

# EXHIBIT “D”

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

CERTIFIED COPY

ERIC M. ALBRITTON,

Plaintiff,

vs.

No. 6:08-CV-00089

(1) CISCO SYSTEMS, INC.,  
(2) RICHARD FRENKEL, (3) MALLUN  
YEN and (4) JOHN NOH,

Defendants.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

DEPOSITION OF RICHARD G. FRENKEL

Tuesday, November 18, 2008

SHEILA CHASE & ASSOCIATES  
REPORTING FOR:  
West Court Reporting Services  
221 Main Street, Suite 1250  
San Francisco, California 94105  
Phone: (415) 321-2300  
Fax: (415) 618-0743

Reported by:  
JANIS JENNINGS, CSR, CRP, CLR  
CRS-100282-023

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RICHARD G. FRENKEL,

The deponent herein, was sworn and testified as follows:

THE VIDEOGRAPHER: Please begin.

EXAMINATION

BY MR. PATTON:

Q. State your name, please.

A. Richard Frenkel.

Q. Where do you live?

A. I live in Palo Alto, California.

Q. Your address?

A. My work or my home address?

Q. Give me your home address and number first and then your work address and number second.

A. I live at 3229 Morris Drive in Palo Alto, and I work at 650 Page Mill Road, also in Palo Alto, California.

Q. Telephone number at your work?

A. 650-849-3201.

Q. Do you now work for Wilson Sonsini?

A. Yes.

Q. And what is your status there?

A. My title is of counsel.

1 not?

2 A. I don't remember using the word "engaged."

3 Q. Okay. What word would you use?

4 A. We asked Baker Botts to call the clerk's  
5 office, and they did.

6 Q. Okay. And?

7 A. And we found out that the clerk's office  
8 had told -- Baker Botts told us that the clerk's  
9 office said that Mr. Albritton's office had called  
10 the court clerk to ask them to change the date from  
11 October 15th to October 16th.

12 Q. All right. Who --

13 A. Which was consistent with what I had  
14 observed by looking at the docket myself.

15 Q. Who at Baker Botts told you that?

16 A. I believe that the conversation was not  
17 with me but with Marta Beckwith or Mallun Yen.

18 Q. Okay. By the Baker Botts people?

19 A. Yes.

20 Q. Okay. Do you know if anyone -- if Baker  
21 Botts was asked to ask the clerk to return the  
22 filing date to the 15th?

23 A. Could you repeat the question. I lost it.

24 Q. Do you know if anyone at Baker Botts on  
25 behalf of Cisco asked the clerk to return the filing



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CERTIFICATE OF REPORTER

I, JANIS L. JENNINGS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: November 20, 2008.

  
\_\_\_\_\_  
JANIS JENNINGS  
CSR NO. 3942, CLR, CRP