

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,)	Case No. 3-14-CV-05344-BLF
)	
Plaintiff,)	ORDER GRANTING MOTION TO
)	COMPEL
v.)	
)	(Re: Docket No. 66)
ARISTA NETWORKS, INC.,)	
)	
Defendant.)	

Late last year, Plaintiff Cisco Systems, Inc. brought this suit, alleging that Defendant Arista Networks, Inc. had infringed 26 of Cisco’s copyrighted works.¹ Earlier this year, Arista served interrogatories on Cisco seeking information about the origin and creation of those copyrighted works.² Dissatisfied with Cisco’s responses, Arista moves to compel further responses to interrogatories nos. 5 and 16. After considering the parties’ arguments, the court GRANTS Arista’s motion.

I.

At issue are Cisco’s responses to two of Arista’s interrogatories, nos. 5 and 16. In interrogatory no. 5, Arista seeks “the derivation of each [command line interface] Command used by Cisco, including without limitation all CLI Commands that You contend Arista has unlawfully

¹ See Docket No. 1.

² See Docket No. 66 at 6.

1 copied.”³ Due to claimed confusion about the meaning of “derivation,” Cisco initially responded
2 that it was “not presently aware of any responsive information.”⁴ Through the meet and confer
3 process, Arista clarified that this interrogatory sought basic facts about the origin and creation of
4 each CLI command.⁵ Cisco then provided a supplemental, narrative response identifying
5 documents about Cisco’s creative process.⁶ Because this response also did not provide the
6 bibliographic information that Arista sought, Cisco provided a second supplemental response that
7 identified Kirk Lougheed as a person most knowledgeable about Cisco’s development process for
8 command expressions.⁷ This response also did not provide the information that Arista required.

9 While the back-and-forth over interrogatory no. 5 continued, Arista propounded
10 interrogatory no. 16, which specified in more detail the bibliographic information that Arista
11 sought. Interrogatory no. 16 seeks the following information regarding each CLI Command,
12 command hierarchy, and command mode and prompt listed in Cisco’s second amended
13 complaint:

- 14 (i) the author or originator of such Command, command hierarchy, command mode
15 and prompt, (ii) the date of such authorship or creation, (iii) the document(s) in
16 which such Command, command hierarchy, command mode or prompt was first
17 fixed in any tangible medium of expression, (iv) the document(s) in which such
18 Command, command hierarchy, command mode or prompt was first published, and
19 (v) the first Cisco product (including version number) that used or responded to
20 each CLI Command, command hierarchy, command mode or prompt.⁸

21 Cisco’s initial response only identified documents showing that Cisco owned the copyrighted
22 works⁹ and did not provide the detailed authorial information that Arista sought. After further
23 meet and confer failed to resolve the dispute, Arista filed its pending motion.

24 ³ Docket No. 67-5 at 4.

25 ⁴ Docket No. 66 at 6.

26 ⁵ See Docket No. 66 at 6.

27 ⁶ See Docket No. 76-3.

28 ⁷ See Docket No. 66 at 7.

⁸ Docket No. 67-8 at 4.

⁹ See Docket No. 76-3 at 12.

1 **II.**

2 The court has jurisdiction under 28 U.S.C. §§ 1331. The matter was referred to the
3 undersigned pursuant to Fed. R. Civ. P. 72(a).

4 The Federal Rules of Civil Procedure allow for broad discovery, allowing parties to obtain
5 discovery regarding any information “reasonably calculated to lead to the discovery of admissible
6 evidence.”¹⁰ District courts have broad discretion to determine relevancy for discovery
7 purposes,¹¹ and the burden is on the party resisting discovery to show “that the discovery should
8 not be allowed.”¹² When considering whether the burden of proposed discovery outweighs its
9 likely benefit, the court must consider the burden against “the needs of the case, the amount in
10 controversy, the parties’ resources, the importance of the issues at stake in the action, and the
11 importance of the discovery in resolving the issues.”¹³

12 **III.**

13 Applying these standards to the record before the court, the motion to compel is granted as
14 follows.

15 **First**, Arista’s interrogatories nos. 5 and 16 seek information that is plainly relevant to
16 defenses in a copyright action. The interrogatories seek information regarding the authorship and
17 source of the disputed works, which is necessary to contesting the works’ originality. Originality
18 is the “sine qua non of copyright.”¹⁴ “To qualify for copyright protection, a work must be
19 original to the author.”¹⁵ The information that Arista requests is relevant to the inquiry of
20 originality, because information as to the authorship of the disputed works, the dates of creation,
21 the documents in which they were first fixed or published, and the first Cisco product in which

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¹⁰ Fed R. Civ. P. 26(b)(1).

23 ¹¹ See *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002).

24 ¹² *Louisiana Pac. Corp. v. Money Mkt. 1 Institutional Inv. Dealer*, 285 F.R.D. 481, 485
25 (N.D. Cal. 2012).

26 ¹³ Fed R. Civ. P. 26(b)(2)(C)(iii).

27 ¹⁴ *Feist Publ’ns, Inc. v. Rural Tel. Serv. Co.*, 499 U.S. 340, 345 (1991).

28 ¹⁵ *Id.*

1 they were used is reasonably calculated to lead to the discovery of witnesses for deposition and
2 testimony as to whether, for example, a CLI “was independently created by the author (as
3 opposed to copied from other works).”¹⁶

4 **Second**, while the burden of responding to the interrogatories may be substantial, that
5 burden must be weighed against the nature of Cisco’s claim. Cisco asserted 26 copyrighted
6 works, including over 500 CLI commands, hierarchies, and prompts. To the extent that
7 investigating and producing information on those works’ creation creates a large burden, that
8 burden is one of Cisco’s own making. The information sought by Arista is directly relevant to the
9 issues at stake in this lawsuit, and the hardship created by the interrogatories therefore is not
10 “unreasonable in the light of the benefits to be secured from the discovery.”¹⁷

11 **IV.**

12 Arista’s motion to compel responses to interrogatories nos. 5 and 16 is GRANTED. No
13 later than October 14, 2015, Cisco shall supplement its responses to interrogatories nos. 5 and 16
14 in compliance with this order.

15 **SO ORDERED.**

16 Dated: September 30, 2015

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18 _____
19 PAUL S. GREWAL
20 United States Magistrate Judge

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27 ¹⁶ Id.

28 ¹⁷ Thomas v. Cate, 715 F. Supp. 2d 1012, 1032 (E.D. Cal. 2010).