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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ERIC ALBRITTON] CASE NO. 6:08CV89
VS.] 9 AM, SEPTEMBER 14, 2009
CISCO SYSTEMS, INC.] TYLER, TEXAS

REPORTER'S SAME-DAY DELIVERY TRANSCRIPT OF JURY TRIAL

VOLUME 1 OF _____, PAGES 1 THROUGH 248

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THE HONORABLE RICHARD SCHELL, U.S. DISTRICT JUDGE, PRESIDING

PROCEEDINGS REPORTED USING COMPUTERIZED STENOTYPE,
TRANSCRIPT PRODUCED USING COMPUTER-AIDED TRANSCRIPTION.

02:35PM 1 AND HERE IS SOME OF THE THINGS THAT WE THINK THE
02:35PM 2 EVIDENCE IS GOING TO SHOW IN THIS CASE. FIRST OF ALL, NO
02:35PM 3 DAMAGES. MR. ALBRITTON HAS SUFFERED NO MENTAL-ANGUISH DAMAGES,
02:35PM 4 AND THAT'S ALL HE'S CLAIMING IN THIS LAWSUIT. WE'LL TALK ABOUT
02:35PM 5 THAT A LITTLE MORE IN A MINUTE.

02:35PM 6 MR. HOLMES IS QUITE RIGHT. WE DO SAY THAT THE
02:35PM 7 STATEMENTS ARE TRUE. ESN'S LOCAL COUNSEL CONVINCED THE CLERK
02:36PM 8 TO ALTER THE DOCKET. YOU'LL GET TO SEE THE ACTUAL LANGUAGE IN
02:36PM 9 A MINUTE, BUT THERE'S A CONCEPT IN THIS AREA OF THE LAW CALLED
02:36PM 10 SELF-DEFAMATION, AND THAT OCCURS WHEN SOMEBODY, TYPICALLY A
02:36PM 11 PLAINTIFF AND HIS LAWYER, TAKE THE ACTUAL LANGUAGE AND THEN
02:36PM 12 THEY INTERPRET IT IN A WAY THAT THEY THINK WOULD BE HELPFUL IN
02:36PM 13 THEIR LAWSUIT. FOR EXAMPLE, YOU HEARD MR. HOLMES SAY A NUMBER
02:36PM 14 OF TIMES THAT WHAT MR. FRENKEL HAD DONE WAS TO ACCUSE
02:36PM 15 MR. ALBRITTON AND THE CLERK OF FALSELY, CRIMINALLY CHANGING A
02:36PM 16 DOCUMENT. I WROTE DOWN THE LANGUAGE HERE IN A MINUTE, AND
02:36PM 17 WE'LL TALK ABOUT THAT MORE.

02:36PM 18 THE THIRD THING WE WANT TO TALK ABOUT IS THAT MORE
02:36PM 19 PEOPLE KNOW ABOUT FRENKEL'S ARTICLES AS A RESULT OF THIS
02:36PM 20 LAWSUIT THAN EVER READ THEM AT THE TIME.

02:36PM 21 NOW, THE FOURTH POINT WE WANT TO TALK ABOUT,
02:36PM 22 ALBRITTON SELF-DEFAMED BY CLAIMING THAT HE WAS ACCUSED OF
02:37PM 23 CRIME. LET THERE BE NO DOUBT THAT AS I STAND HERE IN FRONT OF
02:37PM 24 YOU, CISCO IS TAKING FULL RESPONSIBILITY FOR THE PATENT TROLL
02:37PM 25 TRACKER ARTICLES, EVEN THOUGH THE COMPANY DID NOT WRITE,

02:37PM 1 REVIEW, OR EDIT THE ARTICLES OR SEND THEM OUT TO ANYBODY. IT
02:37PM 2 IS QUITE CLEAR, AND THE EVIDENCE WILL NOT BE DISPUTED, THAT
02:37PM 3 MR. FRENKEL'S SUPERIOR KNEW ABOUT THE PATENT TROLL TRACKER AND
02:37PM 4 KNEW THAT HE WAS GOING TO WRITE THESE ARTICLES, EVEN THOUGH SHE
02:37PM 5 DIDN'T READ WHAT HE WROTE BEFORE HE SENT IT OUT. AND IT'S ALSO
02:37PM 6 QUITE CLEAR THAT CISCO, AS A COMPANY, DIDN'T AGREE WITH HIS
02:37PM 7 OPINION ABOUT THE EASTERN DISTRICT OF TEXAS BEING A BANANA
02:37PM 8 REPUBLIC. HE APPARENTLY, WITHOUT ANY CONSULTATION FROM US,
02:37PM 9 THOUGHT BETTER OF THAT THE NEXT DAY AND CHANGED THE LANGUAGE.

02:37PM 10 I THINK MR. MCWILLIAMS WILL TALK A LITTLE MORE ABOUT
02:37PM 11 HOW MR. FRENKEL CREATED THE PATENT TROLL TRACKER BECAUSE OF HIS
02:37PM 12 PERSONAL INTEREST IN PATENT REFORM. AND FINALLY, I THINK WE'RE
02:38PM 13 BOTH GOING TO TALK A LITTLE BIT ABOUT FREE-SPEECH GUARANTIES,
02:38PM 14 THE RIGHT TO EXPRESS YOUR OPINIONS, WHICH IS WHAT MR. FRENKEL
02:38PM 15 WAS DOING IN THIS CASE. BUT NOW THIS VOICE -- IT MAY NOT BE AN
02:38PM 16 IMPORTANT VOICE TO YOU; CERTAINLY IS NOT AN IMPORTANT VOICE TO
02:38PM 17 THE PLAINTIFFS. BUT THIS VOICE IS SILENT. THE PATENT TROLL
02:38PM 18 TRACKER IS NO LONGER PUBLISHING TO ANYBODY.

02:38PM 19 LET ME GO TO THE EVIDENCE OF MENTAL ANGUISH.
02:38PM 20 MR. ALBRITTON IS NOT CLAIMING IN THIS CASE THAT HE HAS HAD ANY
02:38PM 21 ECONOMIC DAMAGE. HE IS NOT CLAIMING THAT HE HAS LOST ANY
02:38PM 22 BUSINESS. HE IS NOT CLAIMING DAMAGE TO HIS GOOD REPUTATION.
02:38PM 23 EVERYBODY AGREES HE'S GOT A GOOD REPUTATION IN THIS DISTRICT,
02:38PM 24 AND HE'S NOT CLAIMING REPUTATIONAL DAMAGES. ALL HE IS CLAIMING
02:38PM 25 IS MENTAL-ANGUISH DAMAGES, WHAT MR. HOLMES REFERRED TO AS THE

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ERIC ALBRITTON] CASE NO. 6:08CV89
VS.] 9 AM, SEPTEMBER 15, 2009
CISCO SYSTEMS, INC.] TYLER, TEXAS

REPORTER'S SAME-DAY DELIVERY TRANSCRIPT OF JURY TRIAL

VOLUME 2 OF _____, PAGES 249 THROUGH ^ 000

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PROCEEDINGS REPORTED USING COMPUTERIZED STENOTYPE,
TRANSCRIPT PRODUCED USING COMPUTER-AIDED TRANSCRIPTION.

03:43PM 1 Q. SO SOMETIME AROUND -- ON OCTOBER 18TH, SOMETIME AROUND
03:43PM 2 9:30 A.M., MR. PANKRATZ CALLED YOU AT YOUR OFFICE TO DISCUSS
03:43PM 3 THE ESN COMPLAINT; IS THAT RIGHT?

03:44PM 4 A. YES.

03:44PM 5 Q. AND MR. PANKRATZ ASKED YOU TO DO TWO THINGS. HE ASKED
03:44PM 6 YOU TO GET THE COMPLAINT, THE ESN COMPLAINT WITH THE REVISED
03:44PM 7 BANNER, AND TO GET IN TOUCH WITH THE COURT CLERK; IS THAT
03:44PM 8 RIGHT?

03:44PM 9 A. THAT'S CORRECT.

03:44PM 10 Q. I WANT TO ASK YOU A COUPLE OF QUESTIONS ABOUT
03:44PM 11 MR. PANKRATZ'S FIRST REQUEST, THAT YOU GET A COPY OF THE ESN
03:44PM 12 COMPLAINT WITH THE REVISED BANNER. DID YOU KNOW WHAT
03:44PM 13 MR. PANKRATZ MEANT BY "REVISED BANNER"?

03:44PM 14 A. YES.

03:44PM 15 Q. AND WHAT IS A REVISED BANNER?

03:44PM 16 A. IT'S THE CASE INFORMATION, DATE OF FILING, AND THE
03:44PM 17 DATE. IT'S --

03:44PM 18 Q. IT'S ALL RIGHT. IT'S NOT A MEMORY TEST --

03:44PM 19 A. OKAY.

03:44PM 20 Q. -- SO --

03:44PM 21 A. I REMEMBER IT WAS THE DATE OF THE FILING AND THE COURT
03:45PM 22 IT WAS IN.

03:45PM 23 Q. OKAY. SO I KNOW YOU WEREN'T HERE WHEN MS. -- THROUGH
03:45PM 24 THE TESTIMONY IN THIS CASE, BUT LET ME TELL YOU THAT WE'VE
03:45PM 25 HEARD TESTIMONY THAT THE BANNER THAT'S AT THE TOP OF THE

03:49PM 1 A. YES; BUT USUALLY, THEY CONTACT US BEFORE WE GET TO IT.

03:49PM 2 Q. OKAY. BUT IF YOU NOTICED AN ERROR AND YOU WANTED TO
03:49PM 3 KNOW WHAT TO DO TO FIX IT, THAT'S THE PERSON YOU WOULD CALL?

03:50PM 4 A. YES.

03:50PM 5 Q. AND THE COURT CLERKS MAKE CORRECTIONS TO DOCKETS?

03:50PM 6 A. I CAN'T -- I DON'T KNOW WHAT KIND OF CORRECTIONS THEY
03:50PM 7 MAKE; BUT I KNOW THEY MAKE CERTAIN CORRECTIONS, YES.

03:50PM 8 Q. OKAY. FAIR ENOUGH. AND YOU YOURSELF HAVE PREVIOUSLY
03:50PM 9 CALLED THE COURT CLERK TO TALK ABOUT PROBLEMS WITH FILINGS?

03:50PM 10 A. YES.

03:50PM 11 Q. IN FACT, YOU HAVE GROWN ACCUSTOMED TO CALLING ONE
03:50PM 12 PARTICULAR COURT CLERK, MS. MAE VELVIN, BECAUSE SHE WAS THE
03:50PM 13 COURT CLERK THAT WORKED ON TWO OF YOUR BIGGEST CASES?

03:50PM 14 A. I WOULDN'T SAY ACCUSTOMED, BUT I CALLED HER A HANDFUL
03:50PM 15 OF TIMES, YES.

03:50PM 16 Q. OKAY. AND THE CALLS BETWEEN THE LEGAL ASSISTANTS THAT
03:50PM 17 WORK IN THE EASTERN DISTRICT OF TEXAS FOR THE VARIOUS FIRMS AND
03:50PM 18 THE COURT CLERKS IS OFTEN INFORMAL; WOULD YOU AGREE WITH ME?

03:50PM 19 A. I WOULD AGREE, YES.

03:50PM 20 Q. SO ON THIS OCCASION, YOU DIDN'T HAVE A PROBLEM AT
03:50PM 21 ALL -- WHEN MR. PANKRATZ ASKED YOU TO CALL THE COURT CLERK, YOU
03:51PM 22 DIDN'T HAVE A PROBLEM CALLING THE COURT CLERK, DID YOU?

03:51PM 23 A. NO.

03:51PM 24 Q. AND WHEN YOU CALLED THE COURT CLERK, YOU WERE CALLING
03:51PM 25 SPECIFICALLY TO ASK ABOUT THE FILING OF THE ESN COMPLAINT; IS

03:51PM 1 THAT RIGHT?

03:51PM 2 A. YES.

03:51PM 3 Q. YOU WANTED TO KNOW WHY THE DATES ON THAT OPTIONAL
03:51PM 4 BANNER HAD CHANGED; IS THAT RIGHT?

03:51PM 5 A. YES.

03:51PM 6 Q. AND WHEN YOU CALLED THE COURT CLERK, YOU LEARNED FROM
03:51PM 7 HER THAT AMIE MATHIS FROM MR. ALBRITTON'S OFFICE HAD CALLED
03:51PM 8 OVER TO ASK ABOUT THE SAME THING, RIGHT?

03:51PM 9 A. I DIDN'T GET INTO NAMES OR ANYTHING LIKE THAT.

03:51PM 10 Q. OKAY. BUT YOU LEARNED FROM THE COURT CLERK THAT
03:51PM 11 SOMEBODY FROM MR. ALBRITTON'S OFFICE HAD CALLED ABOUT THE SAME
03:51PM 12 THING, THE FILING OF THE ESN COMPLAINT; IS THAT RIGHT?

03:51PM 13 A. YES.

03:51PM 14 Q. SO WHAT -- MR. ALBRITTON'S OFFICE CALLED OVER BECAUSE
03:51PM 15 THEY HAD A QUESTION ABOUT THE FILING OF THE ESN COMPLAINT?
03:51PM 16 THAT'S WHAT YOU LEARNED?

03:52PM 17 A. YES.

03:52PM 18 Q. AND YOU HAD A QUESTION ABOUT THE FILING OF THE ESN
03:52PM 19 COMPLAINT, AND THAT'S WHAT YOU WERE CALLING ABOUT?

03:52PM 20 A. YES.

03:52PM 21 Q. WHEN YOU CALLED OVER TO THE COURT CLERK'S OFFICE, DID
03:52PM 22 ANY -- DID YOU CALL MR. ALBRITTON'S OFFICE AND ASK HIM TO BE ON
03:52PM 23 THE CALL?

03:52PM 24 A. NO.

03:52PM 25 Q. DID MR. PANKRATZ -- I'M SORRY. I'M LOSING MY VOICE.

03:52PM 1 GIVE ME JUST A MINUTE.

03:52PM 2 DID MR. PANKRATZ TELL YOU THAT BEFORE YOU CALLED
03:52PM 3 OVER TO THE COURT CLERK'S OFFICE TO ASK ABOUT THE FILING OF THE
03:52PM 4 COMPLAINT, THAT YOU NEEDED TO CONFERENCE SOMEBODY IN FROM
03:52PM 5 MR. ALBRITTON'S OFFICE?

03:52PM 6 A. NO.

03:52PM 7 Q. AND YOU WEREN'T WORRIED AT ALL, WERE YOU, ABOUT CALLING
03:52PM 8 TO THE COURT CLERK TO TALK ABOUT THE ESN COMPLAINT WITHOUT
03:52PM 9 HAVING SOMEBODY FROM MR. ALBRITTON'S OFFICE ON THE PHONE?

03:52PM 10 A. NO.

03:53PM 11 Q. THERE WAS ABSOLUTELY NOTHING IMPROPER ABOUT WHAT YOU
03:53PM 12 DID, WAS THERE?

03:53PM 13 A. NO.

03:53PM 14 Q. MS. POWELL, I WANT TO ASK YOU A COUPLE OF QUESTIONS
03:53PM 15 ABOUT YOUR CONVERSATION WITH THE COURT CLERK. I KNOW THAT YOU
03:53PM 16 HAVEN'T BEEN HERE THROUGH THIS TRIAL, BUT WE'VE HEARD A LOT
03:53PM 17 ABOUT THE CONFUSION ABOUT THE DIFFERENT BANNER DATES AND THE
03:53PM 18 CONFUSION ABOUT THE DOCKET. WOULD YOU AGREE WITH ME THAT THERE
03:53PM 19 WAS, AT LEAST FROM CISCO'S PERSPECTIVE, SOME CONFUSION ABOUT
03:53PM 20 THE BANNER DATES?

03:53PM 21 A. I DON'T KNOW.

03:53PM 22 MR. MORAN: OBJECTION, YOUR HONOR. I BELIEVE THIS
03:53PM 23 CALLS FOR SPECULATION AS TO WHAT CISCO KNEW OR DIDN'T KNOW; AND
03:53PM 24 SECOND, MAY BE IN VIOLATION OF PRIVILEGE.

03:53PM 25 MS. PEDEN: I'LL REPHRASE THE QUESTION.

03:53PM 1 THE COURT: I'LL SUSTAIN THE QUESTION. YOU'RE
03:53PM 2 ASKING HER WHAT CISCO WAS THINKING.

03:53PM 3 MS. PEDEN: I'LL REPHRASE THE QUESTION.

03:53PM 4 MS. PEDEN:

03:53PM 5 Q. MS. POWELL, ON OCTOBER 18TH, WERE YOU CONFUSED ABOUT
03:54PM 6 WHAT WAS -- WHY THE BANNERS ON THE ESN COMPLAINT SHOWED TWO
03:54PM 7 DIFFERENT DATES?

03:54PM 8 A. I HAD NEVER SEEN IT BEFORE, BUT I WAS JUST TOLD TO CALL
03:54PM 9 AND ASK FOR THE DIFFERENT -- FOR THE REASON BEHIND IT AND SEE
03:54PM 10 IF I COULD FIND OUT WHAT HAPPENED.

03:54PM 11 Q. OKAY. SO YOU CALLED THE COURT CLERK; IS THAT RIGHT?

03:54PM 12 A. YES.

03:54PM 13 Q. AND YOU TALKED TO MRS. RHONDA LAFITTE?

03:54PM 14 A. I BELIEVE THAT'S WHO I SPOKE WITH.

03:54PM 15 Q. AND YOU WERE CALLING MS. LAFITTE BECAUSE YOU WERE
03:54PM 16 TRYING TO ASCERTAIN THE FACTS OF WHAT HAPPENED WITH THE ESN
03:54PM 17 COMPLAINT?

03:54PM 18 A. THAT'S CORRECT.

03:54PM 19 Q. AND WHEN YOU CALLED MS. LAFITTE FOR THE FACTS,
03:54PM 20 MS. LAFITTE TOLD YOU THAT THE CIVIL COVER SHEET WAS RECEIVED BY
03:54PM 21 MR. ALBRITTON'S OFFICE BEFORE THE COMPLAINT WAS FILED, DIDN'T
03:54PM 22 SHE?

03:54PM 23 A. YES. SHE SAID IT WAS BEFORE.

03:54PM 24 Q. AND MS. LAFITTE TOLD YOU THAT ESN'S COUNSEL HAD LOGGED
03:55PM 25 ONTO THE ELECTRIC FILING SYSTEM BEFORE MIDNIGHT? SHE TOLD YOU

03:55PM 1 THAT, DIDN'T SHE?

03:55PM 2 A. YES.

03:55PM 3 Q. AND SHE ALSO TOLD YOU THAT MR. ALBRITTON'S OFFICE HAD
03:55PM 4 OFFICIALLY FILED THE COMPLAINT AFTER MIDNIGHT?

03:55PM 5 A. I DON'T KNOW IF SHE SAID "OFFICIALLY FILED." I CAN'T
03:55PM 6 REMEMBER EXACTLY, BUT I THINK IT WAS SOMETHING LIKE, THEY
03:55PM 7 FINISHED THE FILING AFTER MIDNIGHT.

03:55PM 8 Q. SHE TOLD YOU THAT MR. ALBRITTON'S OFFICE DIDN'T
03:55PM 9 COMPLETE THE FILING UNTIL AFTER MIDNIGHT?

03:55PM 10 A. THAT IS CORRECT.

03:55PM 11 Q. AND SHE ALSO TOLD YOU THAT MR. ALBRITTON'S OFFICE HAD
03:55PM 12 EXPLAINED THAT THERE HAD BEEN AN ERROR IN THE WAY THAT THE
03:55PM 13 COURT'S ELECTRONIC FILING SYSTEM RECORDED THE FILING DATE; IS
03:55PM 14 THAT RIGHT?

03:55PM 15 A. WE -- I DON'T RECALL EVER TALKING ABOUT AN ERROR,
03:55PM 16 BUT -- I DON'T RECALL TALKING ABOUT AN ERROR.

03:55PM 17 Q. OKAY. WHAT SHE DID TELL YOU WAS THEY LOGGED ON BEFORE
03:56PM 18 MIDNIGHT, RIGHT?

03:56PM 19 A. YES.

03:56PM 20 Q. AND THEY FILED AFTER MIDNIGHT?

03:56PM 21 A. YES, MA'AM.

03:56PM 22 Q. AND BASED ON THAT INFORMATION, THE COURT CLERK MADE A
03:56PM 23 CORRECTION TO THE DOCKET ENTRY?

03:56PM 24 A. I WAS TOLD THEY CHANGED THE DOCKET ENTRY.

03:56PM 25 Q. DO YOU REMEMBER WHETHER OR NOT SHE USED THE

03:56PM 1 WORD "CORRECTED"?

03:56PM 2 A. I DON'T REMEMBER.

03:56PM 3 Q. MS. POWELL, AS YOU SIT HERE TODAY, YOU DON'T RECALL
03:56PM 4 WHETHER OR NOT SHE USED THE WORD "CORRECTED"?

03:56PM 5 A. I'M SORRY. I DON'T REMEMBER.

03:56PM 6 Q. OKAY. DID THE E-MAIL THAT YOU WROTE ON OCTOBER 22ND
03:56PM 7 HAVE THE BEST SUMMARY OF THE FACTS THAT YOU LEARNED FROM
03:56PM 8 MRS. LAFITTE?

03:56PM 9 A. I CAN'T RECALL, BUT IT'S LIKELY.

03:57PM 10 Q. IF YOU HAD A COPY OF THAT E-MAIL JUST FOR YOUR
03:57PM 11 REFERENCE, WOULD THAT HELP YOU REMEMBER WHAT YOU DISCUSSED WITH
03:57PM 12 THE COURT CLERK?

03:57PM 13 A. IT WOULD BE MOST OF THE INFORMATION. YES.

03:57PM 14 Q. OKAY.

03:57PM 15 MS. PEDEN: YOUR HONOR, MAY I APPROACH THE WITNESS
03:57PM 16 AND JUST GIVE HER A COPY OF HER E-MAIL TO REFRESH YOUR
03:57PM 17 RECOLLECTION?

03:57PM 18 MR. MORAN: IS THIS PLAINTIFF'S EXHIBIT 284?

03:57PM 19 MS. PEDEN: PLAINTIFF'S EXHIBIT 285.

03:57PM 20 MR. MORAN: I BELIEVE -- IS THAT -- I DON'T BELIEVE
03:57PM 21 THAT EXHIBIT IS ADMITTED INTO EVIDENCE, YOUR HONOR.

03:57PM 22 MS. PEDEN: YOUR HONOR, IT'S NOT PREADMITTED. IT
03:57PM 23 WAS ADMITTED ONLY FOR IMPEACHMENT, BUT --

03:57PM 24 THE COURT: OKAY. YOU WANT TO SHOW IT TO HER TO
03:57PM 25 REFRESH HER RECOLLECTION?

03:57PM 1 MS. PEDEN: I WANT TO REFRESH HER RECOLLECTION. I'M
03:57PM 2 NOT PLANNING ON PUTTING IT ON THE SCREEN.

03:57PM 3 THE COURT: OKAY.

03:57PM 4 MR. MORAN: IN FACT, YOUR HONOR, JUDGE BUSH RULED
03:57PM 5 THAT 285 WAS NOT ADMITTED.

03:57PM 6 THE COURT: OKAY. THEN WE WON'T DISPLAY IT BUT I
03:57PM 7 THINK SHE CAN SHOW HER ANYTHING TO REFRESH HER RECOLLECTION.

03:57PM 8 MS. PEDEN: THANK YOU, YOUR HONOR.

03:57PM 9 THE COURT: THAT'S FINE.

03:57PM 10 MS. PEDEN: MR. MORAN, DO YOU WANT TO SEE A COPY OF
03:58PM 11 IT BEFORE I TAKE IT UP TO HER? OKAY.

03:58PM 12 (TENDERS DOCUMENT.)

03:58PM 13 MS. PEDEN:

03:58PM 14 Q. I'LL TAKE IT BACK. THANK YOU.

03:58PM 15 A. (TENDERS DOCUMENT.)

03:58PM 16 Q. MS. POWELL, DID THAT REFRESH YOUR RECOLLECTION OF WHAT
03:58PM 17 MS. LAFITTE TOLD YOU?

03:58PM 18 A. A LITTLE.

03:58PM 19 Q. OKAY. AND SO MY QUESTION WAS: DID MS. LAFITTE TELL
03:59PM 20 YOU THAT THEY MADE A CORRECTING ENTRY TO THE DOCKET?

03:59PM 21 A. I CAN'T -- I MEAN, THAT'S WHAT IT SAYS, BUT I CAN'T
03:59PM 22 REMEMBER FOR SURE.

03:59PM 23 Q. OKAY. MS. POWELL, MS. LAFITTE NEVER TOLD YOU THAT THE
03:59PM 24 CLERK'S OFFICE WAS DOING A FAVOR FOR A LOCAL LAWYER, DID SHE?

03:59PM 25 A. NO.

04:06PM 1 EXHIBIT 251.

04:06PM 2 MS. PEDEN:

04:07PM 3 Q. MS. POWELL, HAVE YOU SEEN THIS DOCUMENT BEFORE?

04:07PM 4 A. NO, MA'AM.

04:07PM 5 Q. OKAY. I WANT TO DRAW YOUR ATTENTION TO THE SECOND
04:07PM 6 SENTENCE THERE.

04:07PM 7 MS. PEDEN: CAN YOU HIGHLIGHT IT FOR HER, DEREK,
04:07PM 8 "ONE E-MAIL SUGGESTED."

04:07PM 9 MS. PEDEN:

04:07PM 10 Q. THE SENTENCE SAYS, "ONE E-MAIL SUGGESTED THAT ESN'S
04:07PM 11 LOCAL COUNSEL CALLED THE EASTERN DISTRICT OF TEXAS COURT CLERK
04:07PM 12 AND CONVINCED HIM OR HER TO CHANGE THE DOCKET TO REFLECT AN
04:07PM 13 OCTOBER 16TH FILING DATE RATHER THAN THE OCTOBER 15TH FILING
04:07PM 14 DATE."

04:07PM 15 DO YOU SEE THAT?

04:07PM 16 A. YES, MA'AM.

04:07PM 17 Q. DO YOU KNOW, MS. POWELL, WHETHER OR NOT THAT E-MAIL
04:07PM 18 REFERENCED THERE IS AN E-MAIL FROM BAKER, BOTTS?

04:07PM 19 A. I HAVE NO IDEA.

04:07PM 20 Q. OKAY. WELL, CERTAINLY THE INFORMATION THERE THAT LOCAL
04:07PM 21 COUNSEL CALLED THE EASTERN DISTRICT OF TEXAS COURT CLERK, THAT
04:07PM 22 WAS INFORMATION YOU LEARNED FROM MS. LAFITTE, RIGHT?

04:08PM 23 A. CAN YOU REPEAT THAT AGAIN? I'M SORRY.

04:08PM 24 Q. WELL, THE SENTENCE SAYS THAT ESN'S LOCAL COUNSEL CALLED
04:08PM 25 THE EASTERN DISTRICT OF TEXAS COURT CLERK. DO YOU SEE THAT?

04:08PM 1 A. YES, MA'AM.

04:08PM 2 Q. AND THAT'S THE INFORMATION THAT YOU LEARNED FROM
04:08PM 3 MS. LAFITTE; IS THAT RIGHT?

04:08PM 4 A. YES.

04:08PM 5 MS. PEDEN: AND DEREK, IF YOU CAN HIGHLIGHT FROM "I
04:08PM 6 CHECKED, AND SURE ENOUGH."

04:08PM 7 MS. PEDEN:

04:08PM 8 Q. IT SAYS, "I CHECKED, AND SURE ENOUGH, THAT'S EXACTLY
04:08PM 9 WHAT HAPPENED."

04:08PM 10 DO YOU SEE THAT?

04:08PM 11 A. YES, MA'AM.

04:08PM 12 Q. IN FACT, MS. POWELL, IT WAS YOU THAT CHECKED ON BEHALF
04:08PM 13 OF BAKER, BOTTS; IS THAT RIGHT?

04:08PM 14 A. I CHECKED, BUT I DON'T KNOW --

04:08PM 15 Q. OKAY. SO YOU'RE THE ONE THAT CHECKED?

04:08PM 16 A. I CHECKED, YES.

04:08PM 17 Q. AND YOU REPORTED THAT BACK TO MR. PANKRATZ?

04:08PM 18 A. YES.

04:08PM 19 Q. AND WE AT LEAST KNOW THAT MR. PANKRATZ PROMISED TO GIVE
04:08PM 20 THAT INFORMATION TO CISCO?

04:08PM 21 A. YES, MA'AM.

04:08PM 22 Q. AND MS. POWELL, IN THIS TROLL TRACKER ARTICLE, THERE'S
04:09PM 23 NO MENTION ABOUT THERE BEING ANY CONFUSION AROUND THE OPTIONAL
04:09PM 24 BANNER ON THE ESN COMPLAINT, IS THERE?

04:09PM 25 A. IT DOESN'T SEEM SO, NO.

04:40PM 1 A MONTH LATER. I DON'T KNOW.

04:40PM 2 Q. WAS THERE ANY CONFUSION GOING ON WITH YOU BAKER BOTTS
04:40PM 3 GUYS ABOUT WHEN WAS THIS CASE FILED, WHEN WAS THE ACTUAL DATE,
04:40PM 4 WHAT WAS THE EFFECTIVE TIME OF THE FILING? WERE YOU GUYS
04:40PM 5 TALKING ABOUT THAT?

04:41PM 6 A. CONFUSION? OR WERE WE TALKING--WE WERE DEFINITELY
04:41PM 7 TALKING ABOUT THE FILING DATE.

04:41PM 8 Q. AND WAS THERE CONFUSION ABOUT WHEN IT WAS FILED?

04:41PM 9 A. I WOULD SAY ON THE 15TH AND 16TH THERE WAS NO CONFUSION
04:41PM 10 AS FAR AS I KNEW.

04:41PM 11 Q. OKAY. AND WHEN DID THE CONFUSION ARISE?

04:41PM 12 A. WHEN THE DATE--THE BANNER ON THE COMPLAINT CHANGED
04:41PM 13 AND WE BECAME AWARE THAT THE DATE THAT IT HAD BEEN FILED OR
04:41PM 14 THAT WE THOUGHT IT HAD BEEN FILED AND THAT WAS PRINTED ON THE
04:41PM 15 TOP OF THE COMPLAINT SUDDENLY CHANGED TO A DIFFERENT DATE.

04:41PM 16 Q. AND WHEN WAS THAT?

04:41PM 17 A. SOMETIME THAT WEEK. I DON'T RECALL THE EXACT TIME.

04:41PM 18 Q. SOMETIME WHAT?

04:41PM 19 A. SOMETIME THE WEEK OF THE 15TH. I DON'T RECALL EXACTLY
04:41PM 20 WHEN.

04:41PM 21 Q. OKAY. WERE YOU AWARE THAT JILL POWELL, JILLIAN POWELL,
04:42PM 22 WHO IS A PARALEGAL AT BAKER BOTTS, HAD HAD A CONVERSATION WITH
04:42PM 23 THE COURT CLERK ABOUT THE ESN FILING?

04:42PM 24 A. YES, SIR, I WAS AWARE OF THAT.

04:42PM 25 Q. AND WHAT WAS YOUR UNDERSTANDING OF WHAT MS. POWELL

04:42PM 1 FOUND OUT?

04:42PM 2 A. I THINK THE COURT CLERK TOLD HER THAT HE HAD RECEIVED A
04:42PM 3 CALL FROM ESN'S COUNSEL, THAT ESN'S COUNSEL TOLD THEM THERE HAD
04:42PM 4 BEEN AN ERROR ON THE COURT DATE AND ASKED FOR IT TO BE CHANGED,
04:42PM 5 AND THE COURT CLERK SUBSEQUENTLY CHANGED THAT BANNER.

04:42PM 6 Q. I ASSUME THAT MS. POWELL RELAYED THAT INFORMATION TO
04:42PM 7 SOMEONE AT BAKER BOTTS.

04:42PM 8 A. YES.

04:42PM 9 Q. AND TO WHOM DID SHE RELAY THE INFORMATION?

04:42PM 10 A. TO ME AND MAYBE ONE OF MY PARTNERS AS WELL.

04:43PM 11 Q. OKAY. DID YOU RELAY THAT FACTUAL INFORMATION TO CISCO?

04:43PM 12 A. YES, I DID.

04:43PM 13 Q. AND WHEN DID YOU DO THAT?

04:43PM 14 A. AGAIN, IT'S BEEN A COUPLE OF YEARS. I WOULD SAY
04:43PM 15 PROBABLY SOMETIME THAT WEEK OF THE 15TH.

04:43PM 16 MR. PATTON: THERE'S AN E-MAIL--JUDGE, I THINK--
04:43PM 17 COULD I ASK IF 249 HAS BEEN ADMITTED?

04:43PM 18 THE COURT: LET'S SEE. JUST GIVE ME A MINUTE TO
04:43PM 19 FIND THE ORDER HERE.

04:43PM 20 MR. PATTON: THEY'RE NODDING THEIR HEAD AT ME THAT
04:43PM 21 IT HAS BEEN, JUDGE.

04:43PM 22 THE COURT: HAS BEEN?

04:43PM 23 MR. MORAN: I BELIEVE IT HAS, YOUR HONOR.

04:43PM 24 THE COURT: OKAY.

04:43PM 25 MR. PATTON: MAY I APPROACH THE WITNESS?

05:05PM 1 THE COURT: I'LL SUSTAIN THE LAST PART OF THAT,
05:05PM 2 WHETHER IT COULD MAKE YOU LOSE YOUR LAW LICENSE.

05:05PM 3 MR. PATTON: OKAY.

05:05PM 4 THE COURT: I DON'T KNOW, BUT--

05:05PM 5 MR. PATTON: OKAY.

05:05PM 6 Q. LET'S JUST SAY ACCUSATION OF A CRIME AND AN ACCUSATION
05:05PM 7 OF UNETHICAL BEHAVIOR. OKAY? DO YOU THINK THAT IT'S OKAY TO
05:06PM 8 POST A BLOG HAVING THE INFORMATION THAT YOU HAD SENT TO THEM
05:06PM 9 AND SAYING WHAT THEY SAID?

05:06PM 10 A. AGAIN, I DON'T KNOW WHAT ALL OTHER INFORMATION THEY
05:06PM 11 HAD, BUT IF WE'RE ASSUMING THAT THE INFORMATION FROM ME WAS THE
05:06PM 12 ONLY INFORMATION THAT THEY HAD, I WOULD CERTAINLY ADVISE THEM
05:06PM 13 NOT TO POST A BLOG.

05:06PM 14 Q. THE E-MAIL--THIS OCTOBER 18TH ARTICLE SAYS FRENKEL GOT
05:06PM 15 AN E-MAIL SAYING THAT ESN CALLED THE COURT CLERK. DID YOU KNOW
05:06PM 16 THAT?

05:06PM 17 A. I'M SORRY. COULD YOU REPEAT THAT QUESTION?

05:06PM 18 Q. THAT ERIC ALBRITTON--THE YEN MATTER. ARE YOU AWARE
05:07PM 19 THAT MS.--YOU KNOW WHO MS. YEN IS, MALLUN YEN?

05:07PM 20 A. YES, I DO.

05:07PM 21 Q. AND SHE IS HIGH UP IN THE LEGAL DEPARTMENT AT CISCO?

05:07PM 22 A. SHE'S A VICE PRESIDENT THERE, YES.

05:07PM 23 Q. THAT'S HIGH UP, ISN'T IT?

05:07PM 24 A. I WOULD CONSIDER THAT HIGH UP, YES.

05:07PM 25 Q. ARE YOU AWARE THAT MS. YEN TESTIFIED--DID YOU MAKE

05:07PM 1 THE STATEMENT ABOUT BUZZ? WAS THAT IN YOUR E-MAIL? THE BUZZ
05:07PM 2 THAT'S GOING AROUND, WAS THAT IN YOUR E-MAIL?

05:07PM 3 A. I DON'T REMEMBER EVER SAYING ANYTHING ABOUT BUZZ.

05:07PM 4 Q. ARE YOU AWARE THAT MS. YEN HAS TESTIFIED THAT:

05:07PM 5 "I HEARD FROM A COUPLE OF SOURCES."

05:07PM 6 AND I SAID, "WHO? WHO WERE THE SOURCES?"

05:07PM 7 AND SHE SAID, "KURT PANKRATZ."

05:07PM 8 AND I SAID "AND"?

05:07PM 9 AND SHE SAID, "I BELIEVE MARTA BECKWITH."

05:08PM 10 WOULD THAT BE THE PEOPLE TO WHOM YOU SENT YOUR
05:08PM 11 FINDINGS OR INFORMATION?

05:08PM 12 A. YES, I THINK THAT'S RIGHT, THAT THE TWO OF THEM WOULD
05:08PM 13 HAVE RECEIVED IT.

05:08PM 14 MR. PATTON: DEREK, LET'S LOOK AT THAT SENTENCE.

05:08PM 15 Q. IT SAYS, "ONE E-MAIL SUGGESTED THAT ESN'S LOCAL COUNSEL
05:08PM 16 CALLED THE COURT CLERK AND CONVINCED HIM"--I'VE ALREADY READ
05:08PM 17 THIS. YOU SEE THAT?

05:08PM 18 A. I DO SEE THAT.

05:08PM 19 Q. WAS THAT YOUR E-MAIL?

05:08PM 20 A. I DON'T KNOW. I HAD NO PART IN THIS, AND SO I CAN'T
05:08PM 21 TELL YOU WHETHER THAT'S MY E-MAIL OR NOT.

05:08PM 22 Q. WELL, DID YOU, IN YOUR E-MAIL--DID YOU SUGGEST IN YOUR
05:08PM 23 E-MAIL THAT ERIC HAD CALLED THE COURT CLERK?

05:08PM 24 A. YES, I DID. WELL, I THINK THAT'S RIGHT. THAT WAS MY
05:08PM 25 BEST RECOLLECTION.