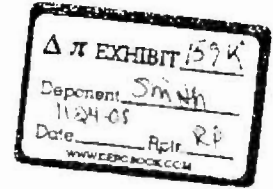


EXHIBIT A

From: [Michael C. Smith](mailto:Michael.C.Smith)
To: michaelsmith@siebman.com;
"Thomas John Ward, Jr.";
cc: "Eric M. Albritton";
Subject: RE: ESN v. Cisco - original complaint
Date: Thursday, March 13, 2008 4:38:48 PM



Johnny/Eric,

Never mind – the guy sent me the NEF and after looking at the difference between the date “filed” and the date “entered” I think I better stay out of this!

M

From: Michael C. Smith [mailto:michaelsmith@siebman.com]
Sent: Thursday, March 13, 2008 3:14 PM
To: 'Thomas John Ward, Jr.'
Subject: FW: ESN v. Cisco - original complaint

Johnny,

See the e-mail string below – I got an inquiry from a WSGR lawyer about the “file stamp” on the ESN case and when I saw it I realized that everyone is calling that the “file stamp” when the “file stamp” – with filing time is on the NEF. I e-mailed Eric about posting something on this and apparently he’s off cavorting someplace so I thought I’d ask you what I’d asked him. This just seemed appropriate for a blog post from me if I can get the NEF for 1-1, because I can explain that what was changed was a header, not the file stamp.

Again, if y’all don’t want to share this, I understand. It’s your issue, not mine.

Michael

From: Michael C. Smith [mailto:michaelsmith@siebman.com]
Sent: Thursday, March 13, 2008 3:08 PM
To: 'Eric M. Albritton'
Subject: FW: ESN v. Cisco - original complaint

Eric,

See the below e-mail string – now I get why people are saying the file stamp was changed – the header has the 15th on it and that was later changed. They don’t know that that’s not the “file stamp” – that’s electronic and on the NEF.

If you have the NEF saved for 1-1 in the ESN case and you don’t mind sharing a pdf of it, I’d like to explain in a blog post the difference between the header and the “file stamp” and show once and for all that the official court record – which is where the “file stamp” which shows the filing time is 10/16. I wouldn’t mention you by name – just note that in response to some inquiries I received I learned that the optional document header the clerk’s office provides is what was changed, but that that is not the file stamp. I’d get this from CM/ECF, but the electronic document stamp and the filing time (as opposed to the date).

If you’d prefer not to I understand, but I wanted to make the offer, since I now know what people are looking at.

M

From: Michael C. Smith [mailto:michaelsmith@siebman.com]
Sent: Thursday, March 13, 2008 3:00 PM
To: 'Barclay, Michael'
Subject: RE: ESN v. Cisco - original complaint

Thanks very much for sending this – I would think the document info line should say 10/16 if it was filed at 12:01, but it may be that when the file “shell” is set up, the info line reflects that date for the complaint regardless of when it’s filed.

Exhibit A

But that isn't the "file stamp" – the "electronic document stamp" is actually the gibberish at the bottom of the notice of electronic filing (see attached from another case) and that contains – in some computer-readable format – info on the filing. The NEF also contains the precise time the document was filed. In our office we keep NEFs for what we file because the docket available publicly doesn't reflect the time something was filed, just the date. Do you have the NEF for document 1-1 in the Cisco case? That's the key document that shows the actual time of filing and contains the "electronic document stamp". The top line is just an optional header the clerk's office provides – you can turn it on or off in your options in the case.

Again, thanks for the heads up. I didn't know this.

Michael C. Smith
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From: Barclay, Michael [mailto:MBarclay@wsgr.com]
Sent: Thursday, March 13, 2008 2:25 PM
To: michaelsmith@siebman.com
Subject: ESN v. Cisco - original complaint

Michael,

Regarding your posts on ESN v. Cisco, you might find the attached complaint interesting. Note that the file stamp is October 15, not October 16. My firm's marketing department downloaded this version of the complaint on October 16. After October 17 (including up to today to my belief) if you were to download a copy of the complaint, it no longer had an October 15 file stamp, but it rather had an October 16 file stamp.

If, as Messrs. Albritton and Ward contend, they filed this complaint at 12:01 a.m. on October 16, then the computer-generated file stamp on the attached should have said October 16, and not October 15 as it actually did -- at least as I understand the way ECF software works. Again to my understanding, this is regardless of whether or not the docket was set up on October 15. I could be wrong about how the software works, and if I am, please advise.

Michael Barclay
mbarclay@wsgr.com
(850) 320-4849
<<ESN v. Cisco Complaint_filed one day early.pdf>>

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