

Message

Page 1 of 3

REDACTED

**From:** Mallun Yen (myen)  
**Sent:** Thursday, October 18, 2007 10:06 AM  
**To:** John Noh (jnoh)  
**Cc:** Rick Frenkel (rfrenkel)  
**Subject:** RE: ESN

actually someone sent an anonymous tip to trolltracker about this, and perhaps he could reference that.

Mallun Yen  
Vice President, Worldwide Intellectual Property  
Cisco Systems, Inc.  
Direct: 408.527.4213

*The contents of this message and any additions or modifications thereto constitute CISCO CONFIDENTIAL INFORMATION and may be a privileged communication to or from one or more attorneys and/or supporting personnel for purposes of obtaining or facilitating legal advice and/or legal services.*

**From:** John Noh (jnoh)  
**Sent:** Thursday, October 18, 2007 10:04 AM  
**To:** Mallun Yen (myen)  
**Cc:** Rick Frenkel (rfrenkel)  
**Subject:** RE: ESN

Mallun, in the simplest terms possible, are you saying that this troll filed a patent lawsuit against us before they even had the patent issued to them?

**HIGHLY  
CONFIDENTIAL**

**CISCO PRIVILEGED.000011  
Attorney/Client  
Attorney Work-Product**

Message

Page 2 of 3

Can we have the TrollTracker do a very simply worded blog about this? I'd love to be able to send it out to a few of the legal reporters and bloggers. I play a game with them now about I have no idea who the TrollTracker is but I read his/her blog religiously.

TT: Would this be hitting too close to home in terms of dotted line between TT and Cisco?

+++++  
John Noh  
Cisco Public Relations  
Cisco Systems, Inc.  
408-853-8445 (w)  
408-242-3852 (m)  
[jnoh@cisco.com](mailto:jnoh@cisco.com)

**From:** Mallun Yen (myen)  
**Sent:** Thursday, October 18, 2007 9:47 AM  
**To:** Mark Chandler (machandl); Matthew Tanielian (mtanieli); Neal Rubin (nrubin); John Noh (jnoh)  
**Subject:** FW: ESN

This is ridiculous. The "buzz" we're getting from various sources is that the local counsel persuaded the court clerk to change the filing date to Oct. 16th.

Neal, the background is that ESN filed a lawsuit against us one day too early -- a day before the patent actually issued. We DJ'd them in Connecticut, and then yesterday, they arranged for the filing date to be changed to Oct. 16th, the day the patent issued. Neal, including you because I think one of our Alcatel cases was in Texarkana and wondering who we used as local counsel.

Also, Mark, case has been referred to the Magistrate Judge (we've not consented yet), so it may not be Folsom. I left a message for Webb anyway to see what he has to say about this.

Maybe a news story here? Though we'll obviously keep getting data to track down what happened.

Mallun

Mallun Yen  
Vice President, Worldwide Intellectual Property  
Cisco Systems, Inc.  
Direct: 408.527.4213

*The contents of this message and any additions or modifications thereto constitute CISCO CONFIDENTIAL INFORMATION and may be a privileged communication to or from one or more attorneys and/or supporting personnel for purposes of obtaining or facilitating legal advice and/or legal services.*

**From:** kurt.pankratz@bakerbotts.com [mailto:kurt.pankratz@bakerbotts.com]  
**Sent:** Thursday, October 18, 2007 9:29 AM  
**To:** Rick Frenkel (rfrenkel); bart.showalter@bakerbotts.com; Marta Beckwith (mabeckwi); Mark Michels (mmichels); Mallun Yen (myen); Michael Ritter (micritte)  
**Cc:** Dan Lang (dlang)  
**Subject:** RE: ESN

I got a tip from a colleague here in town this morning and have been looking into this. I have Jillian getting the complaint with the revised banner right now and getting in touch with the clerk as well. I think this is good for us, since it shows that they know it can't stick on the 15th. Having the court clerk change dates will not change the facts.

**HIGHLY  
CONFIDENTIAL**

**CISCO PRIVILEGED.000012  
Attorney/Client  
Attorney Work-Product**

Message

Page 3 of 3

-----Original Message-----

**From:** Rick Frenkel (rfrenkel) [mailto:rfrenkel@cisco.com]

**Sent:** Thursday, October 18, 2007 11:23 AM

**To:** Showalter, Bart; Pankratz, Kurt; Marta Beckwith; Michels, Mark; Yen, Mallun; Ritter, Michael

**Cc:** Lang, Dan

**Subject:** ESN

The court clerk of the Eastern District of Texas changed the docket and all of the documents to reflect a 10/16 filing date instead of a 10/15 filing date in the ESN case. The result would be, of course, creating subject matter jurisdiction where there was none before. Of course, this is absurd. Kurt, what options do we have?

---

**Rick Frenkel**

Director, Intellectual Property - Consumer & Emerging Technologies

Cisco Systems, Inc.

Mailing Address: 170 West Tasman Drive, M/S 10/2/1

Physical Address: 300 East Tasman Drive, Second Floor

San Jose, California 95134-1706

Phone: (408) 525-5673

Email: [rfrenkel@cisco.com](mailto:rfrenkel@cisco.com)

*The contents of this message and any additions or modifications thereto constitute Cisco confidential information and may be a privileged communication to or from one or more attorneys and/or supporting personnel for purposes of obtaining or facilitating legal advice and/or legal services.*

**HIGHLY  
CONFIDENTIAL**

CISCO PRIVILEGED.000013

**Attorney/Client  
Attorney Work-Product**

---

**From:** Mallun Yen (myen)  
**Sent:** Thursday, October 18, 2007 9:47 AM  
**To:** Mark Chandler (machandl); Matthew Tanielian (mtanieli); Neal Rubin (nrubin); John Noh (jnoh)  
**Subject:** FW: ESN

This is ridiculous. The "buzz" we're getting from various sources is that the local counsel persuaded the court clerk to change the filing date to Oct. 16th.

Neal, the background is that ESN filed a lawsuit against us one day too early -- a day before the patent actually issued. We DJd them in Connecticut, and then yesterday, they arranged for the filing date to be changed to Oct. 16th, the day the patent issued. Neal, including you because I think one of our Alcatel cases was in Texarkana and wondering who we used as local counsel.

Also, Mark, case has been referred to the Magistrate Judge (we've not consented yet), so it may not be Folsom. I left a message for Webb anyway to see what he has to say about this.

Maybe a news story here? Though we'll obviously keep getting data to track down what happened.

Mallun

Mallun Yen  
Vice President, Worldwide Intellectual Property  
Cisco Systems, Inc.  
Direct: 408.527.4213

*The contents of this message and any additions or modifications thereto constitute CISCO CONFIDENTIAL INFORMATION and may be a privileged communication to or from one or more attorneys and/or supporting personnel for purposes of obtaining or facilitating legal advice and/or legal services.*

---

**From:** kurt.pankratz@bakerbotts.com [mailto:kurt.pankratz@bakerbotts.com]  
**Sent:** Thursday, October 18, 2007 9:29 AM  
**To:** Rick Frenkel (rfrenkel); bart.showalter@bakerbotts.com; Marta Beckwith (mabeckwi); Mark Michels (mmichels); Mallun Yen (myen); Michael Ritter (micritte)  
**Cc:** Dan Lang (dlang)  
**Subject:** RE: ESN

I got a tip from a colleague here in town this morning and have been looking into this. I have Jillian getting the complaint with the revised banner right now and getting in touch with the clerk as well. I think this is good for us, since it shows that they know it can't stick on the 15th. Having the court clerk change dates will not change the facts.

-----Original Message-----

**From:** Rick Frenkel (rfrenkel) [mailto:rfrenkel@cisco.com]  
**Sent:** Thursday, October 18, 2007 11:23 AM  
**To:** Showalter, Bart; Pankratz, Kurt; Marta Beckwith; Michels, Mark; Yen, Mallun; Ritter,

HIGHLY  
CONFIDENTIAL

CISCO PRIVILEGED.000015  
Attorney/Client  
Attorney Work-Product

Michael  
**Cc:** Lang, Dan  
**Subject:** ESN

The court clerk of the Eastern District of Texas changed the docket and all of the documents to reflect a 10/16 filing date instead of a 10/15 filing date in the ESN case. The result would be, of course, creating subject matter jurisdiction where there was none before. Of course, this is absurd. Kurt, what options do we have?

---

**Rick Frenkel**

Director, Intellectual Property - Consumer & Emerging Technologies  
Cisco Systems, Inc.  
Mailing Address: 170 West Tasman Drive, M/S 10/2/1  
Physical Address: 300 East Tasman Drive, Second Floor  
San Jose, California 95134-1706

Phone: (408) 525-5673  
Email: [rfrenkel@cisco.com](mailto:rfrenkel@cisco.com)

*The contents of this message and any additions or modifications thereto constitute Cisco confidential information and may be a privileged communication to or from one or more attorneys and/or supporting personnel for purposes of obtaining or facilitating legal advice and/or legal services.*

**HIGHLY  
CONFIDENTIAL**

**CISCO PRIVILEGED.000016**

**Attorney/Client  
Attorney Work-Product**

REDACTED

-----Original Message-----

From: Rick Frenkel (rfrenkel)

Sent: Thursday, October 18, 2007 09:47 PM Eastern Standard Time

To: Mark Chandler (machandl); Matthew Tanielian (mtanieli)

Cc: Mallun Yen (myen); Dan Lang (dlang)

Subject: Fair Comparison of Patent Litigation Statistics, 1990 v. 2006 v. 2007

Mark and Matt,

The Baker Botts paralegal updated the stats to cover the 20 busiest jurisdictions in terms of patent infringement (listed below). These 20 jurisdictions accounted for 68-71% of all patent cases filed in 1990, in 2006, and in the first 9 months of 2007. The other 30% of patent cases are pretty evenly distributed over the other 74 jurisdictions. We could analyze some more, but I don't think you'll change the ultimate numbers. Here are the totals:

Year

Total Cases – 20 Top Jurisdictions

Total Defendants – 20 Top Jurisdictions

Total Cases – All Jurisdictions

Extrapolated Defendants – All Jurisdictions

1990

626

1085

921

1596

2006

1947

4221

2822

6118

2007 (thru Sept.)

1550

4147

2189

5857

2007 (extrapolated thru Dec.)

2067

5529

2919

7809

As you can see, the number of cases went from 921 in 1990 to 2,822 in 2006, and is projected to be over 2,900 in 2007, based on statistics collected through the end of September and then extrapolated through the end of the year. More dramatically, the number of defendants sued went from 1,596 in 1990 to 6,118 in 2006, and is projected to be over 7,800 in 2007. That's nearly a 5-fold increase in number of defendants sued since 1990, with a tripling of number of cases filed.

Consider this: if you extrapolate the EDTX # of defendants sued from 9 months out to 12 months, you get just over 1,500 defendants sued in that district in 2007. That's nearly as many as were sued for patent infringement in the entire country in 1990.

I would be happy to go over these numbers with anyone interested. Just let me know. Here are the

jurisdictions included, listed in order of most number of defendants sued in the first 9 months of 2007 to least:

1. Eastern District of Texas (1,138 defendants sued so far in 2007)
2. Central District of California (594)
3. Northern District of Georgia (418)
4. District of New Jersey (275)
5. Southern District of New York (231)
6. District of Delaware (230)
7. Northern District of California (211)
8. Northern District of Illinois (211)
9. Southern District of Florida (102)
10. Western District of Wisconsin (100)
11. District of Minnesota
12. Southern District of California
13. Northern District of Texas
14. Middle District of Florida
15. Northern District of Ohio
16. District of Massachusetts
17. Eastern District of Virginia
18. Eastern District of Michigan
19. Eastern District of Pennsylvania
20. District of Colorado

---

Rick Frenkel

Director, Intellectual Property - Consumer & Emerging Technologies

Cisco Systems, Inc.

Mailing Address: 170 West Tasman Drive, M/S 10/2/1

Physical Address: 300 East Tasman Drive, Second Floor

San Jose, California 95134-1706

Phone: (408) 525-5673

Email: rfrenkel@cisco.com

The contents of this message and any additions or modifications thereto constitute Cisco confidential information and may be a privileged communication to or from one or more attorneys and/or supporting personnel for purposes of obtaining or facilitating legal advice and/or legal services.



**From:** Rick Frenkel (rfrenkel)  
**Sent:** Wednesday, October 17, 2007 9:50 PM  
**To:** Mallun Yen (myen) <myen@cisco systems.com>; Marta Beckwith (mabeckwi) <mabeckwi@cisco systems.com>; Michael Ritter (micritte) <micritte@cisco systems.com>; Mark Michels (mmichels) <mmichels@cisco systems.com>  
**Subject:** RE: Amended ESN Complaint

---

Not me.

Rick Frenkel  
Director, Intellectual Property -  
Consumer & Emerging Technologies  
Cisco Systems, Inc.  
170 West Tasman Drive, M/S 10/2/1  
San Jose, California. 95134-1706

Phone: (408) 525-5673  
Email: rfrenkel@cisco.com

-----Original Message-----

**From:** Mallun Yen (myen)  
**Sent:** Wednesday, October 17, 2007 09:31 PM Pacific Standard Time  
**To:** Marta Beckwith (mabeckwi); Michael Ritter (micritte); Rick Frenkel (rfrenkel); Mark Michels (mmichels)  
**Subject:** FW: Amended ESN Complaint

I need to call Dan Webb out of courtesy and to hear what he has to say. He's not a patent litigator, but he is one of the top trial attorneys in the country. Which of the Winston people did you like? Pete McCabe? Or the other one? Can't remember which of you met them.

Mallun Yen  
Vice President, Worldwide Intellectual Property  
Cisco Systems, Inc.  
Direct: 408.527.4213

The contents of this message and any additions or modifications thereto constitute CISCO CONFIDENTIAL INFORMATION and may be a privileged communication to or from one or more attorneys and/or supporting personnel for purposes of obtaining or facilitating legal advice and/or legal services.

---

**From:** Mark Chandler (machandl)  
**Sent:** Wednesday, October 17, 2007 2:41 PM  
**To:** Mallun Yen (myen)  
**Subject:** RE: Amended ESN Complaint

Dan Webb claims to be a best friend of Judge Folsom and called me about this case, and claims to have "right" local counsel in Texarkana on his team. I explained to him the DJ strategy but told him we might want to talk to him about getting the case dismissed. Just FYI, let me know if you want to follow up with him.

---

From: Mallun Yen (myen)  
Sent: Wednesday, October 17, 2007 2:32 PM  
To: Mark Chandler (machandi)  
Subject: FW: Amended ESN Complaint

just fyi, as expected

Mallun Yen  
Vice President, Worldwide Intellectual Property  
Cisco Systems, Inc.  
Direct: 408.527.4213

The contents of this message and any additions or modifications thereto constitute CISCO CONFIDENTIAL INFORMATION and may be a privileged communication to or from one or more attorneys and/or supporting personnel for purposes of obtaining or facilitating legal advice and/or legal services.

---

From: Rick Frenkel (rfrenkel)  
Sent: Wednesday, October 17, 2007 1:47 PM  
To: Marta Beckwith (mabeckwi); Mallun Yen (myen); Michael Ritter (micritte); Mark Michels (mmichels); bart.showalter@bakerbotts.com; kurt.pankratz@bakerbotts.com; John Corcoran (jocorcor)  
Cc: Dan Lang (dlang)  
Subject: Amended ESN Complaint

ESN filed an amended complaint today, probably in response to all of the press about how they filed a day too early. Hey, too little, too late, right?

---

Rick Frenkel  
Director, Intellectual Property - Consumer & Emerging Technologies  
Cisco Systems, Inc.  
Mailing Address: 170 West Tasman Drive, M/S 10/2/1  
Physical Address: 300 East Tasman Drive, Second Floor  
San Jose, California 95134-1706

Phone: (408) 525-5673  
Email: rfrenkel@cisco.com

**The contents of this message and any additions or modifications thereto constitute Cisco confidential information and may be a privileged communication to or from one or more attorneys and/or supporting personnel for purposes of obtaining or facilitating legal advice and/or legal services.**