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NEWS

Patent troll tracker sued for defamation

3/13/2008 11:52 AM
By Michelle Massey, Texarkana Bureau

TEXARKANA -- After a Chicago plaintiffs' lawyer offered a $15,000 bounty for the identity of a "patent troll" tracker, the blogger revealed his identity - Rick Frenkel, director of intellectual property at Cisco.

Only four days after revealing his identity, Frenkel was sued by two East Texas patent lawyers for defamation in Gregg County District Court.

A "patent troll" is a derogatory term referring to those who aggressively enforce their patents against alleged infringers. The previously anonymous blogger, referred to as Troll Tracker and identifying himself as "just a lawyer, interested in patent cases, but not interested in publicity", regularly wrote about those companies and attorneys he considered patent trolls and attempted to expose companies that bought patents for the express purpose of filing infringement suits over them.

Eric Albritton

The son of East Texas federal Judge T. John Ward, attorney T. John "Johnny" Ward Jr. filed the original defamation suit on Nov. 7, 2007, with the idea of deposing someone at Google, who hosted the anonymous blogger's site.

When the identity was revealed, Ward filed the amended complaint naming Frenkel and Cisco as defendants on Feb. 27. Fellow East Texas attorney Eric Albritton filed another suit against Frenkel and Cisco on March 3 alleging defamation.


T. John Ward Jr.

Johnny Ward and Albritton have filed hundreds of patent infringement suits in the Marshall federal court on behalf of plaintiffs.

At issue are October blog posts Frenkel wrote surrounding a case in which Cisco was sued for patent infringement.

According to the defamation suit, Frankel wrote:

"I got a couple of anonymous emails this morning, point out that the docket in ESN v. Cisco (the Texas docket, not the Connecticut docket), had been altered. One email suggested that ESN's local counsel called the EDTX court clerk, and convinced him/her to change the docket to reflect an October 16 filing date, rather than the October 15 filing date. I checked, and sure enough, that's exactly what happened - the docket was altered to reflect an October 16 filing date and the complaint was altered to change the filing date stamp from October 15 to October 16. Only the EDTX Court Clerk could have made such changes.

Of course, there are a couple of flaws in this conspiracy. First, ESN counsel Eric Albritton signed the Civil Cover Sheet state that the complaint had been filed on October 15. Second, there's tons of proof that ESN filed on October 15.

You can't change history, and it's outrageous that the Eastern District of Texas may have, wittingly or unwittingly, helped a non-practicing entity to try to manufacture subject matter jurisdiction.

This is yet another example f the abusive nature of litigating paten cases in the Banana Republic of Texas."

A couple of days after posting the comment, Frenkel rewrote the last line but the amended version is not included with either of the lawsuits:

"Even if this was a 'mistake,' which I can't see how it could be, given that someone emailed me a printout of the docket from Monday showing the case, the proper course of action should be a motion to correct the docket."

An entry of the day before the above blog posts, Frenkel wrote:

"Perhaps realizing their fatal flaw (as a couple of other bloggers/news items have pointed out), ESN (represented by Chicago firm McAndrews Held and Malloy and local counsel Eric Albritton and T. Johnny Ward) filed an amended complaint in Texarkana today - amending to change absolutely nothing at all, by the way, except the filing date of the complaint. Survey says XXXXXX (Insert "Family Feud" sound here). Sorry, ESN. You're on your way to New Haven. Wonder how Johnny Ward will play there?"

The patent was not issued until Oct. 16, which if the case was filed on Oct. 15 meant the case had no legal standing.

The lawsuits summarize the posts and state that Frenkel alleged the attorneys had engaged in criminal conduct in altering the date of the patent infringement complaint so that it would not be filed before their client's patent had been approved.

In a subsequent motion, Ward and Albritton said they filed the original suit on Oct. 16 at 12:01 a.m. Attempting to win venue, Cisco filed a declaratory judgment against ESN in Connecticut on Oct. 16.

The Texas case was dismissed on Nov. 2 with agreement of the parties and rendering the filing dates as meaningless.

The attorneys are seeking damages for shame, embarrassment, humiliation, mental pain, and anguish. Further, the attorneys state injuries to their "business reputation, good name, and standing in the community, and will be exposed to the hatred, contempt, and ridicule of the public in general as well as of his business associates, clients, friends, and relatives."

Moreover, the plaintiffs are seeking exemplary damages arguing the defendants acted with malice.

The two lawsuits allege Cisco as Frenkel's employer is also liable for exemplary damages by arguing Frenkel, as the director of intellectual property litigation at Cisco, published his statements in his managerial capacity with knowledge of his employer.

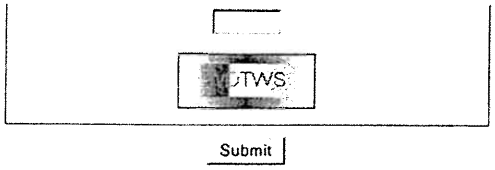
Attorney Nicholas H. Patton of the Texarkana law firm Patton, Tidwell & Schroeder LLP is representing attorney John Ward Jr. Henderson attorney James A. Holmes is representing attorney Eric M. Albritton.

"The parties have mutually agreed to make no comment on the lawsuit in question at this time," Cisco spokesperson Terry Alberstein stated in a press release. "That said we would like to underscore that the comments made in the employee's personal blog represented his own opinions and several of his comments are not consistent with Cisco's views. We continue to have high regard for the judiciary of the Eastern District of Texas and confidence in the integrity of its judges."

The lawsuits are receiving wide publicity in the blogosphere as the lawsuits could result in precedents to be applied to future bloggers.

The Troll Tracking blog is now invitation only.

Ward v. Cisco and Frenkel Case No. 2007-2502-A
Albritton v. Cisco and Frenkel Case No. 2008-481-CCL2


TWS
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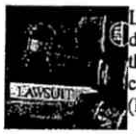
Revealed Patent Blogger, and Employer, Sued for Defamation

Posted by Dan Slater

WSJ colleague Bobby White, who covers Cisco from San Francisco, passed along this update on the Patent Troll Tracker saga:



Late last month, we posted on Rick Frenkel, a lawyer and the director of IP litigation at Cisco who outed himself as the author of the widely-read Patent Troll Tracker blog. The blog follows companies said to holding patents solely to sue for infringement. (Now the blog can be read only by invited members.)

The next day, both Frenkel and his employer, Cisco, were slapped with a defamation suit. The suit stemmed from a blog post Frenkel wrote in which he alleged irregularities in a patent case in which two Texas lawyers, Johnny Ward and Eric Albritton, represented ESN against Cisco. The post questioned whether someone had tampered with the date of a patent filing. Frenkel concluded: "This is yet another example of the abusive nature of litigating patent cases in the Banana Republic of East Texas." (Click here, here and here for past posts on the patent landscape of East Texas.)

According to news reports, Ward originally filed a defamation suit last November, wanting to depose managers at Google, which hosted the then-anonymous blog. When Frenkel revealed his identity, Ward amended the suit. Albritton filed his own suit against Frenkel and Cisco on March 3 alleging defamation. Meanwhile, the original case in question, ESN vs. Cisco, was dismissed by agreement of the parties this past November.

Albritton wasn't immediately available for comment, while Ward requested that we contact *his* lawyer, Nick Patton, who has not yet returned a call.

As for Cisco, where Frenkel still works, a spokesperson says: "We would like to underscore that the comments made in the employee's personal blog represented his own opinions and several of his comments are not consistent with Cisco's views. We continue to have high regard for the judiciary of the Eastern District of Texas and confidence in the integrity of its judges."

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Comments
Report offensive comments to lawblog@wsj.com

I said when Frenkel was 'outed' that he'd be sued promptly — how right I was!

Comment by I said it FIRST - March 13, 2008 at 4:54 pm

Is this lawsuit about trying to obtain redress for someone who suffered real, actionable damage, or is it a tactic to intimidate and silence someone who said things the plaintiff just didn't like?

Comment by Come On, Really -- what's at stake here? - March 13, 2008 at 4:57 pm

Why not have the parties settle this with traditional Frontier Justice? We know the

ABOUT THIS BLOG

The Wall Street Journal's Law Blog focuses on law and business, and the business of law. Dan Slater is the lead writer. Dan joined The Wall Street Journal from The Deal magazine. Before becoming a journalist, Dan worked as a litigator at a New York law firm. The blog's founding writer was Peter Lattman, who now covers private equity for the Journal.

The Law Blog also includes contributions from reporters and editors at the Journal and Dow Jones Newswires. Have a comment or tip? Write to lawblog@wsj.com.

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equipment is easily and quickly available in TX, and one less lawyer is society's gain.

Comment by Texas traditionalist - March 13, 2008 at 5:05 pm

The defamation action is frivolous. Companies and the people that work for them ought to be able to say anything they want about anybody. Especially a lawyer. This matter should be thrown out of court like a troll at a troll throwing contest.

Comment by Tort Reform - March 13, 2008 at 5:30 pm

this screams for an anti-SLAPP motion

Comment by Anonymous - March 13, 2008 at 5:48 pm

In my opinion, patent litigation is the new bastion of frivolous litigation

Comment by Frank - March 13, 2008 at 6:14 pm

Just make sure Mr Ward that I am not on the jury.

Comment by Merrill - March 13, 2008 at 6:24 pm

Where is the lawsuit and why does the lawblog not provide a link to it? Lattman would have been right on this one. Those were the days.

Comment by Anon - March 13, 2008 at 7:44 pm

One thing of interest is that, apparently, the PTT had read, then reacted to, a report on the internet that indicated the Tx lawyers had sued before their client had standing - but, either that report proved incorrect, or the court clerk corrected the docket. One rule of the cyberhighway is not to believe everything on the internet, and taken a step further, not to the publish on the web conclusions that you've jumped to based on that internet report. Most libel involves over-reactive reporting about some thin or evanescent 'facts'.

Comment by Thomason - March 14, 2008 at 10:02 am

But it looks like everything that guy posted was factually true, based on everything I've read. The case docket did show that that the plaintiff lawyers had sued on a patent one day before it issued from the Patent Office, which would mean they wouldn't have legal standing. And it is also true that the court docket was then changed to move the filing date by one day, which apparently only the court clerk could have done. I haven't seen anyone say that any of those facts were inaccurate. He's really being sued for the rest of the post, which were his opinions, which are protected by the First Amendment.

Comment by Carl - March 14, 2008 at 10:45 am

Ah yes, but this is the Eastern District of Texas, Texarkana Division. Nick Patton is close to Judge Folsom and Magistrate Judge Craven, and Johnny Ward is also a familiar presence in that Court. I would not want to be the defendant under the circumstances!

Comment by Occasional Texarkana Tourist - March 14, 2008 at 11:21 am

Dan Slater
I think the biggest farce we have at the moment is, we have no good, I mean a very good lawyers on patents. correct me if I am wrong. Hence we have all piracies etc
I thank you
Firozali A Mulla MBA PhD
P.O.Box 6044
Dar-Es-Salaam
Tanzania
East Africa

Comment by Firozali A. Mulla MBA PhD - March 14, 2008 at 11:48 am

Truth may be a great defense, but one bad lawsuit can still ruin your life.

Comment by Interested reader - March 14, 2008 at 3:54 pm

You are missing one *very important* fact, people

Rick Frenkel was in charge of that particular patent lawsuit brought against his

JW.000127

company and *purposely* made serious and false accusations againts plaintiff's attorneys
Enough info to disbar him immediately

Comment by angry dude - March 17, 2008 at 9:34 pm

If you want the facts, read the recent article at www.texaslawyer.com. They interviewed all involved — even the court clerk and judge. Sounds like Frenkel, who is a lawyer himself and would have had the insight of his own Texas local counsel, knew he was spinning yarns. If Frenkel's blogging was truly independent, why hasn't Cisco fired him yet?

Comment by Cisco's Dilemma - March 20, 2008 at 4:57 pm

Hi,

I just found this web site that lets you download patents as PDF files for free. Its http://www.patentretriever.com/

Thought I'd share this little gem with those that are interested.

John

Comment by John Segal - June 1, 2008 at 9:46 am
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PATENT ATTORNEYS SUE CISCO SYSTEMS, BLOGGER, ALLEGING DEFAMATION

by BRENDA SAPINO JEFFREYS, JOHN COUNCIL and MIRIAM ROZEN

The moral of this story is blogger beware, at least when it comes to blogging anonymously about litigation involving your employer.

Before Cisco Systems Inc. in-house lawyer Richard Frenkel outed himself in February as the Patent Troll Tracker blogger, he posted blog entries in October 2007 that alleged two East Texas lawyers conspired with the Eastern District Clerk's Office to alter the filing date of an infringement suit. That suit was filed against Frenkel's employer, Cisco.

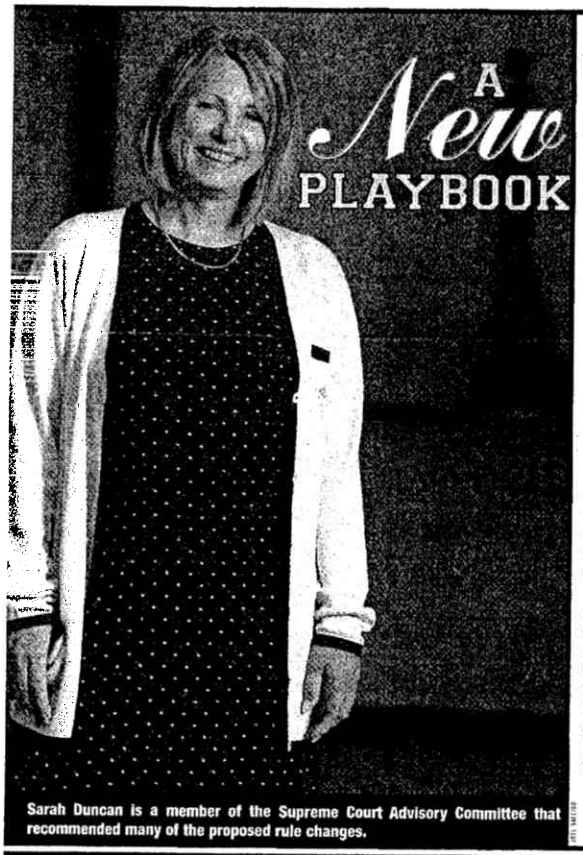
On Oct. 18, 2007, Frenkel, who was posting anonymously at that time, alleged in Patent Troll Tracker that the filing date for *ESN v. Cisco* was changed from Oct. 15, 2007, to Oct. 16, 2007, after ESN's local counsel "called the EDTX court clerk, and convinced him/her to change the docket to reflect an October 16 filing date, rather than the October 15 filing date." The filing date is significant, Frenkel alleged in the blog, because the ESN patent that is the basis of the suit was not issued until Oct. 16.

Frenkel identified the local counsel on his blog, and alleged in the posting — which is attached as an exhibit in two defamation suits recently filed against Frenkel and Cisco — that it's "outrageous" that the Eastern District is apparently conspiring with ESN to "try to manufacture subject matter jurisdiction."

Filing an infringement suit like *ESN* after the stroke of midnight on the day the U.S. Patent and Trademark Office issues a patent gives a plaintiff the opportunity to choose jurisdiction.

"This is yet another example of the abusive nature of litigating patent cases in the Banana Republic of East

▶ see Patent, page 12



Sarah Duncan is a member of the Supreme Court Advisory Committee that recommended many of the proposed rule changes.

Texas Supreme Court Drafts Appellate Rules On Transfers, Deadlines

by MARY ALICE ROBBINS

When the Texas Supreme Court transfers a case from one court of appeals to another to equalize the courts' workload, the receiving court often must choose whether to decide the appeal according to its own precedent or that of the transferring court. That issue could be resolved under a rule proposed by the high court March 10.

As proposed, Texas Rule of Appellate Procedure (TRAP) 41.3 requires the court of appeals that is receiving a transferred case to decide the case by following the precedent of the appeals court from which the case came.

"The rule requires the transferee court to 'stand in the shoes' of the transferor court so that an appellate transfer will not produce a different outcome, based on application of substantive law, than would have resulted had the case not been transferred," according to the Supreme Court's comment to TRAP 41.3, one of about three dozen proposed rule changes.

Sarah Duncan, a former justice on

▶ see In Austin, page 4

CARDS, SECURITY AND KOLACHES

A Look at Appellate Judges' Campaign Finance Reports

by MARY ALICE ROBBINS, JOHN COUNCIL and MIRIAM ROZEN

With three Texas Supreme Court justices under scrutiny for how they allegedly spent thousands of dollars in campaign contributions, *Texas Lawyer* decided to take a look at the campaign finance reports of all 98 justices and judges on the state's appellate courts to see what else they might reveal.

Texas Lawyer analyzed the campaign finance reports filed with the Texas Ethics Commission between January 2006 and January 2008 — reports that indicate some judges have dipped into their campaign coffers for unusual expenses.

On several occasions, Chief Justice Tom Gray of Waco's 10th Court of Appeals has used political contributions to provide for his personal security, Gray's reports show.

In his January 2008 filing, Gray reported an expenditure of $173.20 on Oct. 17, 2007, at Cash America No. 401 in Waco and a $70 expenditure on Nov. 27, 2007, at the Texas Department of Public Safety (DPS). According to the report, each expenditure was for "personal protection."

Gray, a member of the 10th Court since

▶ see A Look, page 15

PATENT ATTORNEYS SUE CISCO SYSTEMS, BLOGGER, ALLEGING DEFAMATION

continued from page 1

Texas," Frenkel wrote on Oct. 18 in Patent Troll Tracker, a blog popular among intellectual property litigators and those interested in reports on so-called patent troll companies that allegedly buy patents simply to bring infringement suits.

The Eastern District is a nationally known forum for patent litigation because of rules that allow suits to progress speedily through the court system.

On Feb. 23, Frenkel, director of IP at Cisco, revealed his identity as the blogger.

Now, Frenkel and Cisco are defendants in two separate defamation suits filed by the two East Texas lawyers who are local plaintiffs counsel in *ESN*. The suits are attracting attention in Texas and in the IP blogosphere, not only because of the popularity of the Patent Troll Tracker blog, but because one of the lawyers suing Frenkel and Cisco is John Ward Jr., a son of U.S. District Judge T. John Ward who sits in the Eastern District.

John Ward Jr., a partner in Ward & Smith in Longview, filed his amended defamation petition against San Jose, Calif.-based Cisco and Frenkel on Feb. 27, while Eric Albritton of the Albritton Law Firm in Longview filed a similar defamation suit on March 3 against Cisco and Frenkel. Both suits are filed in Gregg County: Ward's in the 188th District Court, and Albritton's in County Court-at-Law No. 2.

Albritton alleges in his original petition that Frenkel published statements on the Internet alleging Albritton had conspired with the "Clerk of the U.S. District Court for the Eastern District of Texas" to "alter documents to try to manufacture subject matter jurisdiction where none existed." Similarly, in his first amended petition, Ward alleges Frenkel made "statements to the effect that Plaintiff had conspired with others to alter the filing date on a civil complaint" Ward filed in the Eastern District of Texas on behalf of a client.

Lawyers for Albritton and Ward say their clients allege that Frenkel's assertions on the blog are untrue and defamatory and that he wrote the blog during the course and scope of his employment at Cisco.

James Holmes, a Henderson solo who represents Albritton, says the allegations posted on the blog — the Patent Troll Tracker blog postings for Oct. 17 and 18, 2007, are attached as an exhibit to Albritton's petition — damaged his client's good name.

"Eric does a lot of defense work as well as plaintiffs patent work. He has a number of clients that are concerned about this allegation. It's not as though Cisco alleged that he was careless or exercised poor judgment. The accusation is that he intentionally conspired to commit a felonious act," Holmes says. "That's completely out of this guy's character, it's inconsistent with his background and it's completely false."

"A lie is equal to a blow," Holmes says. "You don't attack a man's reputation. If they don't like to litigate in the Eastern District of Texas, they need to address themselves to the rules and the Legislature rather than slander a man's reputation."

Ward's lawyer, Nicholas Patton, a partner in Patton, Tidwell & Schroeder in Texarkana, says Frenkel's postings about his client on Patent Troll Tracker are a "horrible thing," and Ward had no choice but to sue to protect his reputation.

"Those things are damaging. Those kinds of accusations are seen by literally hundreds of thousands of people. Those are serious accusations that you just can't let go unaddressed," Patton says. "There's no truth to it whatsoever."

Frenkel did not return a telephone message left at his office at Cisco, and a computer-generated reply to a message sent to his work e-mail indicated he was out of the office.

John Earnhardt, a senior manager of media relations at Cisco, says Frenkel wrote the blog independently of his job at Cisco.

"He was doing it on his own. Cisco didn't set it up," Earnhardt says. "My understanding is at some point, there were people . . . aware of it, after he had started it."

Earnhardt declines to discuss Cisco's policy on employee blogs.

However, Holmes says the issue of Cisco's alleged involvement with Frenkel's blog will be examined in discovery.

Frenkel posted the blog during Cisco work hours, Holmes alleges. "He posted about his own area of responsibility. In fact, *ESN* is his case. And he did it all with the knowledge of his direct supervisor," Holmes alleges. "There are lessons to be learned there."

"You've got the Cisco folks out there citing Troll Tracker as some sort of independent source on litigation, and it's their own guy," Holmes alleges. "That's going to be a source of discovery."

In his Feb. 23 posting in which he identified himself as the writer of the blog, Frenkel wrote that he might continue writing the blog but would take some time off. Patent Troll Tracker is now viewable by invitation only. He wrote that he decided to make his identity public, because he had received an anonymous e-mail from someone who threatened to out him. Prior to Feb. 23, Frenkel identified

himself as "Just a lawyer, interested in patent cases, but not interested in publicity."

In a statement regarding the defamation suits, Cisco writes:

> The parties have mutually agreed to make no comment on the lawsuit in question at this time. That said, we would like to underscore that the comments made in the employee's personal blog represented his own opinions and several of his comments are not consistent with Cisco's views. We continue to have high regard for the judiciary of the Eastern District of Texas and confidence in the integrity of its judges.

Paul Watler, a partner in Jackson Walker in Dallas who represents Cisco in the defamation suits, declines comment.

Albritton and Ward refer comment to their lawyers.

The state court litigation dates back to Nov. 7, 2007, when Ward filed *John Ward Jr. v. John Doe, et al.* in the 188th District Court in Gregg County. Ward initially filed a petition to conduct a deposition under Texas Rule of Civil Procedure 202, which says a party may conduct depositions prior to filing suit.

In January, 188th District Judge David Brabham granted a motion allowing Ward to take a deposition of an individual at Google Inc. Patton says he hoped the Google deposition would reveal who was writing the Patent Troll Tracker blog. However, Patton never took that deposition, because Frenkel revealed his identity as the blogger on Feb. 23.

Two days later, Ward filed an amended petition in the suit and changed the style to *John Ward Jr. v. Cisco Systems Inc., et al.* In the amended petition, Ward brings a defamation cause of action and alleges Frenkel knew that many people were reading the defamatory statements in the blog and Cisco was aware of Frenkel's blog activity.

"Defendant Frenkel has publicly admitted that he engaged in this activity with the full knowledge and consent of his employer Defendant Cisco Systems, Inc" and because of that, Ward alleges Cisco is vicariously and directly liable for the intentional torts of Frenkel.

In his petition filed on March 3, Albritton also alleges that Frenkel acted in the course and scope of his employment at the time Frenkel published the allegedly defamatory statements. He alleges, "Cisco has done nothing since the publication of the statements to disclaim them or distance itself from Frenkel."

Ward and Albritton each seek unspecified actual and punitive damages in their petitions.

Patton says Frenkel's allegations in the blog are not "protected speech" under First Amendment law. Additionally, Patton notes, nothing about the filing of *ESN v. Cisco* was out of the ordinary.

"Anybody that knows the rules in the Eastern District knows that what happened here is exactly how business is conducted in the Eastern District," Patton says. In the Eastern District, Patton says, the clerk's office will assign a case number and a judge to a suit 24 hours before it is filed when a lawyer calls the clerk's office with the request and sends in a cover sheet for a civil suit.

"On the 15th they sent in the civil cover sheet after they had called the clerk's office, requesting a number. That patent was to issue on the next day, the 16th, so they filed at 12:01 on Oct. 16. There was a mistake by the clerk's office as to dates that was corrected by the clerk to show what had happened," Patton says. "Nobody made any attempt to alter a government record."

He says an amended complaint in *ESN v. Cisco* was filed on Oct. 16, 2007, simply to allow the plaintiff to attach a copy of the patent. Patton says Frenkel could have determined the suit was filed properly by calling the clerk's office, but instead the Cisco lawyer "just made the accusation" in the blog.

Eastern District Clerk David Maland says there was no conspiracy. However, he says the clerk's office did make a "correcting entry" to the filing date of the original petition in *ESN v. Cisco*. Maland says that at the request of an employee at Albritton Law Firm, the clerk's office opened a "shell case" on Oct. 15, 2007, with a case name and judge assignment, to allow for the speedy filing of a complaint. Maland says that under procedures in effect in October 2007, lawyers wanting to file a suit at a certain time could make arrangements in advance with the clerk's office.

"Anytime somebody wanted us to hustle [it] along, we would have tried to make sure we pulled the judge assignment, did the work, so they could file on the time they wanted to file," Maland says. He says the clerk's office made those arrangements on an occasional basis, and there was no special privilege granted the local counsel in *ESN*. "We would have done it for anybody," he says.

Maland says new rules adopted in November 2007 give lawyers the ability to file suits electronically at the exact moment they want to file, so there's no need to ask the clerk's office for assistance.

As Maland relates it, an employee at Albritton Law Firm was sitting at her computer around midnight on Oct. 15, 2007, waiting for Oct. 16 to file the suit.

"According to her watch, it said 12:05 [a.m.], and she mashes the send button to file the complaint," he says.

However, on Oct. 16, she noticed that the docket sheet in *ESN* showed an Oct. 15 date, and she called the clerk's office, Maland says. "She asked us to change it to the 16th, because that was the intent. In all candor, we did a correcting entry. There was no ill intent," Maland says.

Holmes says his client has a computer-generated receipt from the clerk's office that shows the complaint was filed at one minute after midnight on Oct. 16.

Holmes says the clerk's office did the correcting entry because of "a software or systems-type issue."

Maland says the electronic-filing system at the clerk's office was modified in November 2007 to allow lawyers to file at an exact time more easily, similar to the old days of paper filing.

"We had a drop box where they had paper filling. The attorney would stand at the drop box until he watched the timer change to midnight or whatever. They would ensure that the clock said 12:01, and it would stamp it at 12:01, so they could ensure they were the first one at the courthouse," he recalls.

By agreement of the parties, *ESN v. Cisco* was dismissed without prejudice in November 2007, and ESN re-filed the suit on Jan. 31. That suit is assigned to U.S. District Judge David Folsom. In its infringement suit, ESN alleges Cisco is infringing on a patent it holds related to switching systems for communications over a broadband network.

Patton, who does IP litigation and has read the Patent Troll Tracker blog on occasion, says he was offended when he read Frenkel's comment calling the Eastern District the "Banana Republic of Texas."

"It offended the hell out of me. This is not a Banana Republic up here. I've practiced in the district for years and years, and I've never seen anything up here but superb judges," says Patton.

Cisco is a plaintiff, defendant or counter-claimant in five suits pending in the Eastern District, according to a review of cases listed on the district's electronic filing system. None of Cisco's suits are before Judge Ward.

Chief U.S. District Judge Thad Heartfield of the Eastern District says the Troll Tracker's characterization of his district as a Banana Republic is "ridiculous."

Heartfield says the Beaumont division where he sits doesn't attract as many IP cases as the Marshall and Texarkana divisions, and he refers further comment to the three U.S. district judges who sit in those divisions. Two of the three — Judge Ward who sits in Texarkana and Marshall and Judge Leonard Davis who sits in Marshall and Tyler — did not return telephone messages left at their offices.

Folsom, who sits in the Marshall and Texarkana divisions, says, "I have a Cisco case [*ESN v. Cisco*] pending in my court, and Johnny Ward's son is representing one of the parties, so I probably shouldn't say anything, but it won't influence my outlook on matters a bit."

The Prior Art

One reporter's notes on the IP beat

March 11, 2008

Troll Tracker sued: Judge Ward's son is one of the plaintiffs

The Daily Journal's Tuesday edition (not linkable) reports that Troll Tracker author Rick Frenkel, and his employer Cisco, have been sued for defamation by two East Texas attorneys who are players in that district's patent litigation scene, Eric Albritton and T. John Ward, Jr.

T. John "Johnny" Ward, Jr. is a Texas lawyer who has filed a large number of patent infringement lawsuits in recent years. Between January and mid-October of 2007, his name was attached to 54 separate lawsuits by my count; in all but four, he represented the plaintiff. He is also, as I reported in October, the son of Judge T. John Ward, the judge who is largely responsible for making the Eastern District of Texas a hotspot for patent litigation.

I haven't yet read the complaints. But I did re-read a copy of the ~~Oct. 17, 2007 post~~ two October posts that apparently inspired the lawsuits. (that's a small assumption on my part--but it's one of only a few posts that mentions Cisco and the only one I know of that mentions both Cisco and Ward & Albritton, and Craig Anderson's DJ story says the post is from October.) The Oct. 17 post is titled "Troll Jumps the Gun, Sues Cisco Too Early," and alleges that Ward & Albritton filed an amended complaint solely to change the filing date on a lawsuit where Cisco was a defendant.

The 10/17/08 Troll Tracker post begins:

> Well, I knew the day would come. I'm getting my troll news from Dennis Crouch now. According to Dennis, a company called ESN sued Cisco for patent infringement on October 15th, while the patent did not issue until October 16th. I looked, and ESN appears to be a shell entity managed by the President and CEO of DirectAdvice, an online financial website. And, yes, he's a lawyer. He clerked for a federal judge in Connecticut, and was an attorney at Day, Berry & Howard. Now he's suing Cisco on behalf of a non-practicing entity.
>
> I asked myself, can ESN do this? I would think that the court would lack subject matter jurisdiction, since ESN owned no property right at the time of the lawsuit, and the passage of time should not cure that. And, in fact, I was right:

(he goes on..)

Of course, Frenkel works for Cisco, as we now all know. So it's unlikely that he was actually, as he says, "getting [his] troll news from Dennis Crouch now." I'd guess he was well aware of the ESN lawsuit. Still, he was careful to write about it after Patently-O author Crouch, who reported the same basic facts: that the ESN v. Cisco patent infringement lawsuit was filed on 10/15/2007, a day before the patent in question was actually issued, thus "jumping the gun." Crouch didn't mention the amended complaint, which hadn't yet been filed.

In this subsequent motion, Ward and Albritton say they filed the ESN v. Cisco lawsuit at 12:01am Central Time on 10/16, and that Cisco filed suit in Connecticut ten and a half hours later, at 11:32am EST 10/16. They insisted the case should be kept in Texas. , but then apparently changed their minds--they stipulated to dismissal on Nov. 2.

The PACER entry does list 10/15/07 as the date he lawsuit was filed, but the first document--the complaint--is

listed as being filed on 10/16.

Back to the Troll Tracker 10/17 post:

> One other interesting tidbit: Cisco appeared to pick up on this, very quickly. Cisco filed a declaratory judgment action (in Connecticut) yesterday, the day after ESN filed its null complaint. Since Cisco's lawsuit was filed after the patent issued, it should stick in Connecticut.
>
> Perhaps realizing their fatal flaw (as a couple of other bloggers/news items have pointed out), ESN (represented by Chicago firm McAndrews Held & Malloy and local counsel Eric Albritton and T. Johnny Ward) filed an amended complaint in Texarkana today - amending to change absolutely nothing at all, by the way, except the filing date of the complaint. Survey says? XXXXXX (insert "Family Feud" sound here). Sorry, ESN. You're on your way to New Haven. Wonder how Johnny Ward will play there?

And how will a Silicon Valley lawyer who referred to East Texas as a "Banana Republic" play in Longview? Albritton and Ward Jr. have probably hauled enough Californians into court to know the answer to that one.

UPDATE: A Cisco spokesperson asked me to add their statement on this issue:

> "The parties have mutually agreed to make no comment on the lawsuit in question at this time. That said, we would like to underscore that the comments made in the employee's personal blog represented his own opinions and several of his comments are not consistent with Cisco's views. We continue to have high regard for the judiciary of the Eastern District of Texas and confidence in the integrity of its judges."

I should also add that the only place I have seen the "Banana Republic" comment thus far is in today's Daily Journal. Craig Anderson writes: "In the October posts at issue in the complaints, Frenkel accused the court of conspiring with the company, on whose behalf the Texas lawyers had filed the patent infringement lawsuit at issue, and referred to the court as 'the Banana Republic of East Texas.'"

It does not appear in my version of the TT posts, which were saved on Feb. 25. But there is a notation that indicates the October 18 post was edited later. I may post up relevant portions of other posts at a later date, but I'm going to hold off until I'm clear on what the accusations are.

UPDATE again: This post has gotten a lot of attention. (Can't read Troll Tracker, work sucks, what're you going to do?) I'll write more on this soon. Meanwhile my colleague Zusha Elinson at The Recorder has a bit more on Cisco and Troll Tracker here.

Posted at 12:45 AM in Eastern District of Texas, Patent Troll Tracker, Patents | Permalink

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» Watch What You Say About Lawyers Dept.: Troll Tracker blog sued out of existence from Overlawyered
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Tracked on March 11, 2008 at 03:33 PM
» Anonymous Bloggers Carry on Tradition of the Federalist Papers from Chicago IP Litigation Blog
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Tracked on March 17, 2008 at 05:13 AM

Comments

Don't get up over your head in the lawyer slime from East Texas. I understand it has reached the Rio Grande and is at this moment creating a dead spot in the gulf.

Posted by: Richard Bentley | March 12, 2008 at 02:37 PM

Don't get up over your head in the lawyer slime from East Texas. I understand it has reached the Rio Grande and is at this moment creating a dead spot in the gulf.

Posted by: Richard Bentley | March 12, 2008 at 02:37 PM

"The Banana Republic of East Texas." I like that, and it does seem to fit the bill.

On a more serious note, I think that a police investigation of the judiciary in East Texas should be carried out. Whether or not the actions of the courts there were legal, there is now a perception that things may not have been. The only way to clear the air is to launch an independent investigation, and the investigation would fall under criminal law, as interference with the court system is a criminal offense.

Posted by: Wayne | March 12, 2008 at 06:02 PM

I wonder how long it will take for dozens (or hundreds) of others to create similar content to make it impossible for those *trolls* to be too busy to bother with them. Kinda line Digg with the MPAA DVD decryption key not too long ago.

Posted by: Hawkeye | March 13, 2008 at 06:10 AM

The comments to this entry are closed.

Law.com

Patent Attorneys Sue Cisco and Blogging In-House Lawyer for Defamation

Monday March 17, 3:03 am ET

Brenda Sapino Jeffreys, John Council and Miriam Rozen, Texas Lawyer

The moral of this story is blogger beware, at least when it comes to blogging anonymously about litigation involving your employer.

Before Cisco Systems Inc. in-house lawyer Richard Frenkel outed himself in February as the Patent Troll Tracker blogger, he posted blog entries in October 2007 that alleged two East Texas lawyers conspired with the Eastern District Clerk's Office to alter the filing date of an infringement suit. That suit was filed against Frenkel's employer, Cisco.

On Oct. 18, 2007, Frenkel, who was posting anonymously at that time, alleged in Patent Troll Tracker that the filing date for *ESN v. Cisco* was changed from Oct. 15, 2007, to Oct. 16, 2007, after ESN's local counsel "called the EDTX court clerk, and convinced him/her to change the docket to reflect an October 16 filing date, rather than the October 15 filing date." The filing date is significant, Frenkel alleged in the blog, because the ESN patent that is the basis of the suit was not issued until Oct. 16.

Frenkel identified the local counsel on his blog, and alleged in the posting -- which is attached as an exhibit in two defamation suits recently filed against Frenkel and Cisco -- that it's "outrageous" that the Eastern District is apparently conspiring with ESN to "try to manufacture subject matter jurisdiction."

Filing an infringement suit like *ESN* after the stroke of midnight on the day the U.S. Patent and Trademark Office issues a patent gives a plaintiff the opportunity to choose jurisdiction.

"This is yet another example of the abusive nature of litigating patent cases in the Banana Republic of East Texas," Frenkel wrote on Oct. 18 in Patent Troll Tracker, a blog popular among intellectual property litigators and those interested in reports on so-called patent troll companies that allegedly buy patents simply to bring infringement suits.

The Eastern District is a nationally known forum for patent litigation because of rules that allow suits to progress speedily through the court system.

On Feb. 23, Frenkel, director of IP at Cisco, revealed his identity as the blogger.

Now, Frenkel and Cisco are defendants in two separate defamation suits filed by the two East Texas lawyers who are local plaintiffs counsel in *ESN*. The suits are attracting attention in Texas and in the IP blogosphere, not only because of the popularity of the Patent Troll Tracker blog, but because one of the lawyers suing Frenkel and Cisco is John Ward Jr., a son of U.S. District Judge T. John Ward who sits in the Eastern District.

John Ward Jr., a partner in Ward & Smith in Longview, filed his amended defamation petition against San Jose, Calif.-based Cisco and Frenkel on Feb. 27, while Eric Albritton of the Albritton Law Firm in Longview filed a similar defamation suit on March 3 against Cisco and Frenkel. Both suits are filed in Gregg County: Ward's in the 188th District Court, and Albritton's in County Court-at-Law No. 2.

Albritton alleges in his original petition that Frenkel published statements on the Internet alleging Albritton had conspired with the "Clerk of the U.S. District Court for the Eastern District of Texas" to "alter documents to try to manufacture subject matter jurisdiction

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where none existed." Similarly, in his first amended petition, Ward alleges Frenkel made "statements to the effect that Plaintiff had conspired with others to alter the filing date on a civil complaint" Ward filed in the Eastern District of Texas on behalf of a client.

Lawyers for Albritton and Ward say their clients allege that Frenkel's assertions on the blog are untrue and defamatory and that he wrote the blog during the course and scope of his employment at Cisco.

James Holmes, a Henderson, Texas solo who represents Albritton, says the allegations posted on the blog -- the Patent Troll Tracker blog postings for Oct. 17 and 18, 2007, are attached as an exhibit to Albritton's petition -- damaged his client's good name.

"Eric does a lot of defense work as well as plaintiffs patent work. He has a number of clients that are concerned about this allegation. It's not as though Cisco alleged that he was careless or exercised poor judgment. The accusation is that he intentionally conspired to commit a felonious act," Holmes says. "That's completely out of this guy's character, it's inconsistent with his background and it's completely false."

"A lie is equal to a blow," Holmes says. "You don't attack a man's reputation. If they don't like to litigate in the Eastern District of Texas, they need to address themselves to the rules and the Legislature rather than slander a man's reputation."

Ward's lawyer, Nicholas Patton, a partner in Patton, Tidwell & Schroeder in Texarkana, says Frenkel's postings about his client on Patent Troll Tracker are a "horrible thing," and Ward had no choice but to sue to protect his reputation.

"Those things are damaging. Those kinds of accusations are seen by literally hundreds of thousands of people. Those are serious accusations that you just can't let go unaddressed," Patton says. "There's no truth to it whatsoever."

Frenkel did not return a telephone message left at his office at Cisco, and a computer-generated reply to a message sent to his work e-mail indicated he was out of the office.

John Earnhardt, a senior manager of media relations at Cisco, says Frenkel wrote the blog independently of his job at Cisco.

"He was doing it on his own. Cisco didn't set it up," Earnhardt says. "My understanding is at some point, there were people ... aware of it, after he had started it."

Earnhardt declines to discuss Cisco's policy on employee blogs.

However, Holmes says the issue of Cisco's alleged involvement with Frenkel's blog will be examined in discovery.

Frenkel posted the blog during Cisco work hours, Holmes alleges. "He posted about his own area of responsibility. In fact, *ESN* is his case. And he did it all with the knowledge of his direct supervisor," Holmes alleges. "There are lessons to be learned there."

"You've got the Cisco folks out there citing Troll Tracker as some sort of independent source on litigation, and it's their own guy," Holmes alleges. "That's going to be a source of discovery."

In his Feb. 23 posting in which he identified himself as the writer of the blog, Frenkel wrote that he might continue writing the blog but would take some time off. Patent Troll Tracker is now viewable by invitation only. He wrote that he decided to make his identity public, because he had received an anonymous e-mail from someone who threatened to out him. Prior to Feb. 23, Frenkel identified himself as "Just a lawyer, interested in patent cases, but not interested in publicity."

In a statement regarding the defamation suits, Cisco writes:

The parties have mutually agreed to make no comment on the lawsuit in question at this time. That said, we would like to underscore that the comments made in the employee's personal blog represented his own opinions and several of his comments are not consistent with Cisco's views. We continue to have high regard for the judiciary of the Eastern District of Texas and confidence in the integrity of its judges.

Paul Watler, a partner in Jackson Walker in Dallas who represents Cisco in the defamation suits, declines comment.

Albritton and Ward refer comment to their lawyers.

The state court litigation dates back to Nov. 7, 2007, when Ward filed *John Ward Jr. v. John Doe, et al.* in the 188th District Court in Gregg County. Ward initially filed a petition to conduct a deposition under Texas Rule of Civil Procedure 202, which says a party may conduct depositions prior to filing suit.

In January, 188th District Judge David Brabham granted a motion allowing Ward to take a deposition of an individual at Google Inc. Patton says he hoped the Google deposition would reveal who was writing the Patent Troll Tracker blog. However, Patton never took that deposition, because Frenkel revealed his identity as the blogger on Feb. 23.

Two days later, Ward filed an amended petition in the suit and changed the style to *John Ward Jr. v. Cisco Systems Inc., et al.* In the amended petition, Ward brings a defamation cause of action and alleges Frenkel knew that many people were reading the defamatory statements in the blog and Cisco was aware of Frenkel's blog activity.

"Defendant Frenkel has publicly admitted that he engaged in this activity with the full knowledge and consent of his employer Defendant Cisco Systems, Inc." and because of that, Ward alleges Cisco is vicariously and directly liable for the intentional torts of Frenkel.

In his petition filed on March 3, Albritton also alleges that Frenkel acted in the course and scope of his employment at the time Frenkel published the allegedly defamatory statements. He alleges, "Cisco has done nothing since the publication of the statements to disclaim them or distance itself from Frenkel."

Ward and Albritton each seek unspecified actual and punitive damages in their petitions.

Patton says Frenkel's allegations in the blog are not "protected speech" under First Amendment law. Additionally, Patton notes, nothing about the filing of *ESN v. Cisco* was out of the ordinary.

"Anybody that knows the rules in the Eastern District knows that what happened here is exactly how business is conducted in the Eastern District," Patton says. In the Eastern District, Patton says, the clerk's office will assign a case number and a judge to a suit 24 hours before it is filed when a lawyer calls the clerk's office with the request and sends in a cover sheet for a civil suit.

"On the 15th they sent in the civil cover sheet after they had called the clerk's office, requesting a number. That patent was to issue on the next day, the 16th, so they filed at 12:01 on Oct. 16. There was a mistake by the clerk's office as to dates that was corrected by the clerk to show what had happened," Patton says. "Nobody made any attempt to alter a government record."

He says an amended complaint in *ESN v. Cisco* was filed on Oct. 16, 2007, simply to allow the plaintiff to attach a copy of the patent. Patton says Frenkel could have determined the suit was filed properly by calling the clerk's office, but instead the Cisco lawyer "just made the accusation" in the blog.

Eastern District Clerk David Maland says there was no conspiracy. However, he says the clerk's office did make a "correcting entry" to the filing date of the original petition in *ESN v. Cisco*. Maland says that at the request of an employee at Albritton Law Firm, the

clerk's office opened a "shell case" on Oct. 15, 2007, with a case name and judge assignment, to allow for the speedy filing of a complaint. Maland says that under procedures in effect in October 2007, lawyers wanting to file a suit at a certain time could make arrangements in advance with the clerk's office.

"Anytime somebody wanted us to hustle [it] along, we would have tried to make sure we pulled the judge assignment, did the work, so they could file on the time they wanted to file," Maland says. He says the clerk's office made those arrangements on an occasional basis, and there was no special privilege granted the local counsel in *ESN*. "We would have done it for anybody," he says.

Maland says new rules adopted in November 2007 give lawyers the ability to file suits electronically at the exact moment they want to file, so there's no need to ask the clerk's office for assistance.

As Maland relates it, an employee at Albritton Law Firm was sitting at her computer around midnight on Oct. 15, 2007, waiting for Oct. 16 to file the suit.

"According to her watch, it said 12:05 [a.m.], and she mashes the send button to file the complaint," he says.

However, on Oct. 16, she noticed that the docket sheet in *ESN* showed an Oct. 15 date, and she called the clerk's office, Maland says. "She asked us to change it to the 16th, because that was the intent. In all candor, we did a correcting entry. There was no ill intent," Maland says.

Holmes says his client has a computer-generated receipt from the clerk's office that shows the complaint was filed at one minute after midnight on Oct. 16.

Holmes says the clerk's office did the correcting entry because of "a software or systems-type issue."

Maland says the electronic-filing system at the clerk's office was modified in November 2007 to allow lawyers to file at an exact time more easily, similar to the old days of paper filing.

"We had a drop box where they had paper filing. The attorney would stand at the drop box until he watched the timer change to midnight or whatever. They would ensure that the clock said 12:01, and it would stamp it at 12:01, so they could ensure they were the first one at the courthouse," he recalls.

By agreement of the parties, *ESN v. Cisco* was dismissed without prejudice in November 2007, and ESN re-filed the suit on Jan. 31. That suit is assigned to U.S. District Judge David Folsom. In its infringement suit, ESN alleges Cisco is infringing on a patent it holds related to switching systems for communications over a broadband network.

Patton, who does IP litigation and has read the Patent Troll Tracker blog on occasion, says he was offended when he read Frenkel's comment calling the Eastern District the "Banana Republic of Texas."

"It offended the hell out of me. This is not a Banana Republic up here. I've practiced in the district for years and years, and I've never seen anything up here but superb judges," says Patton.

Cisco is a plaintiff, defendant or counter-claimant in five suits pending in the Eastern District, according to a review of cases listed on the district's electronic filing system. None of Cisco's suits are before Judge Ward.

Chief U.S. District Judge Thad Heartfield of the Eastern District says the Troll Tracker's characterization of his district as a Banana Republic is "ridiculous."

Heartfield says the Beaumont division where he sits doesn't attract as many IP cases as the Marshall and Texarkana divisions, and he refers further comment to the three U.S. district judges who sit in those divisions. Two of the three -- Judge Ward who sits in Texarkana and Marshall and Judge Leonard Davis who sits in Marshall and Tyler -- did not return telephone messages left at their offices.

Folsom, who sits in the Marshall and Texarkana divisions, says, "I have a Cisco case [*ESN v. Cisco*] pending in my court, and Johnny Ward's son is representing one of the parties, so I probably shouldn't say anything, but it won't influence my outlook on matters a bit."

Cisco and 'troll tracker' sued by Texas attorneys

By John Letzing, MarketWatch
Last update: 10:13 p.m. EDT March 20, 2008

SAN FRANCISCO (MarketWatch) -- Cisco Systems Inc. and one of its employees are being sued by Texas attorneys claiming the employee anonymously defamed them on a Web site critical of so-called "patent trolls" that sue technology companies over intellectual property rights.

The Cisco (CSCO: 26.72, +0.51, +2.0%) employee, attorney Richard Frenkel, had been writing anonymously on the "Patent Troll Tracker" Web site. According to court documents, in October, Frenkel wrote that Texas attorney Eric Albritton "conspired" with the clerk of the U.S. District Court for the Eastern District of Texas to alter official documents in a proceeding involving Cisco.

In a civil suit filed in a Texas court Friday, Albritton claims that by doing so, Frenkel "acted with specific intent to injure" Albritton's reputation and professional standing. Albritton is seeking unspecified damages.

In addition, Albritton claims "Frenkel was acting in his official capacity as director of intellectual property litigation for Cisco, and thus Cisco is vicariously liable for the acts of Frenkel."

"Cisco has done nothing since the publication of the statements to disclaim them or distance itself from Frenkel," Albritton says in the complaint.

In a separate suit filed Thursday, Texas attorney John Ward Jr. makes similar claims that Cisco and Frenkel also sought to damage his reputation by writing about him on the site and "exposing him to public hatred, shame, and ridicule." Ward seeks compensatory damages "in excess of $75,000" and unspecified exemplary damages.

Frenkel's Web site had become widely read among intellectual property attorneys and journalists. His posts viciously criticized companies established to pursue litigation with large companies using their patent portfolios, and the attorneys who represent them.

Frenkel revealed his identity and his employer late last month, after another attorney had posted a $15,000 reward for anyone willing to unmask him.

A Cisco spokesman said the company is unable to comment on the litigation. Access to Frenkel's Web site was recently restricted to an invitation-only basis.

Cisco and other companies are often sued by companies that have made a successful business of pursuing patent litigation. Cisco and others have complained that these companies shouldn't be allowed to harass them with lawsuits, because the companies often aren't using the intellectual property in question to make their own products.

Cisco, Microsoft Corp. (MSFT: 28.32, +0.01, +0.0%) , Intel Corp. (INTC: 23.18, +0.04, +0.2%) and other companies are members of the Coalition for Patent Fairness, an organization currently lobbying the U.S. Senate to pass a version of the Patent Reform Act. That legislation would place certain limits on the ability of patent holders to file suit against large companies.

The House passed a version of the Patent Reform Act last year. See related story. ■

John Letzing is a MarketWatch reporter based in San Francisco.

Comments

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rjriley5000 72 days ago | Report Abuse

Has it occurred to anyone that Cisco is getting sued because they have a big appetite for other's patent property and a big ego that gets in the way of acquiring the rights to the patent properties they need to succeed in the market?

Have you considered that Cisco gets sued after they have refused a legitimate offer for a license?

Or have you considered that Cisco's membership in the Coalition for Patent fairness and PIRACY, aka. the Piracy Coalition is a good indication that birds of a feather do flock together?

Some companies start as inventors, and some start as parasites on those who have invented. Eventually they end up alike, one group never being inventive and the second losing the ability to invent as they age. Both will try to substitute quantity in patent filing for the quality of inventions they are incapable of producing. It does not work.

All Piracy Coalition members fit one of these profiles. Tech companies who are past their prime, insurance and banking collectively have no shame!

What they very good at producing is innovating media hype which obfuscates the reality of their existence. Their multi-million dollar "troll" campaign is a perfect example of this. They paint their victims as "trolls" while the courts are finding their conduct so egregious that they are handing down staggering judgments. This is what happens to those who are caught lying, cheating, and stealing and no amount of public relations painting their victims as evil "trolls" can change the facts of these cases.

Personally I think that it is a shame that Piracy Coalition members have failed to learn the lesson that inventors and the courts are teaching. It is all about conducting one's business in an ethical manner!
Ronald J. Riley,

Speaking only on my own behalf.
Affiliations:
President - www.PIAUSA.org - RJR at PIAUSA.org
Executive Director - www.InventorEd.org - RJR at InvEd.org
Senior Fellow - www.patentPolicy.org
President - Alliance for American Innovation
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News

Cisco and the 'troll tracker' sued by Texas attorneys

10:13p ET March 20, 2008 (MarketWatch)

SAN FRANCISCO (MarketWatch) – Cisco Systems Inc. and one of its employees are being sued by Texas attorneys claiming the employee anonymously defamed them on a Web site critical of so-called "patent trolls" that sue technology companies over intellectual property rights.

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The House passed a version of the Patent Reform Act last year. See related story.

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Cisco Snared in Patent Blog Suits

MARCH 21, 2008

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Now that the world knows a Cisco Systems Inc. (Nasdaq: CSCO - message board) employee is behind the Patent Troll Tracker blog, it's no surprise to see the company's name show up in defamation lawsuits.

Two Texas attorneys are suing blogger Richard Frenkel over some postings made in October. And they've named Cisco as a defendant as well.

Eric Albritton filed his suit on March 3 in the District Court of Gregg County, Texas, followed by John Ward Jr., who filed March 13. Both are seeking unspecified damages

Patent Troll Tracker is a blog that investigates patent lawsuits -- specifically, the ones Frenkel thinks are frivolous.

The term "patent troll" gets tossed around rather loosely, but usually, it refers to someone who holds a patent and just waits around for a chance to sue someone. Anti-troll crusaders get particularly irked in cases where the patent holder makes no effort to build the product patented.

The practice is legal and can pay off big. In 2006, Research In Motion Ltd. (RIM) (Nasdaq: RIMM - message board; Toronto: RIM) paid $612.5 million to NTP Software Inc., which held patents crucial to the BlackBerry device and service. NTP has gone on to sue Palm Inc., AT&T Inc. (NYSE: T - message board), and Verizon Communications Inc. (NYSE: VZ - message board). (See RIM, NTP Come to Terms, NTP Takes Another Shot, and NTP Rides Again.)

The suits against Frenkel don't strike at any big patent questions. Instead, they're about some alleged legal maneuvering which, if it happened, could get Albritton and Ward in hot water.

Albritton and Ward were among the attorneys representing a company called ESN, which filed a patent suit against Cisco and Linksys on Oct. 15, 2007. But the patent in question, No. 7,283,519, didn't get issued until Oct. 16.

Frenkel pointed this out in a blog entry of Oct. 17, according to a copy attached to Albritton's complaint. Frenkel went on to say ESN was trying to change the date on its complaint to Oct. 16.

And in a posting the following day, he said the date did indeed get changed on the docket for the Eastern District Court of Texas. Only the court clerk could make that change, Frenkel wrote, and he cites an email that "suggested" the attorneys convinced the clerk by phone to do it.

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- The Right Packet Transport Technology: MPLS or PBB-TE - by ECI Telecom 5/13/2008
- Metro Ethernet: An Efficient Way to Provide Triple Play Services - by ECI Telecom 5/13/2008
- Ethernet Services and Service Delivery Technologies in the Metro - by ECI Telecom 5/13/2008

Stock Quotes
- Nasdaq: CSCO, Nasdaq: RIMM, NYSE: T, NYSE: VZ

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- Turkey Awards 2007 11/22/2007

Opinion
- Telco Video: The Quality Scale 5/7/2008

Reports
- A Guide to PBT/PBB-TE 4/3/2008

"You can't change history, and it's outrageous that the Eastern District of Texas is apparently, wittingly or unwittingly, conspiring with a non-practicing entity to try to manufacture subject matter jurisdiction," Frenkel wrote. "This is yet another example of the abusive nature of litigating patent cases in the Banana Republic of East Texas."

So, how does Cisco get roped into this, if Frenkel was acting on his own? The key appears to be the way in which Fenkel outed himself.

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Heavy Lifting

Analyst Notes
BY ALAN BREZNICK, SENIOR ANALYST

Does Cable Really Mean Business?
MAY 28, 2008
US cable operators are gearing up to take another run at the commercial services market
MORE ANALYST NOTES

The Bloggers

Jonestown
BY DAN JONES

3G IPhone: Hiding in Plain Sight?
MAY 30, 2008
6:00 PM -- Apple in a box

Contentinople
CONTENTINOPLE STAFF

Onstream Gets Narrowstep
MAY 30, 2008
5:15 PM -- Today's news from *Contentinople*

Valley Wonk
BY CRAIG MATSUMOTO

RBN's Not Dead
MAY 30, 2008
4:40 PM -- But it's Sorrento's property now

Valley Wonk
BY CRAIG MATSUMOTO

Another CEO at Hammerhead
MAY 30, 2008
11:45 AM -- Stop us if this sounds familiar

The Philter
BY PHIL HARVEY

The U-verse Experiment
MAY 30, 2008
8:45 AM -- I switched. Here's how it's going so far

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8. OFC: Mergers Pay Off - 2/28/2008

Startup Spotlight
Zeugma Systems Inc.
Edge routers and services management

THE FIFTH COLUMN


FIRST COLUMNIST
Michael Harris
The Top 2%


SECOND COLUMNIST
Michael Harris
Comcast, Plaxo & Privacy


FIFTH COLUMNIST
Bob Faulkner
Betting on Microtune

Who Says What?
TOP BLOG AND MESSAGE BOARD POSTS ON LR

Top Blogs
1. THE PHILTER
By Phil Harvey
The U-verse Experiment
May 30, 2008
8:45 AM -- I switched. Here's how it's going so far

2. VALLEY WONK
By Craig Matsumoto
OFC: Mergers Pay Off
February 28, 2008
5:00 PM -- Fruits of some recent buys were on display

3. RED PANDA
By Red Panda
Blue Panda Movies
November 11, 2008
10:00 AM -- What's black & white & dumb all over?

4. VALLEY WONK
By Craig Matsumoto
Another CEO at Hammerhead
May 30, 2008
11:45 AM -- Stop us if this sounds familiar

5. THE PHILTER
By Phil Harvey
AlcaLu's Next CEO?
May 1, 2008
5:00 AM -- Well, since we brought it up, I have another name to add
CLICK TO POST A MESSAGE

Best and Worst of Message Boards
TOP 5 RANKED
1. 5/31/2008 3:07:46 AM
Re: RUSSO

2. 5/15/2008 5:04:48 PM
Re: Will the Easter Bunny Supplant Santa

3. 5/3/2008 12:22:22 PM
Re: E is going end that TO-can process

4. 5/8/2008 10:04:24 PM
McFly...McFly....anyone home McFly?

5. 5/30/2008 9:23:42 AM
Re: carrier ethernet will continue

BOTTOM 5 RANKED
5. 5/9/2008 6:21:08 PM
Dear my 60's technology fellows

4. 5/9/2008 12:41:54 AM
Re: McFly...McFly....anyone home McFly?

3. 5/7/2008 8:17:37 PM
Re: Big E NEWS! E is getting even bigger

2. 5/3/2008 11:12:35 AM
Re: E is going end that TO-can process

1. 5/20/2008 3:26:16 PM
Re: The next biggest
CLICK TO POST A MESSAGE

Until last month, the author of Patent Troll Tracker was a mystery. His writings were infuriating some patent attorneys, though. Raymond Niro, a partner in Chicago-based Niro Scavone Haller & Niro, offered a reward for anyone who could unmask the blogger; the amount started at $5,000 and eventually climbed to $15,000.

Last month, for reasons that still aren't clear, Frenkel came clean about his name and occupation. He claimed Cisco's higher-ups had no knowledge of what he was doing -- but that his manager did.

That last part might be what's allowing some legalese to get pointed Cisco's way.

"Defendant Frenkel has publicly admitted that he engaged in this activity with the full knowledge and consent of his employer," Ward's complaint reads -- meaning "Cisco is vicariously and directly liable for the intentional torts of Defendant Frenkel."

From there, Ward goes on to claim Cisco (and Frenkel) were intentionally attacking him in hopes of damaging his business.

Albritton's complaint follows similar lines. Further, Albritton notes that Frenkel was a Cisco manager and claims Frenkel was involved with the ESN case.

Both complainants also accuse Frenkel of gaming search engines to make his blog appear when their names are used as search keys. *Light Reading*'s quick Google checks of "Albritton" and "Eric Albritton" didn't turn up Patent Troll Tracker on the first page, but that might be because Patent Troll Tracker has shut itself in. It's an invitation-only blog now.

Cisco declined to comment but issued a statement that reads, in part: "We would like to underscore that the comments made in the employee's personal blog represented his own opinions and several of his comments are not consistent with Cisco's views."

(The *ESN v. Cisco* case was dismissed on Nov. 19, by the way.)

— Craig Matsumoto, West Coast Editor, *Light Reading*

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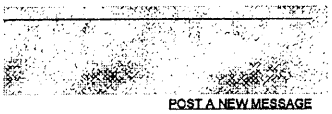


ARTICLE TALK

Cisco Snared in Patent Blog Suits

FULL MESSAGE LIST POST A NEW MESSAGE

ID	Subject	User Rank	User	Date
6	Cisco Blog Policy		Craig Matsumoto	3/24/2008 05:45 PM
5	Re: Trolls		motorway	3/23/2008 08:19 PM
4	Re: Trolls		trzwuip	3/23/2008 09:50 AM
3	Re: Trolls		donniall	3/22/2008 05:35 PM
2	Headline		everythingip	3/22/2008 11:16 AM
1	Trolls		trzwuip	3/22/2008 09:40 AM

FULL MESSAGE LIST POST A NEW MESSAGE

This board does not reflect the views of Light Reading. These messages are only the opinion of the poster, are no substitute for your own research, and should not be relied upon for trading or any other purpose. The anonymity of the user cannot be guaranteed. Please don't feed the monkey.

JW.000111

Telecom Italia migrates its network for today's needs...

CP POD MicroTCA: A Versatile Platform For New Services - by Intel
An evolution of enterprise services to a simpler, mo...

CP POD Assured Carrier Ethernet for Business - by InfoVista
An evolution of enterprise services to a simpler, mo...

CP POD Pseudowire: it's the real deal - by Tellabs
Pseudowires establish "virtual wires" to carry ...

ALL PODCASTS

Companies
Alcatel-Lucent (5412), AT&T (1586), BellSouth (824), BT (1065), Cablevision (351), Cisco (4714), Comcast (1068), Cox Communications (534), Deutsche Telekom (730), eBay (Skype) (327), Ericsson (1284), France Telecom (863), Google (427), Huawei (811), Intel (1104), Juniper (1845), Microsoft (967), Motorola (1165), Nokia Siemens Networks (2373), Nortel (3685), NTT (113), Siemens (1345), Sprint (1000), Telefonica (371), Time Warner Cable (519), Verizon (2153), Vodafone (449), Yahoo (309)

Broadband
Access equipment (1883), Access technologies (2008), Broadband loop carriers / multiservice access nodes (320), Cable modem termination systems (CMTSs) (839), Cable TV chips (147), DSL (1729), DSL chips (175), DSLAMs (816), Free-space optics (32), FTTx (1497), Gaming consoles (24), Gaming servers (16), Media adapters (7), Municipal networks (97), PON (807), PON chips (154), Satellite (290), WiMax (735), Wireless LAN (332)

Cable Digital
Cable Modems (250), Cable/MSO equipment (2307), CableLabs (210), Compression (MPEG-2 and MPEG-4) (145), DOCSIS (450), Embedded multimedia terminal adapters (E-MTAs) (99), Head-ends (91), PacketCable (84), QAM (177)

Chips, Components & Subsystems
ASICs & FPGAs (70), ATCA (361), ATM chips (13), Comm chips (2096), Dispersion compensators (136), Lasers (840), Modulators (143), Mux/demuxes (292), Network processors (830), Optical amplifiers (321), Optical channel monitors (90), Optical components (2308), Specialty fiber (60), Switches & OADMs (362), Transceivers (1115), Transmission fiber (386), Variable optical attenuators (138)

Ethernet (Sponsored by ECI Telecom)
10-Gbit/s Ethernet switches (1300), Access devices (214), ATM switches (333), Circuit emulation (16), Converged access (85), Ethernet chips (472), Ethernet equipment (1509), Ethernet over copper (187), Ethernet PONs (140), Ethernet services (1435), Ethernet technologies (406), Multipoint (108), Multiservice edge equipment (115), Multiservice provisioning platforms (600), Multiservice switches (375), PBT (Provider Backbone Transport) (164), Point-to-point (115), Pseudowire (Layer 2 tunnels) (121)

IP & Convergence
B-RASs (217), Cell/WLAN (71), Compression equipment (10), Core routers (1149), DNS (42), Edge routers (1429), ENUM (48), Fixed/Mobile Convergence (481), GMPLS (77), IMS (932), IMS Control Layer (28), IMS Service Layer (24), IP equipment (945), IP software (311), IP technologies (1277), IPv6 (60), Layer 3 VPNs (127), MPLS (674), MPLS (1627), Multicast (31), P2P (192), Pseudowire (Layer 2 tunnels) (121), QOS (322), SIP (340), Traffic managers (719), Wireline/Wireless (50)

Mobile/Wireless
3G Evolution (124), Broadcast (Mobile TV, etc.) (177), Carrier WiFi (187), CDMA (3G) (227), Core Network (137), EV-DO (98), Fixed Wireless (Microwave, etc.) (88), GSM/EDGE (322), HSDPA/HSUPA (261), IMS Core (36), Mobile/Wireless (4541), Packet Core (42), Radio Access Network (174), TD-SCDMA (Chinese 3G) (30), Transmission (35), UMTS(3G) (258), Voice Core (17), WiMax (735), Wireless Backhaul (138), Wireless Chips (149), Wireless LAN (332)

Optical Networking
40-Gbit/s transmission (348), Core optical switches (744), CWDM (262), DWDM (1667), Long-haul WDM equipment (517), Metro optical switches, ROADMs (1077), Metro WDM equipment (662), Multiservice provisioning platforms & add/drop muxes (360), Optical equipment (1363), Optical switches & crossconnects (386), Optical technologies (292), Sonet/SDH (952), Sonet/SDH chips (305), Wavelength services (231)

Security
Anti-virus (27), Denial-of-service attacks (37), Encryption (57), Endpoint security (18), Firewalls (54), Intrusion detection & prevention (37), IPSec VPN (793), Security (1630), SSL VPN (856), URL filtering (11), User authentication (18)

Services Software
Activation (394), Billing systems (606), Content/software downloads (200), Customer relationship management (130), Data integrity (9), Element management systems (24), Fault management (52), Inventory management (127), Mediation systems (185), Messaging (168), Middleware (31), Mobile location (31), OSS (2012), Performance monitoring (235), Policy control (135), Provisioning (475), Revenue assurance & fraud management (300), Service delivery platforms (SDPs) (251), Service management (116), Service-oriented architectures (220), Services (1868), Web gateways (24), Web services (81), XML (45)

Test & Measurement
OSS Test & measurement (1022), Test & measurement (1344), Optical equipment Test & measurement equipment (815), Ethernet equipment Test & measurement equipment (123), IP equipment Test & measurement equipment (87), Access equipment Test & measurement equipment (109), Comm chips Test & measurement equipment (29), Optical components Test & measurement equipment (89), VOIP equipment Test & measurement equipment (137), MPLS Test & measurement equipment (11), Sonet/SDH Test & measurement equipment (1579)

Video
Broadcast video equipment (including encoding) (520), Content delivery network (CDN) (267), Content protection (176), DVRs (251), Internet Video (309), IPTV (2325), Middleware & business support systems (388), Set-top boxes (944), Stored video servers (250), TV (1858), Video equipment (1899), Video services (2931), Video software (924), Videophone (151), VOD (1665)

VOIP
Application servers (148), Centrex (176), Conferencing (66), Contact centers (36), Enhanced voice (25), Enterprise (540), Media gateways (298), Messaging (56), Presence management (35), Residential (606), Session border controllers (335), Signaling gateways (66), Softswitches (1003), VOIP chips (133), VOIP equipment (3103), VOIP services (3292), VOIP software (524), VOIP VPNs (22), Wholesale (205)

JW.000112

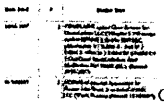
Mar 12, 2008

Troll Tracker, Defamation, and Splitting the Bar

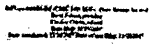
Rick Frenkel – who until recently was known only as the *Patent Troll Tracker* – has now been sued for defamation by two Eastern District of Texas lawyers: Johnny Ward, Jr. and Eric Albritton. Frenkel recently revealed himself as an IP Director at Cisco Systems. Cisco is also a named defendant in the lawsuit. Ward has represented many plaintiffs in E.D. Texas patent cases and is the son of Federal Judge John Ward of the Eastern District of Texas.

The whole case seemingly stems from a Patently-O posting on October 16, 2007. That post, titled "*Patent Office Has Stopped Examining Patents with 25+ Claims*," included a short blurb about a seeming "preemptive strike" by the patent holder ESN:

> From *Patently-O*: In another preemptive strike, on October 15th, ESN sued Cisco for infringing Patent No. 7,283,519. Unfortunately, the patent did not issue until the 16th of October. [Link]



Of course, a patentee has no standing to sue until after the patent issues, even if you know that the patent will issue the next day. The *Patently-O* post included a link to ESN's complaint that had an October 15 electronic time-stamp and a civil cover sheet dated October 15. Ward and Albritton were involved in this case, apparently serving as local counsel for the McAndrews firm.



By October 18, the PACER filing information still reflected that the case had been originally filed on the 15th, but the PACER complaint filing date now indicated October 16. (See thumbnail screenshots.) This date became potentially important because, in the meantime, Cisco had filed a declaratory judgment action against ESN in Connecticut. (First-to-file with standing usually wins venue.)

On October 18, the Troll Tracker posted what are seemingly his most pointed comments about the case:

> "I got a couple of anonymous emails this morning, pointing out that the docket in ESN v. Cisco . . . had been altered. One email suggested that ESN's local counsel called the EDTX court clerk and convinced him/her to change the docket to reflect an October 16 filing date, rather than the October 15 filing date. I checked, and sure enough, that's exactly what happened – the docket was altered to reflect an October 16 filing date and the complaint was altered to change the filing date stamp from October 15 to October 16. Only the EDTX Court Clerk could have made such changes. . . . This is yet another example of the abusive nature of litigating patent cases in the Banana Republic of East Texas."

In a different post, PTT mentioned that Ward and Albritton represented ESN and that they might not "play well" in a Connecticut court.

Moot Point?: Since then, *ESN v. Cisco* has been dismissed by agreement of the parties, and the original filing dates have become meaningless and moot. However, Ward and Albritton remembered Frenkel's comments. Within three days of Frenkel's "outing" a defamation lawsuit had been filed in Texas state court. At this point, none of the parties are discussing either case in public except that Cisco "continue[s] to have high regard for the judiciary of the Eastern District of Texas and confidence in the integrity of its judges."

Seeing an opportunity, the Howrey firm has now declared that it "absolutely won't represent trolls." Is the patent bar in the midst of a split? [Joe Mullin has the Howrey Advert]

Documents:

- File Attachment: Defamation Complaint filed by WARD (383 KB)
- File Attachment: Defamation Complaint filed by ALBRITTON (452 KB)
- Original ESN v. CISCO complaint

Notes:

- Although I have not always agreed with Frenkel's opinions, he has been a great addition to the public debate over patents and patent reforms. His analysis has always been fresh. On several occasions, I double-checked the factual basis of his reports, and each time found them spot-on. I do hope that he'll be back with more caustic analysis. I've been sitting on this story for a while now. Although not a named party, my name appears in the filings. Craig Anderson (DailyJournal) apparently broke the story in a hardcopy version.
- This case may serve as a caution to Patently-O "anonymous" commentors. A defamed individual may have ways to figure out your identity.
- ESN has explained that it actually filed the complaint at 12:01 am on October 16.
- A couple of days after posting the comment above, PTT deleted the above quoted material and replaced it with the following: "You can't change history, and it's outrageous that the Eastern District of Texas may have, wittingly or unwittingly, helped a non-practicing entity to try to manufacture subject matter jurisdiction. *Even if this was a "mistake," which I can't see how it could be, given that someone emailed me a printout of the docket from Monday showing the case, the proper course of action should be a motion to correct the docket.* (*n.b.*: don't be surprised if the docket changes back once the higher-ups in the Court get wind of this, making this post completely irrelevant). *EDIT: You can't change history, but you can change a blog entry based on information emailed to you from a helpful reader.*" [Mullin]
- Reporter, Joe Mullin has more background – According to his report, Ward filed the complaint in November and had been in the process of unmasking the troll.
- Joe Mullin Reports on the Case
- Legal Blog Watch
- Legal Pad reports on the Case
- Forbes has a quite flippant view
- Zura Reports
- Mark Randazza
- Robert Ambrogi

JW.000010

Posted by Dennis Crouch | Permalink

Comments

TT seriously needs to grow a pair and open up to the public again. That's the only thing bad you'll probably ever hear me say about TT. A job's a job, fame, on the other hand ... I mean seriously, to be so instrumental in generating awareness of the troll agenda is to be awesome. You know that guy's site was not far below Denise's here in readership. If he'd spruce it up, who knows?

Oh, and not only grow a pair, but rock those two's worlds for dragging him into court.

Oh, and yeah, I can only hope it is in the midst of a split, but it's probably more like a small fragment breaking away until more recognition is gained.

Posted by: examiner#6k | Mar 12, 2008 at 12:04 AM
My bad on that typo Dennis.

Posted by: examiner#6k | Mar 12, 2008 at 12:06 AM
Doesn't look like the complaint is linked.

I enjoyed reading TT - I remember that story about someone suing on a patent that hadn't issued, but didnt know it was a case involving Cisco . . . interesting . . .

Posted by: random.examiner | Mar 12, 2008 at 12:49 AM
Where's the defamation, and where's the damage? These guys are litigators, they're not so thin-skinned as to be offended by a post in which they're not even named, and I doubt that the TT post put a dent in their business. This is a frivolous suit designed to squelch our first amendment rights. I hope Rick Frenkel and Cisco wipe the floor with them, but the suit was filed in daddy's backyard, so who knows?

Posted by: Defender of the first amendment | Mar 12, 2008 at 01:42 AM
My first thought was perhaps Messrs. Ward and Albritton should give this a rest. Then again, if they know they didn't do what they're accused of, I could see how they might want to clear their names.

I hope you two and Mr. Frenkel can just have a conference call, figure out what really happened, anyone in error should publicly apologize, and you all go on with your lives.

Posted by: Andrew Dhuey | Mar 12, 2008 at 01:46 AM
By the way, Dennis, regarding your point about anonymous commentators, I suggest that others consider using their real names (like Dennis & me!). Knowing that your name will follow your words makes you more honest and polite.

Posted by: Andrew Dhuey | Mar 12, 2008 at 01:51 AM
Why doesn't the US deal with the scourge of patent trolls by enacting a working requirement, as is the case in other countries? For example, the Patent Act could be amended so that a patentee must commercialize an embodiment of the invention within 36 months of issue, or lose the patent. This would encourage trolls to seek licensing deals rather than becoming rent-seekers.

Posted by: Robert | Mar 12, 2008 at 02:22 AM
Well, listen to that Dhuey speaking truth tonight. With the possible exception of the anon part.

Posted by: examiner#6k | Mar 12, 2008 at 02:43 AM
Robert, I'll answer politely what others will probably flame you about: there are those who would tell you that they're too small to commercialize their technology (e.g. an improvement on MS Windows; they're not going to develop their own OS) or they've tried to license their technology, but the big boys won't play. So in some cases, a working requirement like you've proposed would not only work against solo inventors or small companies who lack the wherewithall to commercialize their products, by taking their rights from them (after they've upheld their end of the bargain by disclosing their invention in a patent), but would actually be an incentive for big players refuse to take a license (or draw out negotiations interminably), since in a few years' time the patent would be dead anyway for lack of working by the inventors.

Posted by: Flame On | Mar 12, 2008 at 02:46 AM
Well, I've had a look at Albritton's and Ward's bios, and I can tell you these are two fine suits. They are not the kind of porcine puckerballs who would ever consider filing a SLAPP suit against anyone, and their bios say they graduated from law school, so they could not possibly be daft enough to file a patent infringement suit before the patent even issued.

Just because the complaint in case 5:07-cv-00156-DF-CMC is ECF-dated "10/15/2007" and alleges the subject patent issued "October 16, 2007," and has their names on it doesn't mean a thing.

BTW, is this the same court in which the hamburger farmers went after Oprah with a SLAPP?

Ah cain't wait 'til our favorite cleft-toed troll, JOAI, checks in on this one.

Posted by: BadMoonRisin' | Mar 12, 2008 at 04:40 AM
I'll take your challenge FlameOn. Little guys, learn to code an OS? It should take them about a week, tops. No, really, assuming they could code the "invention" at all, and it wasn't just an abstract idea they hadn't even tried to make, then it should take about a week of concerted effort to make a crppy little OS and integrate, tops, if you're kind of slow and stupd. Don't want to spend the time? Too bad. It has been held for far too long that sitting on the "invention" is the "right" of the patent holder, many times holding a patent on subject matter which is questionable as to being a valid "invention" to begin with. The guy above's idea, limited term without a working model is one amongst many ideas for change. And, let's be honest, it's one of the more reasonable ones. If the big boys don't want to play after 3 years, your idea probably isn't that great anyway, fyi.

Posted by: examiner#6k | Mar 12, 2008 at 04:45 AM
Ward's complaint is about as lame a defamation suit as I've ever seen. The TT excerpt he alleges is defamatory doesn't refer to Ward at all, not even tangentially.

If anything tends to "expose [Ward]to public hatred, contempt or ridicule" it's being the named plaintiff on this SLAPP suit.

And somebody has an ethics problem here. According to Dennis, ESN is now claiming it filed the suit on 12:01 AM Oct 16, 2007. But the TT piece says the Civil Cover Sheet signed by Albritton states the suit was filed on October 15, 2007. Obviously, one of these statements is not the truth.

Posted by: BabelBoy | Mar 12, 2008 at 05:17 AM
I can't find Albritton's complaint anywhere. Dennis' link is dead and Zura links only to Ward's.

Albritton's Civil Cover Sheet in the ESN suit is dated "10/15/2007," OK. But I'm not sure that means he filed on that date. That's the date of the signature. Surely there is a digital record of the precise time of filing.

Here's what the Pacer docket entry says:

COMPLAINT against Cisco Systems Inc, Cisco-Linksys LLC (Filing fee $ 350 receipt number 1298562.), filed by ESN LLC. (Attachments: # 1 Exhibit A - Part 1# 2 Exhibit A - Part 2# 3 Exhibit B# 4 Exhibit C# 5 Civil Cover Sheet)(Albritton, Eric) Modified on 10/17/2007 (fnt,). (Entered: 10/16/2007)

The "Modified on 10/17/2007" becomes exceedingly interesting.

Posted by: BabelBoy | Mar 12, 2008 at 05:35 AM
I'm curious - what color is the sky on Planet #6K?

Posted by: elgobix | Mar 12, 2008 at 05:49 AM

JW.000011

elgobix: whatever color mom painted his/her basemement ceiling.
//I'm kidding!!//

#6K and Robert: It is all about comparative advantage. It is simply more efficient to let an R&D shop specialize in R&D...regardless of size.

Whether you are a university or a handful of really smart folks who just want to leave BigCorp. and do R&D on their own, your plan to force commercialization in 36 mos. prevents them from existing.

#6k can wave his/her hands around and say "write an operating system" all you want, but that is a horrible misuse of the R&D shop's time and money, which would be better spent inventing more cool stuff....and completely n/a in many if not most technology areas. ("hey, we invented a great new fuel injection controller....let's go build an automobile factory so we can patent it!")

BTW, #6k & Robert, how do you address assignments in your world? Does the original inventor have to commercialize or just the assignee? Which assignee?

What if a "troll" buys a patent from BigCorp who has commercialized the technology, and gives them a non-exclusive license. Is the patent invalid unless "troll" commercializes the invention again in 36 mos?

What if an inventor sells his patent to a "troll", who turns and sells it to AT&T, who wants to commercialize it. But it's already been 35 1/2 months. Who has to commercialize it and when?

And what is "commercialization?" How many widgets (assuming the invention fits into widgets) do they have to build and sell? 1? 1M? Maybe #6k should write the perfect OS and see how many copies sell.

At that point you'll find out why MS's business model no longer relies on patents – the network effect has taken over as the barrier to entry for competition.

I don't think you two have thought your cunning plan through.

Posted by: Anon E. Mouse | Mar 12, 2008 at 07:58 AM
This comment responds to "gauntlet picker-upper's" comment on this thread:

http://www.patentlyo.com/patent/2008/03/pharma-prosecut.html#comment-106597136

Posting here seems more appropriate and I wouldn't want to disappoint BadMoonRisin' (by the way, how did you know about my toes?).

Dear gauntlet picker-upper,

Thanks for picking the gauntlet upper.

Your arguments are sound.
With all due respect however, logically, here's the thing:

Essential to THE LOBBYING DISCLOSURE ACT OF 1995 is THAT
the WHAT without the WHO is not in compliance. I am not saying you are wrong, but, I see another sound interpretation of the Act:

http://lobbyingdisclosure.house.gov/lda.pdf

Is it not reasonable to argue that the WHAT without the WHO is unlawful? –
THE LOBBYING DISCLOSURE ACT OF 1995 is crystal clear about its purpose, i.e., in simple terms, the Act mandates PUBLIC DISCLOSURE OF WHO IS LOBBYING FOR WHAT.

The language of the ACT itself puts it this way:
"Section 2 (3) the effective public disclosure of the IDENTITY and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of Government actions will increase public confidence in the integrity of Government." (emphasis added).

When Cisco's Director Tricky Rick publicly admitted on Cisco's Troll Tracker Blob that:

"I have received 30,000 visits ... My readers include those from the Senate and House of Representatives, the Patent and Trademark Office"

Tricky Rick KNEW that Cisco's

"electronic communication" was getting TO "a covered executive branch official or a covered legislative branch official ... on behalf of ... [Cisco] with regard to the formulation, modification, or adoption of Federal legislation (including legislative proposals)"

THE LOBBYING DISCLOSURE ACT OF 1995 specifically says this about that:
"(8) LOBBYING CONTACT.—
(A) DEFINITION.—The term "lobbying contact" means any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to—
(i) the formulation, modification, or adoption of Federal legislation (including legislative proposals);"

• • • • •

Next, regarding the definition you discuss in "(10) LOBBYIST.—" that seems to quite clearly say, if you don't lobby more than 20% of your time, you are not a "lobbyist," and therefore (the implication is), you don't need to comply with the THE LOBBYING DISCLOSURE ACT OF 1995.

I'm at a loss – I don't know how to figure this. Assuming this "lobbyist" definition in the Act is controlling and not in tension with another part(s) of the Act (there may in fact be such conflicts), Cisco, or anybody else for that matter, could do all the anonymous lobbying it wants to do if it uses only part-time lobbyists. On the face of it, this Act would therefore have built in means to skirt the Act and thereby subvert its crystal clear purpose, PUBLIC DISCLOSURE OF WHO IS LOBBYING FOR WHAT.

"That don't make no sense," as Pete (John Turturro) might say, or, "That would be dumber than a bag of hammers" as Everett (George Clooney) might say in "O Brother, Where Art Thou?," a very funny movie with enchanting music and fascinating dialogue, and with a tagline, "They have a plan, but not a clue."

In the occasional business patent licensing contract I have entered, I recall seeing something to this effect – if parts of this Agreement don't hold water the rest still stands. Could this be what is in part meant by the Spirit of the Law? I mean, don'cha wanna know WHO IS LOBBYING FOR WHAT to increase public confidence in the integrity of Government? If our government is broken, how else are We the American People gonna have a prayer to fix it?

More importantly, who's to say that Cisco Director Tricky Rick's other IP duties at Cisco don't directly and or indirectly relate to his anonymous lobbying for Cisco's patent reform agenda?— Cisco got their patents now Cisco wants to close the patent barn door behind them, leaving many of us self-employed inventors in a lurch. "'Tain't fair," I say, "'tain't fair."

• • • • •

Next, again with all due respect, you asked about a distinction between Cisco's Tricky Rick and a journalist:
"Unless you have found a distinction between PTT and other writers that is not based on the fact that PTT hid his identity?"

What do you think of this distinction?: An honest-to-God Journalist doesn't go around lobbying for a particular corporate agenda while steadily disparaging and defaming a particular class of inventors on a Blob set up for that corporate lobbying purpose. If s/he did do that, shouldn't s/he register (and thus reveal his or her identity) in accordance with THE LOBBYING DISCLOSURE ACT OF 1995?

To a demonstrable extent, our three branches of government have been hijacked by Organized Big Business, OBB – lobbying is a favorite and effective tool to accomplish such hijacking. Our government dances too much to the tune of OBB. In accordance with the United States Constitution, our three branches of government are meant to serve We the American People. The problem, as I see it, is that OBB has lobbied our government away from the Constitution – we are to a large extent off our Constitutional Standard.

The preamble of the Declaration of Independence says:
"Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government."

Fortunately, We the American People do not need new government – all we really need is to go back on the Constitutional Standard. I could be wrong now, but I don't think so.

• • • • •

And lastly, I want to say Thank You Mr/s. "GAUNTLET PICKER-UPPER" for your astute analysis with which I respectfully disagree. The more views I see the more armed I will be to pursue for me and We the People of the United States a more perfect Union, the reestablishment of Justice and the promotion of the general Welfare, and to secure the Blessings of Liberty to ourselves and our Posterity, and, mostly, to

RECONSTITUTE THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

I wonder which way Attorney General Michael B. Mukasey will lean? Anybody? Anybody? Bueller?

Please watch www.youtube.com/watch?v=l_Twc1jURn4
and wish me luck & success on my Quixotic journey.

PS:
As memory serves, O'Henry's legendary Cisco Kid was a good guy & wore a big white hat, Just like the Lone Ranger. Tricky Rick, in my humble opinion, is a Dirty Rick (rhymes with Dirty Dick), and this Dirty Rick sold out We the American People and our strong patent system for Cisco's shameful agenda, "greed-at-all-cost." It makes me, a Red, White & Blue American through & through, who remembers Pledging my Allegiance to America every day in school, wanna' puke.

More PS:
My personal advice to Tricky Rick – Find lawyer, discuss Sarbanes-Oxley Act of 2002, goto DA ASAP and cut a deal. Do it anonymously (you have experience at that) – do not tell anybody, do not risk Cisco finding out prematurely. Mortgage your house if you have to but get the best attorney extant for your dilemma.

This is Jaoi(TM) and I (holding my breath on bended knees with head raised, hands folded) approved this message; heck, I wrote this message, and, God willing, I will write more.

Posted by: Just an ordinary inventor(TM) | Mar 12, 2008 at 08:14 AM
Dear BadMoonRisin',

I hope I haven't disappointed you with my views above. BTW, FYI, by most all definitions of "troll" I've read, I am not a troll. If that fact disappoints anyone, they can take a flying kite.

From my vantage point, far, far more self-employed inventors have been screwed by OBB compared to those few who have abused our strong American patent system. The patent reform that has been proposed is like using a nuke to kill a mosquito.

Posted by: Just an ordinary inventor(TM) | Mar 12, 2008 at 09:01 AM
JAOI,

I think that your reasoning is flawed in at least one respect. I agree, PTT may know that covered officials are reading his blog. But, you're assuming he made them read the blog, versus their voluntarily reading it. Under your reasoning, he became a lobbyist because a covered official read the blog. In other words, he falls under the LDA because of someone else's actions, not his own. That's not fair, to say that PTT falls under the LDA if he can't control the other person's actions to ensure he doesn't fall under the LDA. If you say, "he didn't have to write what he wrote," well, now you're taking away his right to free speech and his freedom to publish. That is known as a chilling effect, and I don't think you want to go there.

Think to before PTT makes his blogpost. What actions can he affirmatively take to prevent himself from falling under the LDA, besides not posting at all? Let me know what actions you think of and we can go on from there if you like. Something that might be related would be caselaw on personal jurisdiction based on the Internet. The same actions taken to limit personal jurisdiction might help with analogous actions for PTT to take to not fall under the LDA. The only thing that comes to the top of my mind is a disclaimer that says, "this website is intended only for residents of Missouri" is a good argument for personal jurisdiction only in Missouri. A disclaimer that says, "this blog is not intended for covered officials to read" might help, but it doesn't prevent such officials from reading, which act would presumably be the trigger that makes him fall under the LDA, and then we're back to the problem described above.

As to the 20% test, I think it means that Congress only wants the LDA to apply to certain people. For example, Congress does not want it to apply to ordinary people like you and me who might call their representative's office multiple times a year expressing their views on abortion, taxes, patent reform, crime bills, etc. I don't think you or I want it to apply to those kinds of conversation either. I think under the LDA those telephone calls would be considered lobbying contacts (not sure; are you your own client when representing yourself?). Congress may not want it to apply to groups who spend time on only one issue, e.g. the AIPLA writing a position paper on patent reform, but only once and the position paper gets sent to all 535 Congressional members.

As to your distinction between PTT and a journalist, I submit that your distinction is based on whether or not you agree with the agenda/purpose. That would be a content-based distinction, which I admit is different from identity, but does not go to the heart of deciding who should be registered as a lobbyist and who shouldn't. For example, again, certain newspapers / magazines are regarded as being conservative or liberal. Does this mean all of their writers / editors should be forced to register as a lobbyist? If you review First Amendment law, you'll see that content-based restrictions on speech are very disfavored.

Posted by: gauntlet picker-upper | Mar 12, 2008 at 09:15 AM
Does Ward Jr. practice before Ward Sr.? Conflict?

Posted by: Student | Mar 12, 2008 at 09:16 AM
Besides being an uncivilized basis of debate, derogatory references to "patent trolls" are a one-sided attempt by users of technology to avoid paying fair and equitable economic rent.

No-one would suggest the owner of an apartment building be forced to stop charging rent because she does not live there, but holds the building for investment. Yet in economically identical situations those like this fellow from Cisco, and many others with similar axes to grind avoid meeting issues by labeling technology investors with a disparaging epithet.

Although the context is of course different, the procedure is as intellectually dishonest as when some people with unpopular ideas were called "communist" decades ago, so those with opposite views could avoid debate on any merits.

I think disparagements like "troll" should be banned from this forum. If there are economic or legal matters that arise from entities investing in patents, let us debate them on the merits like ladies and gentlemen.

Thank you.

Posted by: Phil Marcus | Mar 12, 2008 at 09:27 AM
Dear Phil (if I may be so familiar),

So elegantly and compellingly put. Dr. Phil himself couldn't have said it any better. Thank you, you've made my day++.

Posted by: Just an ordinary inventor(TM) | Mar 12, 2008 at 09:40 AM
LOL - Howrey wont represent trolls! I guess trolls cant afford their fees and I kinda doubt they take cases on contingency.

Posted by: me | Mar 12, 2008 at 09:56 AM
"Does Ward Jr. practice before Ward Sr.? Conflict?"

He practices in the same district, but not before his father. I've seen him before Judge Folsom, in Texarkana. If you want to be in the ED Texas, but don't want Judge Ward, then hire Ward Jr.

Posted by: Leopold Bloom | Mar 12, 2008 at 10:33 AM
I don't know that hiring Ward, Jr. would keep you out of Ward's courtroom. Perhaps the Canon of Avoiding the Appearance of Impropriety would help, but I don't know that there's another bar that would keep the two Wards apart.

Posted by: Jud | Mar 12, 2008 at 10:45 AM
Anon,

What you've described does not appear to occur within the chem/bio fields where I practice. If a small entity develops a new drug delivery method, Big Pharma companies usually fall over themselves to strike a deal with the small inventor. Competition among the drug companies drives the process, not the threat of litigation.

Besides, if a so-called inventor's contribution is so marginal that it garners the interest of only 1-2 potential licensees, then I dare say that he/she has probably not come up with something that's worthy of statutory protection.

Also, I'm just throwing out the idea of the working requirement as a seed to spur further discussion. I do see it as a good way of distinguishing small biotech inventors from small EE inventors. Biotech inventors typically seek to start companies and commercialize the technology, while small EE inventors prefer to sell their inventions to trolls who will line the pockets of patent plaintiffs' lawyers.

Further, the comparisons to common law real property interests are inapposite. Under the common law, ideas receive no protection! The Patent Act is nothing more than a limited, narrow statutory estoppel scheme that carves out an exception to the common law's default rule of no protection. Therefore, trolls might more aptly be compared to squatters than to fee simple owners.

Posted by: Robert | Mar 12, 2008 at 10:47 AM
Dear gauntlet picker-upper,

Thanks for picking the gauntlet upper again.

Re: "I think that your reasoning is flawed in at least one respect."

Your argument is again sound in one respect, however, with all due respect, another, less flawed interpretation is even more sound and persuasive.

A lot depends on what the meaning of "to" is is in THE LOBBYING DISCLOSURE ACT OF 1995:
"(8) LOBBYING CONTACT.—
(A) DEFINITION.—The term "lobbying contact" means any oral or written communication (including an electronic communication) TO a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to— (emphasis added)
(i) the formulation, modification, or adoption of Federal legislation (including legislative proposals);"

You say: "That's not fair, to say that PTT falls under the LDA if he can't control the other person's actions"

If Cisco's Tricky Rick wrote a lobbying letter or sent a lobbying email TO a covered government official, he still couldn't control whether or not that official would read the lobbying letter or open the lobbying email. So, materially speaking, what's the diff?

With all due respect, your other arguments beg the question and begin to sound like "lawyer's arguments" (a pejorative used be Judge Bryson during the oral argument in Gillespie v Dywidag).

For example, journalists don't set up Blobs for the purpose of disparaging and defaming a particular class of inventors while lobbying for their employer's patent reform agenda.

Posted by: Just an ordinary inventor(TM) | Mar 12, 2008 at 10:58 AM
Dear gauntlet picker-upper,

Please allow me to add this:

In regard to controlling what others may or mayn't read, in Cisco's Tricky Rick's case, he specifically said that:

"I have received 30,000 visits ... My readers include those from the Senate and House of Representatives, the Patent and Trademark Office"

Thus, it would seem an otherwise conceivable "he-had-no-control" argument is of no present moment.

Also, you ask:
"What actions can he affirmatively take to prevent himself from falling under the LDA, besides not posting at all?"

After checking with Cisco's counsel, Tricky Rick should have registered to be compliant with THE LOBBYING DISCLOSURE ACT OF 1995. The essence of that Act is THAT the WHAT without the WHO is not in compliance.

In sum, Congress passed an Act that mandates We the American People are entitled to PUBLIC DISCLOSURE OF WHO IS LOBBYING FOR WHAT. Cisco violated that Act in a rather contemptible in-your-face way, and I'm "Mad As ... [HECK] and I'm Not Going TO Take It Anymore."

Posted by: Just an ordinary inventor(TM) | Mar 12, 2008 at 11:30 AM
Good for Ward. The patent troll term itself - as now used - is a defamatory term designed to incite bias and prejudice legal proceedings. As the invective in the pleadings of the serial infringers heats up, the people involved are forgetting that creating or repeating the invective outside a pleading (immunity) could subject them to defamation suits - i think the term of art is drinking your own bath water. All this IMO is double bad in that TT was employing subterfuge - feigning disinterest in the outcome of the case - and yet as we now know hoping to advance an agenda (venue selection in patent reform perhaps?)

As to some of the other comments - American law, with of course some huge black eyes of the past - at its best - seeks to afford all citizens equal protection under the law - it's not just an amendment but a philosophy and practically hardcoded in our societal DNA. I respect that fact that the globalization (AKA Chinese military-industrial agenda) are acting in there own economic self interest to demolish IP rights in the US. They need to respect the fact, that people are going to call out not just the extremely damaging effects of their agenda to the US but also their tactics to influence public and unfortunately some judicial opinions as well.

Posted by: iwasthere | Mar 12, 2008 at 12:01 PM
Just to add to the silly LDA argument because I have some spare time. The act specifically states that:

(B) Exceptions
The term "lobbying contact" does not include a communication that is—

...

(iii) made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication;

I'm fairly certain a blog would fall under this. Also ths shows that the intent of the act was mainly disclosure of personal contacts.

Posted by: Raoul | Mar 12, 2008 at 12:04 PM
Dear iwasthere,

It's as if you are reading my tea leaves in some regard.

Thank you, you too have made my day++.

You too (i.e., you & Phil) are brilliant. It is a shame not everyone sees the bigger picture, and the extreme value a strong patent system affords We the American People.

Posted by: Just an ordinary inventor(TM) | Mar 12, 2008 at 12:17 PM
Robert :: "Also, I'm just throwing out the idea of the working requirement as a seed to spur further discussion. I do see it as a good way of distinguishing small biotech inventors from small EE inventors. Biotech inventors typically seek to start companies and commercialize the technology, while small EE inventors prefer to sell their inventions to trolls who will line the pockets of patent plaintiffs' lawyers." and KSR was about pedals ...

drug companies have a ready market with little to no price competition ... and certain guarantees that the us govt will not purchase cheaper manufactures from other countries, even as they are the biggest "client" ... with price competition from, say, canada would your theory still hold true? or, could it be that the fda is a gateway to commercialization and big pharma has the muscle to get the approvals (they still fight tooth-and-nail against generics -- lining the defendants bar quite nicely) ... but without real price competition or even network effects ... how can you generalize about a specific inventors intentions or even their passion?

however, what is a "small ee inventor"? there have been several threads about gilbert hyatt -- does he qualify? what about steve pearlman? (webtv, quicktime - at apple) have you ever been to an "ee"-type industry standards meeting? have you counted the number of small inventors?

but the leap between the two businesses should have nothing to do with the preferred exit by either "type" of inventor ... least of all driven without regards to a tangible return ... big pharma is in favor of patents and is able to collect perhaps better rent under their existing model (that may not hold true as you can see in foreign countries that reject patent protection for certain drugs -- see thai govt response recently to drug patents) ...

ee-types have a very competitive market for which the exits are not as clear ... and monopsonist purchasers versus a troll? a negotiation in the ee-type world is not too often unlike the following "hi, we're interested in your house" "well, i dont want to sell at that price" "okay, well we just burned your car so are you willing to sell now?"

would it not also be the case that ee-type inventions (presumably the ones that go to trolls - but that is hardly clear - the market in IT is so large why wouldn't there be more legal activity?) get better returns than from a vulture capitalist or a private-- pay me 20% no matter what --equity firm ... what companies in the ee-type world are engaged in active m&a? what are their stances vis-a-vis patent reform? what about biotech? overly simplified and for example only :: vioxx is expensive aspirin -- how do we price it? what "incremental value" is measured versus the demands of the ee-type patent reform proponents?

the patent system should be industry-neutral ... if ksr can apply to any invention in determining obviousness ... ee-types and biotech-types can hardly be hived into pro-troll or anti-troll camps ...

Posted by: ironicslip | Mar 12, 2008 at 12:22 PM
Dear Raoul,

Please read the whole LOBBYING DISCLOSURE ACT OF 1995.
By taking a part of the Act out of context, you skew its interpretation.

In context, Congress passed an Act that mandates We the American People are entitled to Public Disclosure of WHO is Lobbying for what.

In context, the Act first articulates and then presupposes Public Disclosure of the WHO, i.e., PUBLIC DISCLOSURE OF THE IDENTITY. Here is what the Act says (verbatim but with emphasis):

"... the effective PUBLIC DISCLOSURE OF THE IDENTITY and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of Government actions will increase public confidence in the integrity of Government.
...
made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication;"

By lobbying anonymously, Cisco violated that Act in a rather contemptible in-your-face way.

With all due respect, your "lawyer's argument" begs the question.

Thank you Rauol for allowing me another opportunity to voice my opinions. The more views I see the more able I will be to help our nation

RECONSTITUTE THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

Have you seen www.youtube.com/watch?v=l_Twc1jURn4

Please wish me luck & success on my Quixotic journey.

Posted by: Just an ordinary inventor(TM) | Mar 12, 2008 at 12:46 PM
JAOI,

"If Cisco's Tricky Rick wrote a lobbying letter or sent a lobbying email TO a covered government official, he still couldn't control whether or not that official would read the lobbying letter or open the lobbying email. So, materially speaking, what's the diff?"

The material difference is that if PTT writes a letter TO the covered official, he is writing specifically TO the official. When the official reads a letter written to nobody in particular that expresses an opinion, he is not writing specifically to the official. It's like collateral damage; I mean to hit a particular building, not the ones next to it.

"After checking with Cisco's counsel, Tricky Rick should have registered to be compliant with THE LOBBYING DISCLOSURE ACT OF 1995."

As I'm sure you realize, this action does not keep PTT from falling outside of the LDA. Perhaps you and I should register as well, just to be safe? After all, we may be trying to influence a covered official to bring federal criminal charges against PTT for not registering as required by the LDA. You never know who's reading this blog.

As for lawyer's argument, that doesn't make the argument wrong. It means you have no response to it.

I agree that the spirit of the law and the letter of the law are two different things, as you seem to as well. In the realm of the First Amendment, the letter of the law matters because we the people don't want chilling effects where people are afraid to speak because they don't know if what they say will cause them to get sued. Take a look at www.chillingeffects.org .

Posted by: gauntlet picker-upper | Mar 12, 2008 at 01:18 PM
JAIO,

Rick is not in violation of the LDA for anything he blogged. Period. Any such argument would be thrown out immediately. There is no gray area here.

Posted by: Lionel Hutz | Mar 12, 2008 at 01:19 PM
Working requirements in other countries lead to licences of right if the invention is not worked, NOT loss of the patent. I am all for licences of right, but suggesting invalidation instead of that is frankly outrageous, and displays a transparent pro-large corporation agenda.

I am a patent agent, not a small inventor, but I have done work for many of the former, and I feel the system is stacked against them enough without such a flagrant attempt to gut their rights.

Posted by: Alun Palmer | Mar 12, 2008 at 01:42 PM
"If anything tends to "expose [Ward]to public hatred, contempt or ridicule" it's being the named plaintiff on this SLAPP suit."

Yup. It takes a certain kind of, um, personality not to recognize such basic facts.

Like everyone else on earth, I barely noticed and immediately forgot the initial incident. But, hey, let's talk about these doofusses some more, by all means.

Posted by: Malcolm Mooney | Mar 12, 2008 at 01:51 PM
Dear Lionel Hutz,

With all due respect, unless you point out some rational, how am I to respond?

I believe Congress intended the LDA of 1995 to afford We the American People public disclosure of who is lobbying for what. That's a good thing; why do you suggest cutting it short of its intended purpose?

• • • • •

Dear gauntlet picker-upper,

Thanks again for your input. Yes, I agree – you raise some legitimate concerns.

However, my "boss" (my wife) insisted I turn my attention to another matter for the moment, but I will respond eventually. (Our son is home from college for the week.)

Posted by: Just an ordinary inventor(TM) | Mar 12, 2008 at 02:03 PM
Obviously this is having the desired chilling effect. Someone should mention that this suit is a dead loser and, therefore, borders on the frivolous. Two lawyers filing complaints in federal court are limited public figures, and Troll Tracker made reasonable inferences about a serious matter of public concern (i.e. possible alteration of judicial records). There is no plausible case of actual malice as required under NY Times v. Sullivan.

Now the thing to do is to remove to federal court on the basis of diversity, and the disqualify all the judges there based on the fact that the subject-matter of the case is an insult to each and every one of them, so obviously it would be inappropriate for them to sit on a case of whether E.D. Tex. is a "Banana Republic."

Posted by: anon | Mar 12, 2008 at 02:13 PM
Hey, Why doesn't Blogmaster delete Troll Tracker's defamatory post the way he deletes my ocasional offensive post? I am being chilled

Posted by: Budge | Mar 12, 2008 at 02:17 PM
JAIO,

(1) You completely ignore the intent of the law and rely upon the letter of the law

(2) Your interpretation of the letter is flat-out incorrect. I was trying to avoid being so blunt.

As Raoul pointed out. None of the Troll trackers blogging actions establish him as a lobbying contact.

In court, "I would simply say, the plaintiff has not established his case your honor" and move for dismissal of that count (or whatever you all the separate charges in a trial) and as a good defense attorney I would not bother making any positive argument unless I had too.

Posted by: Lionel Hutz | Mar 12, 2008 at 02:30 PM
To All,

If he did actually accuse the law firm of having their papers redated by the Texas Court and they did not, couldn't that be libel if it is not in fact true? Granted, it may be debateable whether it was a reckless disregard for the truth and their damages are nonexistent, but TT may have committed libel in that instance.

Posted by: Lionel Hutz | Mar 12, 2008 at 02:34 PM
JAOI,

I realize I screwed up the acronym in my last few posts. My bad.

Posted by: Lionel Hutz | Mar 12, 2008 at 02:35 PM
"Although I have not always agreed with Frenkel's opinions, he has been a great addition to the public debate over patents and patent reforms."

Frenkel would have to be completely out of his mind to start up the blog on a public basis again. One voice in an important debate has been silenced.

Looking at the complaints filed by Ward and Albritton, I note that they have alleged actual damage. Discovery and cross-examination on that should be fun.

Posted by: big hairy rat | Mar 12, 2008 at 02:50 PM
Out of curiosity, is there a jurisdictional issue is this case? Does the Banana Republic of the Eastern District of Texas have jurisdiction over a California resident for blogging? I noticed the complaint cited a Texas code mandating venue but that doesn't address the jurisdictional issue. Alternaticely, would TT's role as IP counsel in that previous case meet the "minimum contacts" requirement?

Posted by: Raoul | Mar 12, 2008 at 03:22 PM
It appears they sued Richard Frenkel, not Rick Frenkel. The two cases were filed February 27, 2008 (case number 2007-2502-A) and March 3, 2008 (case number 2008-481-CCL2). The February 27, 2008 case was filed in the 188th District Court, Gregg County, Texas and the March 3, 2008 case was filed in the County Court at Law #2, Gregg County, Texas.

The dockets for these two courts can be found at
http://www.co.gregg.tx.us/countyguide/forms.asp

It is interesting that two lawsuits were files in separate courts.

Posted by: Luoar | Mar 12, 2008 at 03:56 PM
Some of the cases in this area have the Plaintiff (1) suing "Doe" defendant in an effort to compel the internet blog site to reveal the name of the poster and (2) suing the internet blog site itself. The Doe defendant (or Does 1-100 defendant) route seems like a pain in the behind 'cause the pre-name disclosure litigation gets bogged down in whether a particular communication is actionable as defamation and, once that is resolved, it still is a far ways away from actually finding out the name of the person behind the "Doe". And if the name finally is determined, that defendant now has a road map to the Plaintiff's defamation case even before being brought into the lawsuit. The lawsuits against the internet blog site itself don't seem to work 'cause the Communications Decency Act of 1996 offers Web hosters some protection.

Posted by: Piddlefifth | Mar 12, 2008 at 04:21 PM
This one is spreading fast: From the IPO Daily news:

IP SUITS -- Compiled from newswire reports and other sources:

Two lawyers practicing in the Eastern District of Texas, Johnny Ward, Jr. and Eric Albritton, have filed a defamation suit against Cisco Systems, Inc. and Rick Frenkel, an employee of Cisco. Until recently, Frenkel operated an anonymous web site known as Patent Troll Tracker. (Dennis Crouch, Patently-O web site.)

Posted by: Anonymous | Mar 12, 2008 at 05:11 PM
anon :: loser to whom? david needs goliath ... or he does not become king ... the relevance of TT can be measured by the reasons they shut it down (the fuiture value? if the patent reform act does not go through because this makes the senate feel uneasy ... what is the worth then?) ... but now that the coalition has decided it will not compromise on damages calculations; and the 15 minutes of fame is turning into consequences for TT and cisco (presumably without any detailed statement that has come to light); TT's accounting credentials have been undermined (what is the cost of the shindig on the enterprise value of cisco? goodwill? political capital spent? how about the lawyers famous for taking on the TT?) ...

i dont see the hair on this deal coming off to quick given the number of people who are connecting dots ...

the relevance of the TT Blog has now moved on ... money you want those carnie tix? the site is inaccessible without subscription - easy to prove the blog had 15K of value to niro (he

presumably paid it) to out the TT? the cost to others? as yet to be determined ...

Posted by: ironicslip | Mar 12, 2008 at 07:50 PM
Imagine if you mixed the color of the sky on planet #6K with that of Planet Ornery - probably some amazing mystic hue to which the normal human eye is insensitive, and probably for very good reason

> takes JAOI by the hand...

Jaoi (sounds ~like Joey?) - no-none here, and no sane person anywhere who understood anything about the concepts of invention and patents and patent trolling, would ever, ever accuse an honest-to-goodness independent inventor of being a patent troll. There are, of course, other kinds of troll.

With the indulgence of the commuunity, I will hereby declare and claim copyright in a dramatic scenario comprising:
a weblog
a preponderance of honest-to-goodness professional folk seeking comfort/companionship/help/validation therein
a plurality of potentially/borderline obsessive/psychotic participants thereamong
a spiral into madness and violence

Who's(/re)re the perp(s)?

So many obvious candidates - but what about mild mannered DC himveryself?!?

- coming soon to pollute your mind via every available medium

!!

Mr Scorcese!.. a moment please. Mr. Lynch! Gus! Messrs Coen!!

Anybody...
OK, guess I'll just have to do it myself.

"Niggardly" may have been MM's finest moment, but that was a whole different thread, with swastikas and everything.

}note to self: get a grip

Posted by: elgobix | Mar 12, 2008 at 09:13 PM
Nobody has mentioned that two additional parties are named as Defendants on one of the suits: Google and "John Doe". Google, of course, owns Blogger.com -- host of the TT site. Without seeing the original complaint (filed in Nov. 2007), it's tough to know why, but I suspect that it was to force Google to reveal "John Doe's" identity. But if it somehow implicated Google as responsible with respect to the speech itself, it would be a true attack on the forum. Talk about chilling...

Posted by: Elfin Magic | Mar 12, 2008 at 10:21 PM
It's all crystal clear now:

Rick makes false and defamatory statements in his anonymous blog about plaintiff's attorneys.
Attorneys get pissed off and file a lawsuit against John Doe and Google in order to subpoena somebody at Google to reveal blogger's registration info.
Subpoena was granted by the judge
Next thing Rick gets an email from one of those guys asking him to publicly unmask himself before judge takes care of it...
Next thing Rick and Cisco get sued
The bounty was never paid

Posted by: angry dude | Mar 12, 2008 at 10:46 PM
Elfin Magic, I don't think Google is feeling very chilled right now. They probably put a junior paralegal on this case, and even this person barely gives it a thought.

Posted by: Andrew Dhuey | Mar 12, 2008 at 11:19 PM
Totally awesome.

A frivolous suit, but awesome nonetheless.

You have got to love the way the U.S. court system can be used to attack your enemies.

Posted by: GP | Mar 13, 2008 at 12:51 AM
Dear Lionel,

With all due respect, remarkably and ironically, you said:
"(1) You completely ignore the intent of the law and rely upon the letter of the law"

That statement alone bolsters my viewpoint; I had been thinking all along that it is YOU (and my new-found friend, gauntlet picker-upper -- may I call you a friend?) who ignore the intent of the law, and it is YOU who rely upon the letter of the law. (That alone makes the area pretty gray, at least for me.)

It is in my opinion absurd to agrue that Cisco's Director Tricky Rick was not purposely acting as a lobbyer for his employer Cisco. If it looks like a duck, quacks, poops, stinks, waddles and has webbed feet Just like a &*#^ing duck, why would you stand there and pee in my face insisting to me that Cisco's Patent Director Tricky Rick wasn't lobbying for his employer? Really, *That just don't make sense. Admit it, we all know the truth, you'll feel much better.*

You then said:
"(2) Your interpretation of the letter is flat-out incorrect. I was trying to avoid being so blunt."

With all due respect, remarkably and ironically, your first comment was this:
"Rick is not in violation of the LDA for anything he blogged. Period. Any such argument would be thrown out immediately. There is no gray area here."

Your first comment is even blunter than your second comment! Not to worry, I'm not inclined to easily take offense, and I'm sure your meant none, but please, come on, gimme a even break.

Please, be more open minded while you read my comments, and then follow the dots, e.g, my continuing comment below addressed to "gauntlet picker-upper" directly addresses your this part of your second comment:

"As Raoul pointed out. None of the Troll trackers blogging actions establish him as a lobbying contact."

• • • • •

Dear gauntlet picker-upper,

Thanks for picking the gauntlet upper yet again.

My point is is, it all depends on what the meaning of what "TO" is, and that is is a lawyer's argument if I ever saw one (just like Billery's argument was was when he lied about getting his jollies in the oval orifice).
Please read my response addressed to Raoul at 12:26PM -- objectively speaking, your and Raoul's argument, and Lionel's as well, is is unavailing, as explained at 12:26 above.

I will also address your (gauntlet picker-upper's) specific thought about Tricky Rick
"... writing specifically TO the official ..."

THE LOBBYING DISCLOSURE ACT OF 1995 specifically says "to", not "specifically to":

Please reread the definition of Lobbying Contact; it does not say "specifically TO"; it simply says "to", to wit:

"(8) LOBBYING CONTACT.—
(A) DEFINITION.—The term "lobbying contact" means any oral or written communication (INCLUDING AN ELECTRONIC COMMUNICATION) TO a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to—
(i) the formulation, modification, or adoption of Federal legislation (including legislative proposals);" (emphasis added)

Just like you cannot add words to a patent claim to change its meaning, you cannot add words to an Act to change its meaning.

Lionel, with all due respect, please note that my argument is solidly and soundly based upon THE INTENT OF THE LAW, upon THE LETTER OF THE LAW and upon THE SPIRIT OF THE LAW (does the "intent" and "spirit" go hand-in-hand?)

As I said above, don'cha wanna know WHO IS LOBBYING FOR WHAT to increase public confidence in the integrity of Government? If our government is broken, how else are We the American People gonna have a prayer to fix it?

By enacting THE LOBBYING DISCLOSURE ACT OF 1995, Congress intended for We the People to know WHO IS LOBBYING FOR WHAT. It is not credible to argue otherwise.

Furthermore, you suggest that,

"As for lawyer's argument, that doesn't make the argument wrong. It means you have no response to it."

No, with all due respect, I disagree – that isn't the intent or meaning of a "lawyer's argument" (unless you mean the argument is so absurd as to not warrant a reply other than "that's bullsh-t").

Your erroneous meaning, for example, is in tension with Judge Bryson's use of the term "a lawyer's argument" (as I pointed out earlier) during the oral argument in Gillespie v Dywidag (I hope this info goes directly to the audio link – if not, it is easy to find):

12/6/2006 2006-1382 Gillespie v Dywidag Systems 2006-1382.mp3

You may disagree with me and His Honor Federal Circuit Judge Bryson but you would be incorrect; His Honor used the term "lawyer's argument" pejoratively (but did not want to be disrespectful or too blunt to an Officer of the Court in open Court) –

His Honor used the term to mean an unavailing bull sh-t argument (let's call a spade a spade) (before attacking me for another, separate reason, please see: www.phrases.org.uk/meanings/83700.html)

(Some of the commenters here (I won't name names but you know who you are) might benefit by reading an under $10 small book on a big subject titled: "ON BULLSH-T" by Harry G. Frankfurt, Professor of Philosophy Emeritus at Princeton University.)
http://press.princeton.edu/titles/7929.html

Here's another BIG thing: If you or I worked for a $35,000,000,000 corporate giant pushing a well-known anti-American patent system agenda, and you or I set up a Blob specifically for the purpose of disparaging and defaming a particular class of inventors while lobbying for his or her $35,000,000,000 employer's patent reform agenda, then yes, of &*%#ing course, we should register under the LDA because to do so anonymously would be unlawful.

Ironically, the website you directed me to www.chillingeffects.org tends to (a) refute your suggestion in this regard and (b) support my opinion in spades (please see above); for example, the website you yourself directed me talks about PEOPLE WITH WEBSITES!, your link says this on the first page (verbatim but with emphasis):

"... offers background material and explanations of the law FOR PEOPLE WHOSE WEBSITES deal with topics such as Fan Fiction, Copyright, Domain Names and Trademarks, Anonymous Speech, and Defamation."

I for one do not have a website. However, I am most thankful Professor Crouch does, and that he allows me to air my passionate patriotic and pro-patent comments in my effort to

RECONSTITUTE THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

For this I should register in accordance with the LOBBYING DISCLOSURE ACT OF 1995?? Maybe so, maybe so. As everyone knows, I am trying passionately to protect my patented and patent pending inventions, and I would like to see the status quo maintained. It doesn't seem American to take the wind out of my patent sails after the fact – that is not justice. Do I make sense? (That is a rhetorical question – of course I do, and you my friend know I make sense.)

Am I getting through to anybody?, anybody?, Bueller?

This is Jaoi(TM) and I approved this message and, God willing, I have more.

Posted by: Just an ordinary inventor(TM) | Mar 13, 2008 at 07:21 AM
JAOI,

I think both you and I should step back a bit and start from the beginning.

Question one: Would you agree with me that Congress wants the LDA to force some people to register as lobbyists, but not others?

If your answer to question one is yes, then Question two: can you accept that your idea of who should be forced to register as a lobbyist might be different from Congress' idea of who should be forced to register as a lobbyist?

If your answer to question two is yes, then Question three: is PTT someone Congress wants to be registered as a lobbyist?

This is the path I wanted to lead you down by looking at the definition of "lobbyist" and "lobbying contact." Never mind the exceptions, which I believe others have pointed to and which would definitely exclude PTT. (I prefer not to rely on exceptions if I don't have to.)

I don't think there's much more to analyze about the LDA. Sure, you can call me a friend, since I'm a patriotic pro-patent American who thinks the little guy gets unfairly picked on in this patent system of ours (except for paying lower fees). Plus, I make my living helping people navigate it.

I think you may have missed the point of chillingeffects.org. Or else I am remembering the wrong website address. My point is that free speech should have, and hopefully does have, wide boundaries and latitude for actions which are disagreeable to us. If you're not being offended by someone's speech or actions here in the US, I would submit that the US is not the place that we the people want it to be. Anonymity is a key part of that free speech, precisely because it is intended to prevent the consequences of the speech from coming back on the speaker.

I would ask you again, because I don't think you've ever answered directly, did knowing PTT's identity change whether or not you agreed with him? If you don't want to answer, that's fine too.

And with that, I think I shall retire from the topic. Patently-O is the blog that made me finally want to post comments.

Posted by: gauntlet picker-upper | Mar 13, 2008 at 08:12 AM
"It's all crystal clear now:"

Yep, perhaps this gives new meaning to TT's "live by the sword, die by the sword" reference.

(I had previously thought that being outed, by itself, could not be construed as dying by the sword/anonymity. Fare thee well, Rick. Perhaps you could use a little Bounty(R) of your own to take care of the mess.)

Posted by: real anonymous | Mar 13, 2008 at 09:55 AM
JAOI,

You are so misguided it almost hurts. What you fail to realize is that you, basically, want to end free speech. You misunderstand not only the letter of the law but also the intent of the law. It's been explained many times to you in this discussion, but you ignore it each time.

Under your formulation of the law, anybody who publicly expresses an opinion is a lobbyist and should have to register, including yourself with your agenda to "reconstitute" the constitution. (which, as far as i can tell, means to get rid of the 1st amendment)

Posted by: Lowly | Mar 13, 2008 at 09:58 AM
Dear Lowly,

With all due respect, which part of this, which I posted above, do you feel is misguided:

Here's another BIG thing: If you or I worked for a $35,000,000,000 corporate giant pushing a well-known anti-American patent system agenda, and you or I set up a Blob specifically for the purpose of disparaging and defaming a particular class of inventors while lobbying for his or her $35,000,000,000 employer's patent reform agenda, then yes, of &*%#ing course, we should register under the LDA because to do so anonymously would be unlawful.

Here's yet another thing:
I believe Cisco's Tricky Rick is entitled to say what he wants on Cisco's PTT blob whether I like it or not, after all this is America, but it is not entitled to anonymously spread propaganda under the guise of a public service – to do that Cisco would have had to comply with the LDA.

What is misguided about that?

Posted by: Just an ordinary inventor(TM) | Mar 13, 2008 at 10:34 AM
Dear gauntlet picker-upper,

Thanks again for your input. I sensed from the beginning you were patriotic and sincere.
I am quite flattered that you picked my comments to make you "finally want to post comments" on Patently-O. I feel special and I will glow happily all day.

You ask:
"I would ask you again, because I don't think you've ever answered directly, did knowing PTT's identity change whether or not you agreed with him? If you don't want to answer, that's fine too."

I would happily answer that question if I could, but I cannot as such because I did not read Cisco's Tricky Rick's Patent Troll Tracker blob before Dennis outed the scoundrel. I confess, I am loyal to Patently-O – I read no other. However, I read enough comments on Patently-O to figure out that if I had been reading the now defunct PTT blob I would have puked over and over again.

But by asking your question, you reveal to me that we have been talking at cross purposes – you missed my point.

What Cisco and its henchmen led by Tricky Rick did was DESPICABLE and UNLAWFUL in my opinion.

Public Corporations have responsibilities that We the People do not have. Public corporations do not have the same rights as do We the People or private entities. While

CaveMan was blasting James Bessen's and Michael J. Meurer's new book "Patent Failure" published by Princeton University Press on another thread
http://www.patentlyo.com/patent/2008/03/do-patents-stim.html#comment-106819200
CaveMan provided a definition of propaganda which I will reprint in a minute.

Being me I must say that, judging from what I browsed on that thread, Messieurs Bessen & Meurer would have done well to read Philosophy Professor Harry G. Frankfurt's book also published by Princeton University Press titled, "ON BULLSH-T" (which I cited above) before they piled it in their book. Some people who write books want to write inflammatory stuff that sells into the current politically correct atmosphere. Such writers tend to be myopic and wittingly or unwittingly miss the bigger picture. If you read "ON BULLLSH-T" you'll see what I mean.
http://press.princeton.edu/titles/7929.html

Be that as it may, I believe what Cisco did was even worst than Anonymous Lobbying –
WHAT CISCO DID WAS PROPAGANDIZED ANONYMOUS LOBBYING PRESENTED UNDER THE GUISE OF A "PUBLIC SERVICE."

CaveMan's definition of propaganda makes the point elegantly:

"'Propaganda is a concerted set of messages aimed at influencing the opinions or behavior of large numbers of people. Instead of impartially providing information, propaganda in its most basic sense presents information in order to influence its audience.'"

"'...propaganda presents facts selectively to encourage a particular synthesis, or gives loaded messages in order to produce an emotional rather than rational response to the information presented. The desired result is a change of the cognitive narrative of the subject in the target audience.'"

"Posted by: CaveMan | Mar 12, 2008 at 10:16 PM "

To answer your
"Question three: is PTT someone Congress wants to be registered as a lobbyist?"

Absolutely – for all the reasons I've presented.

I can also respond to your last question
"... did knowing PTT's identity change whether or not you agreed with him?"
this way: I don't cotton to anyone who fans the patent troll inflammatory atmosphere. When I found out truth, the whole truth, I became increasingly livid as the fraud of what Cisco had perpetrated sunk in – I believe

WHAT CISCO DID WAS PROPAGANDIZED ANONYMOUS LOBBYING PRESENTED UNDER THE GUISE OF "PUBLIC SERVICE."

I must admit, however, that when I first read the LOBBYING DISCLOSURE ACT OF 1995 I did not think I could make the case that PTT should have registered in accordance therewith.

But I put pen to paper nonetheless, and as I picked away at it, it eventually became clear as a bell, that YES,

Congress wants Cisco's propaganda-spreading PTT Tricky Rick to be registered as a lobbyist.

Don't get me wrong, Cisco's Tricky Rick is entitled to say what he wants on Cisco's PTT blob whether I like it or not, after all this is America, but it is not entitled to anonymously spread propaganda under the guise of a public service – to do that Cisco would have had to comply with the LDA.

Like a good patent claim, Congress drafted the LOBBYING DISCLOSURE ACT OF 1995 broadly enough to cover what it wanted to cover to protect We the People from Propagandized Anonymous Lobbying presented under the guise of a "Public Service."

The language of the ACT itself puts it this way:
"Section 2 (3) the effective public disclosure of the IDENTITY and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of Government actions will increase public confidence in the integrity of Government." (emphasis added).

cc: CaveMan

Dear CaveMan,

I hope you approve of my reprinting some of your material.
Thank you for all your posts – you are one of the best commenters on Patently-O.

Posted by: Just an ordinary inventor(TM) | Mar 13, 2008 at 10:42 AM
JAOI is a hacker paid by the USPTO dogs to screw up this blog.

He's doing a great job. Unless you ignore his pre-pubescent, mono-neuronal diatribes it'll just get worse. He hasn't said anything worth responding to anyway.

Posted by: DudeAbides | Mar 13, 2008 at 12:06 PM
Mr. DudeAbides,

What no 50 cent words this time? Do you get paid to advance such drivel? Is your real name Rick? No, but you got his back? Which is it? Come on, you can tell the truth, we all know.

Posted by: Just an ordinary inventor(TM) | Mar 13, 2008 at 12:34 PM
JAOI wrote

"Here's another BIG thing: If you or I worked for a $35,000,000,000 corporate giant pushing a well-known anti-American patent system agenda, and you or I set up a Blob specifically for the purpose of disparaging and defaming a particular class of inventors while lobbying for his or her $35,000,000,000 employer's patent reform agenda, then yes, of &*%$ing course, we should register under the LDA because to do so anonymously would be unlawful."

WHY? Are you saying you anyone who works for a coporation is not entitled to free speech? (Which is not to say, that I believe corporations themselves should be able to fully avail themselves of the First Amendment - I personally believe treating corporations as persons entitled to Constitutional rights was a huge mistake of the SC)

You seem hung up on who the speaker is and it should not matter if it was the CEO of Cisco. It was an anonymous blog. Even if Cisco had an official Cisco blog that expressed all the same beliefs as PTT's, Cisco would not be acting as a lobbyist based upon its blog posts.

Posted by: Lionel Hutz | Mar 13, 2008 at 12:45 PM
Dear Lionel,

Thanks for your comment. Perhaps you can help me find an answer to this question:

If Cisco's Director's Troll Tracker Blob was OK while it was anonymous (at least in the view of some following this thread), why did they have to take it down when it was discovered that Cisco was behind it?

On February 23rd, Cisco's Director Frenkel said this:
"Why blog anonymously? ... I feared that someone would claim to have the patent on blogging, and I might face a retaliatory lawsuit."

If Cisco Director Frenkel's statement were truthful, why would there be any need to take down the Blob?

I mean, whatever the consequences of running Cisco's Blob anonymously may or mayn't be, the damage had already been done. I don't see how the cat being out of the bag could have hurt anything further?

So why did Cisco take down the Blob?

Posted by: Just an ordinary inventor(TM) | Mar 13, 2008 at 01:06 PM
I'm not really picking up the gauntlet again, JAOI.

In response to your questions of 1:06pm, though, I see no suggestion that they HAD to take it down (i.e., involuntarily). If you click on the link to PTT, it says it's only open to invited readers now.

If patent infringement was a concern, though, taking down the blog would limit any damages he might have to pay if he was found liable because he's not infringing anymore.

If defamation were a concern, again, taking down the blog might limit damages since the defamatory text is no longer out there.

This is what the chilling effect is about. Now, even though PTT may not actually infringe and may not actually be defamatory, he's been silenced because he's justifably afraid of being SLAPPed. Look up the definition of SLAPP; it goes hand-in-hand with chilling effect. There's something for you to be worried about.

Posted by: gauntlet picker-upper | Mar 13, 2008 at 03:22 PM
Go with it JAOI, you're on a roll my friend. Just watch the gasket pressure. Remember, sometimes saying less is saying more – especially in a forum like this where most people are more than capable of picking up what you're puttin' down. Plus, you don't want to come off as being part of the lunatic fringe.

Posted by: CaveMan | Mar 14, 2008 at 03:19 AM
And, by the way, thanks for the compliment. I am truly flattered.

Posted by: CaveMan | Mar 14, 2008 at 03:21 AM
Thank you CaveMan, I needed that. You are too kind.

And I thank others as well for their courtesies and patience. It's back to decaf for me.

It reminds me of a fable told to me by a renowned inventor, one of my mentors, back in the 70s, about flying off the handle – stop me if you heard it:

A new psychiatrist, Dr. Fried, is assigned to a mental hospital to do periodic examinations of patients to evaluate whether or not they have recovered and are ready for release.

On his first rounds he examines a patient, Mr. Smyth, who has been committed for many years. Mr. Smyth passes with flying colors – Dr. Fried can find no reason Smyth has been institutionalized for so long and he tells Smyth it will take him a week to arrange for his discharge.

As Dr. Fried is walking to the parking lot to leave for the day, he gets hit in the back of his head with a brick. Lying on the ground, barely conscious, Dr. Fried looks up to see Smyth leaning out a window – Mr. Smyth yells, "You won't forget, will you (;o?)."

• • • • •

Dear gauntlet picker-upper et al.,

Thanks for addressing my questions, and your word of caution.

I think our patent world would be in a better place today if Cisco's Director's Blog had been upfront even if 1995's Lobbying Disclosure Act did not require it to do so. I'd like to think you and others agree about being upfront. Further, I think we are in a better place today now that it is effectively defunct.

I'll add one further thought as to why Cisco took down its Patent Troll Tracker Blog – having been exposed for what it really is, it makes Cisco look bad.

Posted by: Just an ordinary inventor(TM) | Mar 14, 2008 at 08:19 AM
"If Cisco's Director's Troll Tracker Blob was OK while it was anonymous (at least in the view of some following this thread), why did they have to take it down when it was discovered that Cisco was behind it?"

Simple answer - They didn't. They took it down voluntarily. Why? For any of the reasons cited by gauntlet guy or because of simple negative press that would not be good for business.

Fear of frivolous lawsuits is probably large. Particularly fear of being sued (again) for libel (whether actual libel was committed or not) is probably a large reason behind their decision.

Posted by: Lionel Hutz | Mar 14, 2008 at 03:55 PM
Sorry Lionel,

You rationalization doesn't mask the reality of the fact that Frenkel's anonymous shenanigans, which would have been acceptable if he had been a mere poster on a blog such as this one, rose to a whole nutha level (HNL) when he sponsored a blog that denigrated his opponents in litigation. Remember, every lawyer has a duty to avoid an appearance of impropriety. Frenkel has miserably failed at upholding that duty.

I'm not sure why you are apologizing for TT unless you are Dennis.

Posted by: CaveMan | Mar 15, 2008 at 11:47 AM
CaveMan - A agree with you that as lawyers (and patent agents) we have a duty, inter alia, to avoid any appearance of impropriety.

However, I don't think we have a regime that sees a difference between an attorney posting improper statements on his own blog versus an attorney posting improper statements as comments to a blog hosted by another person.

Posted by: Dennis Crouch | Mar 15, 2008 at 12:01 PM
...or something... What I mean is that why apologize for TT? This blog is different from TT in that the author is not director of IP for a large corporation and, in any case, does not discuss particular cases.

Posted by: CaveMan | Mar 15, 2008 at 12:03 PM
I don't know Dennis, I think there is a big difference. An anonymous poster and a blog sponsor, like you, who is not actively engaged in any particular case can only be providing commentary.

Posted by: CaveMan | Mar 15, 2008 at 12:09 PM
Cave Man and Just Another Troll are trying to make mud stick to the wall when it won't.

If I'm defending a client in a law suit, there is absolutely no ethical prohibition against me publishing on the web, in the New York Times, or on Oprah the fact that the complaint was first marked as filed on one date and then marked as filed on a later, critical date, so long as that allegation is true. And it was true in this case.

There is no ethical issue in TT's post, and there is no defamation. The ethical issue arises in filing complaints for defamation (i.e. SLAPP suits) that are unfounded in fact and law.

Posted by: Barney Rumble | Mar 15, 2008 at 12:40 PM
Guys,

I think "an attorney posting improper statements" anywhere is verboten.

Do you think it fair to say a given posting may be improper in one venue but not another?

I'm not sure this pertains to anything specific at hand.

* * * * *

Dear Cisco IP Director Rick Frenkel, Esq:

If memory serves, before you made Cisco's (blasphemous) Patent Troll Tracker blog (PTT) essentially defunct, it was available for free to readers who made an email subscription request (in similar manner as other blogs do).

Please confirm the following:
In the past, after receiving such requests, you emailed PTT directly to those readers on a regular basis (I will take your confirmation to confirm only this one sentence and not my characterizations above).

If you do not respond on this thread to my request for confirmation, I will take your lack-of-response for a YES.

* * * * *

Dear Barney Rumble,

I believe you are multiple mistaken or disingenuous or both. That may be understandable if you are actually Rick or are Rick's friend and or are defending Rick. Of course, it is Just possible that you are Just a regular guy named Barney Rumble.

Rick is in my opinion, for what it may be worth, guilty of more than one tort, and he ought to confess and own up to his and Cisco's predicament; let's face it, they (Rick & Cisco) are in, as Everett (George Clooney) said in "O Brother, Where Art Thou?," "We're in a tight spot."

I'd suggest that you click and read (or re-read) the Complaint link on this:

http://www.patentlyo.com/patent/2008/03/patently-o-bi-3.html

This is Jaoi(TM) and I approved this message and, God willing, I'll have more.

Posted by: Just an ordinary inventor(TM) | Mar 15, 2008 at 01:03 PM
per se verboten.

Posted by: Just an ordinary inventor(TM) | Mar 15, 2008 at 01:06 PM
Dear Cisco IP Director Rick Frenkel, Esq:

To be fair, before responding or not responding, you may want to consider this:

http://lobbyingdisclosure.house.gov/lda.pdf

Here're some excerpts for your convenience:
"SEC. 2. FINDINGS.
The Congress finds that—
...
(3) the effective public disclosure of the identity and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of Government actions will increase public confidence in the integrity of Government.
...
SEC. 3. DEFINITIONS.
...
(8) LOBBYING CONTACT.—
(A) DEFINITION.—The term "lobbying contact" means any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to—

(i) the formulation, modification, or adoption of Federal legislation (including legislative proposals);

(ii) the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;

...

(B) EXCEPTIONS.—The term "lobbying contact" does not include a communication that is—

...

(ii) made by a representative of a media organization if the purpose of the communication is gathering and disseminating news and information to the public;

(iii) made in a speech, article, publication or other material that is distributed and made available to the public, or through radio, television, cable television, or other medium of mass communication;"

Please note that Congress Found and articulated with particularity in their Findings that

"the effective public disclosure of the IDENTITY and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of Government actions" (emphasis added)

was an inherent function of their Lobbying Disclosure Act of 1995.

On a personal note, please understand that I take no pleasure whatsoever in being the bearer of ill tidings, to the contrary – my heart goes out to you and your family. When I am troubled, I recall my Confirmation Psalm, Psalm 23, and I remember that tomorrow is another day.

Posted by: Just an ordinary inventor(TM) | Mar 15, 2008 at 01:41 PM
"There is no ethical issue in TT's post, and there is no defamation. The ethical issue arises in filing complaints for defamation (i.e. SLAPP suits) that are unfounded in fact and law."

Yup.

But let's all watch together as facts and history once again steamroll CaveMan and JAOI into whining pancakes, with extreme prejudice.

Posted by: Malcolm Mooney | Mar 15, 2008 at 02:40 PM
"I got a couple of anonymous emails this morning, pointing out that the docket in ESN v. Cisco . . . had been altered. One email suggested that ESN's local counsel called the EDTX court clerk and convinced him/her to change the docket to reflect an October 16 filing date, rather than the October 15 filing date. I checked, and sure enough, that's exactly what happened – the docket was altered to reflect an October 16 filing date and the complaint was altered to change the filing date stamp from October 15 to October 16. Only the EDTX Court Clerk could have made such changes. . . . This is yet another example of the abusive nature of litigating patent cases in the Banana Republic of East Texas."

That's not, to paraphrase, "merely noting dates on a filing". That is publicly suggesting that opposing counsel engaged in a conspiracy with a court clerk to alter a court record for opposing counsel's benefit.

Posted by: Clive Fenster | Mar 15, 2008 at 02:42 PM
The first page of the Electronic Copy from ECF, as originally posted, shows the following header:

Case 5:07-cv-00156-DF-CMC Document 1-1 Filed 10/15/2007 Page 1 of 6

OK, if someone is changing dates on the court's computer system, the appropriate law enforcement investigators should be figuring out why, and also determining if anyone was provided anything of value to effect such a change. Even if the issue is moot as between the parties in the original filing.

Daylight savings time didn't end until November 2007, and provides no excuse for a change between 10/15 and 10/16.

On the other hand, if I file a case in Denver at 10:01 PM on Monday night, the patent HAS actually already issued at 12:01 AM on Tuesday in the time zone of the USPTO. Why, as a plaintiff, should I be prejudiced as to forum possibility if I live in Hawaii or Alaska....??? Shouldn't the LOCAL court ACCEPT my filing as TIMELY, i.e., accept that such a filing IS after ISSUE of the US Patent ?

Posted by: BentwaterBlitzers | Mar 15, 2008 at 04:03 PM
"That's not, to paraphrase, "merely noting dates on a filing". That is publicly suggesting that opposing counsel engaged in a conspiracy with a court clerk to alter a court record for opposing counsel's benefit."

Exactly

If every defendant's legal counsel gets anonymous web blog and starts making public suggestions and false allegations about the gross misconduct of the opposing party's councel, then this whole trial thing becomes a mess...

Such behaviour must be penalized, maybe by disbarring Frenkel..
But then again, he's just a little puppet, a scapegoat for Mark Chandler & Co.

Posted by: angry dude | Mar 15, 2008 at 04:38 PM
"publicly suggesting that opposing counsel engaged in a conspiracy with a court clerk to alter a court record for opposing counsel's benefit."

Oooooh, that's like the worst thing evah!!! Mommy, mommy, that anonymous blog guy suggested something and I got a tummy ache because of it!!!! Waaaahh!!!!! Waaaah!!!!!!!

Judge, please make me whole again.

/whining SLAPP suit filer off

Posted by: Malcolm Mooney | Mar 15, 2008 at 10:23 PM
"If every defendant's legal counsel gets anonymous web blog and starts making public suggestions and false allegations about the gross misconduct of the opposing party's councel, then this whole trial thing becomes a mess..."

It's the end of civilization as we know it!!!!!!!!!!!!! HANG RICK FRENKEL!!!!! SAVE THE RULE OF LAW AS WE KNOW IT!!!!

/ridiculous chicken little freak off

Posted by: Malcolm Mooney | Mar 15, 2008 at 10:29 PM
Mooney you still seem to have some kind of preoccupation with smackdowns and steam rollers. These issues are far from slam dunks. If everything was so self evident, as you would have us all believe it is to you, then why are you even reading this blog, much less posting on it. Why don't you just take your place at the exalted Throne of all Mankind and for that matter Rule of the Cosmos? Oh wait, because you are just another bag of flesh and bones with a pulse and a few ideas bouncing around in your head, with access to a keyboard and the Internet like the rest of us. Get over yourself.

Posted by: CaveMan | Mar 16, 2008 at 04:21 AM
Isn't there a link here, between Patent Reform (apportionment of damages) and the frivolous law suits against the Troll Tracker, namely, the task of disposing of law suits justly? Damages should be proportionate, and those who bring frivolous law suits should suffer some sanction. There should be a mechanism that tries to ensure that 1) precious court resources are used judiciously and 2) the law should minimise in aggregate the harm that people do to each other. Innocent victims of the popular press do suffer huge damages. That's not fair. Otherwise, I'm with Mooney. I don't see why the court should award Ward any damages at all. The only individuals interested in the Ward suit are other hard-bitten lawyers, who are quite capable of assessing the TT blog content with the appropriate degree of worldly-wise scepticism.

Posted by: MaxDrei | Mar 16, 2008 at 06:26 AM
Here's the Thing:

AMERICA'S STRONG PATENT SYSTEM ("our System") has been on Public Trial for years, and to date our System has suffered dramatic and fundamental loses:

(i) Traditional strengths of patents previously issued by the PTO have been eroded.
(ii) Currently, the PTO is rejecting more patent applications than ever in its history.

This much damage has been done. These are FACTS, and they are not in dispute.

The "JURY POOL" and those SITTING ON THE BENCH IN JUDGMENT of America's Strong Patent System have been / are comprised of:

(i) We the People; especially We IP People;

(ii) Executive Branch People (e.g., PTO) (and their staffs);

(iii) House and Senate People (and their staffs);

(iv) Judges of the Supreme Court, Federal Circuit and District Courts (and their staffs);

(v) Government wannabe People, those running for office and vying for government positions; and

(vi) News media People, comprised of reporters publishing on the Internet, TV, Newspapers (e.g., the NYT and Washington Post) and books.

Our System's jury pool had been tampered with, and those sitting on the Bench have been anonymously influenced by conjured-up pejorative patent troll talk propaganda*. Hill & Knowlton or Burson-Marsteller could not have done a better job at rigging the outcome.

Under The Lobbying Disclosure Act of 1995 ALL American People were/are entitled to know WHO was/is LOBBYING for WHAT.

To suggest otherwise is to ignore our nation's Lobbying DISCLOSURE Act of 1995 ("LDA"), to wit, this statement is from the United States Senate:
http://www.senate.gov/reference/reference_index_subjects/Lobbying_vrd.htm

"LOBBYING
"Lobbying is the practice of trying to persuade legislators to propose, pass, or defeat legislation or to change existing laws. A lobbyist may work for a group, organization, or industry, and presents information on legislative proposals to support his or her clients' interests.

THE LOBBYING DISCLOSURE ACT OF 1995 establishes criteria for determining WHEN AN ORGANIZATION OR FIRM SHOULD REGISTER THEIR EMPLOYEES AS LOBBYISTS. Lobbyists register with the Senate Office of Public Records." (emphasis added) This is a FACT, and it is not in dispute.

In CONCLUSION:
Anyone in Violation of the LDA should be investigated.

Anyone contributing to tampering with the jury pool and anonymously influencing those sitting in judgment should be held accountable to We the American People.

---

* CaveMan's definition of propaganda hits the mark:

"'Propaganda is a concerted set of messages aimed at influencing the opinions or behavior of large numbers of people. Instead of impartially providing information, propaganda in its most basic sense presents information in order to influence its audience.'"
"'...propaganda presents facts selectively to encourage a particular synthesis, or gives loaded messages in order to produce an emotional rather than rational response to the information presented. The desired result is a change of the cognitive narrative of the subject in the target audience.'"

Posted by: Just an ordinary inventor(TM) | Mar 16, 2008 at 11:01 AM
Seems to me that Just Another Troll and Cave, and apparently Ward, are having trouble grasping one basic but important issue: truth is an absolute defense to defamation.

Everything TT said in that post is verifiably true except for the Banana Republic slam, which is non-actionable opinion. The documents were marked Oct15 and the clerk changed the date to Oct16. End of story. End of liability.

Unfortunately, not the end of SLAPP, because the purpose of SLAPP is to shut up honest comment and criticism.

Now that Ward has filed in daddy's court, the SLAPP effect is multiplied, probably without risk of sanctions. What's the chances of getting sanctioned in a district where your daddy is a judge? I'd like to see the statistics on that.

This is disgusting. It should also be sufficient reason to transfer venue to Calif. or wherever the defendants are.

Posted by: Sofa King Appalled | Mar 16, 2008 at 08:24 PM
"What's the chances of getting sanctioned in a district where your daddy is a judge? I'd like to see the statistics on that."

Be careful!!!!! According to JAOI and Co., this disturbing inuendo regarding a conspiracy between a judge and his son could cause one or both of the two men to rend his garment as he imagines a mild stain upon his otherwise gleaming reputation.

Sewing that ripped fabric could cost upwards of twenty five bucks, even more if its satin underwear.

Posted by: Malcolm Mooney | Mar 17, 2008 at 03:09 AM
Well, the statistics I was referring to will work out something like the following -- with wild numbers here.

The proportion of lawyers who have a parent on the bench -- say, 1:50,000? -- times the proportion of lawyers sanctioned per year -- say, 1:1000? -- equals a probability of 1 in 50 million. Slim.

Posted by: Sofa King | Mar 17, 2008 at 03:48 AM
Dear Sofa King & Malcolm Mooney,

Nice picture postcard photo of youse two together, only I'm confused -- you can't both be on the right?

http://howappealing.law.com/TexarkanaPostOfficeAndCourtHouse.pdf

Who of youse two is holding the reins?

Happy Saint Patrick's Day

http://www.history.com/minisites/stpatricksday/

Posted by: Just an ordinary inventor(TM) | Mar 17, 2008 at 08:14 AM
Also to Sofa King Appalled, I am sofa king happy to direct you to Michael Smiths EDTX blog who has explained the date issues in the context of routine EDTX practice. Truth apparently will not be a defense here.

Posted by: CaveMan | Mar 17, 2008 at 10:28 PM
Cave

What were those routine EDTX procedures again?

JW.000023

Pre-file the civil cover sheet before midnight, then wait until 1 minute after midnight to file the infringement complaint, then wait for the patent you are enforcing to issue sometime later in the day, then call the clerk and tell him to adjust the filing date. Then, if anyone complains or questions what happened, SLAPP them.

This is "routine EDTX practice?"

I refer you back to TT's comment about a Banana Republic.

Rick, Dennis, Smith, Gary Odom and others have provided a valuable public service in throwing light on these "routine practices." Your assistance is appreciated, too.

Posted by: Sofa King | Mar 18, 2008 at 09:39 AM
"Also to Sofa King Appalled, I am sofa king happy to direct you to Michael Smiths EDTX blog who has explained the date issues in the context of routine EDTX practice."

The link is:
http://mcsmith.blogs.com/eastern_district_of_texas/2008/03/trolltracker-de.html

Posted by: CliveFenster | Mar 18, 2008 at 10:25 AM
Greetings Citizens of the IP community et al.,

Hear Ye, Hear Ye Here's the Thing:

YES, it makes a material difference WHO is saying WHAT.

It almost can go without saying that one must, of course, Consider the Source:
www.springerlink.com/content/p415141238v00502

The very purpose behind of the passing of THE LOBBYING DISCLOSURE ACT OF 1995 was –
DISCLOSURE of WHO is LOBBYING for WHAT.

When executives, comprising the IP Director et al., of a Fortune 100 public company like CISCO SYSTEMS Inc. ("CISCO") email their biased corporate lobbying agenda, i.e., Pejorative Patent Propaganda,* in the guise of "Patent Troll Tracker blog" anonymously and repeatedly to one or more executive branch or legislative branch official(s) for years, all the while purposely promoting the public perception of Patent Troll Tracker as presenting a "public service," I say, PUBLIC et al. BEWARE.

As discussed in detail in this comment (above) on this link,
www.patentlyo.com/patent/2008/03/troll-tracker-d.html#comment-10718487 2

– AMERICA'S STRONG PATENT SYSTEM ("our System") has been on Public Trial for years, and to date our System has suffered dramatic and fundamental loses:
(i) Traditional strengths of patents previously issued by the PTO have been eroded.
(ii) Currently, the PTO is rejecting more patent applications than ever in its history.
This much damage has been done. These are FACTS, and they are not in dispute –

To me, Jaoi, it has become clear, unmistakable, unambiguous and even *self-evident* that, by operating Patent Troll Tracker blog anonymously for years, *CISCO* accomplished its lobbying mission (I wonder if Rick got a bonus last year (;-?) –

CISCO effectively poisoned the jury pool trying, and those sitting in judgment of, America's Strong Prestigious Premier Patent system – historically, our System had been the envy of all the *world's self-employed independent inventors and entrepreneurs.*

Who can now deny that CISCO materially contributed to the major deconstruction of the American patent system in violation of the LOBBYING DISCLOSURE ACT OF 1995, and that CISCO should be held accountable to We the American People, and that that is a large part of why CISCO took down the blog after it was discovered who was anonymously operating that now-defunct blasphemous blog.
---

* CaveMan's definition of propaganda tells it like it is:
"'Propaganda is a concerted set of messages aimed at influencing the opinions or behavior of large numbers of people. Instead of impartially providing information, propaganda in its most basic sense presents information in order to influence its audience.'"
"'...propaganda presents facts selectively to encourage a particular synthesis, or gives loaded messages in order to produce an emotional rather than rational response to the information presented. The desired result is a change of the cognitive narrative of the subject in the target audience.'"
* * * * *

This is Jaoi(TM) and I approved this message, and my religious advisor for the past thirty-seven years has been a saint-like Jamaican lady with a heart of gold who has been an integral part of my family raising my two children teaching family values, love and forgiveness to all.

Posted by: Just an ordinary inventor(TM) | Mar 19, 2008 at 10:19 AM
Sorry sofa king, I am not an EDTX practioner or a Texas attorney for that matter, I am telling you what is posted on the EDTX blog. But can you tell me what is so backward about conducting administrative preparation for a substantial filing in advance? If anything, to me, it shows a certain amount of diligence. Sort of the opposite of laches don't you think?

Posted by: CaveMan | Mar 19, 2008 at 10:30 AM
...or much of a speller for that matter. Practitioner that is.

Posted by: CaveMan | Mar 19, 2008 at 10:32 AM
But I do know one thing:

Vigilantibus non dormientibus æquitas subvenit.

Posted by: CaveMan | Mar 20, 2008 at 12:01 AM

peter zura's 271 patent blog

Tuesday, March 11, 2008

TROLL TRACKER SUED

> *"I am altering the deal. Pray I don't alter it any further"*
>
> - Darth Vader, Empire Strikes Back (1980)

John Ward v. Cisco Systems, Inc. (2007-2502-A), 188th District, Gregg County Texas

On February 27, John Ward filed a complaint in district court alleging defamation against Richard Frenkel (aka the Patent Troll Tracker) and Cisco. According to the complaint:

> On or about October 18, 2007 Defendant Frenkel made statements to the effect that Plaintiff had conspired with others to alter the filing date on a civil complaint that Plaintiff filed on behalf of Plaintiff's client in Federal Court in the Eastern District of Texas, Marshall Division. Defendant alleged that Plaintiff had engaged in this felonious activity in order to create subject matter jurisdiction against the defendant named in the civil complaint. The defendant in the civil complaint was Cisco Systems, Inc., which also happened to be Defendant Frenkel's employer.
>
> * * *
>
> As a direct and proximate result of Defendant Frenkel's false and defamatory statements, the Plaintiff has endured shame, embarrassment, humiliation, and mental pain and anguish. Additionally, the Plaintiff has and will in the future be seriously injured in his business reputation, good

JW.000069

> name, and standing in the community, and will be exposed to the hatred, contempt, and ridicule of the public in general as well as of his business associates, clients, friends, and relatives. Consequently, the Plaintiff seeks actual damages in a sum within the jurisdictional limits of this Court.

Read/download a copy of the complaint here (**link**)

Reports are starting to come in from the blogosphere:

- The Prior art Blog (**link**)

- Robert Ambrogi (**link**)

- Legal Pad (Cal Law) (**link**)

- Legal Satyricon (**link**)

UPDATE: The 271 Blog received the following statement from Cisco:

"The parties have mutually agreed to make no comment on the lawsuit in question at this time. That said, we would like to underscore that the comments made in the employee's personal blog represented his own opinions and several of his comments are not consistent with Cisco's views. We continue to have high regard for the judiciary of the Eastern District of Texas and confidence in the integrity of its judges."

Posted by Two-Seventy-One Patent Blog at **8:32 PM**

Labels: **litigation, Patent Troll Tracker**

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JW.000070

peter zura's 271 patent blog

Wednesday, March 12, 2008

Patent Troll Tracker Litigation Update

Joe Mullin, reporter at **IP Law & Business** magazine and author of the Prior Art Blog has some additional information on the Ward/Albritton lawsuit against Frenkel and Cisco (see 271 Blog post **below**). As many have noticed already, the Ward complaint "making the rounds" is an amended complaint. According to the the case docket in Gregg County District Court (**link**), the case was originally filed as *John Ward, Jr. v. John Doe et al.* on Nov. 7, 2007, and it is presumed that the complaint was filed with the notion of deposing someone at Google, who oversees the Blogger.com sevice used by Frenkel.

Since filing the complaint, the timelines are as follows:

Jan. 24: Petition to depose granted.

Feb. 23: Troll Tracker is revealed to be Rick Frenkel, an IP director at Cisco Systems.

Feb. 27: Ward Jr. filed an amended complaint claiming defamation against Cisco and Frenkel.

March 3: Eric Albritton files a separate complaint against Cisco and Frenkel.

This is going to be an interesting case to watch. According to Joe, there appear to be some discrepancies in the Troll Tracker posts that are alleged to contain the defamatory statements. The original post-in-question was changed by Frenkel after receiving additional information from a reader. Frenkel acknowledged those changes when they were made. However, only the original post was submitted to the court. Read Joe's post in its entirety **here**.

Also, as noted by Dennis at **Patently-O**, the PACER filing information still reflected that the case had been originally filed on the 15th, but the PACER complaint filing date now indicated

October 16 (see here and here).

Posted by Two-Seventy-One Patent Blog at 7:44 AM

Labels: Patent Troll Tracker

POST THIS ARTICLE:

1 comments:

Francy said...
Hi!
This is Nice Blog!

We are located in Chennai India Offering a wide range of back office and I.T Enabled Services namely data entry, litigation data processing and data conversion that match the high global standards in terms of efficiency and accuracy.

We offers innovative and effective outsourcing solutions for clients around the world. We deliver higher quality, increased productivity, and lower costs. Can we do that for you? Sure we can

11:04 PM

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Just a Patent Examiner
LawKT.com
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Orange Book Blog
Patent Arcade Blog
Patent Baristas
Patent Demand
Patent Docs
Patent Infringement Updates
Patent Troll Tracker
Patently Silly
Patentlv Unobvious

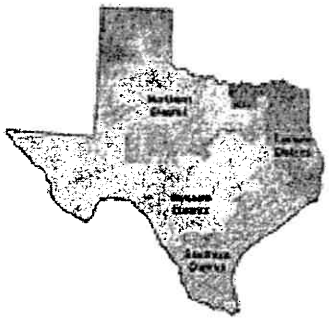
JW.000046

The Prior Art

One reporter's notes on the IP beat

March 12, 2008

Ward Jr. may have pursued Troll Tracker for months



Following up on the recent demise of the popular and controversial Troll Tracker blog: I've read T. John Ward, Jr.'s defamation complaint (link) against Patent Troll Tracker, thanks to Patently-O and the Zura 271 blog. Readers should note that it's an amended complaint. According to the case docket in Gregg County District Court (link), the case was originally filed as *John Ward, Jr. v. John Doe et al.* on Nov. 7, 2007, as a petition to depose someone at Google. I'm guessing that the goal was to discover Troll Tracker's identity. (Google hosted the anonymous blog.) Since then:

Jan. 24: Petition to depose granted.

Feb. 23: Troll Tracker reveals himself as Rick Frenkel, an IP director at Cisco Systems.

Feb. 27: Ward Jr. filed an amended complaint claiming defamation against Cisco and Frenkel.

March 3: Eric Albritton files a separate complaint against Cisco and Frenkel. I have not seen this one. (link to docket)

The two posts Ward objects to are dated Oct. 17 and Oct. 18 of last year; those posts are printed out and attached to the end of his complaint. If those printouts are accurate, Frenkel edited the language of his Oct. 18 post at some point, and acknowledged doing so; the language in the Ward Jr. complaint differs from my version, which I saved on Feb. 25, 2008.

The first two paragraphs of the Oct. 18 are the same in both the complaint and my copy:

> I got a couple of anonymous emails this morning, pointing out that the docket in ESN v. Cisco (the Texas docket, not the Connecticut docket), had been altered. One email suggested that ESN's local counsel called the EDTX court clerk, and convinced him/her to change the docket to reflect an October 16 filing date, rather than the October 15 filing date. I checked, and sure enough, that's exactly what happened – the docket was altered to reflect an October 16 filing date and the complaint was altered to change the filing date stamp from October 15 to October 16. Only the EDTX Court Clerk could have made such changes.
>
> Of course, there are a couple of flaws in this conspiracy. First, ESN counsel Eric Albritton signed the Civil Cover Sheet stating that the complaint had been filed on October 15. Second, there's tons of proof that ESN filed on October 15. Heck, Dennis Crouch may be subpoenaed as a witness!

Here's the end of the Oct. 18 post per the Ward complaint (emphasis mine):

> You can't change history, and it's outrageous that the Eastern District of Texas may have, wittingly or unwittingly, helped a non-practicing entity to try to manufacture subject matter jurisdiction. ***This is yet another example of the abusive nature of litigating patent cases in the Banana Republic of East Texas.***
>
> (*n.b.*: don't be surprised if the docket changes back once the higher-ups in the Court get wind of this, making this post completely irrelevant).

And here's the end of my version (emphases mine):

> You can't change history, and it's outrageous that the Eastern District of Texas may have, wittingly or unwittingly, helped a non-practicing entity to try to manufacture subject matter jurisdiction. ***Even if this was a "mistake," which I can't see how it could be, given that someone emailed me a printout of the docket from Monday showing the case, the proper course of action should be a motion to correct the docket.***
>
> (*n.b.*: don't be surprised if the docket changes back once the higher-ups in the Court get wind of this, making this post completely irrelevant).
>
> ***EDIT: You can't change history, but you can change a blog entry based on information emailed to you from a helpful reader.***

So it looks like he got some more evidence and scaled down the tone a notch. Either way, it hardly sounds defamatory to me.

For the Oct. 17 Troll Tracker post, the version in the lawsuit matches my version exactly. You can read the relevant parts of that in my earlier post about Troll Tracker's demise, and Cisco's response.

Patently-O has links to other coverage, and the clearest description of the events at issue in the Ward v. Frenkel lawsuit, which involves the filing date of the *ESN v. Cisco* lawsuit. (link) If this is defamation... I don't even know where to begin. Ward files patent infringement lawsuits one minute after the stroke of midnight, and then sues when people think he filed a day too early? Obviously, this could have been cleared up without a lawsuit, but Ward Jr. hasn't been too communicative (he's never returned my calls, including one yesterday afternoon). The original complaint really *was* time-stamped 10/15, as noted on Patently-O, which would mean Ward's patent gun was shooting blanks.

Posted at 01:12 AM in Eastern District of Texas, Patent Troll Tracker, Patents | Permalink

TrackBack

TrackBack URL for this entry:
http://www.typepad.com/t/trackback/2702122/27019456
Listed below are links to weblogs that reference Ward Jr. may have pursued Troll Tracker for months:

» Anonymous Bloggers Carry on Tradition of the Federalist Papers from Chicago IP Litigation Blog
There has been a lot of coverage of Troll Tracker's recently disclosed identity.* Troll Tracker ended his anonymity a few weeks ago and now faces a libel law suit along with his employer, Cisco, based upon statements he made about a case involving Cisc... [Read More]

Tracked on March 17, 2008 at 03:25 AM

» Northern District & IP News: Pro Bono & Patent Reform from Chicago IP Litigation Blog
Tomorrow I will be back to case analysis, but there is some Northern District news and some excellent IP and litigation blog posts worth reading, here they are: Ninth Annual Pro Bono and Public Interest Awards -- The Northern District and the Federal ... [Read More]

Tracked on March 18, 2008 at 03:18 AM

Comments

My guess is the "helpful reader" may have later sued him. :-) **JW.000053**

Posted by: real anonymous | March 13, 2008 at 06:38 AM
Can someone please explain: Where's the defamation? What damage do the plaintiffs specifically claim? Nothing in the snippets that I've read on this case appears to be anything close to defamation.

Instead, it appears to be just another harassment lawsuit – one of those where some greedy little grunt casts a line to see if he

can force a settlement over litigation.

It's that same wrong-minded thinking in Gibson's lawsuit over Activision (and now expanded to include Walmart, Target, Amazon, GameStop, K-Mart, and Toys R Us).

This stupidity makes me yearn (hope upon hope) for some legislative or regulatory leadership to put an end to these shenanigans because that giant sucking sound is the effect this abominable lawsuits on U.S. innovation.

And no, I'm not an employee, spouse, friend, business partner, etc. of any of the named defendants.

Posted by: Doug van Aman | March 24, 2008 at 05:29 PM

The comments to this entry are closed.

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Refine this search

In the COUNTY COURT AT LAW #2
Gregg County, Texas
Cause No. 2008-481-CCL2

ALBRITTON, ERIC M. VS. CISCO SYSTEMS INC & RICHARD FRENKEL

Filed on 03/03/2008
Case Type: DEFAMATION
Current Status: Filed

Defendants	Defendant Attorneys
Cisco Systems Inc B/S REGISTERED AGENT PRENTICE HALL CORPORATION SYSTEMS 701 BRAZOS STREET STE 1050 AUSTIN, TX 78701	
Frenkel, Richard 170 W TASMAN DR. M/S SJC-10/2/1 SAN JOSE, CA 95134-1700	

Plaintiffs	Plaintiff Attorneys
Albritton, Eric M	Holmes, James A 605 SOUTH MAIN ST, SUITE 203 HENDERSON, TX 75654

Events and Orders of the Court

03/14/2008 LETTER

JW.000055

03/14/2008 NOTICE OF FILING
03/14/2008 DEF/ORIGINAL ANSWER
03/10/2008 CIT RET REGISTER MAIL
03/03/2008 Jury Trial Requested
03/03/2008 JURY DEMAND
03/03/2008 PLNTF'S/ORIG/PETITION

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In the 188th District Court
Gregg County, Texas
Cause No. 2007-2502-A

WARD JR., JOHN VS. DOE, JOHN ET AL

Filed on 11/07/2007
Case Type: PETITION TO CONDUCT DEPOSITION UNDER RULE 202
Current Status: Filed

Defendants	Defendant Attorneys
Doe, John B/S CORPORATION SERVICE COMPANY DBA CSC-LAWYERS INCORPORATING SERVICE COMPANY 701 BRAZOS ST. STE 1050 AUSTIN, TX 78701	
Google Inc B/S CORPORATION SERVICE COMPANY DBA CSC-LAWYERS INCORPORATING SERVICE CO 701 BRAZOS ST SUITE 1050 AUSTIN, TX 78701	
Cisco Systems Inc B/S PRENTICE HALL CORP. SYSTEM 701 BRAZOS ST. #1050 AUSTIN, TX 78701	
Frenkel, Richard	

JW.000057

170 W TASMAN DR.
M/S SJC-10/2/1
SAN JOSE, CA 95134-
1700

Plaintiffs	Plaintiff Attorneys
Ward Jr., John	Patton, Nicholas H 4605 TEXAS BLVD TEXARKANA, TX 75503

Hearings

01/24/2008 Thursday	1:00pm	Motion to Compel

Disposition	Party Name
03/13/2008 - Order Of Dismissal	FRENKEL, RICHARD
03/13/2008 - Order Of Dismissal	CISCO SYSTEMS INC.

Judgment	Party Name
03/13/2008	FRENKEL, RICHARD
03/13/2008	CISCO SYSTEMS INC.

Events and Orders of the Court

03/19/2008 NOTICE OF JUDGMENT
03/13/2008 ORDER FOR NON-SUIT
03/13/2008 NOTICE OF NONSUIT
03/07/2008 CIT RET REGISTER MAIL
03/07/2008 CIT RET REGISTER MAIL
02/27/2008 PL/1ST AMEND/ORIG/PET
01/24/2008 ORD/GRANTING MOTION
01/22/2008 NOTICE RETURN REG MAIL
01/10/2008 NOTICE OF HEARING
01/10/2008 LETTER
11/26/2007 CIT RET REGISTER MAIL
11/19/2007 CIT RET REGISTER MAIL
11/07/2007 PLNTF'S/ORIG/PETITION
