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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

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ERIC ALBRITTON ] CASE NO. 6:08CV89  
VS. ] 9 AM, SEPTEMBER 17, 2009  
CISCO SYSTEMS, INC. ] TYLER, TEXAS  
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REPORTER'S SAME-DAY DELIVERY TRANSCRIPT OF JURY TRIAL

VOLUME 4 OF ^ 000, PAGES 1 THROUGH ^ 000

TABLE OF CONTENTS, ^ 000

THE HONORABLE RICHARD SCHELL, U.S. DISTRICT JUDGE, PRESIDING

PROCEEDINGS REPORTED USING COMPUTERIZED STENOTYPE,  
TRANSCRIPT PRODUCED USING COMPUTER-AIDED TRANSCRIPTION.

02:35PM 1 ENTITIES FILING LAWSUITS IN THE EASTERN DISTRICT OF TEXAS.

02:35PM 2 MS. PEDEN: NO, I DON'T BELIEVE THAT THAT'S WHAT  
02:35PM 3 DEFENDANTS CONTEND, AND WE DID THAT BATTLE IN DISCOVERY. WE  
02:35PM 4 ASKED FOR THAT DISCOVERY. THEY DIDN'T GIVE IT TO US -- AND --  
02:35PM 5 BECAUSE THAT WASN'T THEIR -- I BELIEVE THAT WASN'T THEIR  
02:35PM 6 POSITION.

02:35PM 7 THE COURT: MR. MORAN, WAS THAT YOUR POSITION IN  
02:35PM 8 CONNECTION WITH THE MOTION FOR SUMMARY JUDGMENT, THAT THE  
02:35PM 9 PUBLIC CONCERN HAD TO DO WITH THAT ISSUE?

02:35PM 10 MR. MORAN: LET ME SEE IF I CAN CLARIFY THAT, YOUR  
02:35PM 11 HONOR.

02:35PM 12 THE COURT: OKAY.

02:36PM 13 MR. MORAN: WHAT WE'RE TALKING ABOUT HERE THIS  
02:36PM 14 AFTERNOON IS THE CHARACTER OF THE SPEECH. THE SUMMARY-JUDGMENT  
02:36PM 15 MOTION WAS DIRECTED TO WHETHER OR NOT THE PLAINTIFF WAS A  
02:36PM 16 PUBLIC FIGURE, AND THE COURT HELD THAT MR. ALBRITTON WAS NOT A  
02:36PM 17 PUBLIC FIGURE; HE WAS A PRIVATE FIGURE.

02:36PM 18 THE COURT: YES.

02:36PM 19 MR. MORAN: ONE OF THE ELEMENTS OF CONSIDERATION IN  
02:36PM 20 THAT DETERMINATION OF THE STATUS OF THE PLAINTIFF -- NOT THE  
02:36PM 21 CHARACTER OF THE SPEECH, WHICH IS WHAT WE'RE TALKING ABOUT  
02:36PM 22 NOW -- IS WHETHER OR NOT THERE WAS A PUBLIC CONTROVERSY THAT  
02:36PM 23 MR. ALBRITTON MAY HAVE PLAYED MORE THAN A TANGENTIAL ROLE IN.  
02:36PM 24 AND YOUR HONOR RULED THAT HE REALLY WASN'T INVOLVED IN THAT  
02:36PM 25 PUBLIC CONTROVERSY, IF THERE WAS A PUBLIC CONTROVERSY. WE'RE

02:36PM 1 TALKING --

02:36PM 2 THE COURT: WAIT A MINUTE. DID I SAY THAT? I THINK  
02:36PM 3 WHAT I SAID ON PAGE 10 -- MAYBE I MISREAD WHAT YOU HAD IN YOUR  
02:36PM 4 BRIEF, BUT -- THERE WAS A LOT OF BRIEFING ON THIS. BUT I  
02:36PM 5 THOUGHT THAT YOUR POSITION WAS THAT THE PUBLIC CONTROVERSY WAS  
02:36PM 6 ABUSE OF THE PATENT SYSTEM BY NONPRACTICING ENTITIES IN THE  
02:37PM 7 EASTERN DISTRICT OF TEXAS.

02:37PM 8 MR. MORAN: ABSOLUTELY. THERE'S NO DOUBT ABOUT  
02:37PM 9 THAT. IT'S PART OF, WE SAID, A PUBLIC CONTROVERSY AT THE TIME.

02:37PM 10 THE COURT: OKAY. BUT YOUR POSITION IS -- AND I --  
02:37PM 11 I'LL HEAR FROM MS. PEDEN, BUT I TEND TO AGREE THAT WHAT GOES ON  
02:37PM 12 IN OUR CLERK'S OFFICE IS A MATTER OF PUBLIC CONCERN.

02:37PM 13 MR. MORAN: ABSOLUTELY, AND THAT'S WHAT WE'RE SAYING  
02:37PM 14 NOW. WE ARE TALKING ABOUT THE CHARACTER OF THE SPEECH. AND  
02:37PM 15 THE PATENT TROLL TRACKER BLOGS ARE SUBSTANTIALLY ABOUT THE  
02:37PM 16 PUBLIC INTEGRITY OF THE DOCKETING SYSTEM, THE FILE SYSTEM, THE  
02:37PM 17 CONDUCT --

02:37PM 18 THE COURT: OKAY.

02:37PM 19 MR. MORAN: -- ACTIONS OF THE CLERK, AND SO THAT'S  
02:37PM 20 WHY WE SAY THE SPEECH IS A MATTER OF PUBLIC CONCERN.

02:37PM 21 THE COURT: OKAY.

02:37PM 22 MS. PEDEN, YOU DON'T DISAGREE WITH THAT, DO YOU?

02:37PM 23 MS. PEDEN: I DON'T DISAGREE THAT THAT'S THEIR  
02:37PM 24 POSITION. IT WAS BRIEFED IN A SUMMARY-JUDGMENT BRIEFING, AND  
02:37PM 25 NOT JUST IN THE CONTEXT OF THE PRIVATE FIGURE -- PUBLIC