

# EXHIBIT “E”

30(b)(6) Deposition of Mallun Yen  
CONFIDENTIAL - Subject to the Protective Order

11/17/2008

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

CERTIFIED COPY

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

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1 Q. And who would that be?

2 A. John Noh.

3 Q. Okay.

4 A. And I responded saying Mr. Frenkel had  
5 gotten an anonymous tip.

6 Q. About what?

7 A. About the ESN case.

8 Q. All right. So the chronology at that  
9 period of time was that Mr. Frenkel got an anonymous  
10 tip from someone about the ESN business; correct?

11 A. If it's a chronology, it has to be -- what  
12 chronology are you asking about?

13 Q. You do know that the accusations in the  
14 blog about altering the document and the Banana  
15 Republic and the Eastern District of Texas and those  
16 kind of things did come about, did they not, in the  
17 blog?

18 MR. McWILLIAMS: Objection. Form.

19 MR. BABCOCK: Object to the form.

20 THE WITNESS: It's such an odd -- can you  
21 rephrase that question?

22 BY MR. PATTON:

23 Q. Yes, I sure can. Did you read the blog of  
24 October the 18th, 2007?

25 A. After the lawsuit was filed?

1 Q. No. Way before the lawsuit. You're  
2 talking about the ESN lawsuit or this lawsuit?

3 A. I was talking about this lawsuit.

4 Q. Okay. Well, I think that this lawsuit  
5 wasn't filed until sometime in 2008, and the time  
6 period I'm talking about is in October of 2007 and I  
7 believe that would be before the lawsuit was filed.  
8 Don't you agree?

9 A. I'm sorry. Can you say that again?

10 MR. BABCOCK: He's asking you whether you  
11 read the thing in October of 2008 is what he wants  
12 to know.

13 MR. PATTON: No. 2007.

14 MR. BABCOCK: 2007. Sorry. October 2007.

15 THE WITNESS: I don't remember reading it.

16 BY MR. PATTON:

17 Q. You never read the ESN controversy, the  
18 accusations? You've never read that?

19 A. I don't know.

20 MR. McWILLIAMS: Objection to form.

21 MR. BABCOCK: Same objection.

22 BY MR. PATTON:

23 Q. Have you ever read it?

24 A. I have read it.

25 Q. Okay. When did you read it?

1           A.    I read it after the lawsuit was filed,  
2 this lawsuit.

3           MR. BABCOCK:   The Albritton lawsuit?

4           THE WITNESS:   Yes.

5 BY MR. PATTON:

6           Q.    You had not -- you weren't aware of it  
7 at all around the October 16, 17, 18 time period  
8 of 19- -- of 2007; is that right?

9           A.    No, I didn't say that. I was aware of it.

10          Q.    But you hadn't read the blog material?

11          A.    I don't remember reading it.

12          Q.    Okay. You have read it now?

13          A.    I have read it now.

14          Q.    Okay. Did Mr. Frenkel call the Eastern  
15 District of Texas a Banana Republic?

16          MR. BABCOCK:   Object to the form.

17          MR. McWILLIAMS:   Same objection.

18          THE WITNESS:   I don't know. I read the  
19 posting that was attached to the complaint in this  
20 lawsuit and that is the first I saw of that phrase  
21 used. So I don't know any --

22 BY MR. PATTON:

23          Q.    Maybe we're just having time sequencing  
24 problems, Miss Yen. And what I'm getting ready to  
25 ask you refers to have you ever read that blog; and

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

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?