

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

ESN, LLC,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 5:08-CV-20-DF
)	
CISCO SYSTEMS, INC., and)	
CISCO-LINKSYS, LLC,)	
)	
Defendants.)	

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Pursuant to Patent Rule 4-3 of the Rules of Practice for Patent Cases before the Eastern District of Texas and the Court’s Docket Control Order, dated May 22, 2008 the parties hereby submit this Joint Claim Construction and Prehearing Statement. Counsel for ESN, LLC (“ESN”) and counsel for Cisco Systems, Inc. and Cisco-Linksys, LLC (collectively “Cisco”) have exchanged preliminary lists of proposed claim constructions and met and conferred thereon.

(a) Agreed Constructions

For purposes of P.R. 4-3(a), a list of terms for which the parties have agreed upon the appropriate construction is attached hereto as Exhibit A.

(b) Disputed Constructions

Pursuant to Patent Local Rule 4-3(b), attached as Exhibit B is a chart setting forth ESN's and Cisco's proposed construction of each disputed claim term, phrase or clause respectively. The first column of this chart sets forth the claim language with the disputed term, phrase or clause in bold. The second column sets forth the disputed claim term, phrase, or clause, and identifies the asserted claims in which the term, phrase or clause can be found. The third column

sets forth ESN's proposed constructions with citations to the intrinsic and extrinsic evidence supporting ESN's constructions.¹ The fourth column sets forth Cisco's proposed constructions with citations to the intrinsic and extrinsic evidence supporting Cisco's constructions.

(c) Length of Time Needed for Claim Construction Hearing

The parties agree that approximately two (2) hours per side will be needed for the Claim Construction Hearing on June 11, 2009, and 45 minutes per side for the technical tutorial on June 10, 2009, as discussed at the Case Management Conference on April 22, 2008. Cisco may call its expert Dr. Eric Burger to provide its portion of the tutorial.

(d) Live Witnesses for Claim Construction

ESN does not believe that live expert testimony is necessary or appropriate at this time. However, if Cisco intends to rely on expert testimony in support of its proposed claim constructions, and the court should allow such expert testimony, ESN reserves the right to present its own expert declaration(s) and/or live testimony to rebut any such expert opinions and/or testimony offered by Cisco.

Cisco reserves the right to rely on expert testimony or declarations in support of its construction of the disputed terms, phrases or clauses, and to rebut ESN's expert opinions. Cisco's statement pursuant to Patent Local Rule 4-3(d) is set forth in attached Exhibit C.

(e) Issues for Pre-hearing Conference

At this time the parties do not believe there are any issues to address during the Pre-Hearing Conference.

¹ Cisco objects to ESN's citation to extrinsic evidence not previously disclosed in ESN's Preliminary Proposed Claim Construction and Identification of Extrinsic Evidence as required by Patent Rule 4-2(b).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email on this the 10th day of February, 2009.

/s/ John Ward, Jr.
T. John Ward, Jr.