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On The Docket

Shut Up, Already!

Asher Hawkins 03.11.08, 7:00 PM ET

What was this guy thinking?

Late last month, the anonymous author of the Patent Troll Tracker--a must-read blog among top intellectual property litigators--revealed his identity: Cisco in-house intellectual-property counsel Richard Frenkel.

For months, IP lawyers everywhere had been wondering which side of the aisle the masked blogger was on. Now Chief Executive John Chambers may be wondering why he hadn't imposed a more draconian employee-blogging policy.

Last October, the Patent Troll had been mouthing off about a patent-infringement case in which Cisco was the defendant. The plaintiff: a small company named ESN, based in Bloomfield, Conn. According to the blog, ESN filed suit a day before the patent was issued (which wouldn't do ESN much good). But, the blog claimed, ESN's local counsel convinced a federal courthouse clerk to switch the date on the docket to the next day.

Retribution was swift. Days after Frenkel's unmasking, attorneys T. John Ward, Jr. and Eric Albritton both filed separate defamation actions against Cisco and Frenkel. Grounds for suing Cisco itself? When Frenkel unveiled his identity, he also wrote that his "direct manager" knew about his blogging (but insisted that nobody further up the chain at Cisco did).

Cisco's response: "Comments made in the employee's personal blog represented his own opinions and several of his comments are not consistent with Cisco's views," wrote spokesperson Terry Alberstein in a press release. Cisco commented neither on Frenkel's employment status nor its employee-blogging policies. Frenkel did not respond to calls seeking comment.

Some companies encourage blogging, though with caveats. Sun Microsystems, for one, has a laundry list of general guidelines for the roughly 4,000 bloggers who use Sun's software platform. ("Do not discuss work-related legal proceedings" is No. 5.)

Still, the risks are real: "Companies have to be concerned about statements by employees that could come back to haunt them in litigation involving the company," says attorney Robert Clothier, a regular corporate adviser on First Amendment issues. Chambers would likely agree.

As for the Patent Troll Tracker? The blog is now invitation-only.