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## Revealed Patent Blogger, and Employer, Sued for Defamation

Posted by Dan Slater

*WSJ colleague Bobby White, who covers Cisco from San Francisco, passed along this update on the Patent Troll Tracker saga:*

Late last month, we posted on Rick Frenkel, a lawyer and the director of IP litigation at Cisco who outed himself as the author of the widely-read Patent Troll Tracker blog. The blog follows companies said to holding patents solely to sue for infringement. (Now the blog can be read only by invited members.)

The next day, both Frenkel and his employer, Cisco, were slapped with a defamation suit. The suit stemmed from a blog post Frenkel wrote in which he alleged irregularities in a patent case in which two Texas lawyers, Johnny Ward and Eric Albritton, represented ESN against Cisco. The post questioned whether someone had tampered with the date of a patent filing. Frenkel concluded: "This is yet another example of the abusive nature of litigating patent cases in the Banana Republic of East Texas." (Click [here](#), [here](#) and [here](#) for past posts on the patent landscape of East Texas.)

According to news reports, Ward originally filed a defamation suit last November, wanting to depose managers at Google, which hosted the then-anonymous blog. When Frenkel revealed his identity, Ward amended the suit. Albritton filed his own suit against Frenkel and Cisco on March 3 alleging defamation. Meanwhile, the original case in question, ESN vs. Cisco, was dismissed by agreement of the parties this past November.

Albritton wasn't immediately available for comment, while Ward requested that we contact his lawyer, Nick Patton, who has not yet returned a call.

As for Cisco, where Frenkel still works, a spokesperson says: "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."

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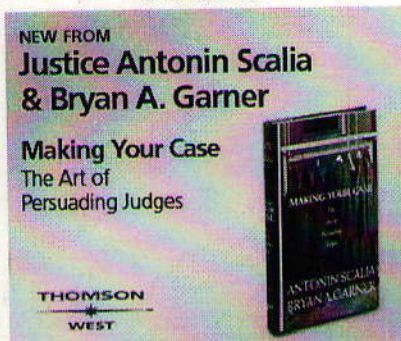
I said when Frenkel was 'outed' that he'd be sued promptly — how right I was!

Comment by I said it FIRST - March 13, 2008 at 4:54 pm

Is this lawsuit about trying to obtain redress for someone who suffered real, actionable damage, or is it a tactic to intimidate and silence someone who said things the plaintiff just didn't like?

Comment by Come On, Really -- what's at stake here? - March 13, 2008 at 4:57 pm

Why not have the parties settle this with traditional Frontier Justice? We know the



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## ABOUT THIS BLOG



The Wall Street Journal's Law Blog focuses on law and business, and the business of law. Dan Slater is the lead writer. Dan joined The Wall Street Journal from The Deal magazine. Before becoming a journalist, Dan worked as a litigator at a New York law firm. The blog's founding writer was Peter Lattman, who now covers private equity for the Journal.

The Law Blog also includes contributions from reporters and editors at the Journal and Dow Jones Newswires. Have a comment or tip? Write to [lawblog@wsj.com](mailto:lawblog@wsj.com).

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equipment is easily and quickly available in TX, and one less lawyer is society's gain.

Comment by Texas traditionalist - March 13, 2008 at 5:05 pm

The defamation action is frivolous. Companies and the people that work for them ought to be able to say anything they want about anybody. Especially a lawyer. This matter should be thrown out of court like a troll at a troll throwing contest.

Comment by Tort Reform - March 13, 2008 at 5:30 pm

this screams for an anti-SLAPP motion

Comment by Anonymous - March 13, 2008 at 5:48 pm

In my opinion, patent litigation is the new bastion of frivolous litigation

Comment by Frank - March 13, 2008 at 6:14 pm

Just make sure Mr Ward that I am not on the jury.

Comment by Merrill - March 13, 2008 at 6:24 pm

Where is the lawsuit and why does the lawblog not provide a link to it? Lattman would have been right on this one. Those were the days.

Comment by Anon - March 13, 2008 at 7:44 pm

One thing of interest is that, apparently, the PTT had read, then reacted to, a report on the internet that indicated the Tx lawyers had sued before their client had standing - but, either that report proved incorrect, or the court clerk corrected the docket. One rule of the cyberhighway is not to believe everything on the internet, and taken a step further, not to publish on the web conclusions that you've jumped to based on that internet report. Most libel involves over-reactive reporting about some thin or evanescent 'facts'.

Comment by Thomason - March 14, 2008 at 10:02 am

But it looks like everything that guy posted was factually true, based on everything I've read. The case docket did show that that the plaintiff lawyers had sued on a patent one day before it issued from the Patent Office, which would mean they wouldn't have legal standing. And it is also true that the court docket was then changed to move the filing date by one day, which apparently only the court clerk could have done. I haven't seen anyone say that any of those facts were inaccurate. He's really being sued for the rest of the post, which were his opinions, which are protected by the First Amendment.

Comment by Carl - March 14, 2008 at 10:45 am

Ah yes, but this is the Eastern District of Texas, Texarkana Division. Nick Patton is close to Judge Folsom and Magistrate Judge Craven, and Johnny Ward is also a familiar presence in that Court. I would not want to be the defendant under the circumstances!

Comment by Occasional Texarkana Tourist - March 14, 2008 at 11:21 am

Dan Slater  
I think the biggest farce we have at the moment is, we have no good, I mean a very good lawyers on patents. correct me if I am wrong. Hence we have all piracies etc I thank you  
Firozali A Mulla MBA PhD  
P.O.Box 6044  
Dar-Es-Salaam  
Tanzania  
East Africa

Comment by Firozali A. Mulla MBA PhD - March 14, 2008 at 11:48 am

Truth may be a great defense, but one bad lawsuit can still ruin your life.

Comment by Interested reader - March 14, 2008 at 3:54 pm

You are missing one \*very important\* fact, people

Rick Frenkel was in charge of that particular patent lawsuit brought against his

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company and \*purposely\* made serious and false accusations against plaintiff's attorneys  
Enough info to disbar him immediately

Comment by angry dude - March 17, 2008 at 9:34 pm

If you want the facts, read the recent article at [www.texaslawyer.com](http://www.texaslawyer.com). They interviewed all involved — even the court clerk and judge. Sounds like Frenkel, who is a lawyer himself and would have had the insight of his own Texas local counsel, knew he was spinning yarns. If Frenkel's blogging was truly independent, why hasn't Cisco fired him yet?

Comment by Cisco's Dilemma - March 20, 2008 at 4:57 pm

Hi,

I just found this web site that lets you download patents as PDF files for free. Its <http://www.patentretriever.com/>

Thought I'd share this little gem with those that are interested.

John

Comment by John Segal - June 1, 2008 at 9:46 am  
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March 2008

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