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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ERIC M. ALBRITTON,  
Plaintiff,

vs.

CISCO SYSTEMS, INC., RICHARD  
FRENKEL, MALLUN YEN, & JOHN  
NOH,  
Defendants.

Miscellaneous Action No.  
CV 5:08-mc-80153-JW (HRL)

**DECLARATION OF RICHARD  
FRENKEL IN SUPPORT OF  
DEFENDANTS CISCO SYSTEMS,  
INC., RICHARD FRENKEL, MALLUN  
YEN, JOHN NOH & NON-PARTY  
MARK CHANDLER'S MOTION TO  
QUASH SUBPOENA**

I.

DECLARATION OF RICHARD FRENKEL IN SUPPORT OF  
DEFENDANTS CISCO SYSTEMS, INC., RICHARD FRENKEL,  
MALLUN YEN, JOHN NOH & NON-PARTY MARK CHANDLER'S  
MOTION TO QUASH SUBPOENA

1 I, RICHARD FRENKEL, declare and state as follows:

2 1. My name is Richard Frenkel. I am over twenty-one years of age, competent in all  
3 respects and authorized to execute this Declaration. All of the matters stated herein are true and  
4 correct and are within my personal knowledge.

5 2. I am an attorney and member of the California Bar since 1999, and I am licensed to  
6 practice in California. I was at all times material to the underlying lawsuit that forms the basis of  
7 the subpoena at issue (the "Underlying Lawsuit") a Director, Intellectual Property—Consumer  
8 and Emerging Technologies of Cisco Systems, Inc. ("Cisco")

9 3. On May 9, 2007, I began a news-oriented website called the "Patent Troll  
10 Tracker." I used Google's Blogger service as my web hosting provider, and maintained an email  
11 account with Google using Google's Gmail software. My stated goal, in my very first post, was  
12 "to educate the world on how many patent cases are out there that are filed by trolls," which I  
13 defined as "corporations that make no products, but do nothing but acquire patents to sue and  
14 make revenue." I continued that education by providing regular news articles about cases filed by  
15 non-practicing entities colloquially known as "patent trolls."

16 4. The Patent Troll Tracker website continued until late February 2008. During these  
17 nine months, I published over 180 articles about different facets of patent litigation and "patent  
18 trolls." Patent Troll Tracker was published regularly. For example, I had a monthly installment  
19 where I would review the patent litigation statistics from the previous month, and report on  
20 litigation filed by non-practicing entities. I called this my "Troll Call." Besides the monthly  
21 feature, I would try to have an assortment of stories, about two or three per week, focusing on  
22 different interesting cases and the debate on patent reform issues.

23 5. Until earlier this year, I published the Patent Troll Tracker website anonymously. I  
24 voluntarily disclosed my identity on the website on February 23, 2008. After I revealed myself to  
25 be an attorney employed by Cisco, my employer and I were sued in Texas by Eric M. Albritton  
26 ("Albritton") for defamation relating to an article I posted on October 18, 2007. The article  
27 concerned a lawsuit filed on behalf of ESN, LLC by Albritton in U.S. District Court for the  
28 Eastern District of Texas. Cisco was one of the defendants in that litigation.

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6. As part of the subpoena issued by Albritton, Google, Inc. ("Google") has been asked to produce documents regarding sources and unpublished information that I used to gather and report news about patent litigation on my Patent Troll Tracker website. The subpoena also attempts to compel Google to produce unpublished documents that I obtained and used for preparation of my communications to the public on my Patent Troll Tracker website.

7. Throughout the entire publication of Patent Troll Tracker, I engaged in newsgathering activities for the purpose of reporting on news about patent litigation and the debate regarding patent reform. In doing so, I made use of Google software. For example, I used the Google Blogger service to publish my many articles. In addition, I used the Google Gmail email software to communicate with others who would send me "leads"

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 4, 2008.



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Richard Frenkel