IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

JOHN WARD, JR.,
Plaintiff,
vs. Case No. 08-4022
CISCO SYSTEMS, INC.,
Defendants.
_____

VIDEOTAPED DEPOSITION OF
MARK MICHELS, ESQ.

Friday, December 18, 2009
10:04 a.m.

2200 Geng Road, Suite 200
Palo Alto, California

Reported by Hanna Kim, CSR No. 13083

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together with Mr. Babcock and his firm.

Q. When did Ms. Yen undertake her investigation of Frenkel's activities?

A. Shortly before Mr. Frenkel identified himself as the -- or around the same time that he identified himself as the -- the Troll Tracker. That would have been, I believe, in February of 2008.

Q. Who partook in the investigation?

A. Ms. Yen.

Q. Solely Ms. Yen?

A. Yes.

Q. And what did she do to undertake this investigation?

A. She reviewed the -- the current blogging policy at the time, reviewed the -- the -- the -- Rick's Troll Tracking -- Troll Tracker postings, and concluded that his Troll Tracker activity did not violate Cisco's blogging policy.

Q. How did she reach this conclusion?

A. She reviewed the blogging policies and concluded that they didn't violate the policy.

Q. Did she put this conclusion in writing?

A. Yes, she did.

Q. And what is that document?

A. There is an e-mail that she generated about

Exhibit 2.

A. Which -- which question is pending?

MS. TOWLE: Can I have a read-back?

THE COURT REPORTER: "Question: What communications were there between Cisco and Frenkel concerning the filing of the ESN complaint through October 19th of 2007?"

THE WITNESS: Through October 19th of 2007?

There were several communications among the -- the IP team about the filing of the -- the ESN complaint through and including October 19th, 2007. I had conversations with Mr. Frenkel about it; Mr. Ritter had conversations; Ms. Yen; Ms. Beckwith. There were various e-mails on that subject, as well, between other Cisco employees and Mr. Frenkel. That's it.

BY MS. TOWLE:

Q. Earlier in your testimony with regard to Topic 23 in the amended second notice of deposition, the question was whether or not you could represent on the record the amount paid by Cisco for legal representation in this case.

Do you have an answer to that question?

A. I don't have the amount.

Q. When we discussed the investigations that Cisco made into Frenkel's blogging activity in regard to Topic

6 in the second amended first notice of deposition, you testified that Ms. Yen conducted an investigation, and her conclusion were set forth in an e-mail to her team; is that correct?

A. That's correct.

Q. I'm handing you Exhibit 13.

(Deposition Exhibit No. 13 was marked for identification.)

MR. BABCOCK: Thank you.

BY MS. TOWLE:

Q. And the first page of Exhibit 13 bears the Bates stamp CISCO.000374, ending on CISCO.000379. Is that correct?

A. Yes.

Q. Does this document include the e-mail with Ms. Yen's conclusions as to Mr. Frenkel's blogging activities?

A. Yes.

Q. And where is that in this e-mail string?

A. It is on the page CISCO.000375.

Q. It doesn't start on page 000374?

A. Oh, I'm -- I'm sorry. You asked about her conclusions. The -- her e-mail starts on CISCO.000374.

Q. And her conclusion is reached where?

A. On page CISCO.000375.
Q. And can you read me the conclusions she reached?
A. "Rick complied with this policy."
Q. And that's Mallun's conclusion after her investigation as to Frenkel's blogging activities?
A. That's true.
MR. BABCOCK: What number is that? Exhibit number?
THE WITNESS: This is Exhibit 13.
MR. BABCOCK: Thank you.
BY MS. TOWLE:
Q. I'm handing you Exhibit 14.
MR. BABCOCK: Thank you.
(Deposition Exhibit No. 14 was marked for identification.)
BY MS. TOWLE:
Q. This document is labeled "CISCO PRIVILEGE.000150" through 151.
A. Yes.
Q. It appears to be two e-mail strings, the first of which starts about mid-page on the -- on page 150.
A. Yes.
Q. And it appears to be an e-mail from Frenkel to Mallun Yen, Marta Beckwith, Mark Ritter, and yourself; is