

EXHIBIT 8

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS
3 SHERMAN DIVISION

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6 ERIC ALBRITTON] CASE NO. 6:08CV89
7 VS.] 9 AM, SEPTEMBER 21, 2009
8 CISCO SYSTEMS, INC.] TYLER, TEXAS
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11 REPORTER'S SAME-DAY DELIVERY TRANSCRIPT OF JURY TRIAL

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13 VOLUME 5 OF 6, PAGES 1037 THROUGH 1101

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16
17 THE HONORABLE RICHARD SCHELL, U.S. DISTRICT JUDGE, PRESIDING

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

1 [COURT REPORTER'S NOTES 20090921, 9 AM, MONDAY,
2 SEPTEMBER 21, 2009, TYLER, TEXAS, U.S. DISTRICT JUDGE RICHARD
3 SCHELL PRESIDING]

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1 POINT NUMBER 7, THE ARTICLES AT ISSUE INVOLVE A
2 MATTER OF PUBLIC CONCERN. MS. PEDEN, ANYTHING ELSE YOU WANT TO
3 SAY ON THAT?

4 MS. PEDEN: NO, YOUR HONOR. I THINK THAT WE GOT
5 YOUR RULING A LITTLE BIT AGO. YOU THINK THEY ARE, AND . . .

6 THE COURT: YEAH. I THINK I SAID THAT LAST WEEK. I
7 THINK WHAT I SAID IN MY ORDER ON SUMMARY JUDGMENT WAS I WAS
8 RESPONDING TO WHAT YOU ARGUED AND WHAT CISCO AND MR. FRENKEL
9 ARGUED, AND -- LET'S SEE. I CAN PROBABLY FIND IT HERE.

10 I SAID THE DEFENDANTS ARGUE THAT THE BLOG POSTINGS
11 ADDRESS THE PUBLIC CONTROVERSY REGARDING THE ABUSE OF THE
12 PATENT SYSTEM BY NONPRACTICING ENTITIES IN THE EASTERN DISTRICT
13 OF TEXAS. INDEED, THE BLOG POSTS DO TALK ABOUT THAT, TOO. THE
14 PLAINTIFF COUNTERS THAT THE MATTER AT ISSUE, THE LAWSUIT
15 BETWEEN ESN AND CISCO, DID NOT INVOLVE A PUBLIC CONTROVERSY. I
16 AGREE. THAT LAWSUIT DOESN'T INVOLVE A PUBLIC CONTROVERSY. BUT
17 I THINK THE MATTER AT ISSUE HERE IS WHAT'S GOING ON IN THE
18 CLERK'S OFFICE. I THINK THAT'S REALLY THE HEART OF IT. I
19 DIDN'T SAY ANYTHING ABOUT THAT. I PROBABLY SHOULD HAVE. I
20 DON'T KNOW -- MAYBE I'M WRONG. MAYBE YOU TALKED ABOUT THAT
21 ISSUE AND I JUST MISSED IT, BUT I THINK WHAT YOU TALKED ABOUT
22 IN YOUR BRIEFING ON THE SUMMARY-JUDGMENT ISSUE -- ON THE
23 SUMMARY-JUDGMENT MOTION WAS WHAT I RESPONDED TO ON PAGE 10 OF
24 MY ORDER ON THE MOTION FOR SUMMARY JUDGMENT, BUT THE REAL HEAF
25 OF THE MATTER HERE IS THE OVERSIGHT OF ELECTRONIC CASE RECORDS

1 BY THE DISTRICT CLERK, AND THAT IS A MATTER OF PUBLIC CONCERN.

2 SO I THINK THAT'S PRIMARILY WHAT THE BLOG POSTS ARE

3 ABOUT. THERE IS A MOTION FOR JUDGMENT AS A MATTER OF LAW ON

4 THAT. I'M HAPPY TO STATE IT. AS A MATTER OF LAW, IT IS A

5 MATTER OF PUBLIC CONCERN. I THINK THAT'S WHAT YOU'RE ASKING ME

6 TO DO, MR. MORAN.

7 MR. MORAN: YES. SOUNDS LIKE I'M ONE FOR SEVEN SO

8 FAR, YOUR HONOR.

9 THE COURT: OKAY.

10 MR. MORAN: YOU GRANTED NUMBER 7.

11 THE COURT: YES. YEAH, I'LL GRANT NUMBER 7.

12 LET'S SEE. NUMBER 8, THE DEFENDANTS ARGUE THAT A

13 JUDGMENT AS A MATTER OF LAW SHOULD BE GRANTED ON THE

14 EXEMPLARY-DAMAGES CLAIM BECAUSE THERE'S NO CLEAR AND CONVINCIN

15 EVIDENCE OF CHAPTER 41 MALICE OR GROSS NEGLIGENCE. I THINK

16 WE'VE ALREADY COVERED THAT. I THINK THERE ARE FACT ISSUES.

17 NOW, LET ME GO BACK JUST FOR A MOMENT ON THE MATTER

18 OF PUBLIC CONCERN. LET'S SEE. THE PLAINTIFF'S POSITION THAT

19 IN A DEFAMATION CASE BROUGHT BY A PRIVATE-FIGURE PLAINTIFF, THE

20 BURDEN OF PROVING FALSITY IS ON THE DEFENDANTS --

21 IN THE DEFENDANTS' REPLY BRIEF, THEY SAY THAT

22 MR. ALBRITTON HAS THE BURDEN OF PROVING FALSITY; THAT EVEN A

23 PRIVATE-FIGURE PLAINTIFF MUST PROVE FALSITY WHEN THE SPEECH IS

24 ONE -- OR INVOLVES A MATTER OF PUBLIC CONCERN.

25 OKAY. NOW, DOES THAT DEPEND ON WHETHER THE