

EXHIBIT “B”

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

JOHN WARD, JR.

v.

CISCO SYSTEMS, INC. AND RICK
FRENKEL

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C.A. NO. 08-4022

JURY TRIAL DEMANDED

**PLAINTIFF JOHN WARD JR.'S FIRST SET OF REQUESTS FOR
ADMISSIONS TO DEFENDANT CISCO SYSTEMS, INC.**

Pursuant to Federal Rule Civil Procedure 36, Plaintiff John Ward Jr. ("Ward") hereby requests that Cisco Systems, Inc. ("Cisco") respond within thirty days of service to the following requests for admission. Ward requests and instructs that each request for admission shall be answered separately and fully in writing under oath. The answers are to be signed by the person making them. If Cisco cannot answer any request for admission in full after exercising due diligence to secure the full information to do so, so state and answer to the extent possible, setting forth in detail the reasons why you cannot truthfully admit or deny the matter and detailing what you did in attempting to secure the unknown information.

Requests for Admission

Request No. 1: Admit that the document attached hereto as Exh. 1 is a true and correct copy of the Oct. 17, 2007 internet post published by Richard Frenkel.

Request No. 2: Admit that the document attached hereto as Exh. 2 is a true and correct copy of the Oct. 18, 2007 internet post published by Richard Frenkel.

Request No. 3: Admit that the document attached hereto as Exh. 3 is a true and correct copy of the Oct. 18, 2007 internet post after it was edited by Richard Frenkel.

Request No. 4: Admit that Exh. 1 (October 17, 2007 post) attached hereto remained publically available on the Troll Tracker Blog until March 6, 2008.

Request No. 5: Admit that Exh. 2. attached hereto remained publically available on the Troll Tracker Blog until March 6, 2008.

Request No. 6: Admit that Cisco did not ask Frenkel to remove the October 17, 2007 post (Exh. 1) from the Troll Tracker Blog.

Request No. 7: Admit that Cisco did not ask Frenkel to remove the October 18, 2007 post (Exh. 2) from the Troll Tracker Blog

Request No. 8: Admit that Cisco did not ask Frenkel to remove the October 18, 2007 post, as amended, (Exh. 3) from the Troll Tracker Blog.

Request No. 9: Admit that the complaint filed in the ESN v. Cisco litigation was filed on October 16, 2007.

Request No. 10: Admit that the Eastern District of Texas has at all times had subject matter jurisdiction in the ESN v. Cisco litigation.

Request No. 11: Admit that ESN did not manufacture subject matter jurisdiction in the ESN v. Cisco litigation.

Request No. 12: Admit that Cisco stipulated in the ESN v. Cisco litigation that the Eastern District of Texas had subject-matter jurisdiction in the ESN v. Cisco litigation.

Request No. 13: Admit that the encrypted stamp at the bottom of the Notice of Electronic Filing of the ESN complaint was not altered.

Request No. 14: Admit that ESN's local counsel, Eric Albritton did not sign a civil cover sheet stating that the ESN complaint had been filed on October 15, 2007.

Request No. 15: Admit that the amended complaint filed by ESN included the issued patent as an exhibit to the amended complaint.

Request No. 16: Admit that Local Rule CV-5(b) dictates the time of receipt of electronic filings in the Eastern District of Texas.

Request No. 17: Admit that under the Eastern District of Texas's Local Rule CV-5(b) a pleading is deemed filed when it is received by the court.

Request No. 18: Admit that the Local Rules of the Eastern District of Texas do not require that a motion be filed before a docket entry can be modified.

Request No. 19: Admit that placing a call to the court clerk to discuss an error with the court's electronic filing system is not prohibited by the Texas Rules of Professional Conduct.

Request No. 20: Admit that Cisco asked Baker Botts to call the Eastern District of Texas court clerk's office to inquire as to why the ESN v. Cisco docket entry was changed to reflect an October 16, 2007 filing date.

Request No. 21: Admit that the date reflected on the header or banner across the top of a pleading filed in the Eastern District of Texas is not the official record of the date a document is filed with the Court.

Request No. 22: Admit that dates reflected on the court's docket are not the official record of the date a document is filed in the Eastern District of Texas.

Request No. 23: Admit that the encrypted stamp contained at the bottom of the Notice of Electronic Filing is the official record of the date a pleading is filed in the District Court for the Eastern District of Texas.

Request No. 24: Admit that it is not uncommon for the court clerks in the Eastern District of Texas to make corrections to docket entries.

Request No. 25: Admit that the court clerk has made corrections to the Albritton v. Cisco docket to correct filings made by Cisco.

Request No. 26: Admit that the District Clerk in the Eastern District of Texas, David Maland, had the authority to make a correction to the ESN v. Cisco docket.

Request No. 27: Admit that prior to posting the October 18, 2007 post attached hereto as Exh. 2, Frenkel knew that ESN's counsel had told the Eastern District of Texas court clerk's office that ESN had filed the ESN complaint on Oct. 16, 2007.

Request No. 28: Admit that prior to posting the October 18, 2007 post attached hereto as Exh. 3, Frenkel knew that ESN's counsel had told the Eastern District of Texas court clerk's office that ESN had filed the ESN complaint on Oct. 16, 2007.

Request No. 29: Admit that prior to posting the October 18, 2007 post attached hereto as Exh. 2, Cisco knew that ESN's counsel had told the Eastern District of Texas court clerk's office that ESN had filed the ESN complaint on Oct. 16, 2007.

Request No. 30: Admit that prior to posting the October 18, 2007 post attached hereto as Exh. 3, Cisco knew that ESN's counsel had told the Eastern District of Texas court clerk's office that ESN had filed the ESN complaint on Oct. 16, 2007.

Request No. 31: Admit that prior to posting the October 18, 2007 post attached hereto as Exh. 2, Baker Botts knew that ESN's counsel had told the Eastern District of Texas court clerk's office that ESN had filed the ESN complaint on Oct. 16, 2007.

Request No. 32: Admit that prior to posting the October 18, 2007 post attached hereto as Exh. 3, Baker Botts knew that ESN's counsel had told the Eastern District of Texas court clerk's office that ESN had filed the ESN complaint on Oct. 16, 2007.

Request No. 33: Admit that pursuant to Federal Rule of Civil Procedure 3, "a civil action is commenced by filing a complaint with the court."

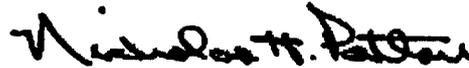
Request No. 34: Admit that at the time the ESN complaint was filed, Cisco did not have counsel of record for the ESN v. Cisco litigation.

Request No. 35: Admit that if ESN had sent Cisco a copy of the ESN complaint, the sending of the complaint would not have perfected service pursuant to Federal Rule of Civil Procedure 4.

Request No. 36: Admit that if ESN had sent Cisco a copy of the ESN complaint, the sending of the complaint would not have perfected service pursuant to Eastern District of Texas's Local Rule CV-4.

Request No. 37: Admit that Plaintiff John Ward Jr. is a private figure as that term is used in connection with First Amendment case law including *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 325-32 (1974).

Respectfully Submitted,



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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

This is to certify that on this 16th day of January, 2009, a true and correct copy of the foregoing Plaintiff's First Set of Requests for Admissions to Defendant Cisco Systems, Inc. was served electronically and/or via U.S. First Class Mail upon:

Richard E. Griffin

Attorney for Defendant Cisco Systems, Inc.

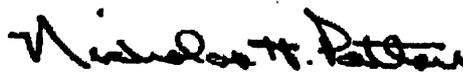
Charles Babcock

Crystal Parker

JACKSON WALKER, LLP

1401 McKinney, Suite 1900

Houston, Texas 77010



Nicholas H. Patton

Patent Troll Tracker

THURSDAY, OCTOBER 16, 2007

ESN Convinces EDTX Court Clerk To Alter Documents To Try To Manufacture Subject Matter Jurisdiction Where None Existed

I got a couple of anonymous emails this morning, pointing 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 stating that the complaint had been filed on October 15. Second, there's tons of proof that ESN filed on October 15. Heck, Dennis Crouch may be subpoenaed as a witness!

You can't change history, and it's outrageous that the Eastern District of Texas is apparently, wittingly or unwittingly, conspiring with 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 East Texas.

(n.b.: don't be surprised if the docket changes back once the higher-ups in the Court get wind of this, making this post completely irrelevant).

Posted by Troll Tracker at 1:13 PM

0 comments

WEDNESDAY, OCTOBER 17, 2007

Troll Jumps the Gun, Sues Cisco Too Early

Well, I knew the day would come. I'm getting my troll news from Dennis Crouch now. According to Dennis, a company called ESN sued Cisco for patent infringement on October 15th, while the patent did not issue until October 16th. I looked, and ESN appears to be a shell entity managed by the President and CEO of DirectAdvice, an online financial website. And, yes, he's a lawyer. He clerked for a federal judge in Connecticut, and was an attorney at Day, Berry & Howard. Now he's suing Cisco on behalf of a non-practicing entity.

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Troll Tracker
Just a lawyer, interested in patent cases, but not interested in publicity

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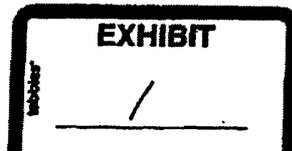
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I asked myself, can ESN do this? I would think that the court would lack subject matter jurisdiction, since ESN owned no property right at the time of the lawsuit, and the passage of time should not cure that. And, in fact, ~~was~~ right:

A declaratory judgment of "invalidity" or "noninfringement" with respect to Elk's pending patent application would have had no legal meaning or effect. The fact that the patent was about to issue and would have been granted before the court reached the merits of the case is of no moment. Justiciability must be judged as of the time of filing, not as of some indeterminate future date when the court might reach the merits and the patent has issued. We therefore hold that a threat is not sufficient to create a case or controversy unless it is made with respect to a patent that has issued before a complaint is filed. Thus, the district court correctly held that there was no justiciable case or controversy in this case at the time the complaint was filed. GAF contends, however, that the issuance of the '144 patent cured any jurisdictional defect. We disagree. Later events may not create jurisdiction where none existed at the time of filing.

GAF Building Materials Corp. v. Elk Corp. of Texas, 90 F.3d 479, 483 (Fed. Cir. 1996) (citations and quotations omitted).

One other interesting tidbit: Cisco appeared to pick up on this, very quickly. Cisco filed a declaratory judgment action (in Connecticut) yesterday, the day after ESN filed its null complaint. Since Cisco's lawsuit was filed after the patent issued, it should stick in Connecticut.

Perhaps realizing their fatal flaw (as a couple of other bloggers/news items have pointed out), ESN (represented by Chicago firm McAndrews Held & 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?

Posted by Troll Tracker at 7:00 PM 1 comments

TrollSurfing: Monts & Ware, Ward & Olivo, and Their Clients

Similar to surfing the web, I started by checking out a hunch I had about Monts & Ware being behind all sorts of troll cases. Then I trollsurfed through a bunch of cases, and I ended up not only with Monts & Ware (Dallas litigation firm), but also Ward & Olivo (patent lawyers from New York/New Jersey), as a thread behind a bunch of cases. I'm not sure what to charge. Under both, there's enough here

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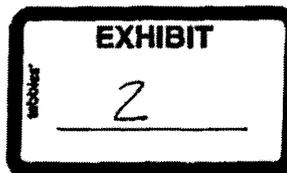


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EDIT: You can't change history, but you can change a blog entry based on information emailed to you from a helpful reader.

Posted by Rick Frankel at 1:13 PM 

Labels: [Cisco](#), [ECF](#), [Eric Albritton](#), [ESN](#), [magically changing docket dates](#)

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