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

ERIC M. ALBRITTON)
)
v.)
) C.A. NO. 6:08-CV-00089
CISCO SYSTEMS, INC.,)
RICK FRENKEL, MALLUN YEN &)
JOHN NOH)

ORAL AND VIDEOTAPED DEPOSITION OF
DAVID MALAND
NOVEMBER 3, 2008
VOLUME I

ORAL AND VIDEOTAPED DEPOSITION OF DAVID MALAND,
produced as a witness at the instance of the Defendant,
and duly sworn, was taken in the above-styled and
numbered cause on the 3rd day of November, 2008, from
9:25 a.m. to 3:15 p.m., before April R. Eichelberger,
CSR in and for the State of Texas, reported by machine
shorthand, at the United States District Court for the
Eastern District of Texas, 211 West Ferguson Street in
the City Tyler and the State of Texas, pursuant to the
Federal Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

1 Eric did to convince you that you needed to make a
2 change?

3 A. I was looking at it from our independent
4 perspective. I wanted to see what the record materials
5 reflected, and I made the judgment call based on what I
6 saw in the record materials.

7 Q. Continuing that same sentence, he says you
8 changed the October 16th filing date. Was there ever
9 any change made to the filing date?

10 A. Again, the term "filing date" a term of art.
11 What we did change is the date -- I think it says date
12 filed on Document Number 1. It's in that first column
13 of the docket sheet. It got changed from October 15th
14 to October 16th. And the filing date, however, in
15 reality, under our rules, is the date that's reflected
16 on the Notice of Electronic Filing. That is the
17 file-stamped indicia of filing.

18 Q. Did anyone at the clerk's office --

19 A. And we can't -- we can't change that. It's
20 hardwired. It is encrypted. It is unassailable, thank
21 heaven.

22 Q. And so the answer to my next question, then,
23 you've probably already given me, but that is no one
24 then at the clerk's office changed the filing date of
25 this document?

1 MR. BABCOCK: Object to the form.

2 MR. McWILLIAMS: Object to the form.

3 A. Well, I would say that we did change
4 something. We adjusted the record, corrected the
5 record, to better reflect what we knew about when the
6 complaint was tendered. The complaint was tendered at
7 two minutes after midnight, and we clarified that by
8 making the adjustment on the date filed in -- on the
9 docket sheet. We did not and could not change the NEF,
10 which is really controlling here.

11 Q. (BY MR. HOLMES) The official filing date is
12 reflected in the NEF?

13 A. Yes.

14 Q. Did you change the official filing date in the
15 NEF?

16 A. No, couldn't, can't.

17 Q. Did the NEF ever reflect an October 15th
18 filing date?

19 A. Well, yes, there's some language there, but --
20 and that's -- if we go to the NEF -- I think I can do
21 this from memory, but it says filed 10/15, entered
22 10/16. And that's confusing. What we were schooled on
23 and the dispositive, to my mind, results are the
24 document stamps. Every one -- thank you. These,
25 stamped document, date 10/16. There is the main