

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,	)	JURY TRIAL DEMANDED
	)	
Defendants.	)	

**DEFENDANTS’ UNOPPOSED MOTION FOR LEAVE TO FILE SUR-REPLY TO PLAINTIFF’S REPLY BRIEF ON CLAIM CONSTRUCTION**

Defendants Cisco Systems, Inc. and Cisco-Linksys, LLC (collectively “Cisco”) hereby request an order granting Cisco leave to file a sur-reply to the reply brief on claim construction filed by Plaintiff ESN, LLC ("ESN"). The parties have met and conferred regarding this motion, and ESN does not oppose Cisco's request for leave to file a sur-reply.

Pursuant to this Court's Scheduling Order of May 22, 2008, ESN served its opening claim construction brief on March 11, 2009. Cisco filed its responsive brief on April 22, 2009. ESN filed its reply brief on May 1, 2009. ESN requested leave to file excess pages in its reply brief, Cisco did not oppose that request, and the Court granted leave for ESN to exceed the page limit on May 4, 2009.

The Court's Scheduling Order requires Cisco to obtain leave to file a sur-reply brief regarding claim construction. A sur-reply is necessary for Cisco to respond to the arguments raised in ESN's reply brief, some of which had not been raised in the earlier rounds of briefing. Specifically, Cisco will address ESN's arguments regarding the following issues: (1) whether

ESN was on notice of the subject matter set forth in the declaration of Cisco's expert in support of Cisco's claim constructions; and (2) whether IETF RFC 2543 is a standard that can be incorporated into the construction of certain disputed claim terms. Cisco therefore respectfully requests an order granting leave to file a sur-reply on claim construction. The sur-reply is submitted concurrently with this motion as required by Local Rule CV-7(k).

DATED: May 8, 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' UNOPPOSED MOTION FOR LEAVE TO FILE SUR-REPLY TO PLAINTIFF'S REPLY BRIEF ON CLAIM CONSTRUCTION

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

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