

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

ERIC M. ALBRITTON,

Plaintiff

v.

CISCO SYSTEMS, INC. RICHARD  
FRENKEL, MAULLUN YEN and  
JOHN NOH,

Defendant

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No. 6:08cv00089

**JOHN WARD JR.'S OBJECTIONS AND RESPONSES  
TO CISCO SYSTEM, INC.'S SUBPOENA**

Pursuant to Rule 45(c) of the Federal Rules of Civil Procedure, non-party John Ward, Jr. ("Ward") makes the following responses and objections to the Subpoena to Ward ("Subpoena") served by Defendant Cisco System, Inc. ("Cisco") on October 17, 2008. In addition to asserting the following objections, Ward reserves the right to assert additional objections and limitations concerning the Subpoena as he may deem necessary or appropriate as developments warrant.

The grounds for Ward's general and specific objections to the Subpoena are set forth below.

**I. GENERAL OBJECTIONS**

Ward makes the following general objections, whether or not separately set forth in response to each request, to each and every instruction, definition, and request in the Subpoena. These general objections specifically may be referred to in response to certain request for the purpose of clarity; however, the failure to specifically incorporate a general objection should not be construed as a waiver of the objection.

1. Ward objects to the Subpoena as a whole on the ground that it specifically requests information from Ward's client files that are protected from disclosure by the duty of

Exhibit D

confidentiality under the attorney-client privilege as well as the work product doctrine. All client files are client property, not property of Ward. Absent client consent to production, Ward has a duty to maintain the confidentiality of those files. The duty of confidentiality applies to all information relating to client representation, whatever its source, and applies to secrets that the client has requested be held inviolate, or the disclosure of which could be detrimental to the client. Ward thus objects to the subpoena as a whole to the extent it requires Ward to disclose confidential client information.

2. Ward objects to the Subpoena as a whole on the ground that the categories of documents to be produced are not described with a reasonable enough particularity as required by Rule 45 of the Federal Rules of Civil Procedure and requires Ward to utilize, and thereby potentially reveal, information protected by the attorney-client privilege and the work product doctrine to identify some or all of the requested documents.

3. Ward objects to the Subpoena to the extent it calls for the production of documents from Ward concerning the pending litigation between Ward and Cisco. To date, discovery has not yet begun in *Ward v. Cisco*. It is unduly burdensome and oppressive, and an abuse of Fed. R. Civ. P. 45 for Cisco to subpoena Ward to produce documents via a subpoena in this case rather than according to the Court's case management order in *Ward v. Cisco*. To the extent that the Subpoena requests documents prepared by Ward or others in connection with *Ward v. Cisco*, it improperly seeks information protected by the attorney-client privilege and the work product doctrine. The Request is also harassing in that it seeks to do an end-run around the court's scheduling order in *Ward v. Cisco*.

4. Ward objects to the Subpoena as a whole on the grounds that it seeks documents and information that Cisco should properly seek from another source. It is well-understood that a party must first seek the documents and information from a party before it may seek documents or information from its counsel. At a minimum, Cisco should narrow the Subpoena to documents peculiarly in the possession of Ward, i.e., that Cisco is not able to obtain from Albritton, the Court, or other public sources.

5. Ward objects to the Subpoena as a whole on the grounds that it is burdensome, oppressive and harassing and because it violates the requirements of Federal Rule of Civil Procedure 45(c)(1) by failing to avoid undue burden or expense. Due to the overbroad nature of the Subpoena, Ward would need to review a voluminous quantity of client documents to determine which documents are actually responsive to the Subpoena. In particular, without limiting the generality of the foregoing:

- a. On its face, the Subpoena calls for the production of documents from Ward's case files in at least one pending litigation between ESN, a client of Ward's, and Cisco. As is the situation with most patent litigation cases, the ESN case file is large. It is unduly burdensome and oppressive, and an abuse of Fed. R. Civ. P. 45, for Cisco to require Ward to search through an entire case file to produce documents in response to its overbroad requests.
- b. Ward does not maintain his documents in a manner organized to correspond with the various categories of the document requests in the Subpoena. Nor does Ward segregate all of his files according to documents that are privileged or not privileged, or subject to other confidentiality concerns that prohibit their production. Accordingly, from the standpoint of Ward, the categories of documents to be produced are not described with a reasonable enough particularity to enable Ward to comply with the Subpoena without undue burden and expense. In particular, Ward would have to review his case files merely to determine if those files include documents which are responsive to the Subpoena, and to separate out documents which are not responsive and/or are privileged. The Subpoena would also require Ward to review voluminous correspondence, pleadings files, working files, other case-related files and thousands of archived emails to determine which, if any, are responsive to the Subpoena, and which of those are privileged or not privileged.

- c. It would cost Ward an unreasonable amount in clerical and administrative costs to review the files potentially relevant to the Subpoena. Ward employees a limited clerical staff and should not be required to bear that cost and expense.
- d. Ward objects to the Subpoena as a whole on the ground that the cost of indentifying, location, collecting, reviewing and copying documents, and other associated costs of production, would be substantial and should be paid by Cisco. Ward will not undertake the burden and expense of locating, identifying, collating, reviewing and producing any documents until arrangements have been made ensuring that Ward will be reimbursed at an appropriate hourly rate for his production-related activities.

6. Ward objects to the date and time specified in the Subpoena for Ward to produce responsive documents, as it fails to provide sufficient time for document searching, collection, review and production, rendering the Subpoena oppressive and unduly burdensome. Ward will meet and confer with Cisco, if available, as to an appropriate time to provide any documents responsive to the Subpoena.

7. Ward objects to the Subpoena to the extent it seeks to impose obligations and duties upon Ward greater or different than those requirements mandated by the Federal Rules of Civil Procedure or the Local Rules for the United States District Court for the Eastern District of Texas.

8. Ward objects to the Subpoena to the extent it seeks information, documents, or things not in Ward's possession, custody, or control as those terms are defined in Federal Rule of Civil Procedure 34, are as easily available to Defendant as to Ward, and/or that have been or will be produced by the Plaintiff or another witness in this case.

9. Ward objects to each request to the extent it seeks information that is not relevant to a claim or defense of any party in the above captioned case.

10. Ward objects to each request to the extent it is vague and ambiguous and thereby renders it impossible for Ward to determine what documents or information the Subpoena actually seeks.

## **II. OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS**

1. Ward objects to the definition of the word “you” or “your” as overbroad and unduly burdensome to the extent it purports to refer Ward to documents beyond his possession, custody or control, and to the extent that the definition is inconsistent with the Federal Rules of Civil Procedure. The definition is also overly broad, vague, ambiguous and unduly burdensome in seeking to obtain information protected by attorney-client privilege, the work-product immunity doctrine, or by any other privilege or immunity under federal or state statutory, constitutional or common law.

2. Ward objects to the definition of the word “Document(s)” as overbroad and unduly burdensome. Ward objections to the definition to the extent that it is inconsistent with the Federal Rules of Civil Procedure. The definition is also overly broad, vague, ambiguous and unduly burdensome in seeking to obtain information protected by attorney-client privilege, the work-product immunity doctrine, or by any other privilege or immunity under federal or state statutory, constitutional or common law. “All documents” shall be understood to mean those documents that Ward is able to locate using reasonable diligence and judgment concerning the whereabouts of responsive documents. Such phraseology should not be construed as a representation that each and every document in the possession of Ward has been examined in connection with these responses or any production pursuant thereto.

3. Ward objects to the definition of the word “Communications” as overbroad and unduly burdensome. Ward objections to the definition to the extent that it is inconsistent with the Federal Rules of Civil Procedure. The definition is also overly broad, vague, ambiguous and unduly burdensome in seeking to obtain information protected by attorney-client privilege, the work-product immunity doctrine, or by any other privilege or immunity under federal or state statutory, constitutional or common law. “Communications” shall be understood to mean those

communications that Ward is able to locate using reasonable diligence and judgment. Such phraseology should not be construed as a representation that each and every communication has been examined in connection with these responses or any production pursuant thereto.

4. Ward objects to the definition of the term “evidencing” to the extent that term lacks sufficient specificity to enable Ward to determine from the face of the documents whether they are responsive; and that the definition is vague, ambiguous, and unintelligible. Ward objects to the definition to the extent that it is inconsistent with the Federal Rules of Civil Procedure. The definition is also overly broad, vague, ambiguous and unduly burdensome to the extent it seeks to obtain information protected by attorney-client privilege, the work-product immunity doctrine, or by any other privilege or immunity under federal or state statutory, constitutional or common law.

5. Ward objects to the definition of the term “relating” to the extent that term lacks sufficient specificity to enable Ward to determine from the face of the documents whether they are responsive; and that the definition is vague, ambiguous, and unintelligible. Ward objects to the definition to the extent that it is inconsistent with the Federal Rules of Civil Procedure. The definition is also overly broad, vague, ambiguous and unduly burdensome to the extent it seeks to obtain information protected by attorney-client privilege, the work-product immunity doctrine, or by any other privilege or immunity under federal or state statutory, constitutional or common law.

6. Ward objects to the instruction portion of the Subpoena because it appears to contemplate a deposition for which Ward has not been subpoenaed.

7. Ward objects to providing a privilege log on the grounds that (i) the Subpoena is so broad, and plainly seeks the discovery of privileged information, that the cost of indentifying all privileged documents and preparing such a log would be excessive and unfair to Ward, and (ii) preparation of such a log would violate Ward’s duty of confidentiality to his clients, the attorney-client privilege and the attorney work product doctrine.

8. Ward objects to the Subpoena to the extent it seeks information protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or by any other privilege or immunity under federal or state statutory, constitutional or common law. The inadvertent production of any information or documents that contain information that is privileged, were prepared in anticipation of litigation, or that are otherwise protected from discovery, shall not constitute a waiver of any privilege or any ground for objection to discovery with respect to such document, or the subject matter thereof, or of the right of Ward to object to the use of any such document or information during any subsequent proceeding, hearing, or trial.

9. Ward's response to each discovery request is hereby made without waiver of, and intentional preservation of:

- (a) all questions as to the competence, relevance, materiality, and admissibility as evidence for any purpose of the information or documents, or the subject matter thereof, in any aspect of this or any other court action or judicial or administrative proceeding or investigation;
- (b) the right to object on any ground to the use of any such information or documents, or the subject matter thereof, in any aspect of this or any other court action or judicial or administrative proceeding or investigation;
- (c) the right to object at any time for any further response to this or any other request for information or production of documents including all objections as to burdensomeness, vagueness, overbreadth and ambiguity; and
- (d) the right at any time to supplement his response.

10. Identification or production of documents responsive to any discovery request should not be construed as:

- (a) an admission or stipulation that the documents or their content or subject matter are relevant;

- (b) a waiver by Ward of his General Objections or of the specific objections asserted in response to a specific request; or
- (c) an agreement that requests for similar information will be treated in a similar manner.

Ward incorporates by reference the General Objections set forth above in the Specific Objections set forth below. Ward may repeat a General Objection for emphasis or some other reason. The failure to repeat any General Objection does not waive any General Objection to the Request. Ward reserves the right to amend his objections.

### **III. SPECIFIC OBJECTIONS TO DOCUMENT REQUESTS**

#### **DOCUMENT REQUEST NO. 1**

All correspondence between you and any other person concerning the filing of the ESN Litigation.

**RESPONSE:** Ward objects to this Request as specifically seeking information that is protected from disclosure by the attorney-client privilege, work product doctrine, the common interest privilege or any other applicable privilege, protection or immunity. Ward specifically objects to this request as seeking documents that are property of a client property, not property of Ward. Absent client consent to production, Ward has a duty to maintain the confidentiality of those files.

Ward also specifically objects that the documents to be produced are not described with a reasonable enough particularity as required by Rule 45 of the Federal Rules of Civil Procedure and requires Ward to utilize, and thereby potentially reveal, information protected by the attorney-client privilege and the work product doctrine to identify some or all of the requested documents.

Ward also specifically objects to the extent this Request calls for the production of documents concerning the pending litigation between Ward and Cisco. To date, discovery has not yet begun in *Ward v. Cisco*. It is unduly burdensome and oppressive, and an abuse of Fed. R. Civ. P. 45 for Cisco to subpoena Ward to produce documents in this case rather than according



to the Court's case management order in *Ward v. Cisco*. To the extent that the Subpoena requests documents prepared by Ward or others in connection with *Ward v. Cisco*, it improperly seeks information protected by the attorney-client privilege and the work product doctrine.

Ward objects to this Request on the grounds that it seeks documents and information that Cisco should properly seek from another source.

Ward objects to this Request on the grounds that it is burdensome, oppressive and harassing because it violates the requirements of Federal Rule of Civil Procedure 45(c)(1) by seeking "all correspondence," and thereby fails to avoid undue burden or expense. This request is also vague and ambiguous in its use of the terms "all," "correspondence," "you" "any other person" and "concerning" and thereby renders it impossible for Ward to determine what documents or information the Subpoena actually seeks.

**DOCUMENT REQUEST NO. 2:**

All notes or memorandum prepared by you or any other person concerning the filing of the ESN Litigation.

**RESPONSE:** Ward objects to this Request as specifically seeking information, including client-related notes and memoranda protected from disclosure by the attorney-client privilege, work product doctrine, the common interest privilege or any other applicable privilege, protection or immunity. Ward specifically objects to this request as seeking documents that are property of a client property, not property of Ward. Absent client consent to production, Ward has a duty to maintain the confidentiality of those files.

Ward also specifically objects that the documents to be produced are not described with a reasonable enough particularity as required by Rule 45 of the Federal Rules of Civil Procedure and requires Ward to utilize, and thereby potentially reveal, information protected by the attorney-client privilege and the work product doctrine to identify some or all of the requested documents.

Ward also specifically objects to the extent this request calls for the production of documents concerning the pending litigation between Ward and Cisco. To date, discovery has

not yet begun in *Ward v. Cisco*. It is unduly burdensome and oppressive, and an abuse of Fed. R. Civ. P. 45 for Cisco to subpoena Ward to produce documents in this case rather than according to the Court's case management order in *Ward v. Cisco*. To the extent that the Subpoena requests documents prepared by Ward or others in connection with *Ward v. Cisco*, it improperly seeks information protected by the attorney-client privilege and the work product doctrine.

Ward objects to this Request on the grounds that it seeks documents and information that Cisco should properly seek from another source.

Ward objects to this Request on the grounds that it is burdensome, oppressive and harassing because it violates the requirements of Federal Rule of Civil Procedure 45(c)(1) by seeking "all notes or memorandum," and thereby fails to avoid undue burden or expense. This request is also vague and ambiguous in its use of the terms "all," "notes," "memorandum," "you" "any other person" and "concerning" and thereby renders it impossible for Ward to determine what documents or information the Subpoena actually seeks.

**DOCUMENT REQUEST NO. 4:**

All instructions you received from or provided to any person concerning the filing of the ESN Litigation.

**RESPONSE:** Ward objects to this Request as specifically seeking information that is protected from disclosure by the attorney-client privilege, work product doctrine, the common interest privilege or any other applicable privilege, protection or immunity. Ward specifically objects to this request as seeking documents that are property of a client property, not property of Ward. Absent client consent to production, Ward has a duty to maintain the confidentiality of those files.

Ward also specifically objects that the documents to be produced are not described with a reasonable enough particularity as required by Rule 45 of the Federal Rules of Civil Procedure and requires Ward to utilize, and thereby potentially reveal, information protected by the attorney-client privilege and the work product doctrine to identify some or all of the requested documents.

Ward also specifically objects to the extent this request calls for the production of documents concerning the pending litigation between Ward and Cisco. To date, discovery has not yet begun in *Ward v. Cisco*. It is unduly burdensome and oppressive, and an abuse of Fed. R. Civ. P. 45 for Cisco to subpoena Ward to produce documents in this case rather than according to the Court's case management order in *Ward v. Cisco*. To the extent that the Subpoena requests documents prepared by Ward or others in connection with *Ward v. Cisco*, it improperly seeks information protected by the attorney-client privilege and the work product doctrine.

Ward objects to this Request on the grounds that it seeks documents and information that Cisco should properly seek from another source.

Ward objects to this Request on the grounds that it is burdensome, oppressive and harassing because it violates the requirements of Federal Rule of Civil Procedure 45(c)(1) by seeking "all instructions," and thereby fails to avoid undue burden or expense. This request is also vague and ambiguous in its use of the terms "all," "instructions," "you" "any other person" and "concerning" and thereby renders it impossible for Ward to determine what documents or information the Subpoena actually seeks.

**DOCUMENT REQUEST NO. 5:**

All communications between you and any other person concerning the Articles.

**RESPONSE:** Ward objects to this Request to the extent it seeks information that is protected from disclosure by the attorney-client privilege, work product doctrine, the common interest privilege or any other applicable privilege, protection or immunity. Ward specifically objects to this request as seeking documents that are property of a client property, not property of Ward. Absent client consent to production, Ward has a duty to maintain the confidentiality of those files.

Ward also specifically objects that the documents to be produced are not described with a reasonable enough particularity as required by Rule 45 of the Federal Rules of Civil Procedure and requires Ward to utilize, and thereby potentially reveal, information protected by the attorney-client privilege and the work product doctrine to identify some or all of the requested

documents.

Ward also specifically objects to the extent this request calls for the production of documents concerning the pending litigation between Ward and Cisco. To date, discovery has not yet begun in *Ward v. Cisco*. It is unduly burdensome and oppressive, and an abuse of Fed. R. Civ. P. 45 for Cisco to subpoena Ward to produce documents in this case rather than according to the Court's case management order in *Ward v. Cisco*. To the extent that the Subpoena requests documents prepared by Ward or others in connection with *Ward v. Cisco*, it improperly seeks information protected by the attorney-client privilege and the work product doctrine.

Ward objects to this Request on the grounds that it seeks documents and information that Cisco should properly seek from another source.

Ward objects to this Request on the grounds that it is burdensome, oppressive and harassing because it violates the requirements of Federal Rule of Civil Procedure 45(c)(1) by seeking "all communication," and thereby fails to avoid undue burden or expense. This request is also vague and ambiguous in its use of the terms "all," "communication," "you" "any other person" and "concerning" and thereby renders it impossible for Ward to determine what documents or information the Subpoena actually seeks.

**DOCUMENT REQUEST NO. 6:**

All documents evidencing the effect of the Articles on the reputation of Eric Albritton.

**RESPONSE:** Ward objects to this Request to the extent it seeks information that is protected from disclosure by the attorney-client privilege, work product doctrine, the common interest privilege or any other applicable privilege, protection or immunity. Ward also specifically objects that the documents to be produced are not described with a reasonable enough particularity as required by Rule 45 of the Federal Rules of Civil Procedure and requires Ward to utilize, and thereby potentially reveal, information protected by the attorney-client privilege and the work product doctrine to identify some or all of the requested documents.

Ward also specifically objects to the extent this request calls for the production of documents concerning the pending litigation between Ward and Cisco. To date, discovery has

not yet begun in *Ward v. Cisco*. It is unduly burdensome and oppressive, and an abuse of Fed. R. Civ. P. 45 for Cisco to subpoena Ward to produce documents in this case rather than according to the Court's case management order in *Ward v. Cisco*. To the extent that the Subpoena requests documents prepared by Ward or others in connection with *Ward v. Cisco*, it improperly seeks information protected by the attorney-client privilege and the work product doctrine.

Ward objects to this Request on the grounds that it seeks documents and information that Cisco should properly seek from another source.

Ward objects to this Request on the grounds that it is burdensome, oppressive and harassing because it violates the requirements of Federal Rule of Civil Procedure 45(c)(1) by seeking "all documents," and thereby fails to avoid undue burden or expense.

Ward also specifically objects to this request because it is drafted in a manner that is fatally vague and ambiguous in its use of the terms "all," "evidencing," "effect" and "reputation" and thereby renders it impossible for Ward to determine what documents or information the Subpoena actually seeks.

Ward also specifically objects that this Request specifically seeks documents that are not in Ward's possession, custody or control and thereby imposes a burden much greater than that required under the Federal Rules.

**DOCUMENT REQUEST NO. 7:**

All communications between you and Eric Albritton concerning his reputation.

**RESPONSE:** Ward objects to this Request to the extent it seeks information that is protected from disclosure by the attorney-client privilege, work product doctrine, the common interest privilege or any other applicable privilege, protection or immunity. Ward also specifically objects that the documents to be produced are not described with a reasonable enough particularity as required by Rule 45 of the Federal Rules of Civil Procedure and requires Ward to utilize, and thereby potentially reveal, information protected by the attorney-client privilege and the work product doctrine to identify some or all of the requested documents.

Ward also specifically objects to the extent this request calls for the production of

documents concerning the pending litigation between Ward and Cisco. To date, discovery has not yet begun in *Ward v. Cisco*. It is unduly burdensome and oppressive, and an abuse of Fed. R. Civ. P. 45 for Cisco to subpoena Ward to produce documents in this case rather than according to the Court's case management order in *Ward v. Cisco*. To the extent that the Subpoena requests documents prepared by Ward or others in connection with *Ward v. Cisco*, it improperly seeks information protected by the attorney-client privilege and the work product doctrine.

Ward objects to this Request on the grounds that it seeks documents and information that Cisco should properly seek from another source, including but not limited to the Plaintiff in this case.

Ward objects to this Request on the grounds that it is burdensome, oppressive and harassing because it violates the requirements of Federal Rule of Civil Procedure 45(c)(1) by seeking "all communications" and thereby fails to avoid undue burden or expense.

Ward also specifically objects to this request because it is drafted in a manner that is fatally vague and ambiguous in its use of the terms "all," "communications," "you," "concerning" and "reputation" and thereby renders it impossible for Ward to determine what documents or information the Subpoena actually seeks.

**DOCUMENT REQUEST NO. 8:**

All communications between you and Eric Albritton concerning his alleged mental anguish.

**RESPONSE:** Ward objects to this Request to the extent it seeks information that is protected from disclosure by the attorney-client privilege, work product doctrine, the common interest privilege or any other applicable privilege, protection or immunity. Ward also specifically objects that the documents to be produced are not described with a reasonable enough particularity as required by Rule 45 of the Federal Rules of Civil Procedure and requires Ward to utilize, and thereby potentially reveal, information protected by the attorney-client privilege and the work product doctrine to identify some or all of the requested documents.

Ward also specifically objects to the extent this request calls for the production of

documents concerning the pending litigation between Ward and Cisco. To date, discovery has not yet begun in *Ward v. Cisco*. It is unduly burdensome and oppressive, and an abuse of Fed. R. Civ. P. 45 for Cisco to subpoena Ward to produce documents in this case rather than according to the Court's case management order in *Ward v. Cisco*. To the extent that the Subpoena requests documents prepared by Ward or others in connection with *Ward v. Cisco*, it improperly seeks information protected by the attorney-client privilege and the work product doctrine.

Ward objects to this Request on the grounds that it seeks documents and information that Cisco should properly seek from another source, including but not limited to the Plaintiff in this case.

Ward objects to this Request on the grounds that it is burdensome, oppressive and harassing because it violates the requirements of Federal Rule of Civil Procedure 45(c)(1) by seeking "all communications" and thereby fails to avoid undue burden or expense.

Ward also specifically objects to this request because it is drafted in a manner that is fatally vague and ambiguous in its use of the terms "all," "concerning," "communications," "you," "alleged" and the undefined term "mental anguish" and thereby renders it impossible for Ward to determine what documents or information the Subpoena actually seeks.

**DOCUMENT REQUEST NO. 9:**

All documents relating to the filing the ESN Litigation.

**RESPONSE:** Ward objects to this Request as specifically seeking information that is protected from disclosure by the attorney-client privilege, work product doctrine, the common interest privilege or any other applicable privilege, protection or immunity. Ward specifically objects to this request as seeking documents that are property of a client property, not property of Ward. Absent client consent to production, Ward has a duty to maintain the confidentiality of those files.

Ward also specifically objects that the documents to be produced are not described with a reasonable enough particularity as required by Rule 45 of the Federal Rules of Civil Procedure and requires Ward to utilize, and thereby potentially reveal, information protected by the

attorney-client privilege and the work product doctrine to identify some or all of the requested documents.

Ward also specifically objects to the extent this request calls for the production of documents concerning the pending litigation between Ward and Cisco. To date, discovery has not yet begun in *Ward v. Cisco*. It is unduly burdensome and oppressive, and an abuse of Fed. R. Civ. P. 45 for Cisco to subpoena Ward to produce documents in this case rather than according to the Court's case management order in *Ward v. Cisco*. To the extent that the Subpoena requests documents prepared by Ward or others in connection with *Ward v. Cisco*, it improperly seeks information protected by the attorney-client privilege and the work product doctrine.

Ward objects to this Request on the grounds that it seeks documents and information that Cisco should properly seek from another source.

Ward objects to this Request on the grounds that it is burdensome, oppressive and harassing because it violates the requirements of Federal Rule of Civil Procedure 45(c)(1) by seeking "all documents," and thereby fails to avoid undue burden or expense. This request is also vague and ambiguous in its use of the terms "all," "documents," and "relating" and thereby renders it impossible for Ward to determine what documents or information the Subpoena actually seeks.

Ward also specifically objects that this Request specifically seeks documents that are not in Ward's possession, custody or control and thereby imposes a burden much greater than that required under the Federal Rules.

**DOCUMENT REQUEST NO. 10:**

All documents relating to communications with the United States District Court or any of its employees regarding the filing of the ESN Litigation and/or whether subject-matter jurisdiction existed in the ESN Litigation.

**RESPONSE:** Ward objects to this Request as specifically seeking information that is protected from disclosure by the attorney-client privilege, work product doctrine, the common interest privilege or any other applicable privilege, protection or immunity. Ward also



specifically objects that the documents to be produced are not described with a reasonable enough particularity as required by Rule 45 of the Federal Rules of Civil Procedure and requires Ward to utilize, and thereby potentially reveal, information protected by the attorney-client privilege and the work product doctrine to identify some or all of the requested documents.

Ward also specifically objects to the extent this request calls for the production of documents concerning the pending litigation between Ward and Cisco. To date, discovery has not yet begun in *Ward v. Cisco*. It is unduly burdensome and oppressive, and an abuse of Fed. R. Civ. P. 45 for Cisco to subpoena Ward to produce documents in this case rather than according to the Court's case management order in *Ward v. Cisco*. To the extent that the Subpoena requests documents prepared by Ward or others in connection with *Ward v. Cisco*, it improperly seeks information protected by the attorney-client privilege and the work product doctrine.

Ward objects to this Request on the grounds that it seeks documents and information that Cisco should properly seek, and has actually sought, from another source, specifically from the United States District Court for the Eastern District of Texas and its employees.

Ward objects to this Request on the grounds that it is burdensome, oppressive and harassing because it violates the requirements of Federal Rule of Civil Procedure 45(c)(1) by seeking "all documents," and thereby fails to avoid undue burden or expense. This request is also vague and ambiguous in its use of the terms "all," "documents," "relating," "communications," "regarding," and the undefined term "subject-matter jurisdiction." and thereby renders it impossible for Ward to determine what documents or information the Subpoena actually seeks.

Ward also specifically objects that this Request specifically seeks documents that are not in Ward's possession, custody or control and thereby imposes a burden much greater than that required under the Federal Rules.

**DOCUMENT REQUEST NO. 11:**

All documents relating to communications between or among ESN, LLC (including its attorneys, agents, or anyone acting on its behalf) and any other person relating to the filing of the

ESN Litigation. Include communications between you, ESN, LLC, T. John Ward, Jr., McAndrews Held & Malloy, Ltd., and anyone purporting to act on their behalf.

**RESPONSE:** Ward objects to this Request as specifically seeking information that is protected from disclosure by the attorney-client privilege, work product doctrine, the common interest privilege or any other applicable privilege, protection or immunity. Ward specifically objects to this request as seeking documents that are property of a client property, not property of Ward. Absent client consent to production, Ward has a duty to maintain the confidentiality of those files.

Ward also specifically objects that the documents to be produced are not described with a reasonable enough particularity as required by Rule 45 of the Federal Rules of Civil Procedure and requires Ward to utilize, and thereby potentially reveal, information protected by the attorney-client privilege and the work product doctrine to identify some or all of the requested documents.

Ward also specifically objects to the extent this request calls for the production of documents concerning the pending litigation between Ward and Cisco. To date, discovery has not yet begun in *Ward v. Cisco*. It is unduly burdensome and oppressive, and an abuse of Fed. R. Civ. P. 45 for Cisco to subpoena Ward to produce documents in this case rather than according to the Court's case management order in *Ward v. Cisco*. To the extent that the Subpoena requests documents prepared by Ward or others in connection with *Ward v. Cisco*, it improperly seeks information protected by the attorney-client privilege and the work product doctrine.

Ward objects to this Request on the grounds that it seeks documents and information that Cisco should properly seek from another source, specifically those parties listed in this Request.

Ward objects to this Request on the grounds that it is burdensome, oppressive and harassing because it violates the requirements of Federal Rule of Civil Procedure 45(c)(1) by seeking "all documents," and thereby fails to avoid undue burden or expense. This request is also vague and ambiguous in its use of the terms "all," "documents," "relating," "communications," "acting on its behalf," "any other person," and "purporting to act" and

thereby renders it impossible for Ward to determine what documents or information the Subpoena actually seeks.

Ward also specifically objects that this Request specifically seeks documents that are not in Ward's possession, custody or control and thereby imposes a burden much greater than that required under the Federal Rules.

**DOCUMENT REQUEST NO. 12:**

All documents evidencing communication between you and any other person concerning Richard Frenkel and/or the Patent Troll Tracker.

**RESPONSE:** Ward objects to this Request as specifically seeking information that is protected from disclosure by the attorney-client privilege, work product doctrine, the common interest privilege or any other applicable privilege, protection or immunity. The documents to be produced are not described with a reasonable enough particularity as required by Rule 45 of the Federal Rules of Civil Procedure and requires Ward to utilize, and thereby potentially reveal, information protected by the attorney-client privilege and the work product doctrine to identify some or all of the requested documents.

Ward also specifically objects to the extent this request calls for the production of documents concerning the pending litigation between Ward and Cisco. To date, discovery has not yet begun in *Ward v. Cisco*. It is unduly burdensome and oppressive, and an abuse of Fed. R. Civ. P. 45 for Cisco to subpoena Ward to produce documents in this case rather than according to the Court's case management order in *Ward v. Cisco*. To the extent that the Subpoena requests documents prepared by Ward or others in connection with *Ward v. Cisco*, it improperly seeks information protected by the attorney-client privilege and the work product doctrine.

Ward objects to this Request on the grounds that it is burdensome, oppressive and harassing because it violates the requirements of Federal Rule of Civil Procedure 45(c)(1) by seeking "all documents" and thereby fails to avoid undue burden or expense.

Ward also specifically objects to this request because it is vague and ambiguous in its use of the terms "all," "documents" "evidencing," "communication," "any other person," "you" and

“concerning” and thereby renders it impossible for Ward to determine what documents or information the Subpoena actually seeks.

Ward also specifically objects that this Request specifically seeks documents that are not in Ward’s possession, custody or control and thereby imposes a burden much greater than that required under the Federal Rules.

Respectfully Submitted,



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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of October, 2008, John Ward Jr.’s Objections and Responses to Cisco System, Inc.’s Subpoena was served via electronic delivery and/or U.S. First Class Mail on Charles Babcock and Crystal Parker, JACKSON WALKER, 1401 McKinney, Suite 1900, Houston, Texas 77010.



Nicholas H. Patton