

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

ERIC M. ALBRITTON,

Plaintiff,

v.

(1) CISCO SYSTEMS, INC., (2) RICHARD  
FRENKEL, (3) MALLUN YEN and  
(4) JOHN NOH,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

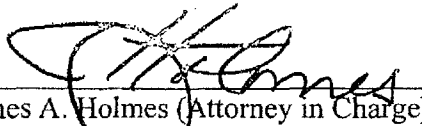
NO. 6:08-CV-00089

**PLAINTIFF'S ANSWERS AND OBJECTIONS TO  
CISCO SYSTEM, INC.'S FIRST SET OF INTERROGATORIES**

**TO:** Cisco Systems, Inc., Mallun Yen and John Noh, by and through their attorney of record, Mr. Charles Babcock, 1401 McKinney, Suite 1900, Houston, Texas 77010 and Richard Frenkel, by and through his attorney of record, Mr. George McWilliams, P.O. Box 58, Texarkana, Texas 75504-0058.

**COMES NOW, ERIC ALBRITTON**, and submit these answers, under oath, to the Interrogatories propounded to him by *Cisco Systems, Inc.*, in accordance with Rule 33 of the Federal Rules of Civil Procedure.

Respectfully submitted,



James A. Holmes (Attorney in Charge)  
Texas Bar No. 00784290

***THE LAW OFFICE OF JAMES HOLMES, P.C.***


635 SOUTH MAIN, SUITE 203  
HENDERSON, TX 75654  
(903) 657-2800  
(903) 657-2855 (fax)  
[jh@jamesholmeslaw.com](mailto:jh@jamesholmeslaw.com)



Exhibit     A

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing has been forwarded to Charles Babcock, 1401 McKinney, Suite 1900, Houston, Texas 77010, attorney for Cisco Systems, Inc., Mallun Yen and John Noh and Mr. George McWilliams, attorney for Richard Frenkel, P.O. Box 58, Texarkana, Texas 75504-0058, via United States mail on this, the 17<sup>th</sup> day of November 2008.

  
James A. Holmes

**INTERROGATORY NO. 1:** Identify verbatim all statements that you allege Richard Frenkel posted that are “scandalous and defamatory allegations about Albritton” as alleged in paragraph 15 of Plaintiff’s Original Complaint.

***ANSWER:*** Plaintiff objects to this Interrogatory in that its answer may be determined by examining the business records of Cisco Systems, Inc. and Richard Frenkel. FED. R. CIV. P. 33(d). Plaintiff further objects to this Interrogatory as unnecessarily cumulative and harassing in that Plaintiff has expressly pled the statements at issue and discussed them at length during his deposition. Subject to these objections, please see the attached articles published by Frenkel in the course and scope of his employment with Cisco.

**INTERROGATORY NO. 2:** Identify all statements that you contend are defamatory in the October 17, 2007, posting referred to in paragraph 16 of Plaintiff’s Original Complaint.

***ANSWER:*** Plaintiff objects to this Interrogatory in that its answer may be determined by examining the business records of Cisco Systems, Inc. and Richard Frenkel. FED. R. CIV. P. 33(d). Plaintiff further objects to this Interrogatory as unnecessarily cumulative and harassing in that Plaintiff has expressly pled the statements at issue and discussed them at length during his deposition. Subject to these objections, please see the attached articles published by Frenkel in the course and scope of his employment with Cisco.

**INTERROGATORY NO. 3:** Identify each “libelous statement” verbatim referred to in paragraph 24 of Plaintiff’s Original Complaint.

***ANSWER:*** Plaintiff objects to this Interrogatory in that its answer may be determined by examining the business records of Cisco Systems, Inc. and Richard Frenkel. FED. R. CIV. P. 33(d). Plaintiff further objects to this Interrogatory as unnecessarily cumulative and harassing in that Plaintiff has expressly pled the statements at issue and discussed them at length during his deposition. Subject to these objections, please see the attached articles published by Frenkel in the course and scope of his employment with Cisco.

**INTERROGATORY NO. 4:** Identify all "false and defamatory statements regarding Albritton" referred to in paragraph 28 of Plaintiff's Original Complaint.

***ANSWER:*** Plaintiff objects to this Interrogatory in that its answer may be determined by examining the business records of Cisco Systems, Inc. and Richard Frenkel. FED. R. CIV. P. 33(d). Plaintiff further objects to this Interrogatory as unnecessarily cumulative and harassing in that Plaintiff has expressly pled the statements at issue and discussed them at length during his deposition. Subject to these objections, please see the attached articles published by Frenkel in the course and scope of his employment with Cisco.

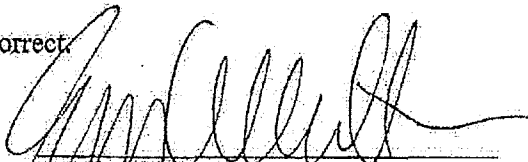
**INTERROGATORY NO. 5:** Identify all "false and defamatory statement of 'fact'" referred to in paragraph 32 of Plaintiff's Original Complaint.

***ANSWER:*** Plaintiff objects to this Interrogatory in that its answer may be determined by examining the business records of Cisco Systems, Inc. and Richard Frenkel. FED. R. CIV. P. 33(d). Plaintiff further objects to this Interrogatory as unnecessarily cumulative and harassing in that Plaintiff has expressly pled the statements at issue and discussed them at length during his deposition. Subject to these objections, please see the attached articles published by Frenkel in the course and scope of his employment with Cisco.

THE STATE OF TEXAS §

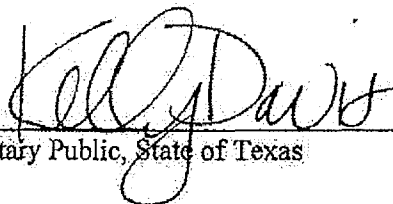
COUNTY OF RUSK §

BEFORE ME, the undersigned authority, on this day personally appeared ERIC ALBRITTON, who, being by me first duly sworn, did on oath depose and say that she prepared the answers which appear hereafter and are attached hereto, in the capacity stated herein, and which Answers are designed to be used in the above styled action, and that every statement, allegation and denial thereof is true and correct.

  
ERIC ALBRITTON

SWORN TO AND SUBSCRIBED BEFORE ME by the said ERIC ALBRITTON on this the 17th day of November 2008, to certify which witness my hand and seal of office.



  
Notary Public, State of Texas

My Commission Expires: 2/19/12

Notary's Printed Name: Kelly Davis

## Patent Troll Tracker

An alternative look at patent litigation trends, focusing on the increasing number of patent lawsuits brought by shell corporations that make or sell no goods or services.

Thursday, October 18, 2007

### ESN Convinces EDTX Court Clerk To Alter Documents To Try To Manufacture Subject Matter Jurisdiction Where None Existed

I got a couple of anonymous emails this morning, pointing out that the docket in ESN v. Cisco (the Texas docket, not the Connecticut docket), had been altered. One email suggested that ESN's local counsel called the EDTX court clerk, and convinced him/her to change the docket to reflect an October 16 filing date, rather than the October 15 filing date. I checked, and sure enough, that's exactly what happened - the docket was altered to reflect an October 16 filing date and the complaint was altered to change the filing date stamp from October 15 to October 16. Only the EDTX Court Clerk could have made such changes.

Of course, there are a couple of flaws in this conspiracy. First, ESN counsel Eric Albritton signed the Civil Cover Sheet stating that the complaint had been filed on October 15. Second, there's tons of proof that ESN filed on October 15. Heck, Dennis Crouch may be subpoenaed as a witness!

You can't change history, and it's outrageous that the Eastern District of Texas may have, wittingly or unwittingly, helped a non-practicing entity to try to manufacture subject matter jurisdiction. Even if this was a "mistake," which I can't see how it could be, given that someone emailed me a printout of the docket from Monday showing the case, the proper course of action should be a motion to correct the docket.

Email Rick

[trolltracker@gmail.com](mailto:trolltracker@gmail.com)

About Me

Rick Frenkel

Patent lawyer, trying to gather and organize information about patent litigation in an informative and useful way.

[View my complete profile](#)

EFF is helping bloggers protect their Constitutional right to anonymous speech




Blogs I Read

[Above The Law \(People Magazine, for Lawyers\)](#)

[Anticipate This!](#)

(n.b.: don't be surprised if the docket changes back once the higher-ups in the Court get wind of this, making this post completely irrelevant).

EDIT: You can't change history, but you can change a blog entry based on information emailed to you from a helpful reader.

Posted by Rick Frenkel at 1:13 PM 

Labels: [Cisco](#), [ECF](#), [Eric Albritton](#), [ESN](#), [magically changing docket dates](#)

0 comments:

[Post a Comment](#)

[Newer](#)

[Home](#)

[Older](#)

[Post](#)

[Post](#)

Subscribe to: [Post Comments \(Atom\)](#)

[Benefit of Hindsight](#)

[Chicago IP Litigation Blog](#)

[Delaware IP Law Blog](#)

[Dennis Crouch's Patently-O Blog \(the Godfather of Patent Blogs\)](#)

[How Appealing \(Howard Bashman\)](#)

[IAM Magazine Blog \(Euro-focused\)](#)

[Ideation Lab](#)

[IP Dragon \(China\)](#)

[IP Geek \(Euro-focused\)](#)

[IP Kat \(UK\)](#)

[Just a Patent Examiner](#)

[Michael Smith's EDTX Blog](#)

[Overlawyered](#)

[Patent Baristas](#)

[Patent Demand](#)

[Patent Prospector](#)

[Patently Absurd Inventions Archive](#)

[Patently Silly](#)

[Peter Zura's 271 Patent Blog](#)

[Phillip Brooks' Patent Infringement](#)

[Updates](#)

[SCOTUSBlog](#)

[Spicy IP \(India\)](#)

[Techdirt](#)

[The Volokh Conspiracy](#)

[Washington State Patent Law Blog](#)

[WSJ Law Blog](#)

## Patent Troll Tracker

THURSDAY, OCTOBER 18, 2007

### ESN Convinces EDTX Court Clerk To Alter Documents To Try To Manufacture Subject Matter Jurisdiction Where None Existed

I got a couple of anonymous emails this morning, pointing out that the docket in ESN v. Cisco (the Texas docket, not the Connecticut docket), had been altered. One email suggested that ESN's local counsel called the EDTX court clerk, and convinced him/her to change the docket to reflect an October 16 filing date, rather than the October 15 filing date. I checked, and sure enough, that's exactly what happened - the docket was altered to reflect an October 16 filing date and the complaint was altered to change the filing date stamp from October 15 to October 16. Only the EDTX Court Clerk could have made such changes.

Of course, there are a couple of flaws in this conspiracy. First, ESN counsel Eric Albritton signed the Civil Cover Sheet stating that the complaint had been filed on October 15. Second, there's tons of proof that ESN filed on October 15. Heck, Dennis Crouch may be subpoenaed as a witness!

You can't change history, and it's outrageous that the Eastern District of Texas is apparently, wittingly or unwittingly, conspiring with a non-practicing entity to try to manufacture subject matter jurisdiction. This is yet another example of the abusive nature of litigating patent cases in the Banana Republic of East Texas.

(*n.b.*: don't be surprised if the docket changes back once the higher-ups in the Court get wind of this, making this post completely irrelevant).

Posted by Troll Tracker at 1:13 PM

[0 comments](#)

WEDNESDAY, OCTOBER 17, 2007

### Troll Jumps the Gun, Sues Cisco Too Early

Well, I knew the day would come. I'm getting my troll news from [Dennis Crouch](#) now. According to Dennis, a company called ESN sued Cisco for patent infringement on October 15th, while the patent did not issue until October 16th. I looked, and ESN appears to be a shell entity managed by the President and CEO of DirectAdvice, an online financial website. And, yes, he's a lawyer. He clerked for a federal judge in Connecticut, and was an attorney at Day, Berry & Howard. Now he's suing Cisco on behalf of a non-practicing entity.

Send email

[email TrollTracker](#)

About Me

Troll Tracker

Just a lawyer, interested in patent cases, but not interested in publicity

[View my complete profile](#)



Blogs TrollTracker Reads

[Dennis Crouch's Patently-Q Blog](#)

[Peter Zura's 371 Patent Blog](#)

[Patent Prospector](#)

[Michael Smith's EDTX Blog](#)

[Delaware IP Law Blog](#)

[Chicago IP Litigation Blog](#)

[Phillip Brooks' Patent Infringement Updates](#)

[Just a Patent Examiner](#)

[SCOTUSBlog](#)

[Patently Silly](#)

Subscribe Now: Feed Icon



[Subscribe in a reader](#)

Google

[Add to Google](#)





I asked myself, can ESN do this? I would think that the court would lack subject matter jurisdiction, since ESN owned no property right at the time of the lawsuit, and the passage of time should not cure that. And, in fact, I was right:

A declaratory judgment of "invalidity" or "noninfringement" with respect to Elk's pending patent application would have had no legal meaning or effect. The fact that the patent was about to issue and would have been granted before the court reached the merits of the case is of no moment. Justiciability must be judged as of the time of filing, not as of some indeterminate future date when the court might reach the merits and the patent has issued. We therefore hold that a threat is not sufficient to create a case or controversy unless it is made with respect to a patent that has issued before a complaint is filed. Thus, the district court correctly held that there was no justiciable case or controversy in this case at the time the complaint was filed. GAF contends, however, that the issuance of the '144 patent cured any jurisdictional defect. We disagree. Later events may not create jurisdiction where none existed at the time of filing.

*GAF Building Materials Corp. v. Elk Corp. of Texas*, 90 F.3d 479, 483 (Fed. Cir. 1996) (citations and quotations omitted).

One other interesting tidbit: Cisco appeared to pick up on this, very quickly. Cisco filed a declaratory judgment action (in Connecticut) yesterday, the day after ESN filed its null complaint. Since Cisco's lawsuit was filed after the patent issued, it should stick in Connecticut.

Perhaps realizing their fatal flaw (as a couple of other bloggers/news items have pointed out), ESN (represented by Chicago firm McAndrews Held & Malloy and local counsel Eric Albritton and T. Johnny Ward) filed an amended complaint in Texarkana today - amending to change absolutely nothing at all, by the way, except the filing date of the complaint. Survey says? XXXXXX (Insert "Family Feud" sound here). Sorry, ESN. You're on your way to New Haven. Wonder how Johnny Ward will play there?

Posted by Troll Tracker at 7:00 PM

[1 comments](#)

### TrollSurfing: Monts & Ware, Ward & Olivo, and Their Clients

Similar to surfing the web, I started by checking out a hunch I had about Monts & Ware being behind all sorts of troll cases. Then I trollsurfed through a bunch of cases, and I ended up not only with Monts & Ware (Dallas litigation firm), but also Ward & Olivo (patent lawyers from New York/New Jersey), as a thread behind a bunch of cases. I'm not sure what is changed. Thanks both. There's more to come.

#### Blog Archive

▼ 2007 (83)

▼ October (17)

[ESN Convinces EDTX Court Clerk To Alter Documents...](#)

[Troll Jumps the Gun, Sues Cisco Too Early](#)

[TrollSurfing: Monts & Ware, Ward & Olivo, and Their...](#)

[Orion, the Hunted](#)

[Texas Judge Bans Using Term "Patent Troll" In Trials...](#)

[A Look at the Fortune 100 and Patent Litigation, P...](#)

[Addendum to Part 1, Fortune 100](#)

[A Look at the Fortune 100 and Patent Litigation, P...](#)

[Last Week Wasn't Even the First Time Niro Scavone...](#)

[Acacia Targets Linux in New Lawsuit Against Red Ha...](#)

[Patent Troll Sues Fish & Richardson](#)

[Bill Gates, Steve Jobs, Hugh Hefner and Larry Flyv...](#)

[Troll Call and Other Patent Stats for September 20...](#)

[Ode to Patent Trolls](#)

[Wednesday Miscellany](#)

[Unveiling TrollTracker's Troll Severity Assessment...](#)

[Patent Reform, Front and Center in the News -- and...](#)

► September (27)

► August (20)

► July (11)

► June (3)

► May (5)

Sitemeter