

From: Rick Frenkel (rfrenkel)
Sent: Tuesday, December 11, 2007 6:46 PM
To: John Noh (jnoh) <jnoh@cisco systems.com>
Subject: RE: Dow Jones: Marshall No Longer a Patent Troll Haven?

I'm sure he knows about that line of argument.

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From: John Noh (jnoh)
Sent: Tuesday, December 11, 2007 4:39 PM
To: Rick Frenkel (rfrenkel); Marta Beckwith (mabeckwi); Mark Michels (mmichels)
Subject: RE: Dow Jones: Marshall No Longer a Patent Troll Haven?

The headline technically says not "SO" friendly anymore...good point about the multi-million settlements though. Maybe Mark should bring that up as a discussion point in his interview with the Post tomorrow?

From: Rick Frenkel (rfrenkel)
Sent: Tuesday, December 11, 2007 4:08 PM
To: John Noh (jnoh); Marta Beckwith (mabeckwi); Mark Michels (mmichels)
Subject: RE: Dow Jones: Marshall No Longer a Patent Troll Haven?

I don't actually agree that EDTX is "unfriendly" to patent holders. I do agree with Smith's sentiments that there are more weaker cases being brought there, and some of those are shaking out as losers. You hear publicity about those, but not about all of the multi-million settlements.

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CISCO.000254

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From: John Noh (jnoh)
Sent: Tuesday, December 11, 2007 4:04 PM
To: Marta Beckwith (mabeckwi); Mark Michels (mmichels)
Cc: Rick Frenkel (rfrenkel)
Subject: Dow Jones: Marshall No Longer a Patent Troll Haven?

Here's the article I referenced on our call. As I said, I know TT has been very helpful to Stuart in the past with background information...not sure if there was a blog about this as well.

John

DOW JONES
Newsires

Texas Federal Crt Not So Friendly To Patent Holders Anymore

By Stuart Weinberg

OF DOW JONES NEWSWIRE

16 November 2007

TORONTO (Dow Jones)--The Eastern District of Texas isn't what it used to be - for patent holders.

From the end of 2001 through mid-2006, 18 patent cases went to trial in the Texas federal court

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and the patent holder won every time, according to Michael Smith, whose blog, EDTexweblog.com, tracks cases before the court.

The high win rate, along with the speed with which cases are prosecuted, have made Eastern Texas the most popular venue in the U.S. for patent-infringement cases.

But the win rate is declining. Just ask Acacia Research Corp. (ACTG). The Newport Beach, Calif. company said late Thursday that its Computer Acceleration unit lost a patent-infringement case against Microsoft Corp. (MSFT) in Eastern Texas. The news has sent Acacia's stock down by 34% to \$11.37 on heavy volume on Nasdaq Friday.

The Acacia decision isn't an isolated event. Ten patent cases have gone to trial in Eastern Texas this year and the patent holder has prevailed in just two of them, according to Smith. In one of those cases, an Eastern Texas judge overturned a \$156 million jury verdict that TGIP Inc., a Dallas patent-licensing company, had won against AT&T Corp. (T). "It has not been a good year for plaintiffs," Smith said.

Indeed, the last two years haven't been stellar for patent holders in Eastern Texas. Since 2006, the win rate in Eastern Texas is just 50%, or 9% below the national average, Smith said. The win rate for plaintiffs is declining because the cases aren't as strong as they were in previous years, and because defendants are being represented by more experienced trial lawyers, he said. "First of all, because there are a lot more patent cases being filed here, there are just a number of cases filed that aren't particularly good cases," he said.

Still, despite the declining win rate, the number of cases being filed, and the number of defendants being sued, in Eastern Texas is rising. According to Smith, about 350 patent cases have been filed so far in Eastern Texas in 2007, up from the high 200s last year.

Smith said he believes the numbers could decline, as patent holders with weak cases see the writing on the wall and choose to prosecute their cases elsewhere.

Acacia's chief executive, Paul Ryan, said his firm will continue to launch infringement litigation in Eastern Texas, as well as other venues. "The reason people select the Eastern District is because there are clear rules of evidence, there are clear rules on discovery and they get cases to trial quickly and do not tolerate delays which saves both sides time and money," he said.

In its case with Microsoft, Computer Acceleration, the Acacia subsidiary, alleged that Microsoft's Windows products, such as Windows XP, infringed on one of its patents. During the recent trial, the expert-damage report submitted by Computer Research suggested that Microsoft should pay past damages of \$2.50 per infringing operating system to Computer Acceleration. "I believe there were either 200 or 300 million (infringing) operating systems," depending on the time frame used to determine when Microsoft was liable for damages, Ryan said.

If the jury had sided with Computer Acceleration and accepted its damages assessment, Acacia would have been awarded damages ranging from \$500-\$750 million. Ryan said the company's law firm, McKool Smith P.C., has 10 days to decide if it will appeal.

In all, Acacia is prosecuting about 34 patent-infringement suits, though the Microsoft case was the first time an Acacia suit had made it to trial, Ryan said. Most cases are settled ahead of trial, he said. In fact, on Thursday, an Acacia subsidiary, Contacts Synchronization Corp., settled its infringement case with AT&T for undisclosed terms. Earlier this week, another Acacia subsidiary, Digital Background Corp., sued Apple Inc. (AAPL) for patent infringement in federal court in the Southern District of Illinois. It's the second Acacia subsidiary to sue Apple within a week.

CISCO.000257

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Ward 001198

From: Rick Frenkel (rfrenkel)
Sent: Monday, December 10, 2007 10:11 AM
To: John Noh (jnoh) <jnoh@cisco systems.com>
Subject: FW: Washington Post Article Opportunity

Wait - do you want me on the call? I think Mark can handle alone.

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From: Kathy Martinetti (kamartin)
Sent: Monday, December 10, 2007 8:08 AM
To: Rick Frenkel (rfrenkel); Mark Chandler (machandl); John Noh (jnoh)
Subject: RE: Washington Post Article Opportunity

John is trying to schedule for 10:00 on Weds.

From: Rick Frenkel (rfrenkel)
Sent: Monday, December 10, 2007 8:08 AM
To: Mark Chandler (machandl); John Noh (jnoh)
Cc: Kathy Martinetti (kamartin)
Subject: RE: Washington Post Article Opportunity

Agree it is but one symptom.

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From: Mark Chandler (machandl)
Sent: Monday, December 10, 2007 8:06 AM
To: John Noh (jnoh)
Cc: Kathy Martinetti (kamartin); Rick Frenkel (rfrenkel)
Subject: RE: Washington Post Article Opportunity

In fact, eager to do it. I have some things to say. One is that this isn't driven by legislation, it's driven by imbalance in the system. Clear that although the Court decisions are directionally correct, they don't address the underlying problem. The venue issue, and any kind of belief by plaintiffs that they can get "better law" in one part of the country or another, reflects underlying imbalances and is a symptom.

From: John Noh (jnoh)
Sent: Monday, December 10, 2007 7:09 AM
To: Mark Chandler (machandl)
Cc: Kathy Martinetti (kamartin); Rick Frenkel (rfrenkel)
Subject: Washington Post Article Opportunity

Hi Mark,

Catherine Rampell at the Post is working on a story examining the spate of new patent cases in the Eastern District of Texas. Her thesis is that this is the trolls anticipating and acting on the possible passage of the Patent Reform Act. She is interested in speaking with a few high-tech opinion leaders on this topic to get their thoughts. She will be speaking with Google as well.

I believe that the Troll Tracker has been blogging a lot about ED Texas lately. The latest blog up there includes this stat, which is eye-opening. Are you interested in speaking to the Post about this.

Kathy: Assuming Mark is good to go, can you shoot me some options in terms of availability for a phone call?

Thank you,
John

November statistics

ED Texas: 34 patent cases, 244 defendants sued (16 troll cases)
CD California: 27 patent cases, 45 defendants sued (2 troll cases)
D New Jersey: 20 patent cases, 33 defendants sued (3 troll cases)
D Delaware: 15 patent cases, 39 defendants sued (1 troll case)
ND Illinois: 11 patent cases, 12 defendants sued (2 troll cases)

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ND California: 11 patent cases, 18 defendants sued (3 troll cases)
SD New York: 9 patent cases, 15 defendants sued (2 troll cases)

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From: Rick Frenkel (rfrenkel) <rfrenkel@cisco.com>
Sent: Tuesday, March 4, 2008 3:55 PM
To: Mallun Yen (myen) <myen@cisco systems.com>
Subject: FW:

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From: John Noh (jnoh)
Sent: Thursday, October 18, 2007 10:25 AM
To: Rick Frenkel (rfrenkel)
Cc: Mallun Yen (myen)
Subject: RE:

Brilliant. Thank you,

John

+++++
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From: Rick Frenkel (rfrenkel)
Sent: Thursday, October 18, 2007 10:23 AM
To: John Noh (jnoh)
Cc: Mallun Yen (myen)

CISCO.000390

Subject:

<http://trolltracker.blogspot.com/2007/10/esn-convince-edtx-court-clerk-to-alter.html>

CISCO.000391

From: Mallun Yen (myen)
Sent: Thursday, October 18, 2007 12:47 PM
To: Matthew Tanielian (mtanieli) <mtanieli@cisco.com>
Subject: esn case

<http://trolltracker.blogspot.com/>

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From: Mallun Yen (myen) <myen@cisco.com>
Sent: Monday, February 25, 2008 10:14 PM
To: Mark Chandler (machandl) <machandl@cisco systems.com>
Subject: RE: ESN - PRIVILEGED AND CONFIDENTIAL

I know. I just want you to be aware of the full facts.

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From: Mark Chandler (machandl)
Sent: Monday, February 25, 2008 10:13 PM
To: Mallun Yen (myen)
Subject: RE: ESN - PRIVILEGED AND CONFIDENTIAL

well I wasn't even on this thread.

From: Mallun Yen (myen)
Sent: Monday, February 25, 2008 10:11 PM
To: Mark Chandler (machandl)
Subject: RE: ESN - PRIVILEGED AND CONFIDENTIAL

This is the closest we came to talking about a topic before it was actually posted. When I finally spoke to Rick about ESN, he said he had already written a posting on it.

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From: Mark Chandler (machandl)
Sent: Monday, February 25, 2008 10:10 PM

Plaintiff's Exhibit

Exhibit No. 299

Case No. 6:08-cv-89

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CISCO PRIVILEGED.000122

To: Mallun Yen (myen)
Subject: RE: ESN - PRIVILEGED AND CONFIDENTIAL

sorry, don't get the point.

From: Mallun Yen (myen)
Sent: Monday, February 25, 2008 9:32 PM
To: Mark Chandler (machandl); Neal Rubin (nrubin)
Cc: Rick Frenkel (rfrenkel)
Subject: FW: ESN - PRIVILEGED AND CONFIDENTIAL

Mark, Neal,

Went back to check my emails. FYI regarding ESN and the blog. I recall that Rick's response after getting this message was that he had already written it.

Mallun

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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.

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

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CISCO PRIVILEGED.000123

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?

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?

+++++
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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

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Ward 001269

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CISCO PRIVILEGED.000125

Ward 001270

Microsoft Mail Internet Headers Version 2.0
Received: from xmb-sjc-213.amer.cisco.com ([171.70.151.153]) by xmb-sjc-211.amer.cisco.com
with Microsoft SMTPSVC(6.0.3790.1830);
Mon, 25 Feb 2008 22:14:08 -0800
X-MimeOLE: Produced By Microsoft Exchange V6.5
Content-class: urn:content-classes:message
MIME-Version: 1.0
Content-Type: application/ms-tnef;
name="winmail.dat"
Content-Transfer-Encoding: binary
Subject: RE: ESN - PRIVILEGED AND CONFIDENTIAL
Date: Mon, 25 Feb 2008 22:13:52 -0800
Message-ID: <8874F6219396A04CA291C90CCD7F9C0706460611@xmb-sjc-
213.amer.cisco.com>
In-Reply-To: <31A6058B3270A040B80F1350EDED928FA7B08@xmb-sjc-
211.amer.cisco.com>
X-MS-Has-Attach:
X-MS-TNEF-Correlator: <8874F6219396A04CA291C90CCD7F9C0706460611@xmb-sjc-
213.amer.cisco.com>
Thread-Topic: ESN - PRIVILEGED AND CONFIDENTIAL
Thread-Index:
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AW2rkAAAAThgAAA Y7jAAAAbvYA=
References: <8874F6219396A04CA291C90CCD7F9C07064605F6@xmb-sjc-
213.amer.cisco.com> <31A6058B3270A040B80F1350EDED928FA7B04@xmb-sjc-
211.amer.cisco.com> <8874F6219396A04CA291C90CCD7F9C070646060C@xmb-sjc-
213.amer.cisco.com> <31A6058B3270A040B80F1350EDED928FA7B08@xmb-sjc-
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To: "Mark Chandler (machandl)" <machandl@cisco.com>
Return-Path: myen@cisco.com
X-OriginalArrivalTime: 26 Feb 2008 06:14:08.0612 (UTC)
FILETIME=[CC031A40:01C8783E]

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