



www.setexasrecord.com



Who's To Blame For \$4 Gas?



VOTE NOW!

www.MoneyAndMarkets.com

Feedback - Ads by Ginnia

Jul. 7, 2008 | S.E. Texas' Legal Journal

Search:

GO >>

NEWS ARGUMENTS DOCKETS ISSUES SUBSCRIBE ABOUT US RSS FEED

NEWS

Patent troll tracker sued for defamation

3/13/2008 11:52 AM

By Michelle Massey, Texarkana Bureau

TEXARKANA -- After a Chicago plaintiffs' lawyer offered a \$15,000 bounty for the identity of a "patent troll" tracker, the blogger revealed his identity - Rick Frenkel, director of intellectual property at Cisco.

Only four days after revealing his identity, Frenkel was sued by two East Texas patent lawyers for defamation in Gregg County District Court.

A "patent troll" is a derogatory term referring to those who aggressively enforce their patents against alleged infringers. The previously anonymous blogger, referred to as Troll Tracker and identifying himself as "just a lawyer, interested in patent cases, but not interested in publicity", regularly wrote about those companies and attorneys he considered patent trolls and attempted to expose companies that bought patents for the express purpose of filing infringement suits over them.

The son of East Texas federal Judge T. John Ward, attorney T. John "Johnny" Ward Jr. filed the original defamation suit on Nov. 7, 2007, with the idea of deposing someone at Google, who hosted the anonymous blogger's site.

When the identity was revealed, Ward filed the amended complaint naming Frenkel and Cisco as defendants on Feb. 27. Fellow East Texas attorney Eric Albritton filed another suit against Frenkel and Cisco on March 3 alleging defamation.

Johnny Ward and Albritton have filed hundreds of patent infringement suits in the Marshall federal court on behalf of plaintiffs.

At issue are October blog posts Frenkel wrote surrounding a case in which Cisco was sued for patent infringement.

According to the defamation suit, Frankel wrote:

"I got a couple of anonymous emails this morning, point out that the docket in ESN v. Cisco (the Texas docket, not the Connecticut docket), had been altered. One email suggested that ESN's local counsel called the EDTX court clerk, and convinced him/her to change the docket to reflect an October 16 filing date, rather than the October 15 filing date. I checked, and sure enough, that's exactly what happened - the docket was altered to reflect an October 16 filing date and the complaint was altered to change the filing date stamp from October 15 to October 16. Only the EDTX Court Clerk could have made such changes.

Of course, there are a couple of flaws in this conspiracy. First, ESN counsel Eric Albritton signed the Civil Cover Sheet state that the complaint had been filed on October 15. Second, there's tons of proof that ESN filed on October 15.

You can't change history, and it's outrageous that the Eastern District of Texas may have, wittingly or unwittingly, helped a non-practicing entity to try to manufacture subject matter jurisdiction.

This is yet another example of the abusive nature of litigating patent cases in the Banana Republic of Texas."

A couple of days after posting the comment, Frenkel rewrote the last line but the amended version is not included with either of the lawsuits:

"Even if this was a 'mistake,' which I can't see how it could be, given that someone emailed me a printout of the docket from Monday showing the case, the proper course of action should be a motion to correct the docket."

An entry of the day before the above blog posts, Frenkel wrote:



Eric Albritton



T. John Ward Jr.

SUBSCRIBE To get our free email newsletter and make changes to your subscription:

Enter your email...

Subscribe to Print Edition
 Renew Print Edition Subscription

ARGUMENTS

- ▶ Legally Speaking: The Justies - Part II - 7/1/2008
- ▶ Legally Speaking: The Justies - Part I - 6/25/2008

▶ ARGUMENTS Archive

MOST POPULAR

- Recent patent infringement cases filed in U.S. District Courts
- Texas SC Justices face ethics hearings
- Crisis to Coon: Wrap it up
- Seaman sues four defendants in Jones Act case
- Couple never receives cash back on new truck, sues rewards company

READER'S POLL

Who is negligent when a drunk driver dies in a head on?

- The bar (8.16%)
- The other driver (3.06%)
- The drunk (84.69%)
- All of the above (4.08%)

This poll is closed.

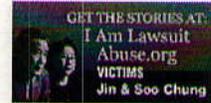
Total Votes: 98

[View Results](#)

ABOUT US

Need to know more about us or have questions? Try the links below:

- ▶ By way of introduction
- ▶ About Us
- ▶ Contact *The Record*



"Perhaps realizing their fatal flaw (as a couple of other bloggers/news items have pointed out), ESN (represented by Chicago firm McAndrews Held and Malloy and local counsel Eric Albritton and T. Johnny Ward) filed an amended complaint in Texarkana today - amending to change absolutely nothing at all, by the way, except the filing date of the complaint. Survey says XXXXXX (Insert "Family Feud" sound here). Sorry, ESN. You're on your way to New Haven. Wonder how Johnny Ward will play there?"

The patent was not issued until Oct. 16, which if the case was filed on Oct. 15 meant the case had no legal standing.

The lawsuits summarize the posts and state that Frenkel alleged the attorneys had engaged in criminal conduct in altering the date of the patent infringement complaint so that it would not be filed before their client's patent had been approved.

In a subsequent motion, Ward and Albritton said they filed the original suit on Oct. 16 at 12:01 a.m. Attempting to win venue, Cisco filed a declaratory judgment against ESN in Connecticut on Oct. 16.

The Texas case was dismissed on Nov. 2 with agreement of the parties and rendering the filing dates as meaningless.

The attorneys are seeking damages for shame, embarrassment, humiliation, mental pain, and anguish. Further, the attorneys state injuries to their "business reputation, good name, and standing in the community, and will be exposed to the hatred, contempt, and ridicule of the public in general as well as of his business associates, clients, friends, and relatives."

Moreover, the plaintiffs are seeking exemplary damages arguing the defendants acted with malice.

The two lawsuits allege Cisco as Frenkel's employer is also liable for exemplary damages by arguing Frenkel, as the director of intellectual property litigation at Cisco, published his statements in his managerial capacity with knowledge of his employer.

Attorney Nicholas H. Patton of the Texarkana law firm Patton, Tidwell & Schroeder LLP is representing attorney John Ward Jr. Henderson attorney James A. Holmes is representing attorney Eric M. Albritton.

"The parties have mutually agreed to make no comment on the lawsuit in question at this time," Cisco spokesperson Terry Alberstein stated in a press release. "That said we would like to underscore that the comments made in the employee's personal blog represented his own opinions and several of his comments are not consistent with Cisco's views. We continue to have high regard for the judiciary of the Eastern District of Texas and confidence in the integrity of its judges."

The lawsuits are receiving wide publicity in the blogosphere as the lawsuits could result in precedents to be applied to future bloggers.

The Troll Tracking blog is now invitation only.

Ward v. Cisco and Frenkel Case No. 2007-2502-A
Albritton v. Cisco and Frenkel Case No. 2008-481-CCL2

EMAIL A FRIEND | PRINT | DIGG THIS | POST TO DELICIOUS

COMMENTS ON THIS ARTICLE

No comments have been posted in the last 15 days!

SEND US YOUR COMMENTS ON THIS ARTICLE

* - Required fields

Subject: *

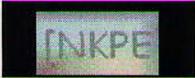
Message: *

Contact Name: *

Contact URL:

Contact Email: *

Write the text from image below to this textbox



Submit