

**From:** Rick Frenkel (rfrenkel) [rfrenkel@cisco.com]

**Sent:** Thursday, October 18, 2007 12:23 PM

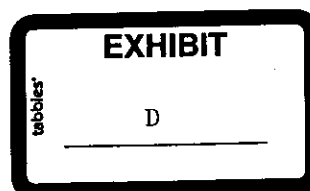
**To:** John Noh (jnoh)

**Cc:** Mallun Yen (myen)

[tp://trolltracker.blogspot.com/2007/10/esn-convince-edtx-court-clerk-to-alter.html](http://trolltracker.blogspot.com/2007/10/esn-convince-edtx-court-clerk-to-alter.html)

CISCO.000001

Ark.000001



**From:** Patent Troll <trolltracker@gmail.com>  
**Sent:** Sunday, August 26, 2007 6:53 PM  
**To:** John Noh (jnoh) <jnoh@cisco.com>  
**Cc:** Mallun Yen (myen) <myen@cisco.com>  
**Subject:** Fwd: Thomas John Ward Jr.

---

I don't know much about the New York Sun, but my sense is that it doesn't make sense for me to do this. Can't see any advantage for us. Let me know if you disagree.

Not sure whether to ignore requests like this or politely decline. Probably the latter, unless the paper's a real rag, then I'll ignore. The Sun seems legit. Far right wing, but legit.

----- Forwarded message -----

**From:** Josh Gerstein <jgerstein@nysun.com>  
**Date:** Aug 24, 2007 8:39 PM  
**Subject:** Thomas John Ward Jr.  
**To:** [trolltracker@gmail.com](mailto:trolltracker@gmail.com)

Hi.

I'm a reporter working on a story about attorney Thomas John Ward Jr.

As I was pacer-checking him and googling him I noticed your blog.

Any chance we could chat about what's going on in TX ED and who this guy is?

Thanks

--  
Josh Gerstein  
National Reporter  
The New York Sun  
(415) 695-0484 voice  
(703) 980-5029 cell  
(415) 449-3551 fax  
[jgerstein@nysun.com](mailto:jgerstein@nysun.com) e-mail

CISCO.000253

Ark.000255

**From:** Rick Frenkel (rfrenkel)  
**Sent:** Tuesday, December 11, 2007 6:46 PM  
**To:** John Noh (jnoh) <jnoh@cisco systems.com>  
**Subject:** RE: Dow Jones: Marshall No Longer a Patent Troll Haven?

---

I'm sure he knows about that line of argument.

---

**Rick Frenkel**  
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---

**From:** John Noh (jnoh)  
**Sent:** Tuesday, December 11, 2007 4:39 PM  
**To:** Rick Frenkel (rfrenkel); Marta Beckwith (mabeckwi); Mark Michels (mmichels)  
**Subject:** RE: Dow Jones: Marshall No Longer a Patent Troll Haven?

The headline technically says not "SO" friendly anymore...good point about the multi-million settlements though. Maybe Mark should bring that up as a discussion point in his interview with the Post tomorrow?

---

**From:** Rick Frenkel (rfrenkel)  
**Sent:** Tuesday, December 11, 2007 4:08 PM  
**To:** John Noh (jnoh); Marta Beckwith (mabeckwi); Mark Michels (mmichels)  
**Subject:** RE: Dow Jones: Marshall No Longer a Patent Troll Haven?

I don't actually agree that EDTX is "unfriendly" to patent holders. I do agree with Smith's sentiments that there are more weaker cases being brought there, and some of those are shaking out as losers. You hear publicity about those, but not about all of the multi-million settlements.

---

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CISCO.000254

Ark.000256

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---

**From:** John Noh (jnoh)  
**Sent:** Tuesday, December 11, 2007 4:04 PM  
**To:** Marta Beckwith (mabeckwi); Mark Michels (mmichels)  
**Cc:** Rick Frenkel (rfrenkel)  
**Subject:** Dow Jones: Marshall No Longer a Patent Troll Haven?

Here's the article I referenced on our call. As I said, I know TT has been very helpful to Stuart in the past with background information...not sure if there was a blog about this as well.

John

**DOW JONES**  
**Newsires**

**Texas Federal Crt Not So Friendly To Patent Holders Anymore**

By Stuart Weinberg

OF DOW JONES NEWSWIRE

16 November 2007

**TORONTO (Dow Jones)**--The Eastern District of Texas isn't what it used to be - for patent holders.

From the end of 2001 through mid-2006, 18 patent cases went to trial in the Texas federal court

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and the patent holder won every time, according to Michael Smith, whose blog, EDTexweblog.com, tracks cases before the court.

The high win rate, along with the speed with which cases are prosecuted, have made Eastern Texas the most popular venue in the U.S. for patent-infringement cases.

But the win rate is declining. Just ask Acacia Research Corp. (ACTG). The Newport Beach, Calif. company said late Thursday that its Computer Acceleration unit lost a patent-infringement case against Microsoft Corp. (MSFT) in Eastern Texas. The news has sent Acacia's stock down by 34% to \$11.37 on heavy volume on Nasdaq Friday.

The Acacia decision isn't an isolated event. Ten patent cases have gone to trial in Eastern Texas this year and the patent holder has prevailed in just two of them, according to Smith. In one of those cases, an Eastern Texas judge overturned a \$156 million jury verdict that TGIP Inc., a Dallas patent-licensing company, had won against AT&T Corp. (T). "It has not been a good year for plaintiffs," Smith said.

Indeed, the last two years haven't been stellar for patent holders in Eastern Texas. Since 2006, the win rate in Eastern Texas is just 50%, or 9% below the national average, Smith said. The win rate for plaintiffs is declining because the cases aren't as strong as they were in previous years, and because defendants are being represented by more experienced trial lawyers, he said. "First of all, because there are a lot more patent cases being filed here, there are just a number of cases filed that aren't particularly good cases," he said.

Still, despite the declining win rate, the number of cases being filed, and the number of defendants being sued, in Eastern Texas is rising. According to Smith, about 350 patent cases have been filed so far in Eastern Texas in 2007, up from the high 200s last year.

Smith said he believes the numbers could decline, as patent holders with weak cases see the writing on the wall and choose to prosecute their cases elsewhere.

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Acacia's chief executive, Paul Ryan, said his firm will continue to launch infringement litigation in Eastern Texas, as well as other venues. "The reason people select the Eastern District is because there are clear rules of evidence, there are clear rules on discovery and they get cases to trial quickly and do not tolerate delays which saves both sides time and money," he said.

In its case with Microsoft, Computer Acceleration, the Acacia subsidiary, alleged that Microsoft's Windows products, such as Windows XP, infringed on one of its patents. During the recent trial, the expert-damage report submitted by Computer Research suggested that Microsoft should pay past damages of \$2.50 per infringing operating system to Computer Acceleration. "I believe there were either 200 or 300 million (infringing) operating systems," depending on the time frame used to determine when Microsoft was liable for damages, Ryan said.

If the jury had sided with Computer Acceleration and accepted its damages assessment, Acacia would have been awarded damages ranging from \$500-\$750 million. Ryan said the company's law firm, McKool Smith P.C., has 10 days to decide if it will appeal.

In all, Acacia is prosecuting about 34 patent-infringement suits, though the Microsoft case was the first time an Acacia suit had made it to trial, Ryan said. Most cases are settled ahead of trial, he said. In fact, on Thursday, an Acacia subsidiary, Contacts Synchronization Corp., settled its infringement case with AT&T for undisclosed terms. Earlier this week, another Acacia subsidiary, Digital Background Corp., sued Apple Inc. (AAPL) for patent infringement in federal court in the Southern District of Illinois. It's the second Acacia subsidiary to sue Apple within a week.

CISCO.000257

Ark.000259

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**CISCO.000258**

Ark.000260

**From:** Rick Frenkel (rfrenkel)  
**Sent:** Monday, December 10, 2007 10:11 AM  
**To:** John Noh (jnoh) <jnoh@cisco systems.com>  
**Subject:** FW: Washington Post Article Opportunity

---

Wait - do you want me on the call? I think Mark can handle alone.

---

**Rick Frenkel**  
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---

**From:** Kathy Martinetti (kamartin)  
**Sent:** Monday, December 10, 2007 8:08 AM  
**To:** Rick Frenkel (rfrenkel); Mark Chandler (machandl); John Noh (jnoh)  
**Subject:** RE: Washington Post Article Opportunity

John is trying to schedule for 10:00 on Weds.

---

**From:** Rick Frenkel (rfrenkel)  
**Sent:** Monday, December 10, 2007 8:08 AM  
**To:** Mark Chandler (machandl); John Noh (jnoh)  
**Cc:** Kathy Martinetti (kamartin)  
**Subject:** RE: Washington Post Article Opportunity

Agree it is but one symptom.

---

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CISCO.000259

Ark.000261



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---

**From:** Mark Chandler (machandl)  
**Sent:** Monday, December 10, 2007 8:06 AM  
**To:** John Noh (jnoh)  
**Cc:** Kathy Martinetti (kamartin); Rick Frenkel (rfrenkel)  
**Subject:** RE: Washington Post Article Opportunity

In fact, eager to do it. I have some things to say. One is that this isn't driven by legislation, it's driven by imbalance in the system. Clear that although the Court decisions are directionally correct, they don't address the underlying problem. The venue issue, and any kind of belief by plaintiffs that they can get "better law" in one part of the country or another, reflects underlying imbalances and is a symptom.

---

**From:** John Noh (jnoh)  
**Sent:** Monday, December 10, 2007 7:09 AM  
**To:** Mark Chandler (machandl)  
**Cc:** Kathy Martinetti (kamartin); Rick Frenkel (rfrenkel)  
**Subject:** Washington Post Article Opportunity

Hi Mark,

Catherine Rampell at the Post is working on a story examining the spate of new patent cases in the Eastern District of Texas. Her thesis is that this is the trolls anticipating and acting on the possible passage of the Patent Reform Act. She is interested in speaking with a few high-tech opinion leaders on this topic to get their thoughts. She will be speaking with Google as well.

I believe that the Troll Tracker has been blogging a lot about ED Texas lately. The latest blog up there includes this stat, which is eye-opening. Are you interested in speaking to the Post about this.

Kathy: Assuming Mark is good to go, can you shoot me some options in terms of availability for a phone call?

Thank you,  
John

November statistics

ED Texas: 34 patent cases, 244 defendants sued (16 troll cases)  
CD California: 27 patent cases, 45 defendants sued (2 troll cases)  
D New Jersey: 20 patent cases, 33 defendants sued (3 troll cases)  
D Delaware: 15 patent cases, 39 defendants sued (1 troll case)  
ND Illinois: 11 patent cases, 12 defendants sued (2 troll cases)

CISCO.000260

Ark.000262

ND California: 11 patent cases, 18 defendants sued (3 troll cases)  
SD New York: 9 patent cases, 15 defendants sued (2 troll cases)

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**Senior PR Manager**  
**Corporate Communications**

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CISCO.000261

Ark.000263

**From:** John Noh (jnoh)  
**Sent:** Monday, December 10, 2007 10:15 AM  
**To:** Mark Chandler (machandl) <machandl@cisco systems.com>  
**Cc:** Kathy Martinetti (kamartin) <kamartin@cisco systems.com>; Rick Frenkel (rfrenkel) <rfrenkel@cisco systems.com>  
**Subject:** RE: Washington Post Article Opportunity

---

Thank you, Mark

Will set the interview with the reporter today.

John

\*\*\*\*\*  
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408-242-3852 (m)  
[jnoh@cisco.com](mailto:jnoh@cisco.com)

---

**From:** Mark Chandler (machandl)  
**Sent:** Monday, December 10, 2007 8:06 AM  
**To:** John Noh (jnoh)  
**Cc:** Kathy Martinetti (kamartin); Rick Frenkel (rfrenkel)  
**Subject:** RE: Washington Post Article Opportunity

In fact, eager to do it. I have some things to say. One is that this isn't driven by legislation, it's driven by imbalance in the system. Clear that although the Court decisions are directionally correct, they don't address the underlying problem. The venue issue, and any kind of belief by plaintiffs that they can get "better law" in one part of the country or another, reflects underlying imbalances and is a symptom.

---

**From:** John Noh (jnoh)  
**Sent:** Monday, December 10, 2007 7:09 AM  
**To:** Mark Chandler (machandl)  
**Cc:** Kathy Martinetti (kamartin); Rick Frenkel (rfrenkel)  
**Subject:** Washington Post Article Opportunity

Hi Mark,

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CISCO.000262

Ark.000264

this topic to get their thoughts. She will be speaking with Google as well.

I believe that the Troll Tracker has been blogging a lot about ED Texas lately. The latest blog up there includes this stat, which is eye-opening. Are you interested in speaking to the Post about this.

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**ND California: 11 patent cases, 18 defendants sued (3 troll cases)**  
**SD New York: 9 patent cases, 15 defendants sued (2 troll cases)**

CISCO.000263

Ark.000265

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CISCO.000264

Ark.000266

**From:** Rick Frenkel (rfrenkel)  
**Sent:** Monday, February 25, 2008 9:34 PM  
**To:** Mallun Yen (myen) <myen@cisco systems.com>; ip-team(mailer list) <ip-team@cisco systems.com>  
**Subject:** RE: Trolltracker

---

And I'd like to thank everyone for their support. I knew there was nobody else out there collecting the information on patent troll cases, but I had no idea that my doing so would touch such a nerve.

Rick Frenkel  
Director, Intellectual Property -  
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Phone: (408) 525-5673  
Email: rfrenkel@cisco.com

-----Original Message-----

**From:** Mallun Yen (myen)  
**Sent:** Monday, February 25, 2008 06:46 PM Pacific Standard Time  
**To:** ip-team(mailer list)  
**Subject:** Trolltracker

Team,

Many of you may have already seen the article below relating to the TrollTracker blog. This is a reminder that as with any media inquiries, please do not comment, and you should refer all press to John Noh of our PR group.

As to the blog, Cisco has a culture of openness and transparency -- we respect free speech rights and do not censor our employees as long as they do not purport to speak for Cisco. This was Rick's personal blog -- it reflected his own opinions and research, based on publicly available information. He did not purport to speak for Cisco, and Cisco did not provide or edit any content. I as well as a few limited others at Cisco were aware of this blog when it was started, although Mark

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Ark.000302

Chandler was not aware of TT's identity.

Many Cisco employees maintain personal blogs, and this is allowed as long as the blogs reflect the personal opinions of the employee and do not violate the COBC. A link to our blogging policy and guidelines is here, which you should be sure to abide by should you choose to blog: [http://www.in.cisco.com/corcom/docs/Cisco\\_Internet\\_Posting\\_Policy\\_FINAL\\_March2007.pdf](http://www.in.cisco.com/corcom/docs/Cisco_Internet_Posting_Policy_FINAL_March2007.pdf)  
<[http://www.in.cisco.com/corcom/docs/Cisco\\_Internet\\_Posting\\_Policy\\_FINAL\\_March2007.pdf](http://www.in.cisco.com/corcom/docs/Cisco_Internet_Posting_Policy_FINAL_March2007.pdf)>

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\* When posting your point of view, you should neither claim nor imply that you are speaking on behalf of Cisco, unless you are authorized in writing by your manager to do so.

\* If you identify yourself as a Cisco employee on any Internet posting, or refer to the work done by Cisco, please include the following notice in a reasonably prominent place: "the views expressed on this post are mine and do not necessarily reflect the views of Cisco."

\* Your Internet postings should not include Cisco's logos or trademarks, and should respect copyright, privacy, fair use, financial disclosure, and other applicable laws.

Rick complied with this policy.

Mallun

Dow Jones News Service

Stuart Weinberg

February 25, 2008

CISCO.000375

Ark.000303

**TORONTO (Dow Jones)**—An anonymous blogger who has specialized in tracing the identity of individuals and entities behind so-called "patent troll" lawsuits has turned out to be a senior Cisco Systems Inc. (CSCO) executive.

The popular blog, known as Patent Troll Tracker, or PTT, is run by Rick Frenkel, director of intellectual property at Cisco. PTT took a critical view of patent trolls and supported a proposed patent reform bill aimed at curbing troll activity.

A patent troll is a controversial and derogatory term used to describe entities that acquire patents and assert them in court to win damages from companies that manufacture and design products. Cisco is a frequent target of troll lawsuits and a member of the Coalition for Patent Reform, a lobby group that supports the proposed reform bill.

Critics of trolls argue that trolls manipulate the system by using contingency-fee lawyers to assert dubious patents to win excessive damages in jurisdictions friendly to patent holders. The PTT site, created in the spring of 2007, offers in-depth - usually critical - postings about who is behind the many shell companies that often file troll lawsuits, as well as the lawyers that represent them. One frequent target of the site, Ray Niro, founder and senior partner of Chicago-based Niro, Scavone, Haller & Niro, offered a \$10,000 bounty to anyone who identified the troll tracker.

In the Feb. 23 posting on the blog in which he identified himself, Frenkel said he had been unmasked, ironically, by someone who sent him an anonymous email. "I got an anonymous email, from the guy who probably

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Ark.000304



collected the (\$10,000) bounty, telling me I better tell everyone who I am (and he clearly knew), or else he would take care of it for me," the posting said. "The clear threat in the email is that he would do it in a way I wouldn't be happy about. I don't know what that means, but as I have been growing weary of anonymity anyway, here I am."

In an interview Tuesday, Niro said the anonymous emailer wasn't connected to him. "I'm happy I don't have to pay the reward because...I have no idea how" how the troll tracker was unmasked, he said.

Niro said he isn't totally surprised the troll tracker is a Cisco employee, as he had always believed someone with an agenda was behind the site. "I have to tell you I think this really puts the lie to the troll tracker," he said. "This was not (an independent) patent lawyer interested in patent cases. This was an employee of Cisco interested in presenting a biased point of view, which is anti-inventor anti-little guy point of view."

#### Blog Started Out Of Frustration

Before the Feb. 23 posting, the PTT site indicated its creator was "just a lawyer, interested in patent cases, but not interested in publicity."

Niro said this attempt to paint himself as an objective observer was clearly false and that Frenkel should have offered full disclosure from the start. "When people hear what I say, they say, 'Hey that's Ray Niro, he represents individual inventors (and) companies that support them.' They know where I'm coming from. This guy stood back and pretended that he was objective when in fact objectivity was never on his plate just by the nature of the beast."

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Ark.000305

In the Feb. 23 posting, Frenkel said he started the blog out of frustration. "I was shocked to learn that a huge portion of the tech industry's patent disputes were with companies that were shells, with little cash and assets other than patents and a desire to litigate, and did not make and had never made any products," he said. "Yet when I would search the Internet for information about these putative licensors, I could find nothing. I was frustrated by the lack of information, and also by the vast array of anti-patent-reform bloggers out there, without a voice supporting what I did believe and still believe is meaningful reform."

Frenkel said he chose to blog anonymously because he didn't want the publicity, and because he feared that someone would claim to have the patent on blogging and he might face a retaliatory lawsuit.

Joe Miller, professor at Lewis & Clark Law School in Portland, Ore., said he can appreciate why Frenkel might have wanted to maintain his anonymity. "I would appreciate why someone would conclude why people would not give the facts a fair hearing if they knew the facts are from a particular company," he said.

However, Miller added that anonymity also has a dark side, as it allows people to say scurrilous, baseless and offensive things about people without being held accountable.

Niro, noting the extensive content on the site, said he "can't believe that this was a spare-time project not supported by Cisco."

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Frenkel said in his posting that his direct manager at Cisco knew he was writing the blog, but the content was entirely his own. He said that "nobody at Cisco ever wrote any content for me or made any attempts to edit me, nor was anyone up the chain above my direct manager aware that I was the author."

Cisco spokesman John Noh said the blog represented the personal opinions and personal research of Frenkel and that Cisco didn't fund, edit or maintain it in any way.

"Many Cisco employees maintain personal blogs and their opinions do not necessarily represent that of Cisco's, and as long as those blogs do not violate our code of business conduct, Cisco does not interfere with their expression of free speech whatsoever," Noh said.

Noh said for now, it is up to Frenkel to decide if he wants to maintain the blog.

Noh said Frenkel wasn't immediately available for comment. In the Feb. 23 posting, Frenkel said he would like to continue maintaining the blog, but would take the next few weeks to think it over.

CISCO.000379

Ark.000307

**From:** Rick Frenkel (rfrenkel) <rfrenkel@cisco.com>  
**Sent:** Tuesday, March 4, 2008 3:55 PM  
**To:** Mallun Yen (myen) <myen@cisco systems.com>  
**Subject:** FW:

---

**Rick Frenkel**  
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---

**From:** John Noh (jnoh)  
**Sent:** Thursday, October 18, 2007 10:25 AM  
**To:** Rick Frenkel (rfrenkel)  
**Cc:** Mallun Yen (myen)  
**Subject:** RE:

Brilliant. Thank you,

John

+++++  
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**From:** Rick Frenkel (rfrenkel)  
**Sent:** Thursday, October 18, 2007 10:23 AM  
**To:** John Noh (jnoh)  
**Cc:** Mallun Yen (myen)

CISCO.000390

Ark.000318

**Subject:**

<http://trollracker.blogspot.com/2007/10/esn-convince-edtx-court-clerk-to-alter.html>

**CISCO.000391**

**Ark.000319**

**From:** Mallun Yen (myen)  
**Sent:** Thursday, October 18, 2007 12:47 PM  
**To:** Matthew Tanielian (mtanieli) <mtanieli@cisco.com>  
**Subject:** esn case

---

<http://trolltracker.blogspot.com/>

Mallun Yen  
Vice President, Worldwide Intellectual Property  
Cisco Systems, Inc.  
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CISCO2.000137

Ark.000456