

# EXHIBIT “D”

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
TEXARKANA DIVISION

JOHN WARD, JR.

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v.

CISCO SYSTEMS, INC. AND RICK  
FRENKEL

C.A. NO. 08-4022  
JURY TRIAL DEMANDED

**PLAINTIFF'S FIRST SUPPLEMENTAL DISCLOSURES**

Pursuant to Fed. R. Civ. P. 26(a)(1), Plaintiff John Ward, Jr. ("Ward"), through counsel, provides the following Initial Disclosures to Defendant Cisco Systems, Inc. ("Cisco").

**PRELIMINARY STATEMENT AND RESERVATION OF RIGHTS**

Ward makes these disclosures based on his current knowledge, based on information that is reasonably available to him at this time, and upon information that is within his possession, custody or control. Ward is under no obligation to produce documents that are within the possession, custody or control of third parties. Ward's investigation and analysis is ongoing and Ward reserves the right to amend or supplement his disclosures consistent with Fed. R. Civ. P. 26(e).

By making these disclosures, Ward does not represent that he is identifying every document, tangible thing, or witness possibly relevant to this lawsuit. Ward's initial disclosure are further made without waiving in any way: (i) the right to object on the grounds of competency, privilege, the work product doctrine, relevancy, materiality, hearsay, undue burden, or any other proper ground, to the use of any such information for any purpose, in whole or in part, in this action or any other action or proceeding; and (ii) the right to object on any grounds, at any time, or any other discovery request or

proceeding involving or relating to the subject matter of these disclosures. All the disclosures set forth below are made subject to the above objections and qualifications.

**Rule 26(a)(1)(A):** “[T]he name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subject of information.”

**Disclosure:** The following individuals may have potentially discoverable information Ward may use to support his claims.

1. John Ward, Jr.  
111 W. Tyler Street  
Longview, Texas 75601  
(903) 757-6400

Mr. Ward is the Plaintiff.

2. Richard Frenkel  
3229 Morris Drive  
Palo Alto, CA 94303

Rick Frenkel wrote the blog which contained the defamatory comments causing damage to Defendant’s reputation and all matters relating to the causes of action in this case.

3. Corporate Representative of Google, Inc.  
1600 Amphitheatre Pkwy  
Mountain View, California 95051

Google has knowledge of the filing of Plaintiff’s original proceeding against John Doe in Gregg County, Texas. Based upon information and belief, it would have informed Rick Frenkel that Plaintiff sought to discover his identity. Google may also have knowledge about the dissemination of the articles at issue.

4. Corporate Representative of Cisco Systems, Inc.  
San Jose, California

Cisco is the Defendant.

5. Mark Chandler  
c/o Jackson Walker, LLP  
1401 McKinney  
Suite 1900  
Houston, TX 77010  
713.752.4200

General Counsel to Cisco Systems Inc.

6. Eric M. Albritton  
111 W. Tyler Street  
Longview, Texas 75601  
(903) 757-8449

Mr. Eric M. Albritton also is local counsel on Civil Action No. 5:07cv156, the civil action that resulted in the defamatory comments by Defendant. Mr. Albritton likely has knowledge of all issues in this case. He has knowledge of Plaintiff's reputation in the legal community. He also has knowledge of Plaintiff's damages.

7. Amie J. Mathis  
1903 Inglewood Street  
Henderson, Texas 75654

Mrs. Mathis filed the Complaint in Civil Action No. 5:07cv156 on behalf of Eric M. Albritton.

8. David Maland  
United States District Clerk's Office  
211 West Ferguson Street, Room 106  
Tyler, Texas 75702

David Maland has knowledge of the circumstances surrounding the filing of the Complaint in Civil Action No. 5:07cv156. Mr. Maland has knowledge of the Local Rules, the court's software system, the Notice of Electronic Filing, local filing procedures and several facts concerning the issues in this case.

9. Rhonda Lafitte  
United States District Clerk's Office  
500 N State Line Ave  
Texarkana, Texas 75504

Rhonda Lafitte has knowledge of the circumstances surrounding the filing of the Complaint in Civil Action No. 5:07cv156. Ms. Lafitte has knowledge

about her conversation with Jillian Powell, who called the clerk's office on behalf of Cisco.

10. Shelly Moore  
United States District Clerk's Office  
500 N State Line Ave  
Texarkana, Texas 75504

Shelly Moore has knowledge of the circumstances surrounding the filing of the Complaint in Civil Action No. 5:07cv156.

11. Peggy Thompson  
United States District Clerk's Office  
211 West Ferguson Street, Room 106  
Tyler, Texas 75702

Peggy Thompson has knowledge of the circumstances surrounding the filing of the Complaint in Civil Action No. 5:07cv156.

12. Faye Thompson  
United States District Clerk's Office  
211 West Ferguson Street, Room 106  
Tyler, Texas 75702

Faye Thompson has knowledge of the circumstances surrounding the filing of the Complaint in Civil Action No. 5:07cv156.

13. David Provines  
United States District Clerk's Office  
211 West Ferguson Street, Room 106  
Tyler, Texas 75702

David Provines has knowledge of the circumstances surrounding the filing of the Complaint in Civil Action No. 5:07cv156. Mr. Provines has knowledge of the Eastern District of Texas' ECF software.

14. Rachel Wilson  
United States District Clerk's Office  
211 West Ferguson Street, Room 106  
Tyler, Texas 75702

Rachel Wilson has knowledge of the circumstances surrounding the filing of the Complaint in Civil Action No. 5:07cv156.

15. Cindy Paar  
United States District Clerk's Office  
211 West Ferguson Street, Room 106  
Tyler, Texas 75702

Cindy Parr has knowledge of the circumstances surrounding the filing of the Complaint in Civil Action No. 5:07cv156.

16. Peter McAndrews  
McAndrews Held & Malloy  
500 W Madison Street  
Suite 3400  
Chicago, IL 60661  
(312) 775-8000

Peter McAndrews is an attorney and represents the Plaintiff in Civil Action No. 5:07cv156. Mr. McAndrews has knowledge of the facts concerning multiple issues in this case, including communication ESN had with Cisco, the filing of the ESN complaint, Cisco's declaratory judgment action, various motions in the ESN v. Cisco case, the issuance of the ESN patent, and the falsity of Defendant's statements. Mr. McAndrews also has information regarding Cisco's conduct, including negligence, actual malice, recklessness and common law malice. Additionally, Mr. McAndrews may have knowledge of Plaintiff's damages.

17. Paul McAndrews  
McAndrews Held & Malloy  
500 W Madison Street  
Suite 3400  
Chicago, IL 60661  
(312) 775-8000

Paul McAndrews is an attorney and represents the Plaintiff in Civil Action No. 5:07cv156. Mr. McAndrews has knowledge of the facts concerning multiple issues in this case, including communication ESN had with Cisco, the filing of the ESN complaint, Cisco's Declaratory Judgment action, various motions in the ESN v. Cisco case, the issuance of the ESN patent, and the falsity of Defendant's statements. Mr. McAndrews may have information regarding Cisco's conduct, including negligence, actual malice, recklessness and common law malice. Additionally, Mr. McAndrews may have knowledge of Plaintiff's damages.

18. George P. McAndrews  
McAndrews Held & Malloy  
500 W Madison Street  
Suite 3400  
Chicago, IL 60661  
(312) 775-8000

George P. McAndrews is an attorney and represents the Plaintiff in Civil Action No. 5:07cv156. Mr. McAndrews has knowledge of the facts concerning multiple issues in this case, including communication ESN had with Cisco, the filing of the ESN complaint, Cisco's Declaratory Judgment action, various motions in the ESN v. Cisco case, the issuance of the ESN patent, and the falsity of Defendant's statements. Mr. McAndrews may have information regarding Cisco's conduct, including negligence, actual malice, recklessness and common law malice. Additionally, Mr. McAndrews may have knowledge of Plaintiff's damages.

19. Gerald C. Willis  
McAndrews Held & Malloy  
500 W Madison Street  
Suite 3400  
Chicago, IL 60661  
(312) 775-8000

Gerald C. Willis is an attorney and he represents the Plaintiff in Civil Action No. 5:07cv156. Mr. Willis may have knowledge of the facts concerning multiple issues in this case, including communication ESN had with Cisco, the filing the ESN complaint, Cisco's Declaratory Judgment action, various motions in the ESN v. Cisco case, the issuance of the ESN patent, and the falsity of Defendant's statements. Mr. Willis may have information regarding Cisco's conduct, including negligence, actual malice, recklessness and common law malice. Additionally, Mr. Willis may have knowledge of Plaintiff's damages.

20. Michael C. Smith  
Siebman, Reynolds, Burg, Phillips & Smith, LLP  
713 South Washington Avenue  
Marshall, Texas 75671  
(903) 938-8900

Michael C. Smith had communications with Rick Frenkel about the libelous statements and he allegedly investigated the facts surrounding the filing of Civil Action No. 5:07cv156. Mr. Smith has knowledge about the Local Rules, and the electronic filing procedures in place at the time the ESN complaint was filed. Mr. Smith has knowledge regarding the falsity of Defendant's statements.

21. Nell Cooley Ward  
101 Fountain Valley Ct.  
Longview, Texas 75601  
(903) 757-6701

Nell Cooley Ward is Plaintiff's spouse. She has knowledge of Plaintiff's damages.

22. The Honorable T. John Ward  
100 East Houston Street  
Marshall, Texas 75670  
(903) 935-3868

The Honorable T. John Ward is Plaintiff's father. He has knowledge of Plaintiff's damages.

23. Bob Chiavello  
Fulbright & Jaworski - Dallas  
2200 Ross Avenue, Suite 2800  
Dallas, Texas 75201  
(214) 855-8000

Bob Chiavello has knowledge of damage done to Plaintiff's reputation by Defendant's statements. He also has knowledge of Plaintiff's reputation in the legal community. Mr. Chiavello may have additional info regarding the facts of this case.

24. Raymond P. Niro  
Niro, Scavone, Haller & Niro  
181 West Madison, Suite 4600  
Chicago, Illinois 60602 -4635  
(312) 236-0733

Ray Niro may have knowledge of damage done to Plaintiff's reputation by Defendant's statements. He may have knowledge of Plaintiff's reputation in the legal community. Mr. Niro also has knowledge of false statements made by the Troll Tracker. Mr. Niro has knowledge about the reasons the Troll Tracker publically disclosed his identity. Mr. Niro may have additional information regarding facts in this case.

25. Danny Williams  
Williams, Morgan & Amerson, P.C.  
10333 Richmond, Suite 1100  
Houston, Texas 77042  
(713) 934-4060



Danny Williams has knowledge of damage done to Plaintiff's reputation by Defendant's statements. He also has knowledge of Plaintiff's reputation in the legal community. Mr. Williams may have additional information regarding the facts underlying this lawsuit.

26. Sam Baxter  
McKool Smith, P.C.  
104 E. Houston Street, Suite 300  
Marshall, Texas 75670  
(903) 923-9000

Sam Baxter has knowledge about the facts surrounding the filing of the ESN complaint, knowledge that ESN did not violate any local rule, custom or practice in the filing of the ESN complaint. Mr. Baxter has knowledge of the filing procedures in place on October 2007. Mr. Babcock may have knowledge about the date the ESN patent issued. Mr. Baxter has knowledge regarding Defendant's negligence, recklessness and malice in defaming by Troll Tracker. Mr. Baxter may have knowledge regarding the falsity of Defendant's accusations. Sam Baxter has knowledge of Plaintiff's reputation in the legal community. Mr. Baxter may also have information regarding Plaintiff's damages.

27. The Honorable Robert Parker  
100 E. Ferguson St., Ste 1114  
Tyler, Texas 75702  
(903) 531-3535

The Honorable Robert Parker has knowledge of Plaintiff's reputation in the legal community.

28. The Honorable Lauren Parish  
405 North Titus  
Gilmer, Texas 75644  
(903) 843-2836

The Honorable Lauren Parish has knowledge of Plaintiff's reputation in the legal community.

29. Larry Carlson  
Baker Botts, LLP  
2001 Ross Avenue  
Dallas, Texas 75201-2980  
(214) 953-6525

Larry Carlson has knowledge of Plaintiff's reputation in the legal community.

30. Jim Knowles  
909 ESE Loop 323, Suite 410  
Tyler, Texas 75701  
(903) 534-3800

Jim Knowles has knowledge of Plaintiff's reputation in the legal community.

31. Greg Love  
Love Law Firm  
109 W. Tyler Street  
Longview, Texas 75601  
(903) 230-5683

Greg Love has knowledge of Plaintiff's reputation in the legal community.

32. Rich Norman  
Three Riverway, Suite 1775  
Houston, TX 77056  
(713) 651-1771

Rich Norman has knowledge of Plaintiff's reputation in the legal community.

33. John Noh  
3663 S. Bascom Avenue  
Campbell, CA 95008  
408.558.9573

Mr. Noh participated in the dissemination of the accused articles. Mr. Noh has factual information regarding many of the issues in this case.

34. Matthew Tanielian  
900 7<sup>th</sup> Street NW  
Suite 750  
Washington, DC 20001

Troll Tracker believes Mr. Tanielian has information concerning its motive to defame by Troll Tracker. Mr. Tanielian likely has additional relevant information.

35. Kurt Pankraz  
Bart Showalter  
Kevin Meek  
Steve Shortgen  
Baker Botts, LLP  
2001 Ross Avenue  
Dallas, Texas 75201  
214.953.6500

Counsel to defendant. The individuals have knowledge about the facts surrounding the filing of the ESN complaint, knowledge that ESN did not violate any local rule, custom or practice in the filing of the ESN complaint. They have knowledge of the filing procedures in place on October 2007 and knowledge that Defendant's statements were false. They have knowledge about the date the ESN patent issued. On information and belief, they have knowledge regarding Defendant's negligence, recklessness and malice in defaming by Troll Tracker.

36. Jillian Powell  
Baker Botts, LLP  
2001 Ross Avenue  
Dallas, Texas 75201  
214.953.6500

Ms. Powell acting as Cisco's agent, contacted the clerk's office and learned information bearing on the falsity of Defendant's statements, Defendant's negligence, recklessness, malice and intent to defame.

37. J. Anthony Downs  
Goodwin Procter, LLP  
Exchange Place  
53 State Street  
Boston, MA 01209

Mr. Downs has knowledge about the *Hertz v. Enterprise* case.

38. Mallun Yen  
Marta Beckwith  
Michael Timmeny  
John Corcoran  
John Earnhardt  
Dan Lang  
Mark Michels  
Neal Rubin  
Terry Anderson  
Robyn Nicole Blum  
Heather Dickinson  
Lisa Domingo  
William Friedman  
Mary Ooley  
Jennifer Greeson  
Dan Lang  
Kenneth M. Lotich  
Mark Michels  
Marc Musgrove

Paul Redifer  
Richard Renfree  
Michael Ritter  
Neal Rubin  
Anita Kirsten Weeks  
Cisco Systems, Inc.  
c/o Jackson Walker LLP  
1401 McKinney  
Suite 1900  
Houston, Texas 77010  
713.752.4200

All employees of Defendant who may have factual information regarding the filing of the ESN complaint, the Troll Tracker blog posts, and Cisco's conduct.

**Rule 26(a)(1)(B):** “[A] copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.”

**Disclosure:** See documents bearing Bates Numbers Ward 000001 – 000386, previously produced. Ward reserves the right to identify additional documents as discovery proceeds.

**Rule 26(a)(1)(C):** “[A] computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.”

**Disclosure:** Ward does not seek economic damages. The damages sought by Ward, as set forth in his Complaint, are within the discretion of the jury.

**Rule 26(a)(1)(D):** “[Produce] for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.”

**Disclosure:** Not Applicable.

Respectfully Submitted,

/s/ Nicholas H. Patton

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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

This is to certify that on this 11<sup>th</sup> day of September, 2009, a true and correct copy of Plaintiff's Initial Disclosures was served via electronic mail upon counsel below:

Richard E. Griffin  
Charles Babcock  
Crystal Parker  
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1401 McKinney  
Suite 1900  
Houston, Texas 77010

Attorneys for Defendant Cisco Systems, Inc.

/s/ Nicholas H. Patton

Nicholas H. Patton