

EXHIBIT 9

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF TEXAS
3 SHERMAN DIVISION
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5 -----
6 ERIC ALBRITTON] CASE NO. 6:08CV89
7 VS.] 9 AM, SEPTEMBER 16, 2009
8 CISCO SYSTEMS, INC.] TYLER, TEXAS
9 -----

10
11 REPORTER'S SAME-DAY DELIVERY TRANSCRIPT OF JURY TRIAL
12

13 VOLUME 3 OF 6, PAGES 529 THROUGH 813
14

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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 20090916, 9 AM, WEDNESDAY,
2 SEPTEMBER 16, 2009, TYLER, TEXAS, U.S. DISTRICT JUDGE RICHARD
3 SCHELL PRESIDING]

4

5 APPEARANCES:

6

7 FOR THE PLAINTIFF: JAMES A. HOLMES

8 ATTORNEY AT LAW

9 605 SOUTH MAIN, SUITE 203

10 HENDERSON, TEXAS 75654

11 903-657-2800

12 AND

13 NICHOLAS H. PATTON

14 ATTORNEY AT LAW

15 PATTON, TIDWELL & SCHROEDER

16 4605 TEXAS BOULEVARD

17 TEXARKANA, TEXAS 75505

18 903-792-7080

19 AND

20 PATRICIA L. PEDEN

21 ATTORNEY AT LAW

22 1316 67TH STREET

23 EMERYVILLE, CALIFORNIA 94608

24 510-268-8033

25

1 FOR THE DEFENDANT CISCO SYSTEMS, INC:

2 CHARLES L. BABCOCK

3 CRYSTAL PARKER

4 ATTORNEYS AT LAW

5 JACKSON WALKER

6 1401 MCKINNEY, SUITE 1900

7 HOUSTON, TEXAS 77010

8 713-752-4200

9 AND

10 DAVID T. MORAN

11 ATTORNEY AT LAW

12 JACKSON WALKER

13 901 MAIN STREET, SUITE 6000

14 DALLAS, TEXAS 75202

15 214-953-6000

16 FOR THE DEFENDANT RICHARD FRENKEL:

17 GEORGE MCWILLIAMS

18 ATTORNEY AT LAW

19 PATTON, ROBERTS, MCWILLIAMS &

20 CAPSHAW

21 406 WALNUT

22 TEXARKANA, TEXAS 75504

23 903-277-0098

24

25

1 A. AND MS. PEDEN, YES. YES.

2 Q. DID YOU AND ERIC EVER HAVE DIFFERENCES THAT CAUSED YOU
3 TO SPLIT UP? WAS IT AMICABLE OR --

4 A. NO. IT WAS A VERY AMICABLE SPLIT. IT WAS A TOUGH
5 SPLIT, BECAUSE -- I DON'T KNOW. -- I HAD TO MAKE A DECISION
6 ABOUT WHICH DIRECTION I THOUGHT MY PRACTICE WAS GOING, AND HE
7 MADE A DECISION ABOUT WHICH DIRECTION HIS PRACTICE WAS GOING.
8 I THINK IN THE LONG RUN, IT ENABLED US TO BE BETTER FRIENDS NOT
9 BEING BUSINESS PARTNERS, BUT -- SO IT WAS AMICABLE, AND WE GET
10 ALONG WELL NOW.

11 Q. WHAT TYPE OF PRACTICE DO YOU HAVE NOW, MR. WARD?

12 A. MY PERSONAL PRACTICE OR MY FIRM'S PRACTICE? BECAUSE
13 THEY'RE A LITTLE BIT DIFFERENT.

14 Q. WELL, LET'S DO YOUR PERSONAL PRACTICE.

15 A. MY PERSONAL PRACTICE RIGHT NOW CONSISTS OF ABOUT
16 95 PERCENT OF -- 90 TO 95 PERCENT OF PATENT-INFRINGEMENT
17 LAWSUITS.

18 Q. SO YOU'RE FAMILIAR WITH THAT TYPE OF LITIGATION?

19 A. I'VE BECOME VERY FAMILIAR WITH IT OVER THE LAST -- I
20 LIKE TO THINK I HAVE. -- OVER THE LAST SIX OR SEVEN YEARS.

21 Q. DO YOU HAVE SOME YOUNG FOLKS THAT WORK WITH YOU,
22 MR. WARD?

23 A. I HAVE SUPPORT STAFF THAT'S YOUNGER THAN ME. I'VE GOT
24 TWO PARTNERS THAT ARE ACTUALLY OLDER THAN ME.

25 Q. OKAY. AND WHAT TYPE OF WORK DO THEY DO?

1 DIDN'T KNOW THIS AT THE TIME, BUT WE NOW KNOW THAT IT WAS
2 CISCO, CISCO'S ATTORNEY, SO I DON'T THINK HE GOT ANONYMOUS
3 E-MAILS POINTING OUT SOMETHING WHAT HAPPENED TO THE ESN DOCKET.
4 I THINK CISCO WAS MONITORING THIS CASE. MR. FRENKEL, WE NOW
5 KNOW WAS THE ATTORNEY IN CHARGE IN-HOUSE FOR THE ESN VERSUS
6 CISCO CASE. SO I DON'T THINK THAT STATEMENT IS TRUE. AND IT'S
7 NOT TRUE THAT IT HAD BEEN ALTERED.

8 Q. ALL RIGHT. NEXT SENTENCE, "ONE E-MAIL."

9 A. YEAH. "ONE E-MAIL SUGGESTED ESN'S LOCAL COUNSEL." IT
10 WAS ACTUALLY MS. MATHIS, BUT SHE WAS WORKING FOR ERIC, AND I
11 DON'T HAVE ANY PROBLEM WITH ANYTHING THAT SHE DID.

12 THAT WE HAD CALLED THE EASTERN DISTRICT OF TEXAS
13 COURT CLERK AND CONVINCED HIM OR HER TO CHANGE THE DOCKET TO
14 REFLECT AN OCTOBER 16TH FILING DATE RATHER THAN THE
15 OCTOBER 15TH FILING DATE. THAT STATEMENT IS UNTRUE. THERE WAS
16 NOT AN OCTOBER 15TH FILING DATE. IT WAS AN OCTOBER 16TH FILING
17 DATE. THEY'VE GOT A PROBLEM IN THEIR SOFTWARE. IT WAS POINTED
18 OUT TO THEM, AND THEY CORRECTED THE DOCKET.

19 Q. OKAY. THERE'S A STATEMENT THERE, "I CHECKED, AND SURE
20 ENOUGH, THAT'S EXACTLY WHAT HAPPENED."

21 A. HE'S STATING IT AS A FACT THAT, AGAIN, WE HAD CONVINCED
22 THE CLERK TO DO SOMETHING TO CHANGE FILING DATE, WHICH, AGAIN,
23 IS UNTRUE.

24 Q. BY THE WAY, MR. WARD, WHEN YOU SAW THIS, THE HEADER,
25 PARTICULARLY, ABOUT YOU CONVINCING AND THE CONSPIRACY AND ALL

1 OF THAT STUFF, DID YOU THINK YOU'D BEEN ACCUSED OF A CRIME?

2 A. WITHOUT A DOUBT, AND IT'S IN THE NEXT SECTION HE TALKS
3 ABOUT THE DOCKET BEING CHANGED; BUT THEN HE GETS TO THE
4 COMPLAINT, AND HE SAYS THE COMPLAINT WAS ALTERED TO CHANGE THE
5 FILING DATE. THERE WAS NO DOUBT IN MY MIND THAT WHAT HE WAS
6 WRITING RIGHT THERE WAS A CRIME. IT WOULD BE THE SAME -- IN
7 THE OLD DAYS, WE WOULD TAKE A COMPLAINT IN AND IT WOULD BE
8 FILE-STAMPED. THERE WOULD BE A STAMP PUT ON IT, HAVE THE DATE
9 AND THE TIME. THAT WOULD BE LIKE ME SCRATCHING THAT DATE OUT
10 OR CONSPIRING WITH THE CLERK TO SCRATCH IT OUT AND CHANGE IT TO
11 A DIFFERENT DATE. THERE WAS NO DOUBT IN MY MIND THAT TO DO
12 THAT, I WOULD BE IN BIG TROUBLE BOTH WITH THE STATE BAR OF
13 TEXAS, THE EASTERN DISTRICT OF TEXAS. I WOULD BE IN BIG
14 TROUBLE, AND I THINK I WOULD BE IN HOT WATER WITH THE U.S.
15 ATTORNEY.

16 Q. I SUSPECT YOU WOULD HAVE A DADDY THAT DIDN'T LIKE IT
17 VERY MUCH EITHER, WOULD YOU?

18 A. I WASN'T WORRIED ABOUT MY DADDY AT THAT POINT.

19 Q. NO. I MEANT IF YOU HAD ALTERED A DOCUMENT.

20 A. AGAIN, THAT WAS NOT MY CONCERN, BUT I'M SURE HE
21 WOULDN'T HAVE BEEN PROUD OF THAT.

22 Q. WHAT ELSE IS UNTRUE?

23 A. DO YOU WANT TO KEEP GOING INTO THE NEXT PARAGRAPH? I
24 MEAN I THINK HE'S RIGHT THAT ONLY THE EASTERN DISTRICT COURT
25 CLERK CAN MAKE CHANGES. I GUESS I COULD MAKE THE CHANGES ON

1 THE FILING DATE, BUT NOW THE WAY THE SYSTEM IS SET UP ONLY
2 THE COURT CLERK COULD MAKE THESE CHANGES.

3 Q. OKAY.

4 A. AND THEN HE TALKS ABOUT A CONSPIRACY IN THAT VERY NEXT
5 SENTENCE, WHICH THERE WAS NO CONSPIRACY TO DO ANYTHING.

6 ERIC DID SIGN THE CIVIL COVER SHEET ON THE 15TH, BUT
7 IT DID NOT STATE THAT THE COMPLAINT HAD BEEN FILED ON THE 15TH.

8 Q. ALL RIGHT.

9 A. SO THAT'S UNTRUE.

10 AND THEN THE VERY NEXT SENTENCE IS UNTRUE. IT SAYS
11 THERE'S TONS OF PROOF THAT ESN FILED ON OCTOBER 15TH. THERE
12 WAS ABSOLUTELY NO PROOF THAT A COMPLAINT HAD BEEN FILED ON THE
13 15TH. THERE WAS A NOTICE OF ELECTRONIC FILING THAT IS NOW LIKE
14 THAT FILE STAMP THAT SHOWS YOU EXACTLY WHEN THE DOCKET--OR WHE
15 THE COMPLAINT GOT FILED. SO THAT WAS ABSOLUTELY UNTRUE.

16 Q. ALL RIGHT. NEXT PARAGRAPH?

17 A. HE'S TALKING ABOUT THE--WHEN HE SAYS THE EASTERN
18 DISTRICT OF TEXAS, I TOOK THAT AS THE CLERK'S OFFICE. SOMEONE
19 IN THE CLERK'S OFFICE IS APPARENTLY, WITTINGLY OR UNWITTINGLY,
20 CONSPIRING. SO THEY'RE EITHER WORKING WITH US AS LOCAL COUNSEL
21 KNOWINGLY OR WE'RE HOODWINKING THEM INTO OBLITERATING THAT FILE
22 DATE AND CHANGING IT TO MANUFACTURE SUBJECT-MATTER JURISDICTION
23 WHICH IS A MAJOR ALLEGATION OF WRONGDOING.

24 Q. DID YOU GUYS DO ANYTHING LIKE THAT?

25 A. ABSOLUTELY NOT. AND THERE WAS NEVER ANYTHING FILED

1 IN THAT CASE WHERE--ANY DISCIPLINARY ACTION TAKEN AGAINST US.
2 THEY NEVER FILED ANYTHING IN THE CASE TO SAY THAT ANY OF THIS
3 HAPPENED, THEY ONLY DID IT IN THIS BLOG. AND IT WAS CISCO THAT
4 WAS DOING IT.

5 Q. THE LAST SENTENCE THERE, DO YOU THINK THAT'S TRUE?

6 A. NO, I DON'T THINK THAT WE HAVE AN ABUSIVE PRACTICE IN
7 THE EASTERN DISTRICT OF TEXAS. I THINK THAT WAS MORE CISCO'S
8 OPINION OF WHAT IT'S LIKE TO BE IN THE EASTERN DISTRICT OF
9 TEXAS. I DON'T THINK IT'S TRUE, BUT THEY'RE ENTITLED TO THEIR
10 OPINION ON THAT.

11 Q. ABOUT THE BANANA REPUBLIC?

12 A. YOU CAN'T SAY THAT AS A LAWYER IN A PLEADING. YOU
13 CAN'T CRITICIZE THE COURT. SO IF MR. FRENKEL HAD DONE THAT AS
14 A LAWYER IN TEXAS, HE WOULD BE SUBJECT TO BEING DISCIPLINED.
15 BUT, YOU KNOW, HE'S DOING IT ANONYMOUSLY IN A BLOG.

16 Q. OKAY.

17 AND THEN THE LAST SENTENCE SAYS, "DON'T BE SURPRISED
18 IF THE DOCKET CHANGES BACK ONCE THE HIGHER-UPS IN THE COURT GET
19 WIND OF THIS, MAKING THIS POST COMPLETELY IRRELEVANT."

20 A. WELL, AND AGAIN, HE'S SAYING: THESE GUYS ARE GONNA GET
21 CAUGHT WHEN THE JUDGES FIND OUT WHAT'S HAPPENED, AND IT WILL
22 GET CORRECTED AFTER WE GET CAUGHT, AFTER WE GET CAUGHT IN THIS
23 CRIME.

24 MR. PATTON: ALL RIGHT.

25 LET'S GO TO THE NEXT ONE, DEREK. THAT'S THE--IT

1 WOULD BE THE NEXT--THE 19TH OF--I'M SORRY. IT WILL BE THE 19TH
2 BLOG.

3 Q. NOW I'LL TELL YOU, MR. WARD--AND I DON'T THINK ANYONE
4 WILL DISAGREE--THAT THIS SAYS THE 18TH UP ON THE TOP, BUT
5 ACTUALLY THIS APPEARED ON THE 19TH.

6 A. OKAY.

7 Q. OKAY? I NOTICE IT STILL HAS THE SAME HEADER.

8 A. RIGHT. CORRECT.

9 Q. I ASSUME IT WASN'T TRUE THERE EITHER.

10 A. NO.

11 Q. OKAY. NOW, THE FIRST PART THERE--

12 A. I HAD THE SAME TESTIMONY ABOUT EVERYTHING EXCEPT, YOU
13 KNOW, WE CAN LOOK AT WHAT HE CHANGED OR WE CAN GO THROUGH THI
14 LINE-BY-LINE. I THINK THIS IS THE ONE WHERE HE EDITED IT.

15 Q. YEAH, IT IS. LET'S GO TO THE THINGS THAT YOU THINK ARE
16 NOTEWORTHY. ANYTHING ABOUT THE "OF COURSE, THERE ARE A COUPLE
17 OF FLAWS"? IS THAT ANY DIFFERENT?

18 A. IT'S TOUGH TO TELL WITHOUT LAYING THEM RIGHT NEXT TO
19 EACH OTHER. I DON'T THINK THAT THERE'S ANYTHING DIFFERENT IN
20 THAT.

21 Q. OKAY. NOW LET'S GO TO THE NEXT PARAGRAPH.

22 A. HE TOOK "CONSPIRING" OUT. ON THESE BLOGS, PEOPLE CAN
23 WRITE IN AND MAKE COMMENTS. AND I THINK HE WROTE THAT HE WAS
24 GETTING A LOT OF COMMENTS ON THESE BLOGS THAT WERE CRITICAL OF
25 THE LANGUAGE THAT HE USED, WHICH I'M SURE THERE WERE--IT WAS

1 LAWYERS MOSTLY THAT WERE READING IT, THE PEOPLE I KNEW THAT
2 WERE READING IT WERE ATTORNEYS AND CLIENTS. AND THERE'S NO
3 DOUBT THAT LAWYERS WERE PICKING UP ON THIS, GOING, "YOU JUST
4 ACCUSED THESE GUYS OF A CRIME. YOU MIGHT WANT TO TONE YOUR
5 LANGUAGE DOWN." HE TONED IT DOWN A LITTLE BIT, BUT NOT MUCH.
6 TOOK THE WORD "CONSPIRING" OUT. AND THEN HE SAYS "EVEN IF THIS
7 WAS A MISTAKE"--AND HE PUTS MISTAKE IN QUOTES--AND HE SAYS HE
8 CAN'T SEE HOW IT COULD BE.

9 Q. ANYTHING IN THERE ABOUT A BANANA REPUBLIC?

10 A. NO. THAT'S GONE. AGAIN, SOMEONE MIGHT HAVE MADE HIM
11 PRIVY TO THE FACT THAT CRITICIZING THE COURT LIKE THAT COULD
12 GET HIM DISCIPLINED IF HE WERE A LAWYER PRACTICING IN TEXAS.

13 Q. THE WORD "CONSPIRACY" WAS TAKEN OUT THERE, BUT LOOK
14 BACK UP TO THE VERY TOP. THE INFORMATION ABOUT ALTERING
15 DOCUMENTS AND THAT TYPE OF THING IS STILL THERE, ISN'T IT?

16 A. ABSOLUTELY. IT WAS THERE FOR--IT'S STILL OUT THERE.
17 YOU CAN GO FIND THESE ARTICLES EVEN NOW. BUT THE BLOG IS NOT
18 NEARLY AS ACCESSIBLE AFTER HE REVEALED HIMSELF.

19 Q. MR. FRENKEL TESTIFIED EARLIER TODAY, MR. WARD, THAT HE
20 GOT FUSSED AT BY HIS BOSS, MR. CHANDLER, ON THE BANANA REPUBLIC
21 DEAL.

22 A. I'M SURE MR. CHANDLER WAS WELL AWARE OF WHAT WAS GOING
23 ON IN THIS BLOG.

24 MR. BABCOCK: YOUR HONOR, I'LL OBJECT. THAT'S
25 NON-RESPONSIVE AND IT'S SPECULATIVE.

1 THE COURT: I'LL SUSTAIN THE OBJECTION. IT'S NOT
2 RESPONSIVE.

3 MR. PATTON: OKAY.

4 I CAN'T REMEMBER MY QUESTION, JUDGE. MAYBE I COULD
5 WORD IT DIFFERENTLY.

6 THE WITNESS: I THINK YOUR QUESTION WAS THAT
7 MR. FRENKEL HAD GOTTEN FUSSED AT BY HIS BOSS FOR TALKING ABOUT
8 THE BANANA REPUBLIC. I DON'T KNOW WHETHER HE FUSSED AT HIM OR
9 NOT.

10 MR. PATTON: OKAY.

11 Q. HE DID TAKE IT OUT, THOUGH?

12 A. HE DID TAKE THAT OUT.

13 Q. DO YOU KNOW HOW LONG THIS BLOG WAS UP WHERE YOU COULD
14 ACCESS IT?

15 A. WHERE I COULD ACCESS IT, IT WAS UP UNTIL HE REVEALED
16 HIMSELF AND TOOK THE BLOG DOWN. I CAN'T REMEMBER WHETHER THAT
17 WAS FEBRUARY OR MARCH OF 2008.

18 Q. MR. FRENKEL TESTIFIED THAT THE BANANA REPUBLIC AND THE
19 CONSPIRACY ASPECT, THAT HE CORRECTED ALL THAT THE NEXT DAY AND
20 YOU COULDN'T ACCESS IT. IS THAT SO?

21 MR. BABCOCK: OBJECTION, YOUR HONOR. MISSTATES THE
22 TESTIMONY, THAT YOU COULDN'T ACCESS--

23 MR. PATTON: I'LL WITHDRAW THE QUESTION, JUDGE, AND
24 SOLVE THAT PROBLEM.

25 THE COURT: OKAY.

1 MR. PATTON:

2 Q. COULD YOU ACCESS IT?

3 A. ABSOLUTELY. YOU COULD DO GOOGLE SEARCHES AND YOU COULD
4 GET THE OLD POSTS THAT WERE CIRCULATING ON THE INTERNET AT THAT
5 POINT, THAT ARE STILL OUT THERE CIRCULATING RIGHT NOW.

6 Q. IF I WANTED TO FIND THIS POST ON THE INTERNET--WELL,
7 LET'S DON'T USE ME, LET'S USE SOMEBODY THAT KNOWS ABOUT
8 COMPUTERS.

9 [LAUGHTER]

10 Q. COULD SOMEBODY THAT KNOWS ABOUT COMPUTERS FIND THIS
11 THING ON THE INTERNET, IF THE BLOG WAS OPEN?

12 A. I BELIEVE ABSOLUTELY YOU COULD.

13 Q. OKAY.

14 A. THE EDITS DIDN'T INTEREST ME THAT MUCH. HE WAS STILL
15 ACCUSING ME OF A CRIME EVEN AFTER HE EDITED IT. SO OLD OR NEW,
16 IT DIDN'T REALLY MATTER. IT WAS ACCESSIBLE. HIS BOSS WAS
17 FUSSING ABOUT IT, THEY ALL KNEW THAT IT WAS THERE.

18 MR. BABCOCK: YOUR HONOR, NON-RESPONSIVE AND WITHOUT
19 THE WITNESS'S KNOWLEDGE.

20 THE COURT: EVERY TIME I LOOK AT SOMETHING, I GET AN
21 OBJECTION. LET'S SEE.

22 MR. PATTON:

23 Q. LET ME ASK YOU, MR. WARD--

24 MR. BABCOCK: YOUR HONOR, I ASK THAT THAT LAST
25 TESTIMONY BE STRICKEN?

1 THE COURT: OKAY. I'VE GOT TO LOOK BACK AT THE
2 QUESTION. HANG ON JUST A MINUTE. OKAY.

3 WELL, MR. WARD ANSWERED THE QUESTION: COULD
4 SOMEBODY THAT KNOWS ABOUT COMPUTERS FIND THIS THING ON THE
5 INTERNET IF THE BLOG WAS OPENED?

6 HE SAID: ABSOLUTELY THEY COULD.

7 AND THEN HE WENT ON AND ADDED MORE.

8 MR. BABCOCK: THAT WAS THE PART I OBJECTED TO.

9 THE COURT: I UNDERSTAND. I'LL SUSTAIN YOUR
10 OBJECTION.

11 MR. BABCOCK: THANK YOU, YOUR HONOR.

12 THE COURT: OKAY, GO AHEAD.

13 MR. PATTON: YOU ARE SUSTAINING THE OBJECTION, YOUR
14 HONOR?

15 THE COURT: WELL, TO ADDITIONAL INFORMATION THAT
16 MR. WARD ADDED THAT WASN'T RESPONSIVE TO THE QUESTION.

17 MR. PATTON: OKAY, I'VE GOT YOU.

18 THE WITNESS: I'LL DO BETTER.

19 THE COURT: JUST TRY TO LIMIT YOUR ANSWER TO
20 WHATEVER THE QUESTION WAS.

21 THE WITNESS: I WILL.

22 MR. PATTON:

23 Q. DOES THE CONSPIRACY ALLEGATION REMAIN THERE TO THIS
24 VERY DAY?

25 A. I THINK HE TOOK THE WORD "CONSPIRING" OUT, BUT I

1 BELIEVE THAT THE CONSPIRACY ALLEGATION REMAINS, YES.

2 Q. OKAY.

3 YOU GUYS--DID YOU CONSPIRE TO ANY DEGREE ABOUT
4 ANYTHING THAT RELATES TO THE FILING OF THE ESN COMPLAINT?

5 A. NO.

6 Q. IS THERE ANY TRUTH WHATSOEVER ABOUT A CONSPIRACY?

7 A. NO.

8 Q. DO YOU KNOW WHETHER YOU OR MR. ALBRITTON HAVE EVER BEEN
9 ABLE TO CONSPIRE WITH THE UNITED STATES FEDERAL DISTRICT COURT
10 CLERK?

11 A. I DON'T KNOW IF WE COULD. I'VE NEVER TRIED, AND I'M
12 NOT GOING TO.

13 Q. MR. MALAND DOESN'T STRIKE ME AS A MAN WHO WOULD ENGAGE
14 IN A LOT OF CONSPIRING.

15 A. I DON'T KNOW MR. MALAND, BUT I DON'T THINK THAT ANYONE
16 IN THE CLERK'S OFFICE IS GONNA DO ANYTHING IMPROPER FOR ME OR
17 ANYBODY ELSE.

18 MR. PATTON: ALL RIGHT.

19 IF WE COULD SEE THE LAST BLOG, DEREK, THANK YOU.
20 THERE WERE FOUR BLOGS. IT'S THE ONE ON THE 20TH. LET'S MOVE
21 ALONG AND WE'LL COME BACK TO IT, DEREK.

22 Q. COULD YOU EXPLAIN TO THIS JURY, MR. WARD, ABOUT HOW THE
23 INTELLECTUAL-PROPERTY SPECIALISTS OPERATE REGARDING THEIR
24 COMMUNITY?

25 A. WELL, IT'S LIKE ANY COMMUNITY OF TRIAL LAWYERS. IT'S A

1 PRETTY SMALL GROUP. YOU COME ACROSS THE SAME LAWYERS WHETHEF
2 THEY'RE ON THE WEST COAST OR EAST COAST, THE LAWYERS THAT ARE
3 ACTUALLY TRYING THESE CASES, THAT ARE STANDING UP PICKING
4 JURIES AND MAKING ARGUMENT. AND THAT WAS KIND OF A NICHE THAT
5 ERIC AND I HAD FOUND OURSELVES IN. AND IT DEVELOPED. SO YOU
6 GET TO KNOW A LOT OF THE LAWYERS THAT ARE TRYING THESE CASES.
7 I THINK IT'S A RELATIVELY SMALL COMMUNITY.

8 Q. OKAY. DID YOU HAVE AN UNDERSTANDING ABOUT WHO READ AND
9 WHO ACCESSED AND WHO WAS INTERESTED IN THIS BLOG?

10 A. I DID.

11 Q. AND WHAT WAS THAT?

12 A. I KNEW I HAD CLIENTS WHO WERE PROSECUTING PATENT-
13 INFRINGEMENT CASES, LAWYERS FROM ALL OVER THE COUNTRY THAT
14 WERE READING THESE ARTICLES. AND CISCO BOASTED THAT THERE WERE
15 HUNDREDS OF THOUSANDS OF PEOPLE READING THESE BLOGS AT SOME
16 POINT AFTER THESE ARTICLES HAD BEEN POSTED. I THINK HE HAD A
17 POST THAT TALKED ABOUT, "I'VE PASSED THE HUNDRED THOUSAND
18 MARK." AND IN FACT, THE ABA JOURNAL SAID THIS WAS A MUST-READ
19 FOR THOSE IN INTELLECTUAL-PROPERTY LITIGATION. SO IT WAS NOT
20 KNOWN TO FOLKS OUTSIDE OF PATENT LAW, REALLY, BUT IT WAS
21 SOMETHING THAT WAS COMMONLY READ BY LAWYERS THAT WERE
22 PRACTICING IN THIS AREA.

23 Q. GENERALLY SPEAKING, ARE LAWYERS FAIRLY GOSSIPY?

24 A. I DON'T KNOW HOW LAWYERS ARE. I MEAN I LIKE TO THINK
25 NO, WE DON'T GOSSIP. BUT, YOU KNOW, THERE'S PUBLICATIONS THAT

1 WE ALL READ, WHETHER IT'S THE "TEXAS LAWYER" OR TROLL TRACKER
2 OR WHAT IT IS. WE KEEP UP WITH WHAT'S GOING ON, OR WE TRY TO.

3 Q. DOES WORD SPREAD PRETTY FAST ABOUT THINGS?

4 A. ABSOLUTELY.

5 MR. PATTON: OKAY.

6 IF YOU WOULD PULL UP EXHIBIT 356, THAT'S THE OCTOBER
7 20TH BLOG. LAST PARAGRAPH. IF YOU WOULD HIGHLIGHT THE LAST
8 PARAGRAPH. CAN YOU HIGHLIGHT THAT FOR ME, DEREK?

9 Q. THE LAST PARAGRAPH OF THIS--WE'VE HAD BLOGS ON THE
10 17TH, THE 18TH, THE 19TH, AND THIS IS THE 20TH. WHAT DID
11 MR. FRENKEL TELL PEOPLE THERE?

12 A. HE'S NO LONGER ALLOWING COMMENTS AND E-MAILS, HE'S
13 GONNA KEEP POSTING, ALTHOUGH FOR MUCH OF THIS WEEK HE'LL BE
14 AWAY FROM HIS COMPUTER, HOPE EVERYONE KEEPS ENJOYING. IF YOU
15 WANT TO COMPLAIN ABOUT HIM, GO TO IHATETROLLTRACKER.COM.

16 MR. PATTON: OKAY. LET'S GO BACK UP TO THE
17 PARAGRAPH ABOVE, DEREK.

18 Q. TALKING ABOUT THE FEEDBACK.

19 A. RIGHT.

20 Q. "WHILE I'VE ENJOYED WRITING IT, ONE PART I HAVEN'T
21 ENJOYED ARE THE OFTEN NASTY AND THREATENING COMMENTS." AND
22 THEN HE TELLS YOU IN THAT BOTTOM PARAGRAPH HE'S SHUTTING IT
23 DOWN FOR COMMENTS, CORRECT?

24 A. CORRECT.

25 MR. PATTON: GO TO THE FIRST PARAGRAPH, IF YOU

1 WOULD, DEREK. START WITH "MY READERS," THE FIRST LINE DOWN,
2 RIGHT NEAR THE END OF THE SENTENCE, PLEASE, DEREK, ALL THE WAY
3 TO THE BOTTOM.

4 Q. "MY READERS INCLUDE THOSE FROM THE SENATE, HOUSE OF
5 REPRESENTATIVES, THE PATENT AND TRADEMARK OFFICE, THE
6 DEPARTMENT OF JUSTICE, MANY MAJOR LAW FIRMS, A TON OF
7 CORPORATIONS, AND QUITE A FEW OWNERS OF SHELL COMPANIES SUING
8 IN EAST TEXAS. NOT SURPRISINGLY, A GOOD PORTION OF THE HITS
9 MY BLOG GETS COME FROM TEXAS." DO YOU SEE THAT?

10 A. I DO.

11 Q. DO YOU REMEMBER HOW IT STARTED, GOTTEN QUITE A FEW
12 NASTY OR--

13 JUST PUT IT UP, DEREK, THE FIRST PARAGRAPH. I DON'T
14 WANT TO MISQUOTE IT. FIRST PARAGRAPH. TOP PARAGRAPH.

15 IS THAT THE ONE THAT SAYS "SIX MONTHS AGO"?

16 A. I THINK IT'S IN THE NEXT PARAGRAPH THAT YOU READ WHERE
17 HE HAD GOTTEN NASTY COMMENTS.

18 Q. YEAH, THE SECOND PARAGRAPH. MOST OF IT HAS BEEN GOOD,
19 BUT THAT HE'S GETTING PROBLEMS AND HE'S SHUTTING IT DOWN.

20 A. RIGHT. HE'S ONLY SHUTTING DOWN THE COMMENTS.

21 Q. RIGHT.

22 A. THE BLOG KEEPS GOING.

23 Q. I UNDERSTAND. SHUTTING THE COMMENTS DOWN. DO YOU KNOW
24 WHY HE DID THAT?

25 A. WHY HE SHUT IT DOWN FOR COMMENT? I MEAN HE SAYS HE'S

1 GETTING TOO MANY COMMENTS RIGHT AFTER HE'S WRITTEN THIS--THIS
2 ARTICLE. I DON'T KNOW THAT WE HAVE THOSE COMMENTS THAT HE WAS
3 GETTING.

4 MR. BABCOCK: YOUR HONOR, AGAIN I'D OBJECT AS
5 NON-RESPONSIVE. THE QUESTION WAS: DO YOU KNOW WHY HE SHUT IT
6 DOWN FOR COMMENTS? AND HE SAID A WHOLE BUNCH OF THINGS THAT
7 WEREN'T RESPONSIVE TO THAT.

8 THE COURT: WELL, I DIDN'T TAKE WHAT HE SAID TO BE
9 TOTALLY NON-RESPONSIVE, AND I KEEP LOSING THE REALTIME. HERE
10 IT IS.

11 MR. BABCOCK: MAYBE MR. PATTON--

12 THE COURT: GETTING TOO MANY COMMENTS RIGHT AFTER
13 HE'S WRITTEN THIS ARTICLE. I DON'T KNOW THAT WE HAVE THOSE
14 COMMENTS. I GUESS HE'S ASSUMING THAT IT'S BECAUSE HE WAS
15 GETTING TOO MANY COMMENTS IS WHY HE SHUT IT DOWN. I THINK
16 THAT WAS YOUR ANSWER, WASN'T IT?

17 THE WITNESS: I BELIEVE SO.

18 THE COURT: I'LL OVERRULE THE OBJECTION. GO AHEAD.

19 MR. PATTON:

20 Q. HOW DID YOU FEEL, YOURSELF, MR. WARD, KNOWING THAT
21 PEOPLE IN THE SENATE, THE HOUSE OF REPRESENTATIVES, JUDGES,
22 PEOPLE IN THE EASTERN DISTRICT OF TEXAS, AND TONS OF
23 CORPORATIONS--HOW DID YOU FEEL WHEN THAT ACCUSATION OF THE
24 CONSPIRACY--WHEN YOU SAW THAT, HOW DID YOU FEEL?

25 A. IT INFURIATED ME WHEN I FIRST SAW IT. I DIDN'T NEED

1 TO SEE WHO HE SAID WAS READING HIS BLOG. I KNEW THAT I HAD
2 CLIENTS AND FELLOW LAWYERS THAT WERE READING THE BLOG BECAUSE
3 PEOPLE WERE TALKING ABOUT IT. IT INFURIATED ME.

4 Q. WERE YOU, AT THAT TIME, SEEING ERIC ALBRITTON ON NEARLY
5 A DAY-TO-DAY BASIS?

6 A. PROBABLY EVERY DAY; IF NOT, EVERY OTHER DAY.

7 Q. OKAY.

8 A. I SAW HIM ON THE DAY THAT THAT GOT POSTED.

9 Q. WERE YOU ABLE TO OBSERVE WHAT WAS GOING ON WITH ERIC
10 AS IT REGARDS THIS POSTING?

11 A. I DID.

12 Q. LET'S START THE FIRST TIME YOU SAW EACH OTHER AFTER
13 IT OCCURRED AND JUST TELL ME WHAT YOU OBSERVED ABOUT WHAT WAS
14 GOING ON WITH ERIC ALBRITTON.

15 A. THERE WAS A LOT GOING ON AT THAT TIME, BUT I REMEMBER
16 ERIC BEING IN MY OFFICE AND WE PULLED THE BLOG UP TO LOOK AT
17 IT TO SEE WHAT WAS WRITTEN, AND WE WERE BOTH JUST INCREDULOUS,
18 JUST VERY ANGRY, YOU KNOW. WE KNEW THIS HAD NOT HAPPENED. WE
19 HAD NO IDEA THAT IT WAS CISCO THAT WAS WRITING THIS ABOUT US.
20 YOU KNOW, WE CAME UP WITH A PLAN, LET'S GET THIS SHUT DOWN. IS
21 THERE A WAY WE CAN GET THIS SHUT DOWN. THAT WAS OUR IMMEDIATE
22 REACTION.

23 Q. DID YOU UNDERTAKE ANY STEPS--WHAT WAS THE FIRST STEP
24 YOU TOOK, ACTIVE STEP YOU TOOK AFTER SEEING THIS?

25 A. THE FIRST ACTIVE STEEP I TOOK, I BELIEVE, WAS TO COME

1 SEE YOU.

2 Q. OKAY. AND WHAT DECISIONS WERE MADE AS A RESULT OF THAT
3 TRIP, MR. WARD?

4 A. WE FILED A JOHN DOE PETITION IN GREGG COUNTY TO TRY AND
5 TAKE THE DEPOSITION OF GOOGLE, BECAUSE IT WAS A BLOG HOSTED BY
6 GOOGLE. WE WANTED TO GET THE IDENTITY OF THE PERSON WHO WAS
7 WRITING THIS SO THAT WE COULD GET IT TAKEN DOWN.

8 Q. OKAY. AND DID WE--

9 A. THAT WAS WITHIN--I THINK IT WAS WITHIN A COUPLE OF
10 WEEKS THAT WE FILED THAT LAWSUIT. IT WASN'T A LAWSUIT, BUT
11 WE FILED THAT PLEADING.

12 Q. AND DID YOU AND I ACTUALLY GO TO A HEARING?
13 THE COURT: OBJECTION?

14 MR. BABCOCK: YEAH. A POINT OF CLARIFICATION, YOUR
15 HONOR. WHEN THE WITNESS SAID, "WE FILED," I'M NOT CERTAIN
16 WHETHER HE'S TALKING ABOUT MR. PATTON OR MR. ALBRITTON.

17 MR. PATTON: I WAS TALKING ABOUT JOHNNY AND ME.

18 MR. BABCOCK: THANK YOU, YOUR HONOR.

19 MR. PATTON:

20 Q. THAT'S THE "WE"?

21 A. CORRECT.

22 Q. OKAY. THE LAWSUIT WAS IN YOUR NAME, OBVIOUSLY?

23 A. CORRECT.

24 Q. AND I SIGNED THE PLEADING?

25 A. YOU SIGNED THE PLEADING.

1 Q. OKAY. AS YOUR LAWYER.

2 A. AS YOUR LAWYER [SIC] YOU SIGNED MY PLEADING.

3 Q. WHICH I HAVE REMAINED SINCE THAT TIME?

4 A. CORRECT.

5 Q. OKAY. AND DID WE HAVE A HEARING ABOUT THAT?

6 A. WE DID HAVE A HEARING, AND THE COURT ISSUED, I BELIEVE,
7 AN ORDER FOR THE DEPOSITION TO PROCEED.

8 Q. OKAY. AND WHAT HAPPENED FROM THAT POINT FORWARD?

9 A. I DON'T KNOW EXACTLY OTHER THAN GOOGLE SAID THEY WERE
10 GONNA TURN THE NAME OVER TO US, IF THERE WAS NO OBJECTION,
11 WITHIN 10 DAYS. AND APPARENTLY THERE WAS AN OBJECTION, AND
12 WE DID NOT GET THE INFORMATION AT THAT TIME. WE WERE PURSUING
13 THAT DEPOSITION WHEN MR. FRENKEL REVEALED HIS IDENTITY.

14 Q. ALL RIGHT. WHAT HAPPENED AS WE WERE PURSUING GETTING
15 A HEARING IN CALIFORNIA?

16 A. I DON'T KNOW THE TIMELINE. I MEAN I KNOW THAT
17 MR. FRENKEL REVEALED HIMSELF. FOR SOME REASON, HE SAID SOMEONE
18 THREATENED TO OUT HIM AND HE OUTED HIMSELF IN A BLOG POST. AND
19 WHEN WE FOUND OUT WHO IT WAS, WE FILED A LAWSUIT FOR DEFAMATION

20 Q. THERE WASN'T ANY NEED TO GO THROUGH GOOGLE ANYMORE, WAS
21 THERE?

22 A. NO. WE KNEW WHO IT WAS.

23 Q. WE KNEW WHO IT WAS.

24 DID MR. ALBRITTON FILE AT THE SAME TIME OR VERY,
25 VERY CLOSE IN TIME?

1 A. VERY CLOSE AFTER WE FILED THAT--THE ACTUAL DEFAMATION
2 SUIT. OF COURSE, THERE WERE THINGS THAT HAPPENED BEFORE THAT,
3 BUT, YES, HE FILED.

4 Q. OKAY.

5 DO YOU KNOW THE MR. CHANDLER WHO IS THE CHIEF LEGAL
6 COUNSEL FOR--

7 A. I'VE MET HIM ONE TIME. I KNOW HE'S NOT HERE.

8 Q. OKAY.

9 LET'S GO BACK TO TALK ABOUT ERIC ALBRITTON.

10 A. OKAY.

11 Q. OKAY? ARE YOU IN CONTACT WITH ERIC, AS YOU HAVE
12 STATED, ON AN ALMOST-DAILY BASIS?

13 A. YES.

14 Q. YOU ARE IN THE SAME BUILDING?

15 A. CORRECT.

16 Q. AND WHAT DID YOU SAY, ABOUT 75 FEET?

17 A. YES, SIR. WE USUALLY HAVE COFFEE TOGETHER IN THE
18 MORNING IF WE'RE BOTH IN THE OFFICE.

19 Q. OKAY. AFTER THIS STUFF CAME OUT, I WILL NOT TALK ABOUT
20 WHAT YOU WERE FEELING, BUT WHAT YOU OBSERVED ABOUT ERIC.

21 A. OKAY. YOU KNOW, MY OBSERVATIONS WERE--IT'S HARD TO
22 TALK ABOUT IT WITHOUT TALKING ABOUT ME, BECAUSE WE HAD A LOT
23 OF THE SAME FEELINGS.

24 Q. I UNDERSTAND.

25 A. BUT I KNEW HE WAS VERY ANGRY, VERY UPSET, WANTED TO

1 KNOW WHO IT WAS WHO WAS WRITING THIS ABOUT US, BECAUSE AFTER IT
2 WAS WRITTEN IT WAS OUT THERE AND REMAINED POSTED FOR QUITE SOMI
3 TIME AND IS STILL OUT THERE. SO WE TALKED ABOUT IT DURING THE
4 TIME PERIOD THAT WE WERE TRYING TO FIND OUT WHO WAS DOING THIS
5 TO US, YOU KNOW, I DON'T WANT TO SAY EVERY DAY, BUT, YOU KNOW,
6 HAVE YOU FOUND ANYTHING OUT? HAVE YOU FOUND ANYTHING OUT? AND
7 THERE WERE OTHER PEOPLE IN THE COUNTRY WHO WERE LOOKING FOR
8 MR. FRENKEL. SO WE TALKED ABOUT THAT.

9 Q. WAS HE UPSET?

10 A. ABSOLUTELY.

11 Q. TELL THE JURY ABOUT THAT. THEY'RE ENTITLED TO KNOW
12 WHAT YOU KNOW ABOUT THAT.

13 A. WHAT I KNOW IS, YOU KNOW, WE TALKED ABOUT LOSING SLEEP;
14 THAT IT WAS DISTURBING THAT, YOU KNOW, WE HAD CLIENTS CALLING
15 US AND OTHER LAWYERS COMMENTING ON THIS; AND HE WAS--WE WERE
16 ANGRY. I MEAN THAT--NO DOUBT ABOUT IT.

17 Q. WAS IT A DISTRACTION FROM WORK?

18 A. WORRYING ABOUT IT, I GUESS, WAS A DISTRACTION. BUT I
19 THINK ERIC AND I ARE KIND OF ALIKE. YOU WORK HARDER WHEN YOU
20 KIND OF FOCUS YOUR ATTENTION ON SOMETHING ELSE. I DON'T KNOW
21 THAT THAT'S UNUSUAL FOR ANYBODY WHO'S, YOU KNOW, IN A STRESSFUL
22 SITUATION. THEY THROW THEMSELVES INTO THEIR WORK. I THINK I
23 DID THAT, I THINK ERIC DID THAT.

24 Q. DO YOU KNOW WHETHER OR NOT ERIC ALBRITTON WAS
25 EMBARRASSED ABOUT THIS?

1 A. I THINK WE WERE BOTH--IT WAS HUMILIATING. I MEAN TO BE
2 ACCUSED OF A CRIME WHEN I THINK ERIC AND I PRACTICE LIKE WHAT
3 YOU'VE GOT IN THIS PRACTICE IS YOUR NAME. WE APPEAR IN THESE
4 COURTS REGULARLY, WEEKLY. AND THAT'S HUMILIATING TO BE ACCUSED
5 OF A CRIME IN A PUBLICATION THAT YOU KNOW YOU GO INTO A ROOM
6 FULL OF LAWYERS WITH HEARINGS IN THESE COURTS WHERE THERE'S 60
7 OR 70 LAWYERS THAT DO PATENT-INFRINGEMENT WORK AND YOU GO IN
8 THERE AND YOU'RE GOING, "THESE GUYS THINK I'M A CRIMINAL." OR
9 READING THAT I'VE BEEN ACCUSED OF A CRIME.

10 Q. WERE PEOPLE TALKING ABOUT IT, MR. WARD?

11 A. ABSOLUTELY.

12 Q. DO YOU KNOW WHETHER MR. ALBRITTON KNEW THEY WERE
13 TALKING ABOUT HIM?

14 A. WE TALKED ABOUT THE FACT THAT, YOU KNOW, WHEN HE WOULD
15 GET A CALL OR I WOULD GET A CALL, SO, YES, I KNOW THAT HE KNEW
16 PEOPLE WERE TALKING ABOUT IT.

17 Q. HAVE YOU EVER GOTTEN AN APOLOGY FROM ANYBODY?

18 A. NO.

19 Q. DO YOU KNOW IF MR. ALBRITTON HAS?

20 A. AS FAR AS I KNOW, HE HAS NOT.

21 Q. MR. BABCOCK QUOTED ME AS MAKING A COMMENT ABOUT
22 STUNNING COWARDICE, WHICH I AFFIRMED TO THIS JURY A WHILE AGO
23 THAT I DID MAKE THAT COMMENT, AND STILL DO. HAS MR. BABCOCK
24 MADE ANY COMMENTS TO THE PRESS THAT BOTHERED YOU?

25 A. ABSOLUTELY, HE HAS.

1 Q. AND WHAT WAS THAT?

2 A. HE WAS QUOTED AS SAYING THAT WE HAD FILED THESE
3 LAWSUITS TO CURRY FAVOR WITH THE COURT, WHICH WAS UPSETTING AS
4 WELL. I MEAN IT'S ESSENTIALLY SAYING THAT THESE LAWSUITS ARE
5 BASELESS AND WE'RE JUST TRYING TO SUCK UP TO THE COURT IS THE
6 REASON WE'RE PURSUING CISCO.

7 Q. DO YOU KNOW WHY ERIC PURSUED THIS LAWSUIT?

8 A. I THINK TO CLEAR HIS NAME.

9 MR. PATTON: I'LL PASS THE WITNESS, YOUR HONOR.

10 THE COURT: ALL RIGHT, MR. BABCOCK.

11 MR. BABCOCK: THANK YOU, YOUR HONOR.

12 CROSS-EXAMINATION OF JOHNNY WARD ON BEHALF OF THE DEFENDANT
13 CISCO

14 MR. BABCOCK:

15 Q. IN FACT, THAT ARTICLE THAT MR. PATTON JUST REFERENCED
16 WHERE I WAS QUOTED SAID EXACTLY THE OPPOSITE OF WHAT YOU JUST
17 SAID, DIDN'T IT?

18 A. I DON'T KNOW. IF YOU WOULD SHOW ME THE ARTICLE, I
19 COULD TELL YOU FOR SURE.

20 Q. WE'RE LOOKING FOR IT. WE'RE LOOKING FOR IT. IT SAID I
21 DIDN'T KNOW IF YOU WERE--IT QUOTED ME AS SAYING I DIDN'T KNOW
22 IF YOU WERE TRYING TO CURRY FAVOR WITH THE JUDGES. BUT WE'LL
23 SEE IT IN A MINUTE.

24 A. I THINK THAT'S THE SAME THING, BUT WE CAN PULL IT UP
25 AND LOOK AT IT.

1 Q. YEAH. AND YOU WEREN'T THERE WHEN I WAS INTERVIEWED BY
2 WHOEVER THIS BLOGGER WAS?

3 A. ABSOLUTELY NOT.

4 Q. YOU DON'T KNOW IF I SAID WHAT I WAS QUOTED AS SAYING?

5 A. DID YOU? TELL US NOW.

6 Q. NO.

7 A. OKAY.

8 Q. BUT IN ANY EVENT, YOU SAID THERE WAS NO APOLOGY. THE
9 FIRST THING YOU DID WHEN YOU SAW THIS ARTICLE ON OCTOBER 18TH,
10 I THINK YOU SAID, WAS GO VISIT MR. PATTON, CORRECT?

11 A. HE WAS THE FIRST--FIRST PERSON I WENT TO VISIT.

12 Q. RIGHT. THAT WAS THE FIRST STEP YOU TOOK. AND THAT
13 WAS--I DON'T WANT TO GET INTO YOUR DISCUSSIONS, OBVIOUSLY--

14 A. RIGHT.

15 Q. --BUT THAT WAS FOR THE PURPOSES OF INITIATING LITIGATION,
16 CORRECT?

17 A. THAT'S INCORRECT.

18 Q. OKAY. WELL, YOU WANTED HIS ADVICE, I ASSUME.

19 A. CORRECT.

20 Q. AS A LAWYER?

21 A. YEAH. I WANTED AN INDEPENDENT PERSON TO SAY, "AM I
22 READING THIS--YOU KNOW, IT'S GOT MY NAME IN IT, SO AM I
23 OVERREACTING?"

24 Q. AND YOU KNOW THAT MR. PATTON IS A LITIGATOR, THAT'S
25 WHAT HE DOES FOR A LIVING?

1 A. ABSOLUTELY.

2 Q. OKAY. AND SO THE VERY FIRST THING YOU DID WAS GO TALK
3 TO A LITIGATOR ABOUT WHAT TO DO ABOUT THIS, RIGHT?

4 A. HOW TO SHUT IT DOWN, ABSOLUTELY.

5 Q. RIGHT. THAT WAS ONE OF YOUR OBJECTIONS--OBJECTIVES,
6 WAS TO SHUT DOWN THE PATENT TROLL TRACKER, RIGHT?

7 A. TO TAKE DOWN THE ARTICLES THAT WERE WRITTEN ABOUT ME,
8 ABSOLUTELY.

9 Q. IF YOU WERE SO INTERESTED IN TAKING DOWN THE ARTICLES
10 THAT WERE WRITTEN ABOUT YOU, AND YOU ARE TALKING ABOUT OCTOBER
11 17 AND 18, RIGHT?

12 A. CORRECT.

13 Q. WHY DID YOU ATTACH THEM TO YOUR COMPLAINT THAT YOU
14 FILED IN GREGG COUNTY?

15 A. WHY?

16 Q. YES.

17 A. SO I COULD SHOW THE JUDGE THAT I HAD BEEN ACCUSED OF A
18 CRIME.

19 Q. BUT YOU KNEW THAT ONCE YOU ATTACHED THEM TO A COMPLAINT
20 THEY WOULD BE IN THE PUBLIC RECORD AND AVAILABLE FOR THE PUBLIC
21 TO SEE, RIGHT?

22 A. THE PUBLIC IS NOT LOOKING AT THOSE THINGS, BUT YOU ARE
23 RIGHT, THEY ARE OUT THERE.

24 Q. RIGHT.

25 A. THE LAWYERS THAT I PRACTICE WITH ARE THE ONES WHO ARE

1 LOOKING AT IT.

2 Q. YOU THINK THAT NOBODY IS GONNA LOOK AT IT IF IT'S
3 ATTACHED TO A PLEADING? THAT'S NOT SOMETHING ANYBODY WOULD
4 EVER LOOK AT?

5 A. OH, I THINK PEOPLE WOULD LOOK AT IT. I'M SURE THERE
6 ARE SOME PEOPLE THAT WOULD.

7 Q. AND IN FACT, WHEN YOU FILED THIS LAWSUIT, THERE WAS A
8 FAIR AMOUNT OF PRESS INTEREST IN THE CLAIMS THAT YOU MADE IN
9 THE LAWSUIT, AND THEY QUOTED FROM THE ARTICLES THAT YOU
10 ATTACHED TO YOUR LAWSUIT, RIGHT?

11 A. WRONG.

12 Q. WHY DO YOU SAY THAT'S WRONG?

13 A. WELL, BECAUSE I THINK THERE WAS A LOT OF INTEREST
14 BECAUSE PEOPLE WERE IN SHOCK THAT CISCO WOULD ENGAGE IN THIS
15 CONDUCT, IS WHAT I THINK BROUGHT A LOT OF THE INTEREST IN THIS.

16 Q. WELL, THERE'S A DOCUMENT IN EVIDENCE THAT'S THE "TEXAS
17 LAWYER" EXHIBIT 81, AND IT WAS A FRONT-PAGE ARTICLE SPREAD
18 ACROSS THE TOP OF THE PUBLICATION. YOU SAW THAT ARTICLE, DID
19 YOU NOT?

20 A. ABSOLUTELY.

21 Q. AND MR. PATTON WAS QUOTED EXTENSIVELY IN IT, CORRECT?

22 A. WE COULD LOOK AT IT. I THINK HE WAS QUOTED IN IT. I
23 DON'T KNOW IF IT WAS EXTENSIVELY.

24 Q. AND MY PARTNER PAUL WATLER DECLINED COMMENT. YOU KNOW
25 THAT, DON'T YOU?

1 A. I DON'T KNOW WHO YOUR PARTNER IS, MR. BABCOCK. IF
2 YOU TELL ME THAT HE DECLINED COMMENT, THEN I'D TAKE YOUR
3 REPRESENTATION.

4 Q. I WOULD REPRESENT THAT TO YOU.

5 A. OKAY.

6 Q. BUT YOU GUYS, YOU AND MR.--YOUR LAWYER, MR. PATTON, AND
7 MR. ALBRITTON'S LAWYER, MR. HOLMES, DID NOT DECLINE COMMENT.
8 THEY CHARACTERIZED THE OCTOBER 18TH ARTICLE AS BEING THE
9 ACCUSATION IS THAT HE INTENTIONALLY CONSPIRED TO COMMIT A
10 FELONIOUS ACT. YOU READ THAT IN THE TEXAS LAWYER, DIDN'T YOU?

11 A. WE FOUGHT BACK, YEAH.

12 Q. OKAY. 0AND YOU FOUGHT BACK EVEN THOUGH THERE HAD NOT
13 BEEN ANY PUBLICITY ABOUT THESE TWO PATENT TROLL TRACKER
14 ARTICLES BETWEEN OCTOBER 18TH AND WHEN YOU FILED YOUR LAWSUIT
15 ON MARCH 3RD, ISN'T THAT TRUE?

16 A. WELL, IT DEPENDS ON HOW YOU ARE DEFINING PUBLICITY.
17 I KNEW THAT MY PEERS AND CLIENTS WERE READING THIS STUFF.

18 Q. LET ME PUT IT A DIFFERENT WAY.

19 A. OKAY.

20 Q. THERE WAS NO NEWS ARTICLE ABOUT THE PATENT TROLL
21 TRACKER ARTICLES THE 17TH AND THE 18TH BETWEEN THAT DATE
22 AND MARCH 3RD, 2008, WHEN YOU FILED YOUR LAWSUIT, RIGHT?

23 A. WRONG.

24 Q. IDENTIFY AN ARTICLE FOR ME.

25 A. THERE WERE ARTICLES THAT WHEN MR. FRENKEL REVEALED

1 HIMSELF AS WORKING FOR CISCO IN THE LAWSUIT THAT FORMED THE
2 BASIS OF HIS--HIS BLOG. SO THERE WAS PUBLICITY.

3 Q. BUT NOTHING ABOUT YOU? THERE WAS NO ARTICLE THAT SAID,
4 HEY, BY THE WAY, ON OCTOBER 18TH, JOHNNY WARD WAS IDENTIFIED IN
5 A PATENT TROLL TRACKER ARTICLE AS DOING SOME BAD STUFF?

6 A. NO.

7 Q. THERE'S NOTHING LIKE THAT?

8 A. NO, THERE WASN'T.

9 Q. THERE WAS ABSOLUTELY NO PUBLICITY. SO NO NEWS
10 ARTICLES, NO INTERNET BLOGS BETWEEN THE DATE OF OCTOBER 18TH
11 AND MARCH 3RD, 2008, RIGHT?

12 A. I CAN'T SAY THAT FOR A FACT. I THINK THERE WAS NOT
13 REFERENCE BACK TO THE ARTICLES UNTIL WE FOUGHT BACK AND
14 ATTACHED THEM TO OUR COMPLAINTS.

15 Q. OKAY. AND IN TERMS OF E-MAIL TRAFFIC, WHAT YOU GOT WAS
16 ONE E-MAIL FROM A GUY IN NEW JERSEY, WHO SAID, "I THINK YOU'RE
17 GONNA PLAY FINE IN NEW HAVEN," RIGHT?

18 A. ARE YOU SAYING THAT'S THE ONLY COMMUNICATION I GOT?

19 Q. YOU GOT THAT E-MAIL, DID YOU NOT?

20 A. I GOT THAT E-MAIL.

21 Q. OKAY. AND THAT WAS REFERRING TO WHETHER OR NOT YOU
22 WERE GONNA PLAY WELL IN CONNECTICUT, RIGHT?

23 A. YOU WANT TO LIMIT IT TO E-MAIL AND NOT PHONE CALLS?

24 YES.

25 Q. I WANT TO LIMIT IT TO E-MAILS RIGHT NOW, YES.

1 A. YES.

2 Q. OKAY. SO BETWEEN OCTOBER 18TH OF 2007 AND MARCH 3RD OF
3 20208, NO ARTICLES, NO INTERNET BLOG PUBLICATIONS REFERENCING
4 YOU, RIGHT?

5 A. WRONG. THIS BLOG IS UP THERE FOR THE WORLD TO SEE.

6 Q. OTHER THAN THE OCTOBER 18TH BLOG.

7 A. AS FAR AS I KNOW, THAT'S RIGHT.

8 Q. OKAY. AND YOU GOT AN E-MAIL FROM A GUY IN NEW JERSEY
9 SAYING, "I THINK YOU'RE GONNA PLAY GREAT IN CONNECTICUT,"
10 RIGHT?

11 A. RIGHT.

12 Q. OKAY.

13 NOW, YOU SAY YOU GOT TELEPHONE CALLS. AND WERE ANY
14 OF THESE PEOPLE THAT PHONED YOU--AND I DON'T WANT YOU TO TELL
15 ME WHAT THEY SAID, BUT WAS THERE ANYTHING THAT WAS CRITICAL OF
16 YOU, SAYING, "HEY, THIS IS THE DEPARTMENT OF JUSTICE CALLING;
17 YOU ARE UNDER INVESTIGATION"?

18 A. NO.

19 Q. ALL RIGHT. YOU NEVER GOT CALLED BY THE DISTRICT
20 ATTORNEY EITHER, DID YOU?

21 A. NO.

22 Q. AND YOU NEVER GOT CALLED BY THE STATE BAR OF TEXAS, DID
23 YOU?

24 A. NO.

25 Q. NOBODY--NO MEMBER OF CONGRESS EVER CALLED YOU AND SAID,

1 "HEY, I'VE READ THAT YOU HAVE COMMITTED SOME SORT OF CRIME AND
2 WE'RE INVESTIGATING IT"?

3 A. THAT'S CORRECT.

4 Q. ALL RIGHT.

5 AND YOU DIDN'T GET AN APOLOGY, BUT YOU DIDN'T REACH
6 OUT TO MR. FRENKEL'S BLOG, TO THE PATENT TROLL TRACKER, EITHER,
7 DID YOU?

8 A. YOU DON'T WRESTLE WITH A SNAKE, YOU CUT ITS HEAD OFF.
9 AND THAT'S WHAT WE DID.

10 Q. WELL, HE'S STILL GOT HIS HEAD, SO YOU ARE A LITTLE
11 PREMATURE IN THAT.

12 A. WELL, NO, WE SHUT THE BLOG DOWN IS WHAT WE DID. AND I
13 WASN'T GONNA ENGAGE WITH HIM ON HIS HOME TURF WHERE HE COULD
14 SPIN WHATEVER HE WAS GONNA SPIN.

15 Q. YOU SHUT THE BLOG DOWN, AND THAT WAS ONE OF YOUR
16 OBJECTIVES, OF COURSE?

17 A. MY OBJECTIVE WAS TO GET THE ARTICLES THAT WERE ACCUSING
18 ME OF A CRIME TAKEN DOWN. HE TOOK THE WHOLE THING DOWN ON HIS
19 OWN ONCE CISCO GOT OUTED.

20 Q. THE ANSWER TO MY QUESTION A MINUTE AGO WAS: YOU DID
21 NOT REACH OUT TO HIM BY E-MAILING HIM EVEN THOUGH THERE'S A
22 BUTTON RIGHT THERE, RIGHT?

23 A. ABSOLUTELY NOT. NEVER WOULD.

24 Q. YOU NEVER WOULD?

25 A. NO WAY.

1 Q. LITIGATE FIRST, ASK QUESTIONS LATER?

2 A. NO. GET HIS IDENTITY AND GET THIS OFF THE INTERNET.

3 THAT WAS MY GOAL.

4 Q. WHY DIDN'T YOU E-MAIL HIM AND SAY, "HEY, I KNOW YOU ARE

5 ANONYMOUS, BUT I'M VERY UPSET ABOUT THIS"?

6 A. AGAIN, WHY DIDN'T I DO THAT?

7 Q. YEAH.

8 A. BECAUSE I WAS LOOKING AT THE VENOM THAT THIS GUY WAS

9 SPEWING. HE OBVIOUSLY--I DIDN'T KNOW HE WORKED FOR CISCO AT

10 THE TIME. HE OBVIOUSLY HAD A LOT OF TIME ON HIS HANDS, BECAUSE

11 HE WAS DOING A LOT OF STATISTICS, WRITING DAY AFTER DAY.

12 THAT'S WHY. THIS IS WHY I DIDN'T ENGAGE THIS GUY.

13 Q. KEEP GOING. AND IN FACT, THOSE STATISTICS WERE

14 HARMFUL TO YOU AND YOUR PRACTICE HERE, WEREN'T THEY? THEY WERE

15 CRITICAL OF WHAT WAS GOING ON IN THE EASTERN DISTRICT OF TEXAS,

16 WASN'T IT?

17 A. I DON'T THINK THEY HARMED MY PRACTICE, MR. BABCOCK. I

18 WAS WATCHING IT, BUT I HAD NO INTENTION OF SHUTTING ANYTHING

19 DOWN UNTIL HE ACCUSED ME OF A CRIME.

20 Q. AND THEN YOU WANTED TO SHUT IT DOWN?

21 A. I WANTED TO TAKE THE ARTICLES DOWN THAT WERE WRITTEN

22 ABOUT ME.

23 Q. WHICH YOU HAVE ACCOMPLISHED?

24 A. ABSOLUTELY.

25 Q. OKAY.

1 A. WELL, THEY'RE STILL OUT THERE, BUT HE'S NOT, YOU KNOW,
2 STILL ANONYMOUSLY ACCUSING ME OF CRIMES.

3 Q. YEAH. NOT TO BEAT A DEAD HORSE, BUT YOUR GREGG COUNTY
4 LAWSUIT WHICH ATTACHED THE ARTICLES, YOU DISMISSED THAT, RIGHT?

5 A. CORRECT.

6 Q. AND THEN YOU RE-FILED IT IN FEDERAL COURT IN ARKANSAS,
7 CORRECT?

8 A. CORRECT.

9 Q. AND YOU ATTACHED THE ARTICLES AGAIN, RIGHT?

10 A. CORRECT.

11 Q. OKAY. AND GREGG COUNTY WAS A STATE COURT THAT YOU
12 FILED IN, RIGHT?

13 A. CORRECT.

14 Q. AND YOU DISMISSED THAT, THEN YOU RE-FILED IN ARKANSAS.

15 AND NOW IT'S ON THE FEDERAL NATIONAL PACER SYSTEM, RIGHT, THESE
16 ARTICLES?

17 A. THEY ARE.

18 Q. SO WHEN YOU SAY THAT THEY'RE ON THE INTERNET, THAT'S
19 CERTAINLY TRUE, BUT IT'S BECAUSE OF WHAT YOU'VE DONE, RIGHT?

20 A. IN PART.

21 Q. OKAY. AND YOU KNOW THAT IN FEDERAL COURT YOU CAN FILE
22 THINGS UNDER SEAL IF YOU WANT?

23 A. YEAH, BUT THERE'S MORE THERE THAN JUST THE ARTICLES.

24 Q. CERTAINLY. I MEAN YOU'VE GOT ALL SORTS OF ALLEGATIONS.

25 A. RIGHT.

1 Q. BUT YOU DON'T HAVE TO--YOU DON'T HAVE TO ATTACH THE
2 ARTICLES IN A PUBLIC DOCUMENT AND LET THEM GET ON PACER SO THAT
3 ANYBODY CAN SEE IT, DO YOU?

4 A. ONCE WE FOUND OUT IT WAS CISCO, I DIDN'T CARE WHAT
5 PEOPLE SAW, 'CAUSE THEY KNEW WHO WAS BEHIND THIS. I DON'T CARE
6 IF PEOPLE SEE IT. THEY KNOW THAT IT'S AN ADVERSE LITIGANT
7 SAYING THESE THINGS ABOUT ME.

8 Q. AND PEOPLE WILL DISCOUNT THAT, OBVIOUSLY?

9 A. NOW?

10 Q. YEAH.

11 A. OH, I THINK NOW, EXCEPT FOR CISCO. CISCO IS NOT GONNA
12 APOLOGIZE, RIGHT?

13 Q. WELL, WE'LL SEE ABOUT THAT. BUT AS OF FEBRUARY 23RD
14 OF 2008, WHEN MR. FRENKEL REVEALED HIMSELF, THEN EVERYBODY KNEW
15 THAT CISCO WAS HIS EMPLOYER, RIGHT?

16 A. THAT'S THE LIMITED INFORMATION THEY KNEW AT THAT TIME.

17 Q. OKAY. AND WHAT YOU ARE JUST SAYING IS THAT AS SOON AS
18 EVERYBODY KNOWS THAT, THEY'RE NOT GONNA BELIEVE A WORD THAT HE
19 SAID IN THIS OCTOBER 18TH ARTICLE, RIGHT?

20 A. THEY GET TO SEE THE FULL PICTURE, RIGHT. WHEN THEY GET
21 TO READ MY PLEADING WITH THE ARTICLES ATTACHED, THEY GET TO SEE
22 THAT CISCO IS THE ONE WHO IS SAYING THIS ABOUT US.

23 Q. SO YOU REALLY HAVEN'T HAD ANY DAMAGE, HAVE YOU?

24 A. OH, NO, IT'S BEEN A WALK IN THE PARK, MR. BABCOCK.

25 Q. WELL, YOU ARE NOT EVEN CLAIMING ANY ECONOMIC DAMAGE,

1 ARE YOU, SIR?

2 A. NO.

3 Q. IN FACT, YOU MADE MORE MONEY IN 2008 THAN YOU DID IN
4 2007?

5 MR. PATTON: I OBJECT, YOUR HONOR. THIS IS NOT
6 RELEVANT.

7 THE COURT: IT'S NOT RELEVANT. SO I'LL SUSTAIN THE
8 OBJECTION.

9 MR. BABCOCK: YOU SAID, IN RESPONSE TO MR. PATTON'S
10 QUESTIONS--

11 MR. PATTON: EXCUSE ME, MR. BABCOCK.

12 MR. BABCOCK: SURE.

13 MR. PATTON: COULD I ASK THE COURT TO INSTRUCT THE
14 JURY TO DISREGARD THE QUESTION THAT MR. BABCOCK ASKED?

15 THE COURT: YES.

16 LADIES AND GENTLEMEN, DISREGARD MR. BABCOCK'S
17 QUESTION ABOUT HOW MUCH MONEY MR. WARD MADE IN 2008, WHICH
18 HE DIDN'T ANSWER, BUT--

19 THE WITNESS: RIGHT.

20 MR. BABCOCK: OKAY.

21 Q. LET ME SEE IF I CAN GET BACK TO THE QUESTION THAT I WAS
22 ABOUT TO ASK WHEN MR. PATTON STOOD UP. YOU SAID IN RESPONSE TO
23 HIM THAT THIS THING--THAT THIS OCTOBER 18TH ARTICLE INFURIATED
24 YOU, RIGHT?

25 A. YES, SIR.

1 Q. ALL RIGHT. AND YOU ARE ASKING FOR ONLY MENTAL-ANGUISH
2 DAMAGES AGAINST CISCO, CORRECT?

3 A. I DON'T BELIEVE THAT'S CORRECT.

4 Q. WELL, ARE YOU ASKING FOR MENTAL-ANGUISH DAMAGES?

5 A. I AM.

6 Q. OKAY. AND YOUR MENTAL ANGUISH CONSISTS OF YOUR WAKING
7 UP EVERY NIGHT--

8 MR. PATTON: YOUR HONOR, I OBJECT TO THIS. WHATEVER
9 MENTAL ANGUISH MR. WARD MAY HAVE SUSTAINED IS NOT RELEVANT TO
10 THIS CASE.

11 MR. BABCOCK: I HAVE TWO ANSWERS TO THAT, YOUR HONOR:

12 THEY, IN DIRECT EXAMINATION, ASKED HIM SEVERAL
13 QUESTIONS, ONE OF WHICH WAS: DID IT INFURIATE YOU? AND I
14 WANT TO EXPLORE THE EXTENT OF HIS FURY.

15 BUT THE SECOND THING IT WOULD BE PROBATIVE OF IS
16 HE'S SUING OVER THE SAME ARTICLE, CLAIMS TO BE 75 FEET AWAY
17 FROM MR. ALBRITTON, AND I WANT TO SEE IF HIS MENTAL ANGUISH
18 IS GONNA MATCH MR. ALBRITTON'S MENTAL ANGUISH.

19 THE COURT: AND YOU ARE OBJECTING BECAUSE IT'S TWO
20 DIFFERENT INDIVIDUALS?

21 MR. PATTON: THAT'S TRUE.

22 THE COURT: I'M GOING TO SUSTAIN THE OBJECTION.

23 THIS IS MR. ALBRITTON'S CASE. MR. WARD HAS A SEPARATE CASE.

24 MR. BABCOCK: OKAY.

25 Q. SO YOU HAVE NO INFORMATION TO SHARE WITH THIS JURY FROM

1 YOUR OWN EXPERIENCE ABOUT YOUR MENTAL ANGUISH THAT WOULD BE
2 PROBATIVE OF MR. ALBRITTON'S MENTAL ANGUISH, CORRECT?

3 A. I CAN ONLY TELL YOU WHAT I SAW IN MR. ALBRITTON AND
4 WHAT HE TOLD ME.

5 Q. RIGHT. BUT YOU ARE NOT TRYING TO TELL THIS JURY THAT
6 YOU SUSTAINED MENTAL ANGUISH AND THEREFORE MR. ALBRITTON MUST
7 HAVE SUSTAINED MENTAL ANGUISH?

8 A. THAT WAS NOT MY TESTIMONY.

9 Q. OKAY. AND YOU ARE NOT TRYING TO OFFER THAT TESTIMONY?

10 A. NO.

11 Q. YOU SAID THAT THE ABA JOURNAL SAID THAT THE PATENT
12 TROLL TRACKER WAS A MUST-READ.

13 A. THAT'S MY RECOLLECTION, YES, SIR.

14 Q. OKAY. FOR THE JURY'S BENEFIT, YOU AND I KNOW WHAT
15 THE ABA JOURNAL IS, BUT THAT'S THE AMERICAN BAR ASSOCIATION
16 JOURNAL, WHICH IS A MAGAZINE THAT COMES OUT WHAT, ONCE A MONTH,
17 I THINK?

18 A. THIS WAS ACTUALLY AN ONLINE DEAL IS WHERE I SAW IT.

19 Q. OKAY.

20 A. YOU GET SOMETHING IN YOUR E-MAIL. AND I BELIEVE THAT'S
21 WHERE THIS REFERENCE TO THE PATENT TROLL TRACKER BEING A
22 MUST-READ WAS.

23 Q. OKAY. AND TELL ME IF YOU RECALL WHAT THE JUSTIFICATION
24 FOR IT BEING A MUST-READ--MUST -READ SOUNDS LIKE IT'S SOMETHING
25 YOU SHOULD READ.

1 A. IF YOU ARE A PATENT LITIGATOR, YOU SHOULD READ THE
2 PATENT TROLL TRACKER--

3 Q. OKAY.

4 A. --TO SEE--HE WAS TRACKING WHAT LAWSUITS WERE GETTING
5 FILED, WHEN, WHERE, WHO THE PARTIES WERE.

6 Q. OKAY. SO AT LEAST IN THE VIEW OF THE AMERICAN BAR
7 ASSOCIATION JOURNAL, THE PATENT TROLL TRACKER WAS PROVIDING
8 USEFUL INFORMATION THAT PEOPLE IN THE AREA MUST READ IN ORDER
9 TO INFORM THEMSELVES?

10 A. I DON'T THINK THAT'S THE WAY THEY MEANT IT, BUT IT WAS,
11 "YOU OUGHT TO BE READING THIS IF YOU WANT TO KNOW WHAT'S GOING
12 ON IN PATENT LITIGATION."

13 Q. OKAY.

14 A. AND I THINK PEOPLE WERE DOING THAT.

15 Q. OKAY. AND YOU DID IT REGULARLY?

16 A. NOT REGULARLY. I GOT--I PROBABLY STARTED READING IT
17 MORE AS WE GOT NEARER THE TIME THAT THESE ARTICLES WERE
18 PUBLISHED, BECAUSE HE WAS WRITING ABOUT SOME OF MY CLIENTS.
19 AND I THINK HE WROTE ABOUT--HE WROTE ABOUT ME IN ONE OF THESE
20 ARTICLES BEFORE, I BELIEVE.

21 Q. OKAY.

22 A. BUT IT WASN'T ANYTHING THAT I SAID, "I'VE BEEN ACCUSED
23 OF A CRIME, I'M GONNA SHUT THIS GUY DOWN AND GET THIS GUY OFF
24 THE INTERNET."

25 Q. IN FACT, YOU ARE NOT MENTIONED BY NAME IN THE OCTOBER

- 1 18TH ARTICLE, ARE YOU, SIR?
- 2 A. NO. "LOCAL COUNSEL" IS WHAT IT SAYS. HE IDENTIFIES ME
- 3 THE DAY BEFORE.
- 4 Q. AND MR. ALBRITTON IS MENTIONED IN THE OCTOBER 18TH
- 5 ARTICLE, BUT YOU ARE NOT, CORRECT?
- 6 A. THAT'S CORRECT.
- 7 Q. AND YOU, FRANKLY, GOT BROUGHT INTO THIS CASE AFTER
- 8 MR. ALBRITTON HAD ALREADY FILED IT, RIGHT?
- 9 A. NO.
- 10 Q. I THOUGHT YOU MADE YOUR APPEARANCE--I THOUGHT THE
- 11 SECOND DOCKET ENTRY SHOWED YOU MAKING AN APPEARANCE AFTER
- 12 MR. ALBRITTON HAD ALREADY FILED. AM I WRONG ABOUT THAT?
- 13 A. WELL, IN THE EASTERN DISTRICT, THE PLEADING IS FILED,
- 14 AND I BELIEVE I'M ON THE PLEADING; BUT TO GET ELECTRONIC
- 15 NOTICES, YOU HAVE TO FILE A NOTICE OF APPEARANCE SO THAT YOU
- 16 CAN GET--EVERY LAWYER, EVEN IF THERE'S 15 LAWYERS ON THE
- 17 PLEADING, ONLY THE ONE WHO SIGNED THE COMPLAINT GETS THE
- 18 ELECTRONIC NOTICE. SO YOU'VE GOT TO FILE A NOTICE OF
- 19 APPEARANCE. SO I WAS ON THE ORIGINAL DOCUMENT.
- 20 Q. YOU DIDN'T KNOW PETER MCANDREWS, THAT WAS PRIMARILY
- 21 MR. ALBRITTON, CORRECT?
- 22 A. CORRECT.
- 23 Q. AND SO IT WAS REALLY MR. ALBRITTON WHO BROUGHT YOU INTO
- 24 THE CASE WHENEVER HE DID?
- 25 A. CORRECT.

1 Q. AND AS I UNDERSTAND IT, YOU AND MR. ALBRITTON WERE
2 MEDIATING TOGETHER WHEN THIS PROBLEM AROSE OR THE SITUATION
3 AROSE.

4 A. WELL, WE WEREN'T TOGETHER. IT'S KIND OF FUNNY. WE
5 WERE--DO YOU WANT TO KNOW WHERE WE WERE AT THAT POINT?

6 Q. YEAH. I WON'T OBJECT TO YOUR BEING NON-RESPONSIVE,
7 BECAUSE--

8 A. OKAY. I'LL TELL YOU ABOUT THE MEDIATION. WE WERE AT
9 BAKER BOTTS' OFFICES. I WAS ACTUALLY WORKING WITH BAKER BOTTS
10 IN A CASE THAT WE ULTIMATELY TRIED FOR A PLAINTIFF UP IN
11 TEXARKANA; MR. ALBRITTON REPRESENTED THE DEFENDANT; AND
12 MR. PATTON WAS THE MEDIATOR. TALK ABOUT A SMALL WORLD.

13 Q. COZY.

14 A. YEAH. LIKE I SAID, IT IS A SMALL, SMALL WORLD.

15 Q. RIGHT. AND NOBODY THAT KNOWS YOU HAS EVER SAID THAT
16 THEY THOUGHT THAT YOU HAD COMMITTED A CRIME, HAVE THEY?

17 A. I'M NOT WORRIED ABOUT THE FOLKS THAT KNOW ME.

18 Q. OKAY. AND SO YOU ARE IN THIS MEDIATION. IT'S
19 MR. ALBRITTON ON ONE SIDE, YOU ARE ON THE OTHER SIDE, AND
20 MR. PATTON IS THE MEDIATOR. AND FOR THE JURY'S BENEFIT,
21 THAT'S SORT OF THE NEUTRAL THIRD PARTY?

22 A. RIGHT.

23 Q. OKAY. AND WHAT DAY WAS THIS? DO YOU REMEMBER?

24 A. I THINK--I'M THINKING THAT IT WAS EITHER THE DAY IT GOT
25 FILED OR THE DAY AFTER.

1 Q. AND--

2 A. BECAUSE THE REASON I KNOW THAT--

3 Q. YEAH.

4 A. --BECAUSE BAKER BOTTS, WHO WAS MY CO-COUNSEL IN THAT
5 CASE, KEVIN MEEK, I KNEW THAT THEY REPRESENTED CISCO, AND I
6 MADE A COMMENT WHILE WE WERE IN A SESSION BY OURSELVES, I SAID,
7 "I'M GENERATING BUSINESS FOR YOU OUT IN EAST TEXAS. WE'VE SUED
8 ONE OF YOUR CLIENTS." AND HE ALREADY KNEW ABOUT IT. SO THAT'S
9 WHY I KNOW IT HAD TO BE--YOU KNOW, IT MIGHT HAVE BEEN THE 17TH.

10 AND HE SAID, "YEAH, BUT Y'ALL HAVE GOT A PROBLEM."

11 AND I SAID--AND I HAD TALKED TO ERIC ALREADY EARLIER
12 THAT DAY, HE'D JUST TOLD ME THAT WE GOT THE COMPLAINT FILED AND
13 THERE WAS A GLITCH IN THE SOFTWARE, SOMETHING TO THAT EFFECT,
14 AND TOLD ME THAT AMIE WAS TAKING CARE OF IT.

15 AND I TOLD KEVIN, "YEAH, I KNOW ABOUT THAT, BUT
16 THAT'S BEEN TAKEN CARE OF."

17 Q. OKAY. AND YOU KNOW NOW THAT THERE WAS NO GLITCH IN THE
18 SOFTWARE. YOU KNOW THAT, RIGHT?

19 A. I THINK THERE WAS A GLITCH IN THE SOFTWARE.

20 Q. YOU THINK THERE WAS?

21 A. YES, SIR.

22 Q. HAVE YOU LISTENED--YOU, OF COURSE, COULDN'T LISTEN TO
23 THE TESTIMONY OF MR. MALAND.

24 A. NO.

25 Q. SO EVEN TO THIS DAY YOU THINK THERE WAS A GLITCH IN THE

1 SOFTWARE?

2 A. WELL, FOR THE DOCKET TO SAY THAT IT WAS FILED ON THE
3 15TH, WHEN WE KNOW IT WAS FILED ON THE 16TH--MAYBE IF A PERSON
4 TYPED THAT IN, THEN IT WASN'T A GLITCH IN THE SOFTWARE. MY
5 UNDERSTANDING WAS THAT THE SOFTWARE GENERATED THAT. BECAUSE
6 IT'S INDISPUTABLE THAT WE FILED IT ON THE 16TH.

7 Q. WELL, YOU HAVEN'T BEEN HERE FOR ALL THE TESTIMONY YET,
8 BUT--

9 A. MAYBE YOU'VE GOT A DIFFERENT NOTICE OF ELECTRONIC
10 FILING THAT YOU'LL SHOW ME, BECAUSE THE ONE I'VE SEEN SAYS
11 THE 16TH.

12 Q. SURE. THAT'S THE NOTICE OF ELECTRONIC FILING IN THIS
13 CASE. WHERE DOES IT SAY IT WAS FILED?

14 A. WELL, YOU'LL HAVE TO BLOW UP THE NOTICE OF ELECTRONIC
15 FILING, AND NOT SHOW ME WHAT Y'ALL TYPED, AND I CAN SHOW YOU.

16 Q. NO, NO, I DIDN'T TYPE IT. SURE, IF YOU WANT TO SEE THE
17 WHOLE THING, PULL UP DEFENDANT'S EXHIBIT 13 AND GO TO THE SAME
18 SPOT ON THE DOCUMENT. IT WILL TAKE A MINUTE.

19 A. OKAY.

20 Q. THERE YOU GO.

21 A. THERE'S THE SPOT WHERE IT SAYS ENTERED ON 10/16 AT
22 12:01, THINK. ENTERED ON 10/16/2007 AT 12:01 AM.

23 Q. GO TO THE NEXT PAGE.

24 A. AND THAT'S THE GLITCH I'M TALKING ABOUT. UNLESS
25 SOMEONE TYPED IN "AND FILED ON," BECAUSE IF YOU GO DOWN--YOU'VE

1 CUT OFF BELOW THE DOCKET TEXT--KEEP GOING DOWN. RIGHT THERE.

2 ORIGINAL FILE NAME--

3 Q. MR. WARD, HANG ON FOR A MINUTE.

4 A. OKAY.

5 Q. I'M RUNNING THIS SHOW.

6 [LAUGHTER]

7 A. I'M JUST TRYING TO ANSWER YOUR QUESTION.

8 MR. PATTON: I OBJECT TO THAT. HE IS RUNNING THE
9 SHOW, BUT MR. WARD WAS ANSWERING A QUESTION THAT HE ASKED.

10 MR. BABCOCK: THERE WAS NO QUESTION PENDING.

11 MR. PATTON: I WOULD LIKE FOR HIM TO BE ABLE TO
12 FINISH IT.

13 THE COURT: I THINK HE DID ANSWER THE QUESTION.
14 SO WE'RE WAITING FOR THE NEXT QUESTION.

15 MR. BABCOCK: NEXT QUESTION.

16 TIM, WILL YOU HIGHLIGHT THE "FILED"? YES.

17 Q. IF YOU GO FROM THE PRIOR PAGE TO THIS PAGE, YOU'LL
18 SEE THAT THE NOTICE OF ELECTRONIC FILING SAYS IT WAS FILED
19 ON 10/15/2007, CORRECT?

20 A. INCORRECT.

21 Q. WELL, THAT'S WHAT IT SAYS, DOESN'T IT?

22 A. YOU'VE GOT HALF--GO ON DOWN THE DOCUMENT. BECAUSE IT
23 SAYS ELECTRONIC DOCUMENT STAMP DATE 10/16/2007. THAT'S WHAT
24 CONTROLS. AND THAT'S THE GLITCH I'M TALKING ABOUT, BECAUSE
25 IT WAS ENTERED ON 10/16, 12:01, WE ALL KNOW THAT.

1 MR. BABCOCK: TIM, SEE IF YOU CAN SHOW US BOTH PAGES

2 SO WE CAN GET PAST THIS.

3 THE WITNESS: I KNOW MR. HERNDON; HE CAN DO IT.

4 MR. BABCOCK:

5 Q. YEAH, HE TOLD ME HE'S WORKED WITH YOU BEFORE.

6 A. WE'VE WORKED TOGETHER BEFORE. SMALL WORLD.

7 Q. YEAH, IT IS INDEED. OKAY. SO NOW YOU SEE "NOTICE"--

8 IT SAYS HERE ON THE DOCUMENT "NOTICE OF ELECTRONIC FILING.

9 THE FOLLOWING TRANSACTION WAS RECEIVED FROM ALBRITTON, ERIC,

10 ENTERED ON 10/16/2007 AT 001 AM CENTRAL DAYLIGHT TIME AND FILED

11 ON 10/15/2007." THAT'S WHAT IT SAYS, RIGHT?

12 A. THAT PART OF THE DOCUMENT SAYS THAT, YES, SIR.

13 Q. OKAY. AND THERE'S NOWHERE ELSE ON THIS DOCUMENT THAT

14 THE WORD "FILED" IS USED, WOULD I BE CORRECT ABOUT THAT?

15 A. LET'S SCROLL DOWN TO WHAT I WAS TALKING ABOUT, THE

16 ELECTRONIC DOCUMENT STAMP.

17 Q. AND LET ME JUST ASK YOU TO CONFINE YOUR ANSWER TO

18 WHETHER THE WORD "FILED" IS USED ANYWHERE ELSE.

19 A. THE WAY YOU ARE ASKING IT, IT MIGHT NOT BE THERE, BUT

20 I WANT TO LOOK AT THE ELECTRONIC DOCUMENT STAMP.

21 Q. SURE. LOOK AS LONG AS YOU WANT.

22 A. IT'S CLOSE, BUT IT DOESN'T SAY "FILED," YOU ARE RIGHT.

23 Q. OKAY.

24 NOW, IN ADDITION TO THIS SUIT AGAINST CISCO IN

25 ARKANSAS--AND BY THE WAY, YOU DROPPED MR. FRENKEL AS A

- 1 DEFENDANT IN THAT CASE, DID YOU NOT?
- 2 A. WHY? OR YES.
- 3 Q. OKAY. YES.
- 4 A. YES. YOU DON'T WANT TO KNOW WHY.
- 5 Q. IN ADDITION TO THAT SUIT, YOU ALSO STILL COUNSEL FOR
- 6 ESN AGAINST CISCO IN FEDERAL COURT IN FRONT OF JUDGE FOLSOM,
- 7 CORRECT?
- 8 A. CORRECT.
- 9 Q. NOW, MR. MCANDREWS, WHO WAS THE FIRST WITNESS HERE,
- 10 IS ALSO COUNSEL FOR ESN WITH YOU AND MR. ALBRITTON, CORRECT?
- 11 A. CORRECT.
- 12 Q. AND YOU STAND TO BENEFIT PERSONALLY, FINANCIALLY, IF
- 13 ESN WINS THAT CASE, CORRECT?
- 14 A. SURE.
- 15 Q. OKAY. AND YOUR POSITION IN THAT CASE IS ADVANTAGED
- 16 IF CISCO LOSES THIS CASE, RIGHT? WOULD YOU AGREE WITH
- 17 MR. MCANDREWS ON THAT OR NOT?
- 18 A. MY POSITION IS--I DON'T KNOW THAT THE RESULT OF THIS
- 19 TRIAL WILL COME INTO EVIDENCE IN THAT TRIAL.
- 20 Q. WELL, YOU ARE TRYING TO GET IT INTO EVIDENCE, BECAUSE
- 21 YOU ARE ASKING DISCOVERY ABOUT IT IN THAT CASE, ARE YOU NOT?
- 22 A. WE WANT TO GET INTO THE FACT THE LENGTHS THAT CISCO
- 23 WOULD GO TO IN THAT CASE, SO, YEAH, WE WANT THIS CONDUCT TO
- 24 COME OUT IN THAT CASE.
- 25 Q. SURE. AND SO IF CISCO LOSES HERE, THAT WILL BENEFIT

1 YOUR TEXARKANA CASE FOR ESN, RIGHT?

2 A. I DON'T KNOW THAT THAT'S RIGHT. WHETHER THEY WIN OR
3 LOSE, THE FACTS ARE THE FACTS, AND THOSE FACTS COME INTO THAT
4 CASE, I THINK.

5 Q. WELL, YOUR FACTS WOULD BE A LITTLE BIT BETTER IF THE
6 JURY ACCEPTS YOUR VERSION OF THE EVENTS, WON'T IT?

7 A. I DON'T THINK SO, BECAUSE I DON'T THINK THAT'S
8 ADMISSIBLE.

9 Q. OKAY. WELL, GOOD.

10 YOU ALSO--YOU AND MR. ALBRITTON HAVE SUED CISCO IN
11 ANOTHER CASE, HAVE YOU NOT, RECENTLY?

12 A. WE HAVE A CLIENT WHO HAS, YES.

13 Q. I'M SORRY.

14 A. RIGHT.

15 Q. YOU ARE REPRESENTING A DIFFERENT CLIENT THAN ESN THAT
16 HAS ALSO SUED CISCO IN THE EASTERN DISTRICT OF TEXAS?

17 A. IT'S ANOTHER PATENT-INFRINGEMENT CASE, YES, SIR.

18 Q. OKAY. AND IF YOU WIN THAT CASE, YOU STAND TO BENEFIT
19 PERSONALLY, DO YOU NOT?

20 A. I THINK THAT CASE IS HOURLY. THERE MIGHT BE A
21 CONTINGENT COMPONENT TOO, AS WELL, BUT THAT'S THE WAY 95
22 PERCENT OF MY BUSINESS IS, IT'S CONTINGENT-FEE LITIGATION.

23 Q. SURE. OKAY.

24 NOW, YOU SAID IN GOING THROUGH THE ARTICLE THAT YOU
25 THOUGHT IT WAS FALSE THAT MR. FRENKEL HAD GOTTEN ANONYMOUS

1 E-MAILS. DO YOU REMEMBER THAT PART ABOUT "I GOT A COUPLE OF
2 ANONYMOUS E-MAILS"?

3 A. RIGHT, RIGHT.

4 Q. YOU DON'T KNOW WHAT MR. FRENKEL GOT ONE WAY OR THE
5 OTHER, DO YOU?

6 A. WELL, HE WAS THE LAWYER IN CHARGE OF THIS FILE, SO--
7 MAYBE IN ADDITION TO THE INFORMATION HE WAS GETTING FROM HIS
8 OWN LAWYERS HE WAS GETTING AN ANONYMOUS E-MAIL TOO, I DON'T
9 KNOW.

10 Q. OKAY. YOU REALLY DON'T KNOW WHAT HE GOT IN TERMS OF
11 ANONYMOUS E-MAILS, DO YOU?

12 A. NO. ARE WE GONNA SEE THEM?

13 Q. YOU ARE LOOKING AT ONE.

14 A. THIS IS ONE?

15 Q. "GO BACK AND CHECK THE MODIFIED FILING DATE FOR THE
16 ORIGINAL COMPLAINT IN THE ESN VERSUS CISCO CASE. THEY'RE
17 COOKING SOMETHING UP TO KEEP THIS CASE IN TEXAS." NOW, YOU
18 DON'T KNOW WHETHER HE RECEIVED THAT OR NOT, DO YOU?

19 A. I DON'T KNOW WHO IT CAME FROM EITHER.

20 Q. SURE. THAT'S WHAT ANONYMOUS IS ALL ABOUT, YOU DON'T
21 KNOW WHERE IT'S COMING FROM.

22 A. RIGHT.

23 Q. OKAY. BUT WHEN YOU TOLD THE JURY THAT IT WAS FALSE
24 THAT HE GOTTA ANONYMOUS E-MAILS, YOU HAD NO BASIS FOR SAYING
25 THAT, DID YOU, SIR?

1 A. WELL, I GUESS MAYBE HE'S TELLING PARTIAL TRUTH. HE
2 DOESN'T SAY, "I'M THE LAWYER IN CHARGE OF THIS FILE AND I'VE
3 GOT LAWYERS MONITORING THE DOCKET AND I KNOW EXACTLY WHAT'S
4 GOING ON." SO PARTIAL TRUTH, YEAH, I GUESS HE TOLD A PARTIAL
5 TRUTH.

6 Q. OKAY. BUT WHEN YOU ANSWERED MR. PATTON'S QUESTION,
7 YOU WERE QUITE EMPHATIC THAT IT WAS FALSE THAT HE RECEIVED
8 ANONYMOUS E-MAILS. AND YOU HAD NO BASIS FOR SAYING THAT,
9 DID YOU?

10 A. NO, I DO HAVE A BASIS. BECAUSE NOW WE KNOW HE WAS THE
11 LAWYER IN CHARGE OF THE FILE FOR CISCO, SO HE'S TELLING A HALF-
12 TRUTH. I THINK THAT'S FALSE. TO TELL A HALF-TRUTH I THINK IS
13 FALSE.

14 Q. YOU DON'T EVEN KNOW IF HE GOT THIS AS PART OF HIS
15 DUTIES AS A CISCO LAWYER, DO YOU?

16 A. I HAVE NO IDEA. I WOULDN'T THINK SO. HOW WOULD THEY
17 KNOW HE WAS IN CHARGE OF THE ESN CISCO CASE?

18 Q. WELL, MAYBE BECAUSE THEY E-MAILED TO THE PATENT TROLL
19 TRACKER.

20 A. YEAH, BUT THEY WOULDN'T BE SAYING, "YOU'RE IN CHARGE
21 OF THE ESN CISCO CASE. LET ME TELL YOU WHAT'S GOING ON."

22 Q. DOES THAT E-MAIL SAY "YOU ARE IN CHARGE OF THE CISCO
23 ESN CASE"?

24 A. NO. BUT I UNDERSTOOD YOUR QUESTION DIFFERENTLY.

25 Q. OKAY. HOW DID YOU UNDERSTAND MY QUESTION?

1 A. I UNDERSTOOD YOUR QUESTION TO BE SOMEONE WROTE IN
2 KNOWING THAT HE WAS IN CHARGE OF THIS LITIGATION, THAT I DIDN'T
3 KNOW THAT.

4 Q. NO, NO.

5 A. THAT I WOULDN'T HAVE KNOWN THAT.

6 Q. YOU DID MISUNDERSTAND MY QUESTION.

7 A. OKAY.

8 Q. IN DIRECT TESTIMONY, IN RESPONSE TO MR. PATTON'S
9 QUESTION, YOU SAID THAT IT WAS--REMEMBER, HE SAID "GO THROUGH
10 THIS WHOLE ARTICLE AND TELL ME ALL THE THINGS THAT ARE FALSE"?

11 A. RIGHT.

12 Q. AND THE VERY FIRST THING IT SAYS IS, "I GOT A COUPLE OF
13 ANONYMOUS E-MAILS."

14 AND YOU SAID, "THAT'S FALSE; HE DIDN'T GET THOSE, HE
15 DIDN'T GET ANONYMOUS E-MAILS."

16 AND YOU HAD NO BASIS FOR SAYING THAT, DID YOU?

17 A. I THINK I'VE TOLD YOU WHAT MY BASIS WAS FOR SAYING
18 THAT. IF YOU WANT ME TO TELL YOU AGAIN, I WILL.

19 Q. WELL, I DO WANT, BECAUSE I THINK MAYBE YOU
20 MISUNDERSTOOD MY QUESTION.

21 A. WELL, I THINK THAT IT WAS FALSE. I DO THINK THAT IT'S
22 FALSE, BECAUSE HE IS TELLING HALF OF THE TRUTH. HE IS THE
23 LAWYER IN CHARGE OF THE CASE, SO HE KNOWS WHAT'S GOING ON IN
24 THE CASE. HE'S SAYING HE'S GETTING HIS INFORMATION FROM
25 ANONYMOUS E-MAILS, WHICH MAYBE THAT'S PART OF THE INFORMATION

1 HE'S GETTING.

2 MR. BABCOCK: PULL UP PLAINTIFF'S EXHIBIT 251 AND GO
3 TO THE FIRST SENTENCE UNDER THE HEADLINE.

4 Q. "I GOT A COUPLE OF ANONYMOUS E-MAILS THIS MORNING."

5 AND YOU SAID THAT WAS FALSE, AND YOU'VE GOT NO BASIS FOR SAYING
6 THAT?

7 A. POINTING TO THE REST OF THE SENTENCE, POINTING OUT THAT
8 THE DOCKET IN ESN VERSUS CISCO HAD BEEN ALTERED.

9 Q. YOU DON'T KNOW WHAT E-MAILS HE GOT THAT MORNING, DO
10 YOU? YOU'VE NEVER SEEN THEM, HAVE YOU?

11 A. NOT IN ADDITION TO THE ANONYMOUS E-MAILS, NO, SIR.

12 Q. OKAY. THANK YOU.

13 YOU AND MR. ALBRITTON WERE PARTNERS FOR A COUPLE OF
14 YEARS, CORRECT?

15 A. THAT'S CORRECT.

16 Q. AND YOU SAID THAT YOU SPLIT UP BECAUSE YOU HAD
17 DIFFERENT TYPES OF PRACTICE.

18 A. YES, SIR.

19 Q. AND WHAT WAS--

20 A. I WAS DOING, AT THAT TIME, ALMOST EXCLUSIVELY
21 PERSONAL-INJURY LITIGATION, AND MR. ALBRITTON WAS DOING
22 PRIMARILY CRIMINAL DEFENSE WORK.

23 Q. ALL RIGHT, SIR. AND THAT WAS THE REASON? THERE WAS
24 NO OTHER REASON FOR THE SPLIT?

25 A. NO. IN FACT, WE WENT TO THE SAME BUILDING TO WORK IN.

1 SO THE SPLIT WAS IN PARTNERSHIP.

2 Q. ALL RIGHT.

3 AND MR. ALBRITTON RECENTLY BOUGHT THE BUILDING
4 ADJACENT TO HIS OFFICE BUILDING, BOUGHT THAT BUILDING NEXT
5 DOOR IS WHAT I'M TRYING TO GET.

6 MR. PATTON: YOUR HONOR, I FAIL TO SEE THE RELEVANCE
7 OF THAT.

8 MR. BABCOCK: I'LL TIE IT UP IN A SECOND, YOUR
9 HONOR.

10 THE COURT: I'M NOT SURE ABOUT THAT. HE BOUGHT A
11 BUILDING?

12 MR. BABCOCK: THAT'S HOUSING HIM AND A LAWYER FOR A
13 WITNESS AND SOME OTHER PEOPLE, BUT--

14 THE COURT: OKAY. YOU WANT TO ASK IF MR. ALBRITTON
15 BOUGHT A BUILDING?

16 MR. BABCOCK: YEAH. I WASN'T TALKING ABOUT WARD, I
17 WAS TALKING ABOUT ALBRITTON.

18 THE COURT: I DON'T KNOW WHERE THAT GOES, BUT GO
19 AHEAD.

20 MR. BABCOCK:

21 Q. YOU AND GREG LOVE ARE TENANTS, BASICALLY, OF A BUILDING
22 THAT MR. ALBRITTON OWNS, CORRECT?

23 A. NO.

24 Q. NO? WHAT'S THE SITUATION? YOU SAID YOU OFFICE WITH
25 HIM. I'M SORRY. 75 FEET AWAY.

1 A. RIGHT. THERE'S THREE OF US THAT OWN THE BUILDING,
2 ALBRITTON, ME AND SCOTT STEVENS. AND THERE'S A NUMBER OF
3 LAWYERS IN THAT BUILDING.

4 Q. ALL RIGHT. SO YOU ARE A BUSINESS PARTNER OF
5 MR. ALBRITTON?

6 A. YES, SIR.

7 Q. OKAY. GREG LOVE IS A TENANT, PERHAPS?

8 A. YES.

9 Q. GREG LOVE IS A LAWYER, RIGHT?

10 A. WELL, STEVENS & LOVE MERGED THEIR LAW FIRMS TOGETHER,
11 SO STEVENS--I DON'T KNOW HOW THEY'RE SET UP, BUT, YEAH, HE IS
12 IN THE SAME BUILDING. THERE'S 11 LAWYERS, I BELIEVE, IN THAT
13 BUILDING.

14 Q. OKAY. AND THE JURY MET MR. LOVE BRIEFLY, BECAUSE HE
15 REPRESENTED AMIE MATHIS, WHO TESTIFIED HERE.

16 A. OKAY.

17 Q. DID YOU KNOW THAT OR NOT?

18 A. I KNEW THAT HE REPRESENTED HER, AND I SAW HIM IN THE
19 COURTROOM DURING VOIR DIRE. I DIDN'T KNOW THAT THEY HAD MET
20 HIM.

21 Q. BEAR WITH ME TWO SECONDS, MR. WARD.

22 A. SURE.

23 Q. I GUESS ONE FINAL QUESTION: YOU'VE INITIALLY FILED
24 YOUR LIBEL CASE IN GREGG COUNTY, WHICH IS HERE IN EAST TEXAS
25 BUT THEN YOU MOVED IT TO ARKANSAS. WHY DID YOU MOVE IT OUT OF

1 THE EASTERN DISTRICT OF TEXAS?

2 A. I THINK THAT GETS INTO OUR LITIGATION STRATEGY.

3 MR. PATTON: I OBJECT TO THAT. THAT WOULD BE A
4 PRIVILEGED COMMUNICATION.

5 MR. BABCOCK: PROBABLY WOULD BE. I'LL WITHDRAW IT,
6 YOUR HONOR. THANK YOU. PASS THE WITNESS.

7 THE COURT: Okay. LET'S SEE. MR. MCWILLIAMS, DO
8 YOU KNOW HOW LONG YOUR EXAMINATION OF MR. WARD WILL BE?

9 MR. MCWILLIAMS: PROBABLY VERY SHORT, YOUR HONOR.

10 THE COURT: VERY SHORT? OKAY. ALL RIGHT. GO
11 AHEAD.

12 THE WITNESS: MR. MCWILLIAMS, CAN I GET A GLASS OF
13 WATER BEFORE WE START?

14 THE COURT: OH, SURE. YEAH.

15 THE WITNESS: I'LL JUST GET IT OFF THAT TABLE.

16 THE COURT: ALL RIGHT.

17 EXAMINATION

18 BY MR. MCWILLIAMS:

19 Q. MR. WARD, IT'S GOING TO BE A LITTLE HARD FOR ME TO CALL
20 YOU MR. WARD INSTEAD OF JOHNNY.

21 A. ALL RIGHT.

22 Q. OKAY.

23 A. I UNDERSTAND WHY YOU HAVE TO.

24 Q. YOU AND I HAVE KNOWN EACH OTHER YOUR ENTIRE CAREER,
25 HAVE WE NOT?

1 A. SINCE ABOUT 1996, ONE YEAR AFTER I STARTED.

2 Q. AND WE HAVE BEEN OPPOSED TO EACH OTHER IN LITIGATION
3 BEFORE?

4 A. WE HAVE BEEN.

5 Q. AND AS FAR AS I CAN TELL, WE REALLY NEVER HAD A CROSS
6 WORD WITH EACH OTHER, HAVE WE?

7 A. TRY NOT TO WITH ANYBODY, BUT YOU AND I HAVE NOT HAD A
8 CROSS WORD.

9 Q. YOU WERE VERY CERTAIN ABOUT A LOT OF THINGS ABOUT THE
10 DOCKET, AND I WANT TO EXPLORE A LITTLE BIT OF THAT AND SEE IF
11 YOU HAVE A RECOLLECTION OF IT.

12 ARE YOU AWARE THAT THE DOCKET IN THE ESN CASE, A DAY
13 OR SO AFTER OCTOBER 15TH, WHEN YOU PULL THAT DOCKET UP ON
14 PACER, IT SHOWED A FILING DATE ON THE DOCKET OF OCTOBER THE
15 15TH? WERE YOU AWARE OF THAT?

16 A. CAN I CORRECT ONE THING IN YOUR PREMISE --

17 Q. SURE.

18 A. -- TO THAT QUESTION? THE ONLY THING I'M REALLY CERTAIN
19 OF WAS THE DATE THAT THE COMPLAINT GOT FILED ON. AND WHEN I
20 GAVE MY DEPOSITION, I THINK I SAID I HADN'T GONE BACK TO LOOK
21 THROUGH THE DOCKET. I UNDERSTAND THAT THERE WERE CORRECTIONS
22 MADE TO THE DOCKET, BUT I HAVE NEVER GONE BACK AND LAID THOSE
23 OUT AND LOOKED AT THEM. SO I'M GOING TO HAVE TO TRUST YOU ON
24 WHAT YOU TELL ME HAPPENED TO THE DOCKET.

25 Q. AND I THINK THE TESTIMONY WILL BEAR ME OUT HERE THAT

1 THERE WAS A DOCKET ENTRY ON THE DOCKET THAT SAID OCTOBER 15TH
2 AS A FILE DATE, BUT YOU SAY YOU HAVE NOT SEEN THAT?

3 A. I'VE NOT GONE AND LOOKED AT IT. I UNDERSTAND AT SOME
4 POINT, THE DOCKET SAID THAT; NOT THE NOTICE OF ELECTRONIC
5 FILING, BUT THE DOCKET SAYS THAT.

6 Q. AND DO YOU ALSO UNDERSTAND THAT AT SOME POINT, THE
7 HEADER STAMP ACROSS EACH PAGE OF THE COMPLAINT, WHICH WAS 74
8 PAGES LONG, SAID, FILED OCTOBER THE 15TH? DID YOU EVER GO BACK
9 AND LOOK AT THAT?

10 A. WELL, THE HEADER STAMP IS NOT PART OF THE COMPLAINT, AS
11 YOU KNOW, RIGHT?

12 Q. BUT IT WILL SHOW ON THE COMPLAINT, WILL IT NOT?

13 A. IF YOU SELECT IT TO PUT ON THERE, RIGHT.

14 Q. YOU CAN'T CHANGE THAT DATE, CAN YOU?

15 A. I CANNOT.

16 Q. RIGHT. BUT YOU HAVE NOT LOOKED AT THE 74 PAGES OF THAT
17 COMPLAINT THAT SHOW A HEADER THAT SAYS, FILED OCTOBER THE 15TH,
18 HAVE YOU?

19 A. NO, SIR, I HAVE NOT.

20 Q. NOW, DO YOU KNOW THAT AMIE MATHIS CALLED THE CLERK
21 ABOUT THAT ISSUE?

22 A. THE ISSUE -- I DON'T KNOW IF IT WAS THAT ISSUE. I KNOW
23 SHE CALLED THE CLERK BECAUSE THEY WERE SHOWING SOMETHING ON TI
24 DOCKET THAT SAYS, FILED ON THE 15TH, WHEN --

25 Q. EXACTLY.

1 A. -- WE SAID IT WAS FILED AT 12:01 ON THE 16TH.

2 Q. AND DO YOU KNOW THAT DAVE MALAND INVESTIGATED THAT
3 ISSUE WITH HIS CLERKS?

4 A. I THINK IT WAS INVESTIGATED INTERNALLY. I DON'T KNOW
5 IF IT WAS DAVE MALAND THAT DID IT.

6 Q. HAVE YOU EVER READ THE MEMO THAT DAVE MALAND WROTE
7 FOLLOWING HIS INVESTIGATION OF THAT MATTER?

8 A. NO, SIR, I HAVE NOT.

9 Q. ALL RIGHT. DO YOU KNOW THAT IN DAVE MALAND'S MEMO, HE
10 STATED THAT AMIE MATHIS ASKED THE CLERKS TO CHANGE THE FILING
11 DATE? YOU HADN'T READ THAT, HAD YOU?

12 A. TO CHANGE THE FILING DATE?

13 Q. YES.

14 A. IF YOU TELL ME THAT'S IN THE MEMO, THEN NO, I HAVEN'T
15 SEEN THAT. I THINK THAT'S AN IMPOSSIBILITY; BUT IF YOU SAY
16 IT'S IN THERE, THAT MIGHT BE THE WORDS HE USED.

17 Q. I THINK MR. MALAND'S MEMO IS IN EVIDENCE HERE, AND THE
18 JURY WILL BE ABLE TO SEE THAT.

19 A. OKAY.

20 Q. AND DID YOU KNOW THAT THE CLERKS CHANGED THE DOCKET TO
21 SHOW A FILING DATE OF OCTOBER 16TH?

22 A. I THINK THAT DID HAPPEN.

23 Q. THAT'S RIGHT. AND DID YOU KNOW THAT THE CLERKS CHANGED
24 THE HEADER STAMP ON EACH PAGE OF THE COMPLAINT TO SHOW
25 OCTOBER THE 16TH?

1 A. I DON'T KNOW HOW THAT HAPPENS. I ASSUME THAT WHEN THEY
2 CHANGE IT ON A DOCKET ENTRY, IT AUTOMATICALLY DOES THAT.

3 Q. ALL RIGHT.

4 A. I DON'T THINK YOU HAVE TO GO BACK AND DO THAT.

5 MR. MCWILLIAMS: LET'S PULL UP THE MALAND MEMO,
6 EXHIBIT 87. TIM, GO TO -- SCROLL IT ON DOWN SOME MORE. ALL
7 RIGHT.

8 MR. MCWILLIAMS:

9 Q. WE'RE GOING TO LOOK AT THIS PARAGRAPH THAT STARTS, ON
10 OR ABOUT THURSDAY, OCTOBER THE 17TH. IT SAYS, SHE WANTED THE
11 CLERK'S OFFICE TO CHANGE THE DATE TO OCTOBER THE 16TH, BECAUSE
12 SHE HAD WANTED [SIC] TO FILE THE COMPLAINT UNTIL AFTER MIDNIGHT
13 ON THE 16TH. DO YOU SEE THAT?

14 A. I THOUGHT YOU SAID THEY WANTED TO CHANGE THE FILING
15 DATE.

16 Q. SHE WANTED THE CLERK'S OFFICE TO CHANGE THE DATE TO
17 OCTOBER THE 16TH.

18 A. SHE'S TALKING ABOUT THE DOCKET SHEET IN THE PREVIOUS
19 SENTENCE.

20 Q. THE FILING DATE ON THE DOCKET SHEET, RIGHT.

21 A. RIGHT. THE WAY I UNDERSTOOD YOUR QUESTION WAS SHE
22 ASKED THE CLERK TO CHANGE THE FILING DATE ON THE COMPLAINT, AND
23 THAT WAS GOING TO SURPRISE ME, BECAUSE THAT'S NOT WHAT THAT
24 SAYS.

25 Q. WELL --

- 1 A. AT LEAST THAT'S HOW I UNDERSTOOD YOUR QUESTION.
- 2 Q. SHE ASKED THEM TO CHANGE THE FILING DATE ON THE DOCKET
- 3 THAT INDICATED THAT THE COMPLAINT WAS FILED ON THE 15TH?
- 4 A. WELL, I DON'T THINK THAT'S WHAT IT SAYS.
- 5 Q. SO WHAT DO YOU THINK SHE'S ASKING THE CLERK TO DO?
- 6 A. SHE WANTS THE DOCKET TO CORRECT -- TO ACCURATELY
- 7 REFLECT THE DATE THAT THE COMPLAINT WAS FILED.
- 8 Q. RIGHT.
- 9 A. WHICH UP IN THE PREVIOUS PARAGRAPH -- I'VE NEVER SEEN
- 10 THIS, BUT IT SAYS, "AT 12:02 A.M. ON THE 16TH, AMIE
- 11 ELECTRONICALLY FILED THE COMPLAINT AND ACCOMPANYING DOCUMENTS
- 12 THIS IS REFLECTED IN THE NOTICE OF ELECTRONIC FILING, WHICH
- 13 STATES THE PLAINTIFF'S COMPLAINT AND EXHIBITS WERE
- 14 ELECTRONICALLY ENTERED AT 12:01 A.M. ON THURSDAY."
- 15 SO I DON'T THINK SHE'S ASKING TO CHANGE --
- 16 Q. OCTOBER 16TH. LET'S READ THE REST OF THAT.
- 17 A. OKAY.
- 18 Q. AND FILED ON WHAT DATE?
- 19 A. OCTOBER -- FILED ON OCTOBER -- THAT'S WHAT WE JUST
- 20 READ.
- 21 Q. YOU REALLY HAVEN'T SEEN THIS MEMO, NOR HAVE YOU LOOKED
- 22 AT THE PREVIOUS DOCKET ENTRIES, HAVE YOU?
- 23 A. NO, SIR, BUT I'M LOOKING AT IT. IN THAT NEXT
- 24 SENTENCE -- AND THIS IS WHAT I WAS POINTING OUT WITH
- 25 MR. BABCOCK. -- "THE NOTICE OF ELECTRONIC FILING, HOWEVER,

1 ALSO CLEARLY REFLECTS IN THE SECTIONS MARKED 'DOCUMENT STAMP'
2 THAT THE COMPLAINT AND ATTACHMENTS WERE ELECTRONICALLY FILED O
3 OCTOBER 16TH.

4 AND AGAIN, WE'RE CUTTING HAIRS, BUT YOU DON'T GO
5 ACCUSING SOMEONE OF A CRIME BASED UPON THIS.

6 Q. THAT'S NOT WHAT THE DOCKET SAID, DID IT? THE DOCKET
7 ACTUALLY SAID, FILED OCTOBER THE 15TH?

8 A. I BELIEVE THAT'S CORRECT.

9 Q. ALL RIGHT. NOW, DO YOU KNOW WHO MADE THE CHANGES TO
10 THE DOCKET?

11 A. NO, SIR.

12 Q. IT WOULD HAVE HAD TO HAVE BEEN THE CLERK'S OFFICE,
13 WOULDN'T IT?

14 A. YES, SIR.

15 Q. ALL RIGHT. NOW, THIS GLITCH WE'RE TALKING ABOUT, ARE
16 YOU AWARE THAT EXACTLY THE SAME THING WOULD HAPPEN TODAY IF
17 AMIE MATHIS STARTED UPLOADING THIS COMPLAINT BEFORE MIDNIGHT
18 AND THEN DIDN'T ENTER IT UNTIL AFTERWARDS? ARE YOU AWARE OF
19 THAT?

20 A. NO. IT WOULDN'T SURPRISE ME, BUT --

21 Q. DO YOU KNOW IF THERE'S ANY WARNING OR ANY INDICATION IN
22 THE LOCAL RULES THAT SAYS YOU BETTER WATCH OUT FOR THIS
23 SITUATION?

24 A. I DON'T THINK IT'S THAT BIG OF A PROBLEM.

25 Q. OKAY. THE ONLY TIME IT'S A BIG PROBLEM IS WHEN YOU

1 START UPLOADING YOUR COMPLAINT BEFORE MIDNIGHT AND FINISH

2 AFTERWARD, ISN'T IT?

3 A. NO, SIR.

4 Q. OKAY. WELL, IS --

5 A. NOTHING EVER GOT FILED IN THE LAWSUIT SAYING THAT THERE
6 WAS A PROBLEM WITH THE WAY WE FILED IT. IT WAS ONLY IN THIS
7 ANONYMOUS BLOG BY CISCO THAT ANYONE MADE THESE ALLEGATIONS.

8 Q. IF THIS WASN'T A PROBLEM, WHY WAS AMIE MATHIS CALLING
9 THE CLERK'S OFFICE ASKING THAT IT BE CHANGED?

10 A. BECAUSE WE KNEW WE HAD FILED IT ON THE 16TH, AND WHY IS
11 THE DOCKET SHOWING THE 15TH? SO -- AND IT'S CRITICAL. WHY IS
12 THE DOCKET INCORRECT?

13 Q. RIGHT. AND SHE WANTED THAT CORRECTED?

14 A. SHE WANTED IT TO CORRECTLY REFLECT WHEN WE FILED IT,
15 RIGHT, AND I STAND BEHIND WHAT SHE DID.

16 Q. NOW, LET ME GET TO MY LAST QUESTION. I'M NOT SURE WHY
17 YOU'RE HERE TO TESTIFY, BUT -- AND IT'S NOT ABOUT YOUR MENTAL
18 ANGUISH, I UNDERSTAND.

19 A. NO, SIR.

20 Q. BUT YOU INDICATED THAT YOU HAD CONCERNS THAT YOU'D
21 BE -- YOU'RE IN A ROOM WITH 60 OR 70 LAWYERS, AND, THESE GUYS
22 THINK I'M A CRIMINAL --

23 A. RIGHT.

24 Q. -- AND I KNOW PEOPLE ARE TALKING ABOUT IT.

25 A. RIGHT.