

**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)	JURY TRIAL DEMANDED
CISCO-LINKSYS, LLC,)	
)	
Defendants.)	

**DECLARATION OF SAYURI SHARPER IN SUPPORT OF DEFENDANTS’ MOTION
PURSUANT TO PATENT LOCAL RULE 3-6(B) FOR LEAVE TO SUPPLEMENT
THEIR INVALIDITY CONTENTIONS**

1. I am an attorney with the law firm Quinn Emanuel Urquhart Oliver & Hedges, LLP. I represent Cisco Systems, Inc. and Cisco-Linksys, LLC (collectively “Cisco”) in this matter.

2. Upon Plaintiff ESN filing of this lawsuit, myself and several other attorneys representing Cisco spent considerable time searching for prior art related to ESN’s patent.

3. In addition, Quinn Emanuel, on behalf of Cisco, retained an expert in the field of Voice over Internet Protocol technology to assist in the search for prior art.

4. My understanding and those of the others involved in the search was that the best prior art would necessarily be informed by ESN’s reading of the claims as shown by its P.R. 3-1 infringement contentions. When ESN served its infringement contentions, however, they contained only vague and conclusory assertions, devoid of citation to any evidence. In addition,

Cisco's search for prior art commercial products was hampered by the fact that many products in the VoIP field have been discontinued and are no longer commercially available.

5. Based on Cisco's best reading of ESN's apparent interpretation of its claims, Cisco identified dozens of prior art references in its P.R. 3-3 invalidity contentions.

6. On November 5, 2008, ESN served on Cisco's a set of amended infringement contentions. These new contentions for the first time cited evidence in support of ESN's otherwise conclusory infringement position. In addition, ESN narrowed its contentions to four asserted claims. In light of these amendments, Cisco focused its continued prior art search for references that fell within ESN's apparent interpretation of its claims.

7. Cisco's newly focused prior art search revealed several commercial products that it had not otherwise discovered. Cisco diligently reviewed many references and identified a small fraction of those as relevant and important to the claims in this case.

8. This search revealed the following prior art references, which are highly relevant to the patent claims at issue in this lawsuit:

- a) VocalTec SIP Server VSS 4000, offered for sale and in public use no later than March 21, 2001;
- b) DSG Technology InterPBX, offered for sale and in public use no later than February 2001;
- c) Intertex IX66 Residential Gateway with built in ADSL Modem, offered for sale and in public use no later than March 2000;
- d) Pingtel SIPxchange Enterprise Communications System, offered for sale and in public use no later than March 2002;
- e) Clarent NetPerformer Enterprise Gateway, offered for sale and in public use no later than August 31, 1999;
- f) Vovida Open Communications Application Library (VOCAL) v.1.3.0, offered for free download and in public use no later than July 2001;

9. In addition, the search uncovered the Meircom Session Initiation Protocol (SIP) Interoperability Testing Report from July 2001. That Report describes testing of various SIP based products. As described in Cisco's supplemental invalidity contentions, the configurations described in the Report practiced ESN's asserted patent claims.

10. Only one deposition has occurred in this case. That deposition concerned Cisco's possession of various documents. ESN has taken no depositions related to prior art or Cisco's invalidity contentions. No significant discovery has occurred regarding Cisco's invalidity contentions.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct. Executed on this 18th day of February 2009 in Redwood Shores, California.

Dated: February 18, 2009

/s/ Sayuri Sharper