

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ERIC M. ALBRITTON,
Plaintiff,

vs.

No. 6:08-CV-00089

(1) CISCO SYSTEMS, INC.,
(2) RICHARD FRENKEL, (3) MALLUN
YEN and (4) JOHN NOH,
Defendants.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

DEPOSITION OF RICHARD G. FRENKEL

Tuesday, November 18, 2008

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1 beginning of videotape No. 2, volume 1 in the
2 deposition of Richard Frenkel.

3 (Whereupon, Frenkel Exhibit 1 was marked
4 for identification.)

5 BY MR. PATTON:

6 Q. I have handed you just a moment ago,
7 Mr. Frenkel, Exhibit 1. Correct?

8 A. Yes.

9 Q. Do you recognize that?

10 A. Yes.

11 Q. Okay. Is this a blog that was posted on
12 October the 18th, 2007?

13 A. No.

14 Q. When was this one, the one you have in
15 front of you, Exhibit 1?

16 A. This is the version of the blog as
17 modified by me on October 19th, 2007.

18 Q. Okay. Does it show up on there somewhere?

19 A. Does what show up where?

20 Q. That it was modified on the 19th.

21 A. No.

22 (Whereupon, Frenkel Exhibit 2 was marked
23 for identification.)

24 BY MR. PATTON:

25 Q. I want to hand you 2 and ask you: Is that

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1 the one that was posted on the 17th?

2 MR. McWILLIAMS: 17th or 18th?

3 MR. PATTON: I'm sorry. The 18th.

4 THE WITNESS: The part on the first page
5 of Exhibit 2 --

6 BY MR. PATTON:

7 Q. Okay.

8 A. -- is, I believe, what was attached to the
9 complaint in this case. And I believe that is what
10 I posted October 18th, 2007.

11 Q. Okay. There were two postings that
12 indicate October 18th, and that's Exhibits 1 and 2;
13 correct?

14 A. They both have the October 18th date on
15 them, yes.

16 Q. Okay. But Exhibit 2 is the one that was
17 filed first, and Exhibit 1 was modified, whatever
18 you want to call it, on the 19th? Is that what you
19 said?

20 A. Yes. I believe I did modify it, alter it.

21 Q. Okay. So Exhibit 2 is the first one
22 filed -- posted?

23 A. It was the -- I believe that's true, yes.

24 Q. Okay. Let's take a look at it, if we
25 could, No. 2, first.

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1 A. Let me just modify that answer. Exhibit 1
2 is a printout of the post that -- the printout was
3 made sometime after the 19th.

4 Q. Why do you say that?

5 A. Because it has the edit line. I just want
6 to make sure my testimony is accurate.

7 Q. Well, I do, too. And I don't really care
8 which one is which, but I want to make sure that I
9 understand.

10 Where is the edit that you're talking
11 about? Which one? On 1 or 2?

12 A. On 1.

13 Q. All right. And where is that located on
14 1?

15 A. On the second page.

16 Q. Where?

17 A. Fourth line, third line.

18 Q. "You can't change history, but you can
19 change a blog"?

20 A. Yes.

21 Q. I don't see the 19th there anywhere.

22 A. It doesn't say the date, but I remember
23 doing it on the 19th.

24 Q. Okay. Where -- after edit? Is that what
25 you're saying?

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1 Okay. Back on the record.

2 BY MR. PATTON:

3 Q. Why was the date not changed on this
4 second posting on the next day?

5 A. The software I was using didn't have that
6 feature.

7 Q. Okay. Could you have started the next
8 day's blog by telling every -- whoever read it, "I
9 am modifying what I said yesterday"?

10 A. When I put the line in there saying
11 "edit," that was my way of doing that. I could have
12 said "edited 10/19/07." I didn't.

13 Q. Okay. And you let the reader determine
14 what the edits were?

15 MR. McWILLIAMS: Objection. Form.

16 BY MR. PATTON:

17 Q. Is that what you're saying?

18 A. I did not put in there what I was
19 altering.

20 Q. Where did you get -- what is the basis of
21 your assertion that the proper way to do this would
22 be to file a motion to correct the docket?

23 A. That was my opinion.

24 Q. Did you base your opinion on anything,
25 something you read or something someone told you, or