## IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

ILLINOIS COMPUTER RESEARCH,	)
LLC,	)
Plaintiff and Counterclaim Defendant,	)
v.	) No. 07 C 5081
FISH & RICHARDSON P.C.,	) Judge Rebecca R. Pallmeyer
Defendant, Counterclaimant, Third-	) Magistrata Judga Maria Waldar
Party Plaintiff, and Counterclaim	Magistrate Judge Maria Valdez
Defendant,	)
·	)
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	)
SCOTT C. HARRIS, et al.,	)
Third-Party Defendants.	)

## FISH & RICHARDSON'S OPPOSITION TO ICR'S MOTION TO STRIKE

ICR's motion to strike should be denied for three reasons.

First, the motion to strike was made without any "meet and confer" and does not otherwise comport with Federal Rule of Civil Procedure 12(f). Counsel for Mr. Harris was in Court following Fish & Richardson's filing of the motion to dismiss which contains the references to "shell entities" and did not complain then or at any time until 2:00 p.m. on Friday May 30 about the use of the term in Fish & Richardson's motion to dismiss. At approximately 2:00 p.m. on Friday, May 30, 2008, without prior warning or phone call, Mr. Niro sent an email to Mr. Bradford, stating that the Niro firm would file a motion on this topic, unless counsel for Fish & Richardson agreed to his demands by 4:00 p.m. that same afternoon. (*See* 05/30/08 R. Niro email, attached as Ex. A.) Mr. Bradford was traveling that day and unable to respond to this ultimatum before the motion was filed. That type of unilateral conduct does not satisfy "meet and confer" standards.

Second, this Court has previously determined that it would be inappropriate to parse and strike pleadings in this case, when it denied Fish & Richardson's request to strike the unconscionable assertions, made in briefs by the Niro firm, that the law firm of Fish & Richardson was connected to death threats on Mr. Niro which allegedly appeared on a third party blog. (See Scott Harris's and ICR's Mot. to Proceed with Disc. at 2-3, Dkt. No. 103; Fish & Richardson's Resp. to Mr. Harris's and ICR's Mot. to Proceed with Disc. at 2-3, Dkt. No. 110.) If the Court grants this motion, it should also strike the numerous pejorative and factually unfounded assertions in the Niro firm's briefs and pleadings. These include outrageous allegations of death threats linked to Fish & Richardson and witness intimidation linked to Jenner & Block, which they know, from discovery and otherwise, have no factual basis and are truly scandalous and inflammatory.

Third, the term "shell entity" is both accurate and appropriate in this case. Most of the referenced entities have demonstrated that they are mere "shells" by producing virtually no corporate documentation; most appear to have no business other than to serve as a transparent basis for Mr. Harris to contend that he is not suing firm clients directly. Virtually all of the economic value of the "Harris patents" allegedly held by these entities belongs to Mr. Harris and the Niro firm and not to the entity itself. Additionally, the Motion to Strike asserts that the term "shell entity" is synonymous, in this context, with the term "patent troll." (Mot. to Strike at 2, Dkt. No. 180.) Significantly, Mr. Harris, even while at Fish & Richardson, sponsored a website, imapatenttroll.com, in which he proudly and openly referred to himself as a "patent troll." Truth is an absolute defense.

This motion to strike, served without benefit of a meet and confer, promotes neither civility nor professionalism. Due regard for truth and dialogue would promote those goals.

This motion to strike should be denied.

Dated: June 2, 2008

Respectfully submitted,

FISH & RICHARDSON P.C.

By: s/ David J. Bradford One of its Attorneys

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## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was filed with the Court by means of the Court's CM/ECF system, which will send notification of such filing to the following counsel at their email address on file with the Court:

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June 2, 2008.

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