

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

<p><b>ESN, LLC,</b></p> <p style="text-align: center;"><b>Plaintiff,</b></p> <p style="text-align: center;"><b>v.</b></p> <p><b>CISCO SYSTEMS, INC., and</b></p> <p><b>CISCO-LINKSYS, LLC,</b></p> <p style="text-align: center;"><b>Defendants.</b></p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p><b>Civil Action No. 5:08-cv-20-DF</b></p> <p><b>JURY TRIAL DEMANDED</b></p>
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**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO CONSOLIDATE THE  
HEARING ON THE PENDING MOTIONS CURRENTLY BEFORE THE COURT**

Defendants Cisco-Systems, Inc. and Cisco-Linksys, LLC (collectively "Cisco")

respectfully submits this response to ESN's Motion to Consolidate the Hearing on the Pending Motions Currently Before the Court.

Currently scheduled for oral argument on November 20, 2009 are four motions: (1) Cisco's Motion to Dismiss for Lack of Standing (Dkt. No. 71); and (2) ESN's Motion to Disqualify Counsel and Impose Sanctions on Defendants and Their Counsel (Dkt. No. 73) (3) Cisco's Motion to Compel an Answer to Interrogatory No. 7 (Dkt. No. 123); and (4) Cisco's Motion Pursuant to Patent Local Rule 3-6(b) for Leave to Supplement Their Invalidity Contentions (Dkt. No. 124) (collectively "the four scheduled motions").

ESN asks the Court schedule oral argument on two additional motions on the same day as the four scheduled motions: (1) ESN's Motion for Discovery Sanctions (Dkt. No. 146); and (2) Cisco's Motion for a Protective Order (Dkt. No. 151). Should the Court, in its discretion, grant ESN's request, Cisco will be prepared to argue all six motions at the November 20, 2009 hearing.

Nevertheless, Cisco believes that consolidation of these two additional motions is not warranted for the following reasons.

First, the four scheduled motions will already account for two hours of scheduled argument. These four fully briefed motions concern very important issues, including a motion to disqualify counsel and a motion to dismiss the complaint. The two additional motions that ESN seeks to add to the November 20, 2009 hearing also concern important issues, including ESN's request for terminating sanctions and ESN's attempts to depose several of Cisco's attorneys. One motion, ESN's Motion for Discovery Sanctions, has not yet been fully briefed.<sup>1</sup> Each of these highly important motions is deserving of the Court's full attention and full argument from the parties. If, in the Court's discretion, there is sufficient time to argue and consider all these motions at the November 20, 2009 hearing, Cisco has no objection to arguing all six on that date.

Second, ESN bases its Motion to Consolidate in part on its contention that "Cisco is considering whether or not it still intends to pursue" its Motion to Compel an Answer to Interrogatory No. 7. ESN states that its response to Cisco's Interrogatory No. 8 "substantially overlaps the information requested by Interrogatory No. 8." The information requested by Interrogatory No. 7 is substantially broader than the information requested by Interrogatory No. 8. The Motion to Compel is therefore not moot, and Cisco fully intends to pursue a response.

For the foregoing reasons, Cisco requests that the Court allow the hearing to go forward as scheduled.

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<sup>1</sup> ESN states that Cisco's sur-reply is due today, Friday November 13, 2009. That is incorrect. ESN filed its Reply on November 4, 2009 (Dkt. No. 164.) Local Rule CV-7(f) provides Cisco five days to file its sur-reply. Under Federal Rule of Civil Procedure 6(d), because ESN served Cisco electronically, three days are added. Under Federal Rule of Civil Procedure 6(a)(2), weekends and Veterans Day (November 11) are excluded. As a result, Cisco's sur-reply is due Monday, November 16, 2009.

DATED: November 15, 2009

Respectfully submitted,

By /s/ Kevin A. Smith

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## **CERTIFICATE OF SERVICE**

I hereby certify that on the date this proof of service is signed below, I served the foregoing:

**DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION TO CONSOLIDATE THE HEARING ON THE PENDING MOTIONS CURRENTLY BEFORE THE COURT**

by email and via the Court's Electronic Filing System to

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Date: November 15, 2009

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