

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

ERIC M. ALBRITTON

v.

CISCO SYSTEMS, INC.,
RICK FRENKEL, MALLUN YEN &
JOHN NOH

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C. A. NO. 6:08-CV-00089

**CISCO SYSTEMS, INC.'S UNOPPOSED MOTION TO
UNSEAL DOCKET NUMBERS 97-102**

TO THE HONORABLE COURT:

Defendant Cisco Systems, Inc. ("Cisco") and Richard Frenkel ("Frenkel") file this unopposed motion to unseal the record with respect to Docket numbers 97-102 (Defendants' Motion for Summary Judgment, exhibits and order), and in support would show as follows:

Considerable confusion concerning the scope of the Protective Order (Docket number 13) had been apparent in this litigation. Out of an abundance of caution, Defendants filed their Motion for Summary Judgment (the "Motion") and exhibits (Docket numbers 97-102) under seal.

Following the filing, Defendants consulted with counsel regarding the two documents produced by Plaintiff marked confidential which were used in support of the Motion and were advised that Plaintiff has no objection to having the documents unsealed.

Court records are presumptively public. *Lecaudia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 164 (3d Cir.1993) (holding that a motion for summary judgment was presumptively public, finding that "our earlier decisions and those in other courts lead ineluctably to the conclusion that there is a presumptive right of public access to pretrial motions

of a nondiscovery nature, whether preliminary or dispositive, and the material filed in connection therewith”); *In re Cendant Corp.*, 260 F.3d 183, 192 (3rd Cir. 2001); *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 253 (4th Cir. 1988) (ordering that a motion for summary judgment be unsealed in a defamation case) (citing *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 n. 17 (1980) (“historically both civil and criminal trials have been presumptively open”)). That is especially true here, where a dispositive motion is at issue and the publication claimed to be defamatory implicates (i) the conduct of a public official, that is the clerk of the United States District Court of the Eastern District of Texas, and/or (ii) a public controversy, that is the abuse of the patent system by non-practicing entities in the Eastern District of Texas. *See Shingara v. Skiles*, 420 F.3d 301 (3rd Cir. 2005). Accordingly, Defendants request that the motion and exhibits filed as Docket numbers 97-102 be unsealed.

Respectfully submitted,

JACKSON WALKER L.L.P.

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CERTIFICATE OF CONFERENCE

Counsel for Cisco Systems, Inc. conferred twice by telephone and by email with counsel regarding the two documents produced by Plaintiff marked as confidential which were used in support of the Motion for Summary Judgment and was advised that Plaintiff has no objection to having the documents unsealed.

/s/ Charles L. Babcock

CERTIFICATE OF SERVICE

This is to certify that on this 3rd day of December, 2008, a true and correct copy of the foregoing was served via electronic mail upon:

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