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

JOHN WARD, JR.

Plaintiff

VS.

CISCO SYSTEMS, INC.

Defendant

CASE NO. 08-4022

JUNE 12, 2009

10:00 A.M.

TELEPHONE CONFERENCE
BEFORE THE HONORABLE JIMM LARRY HENDREN
UNITED STATES DISTRICT JUDGE
FAYETTEVILLE, ARKANSAS

APPEARANCES BY TELEPHONE

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FOR THE PLAINTIFF

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FOR THE DEFENDANT

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(Proceedings recorded by Stenomask; transcript produced from dictation)

1 let's see. "To the extent that Cisco contends any communi-
2 cations subject to this interrogatory are privileged, it's
3 ordered to submit them in camera."

4 Is it possible that with respect to these things that
5 you just mentioned, Mr. Babcock -- You said you didn't have any
6 problem with them seeing various emails in which Ms. Peden is
7 interested in as long as you can secure either an agreement or
8 some sort of an order from the Court insuring that they would
9 not be used in the ESN litigation. Did I follow that right?

10 MR. BABCOCK: Yes, you did.

11 THE COURT: All right. Here's one suggestion that
12 might get to the bottom of this. Why wouldn't it be possible
13 for you to submit to the Court in camera those selfsame communi-
14 cations so that I can look at them and I can make up my own mind
15 as to whether or not, under the parameters of the order that
16 I've already issued, whether they are still subject to any sort
17 of a privilege or whether they are not?

18 MR. BABCOCK: Yeah, I wouldn't have any objection to
19 doing that, Judge, although Number 9 I don't think --

20 THE COURT: No, I used 9 as an example, that I had
21 said that was one thing we might do there. But I'm thinking
22 about one way to get at this because I'm kind of out in left
23 field here. I'm not sure I'm following that. But if I could do
24 that -- What about that, Ms. Peden? If I could get these emails
25 and communications in which you're interested and which you

1 believe are certainly relevant and discoverable in this case,
2 and apparently you know of them because they were discovered or
3 they were made available in the Albritton case, and apparently
4 you want to try to get those same documents here; he wants to
5 protect them for the reasons that he's said. Maybe one way to
6 get this thing off dead center is have those things submitted to
7 me in camera so I can review them and determine whether it
8 appears to me that they are subject to some privilege, or
9 whether I need to hear some argument on that, or whether any
10 privilege that might have protected them has been waived as to
11 this case. Would you have any problem with that, Ms. Peden?

12 MS. PEDEN: No, Your Honor. In fact, we had asked
13 Cisco to agree to that during the briefing with --

14 THE COURT: Well, aside from that. I'm trying to talk
15 about the now. What about it, Mr. Babcock? Are you agreeable
16 to do that?

17 MR. BABCOCK: That is a terrific solution, Your Honor.

18 THE COURT: Well, I don't know that it's a solution,
19 but I want to try to get this thing resolved. Folks, this case
20 needs to be resolved. These folks are entitled to get it off
21 dead center, Mr. Ward and/or Cisco. I don't want to make a
22 career out of it and I don't think you lawyers do either. I am
23 interested in trying to make orders that will promote that to
24 that end. And to me, discovery is not an end in itself, but
25 it's a means to an end, hopefully, to get the discovery out