

The Prior Art

One reporter's notes on the IP beat

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Scott Harris' lawyers drop Troll Tracker deposition demand; Frenkel, Cisco say subpoena was meant to assist Texas lawyers' defamation attack

Part One: Scott Harris' lawyers give up their effort today to depose Patent Troll Tracker blogger Rick Frenkel. Harris' lawyers at Niro Scavone Haller & Niro (NSHN) had said they suspected Frenkel was working with opposing law firm Fish & Richardson, which is locked in litigation with its former top-billing lawyer and Niro Scavone client Scott C. Harris.



Cisco and Frenkel, in turn, claimed that Niro lawyers were using an overly-broad subpoena as a back-door route to uncovering evidence that could be used in the Arkansas and Texas pending defamation lawsuits against Frenkel and his employer.

There was no secret alliance between Fish & Richardson and Frenkel; rather, it was the Niro Scavone firm that could be sneakily helping Johnny Ward Jr. and Eric Albritton get more ammunition for their lawsuits, allege Frenkel his employer.

Harris' lawyers say they gave up on this deposition because Frenkel swore in his deposition that he had "no communication with anybody at Fish & Richardson concerning the underlying litigation and the related parties." That cancels the May 13 hearing that was scheduled in San Jose where Harris' lawyers would have faced off with attorneys representing Cisco and Frenkel.



From Frenkel's brief opposing deposition ("Movants" here means Scott Harris & Co.):

The subpoena is, of course, much broader and seeks wide ranging information about the Patent Troll Tracker. Furthermore, we are informed and believe that the discovery in the Chicago case has put Movants on notice that Frenkel, consistent with his declaration in this matter, had no involvement with the Fish firm whatsoever regarding the Chicago case. We invite Movants to contradict our informed belief with evidence.

What the court is left with is that Frenkel wrote matters displeasing to Movants and their counsel on the PTT. For this they have attempted to create an excuse to take his deposition. The subpoena raises not only issues of harassment and abuse, but also the right of speakers to publish their views free of legally imposed inquiry from and by the subjects of the articles when, as non-parties, they have no connection to the underlying litigation.

The testimony sought may have relevance to the Arkansas and Texas litigation. The Arkansas and Texas litigation involve claims that Frenkel published defamatory comments on the PTT. Because portions of the discovery sought have no apparent relevance to the Chicago case but may have relevance to the Arkansas and Texas litigation, Frenkel fears that Movants' true motivation for issuing the subpoena and seeking to compel discovery is to circumvent the discovery orders of the Arkansas and Texas courts. Such conduct is a clear abuse of the subpoena power.

In its motion to quash, Cisco Systems makes similar arguments. The company points out that not only did Ray Niro put out a \$15,000 (unclaimed) bounty to unmask Frenkel, but that when Niro was a guest on the Internet radio program "Lawyer 2 Lawyer" on March 27, he gave a friendly shout-out to the Texas lawyers behind the defamation suits, saying "I know Johnny Ward very well and I know Eric [Albritton] too."

From Cisco's Motion to Quash:

Frenkel's Patent Troll Tracker is a popular website that provides interesting, timely, and important information to the patent community and others. As the name would suggest, its point of view was sometimes critical of shell corporations established solely for the purpose of filing patent litigation (colloquially known as "patent trolls") and thus, a counterpoint to Harris' website and Niro's written articles which generally extolled their virtue. A posting on October 18, 2007 of the Patent Troll Tracker has resulted in defamation litigation in separate federal courts in Arkansas (Texarkana) and Texas (Tyler) brought by two attorneys (not Niro or his firm).

The following deposition Topics from the subpoena might have relevance to the Texas/Arkansas Suit but would seem to have nothing to do with the claims and defenses of the Chicago case:

5. Factual bases for Patent Troll Tracker blog articles identified in Exhibits A to C.
6. Investigative materials, sources for, and procedure for Patent Troll Tracker blog articles identified in Exhibits A to C.
7. All Patent Troll Tracker blog entries concerning Scott Harris, Raymond P. Niro, NSHN, James B. Parker, Courtney Sherrer, or the relevant lawsuit.
8. The origin and history of the Patent Troll Tracker blog.
9. The decisions on subjects, including but not limited to Scott Harris, Raymond P. Niro, NSHN, James B. Parker, Courtney Sherrer, addressed in the Patent Troll Tracker blog.

"Harris' website" is presumably a reference to the remarkably named, and recently revived, www.imapatenttroll.com.

I'll continue this story over the next ~~two~~ several posts.

Other posts in this series:

- [Part Two: Troll Tracker speaks, and vows to return](#)
- [Part Three: Is the Patent Troll Tracker a reporter?](#)
- [Part Four: Patent Troll Tracker and the Reporter's Privilege.](#)

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