

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ERIC M. ALBRITTON

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v.

C. A. NO. 6:08-CV-00089

CISCO SYSTEMS, INC.,
RICK FRENKEL, MALLUN YEN &
JOHN NOH

CISCO SYSTEMS, INC.’S AMENDED MOTION TO COMPEL

TO THE HONORABLE COURT:

Defendant Cisco Systems, Inc. (“Defendant” or “Cisco”) seeks an order overruling Plaintiff Eric Albritton’s (“Albritton” or “Plaintiff”) objections to interrogatories, which were properly served on him pursuant to Rule 33 of the Federal Rules of Civil Procedure, and limiting all evidence and argument of the Complained of Statements to those contained in the complaint, and in support would show as follows:

I. INTRODUCTION

This is a defamation action concerning two articles in an internet publication called the Patent Troll Tracker (“PTT”). The articles are attached to Plaintiff’s complaint which points out certain words and phrases from the articles in paragraphs 16 and 17 that he contends are defamatory. Although the phrases “libelous statements” (§ 24), “false and defamatory statements regarding Albritton” (§ 28) and “false and libelous statements” (§ 32) are pled, these terms are not defined.

Seeking definition for these terms, Defendant propounded five interrogatories asking Plaintiff to identify the statements that he is complaining about (the “Complained of Statements”). This information was needed so that Defendant can file a tightly focused motion

for summary judgment addressing only the statements of fact (as opposed to rhetoric, hyperbole or opinion) “of and concerning” Albritton. The interrogatories were served on October 15, 2008 by electronic mail. Plaintiff did not provide any substantive responses (other than to point back to the articles) but rather, on November 17, 2008 asserted identical objections to each of the five interrogatories. (The Interrogatories and Objections thereto are attached as Exhibit A and incorporated herein.)

The identical objections were:

Plaintiff objects to this Interrogatory in that its answer may be determined by examining the business records of Cisco Systems, Inc. and Richard Frenkel. Fed. R. Civ. P. 33(d). Plaintiff further objects to this Interrogatory as unnecessarily cumulative and harassing in that Plaintiff has expressly pled the statements at issue and discussed them at length during his deposition.

The objections are verified by Albritton although somewhat ambiguously, as it recites that “**she**” prepared the answers which are said to be “true and correct”. Albritton is a man. These objections are neither factually correct nor legally valid and should be overruled. The Plaintiff should be precluded from providing any additional evidence or argument to vary the Complained of Statements as set forth in the language of Plaintiff’s complaint.

II. THE OBJECTIONS ARE FACTUALLY AND LEGALLY IMPROPER

First, Plaintiff maintains that Cisco can determine what Albritton complains about by looking at Cisco and Frenkel’s business records citing Fed. R. Civ. P. 33(d). Rule 33(d) does give a party responding to an interrogatory the option to respond by producing or specifying certain responsive business records. However, the responding party must “specify the records from which the answer may be derived” and must “be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer” to the interrogatory may be ascertained. Fed. R. Civ. P. 33(d). Here, the

Plaintiff did not specify any records and did not give any detail which would permit Cisco to locate the responsive records. Furthermore, the Defendants have no business records that reveal what Plaintiff complains about in this lawsuit. Even if there were, Cisco is entitled to a sworn answer from Plaintiff himself setting out the language. Because the Plaintiff has failed to meet the requirements of Rule 33(d) to specify the particular records from which the answer may be derived, he has wholly failed to satisfy his burden under the rule.

“Contention interrogatories” which ask a party to state the facts upon which it bases a claim or defense, are a permissible form of written discovery. Fed. R. Civ. P. 33(a)(2). Such interrogatories are not objectionable on the basis that they ask for the responding party’s opinion or contention as it relates to facts or the application of law to fact. *Id.* The Federal courts in Texas have repeatedly held that responses to contention interrogatories must be in narrative form and that responses which merely cite Rule 33(d) in response are insufficient. *See Barkley v. Life Insurance Co. of North America*, No. 3-07-CV-1498-M, 2008 WL 450138 at *1 (N.D. Tex. Feb. 19, 2008), *as modified*, (N.D. Tex. Mar. 12, 2008) (Kaplan, J.), citing *In re Pabst Licensing GmbH Patent Litigation*, No. 99-MD-1298, 2001 WL 797315 at *9 (E.D. La. Jul. 12, 2001); *Alexander v. Hartford Life and Acc. Ins. Co.*, No. 3-07-CV-1489-M, 2008 WL 906786 at *4 (N.D. Tex. Apr. 3, 2008) (Kaplan, J.). At least one district court in Florida has done the same. *See Border Collie Rescue, Inc. v. Ryan*, Case No. 3:04-cv-568-J-32HTS, 2005 WL 662724 (M.D.Fla. 2005) (Snyder, J.).

Second, Plaintiff’s contention that this discovery is “unnecessarily cumulative and harassing” because Plaintiff has “expressly pled the statements at issue and discussed them at length during his deposition” is factually and legally incorrect. The complaint sets out only certain words and phrases. One of the complained of phrases found in paragraph 17, quoting

from the October 18 article, is “another example of the abusive nature of litigation in the Banana Republic of East Texas.”

When asked at his deposition whether he contended that “that phrase is defamatory of you?” His answer was “No” although he added a rambling explanation. (Albritton deposition at p. 69, attached as Exhibit B.) The Banana Republic statement (which was on the website for only 24 hours as Plaintiff admits and which has achieved widespread publicity only because of this lawsuit) is arguably not “of and concerning” Plaintiff, a constitutionally compelled element of Plaintiff’s cause of action (*see New York Times v. Sullivan*, 376 U.S. 254 (1964)) and is almost certainly rhetoric, hyperbole or opinion which are not actionable under Texas or First Amendment jurisprudence. *See Greenbelt Cooperative Publishing Association, Inc. v. Bresler*, 398 U.S. 6 (1970); (“[W]e hold that the imposition of liability on such a basis was constitutionally impermissible—that as a matter of constitutional law, the word ‘blackmail’ in these circumstances was not slander when spoken, and not libel when reported in the Greenbelt News Review. ... [E]ven the most careless reader must have perceived that the word was no more than rhetorical hyperbole, a vigorous epithet used by those who considered Bresler’s negotiating position extremely unreasonable.”) *See also, Presidio Enterprises, Inc. v. Warner Bros. Distributing Corp.*, 784 F.2d 674, 679 (5th Cir. 1986) (“Opinions and beliefs reside in an inner sphere of human personality and subjectivity that lies beyond the reach of the law and is not subject to its sanctions. ... Similarly, actions for fraud or misrepresentation must be based on objective statements of fact, not expressions of personal opinion. The law wisely declines to tread in the latter area because, in some deep sense, ‘everyone is entitled to his own opinion.’ ‘Chacun à son goût’ and ‘De gustibus non est disputandum’ are time-honored expressions of this principle.”)

Third, the Plaintiff says, subject to the objections, “see the attached articles.” This is, of course, no answer because while the articles are to be construed as a whole (to avoid matters being taken out of context), the defendants are still entitled to determine what in the article the Plaintiff complains about.

For these reasons, and because Plaintiff limited its pleadings and discovery to these words and phrases, Defendant would move the Court to limit Plaintiff to those phrases specified in the complaint

III. CONCLUSION AND PRAYER

The motion should be granted and the Plaintiff’s objections overruled and he should be precluded from providing any additional evidence or argument to vary the complained of Statements as articulated in the Complaint.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: /s/ Charles L. Babcock

Charles L. Babcock
Federal Bar No.: 10982
Email: cbabcock@jw.com
Crystal J. Parker
Federal Bar No.: 621142
Email: cparker@jw.com
1401 McKinney
Suite 1900
Houston, Texas 77010
(713) 752-4200
(713) 752-4221 – Fax

**ATTORNEYS FOR DEFENDANT
CISCO SYSTEMS, INC.**

CERTIFICATE OF CONFERENCE

Immediately upon receipt of the objections, in light of the upcoming discovery and motion deadline, lead defense counsel consulted with lead Plaintiff's counsel in person on November 17, 2008. Agreement could not be reached to fully respond to the interrogatories. The next day, associate counsel asked for clarification of the request (which was immediately provided) and promised a written response by close of business on November 19, 2008.¹ The undersigned called associate counsel (Ms. Peden) prior to the close of business on November 19, 2008 (Pacific time where Ms. Peden resides) but was immediately put into her voice mail. Later that day, Mr. Patton, Ms. Peden and I held another conversation regarding discovery. Plaintiff through counsel, refused to withdraw objections and answer interrogatories. On November 26, 2008, counsel again contacted Ms. Peden regarding this amended motion, which is in substance the same and only changes the relief requested due to the fact that the discovery period has now ended. However, an agreement was still not reached regarding the relief requested.

Certified this 26th day of November, 2008.

/s/ Charles L. Babcock

Charles L. Babcock

CERTIFICATE OF SERVICE

This is to certify that on this 26th day of November, 2008, a true and correct copy of the foregoing was served via electronic mail upon:

George L. McWilliams
406 Walnut
P.O. Box 58
Texarkana, Texas 75504-0058
Attorney for Defendant Richard Frenkel

James A. Holmes
605 South Main Street, Suite 203
Henderson, Texas 75654
Attorney for Plaintiff Eric Albritton

Patricia L. Peden
Law Offices of Patricia L. Peden
5901 Christie Avenue
Suite 201
Emeryville, CA 94608
Attorney for Plaintiff Eric Albritton

Nicholas H. Patton
Patton, Tidwell & Schroeder, LLP
4605 Texas Boulevard
P.O. Box 5398
Texarkana, Texas 75505-5398
Attorney for John Ward, Jr.

/s/ Charles L. Babcock

Charles L. Babcock

¹ A fact she now denies.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ERIC M. ALBRITTON,

Plaintiff,

v.

(1) CISCO SYSTEMS, INC., (2) RICHARD
FRENKEL, (3) MALLUN YEN and
(4) JOHN NOH,

Defendants.

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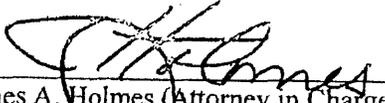
NO. 6:08-CV-00089

PLAINTIFF'S ANSWERS AND OBJECTIONS TO
CISCO SYSTEM, INC.'S FIRST SET OF INTERROGATORIES

TO: Cisco Systems, Inc., Mallun Yen and John Noh, by and through their attorney of record, Mr. Charles Babcock, 1401 McKinney, Suite 1900, Houston, Texas 77010 and Richard Frenkel, by and through his attorney of record, Mr. George McWilliams, P.O. Box 58, Texarkana, Texas 75504-0058.

COMES NOW, ERIC ALBRITTON, and submit these answers, under oath, to the Interrogatories propounded to him by *Cisco Systems, Inc.*, in accordance with Rule 33 of the Federal Rules of Civil Procedure.

Respectfully submitted,


James A. Holmes (Attorney in Charge)
Texas Bar No. 00784290

THE LAW OFFICE OF JAMES HOLMES, P.C.

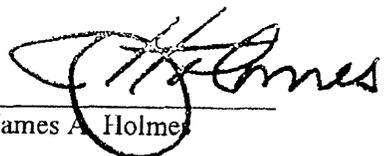
635 SOUTH MAIN, SUITE 203
HENDERSON, TX 75654
(903) 657-2800
(903) 657-2855 (fax)
jh@jamesholmeslaw.com



Exhibit A

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to Charles Babcock, 1401 McKinney, Suite 1900, Houston, Texas 77010, attorney for Cisco Systems, Inc., Mallun Yen and John Noh and Mr. George McWilliams, attorney for Richard Frenkel, P.O. Box 58, Texarkana, Texas 75504-0058, via United States mail on this, the 17th day of November 2008.


James A. Holmes

INTERROGATORY NO. 1: Identify verbatim all statements that you allege Richard Frenkel posted that are “scandalous and defamatory allegations about Albritton” as alleged in paragraph 15 of Plaintiff’s Original Complaint.

ANSWER: Plaintiff objects to this Interrogatory in that its answer may be determined by examining the business records of Cisco Systems, Inc. and Richard Frenkel. FED. R. CIV. P. 33(d). Plaintiff further objects to this Interrogatory as unnecessarily cumulative and harassing in that Plaintiff has expressly pled the statements at issue and discussed them at length during his deposition. Subject to these objections, please see the attached articles published by Frenkel in the course and scope of his employment with Cisco.

INTERROGATORY NO. 2: Identify all statements that you contend are defamatory in the October 17, 2007, posting referred to in paragraph 16 of Plaintiff’s Original Complaint.

ANSWER: Plaintiff objects to this Interrogatory in that its answer may be determined by examining the business records of Cisco Systems, Inc. and Richard Frenkel. FED. R. CIV. P. 33(d). Plaintiff further objects to this Interrogatory as unnecessarily cumulative and harassing in that Plaintiff has expressly pled the statements at issue and discussed them at length during his deposition. Subject to these objections, please see the attached articles published by Frenkel in the course and scope of his employment with Cisco.

INTERROGATORY NO. 3: Identify each “libelous statement” verbatim referred to in paragraph 24 of Plaintiff’s Original Complaint.

ANSWER: Plaintiff objects to this Interrogatory in that its answer may be determined by examining the business records of Cisco Systems, Inc. and Richard Frenkel. FED. R. CIV. P. 33(d). Plaintiff further objects to this Interrogatory as unnecessarily cumulative and harassing in that Plaintiff has expressly pled the statements at issue and discussed them at length during his deposition. Subject to these objections, please see the attached articles published by Frenkel in the course and scope of his employment with Cisco.

INTERROGATORY NO. 4: Identify all “false and defamatory statements regarding Albritton” referred to in paragraph 28 of Plaintiff’s Original Complaint.

ANSWER: Plaintiff objects to this Interrogatory in that its answer may be determined by examining the business records of Cisco Systems, Inc. and Richard Frenkel. FED. R. CIV. P. 33(d). Plaintiff further objects to this Interrogatory as unnecessarily cumulative and harassing in that Plaintiff has expressly pled the statements at issue and discussed them at length during his deposition. Subject to these objections, please see the attached articles published by Frenkel in the course and scope of his employment with Cisco.

INTERROGATORY NO. 5: Identify all “false and defamatory statement of ‘fact’” referred to in paragraph 32 of Plaintiff’s Original Complaint.

ANSWER: Plaintiff objects to this Interrogatory in that its answer may be determined by examining the business records of Cisco Systems, Inc. and Richard Frenkel. FED. R. CIV. P. 33(d). Plaintiff further objects to this Interrogatory as unnecessarily cumulative and harassing in that Plaintiff has expressly pled the statements at issue and discussed them at length during his deposition. Subject to these objections, please see the attached articles published by Frenkel in the course and scope of his employment with Cisco.

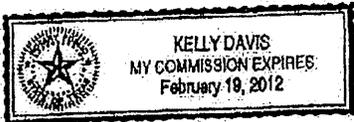
THE STATE OF TEXAS §

COUNTY OF RUSK §

BEFORE ME, the undersigned authority, on this day personally appeared ERIC ALBRITTON, who, being by me first duly sworn, did on oath depose and say that she prepared the answers which appear hereafter and are attached hereto, in the capacity stated herein, and which Answers are designed to be used in the above styled action, and that every statement, allegation and denial thereof is true and correct.

[Handwritten Signature]
ERIC ALBRITTON

SWORN TO AND SUBSCRIBED BEFORE ME by the said ERIC ALBRITTON on this the 17th day of November 2008, to certify which witness my hand and seal of office.



[Handwritten Signature]
Notary Public, State of Texas

My Commission Expires: 2/19/12

Notary's Printed Name: Kelly Davis

Patent Troll Tracker: ESN Convinces EDTX Court Clerk To Alter Documents To Try To Manufacture Subject Matter Jurisdiction Where None Existed

Patent Troll Tracker

An alternative look at patent litigation trends, focusing on the increasing number of patent lawsuits brought by shell corporations that make or sell no goods or services.

Thursday, October 18, 2007

ESN Convinces EDTX Court Clerk To Alter Documents To Try To Manufacture Subject Matter Jurisdiction Where None Existed

I got a couple of anonymous emails this morning, pointing out that the docket in ESN v. Cisco (the Texas docket, not the Connecticut docket), had been altered. One email suggested that ESN's local counsel called the EDTX court clerk, and convinced him/her to change the docket to reflect an October 16 filing date, rather than the October 15 filing date. I checked, and sure enough, that's exactly what happened - the docket was altered to reflect an October 16 filing date and the complaint was altered to change the filing date stamp from October 15 to October 16. Only the EDTX Court Clerk could have made such changes.

Of course, there are a couple of flaws in this conspiracy. First, ESN counsel Eric Albritton signed the Civil Cover Sheet stating that the complaint had been filed on October 15. Second, there's tons of proof that ESN filed on October 15. Heck, Dennis Crouch may be subpoenaed as a witness!

You can't change history, and it's outrageous that the Eastern District of Texas may have, wittingly or unwittingly, helped a non-practicing entity to try to manufacture subject matter jurisdiction. Even if this was a "mistake," which I can't see how it could be, given that someone emailed me a printout of the docket from Monday showing the case, the proper course of action should be a motion to correct the docket.

Email Rick

trolltracker@gmail.com

About Me

Rick Frenkel

Patent lawyer, trying to gather and organize information about patent litigation in an informative and useful way.

[View my complete profile](#)

EFF is helping bloggers protect their Constitutional right to anonymous speech



Blogs I Read

[Above The Law \(People Magazine, for Lawyers\)](#)

[Anticipate This!](#)

Patent Troll Tracker ESN Convinces EDTX Court Clerk To Alter Documents To Try To Manufacture Subject Matter Jurisdiction Where None Existed

(n.b.: don't be surprised if the docket changes back once the higher-ups in the Court get wind of this, making this post completely irrelevant).

EDIT: You can't change history, but you can change a blog entry based on information emailed to you from a helpful reader.

Posted by Rick Frenkel at 1:13 PM 

Labels: [Cisco](#), [ECF](#), [Eric Albritton](#), [ESN](#), [magically changing docket dates](#)

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Patent Troll Tracker

THURSDAY, OCTOBER 18, 2007

ESN Convinces EDTX Court Clerk To Alter Documents To Try To Manufacture Subject Matter Jurisdiction Where None Existed

I got a couple of anonymous emails this morning, pointing out that the docket in ESN v. Cisco (the Texas docket, not the Connecticut docket), had been altered. One email suggested that ESN's local counsel called the EDTX court clerk, and convinced him/her to change the docket to reflect an October 16 filing date, rather than the October 15 filing date. I checked, and sure enough, that's exactly what happened - the docket was altered to reflect an October 16 filing date and the complaint was altered to change the filing date stamp from October 15 to October 16. Only the EDTX Court Clerk could have made such changes.

Of course, there are a couple of flaws in this conspiracy. First, ESN counsel Eric Albritton signed the Civil Cover Sheet stating that the complaint had been filed on October 15. Second, there's tons of proof that ESN filed on October 15. Heck, Dennis Crouch may be subpoenaed as a witness!

You can't change history, and it's outrageous that the Eastern District of Texas is apparently, wittingly or unwittingly, conspiring with a non-practicing entity to try to manufacture subject matter jurisdiction. This is yet another example of the abusive nature of litigating patent cases in the Banana Republic of East Texas.

(n.b.: don't be surprised if the docket changes back once the higher-ups in the Court get wind of this, making this post completely irrelevant).

Posted by Troll Tracker at 1:13 PM

0 comments

WEDNESDAY, OCTOBER 17, 2007

Troll Jumps the Gun, Sues Cisco Too Early

Well, I knew the day would come. I'm getting my troll news from Dennis Crouch now. According to Dennis, a company called ESN sued Cisco for patent infringement on October 15th, while the patent did not issue until October 16th. I looked, and ESN appears to be a shell entity managed by the President and CEO of DirectAdvice, an online financial website. And, yes, he's a lawyer. He clerked for a federal judge in Connecticut, and was an attorney at Day, Berry & Howard. Now he's suing Cisco on behalf of a non-practicing entity.

Send email

email TrollTracker

About Me

Troll Tracker

Just a lawyer, interested in patent cases, but not interested in publicity

[View my complete profile](#)



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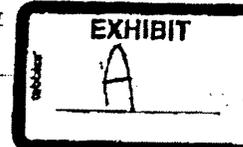
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I asked myself, can ESN do this? I would think that the court would lack subject matter jurisdiction, since ESN owned no property right at the time of the lawsuit, and the passage of time should not cure that. And, in fact, it was right:

A declaratory judgment of "invalidity" or "noninfringement" with respect to Elk's pending patent application would have had no legal meaning or effect. The fact that the patent was about to issue and would have been granted before the court reached the merits of the case is of no moment. Justiciability must be judged as of the time of filing, not as of some indeterminate future date when the court might reach the merits and the patent has issued. We therefore hold that a threat is not sufficient to create a case or controversy unless it is made with respect to a patent that has issued before a complaint is filed. Thus, the district court correctly held that there was no justiciable case or controversy in this case at the time the complaint was filed. GAF contends, however, that the issuance of the '144 patent cured any jurisdictional defect. We disagree. Later events may not create jurisdiction where none existed at the time of filing.

GAF Building Materials Corp. v. Elk Corp. of Texas, 90 F.3d 479, 483 (Fed. Cir. 1996) (citations and quotations omitted).

One other interesting tidbit: Cisco appeared to pick up on this, very quickly. Cisco filed a declaratory judgment action (in Connecticut) yesterday, the day after ESN filed its null complaint. Since Cisco's lawsuit was filed after the patent issued, it should stick in Connecticut.

Perhaps realizing their fatal flaw (as a couple of other bloggers/news items have pointed out), ESN (represented by Chicago firm McAndrews Held & Malloy and local counsel Eric Albritton and T. Johnny Ward) filed an amended complaint in Texarkana today - amending to change absolutely nothing at all, by the way, except the filing date of the complaint. Survey says? XXXXXX (insert "Family Feud" sound here). Sorry, ESN. You're on your way to New Haven. Wonder how Johnny Ward will play there?

Posted by Troll Tracker at 7:00 PM

1 comment

TrollSurfing: Monts & Ware, Ward & Olivo, and Their Clients

Similar to surfing the web, I started by checking out a hunch I had about Monts & Ware being behind all sorts of troll cases. Then I trollsurfed through a bunch of cases, and I ended up not only with Monts & Ware (Dallas litigation firm), but also Ward & Olivo (patent lawyers from New York/New Jersey), as a thread behind a bunch of

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Sitemeter

Albritton, Eric M.

10/27/2008

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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

TYLER DIVISION

ERIC M. ALBRITTON,

Plaintiff,

VS.

CISCO SYSTEMS, INC., RICK
FRENKEL, MALLUN YEN &
JOHN NOH,

Defendants.

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C.A. NO. 6:08-CV-00089

CERTIFIED COPY

ORAL DEPOSITION OF

ERIC M. ALBRITTON

OCTOBER 27TH, 2008

ORAL DEPOSITION OF ERIC ALBRITTON, produced as a witness at the instance of the CLAIMANT, and duly sworn, was taken in the above-styled and numbered cause on the 27th of October, 2008, from 12:44 p.m. to 4:24 p.m., before Tammy Staggs, CSR in and for the State of Texas, reported by machine shorthand, at the Law Offices of James A. Holmes, 605 South Main, Suite 203, Henderson, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

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P R O C E E D I N G S

(Exhibits 21A - 63 marked)

THE VIDEOGRAPHER: Here begins the videotape deposition of Eric Albritton in the matter of Eric M. Albritton vs. Cisco Systems, Inc., Rick Frenkel, et al. Case No. 6:08CV00089. Today's date is October 27th of 2008. The time is approximately 12:44 p.m. Now on the record.

ERIC ALBRITTON,

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. BABCOCK:

Q. Would you state your name, sir.

A. Eric Albritton.

Q. Mr. Albritton, here is Exhibit 21A. I just like to start each deposition with a notice. Obviously you're here, so there's no question about that.

What -- how are you employed?

A. I'm a lawyer.

Q. And do you practice with a firm?

A. I do.

Q. What's the name of the firm?

A. Eric M. Albritton, PC.

Q. And PC stands for professional corporation, correct?

1 traction in terms of being discussed in the Eastern
2 District?

3 A. Not -- I mean, I can't tell you anything
4 specific. I mean, I certainly don't think that's an
5 accurate characterization. But what Justice Scalea said
6 about the Eastern District of Texas has nothing to do
7 with the fact that Cisco Systems and Rick Frenkel called
8 me a criminal.

9 Q. Are you -- do you remember there's a phrase in
10 the -- in the article about the Banana Republic?

11 A. Uh-huh.

12 Q. About -- something about abusive practices in
13 the Banana Republic of East Texas? I'll get it out in a
14 second, but --

15 A. Yeah, I mean, you're sort of smiling. I guess
16 -- I don't think that's a cute saying.

17 Q. Do you think that that phrase is defamatory of
18 you?

19 A. No. I think it gives context to what he was
20 saying about me, but -- or potentially does, I don't
21 know. But I don't -- I don't think -- well, strike
22 that.

23 I mean, I certainly think he is saying
24 that what I did was abusive because he seems to be
25 linking that, I don't know. Yeah, I mean, he clearly

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ERIC M. ALBRITTON, *
*
Plaintiff, *
*
VS. * C.A. NO. 6:08-CV-00089
*
CISCO SYSTEMS, INC., RICK *
*
FRENKEL, MALLUN YEN & *
*
JOHN NOH, *
*
Defendants. *

REPORTER'S CERTIFICATION
DEPOSITION OF ERIC ALBRITTON
OCTOBER 27TH, 2008

I, TAMMY LEA STAGGS, Certified Shorthand Reporter in
and for the State of Texas, hereby certify to the
following:

That the witness, ERIC ALBRITTON, was duly sworn by
the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the deposition transcript was submitted on
_____ to the witness or to the attorney
for the witness for examination, signature and return to

1 me by _____;

2 That the amount of time used by each party at the
3 deposition is as follows:

4 Mr. James A. Holmes - (0:00)

5 Mr. Charles L. Babcock - (2:38)

6 Mr. George L. McWilliams - (0:35)

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8 That pursuant to information given to the deposition
9 officer at the time said testimony was taken, the
10 following includes counsel for all parties of record:

11 FOR THE PLAINTIFF:
12 James A. Holmes, Esq.

13 FOR THE DEFENDANT, CISCO SYSTEMS, INC.:
14 Charles L. Babcock, Esq.

15 FOR THE DEFENDANT, RICHARD FRENKEL:
16 George L. McWilliams, Esq.
17 Nicole Peavy

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24 That \$ _____ is the deposition officer's charges
25 to the Defendant, Cisco Systems, for preparing the
original deposition transcript and any copies of
exhibits;

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I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action. certified to by me this 31st of October, 2008.

Authentic Copy
The original certified transcript
file was electronically signed
using RealLegal technology.

Tammy Lea Slaggs

Tammy Lea Slaggs, CSR 7496
Expiration Date: 12/31/2009
Firm No. Dallas: 69 Houston: 373
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ERIC M. ALBRITTON

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C. A. NO. 6:08-CV-00089

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CISCO SYSTEMS, INC.,

§

RICK FRENKEL, MALLUN YEN &

§

JOHN NOH

§

**ORDER GRANTING CISCO SYSTEMS, INC.’S MOTION TO COMPEL
PLAINTIFF’S INTERROGATORY RESPONSES**

Came on for consideration Cisco Systems, Inc.’s Motion to Compel Plaintiff’s Interrogatory Responses (“Motion”) in the above-referenced matter. The Court, having considered the Motion and any opposition thereto, GRANTS the Motion and ORDERS as follows:

It is ORDERED that the motion should be granted Plaintiff’s objections overruled.

It is further ORDERED that Plaintiff is precluded from providing any additional evidence or argument to vary the complained of statements as articulated in the Complaint.

SO ORDERED.