

Exhibit B

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

30(b)(6) DEPOSITION OF MALLUN YEN

Monday, November 17, 2008

SHEILA CHASE & ASSOCIATES
REPORTING FOR:
West Court Reporting Services
221 Main Street, Suite 1250
San Francisco, California 94105
Phone: (415) 321-2300
Fax: (415) 618-0743

Reported by:
JANIS JENNINGS, CSR, CRP, CLR
CRS-100282-019

CONFIDENTIAL - Subject to the Protective Order

211

1 A. They are both lawyers.

2 Q. All right. "Also, Mark," the last
3 sentence there you say, "the case has been referred
4 to the magistrate judge." Now, "Mark" is Mark
5 Chandler; correct?

6 A. Yes.

7 Q. Okay. So you tell Mark Chandler and none
8 of the other people are lawyers that work on the
9 case; right?

10 A. Yes. The others are not lawyers who
11 worked on the ESN case at the time.

12 Q. Up in the top sentence who is the "local
13 counsel" to whom you were referring?

14 A. I don't know.

15 Q. Did you call Dan Webb?

16 A. I did.

17 Q. And what did you talk to Dan about?

18 A. Dan was hoping to represent us in the
19 underlying -- in the defense of the ESN case.

20 Q. In the ESN case.

21 Had you used Dan Webb before?

22 A. I had not.

23 Q. Had Cisco use Dan before?

24 A. In -- has Webb represented Cisco before?

25 Q. Yes.

1 A. Yes.

2 Q. Okay. And his law firm Winston & Strawn?

3 A. Yes.

4 Q. Did you deal with the Chicago office of
5 Winston & Strawn?

6 A. I don't know. I don't actually know where
7 Dan is based.

8 Q. He's based in Chicago.

9 Did you know him personally?

10 A. I don't believe I had met him in person.

11 Q. What did Dan tell you?

12 A. Dan was trying to pitch for the case
13 and was hoping to start representing us in patent
14 litigation.

15 Q. You left a message for Dan Webb -- or
16 "left a message for Webb to see what he has to say
17 about this." And the subject matter of this to me
18 seems to be a controversy about when the complaint
19 was filed. Do you not agree with that?

20 MR. BABCOCK: Object to the form.

21 MR. McWILLIAMS: Same objection.

22 BY MR. PATTON:

23 Q. What did Dan tell you? Dan Webb, what did
24 he tell you?

25 A. Dan told me that -- Dan was -- primarily

213

1 the purpose of our call was that Dan wanted to
2 represent Cisco in patent litigation and was trying
3 to pitch for the case.

4 Q. Did you talk about the ESN matter when you
5 talked to him?

6 A. That was the matter he was trying to pitch
7 for.

8 Q. Okay. I understand that. But did you
9 tell him about the incident of the filing maybe
10 being made on one day and maybe not and that kind
11 of thing?

12 A. I believe I may have.

13 Q. And what did he tell you?

14 A. That he'd never heard anything like it.

15 Q. Are you sure about that? I know Dan.

16 MR. BABCOCK: Yes, I know him too.

17 Everybody knows Dan.

18 THE WITNESS: I believe he was surprised.

19 BY MR. PATTON:

20 Q. But did he say to you: I've never heard
21 of anything like that?

22 A. He said something -- I believe he said
23 something to that effect.

24 Q. Okay. And that would have been on this
25 date?

1 Q. Well, why was he at home during this
2 period of time?

3 A. Actually, I don't know whether he was at
4 home.

5 Q. On vacation, absent from the premises from
6 Cisco, however you want to describe it.

7 A. I believe he was taking time to focus on
8 this lawsuit which was very distracting and time
9 consuming to him.

10 MR. PATTON: I already have it on there
11 (indicating).

12 THE WITNESS: This next one is 18.

13 MR. PATTON: What?

14 THE WITNESS: 18.

15 (Whereupon, Yen Exhibit 18 was marked
16 for identification.)

17 BY MR. PATTON:

18 Q. It starts with page 269 of the Cisco
19 privileged; correct?

20 A. Yes, that's the mark in the corner.

21 Q. Okay. And it begins on the last page with
22 one of the October 18 letters that we've seen before
23 today; correct? Rick Frenkel to Showalter and so on
24 and so forth? Yes.

25 Q. Did Mr. Showalter and the Baker Botts