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November 10, 2008

Charles L. Babcock, IV  
JACKSON WALKER, LLP  
1401 McKinney, Suite 1900  
Houston, TX 77010

Re: *Albritton v. CISCO Systems, Inc., et al*

Dear Chip:

I write regarding Cisco's document production in the above captioned case. After reviewing Cisco's documents, I have several questions and concerns that need to be addressed. Those concerns are addressed by category below:

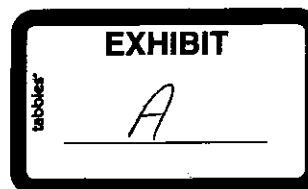
Jackson Walker's Production

The following bates numbered documents are missing from Jackson Walker's production, and there is no note in the production suggesting that the bates number was intentionally skipped: JW.000189, JW.000234, JW.000316, JW.000503, JW.000552, JW.000553, JW.000575, JW.000763, JW.000811, JW.000812, JW2.000023, and JW2.000169. Please produce the missing documents or confirm that Jackson Walker has not withheld documents bearing those bates numbers.

Cisco's Production:

Cisco's production does not prove enough detail to determine how those records were kept and created in the course of Cisco's business.

First, Cisco's use of a broad Cisco bates stamp fails to identify from whose files each of the documents was produced. Please provide a spreadsheet indicating the custodian for each document produced.



Second, it is impossible to know whether Cisco's search for relevant documents was adequate. From my review of emails produced to date at least the following Cisco employees are likely to have relevant documents: Mark Chandler, Mullen Yen, John Noh, Marta Beckwith, Michael Ritter, John Corsoran, Mark Michels, Kathy Martinetti, Dan Lang, Neal Rubin, Matthew Tanielian, John Earnhardt, and other persons in Cisco's Intellectual Property Department. Please confirm that these individuals' files have been searched for responsive documents.

Third, because of the different time zones involved in many of the email communications produced it is difficult to discern the actual times involved in the communications. Please provide the metadata headers for each of the emails produced.

Fourth, Cisco's production includes place holders for bates numbers that were "skipped." Please let me know if this is a copying error or represents additional documents withheld from production.

Finally, my review of Cisco's documents also suggests that some relevant documents have not yet been produced. Please produce the following documents:

- The document bearing bates number Cisco.000388 mentions Cisco's Employee Resource Guide and Code of Business Conduct. Please produce that document.
- The document bearing bates number Cisco.000382 notes that Cisco employees circulated links to the Troll Tracker Blog, and some of those links were sent to third parties. Please produce all such communications. Additionally, please confirm that all Cisco email referring to the Troll Tracker Blog, the ESN v. Cisco case, the Eastern District of Texas, or Mr. Albritton have been produced.
- Cisco has not produced Frenkel, Yen, and Noh's personnel files, including information regarding their job description, their job duties and responsibilities, their performance evaluations, including but not limited to whether they were reprimanded or disciplined in connection with the events leading to this lawsuit. Please produce full employee files for those individuals.
- Cisco has not produced any documents concerning Cisco's efforts to lobby for patent litigation reform. Please produce all documents regarding Cisco's lobbying efforts, including but not limited to the participation in those efforts by Chandler, Yen, Noh, and Frenkel.
- Please produce all communications between Chandler, Noh, Yen or Frenkel and any member of the government concerning, relating to or referencing the Troll Tracker Blog.

- Please produce documents sufficient to identify the time spent by Chandler, Yen, Noh, and Frenkel lobbying the government and the expenditures associated with those activities.
- Please produce any documents relating to Mr. Chandler's citation to the Troll Tracker Blog during his testimony to Congress, including drafts of his proposed testimony and documents sufficient to identify the genesis of his decision to cite to the Troll Tracker Blog.
- Please produce all documents wherein Cisco has publicly cited to the Troll Tracker Blog.
- Cisco's production of emails with third parties regarding this lawsuit, the ESN case, Troll Tracker, and the unmasking of Frenkel as the Troll Tracker has been limited to a few emails with co-counsel in the ESN case and notification to other attorneys that Frenkel had disclosed himself as the author of the Troll Tracker Blog. Please confirm that there are no other communications with any third-party regarding these topics.
- Please confirm that all correspondence between any Cisco employee and Chandler, Frenkel, Noh or Yen related to the Troll Tracker Blog have been produced.
- Cisco has not produced any documents relating to Cisco's Internet Postings Policy, as reflected in the document bearing bates number Cisco.000387. Please produce those documents or confirm that no such documents exist.
- Please produce any Board of Directors and Board Committee meeting notes or minutes regarding this litigation, the ESN v. Cisco case, Mr. Frenkel, Troll Tracker and/or Eric Albritton.
- Please produce documents sufficient to identify any accusation against Cisco that it had defamed, slandered, and/or harmed the reputation of any person.
- Cisco's document production does not contain word processing documents, spreadsheets, PowerPoint files, graphic files, calendars and planners, remote web meetings, voicemail, notes, or instant messaging conversations. Please confirm that Cisco has search all electronic media, remote computers and servers, network servers, handheld devices, storage devices such as CDs or ZIP drives, offsite storage, personal computers, laptop computers and hard copy files for documents relevant to this litigation and that all relevant documents have been produced.

Cisco's Production of Privileged Documents:

There are similar problems with Cisco's privilege production:

First, Cisco's privilege production does not provide enough detail to determine how those records were kept and created in the course of Cisco's business. Again, Cisco's use of a broad Cisco bates stamp fails to identify from whose files each of the documents were produced. Please provide a spreadsheet indicating the custodian for each document produced. Also, please provide the metadata headers for each of the emails produced.

Second, Mr. Holmes's email correspondence to Mr. Babcock on October 9, 2008 regarding deficiencies in Cisco's production has gone unanswered. I have attached a copy of that correspondence for your convenience. Please respond to Mr. Holmes's questions and produce the documents requested in his October 9, 2008 email. In particular, please confirm that (1) you have sought production of Ms. Powell's notes as referenced in Cisco privileged.000009, (2) you have sought Frenkel's response as referenced in Ms. Yen's email at Cisco privileged.000011-13 and that you will produce that response, or alternatively confirm that no written response exists, and (3) you will produce the earlier email and documents sent from Mark Weinstein to Frenkel as discussed in Cisco privileged.000028.

Finally, my review of Cisco's privileged documents suggests that in addition to the documents requested by Mr. Holmes, additional relevant documents may not have been produced. Please produce the following documents:

- The document bearing bates number Cisco privileged.000015 references a message that Mullen Yen left for Dan Webb. Please produce any email correspondence with Mr. Webb, notes regarding the call mentioned in this email, and any communications concerning follow up communications with Mr. Webb. This same document references "[t]he 'buzz' [Cisco was] getting from various sources." Please produce all documents relating to the "buzz" and all documents received by any of the asserted "sources."
- The documents produced at Cisco privileged.000269-271 discuss communications with and documents requested from "Beatrice" and "Tony." Please produce all communications with and documents to or from "Beatrice" and "Tony."
- The document produced at Cisco privileged.000027 refers to a Cisco "extranet" site and "SIP Proxy servers," please confirm that all relevant documents from those sites have been produced.
- The document produced at Cisco privileged.000028 appears to be missing the email sent in response to the original message. It appears that the response has been redacted although no redaction label is present. Please produce that response.

- The document produced at Cisco privileged.000037 has been produced with the information in the “to” line missing but without any note of redaction. Please produce the missing information. Additionally, please confirm that any redactions made to Cisco’s production have been identified as having been redacted.
- The document produced at Cisco privileged.000113 discusses Noh’s intent to send the Troll Tracker Blog post to legal reporters and bloggers. Please produce all communications between Noh and any legal reporter or blogger to whom Noh sent any Troll Tracker posting.
- The document produced at Cisco privileged.000258 discusses Cisco’s intent to talk to local counsel in the Eastern District of Texas to get their views. Please produce all communications with the local counsel referred to in this email or contacted in connection with the events leading to this lawsuit.

Your prompt attention to this letter is appreciated.

Sincerely,

  
Nicholas H. Patton

NHP/ml