

EXHIBIT 8

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

CERTIFIED

ERIC M. ALBRITTON)	
)	
v.)	
)	C.A. NO. 6:08-CV-00089
CISCO SYSTEMS, INC.,)	
RICK FRENKEL, MALLUN YEN &)	
JOHN NOH)	

ORAL AND VIDEOTAPED DEPOSITION OF
SHELLEY MOORE
NOVEMBER 3, 2008
VOLUME I

ORAL AND VIDEOTAPED DEPOSITION OF SHELLEY MOORE,
produced as a witness at the instance of the Defendant,
and duly sworn, was taken in the above-styled and
numbered cause on the 3rd day of November, 2008, from
3:59 p.m. to 4:27 p.m., before April R. Eichelberger,
CSR in and for the State of Texas, reported by machine
shorthand, at the United States District Court for the
Eastern District of Texas, 211 West Ferguson Street in
the City Tyler and the State of Texas, pursuant to the
Federal Rules of Civil Procedure and the provisions
stated on the record or attached hereto.

1 P R O C E E D I N G S

2 (Exhibit Number 115 was marked.)

3 THE VIDEOGRAPHER: This is the oral and
4 videotaped deposition of Shelley Moore taken in the suit
5 styled Eric M. Albritton versus Cisco Systems, Inc., et
6 al., Cause Number 6:08-CV-00089. Today's date, November
7 the 3rd, 2008. We're located at the Federal Courthouse
8 Eastern District, 211 West Ferguson Street, Tyler,
9 Texas. We are now on the record. The time is
10 approximately 3:59.

11 Will the court reporter please swear in
12 the witness.

13 SHELLEY MOORE,
14 having been first duly sworn, testified as follows:

15 EXAMINATION

16 BY MR. BABCOCK:

17 Q. Would you state your name, please.

18 A. Shelley Moore.

19 Q. And, Ms. Moore, how are you employed?

20 A. With the U.S. courts.

21 Q. And in what capacity?

22 A. As a docket specialist in the Texarkana
23 Division.

24 Q. And do you work in the United States Clerk's
25 Office for the Eastern District of Texas?

1 Were you on the phone with her or was she in person?

2 A. On the phone.

3 Q. Okay. And how did she appear to be a little
4 upset?

5 A. Just her tone. She seemed a little more of an
6 urgency instead of -- you know, which appeared to be
7 upsetting.

8 Q. All right. And did she ask the clerk's office
9 to change the date from October 15th to October 16th?

10 A. Let's see. I'm going to make sure of my
11 dates. Yes.

12 Q. Okay. And did she tell you why that she
13 wanted the clerk's office to change the date from
14 October 15th to October 16th?

15 A. She said that it had to be filed the 16th
16 because that is when she is supposed to have it filed.
17 She started filing it prior to that, just a few minutes
18 before.

19 Q. Okay. And -- and she said she started filing
20 it just a few minutes before when, midnight? Or...

21 A. Midnight, yes.

22 Q. Before midnight, okay. And do you recall how
23 big a document that was being -- being filed on this
24 lawsuit, the ESN versus Cisco case?

25 A. No, I do not remember.

1 A. I do not remember the conversation. I just --
2 I see an e-mail where I had called -- talked to her, but
3 I just -- I don't recall much of the conversation.

4 Q. Okay. And did you -- did you call Amie back
5 and tell -- tell her what Cindy Paar had said?

6 A. I had her on hold.

7 Q. Oh, you had her on hold, okay. So she's
8 called, she's a little upset, wants the date changed, so
9 you say, "Hang on, I'll check with somebody." You call
10 Cindy Paar, talk to her, and then you -- and then you
11 get back on with Amie, I take it?

12 A. Yes, sir.

13 Q. Okay. And what -- what did you tell Amie when
14 you got back on with her?

15 A. I said that there -- I don't know if there's a
16 glitch or not for sure, but Cindy would have to tell you
17 that, but the filing date appears to show after you
18 process it, not, you know, as you get in the system. So
19 I really don't feel comfortable in telling you why it
20 did what it did, because that's not my expertise. And I
21 wasn't able to remember all what I -- that Cindy told
22 me, so I can't really recall all what I told her, but I
23 dealt with whatever Cindy had told me I gave to her as
24 well.

25 Q. Okay. And as to her specific request to

1 change the dates, you were leery about doing that, I
2 take it?

3 A. That is correct.

4 Q. And frankly, even more leery after you talked
5 to Cindy?

6 A. That is correct.

7 Q. Okay. And did you refer Ms. Mathis on to
8 anybody else or just say, "Sorry, I can't -- we can't
9 grant your request here"?

10 A. I gave her two options, as I do most
11 customers. I told her she could either file a motion
12 with the court and let the judge decide on the filing
13 date, or if she was not satisfied with that, she could
14 go ahead and contact the clerk of court, but I would not
15 change the filing date.

16 Q. Okay. And what did -- what did Ms. Mathis say
17 in response to that?

18 A. "I'll call Tyler."

19 Q. Okay. She said, "I'll call Tyler." And when
20 you said "Contact the clerk of court," were you
21 referring to any particular person?

22 A. Specifically David Maland.

23 Q. Okay. Did you ever speak to Amie Mathis about
24 that afterwards, after --

25 A. No, sir.

1 A. Correct.

2 Q. Okay. "I see now that it has been modified
3 and changed to the date they wanted. Cindy, Rhonda, and
4 I didn't feel comfortable to make the call to change.
5 Can we in the future or is that a case-by-case basis?
6 Please advise." And why were you -- why were you
7 sending Mr. Maland that e-mail?

8 A. Well, first of all, this was a very unique --
9 it had never happened personally to me that -- someone
10 filing close to midnight and the date, you know,
11 changing. So to be able to help people in the future if
12 this was to occur or if they needed to know more
13 information, I wanted to talk to him to see if -- you
14 know, what his feelings were basically.

15 Q. Okay. And then Mr. Maland says, "Well, Faye
16 did a correcting entry that removed any confusion about
17 when the complaint was filed, which was early on 10/16.
18 I'm okay with us making a correcting entry as long as we
19 do it carefully and correctly. The date and time
20 reflected on the NEF for the complaint is what rules,
21 anyway. It doesn't matter if the clerk's office opened
22 up the shell case on a prior date. The rule on this is
23 going to change soon. That should eliminate requests
24 like this from attorneys who are trying to win a race to
25 the courthouse." Did I read that correctly?

1 couple of questions.

2 EXAMINATION

3 BY MR. McWILLIAMS:

4 Q. You stated that when you talked to Amie and
5 she wanted to change the date, that you gave her two
6 options; one, to file a motion with the court, and the
7 other, to call Tyler?

8 A. That's correct.

9 Q. Now, on Exhibit 88, the memo from Dave Maland
10 to various people, including the Texas Lawyer, does he
11 not also conclude in that memo that in hindsight a
12 better practice would have been to file a motion with
13 the court?

14 A. I can't speak for Dave Maland, but...

15 Q. Would you take a look at what --

16 A. The last sentence?

17 Q. Yes. What does he say?

18 A. "Please adjust your story on this to reflect
19 the correct chain of events and call me if you have any
20 questions."

21 Q. Okay. Read the concluding sentence of the
22 above paragraph.

23 A. "I should have instructed the Tyler docket
24 clerk to tell Mr. Albritton to file a motion to correct
25 the docket report rather than having the deputy clerk to

1 do a correcting entry."

2 Q. Okay. And that was one of the options that
3 you suggested to Amie?

4 A. That is correct. I told her to do a motion
5 or -- and she said, "No, I don't want to do a motion;
6 I've got to have this filed the 16th." So I said, "Your
7 other option is to call the clerk of court."

8 Q. And according to what you read from Mr. Maland
9 and looking back, hindsight 20/20, he thinks that would
10 have been a good idea also, does he not?

11 A. With what he says here, yes.

12 Q. Thank you.

13 MR. McWILLIAMS: That's all I have.

14 EXAMINATION

15 BY MR. HOLMES:

16 Q. Hi, Ms. Shelley.

17 A. Hi, how are you?

18 Q. I'm Jamie Holmes.

19 A. Now I've met you.

20 Q. Talk to me a minute about when Amie called
21 that day. First of all, you get calls from paralegals,
22 secretaries, legal assistants regularly?

23 A. Yes.

24 Q. Nothing unusual or out of the ordinary about
25 the fact that a staffer would call and ask a question

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REPORTER'S CERTIFICATION
DEPOSITION OF SHELLEY MOORE
NOVEMBER 3, 2008

I, April Eichelberger, Certified Shorthand Reporter
in and for the State of Texas, hereby certify to the
following:

That the witness, SHELLEY MOORE, was duly sworn by
the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the deposition transcript was submitted on
_____ to the witness or to the attorney
for the witness for examination, signature and return to
me by _____;

That the amount of time used by each party at the
deposition is as follows:

- MR. BABCOCK.....20 minutes
- MR. McWILLIAMS...2 minute
- MR. HOLMES.....5 minutes;

1 That pursuant to information given to the deposition
2 officer at the time said testimony was taken, the
3 following includes counsel for all parties of record:

4 FOR THE PLAINTIFF:

5 Mr. James A. Holmes

6 FOR THE DEFENDANT CISCO SYSTEMS, INC.:

7 Mr. Charles L. Babcock, Ms. Crystal J. Parker

8 FOR THE DEFENDANT RICHARD FRENKEL:

9 Mr. George L. McWilliams

10 FOR THE WITNESS:

11 Mr. Thomas E. Gibson, Mr. Bob Wells

12 That \$ _____ is the deposition officer's charges
13 to the Defendant for preparing the original deposition
14 transcript and any copies of exhibits;

15 I further certify that I am neither counsel for,
16 related to, nor employed by any of the parties or
17 attorneys in the action in which this proceeding was
18 taken, and further that I am not financially or
19 otherwise interested in the outcome of the action.

20 Certified to by me this ____ day of

21 _____, 2008.

22
23
24 _____
April Eichelberger
Texas CSR No. 7495
25 Expiration Date: December 31, 2009

1 That pursuant to information given to the deposition
2 officer at the time said testimony was taken, the
3 following includes counsel for all parties of record:

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8 FOR THE DEFENDANT RICHARD FRENKEL:

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19 otherwise interested in the outcome of the action.

20 Certified to by me this 5th day of

21 November, 2008.

22
23 

24 April Eichelberger
Texas CSR No. 7495

25 Expiration Date: December 31, 2009