

## Expert Witness Report of Ralph L. DeLoach

This report is submitted by Ralph L. DeLoach as an expert witness for the Defendant in ESN LLC v. Cisco Systems Inc et al, Case No. 5:07-cv-00156-DF-CMC, United States District Court for the District of Texas (Texarkana). The primary focus is the official filing date of the Complaint. The opinions stated in this report are based on a reasonable degree of certainty in the field of electronic case filing.

My background and qualifications are included in my curriculum vitae and attached hereto as Exhibit A. I have not authored any publications in the last 10 years and I have not testified as an expert witness in the previous 4 years. My fee for review and testimony in this case is \$150.00 per hour plus any travel expenses.

In my professional opinion, the complaint and other initiating documents in ESN LLC v. Cisco Systems Inc et al, Case No. 5:07-cv-00156-DF-CMC was officially filed on 10/15/2007. It appears that the electronic transmission of the complaint and initiating documents was begun prior to 12 midnight on 10/15/2007 and that the transmission was not complete until 0:01 AM CDT on 10/16/2007. The Case Management Electronic Case Files system is programmed so that the filing date reflected in the Notice of Electronic Filing cannot be changed. Per my understanding of actual practice in the Federal Court after 30 years of service, any changes made to a complaint after it is officially filed can only be made by order of the court.

If the electronic filing was begun on 10/15/2007 then regardless of how many documents were actually transmitted after 12 midnight on 10/15/2007 the official filing date would be on 10/15/2007. The Notice of Electronic Filing reveals that four documents were filed after midnight or at 0:01 AM CDT on 10/16/2007. The docket sheet for Civil Docket Case No. 5:07-cv-00156-DF-CMC reveals that the case was officially filed on 10/15/2007. (Exhibit B, attached)

A memorandum from Mr. Maland, Court Administrator for the Eastern District of Texas dated 3/14/2008 acknowledges that the official filing date was 10/15/2007. (Exhibit C, attached)

Local Rules for the Eastern District of Texas advise that the official filing date is the date reflected on the Notice of Electronic Filing which in this case is 10/15/2007. (Exhibit D, attached)



Ralph L. DeLoach

November 10, 2009