

## **Connecting the Dots? Rush Holt, HR 811, and Avante International by Rebecca Mercuri, Ph.D., July 13, 2007**

Consider this scenario: If Avante wins its patent lawsuit against the “big three” vendors, HR 811 could bring billions of dollars to Holt’s home district. Here’s how it could happen.

The latest version of HR 811, the “Voter Confidence and Increased Accessibility Act of 2007 [1], amends HAVA’s Section 257(a) by adding an additional billion dollars for municipalities “to modify or replace its voting systems” in accordance with Section 2 of Rush Holt’s bill. Many election integrity advocates have (erroneously) looked to this bill as a mandate that will require voter-verified paper ballots (or “audit trails”) to be added to all of the nation’s Direct Recording Electronic (DRE) voting equipment.

But back in July 2006, I wrote an OpEd piece [2] describing a lawsuit by Avante against Diebold, Sequoia and ES&S that stands poised to derail much of the Federal and State VVPAT legislation. This case grinds merrily along and trial has been scheduled for May 2008. Should Avante win their suit, they have requested relief that could specifically include: 1) permanently enjoining the sale of all infringing equipment produced by Diebold, Sequoia, and ES&S; 2) recalling all infringing equipment; 3) destroying or delivering to Avante the infringing equipment; and 4) awarding infringement damages to Avante including treble damages for willful infringement.

In a one-two punch, Avante’s key patent, #7036730 “Electronic Voting Apparatus, System and Method,” also includes claims that pertain to “a Braille device,” “an aural device,” and “voice recognition apparatus.”[3] Conveniently, Holt’s bill happens to also include requirements that there be “at least one voting system equipped for individuals with disabilities at each polling place” that “allows the voter to privately and independently verify the individual, durable paper ballot through the conversion of the human-readable printed or marked vote selections into accessible form.”

So, Avante could be the “spoiler” in thwarting implementation of Holt’s bill, if the court rules in their favor and they (or the Judge) choose to recall or destroy all of the deployed and infringing VVPAT and disability accessible voting equipment, just a few months prior to the November 2008 Presidential election. Alternatively, all of HR 811’s \$1B, plus a potentially large chunk of the prior \$3B bonanza that voting system vendors had received from the 2002 HAVA legislation, may wander back to Holt’s election district, since Avante, as Mark Crispin Miller recently noted [4], just happens to be located in his “backyard.”

Indeed, this metaphor is considerably more accurate than even Mark had presumed. Avante’s website [5] shows a picture of their 52,000 square foot corporate headquarters, situated on 16 acres at 70 Washington Road, Princeton Junction, NJ. Rush Holt’s website [6] lists his District Office as 50 Washington Road, West Windsor, NJ. As it happens, these two properties are directly adjacent to each other (separated only by some landscaping and their buildings’ parking lots). I’ve posted a few photos on my website that show the juxtaposition of their office signs. [7] This is not a new development, Avante’s office has been “next door” to Rush’s for the entire duration of time since their parent company (AIT) entered the voting business.



But it doesn't stop here. As Bo Lipari revealed a few weeks ago [8], Avante (along with Microsoft) was an active player in the recent attempt to rewrite New York State's source code review laws. Their Vice President issued an email to all of the State's election commissioners and officials [9], complaining that they do not have sufficient time, nor perhaps inclination, to comply with the law, while also mootly asserting that "there is no intent to reduce the integrity of the vote." Although New York held firm in maintaining its source code escrow and review statutes, the spineless U.S. House of Representatives, apparently caved to "Microsoft and others in the proprietary software industry" according to Holt's counsel, Michelle Mulder. Never mind the fact that Mulder had dissuaded many election integrity advocates from providing input, with her repeated assertions that the wording of the bill, as originally introduced, was a "done deal"; and never mind that she had also failed to warn these advocates that the wording was subsequently being co-opted by "the software industry" (including perhaps Avante?) while it was in committee.

Ultimately what emerged in Holt's revised bill is a requirement that could potentially become the first Federal law to instantiate the use of nondisclosure agreements for voting systems (unless State laws waive them) and to further provide that such agreements "shall be governed by the trade secret laws of the applicable State." Despite this explicit vendor-partisan language, various Holt support groups, such as the dubiously-named People For the American Way, have continued to falsely claim that "Rep. Holt's bill requires ... for ALL federal elections starting in 2008: ... No Secret Source Code – ALL voting machine vendors MUST make the machines' software available for inspection" [10] when, in fact, exactly the OPPOSITE is what this bill now says! Interestingly, Holt's own FAQ sheet on the bill [11] entirely avoids mentioning that there's been a complete reversal on his earlier "open source" stance and focuses on activist bashing along with hammering home the fact that the bill does not ban DRE's (great for Avante, since they believe they hold the key patents on the VVPAT DREs).

If any of the above bothers you, try contacting Holt directly (even though you probably won't be satisfied with the response), or better yet, spread the word and let your own congressperson know that this bad piece of compromised and potentially pork-barrel legislation for Holt's "backyard buddy" is far worse than no legislation at all.

- [1] <[http://thomas.loc.gov/cgi-bin/cpquery/?sel=DOC&&item=&r\\_n=hr154.110&&&sid=cp110650mg&&refer=&&&db\\_id=cp110&&hd\\_count=&](http://thomas.loc.gov/cgi-bin/cpquery/?sel=DOC&&item=&r_n=hr154.110&&&sid=cp110650mg&&refer=&&&db_id=cp110&&hd_count=&)>
- [2] <[http://www.dkosopedia.com/wiki/Avante\\_lawsuit](http://www.dkosopedia.com/wiki/Avante_lawsuit)>
- [3] <<http://www.google.com/patents?id=nwd3AAAAEBAJ&dq=AVANTE>>
- [4] <[http://www.opednews.com/articles/genera\\_mark\\_cri\\_070711\\_expose\\_\\_3b\\_rush\\_holt\\_2c\\_.htm](http://www.opednews.com/articles/genera_mark_cri_070711_expose__3b_rush_holt_2c_.htm)>
- [5] <<http://www.avantetech.com/company>>
- [6] <<http://holt.house.gov>>
- [7] <<http://www.notablessoftware.com/holtavantepics.html>>
- [8] <[http://www.opednews.com/articles/opedne\\_bo\\_lipar\\_070629\\_voting\\_machine\\_vendo.htm](http://www.opednews.com/articles/opedne_bo_lipar_070629_voting_machine_vendo.htm)>
- [9] <<http://www.nyvv.org/newdoc/RGleimEmail062007.pdf>>
- [10] <<http://www.pfaw.org/pfaw/general/default.aspx?oid=24309>>
- [11] <[http://holt.house.gov/pdf/hr\\_811\\_faq.pdf](http://holt.house.gov/pdf/hr_811_faq.pdf)>