

Exhibit D

quinn emanuel trial lawyers | silicon valley

555 Twin Dolphin Drive, Suite 560, Redwood Shores, California 94065 | TEL 650-801-5000 FAX 650-801-5100

WRITER'S INTERNET ADDRESS
victoriamaroulis@quinnemanuel.com

May 8, 2008

VIA ELECTRONIC MAIL

Peter J. McAndrews
McAndrews Held & Malloy Ltd.
500 West Madison Street
34th Floor
Chicago, Illinois 60661

Re: ESN, LLC v. Cisco Systems, Inc., and Cisco-Linksys, LLC

Dear Mr. McAndrews:

I write to address the deficiencies in ESN's P.R. 3-1 Disclosure of Asserted Claims and Infringement Contentions served on April 18, 2008. As set forth below, ESN's infringement contentions fall far short of meeting the requirements of Local Patent Rule 3-1.

Local Patent Rule 3-1(c) states that "a party claiming patent infringement must serve on all parties a chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. §112(6), the identify of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claim function." P.R. 3-1(c).

Compliance with P.R. 3-1, therefore, requires ESN to set forth "particular theories of infringement with sufficient specificity to provide defendants with notice of infringement." *STMicroelectronics, Inc. v. Motorola, Inc.*, 308 F. Supp. 2d 754, 754, 755 (E.D. Tex. 2004). Furthermore, infringement contentions "providing vague, conclusory language or simply mimicking the language of the claims when identifying infringement fail to comply with Patent Rule 3-1." *Connectel, LLC v. Cisco Systems, Inc.*, 391 F. Supp. 2d 526, 528 (E.D. Tex. 2005).

ESN's purported infringement charts are conclusory and unsupported. ESN provided four charts that allegedly mapped each element of the 16 asserted claims to the Accused Instrumentality. Yet, the charts contain not a single citation to a Cisco or third-party publication in support of these contentions. Indeed, the charts fail to provide *any evidentiary support* whatsoever for

quinn emanuel urquhart oliver & hedges, llp

LOS ANGELES | 865 South Figueroa Street, 10th Floor, Los Angeles, California 90017 | TEL 213-443-3000 FAX 213-443-3100
NEW YORK | 51 Madison Avenue, 22nd Floor, New York, New York 100101 | TEL 212-849-7000 FAX 212-849-7100
SAN FRANCISCO | 50 California Street, 22nd Floor, San Francisco, California 94111 | TEL 415-875-6600 FAX 415-875-6700

ESN's allegations. This failure to cite to any evidence does not comport with the Local Patent Rules. See *STMicroelectronics*, 308 F. Supp. 2d at 756 ("[T]he Court will not tolerate gamesmanship that attempts to conceal or delay the production of discoverable items.")

In *Connectel*, the plaintiff provided over 600 footnotes in its infringement charts, but failed to "specifically identify" where in the cited publications each elements of the asserted claims were found. *Connectel*, 391 F. Supp. 2d at 527. The court held that the plaintiff failed to comply with P.R. 3-1, and ordered the plaintiff to amend the charts "to highlight ... the text of every piece of cited literature where elements of the asserted claims are found." *Id.* at 528. Here, ESN has provided far less than the plaintiff in *Connectel* before the court ordered the plaintiff to amend its charts.

In order to comply with P.R. 3-1(c), ESN must: (1) provide citations to documentary evidence for its contentions, and (2) specifically identify where in the cited publications each elements of the asserted claims for each Accused Instrumentality is found. Please let me know by May 16, 2008 if ESN will amend its infringement contentions to meet these requirements.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "V.F. Maroulis", with a long, sweeping underline.

Victoria F. Maroulis

51301/2495278.1