

## Legal Pad

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### Cisco: Troll Tracker Had it Right



Here's what Cisco has to say about the controversial Patent Troll Tracker blog authored by former in-house lawyer Rick Frenkel: What he said? It's pretty much true.

Two well-known Texas patent lawyers, Johnny Ward and Eric Albritton, sued Cisco for defamation over a blog post by Frenkel that derided the Eastern District of Texas rocket-docket as a "Banana Republic."

Frenkel -- who at the time was writing as the anonymous Patent Troll Tracker blogger and was only later outed as a

Cisco IP lawyer - was blogging about a case between his own company and a patent-holding company called ESN. Pointing out the race to file patent suits to win the venue game, Frenkel blogged about ESN's lawyer Albritton apparently jumping the gun and suing in the Eastern District before the patent actually issued and then "conspiring" with a court clerk to change the date to "manufacture subject matter jurisdiction."

Albritton's lawyers argued that what Frenkel wrote were lies and damn lies.

*Cisco says, "As if, losers," after the jump.*

Today, in an unsealed motion for summary judgment filed by Cisco, the company says that everything Frenkel wrote was pretty much true. ("Albritton set about to correct the problem not by filing a motion with the court but through private telephone conversations with several employees of the court clerk's office without notice to Cisco.") And even if it wasn't true, there was no malice, Cisco lawyers say. And even if there was no malice, there was no damage to Albritton, they finally argue, noting that the Texas lawyers income has actually gone up this year over last.

Cisco doesn't defend the "banana republic" comment, which Frenkel deleted soon after he'd posted it, but argues that if anything it was hyperbole, not defamatory.

Albritton's lawyer, Nick Patton of Patton Tidwell & Schroeder, declined to comment on the motion for summary judgment.

Chip Babcock, a Jackson Walker lawyer defending Cisco, told Legal Pad he doesn't know why the other side even filed the lawsuit to start with.

"I don't know if it was their motivation to curry favor with the judges," Babcock said. "I just don't know what their motivation was."

-- Zusha Elinson

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