

EXHIBIT “D”

Texarkana, Longview lawyers file lawsuit against California blogger, saying he libeled them

By: Lynn LaRowe - Texarkana Gazette - Published: 06/29/2008

Anonymous Internet blogging by a California corporate lawyer accusing an area attorney of criminal conduct has resulted in a civil lawsuit alleging libel and slander.

"This is the typical situation of a big multinational Fortune 500 company bullying the little guy. It's disgusting," said Nick Patton, a Texarkana lawyer who filed the suit on behalf of T. John Ward Jr.

Ward's legal practice consists of many "intellectual property" cases such as patent disputes.

Patton said when Rick Frenkel, a California lawyer on the opposing side of a patent lawsuit with Ward and Longview attorney Eric Albritton, posted blogs anonymously on "Patent Troll Tracker" accusing Ward, Albritton and a federal clerk of conspiring to alter a federal document, he went too far.

"Cisco has already accepted responsibility for Mr. Frenkel's original blog post," said Terry Alberstein, a senior director of corporate affairs for Cisco. "We are defending the matter vigorously and do not believe any defamation occurred in this case."

Alberstein said at least two of Frenkel's superiors at Cisco were aware of his anonymous blogging. The company has since revised its policy on blogging, he said.

Cisco employees who comment on issues related to the company must now identify themselves, according to an Internet post by Cisco dated March 24.

"We believe that a few Cisco employees used poor judgment when they suggested topics to Rick for his anonymous blog or pointed third parties to the blog without disclosing that the content was created by a Cisco employee," the post said. "These are not appropriate communications activities for Cisco employees and are inconsistent with our values and principles."

Frenkel represents Cisco Systems, a multi-billion dollar corporation in the Internet and computer networking business, in a patent lawsuit filed against them by Ward and Albritton on behalf of ESN Corp.

"Just a lawyer, interested in patent cases, but not interested in publicity," is the way Frenkel described himself on the blog he created.

Patton said Frenkel used a computer terminal inside Cisco's corporate offices in San Jose, Calif., to generate most of his blogs with the blessing of the corporation.

"The cowardice of it is stunning," Patton said, regarding Frenkel's anonymous postings.

Frenkel accused Ward, Albritton and the clerk of altering the date on the ESN vs. Cisco lawsuit from Oct. 15, 2007, to Oct. 16, 2007.

The patent at issue in the suit wasn't issued until Oct. 16, 2007, thus the suit had to be filed on that date or after. ESN's suit alleges Cisco began infringing on their technology with full knowledge that a patent application was pending.

Patton said there is a simple explanation for the confusion about the date.

Lawyers often call federal clerks' offices and notify them of their intention to file a suit within 24 hours. The clerk can then assign a case number and court to the case without the actual petition having been filed.

Federal court records show Ward and Albritton filed the suit at 12:03 a.m. Oct. 16, 2007, in the Eastern District of Texas. U.S. Judge David Folsom's court has been assigned to hear the case.

In a Oct. 18, 2007, blog, Frenkel made the allegations and attacked the entire Eastern District of Texas, Patton said.

"This is yet another example of the abusive nature of litigating patent cases in the Banana Republic of Texas," Frenkel wrote.

Frenkel's true identity was revealed after an unknown individual traced his Internet address and threatened to expose him, according to Frenkel's blog.

On Feb. 23, 2008, he posted a blog admitting his true identity.

Patton said he was told Frenkel had routed his Internet address through a proxy in Korea in an attempt to keep curious individuals from exposing his identity. Cisco is allowing Frenkel to keep his position with the company and to continue his blogging, though not anonymously.

"He has insulted everybody in the Eastern District of Texas from Beaumont to Sherman to Texarkana," Patton said.

He said Frenkel's blog is not only offensive to federal judges, court staff and attorneys who practice in the district, but also to the citizens who make up federal juries in the Eastern District.

"He thinks the jurors in the Eastern District of Texas are banana republic-type people," Patton said.

In Cisco's April 8 answer to the suit filed March 13, the corporation admits Frenkel was acting within the scope of his employment as one of Cisco's directors of intellectual property. Frenkel's Feb. 23 blog contains an admission that his direct supervisor knew of and approved of the anonymous blogging targeting lawyers involved in a lawsuit against the company.

The libel suit against Cisco and Frenkel was filed by Patton in the Western District of Arkansas. Patton has filed a motion to dismiss Frenkel as a defendant because he believes Frenkel acted as an employee of Cisco, Patton said. The suit is scheduled for a hearing Aug. 4 before U.S. Judge Jimmy Hendren of the Western District of Arkansas, Texarkana Division.

Albritton filed a nearly identical suit March 3 in Gregg County, Texas, naming Frenkel and Cisco as

defendants. The case was moved to a federal court in the Eastern District of Texas, Tyler Division, on March 14 at the request of the defendants.

Patton said Cisco has been engaged in lobbying efforts in Congress to get patent laws changed to its advantage.

Alberstein said the company is working to get patent laws changed because of "patent trolls."

A "patent troll" is an individual or company who purchases interests in patents but has no intention of applying to the manufacture of the actual goods or services.

Patton said Cisco has no problem filing lawsuits alleging infringement on one of their patents but has a different view when they are on the defense side of a patent suit.

"They don't want these little folks, the inventors, suing them," he said. "They don't like being sued in the Eastern District of Texas and they allowed a lawyer in their legal department to call it a banana republic."

Patton referred to inventors as the "backbone of this country" and pointed out that inventors like Alexander Graham Bell and Thomas Edison weren't as concerned with manufacturing as inventing.

"You call somebody these ugly names, but the truth of the matter is these people are either inventors or people who have invested in them. They try to put the blame on patent trolls," Patton said. "John Ward isn't a patent troll, he's a lawyer. He files lawsuits just like Cisco's lawyers do."