

Patent Troll Tracker

THURSDAY, OCTOBER 18, 2007

ESN Convinces EDTX Court Clerk To Alter Documents To Try To Manufacture Subject Matter Jurisdiction Where None Existed

I got a couple of anonymous emails this morning, pointing out that the docket in ESN v. Cisco (the Texas docket, not the Connecticut docket), had been altered. One email suggested that ESN's local counsel called the EDTX court clerk, and convinced him/her to change the docket to reflect an October 16 filing date, rather than the October 15 filing date. I checked, and sure enough, that's exactly what happened - the docket was altered to reflect an October 16 filing date and the complaint was altered to change the filing date stamp from October 15 to October 16. Only the EDTX Court Clerk could have made such changes.

Of course, there are a couple of flaws in this conspiracy. First, ESN counsel Eric Albritton signed the Civil Cover Sheet stating that the complaint had been filed on October 15. Second, there's tons of proof that ESN filed on October 15. Heck, Dennis Crouch may be subpoenaed as a witness!

You can't change history, and it's outrageous that the Eastern District of Texas is apparently, wittingly or unwittingly, conspiring with a non-practicing entity to try to manufacture subject matter jurisdiction. This is yet another example of the abusive nature of litigating patent cases in the Banana Republic of East Texas.

(n.b.: don't be surprised if the docket changes back once the higher-ups in the Court get wind of this, making this post completely irrelevant).

Posted by Troll Tracker at 1:13 PM

0 comments

WEDNESDAY, OCTOBER 17, 2007

Troll Jumps the Gun, Sues Cisco Too Early

Well, I knew the day would come. I'm getting my troll news from [Dennis Crouch](#) now. According to Dennis, a company called ESN sued Cisco for patent infringement on October 15th, while the patent did not issue until October 16th. I looked, and ESN appears to be a shell entity managed by the President and CEO of DirectAdvice, an online financial website. And, yes, he's a lawyer. He clerked for a federal judge in Connecticut, and was an attorney at Day, Berry & Howard. Now he's suing Cisco on behalf of a non-practicing entity.

Send email

email TrollTracker

About Me

Troll Tracker

Just a lawyer, interested in patent cases, but not interested in publicity

[View my complete profile](#)



Blogs TrollTracker Reads

[Dennis Crouch's Patently-O Blog](#)

[Peter Zura's 271 Patent Blog](#)

[Patent Prospector](#)

[Michael Smith's EDTX Blog](#)

[Delaware IP Law Blog](#)

[Chicago IP Litigation Blog](#)

[Phillip Brooks' Patent Infringement Updates](#)

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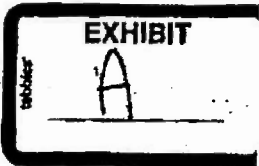
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I asked myself, can ESN do this? I would think that the court would lack subject matter jurisdiction, since ESN owned no property right at the time of the lawsuit, and the passage of time should not cure that. And, in fact, I was right:

A declaratory judgment of "invalidity" or "noninfringement" with respect to Elk's pending patent application would have had no legal meaning or effect. The fact that the patent was about to issue and would have been granted before the court reached the merits of the case is of no moment. Justiciability must be judged as of the time of filing, not as of some indeterminate future date when the court might reach the merits and the patent has issued. We therefore hold that a threat is not sufficient to create a case or controversy unless it is made with respect to a patent that has issued before a complaint is filed. Thus, the district court correctly held that there was no justiciable case or controversy in this case at the time the complaint was filed. GAF contends, however, that the issuance of the '144 patent cured any jurisdictional defect. We disagree. Later events may not create jurisdiction where none existed at the time of filing.

GAF Building Materials Corp. v. Elk Corp. of Texas, 90 F.3d 479, 483 (Fed. Cir. 1996) (citations and quotations omitted).

One other interesting tidbit: Cisco appeared to pick up on this, very quickly. Cisco filed a declaratory judgment action (in Connecticut) yesterday, the day after ESN filed its null complaint. Since Cisco's lawsuit was filed after the patent issued, it should stick in Connecticut.

Perhaps realizing their fatal flaw (as a couple of other bloggers/news items have pointed out), ESN (represented by Chicago firm McAndrews Held & Malloy and local counsel Eric Albritton and T. Johnny Ward) filed an amended complaint in Texarkana today - amending to change absolutely nothing at all, by the way, except the filing date of the complaint. Survey says? XXXXXX (insert "Family Feud" sound here). Sorry, ESN. You're on your way to New Haven. Wonder how Johnny Ward will play there?

Posted by Troll Tracker at 7:00 PM

1 comment

TrollSurfing: Monts & Ware, Ward & Olivo, and Their Clients

Similar to surfing the web, I started by checking out a hunch I had about Monts & Ware being behind all sorts of troll cases. Then I trollsurfed through a bunch of cases, and I ended up not only with Monts & Ware (Dallas litigation firm), but also Ward & Olivo (patent lawyers from New York/New Jersey), as a thread behind a bunch of

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EXHIBIT B

*IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION*

ERIC M. ALBRITTON,

Plaintiff,

v.

(1) CISCO SYSTEMS, INC., (2) RICHARD
FRENKEL, (3) MALLUN YEN and
(4) JOHN NOH,

Defendants.

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NO. 6:08-CV-00089

PLAINTIFF'S SECOND SUPPLEMENTAL DISCLOSURES

TO: Cisco Systems, Inc., Mallun Yen and John Noh, by and through their attorney of record, Mr. Charles Babcock, 1401 McKinney, Suite 1900, Houston, Texas 77010 and Richard Frenkel, by and through his attorney of record, Mr. George McWilliams, P.O. Box 58, Texarkana, Texas 75504-0058.

COMES NOW, ERIC ALBRITTON, Plaintiff in the above captioned and numbered cause, and make the following Second Supplemental Disclosures pursuant to Rule 26(a)(1), Fed. R. Civ. P., and the Order of the Court:

I.

***PERSONS LIKELY TO HAVE DISCOVERABLE INFORMATION RELEVANT
TO THE CLAIMS AND DEFENSES OF ANY PARTY***

1. The plaintiff, Mr. Eric Albritton, who may be contacted through his attorney, Mr. James Holmes of Henderson, Texas.
2. Various current and former employees of Cisco Systems, Inc. including Ms. Marta Beckwith, Mr. Michael Ritter, Mr. John Corcoran, Mr. Dan Lang, Mr. Mark Michels, Mr. Mark Chandler, Mr. Neal Rubin and Mr. Matthew Tanielian.
3. Mr. Bart Showalter, Mr. Kurt Pankratz, Ms. Jillian Powell, Mr. Steve Schortgen and Mr. Kevin Meek of Baker Botts, LLP, all of whom have knowledge of various communications with Defendants regarding the filing of the ESN case.

4. Mr. Michael M. Smith, Siebman, Reynolds, Burg, Phillips & Smith, LLP, 713 South Washington Avenue, Marshall, Texas 75670 who communicated with Frenkel about his allegations against Eric Albritton. He also has knowledge of the Local Rules for the Eastern District of Texas, the operating procedures of the clerk's office, the discussions of the Committee on Local Rules and the reputation of Eric Albritton.
5. Mr. Michael Barclay, Wilson Sonsimi Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304, who communicated with Frenkel about his allegations against Eric Albritton.
6. Mr. Mark Weinstein, White & Case, LLP, 3000 El Camino Real, 5 Palo Alto Square, 9th Floor, Palo Alto, California 94306, who communicated with Frenkel about his allegations against Eric Albritton.
7. The Co-Defendant, Mr. Richard Frenkel who may be contacted through his attorney, Mr. George McWilliams of Texarkana, Texas.
8. The Co-Defendant, Ms. Mallun Yen who may be contacted through her attorney, Mr. Charles Babcock of Houston, Texas.
9. The Co-Defendant, Mr. John Noh who may be contacted through his attorney, Mr. Charles Babcock of Houston, Texas.
10. Mr. T. John Ward, Jr., who has knowledge of the facts surrounding the filing of the ESN litigation, the falsity of Defendants' allegations, the Plaintiffs professional reputation and Plaintiff's damages. Mr. Ward may be contacted through his counsel, Mr. Nick Patton of Texarkana, Texas.
11. Mr. David J. Maland, Clerk of the United States District Court for the Eastern District of Texas, 106 William Steger Federal Building, 211 W. Ferguson Street, Tyler, Texas 75702, who has knowledge of the facts surrounding the filing of the ESN litigation, the electronic filing system for the Eastern District of Texas, the reputation of the Court and Plaintiff's abilities and reputation.
12. David Provines, Deputy Clerk of the United States District Court for the Eastern District of Texas, 106 William Steger Federal Building, 211 W. Ferguson Street, Tyler, Texas 75702, who has knowledge of the facts surrounding the filing of the ESN litigation, the electronic filing system for the Eastern District of Texas, the reputation of the Court and Plaintiff's abilities and reputation.
13. Peggy Thompson, Deputy Clerk of the United States District Court for the Eastern District of Texas, 106 William Steger Federal Building, 211 W. Ferguson Street, Tyler, Texas 75702, who has knowledge of the facts surrounding the filing of the ESN litigation, the electronic filing system for the Eastern District of Texas, the reputation of the Court and Plaintiff's abilities and reputation.

14. Shelly Moore, Deputy Clerk of the United States District Court for the Eastern District of Texas, 500 State Line Ave., Texarkana, Texas 75501, who has knowledge of the facts surrounding the filing of the ESN litigation, the electronic filing system for the Eastern District of Texas, the reputation of the Court and Plaintiff's abilities and reputation.
15. Ms. Amie Mathis, former legal assistant to Eric Albritton, who has knowledge of the filing of the ESN litigation, the Plaintiff's reputation and the Plaintiff's damages. Ms. Mathis may be contacted through her attorney, Mr. Greg Love, 109 West Tyler, Longview, Texas.
16. Mr. Peter McAndrews of McAndrews, Held & Malloy of 500 West Madison Street, 34th Floor, Chicago, Illinois 60661. Mr. McAndrews is co-counsel with the Plaintiff in the ESN litigation and has knowledge of the filing of the ESN case as well as the Plaintiff's reputation and abilities and the impact of the defamatory statements made by Defendants.
17. Ms. Elizabeth DeRieux, P.O. Box 2649, Longview, Texas 75606. Ms. DeRieux has knowledge of the professional reputation and integrity of the Plaintiff.
18. Mr. Robert M. Parker, Parker, Bunt & Ainsworth, P.C., 100 E. Ferguson Street, Suite 1114, Tyler, Texas 75702. Mr. Parker has knowledge of the professional reputation and integrity of the Plaintiff.
19. Mr. Samuel Baxter, P.O. Box O, Marshall, Texas 75671-0290. Mr. Baxter has knowledge of the professional reputation and integrity of the Plaintiff.
20. Mr. Danny Williams, Williams, Morgan & Amerson, 10333 Richmond Ave. #1100, Houston, Texas 77042. Mr. Williams has knowledge of the professional reputation and integrity of the Plaintiff.
21. Mr. Louis Brucculeri, Wong Cabello Lutsch Rutherford Brucculeri, 20333 S.H. 249, Suite 600, Houston, Texas 77070. Mr. Brucculeri has knowledge of the professional reputation and integrity of the Plaintiff and had discussions with Defendant Yen concerning the defamatory statements.
22. Mr. Otis Carroll, Jr., P.O. Box 7879, Tyler, Texas 75711-7879. Mr. Carroll has knowledge of the professional reputation and integrity of the Plaintiff.
23. Mr. John A. Albritton. Father of the Plaintiff. Mr. Albritton has knowledge of the impact this matter has had on Plaintiff.
24. Mrs. Michelle L. Albritton, wife of the Plaintiff. Mrs. Albritton has knowledge of the impact this matter has had on Plaintiff.

25. Scott E. Stevens, Stevens Law Firm. P.O. Box 807, Longview, Texas 75606-0807. Mr. Stevens is a colleague and friend and has knowledge of the impact this matter has had on Plaintiff.

II.

***DOCUMENTS AND THINGS IN THE POSSESSION OF PLAINTIFF THAT ARE
RELEVANT TO THE CLAIMS AND DEFENSES OF ANY PARTY***

1. Documents EMA0001-1563 (previously produced on CD);
2. Documents EMA1564-1566 (previously produced);
3. Documents EMA1567-1604 (previously produced).

Respectfully submitted,

/s/ Nicholas H. Patton

Nicholas H. Patton
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James A. Holmes
Texas Bar No. 00784290
THE LAW OFFICE OF JAMES HOLMES, P.C.
635 South Main, Suite 203
Henderson, Texas 75654
903.657.2800 / 903.657.2855 (Fax)

ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to Charles Babcock, 1401 McKinney, Suite 1900, Houston, Texas 77010, attorney for Cisco Systems, Inc., Mallun Yen and John Noh and Mr. George McWilliams, attorney for Richard Frenkel, P.O. Box 58, Texarkana, Texas 75504-0058, via electronic mail on this, the 11th day of November 2008.

/s/ Nicholas H. Patton _____

Nicholas H. Patton

EXHIBIT C

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

ERIC ALBRITTON,

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Plaintiff,

v.

No. 6:08-CV-89

CISCO SYSTEMS, INC. and
RICHARD FRENKEL,

Defendants.

PLAINTIFF'S INITIAL DISCLOSURES

TO: Cisco Systems, Inc., by and through their attorney of record, Mr. Charles Babcock, 1401 McKinney, Suite 1900, Houston, Texas 77010 and Richard Frenkel, by and through his attorney of record, Mr. George McWilliams, P.O. Box 58, Texarkana, Texas 75504-0058.

COMES NOW, ERIC ALBRITTON, Plaintiff in the above captioned and numbered cause, and discloses the following information pursuant to Rule 26(a)(1), Fed. R. Civ. P., and the Order of the Court:

I.

***PERSONS LIKELY TO HAVE DISCOVERABLE INFORMATION RELEVANT
TO THE CLAIMS AND DEFENSES OF ANY PARTY***

1. The plaintiff, Mr. Eric Albritton, who may be contacted through his attorney, Mr. James Holmes of Henderson, Texas.
2. The various corporate representative(s) of the Defendant Cisco Systems, Inc. whose identities and areas of knowledge and expertise are currently unknown to Plaintiff and who may be contacted through their attorney, Mr. Charles Babcock of Houston, Texas.
3. The Co-Defendant, Mr. Richard Frenkel who may be contacted through his attorney, Mr. George McWilliams of Texarkana, Texas.

4. The Plaintiff's professional colleague, Mr. T. John Ward, Jr., who has knowledge of the facts surrounding the filing of the ESN litigation, the falsity of Defendants' allegations, the Plaintiffs professional reputation and Plaintiff's damages. Mr. Ward may be contacted through his counsel, Mr. Nick Patton of Texarkana, Texas.
5. Mr. David J. Maland, Clerk of the United States District Court for the Eastern District of Texas, 106 William Steger Federal Building, 211 W. Ferguson Street, Tyler, Texas 75702, who has knowledge of the facts surrounding the filing of the ESN litigation, the electronic filing system for the Eastern District of Texas, the reputation of the Court and Plaintiff's abilities and reputation.
6. David Provines, Deputy Clerk of the United States District Court for the Eastern District of Texas, 106 William Steger Federal Building, 211 W. Ferguson Street, Tyler, Texas 75702, who has knowledge of the facts surrounding the filing of the ESN litigation, the electronic filing system for the Eastern District of Texas, the reputation of the Court and Plaintiff's abilities and reputation.
7. Peggy Thompson, Deputy Clerk of the United States District Court for the Eastern District of Texas, 106 William Steger Federal Building, 211 W. Ferguson Street, Tyler, Texas 75702, who has knowledge of the facts surrounding the filing of the ESN litigation, the electronic filing system for the Eastern District of Texas, the reputation of the Court and Plaintiff's abilities and reputation.
8. Shelly Moore, Deputy Clerk of the United States District Court for the Eastern District of Texas, 500 State Line Ave., Texarkana, Texas 75501, who has knowledge of the facts surrounding the filing of the ESN litigation, the electronic filing system for the Eastern District of Texas, the reputation of the Court and Plaintiff's abilities and reputation.
9. Ms. Amie Mathis, legal assistant to Eric Albritton, who has knowledge of the filing of the ESN litigation, the Plaintiff's reputation and the Plaintiff's damages. Ms. Mathis may be contacted through Mr. Albritton's attorney, Mr. James Holmes of Henderson, Texas.
10. Mr. Peter McAndrews of McAndrews, Held & Malloy of 500 West Madison Street, 34th Floor, Chicago, Illinois 60661. Mr. McAndrews is co-counsel with the Plaintiff in the ESN litigation and has knowledge of the filing of the ESN case as well as the Plaintiff's reputation and abilities.

II.

DOCUMENTS AND THINGS IN THE POSSESSION OF PLAINTIFF THAT ARE RELEVANT TO THE CLAIMS AND DEFENSES OF ANY PARTY

1. With the Court's permission, the parties have agreed to make discoverable documents available at the offices of their Counsel.

III.

COMPUTATION OF ANY CATEGORY OF DAMAGES

1. Plaintiff does not seek any economic damages. Plaintiff seeks only an appropriate award of damages for his mental anguish and punitive damages sufficient to deter Defendants from future misconduct. The amounts of these awards are soundly in the discretion of the jury.

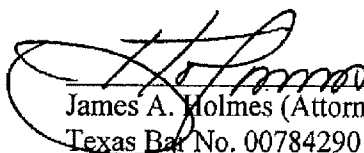
IV.

INSURANCE AGREEMENTS

1. None.

Plaintiff makes these disclosures based upon information currently known to him and expressly reserves the right to amend or supplement these disclosures as discovery progresses and the facts of the case become more clearly known to him.

Respectfully submitted,


James A. Holmes (Attorney in Charge)
Texas Bar No. 00784290

THE LAW OFFICE OF JAMES HOLMES, P.C.

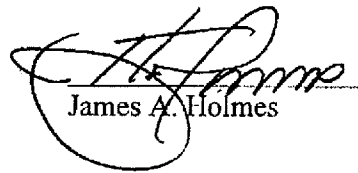
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ATTORNEYS FOR THE PLAINTIFF



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded to Charles Babcock, 1401 McKinney, Suite 1900, Houston, Texas 77010, attorney for Cisco Systems, Inc. and Mr. George McWilliams, attorney for Richard Frenkel, P.O. Box 58, Texarkana, Texas 75504-0058, via United States mail on this, the 2nd day of June 2008.


James A. Holmes