

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

JOHN WARD, JR.

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C.A. NO. 08-4022

v.

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JURY TRIAL DEMANDED

§

CISCO SYSTEMS, INC. AND RICK
FRENKEL

§

§

PROTECTIVE ORDER

1. **PURPOSES AND LIMITATIONS**

(a) Material designated under the terms of this Protective Order shall be limited to: (i) documents reflecting attorney-client communications and/or work product privilege, and (ii) non-public financial information.

(b) Material designated under the terms of this Protective Order shall be used by a Receiving Party solely for this litigation.

(c) The parties acknowledge that this Order does not confer blanket protections on all disclosures. Designations under this Order shall be made with care and shall not be made absent a good faith belief that the designated material satisfies the criteria set forth in this Order. Documents containing both CONFIDENTIAL and non-CONFIDENTIAL information will be produced with the CONFIDENTIAL material redacted. If it comes to the Producing Party's attention that CONFIDENTIAL material does not qualify for protection, the Producing Party must promptly notify all other parties that it is withdrawing its designation.

2. **DEFINITIONS**

(a) "Party" means any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel and their support staffs.

(b) “Producing Party” means any Party who discloses or produces any discovery in this action.

(c) “Confidential Material” means discovery materials designated as “CONFIDENTIAL,” as provided for in this Order.

(d) “Receiving Party” means any Party who receives Discovery Material from a Producing Party.

3. **DESIGNATING PROTECTED MATERIAL**

A Producing Party may designate as “CONFIDENTIAL” the following:

(a) Any document containing information that could otherwise be withheld under the attorney-client privilege and/or work product privilege. Documents subject to this Order will be logged on the parties’ privilege log, with a notation that they have been produced under the terms of this Protective Order. Documents reasonably subject to production with privileged or work product information protected by redaction will be produced in redacted form, with the redacted document appearing on the parties’ privilege log. Documents produced with material that otherwise could have been withheld from production on the producing party’s privilege log will be produced subject to the provisions of this Order.

(b) Any document containing non-public financial information.

(c) Testimony subject to this Protective Order will include testimony given in deposition that would fall within categories 4(a) or 4(b) above. Parties or testifying persons or entities may designate depositions and other testimony as CONFIDENTIAL by indicating on the record at the time the testimony is given or by sending written notice that the testimony is designated within ten (10) days of receipt of the transcript of the testimony. All information disclosed during a deposition shall be deemed confidential until the time within which it may be

appropriately designated as provided for herein has passed. Any Confidential Material that is used in the taking of a deposition shall remain subject to the provisions of this Protective Order, along with the transcript pages of the deposition testimony dealing with such material. In such cases the court reporter shall be informed of this Protective Order and shall be required to operate in a manner consistent with this Order. In the event the deposition is videotaped, the original and all copies of the videotape shall be marked by the video technician to indicate that the contents of the videotape are subject to this Protective Order, substantially along the lines of “This videotape contains confidential testimony used in this case and is not to be viewed or the contents thereof to be displayed or revealed except by order of the Court, or pursuant to written stipulation of the parties.”

(d) Documents or testimony may be designated under this Order by placing CONFIDENTIAL on every page of the written material prior to production. In the event that original documents are produced for inspection, the Producing Party may produce the documents with a temporary designation, provided that the documents are re-designated as necessary by placing the CONFIDENTIAL legend on the documents in the copying process.

4. **DISCLOSURE OF “CONFIDENTIAL” MATERIAL**

Material designated as “CONFIDENTIAL” may be disclosed only to the following:

- (a) The Plaintiff, Plaintiff’s outside counsel, contract attorneys and associated staff;
- (b) Not more than three (3) representatives of Cisco who are in-house counsel for the party, as well as their paralegals and staff, to whom disclosure is reasonably necessary for this litigation, Cisco’s outside counsel and their staff.

(c) Any expert or consultant retained by the Receiving Party to assist in this action, provided that disclosure is only to the extent necessary to perform such work; and provided that: (i) such person has signed the acknowledgement form annexed hereto as Exhibit A agreeing to be bound by the terms of this Protective Order, and (ii) no unresolved objections to such disclosure exist after proper notice has been given to all parties as set forth in Paragraph 5 below;

(d) Fact and expert witnesses employed by or appearing on behalf of the Producing Party in depositions or at trial;

(e) Court reporters, stenographers and videographers retained to record testimony taken in this action;

(f) The Court, jury, and court personnel;

(g) Graphics, translation, design, and/or trial consulting services including mock jurors retained by a Party; and

(h) Any other person with the prior written consent of the Producing Party.

5. **EXPERTS AND CONSULTANTS**

(a) Prior to disclosing any Confidential material to any outside experts or consultants, the party seeking to disclose such information shall provide the Producing Party or Parties with written notice that includes: (i) the name of the person; (ii) the present employer and title of the person; and (iii) an up-to-date curriculum vitae of the person.

(b) Within ten (10) days of receipt of the disclosure of the proposed outside expert or consultant, the Producing Party or Parties may object in writing to the proposed outside expert or consultant for good cause. In the absence of an objection at the end of the ten (10) day period, the person shall be deemed approved under this Protective Order. There shall be no

disclosure of Confidential Material to any expert or consultant prior to expiration of this ten (10) day period. If the Producing Party objects to disclosure to the expert or consultant within such ten (10) day period, the parties shall meet and confer via telephone or in person within three (3) days following the objection and attempt in good faith to resolve the dispute on an informal basis. If the dispute is not resolved, the party objecting to the disclosure will have three (3) days from the date of the meet and confer to seek relief from the Court. If relief is not sought from the Court within that time, the objection shall be deemed withdrawn. If relief is sought, Confidential Materials shall not be disclosed to the proposed expert or consultant in question until the objection is resolved by the Court.

(c) For purposes of this section, “good cause” shall include an objectively reasonable concern that the proposed outside expert or consultant will, advertently or inadvertently, use or disclose Confidential Materials in a way or ways that are inconsistent with the provisions contained in this Order.

(d) Prior to receiving any Confidential Material under this Order, the proposed outside expert or consultant must execute a copy of the “Agreement to Be Bound by Protective Order” (Exhibit A).

6. **USE OF PROTECTED MATERIAL**

(a) Nothing in this Protective Order shall prevent or restrict a Producing Party’s own disclosure or use of its own Confidential Material for any purpose,

(b) Nothing in this Order shall restrict in any way the use or disclosure of Confidential Material by a Receiving Party: (i) that is or has become publicly known through no fault of the Receiving Party; (ii) that is lawfully acquired by or known to the Receiving Party independent of the Producing Party; (iii) previously produced, disclosed and/or provided by the

Producing Party to the Receiving Party or a non-party without an obligation of confidentiality and not by inadvertence or mistake; (iv) with the consent of the Producing Party; or (v) pursuant to Order of the Court.

(c) Nothing in this Order shall preclude any Producing Party from showing its Confidential Material to an individual who prepared the Confidential Material.

(d) Nothing in this Protective Order shall be construed to prevent Counsel from advising their clients with respect to this litigation based in whole or in part upon Confidential Materials, provided Counsel does not disclose the Confidential Material itself except as provided in this Order.

(e) Nothing in this Order shall be construed to prejudice any Party's right to use any Confidential Material in court or in any court filing with consent of the Producing Party or Order of the Court.

(f) This Order is without prejudice to the right of any Producing Party to seek further or additional protection of any Confidential Material or to modify this Order in any way, including, without limitation, an order that certain matter not be produced at all.

7. **CHALLENGING DESIGNATIONS**

(a) The parties agree that that the public interest weighs in favor of open access to documents and testimony obtained during discovery. Therefore, if a dispute should arise regarding any designation under this Order, the designating party shall bear the burden of demonstrating good cause to designate under this Order.

(b) A Party shall not be obligated to challenge the propriety of any designation of Confidential Material under this Order at the time the designation is made, and a failure to do so shall not preclude a subsequent challenge thereto.

(c) Any challenge to a designation of Confidential Material under this Order shall be written, shall be served on outside counsel for the Producing Party, shall particularly identify the documents or information that the Receiving Party contends should be differently designated, and the grounds for the objection. Thereafter, further protection of such material shall be resolved in accordance with the following procedures:

(i) The objecting party shall have the burden of conferring either in person, in writing, or by telephone with the Producing Party claiming protection (as well as any other interested party) in a good faith effort to resolve the dispute. The designating party shall have the burden of justifying the disputed designation;

(ii) Failing agreement, within three (3) days of parties' meet and confer, the producing party must bring a motion to the Court for a ruling that the Confidential Material in question is entitled to the status and protection of this Order. If relief is not sought from the Court within that time, the designation of the material as confidential shall be deemed to be withdrawn.

(iii) The parties' entry into this Order shall not preclude or prejudice either party from arguing for or against any designation, establish any presumption that a particular designation is valid, or alter the burden of proof that would otherwise apply in a dispute over discovery or disclosure of information;

(iv) Notwithstanding any challenge to a designation, the Confidential Material in question shall continue to be treated as designated under this Protective Order until one of the following occurs: (a) the party who designated the Confidential Material in question withdraws such designation; or (b) the Court rules that the Confidential Material in question is not entitled to the designation.

8. **FILING PROTECTED MATERIAL**

(a) Absent written permission from the Producing Party or a court Order secured after appropriate notice to all interested persons, a Receiving Party may not file in the public record any Confidential Material.

(b) Any Receiving Party is authorized under Local Rule CV-5 to file under seal with the Court any brief, document or materials that are designated as Confidential Material under this Order.

9. **INADVERTENT DISCLOSURE**

(a) The inadvertent production by a party of material subject to the attorney-client privilege, work-product protection, or any other applicable privilege or protection, despite that party's reasonable efforts to prescreen such material prior to production, will not waive the applicable privilege and/or protection if a request for return of such inadvertently produced material is made promptly after the Producing Party learns of its inadvertent production.

(b) Upon a request from any Producing Party who has inadvertently produced material that it believes is privileged and/or protected, each Receiving Party shall immediately return such privileged material and all copies to the Producing Party.

(c) Nothing herein shall prevent the Receiving Party from preparing a record for its own use containing the date, author, addresses, and topic of the inadvertently produced privileged material and such other information as is reasonably necessary to identify the privileged Material and describe its nature to the Court in any motion to compel production of the privileged material. Nor shall return of the produced material prevent either Party from arguing waiver of privilege or work product for failure to employ reasonable efforts to prescreen the inadvertently produced privileged material.

10. **INADVERTENT FAILURE TO DESIGNATE**

(a) The inadvertent failure by a Producing Party to designate material as CONFIDENTIAL as provided for under this Order shall not waive any such designation provided that the Producing Party notifies all Receiving Parties that such material is protected as CONFIDENTIAL under this Order within five (5) days of the Producing Party learning of the inadvertent failure to so designate.

(b) A Receiving Party shall not be in breach of this Order for any use of such Confidential Material before the Receiving Party receives notice of the inadvertent failure to designate. Once a Receiving Party has received notice of the inadvertent failure to designate pursuant to this provision, the Receiving Party shall treat such material as Confidential Material under the terms of this Protective Order.

11. **INADVERTENT DISCLOSURE**

(a) In the event of a disclosure of any Confidential Material pursuant to this Order to any person or persons not authorized to receive such disclosure under this Protective Order, the party responsible for having made such disclosure, and each party with knowledge thereof, shall immediately notify counsel for the Producing Party whose Confidential Material has been disclosed and provide to such counsel all known relevant information concerning the nature and circumstances of the disclosure. The responsible disclosing party shall also promptly take all reasonable measures to retrieve the improperly disclosed Confidential Material and to ensure that no further or greater unauthorized disclosure and/or use thereof is made.

(b) Unauthorized or inadvertent disclosure does not change the status of Confidential Material or waive the right to hold the disclosed document or information as Protected.

12. **FINAL DISPOSITION**

(a) Not later than ninety (90) days after the final disposition of this litigation, (including after any appeals), counsel for the parties and all other persons having possession or control of Confidential Material of a Producing Party shall: (a) destroy, or if requested by the Producing Party, return to such party all Confidential Material and any copies thereof; or (b) destroy such Confidential Material and all copies to the extent it contains or is contained in any notes, summaries, digests, synopsis or other document added by counsel or any other person after production.

(b) All parties that have received any such Confidential Material shall certify in writing that all such materials either have been destroyed or returned to the respective outside counsel of the Producing Party. Notwithstanding the provisions for return of Confidential Material, outside counsel may retain pleadings and attorney and consultant work product for archival purposes.

13. **MISCELLANEOUS**

(a) Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

(b) This Order shall be binding upon the Parties hereto, their attorneys, and their successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and experts, and any persons or organizations over which they have direct control.

(c) This Order shall not constitute a waiver of the right of any party to claim in this action or otherwise that any Confidential Material, or any portion thereof, is not admissible in evidence in this action or any other proceeding.

(d) This Order is subject to further court order based upon public policy, requests from the media for access to information contained in the Court's records, or other considerations, and the Court may modify this Order *sua sponte* in the interests of justice.

SO ORDERED.

EXHIBIT A

I, _____, acknowledge and declare that I have received a copy of the Protective Order (“Order”) in *John Ward, Jr. v. Cisco Systems, Inc.*, United States District Court, Western District of Arkansas, Texarkana Division, Civil Action No. 4:08–CV-4022. Having read and understood the terms of the Order, I agree to be bound by the terms of the Order and consent to the jurisdiction of said Court for the purpose of any proceeding to enforce the terms of the Order.

Name of individual: _____

Present occupation/job description: _____

Name of Company or Firm: _____

Address: _____

Dated: _____

[Signature]