

# EXHIBIT 11

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

CERTIFIED COPY

ERIC M. ALBRITTON,

Plaintiff,

vs.

No. 6:08-CV-00089

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

Defendants.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER

DEPOSITION OF RICHARD G. FRENKEL

Tuesday, November 18, 2008

SHEILA CHASE & ASSOCIATES  
REPORTING FOR:  
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Reported by:  
JANIS JENNINGS, CSR, CRP, CLR  
CRS-100282-023

1 RICHARD G. FRENKEL,

2 The deponent herein, was sworn and  
3 testified as follows:

4  
5 THE VIDEOGRAPHER: Please begin.

6  
7 EXAMINATION

8 BY MR. PATTON:

9 Q. State your name, please.

10 A. Richard Frenkel.

11 Q. Where do you live?

12 A. I live in Palo Alto, California.

13 Q. Your address?

14 A. My work or my home address?

15 Q. Give me your home address and number first  
16 and then your work address and number second.

17 A. I live at 3229 Morris Drive in Palo Alto,  
18 and I work at 650 Page Mill Road, also in Palo Alto,  
19 California.

20 Q. Telephone number at your work?

21 A. 650-849-3201.

22 Q. Do you now work for Wilson Sonsini?

23 A. Yes.

24 Q. And what is your status there?

25 A. My title is of counsel.

1 Q. Okay. What others?

2 A. Who was filing a lot of the patent cases.

3 Q. Are you talking about parties or lawyers?

4 A. Parties.

5 Q. Okay. Were you interested in what I have  
6 seen called non-practicing entities?

7 A. Yes, that was an area of interest.

8 Q. And I believe you also describe those  
9 people as trolls, do you not?

10 A. The title of the blog is Patent Troll  
11 Tracker, so, yes, I used the term "patent troll."

12 Q. You're not real found of trolls, are you?

13 MR. McWILLIAMS: Objection. Form.

14 MR. BABCOCK: Same objection.

15 THE WITNESS: I wouldn't characterize it  
16 that way.

17 BY MR. PATTON:

18 Q. How would you characterize it? What are  
19 your feelings about non-practicing entities?

20 A. Are you asking for my feeling now or my  
21 feelings back when I started the blog?

22 Q. Both.

23 A. When I started the blog, I was frustrated  
24 by the lack of information that was out there about  
25 who was behind a lot of the patent cases that I was

1 seeing flock to various rocket dockets.

2 Q. Rocket dockets? Is that what you said?

3 A. Yes.

4 Q. What about rocket dockets? What do those  
5 filers have to do with rocket dockets? What's the  
6 connection?

7 A. My observation was that a large percentage  
8 of the cases involving what I refer to as patent  
9 trolls were being initiated in jurisdictions that  
10 had somewhat of a faster time to trial.

11 Q. All right. Tell me some of those  
12 jurisdictions.

13 A. Well, Eastern District of Texas is one of  
14 them.

15 Q. Right.

16 A. Eastern District of Virginia is another.

17 Q. Okay.

18 A. Western District of Wisconsin.

19 Q. Okay.

20 A. Those are the three that come to mind  
21 right now.

22 Q. Okay. And why were you interested in  
23 that, Mr. Frenkel?

24 A. Why was I interested in --

25 Q. The statistics about these non-practicing

1 BY MR. PATTON:

2 Q. Okay. Well, let's move on, then.

3 The blog about the ESN case, was that a  
4 case that you would be working on?

5 A. No. At the time of October 17th and 18th,  
6 that was not going to be my case.

7 Q. Did it end up being your case?

8 A. For a short period of time.

9 Q. Okay. So you make this blog about the  
10 Banana Republic and the conspiracy and those things,  
11 and you end up working on that case; right?

12 A. For a short period of time, I did.

13 Q. Okay. Did you ever reveal to anybody  
14 while you were working on that case that you were  
15 the Troll Tracker?

16 A. I don't remember.

17 Q. Why were you on the emailing about the  
18 filing of the ESN complaint?

19 A. Because I am the one who discovered it.

20 Q. Okay. Why were you just -- you had to  
21 look at the, what, Pacer docket, the Pacer  
22 information? Is that how you discovered it?

23 A. I looked at the -- I guess it's called  
24 ECF, or electronic case filing. It used to be  
25 called Pacer. Yes, on Monday, October 15th, I

1 looked at it.

2 Q. Okay. And why did you look at it?

3 A. Because I was curious to see if Cisco had  
4 been sued by anybody that day.

5 Q. Were you expecting to be sued that day?

6 A. There had been a sudden increase in  
7 filings of patent litigation in October of 2007.

8 Q. Against Cisco?

9 A. Against a lot of companies.

10 Q. By whom? Who filed them?

11 A. Many different plaintiffs.

12 Q. And in many different jurisdictions?

13 A. That's correct.

14 Q. Would Wisconsin, Eastern District of Texas  
15 and Eastern District of Virginia have been three  
16 that attracted a good bit of the business?

17 A. Among others.

18 Q. Okay. Are you aware that Cisco has filed  
19 suits in the Eastern District of Texas?

20 A. Yes.

21 Q. Okay. So it's okay for Cisco to use the  
22 Eastern District; right?

23 A. I don't know. It depends.

24 Q. Well, what products do you make in the  
25 Eastern District of Texas? Do you know?

1 posted the blog?

2 MR. BABCOCK: Object to the form.

3 MR. McWILLIAMS: Same objection.

4 THE WITNESS: I had the evidence of the  
5 complaint, the civil cover sheet, and all the  
6 exhibits to the complaint being stamped October --  
7 and the docket all being stamped October 15th one  
8 day. And then the next day I saw the complaint, the  
9 docket sheet all had been changed to October 16th,  
10 and the initials of one of the clerks was on there  
11 with a notation that it had been modified by that  
12 clerk on -- I think it was the 17th of October.

13 BY MR. PATTON:

14 Q. What does that say about Eric's conduct?

15 A. What does what say about Eric's conduct?

16 Q. What you just said. This is what you have  
17 seen, you said, that convinced you or it's the  
18 evidence you have.

19 What you just said, what does that have to  
20 do with Eric's conduct?

21 MR. McWILLIAMS: Objection. Form.

22 MR. BABCOCK: Same objection.

23 BY MR. PATTON:

24 Q. What did he do?

25 A. My understanding is that he had his



1 A. Okay.

2 Q. Are you aware on the face of the  
3 complaint, the electronic filing date shows when  
4 this thing was filed? The stamp?

5 A. I believe that the clerk had testified  
6 that they changed that date.

7 Q. I'm talking about the electronic stamp.

8 A. The electronic stamp that I saw on the  
9 front of the complaint said October 15th, 2007 one  
10 day and then October 16th, 2007 the next day.

11 Q. Where was it located on the complaint?

12 A. On the front of it, every page.

13 Q. Top? Bottom? Side? Where?

14 A. I don't remember if was on the top or the  
15 bottom.

16 Q. Is there a banner across the top?

17 A. To me, it's a stamp.

18 Q. Yeah, but it's not to the clerk. Would  
19 you agree with that?

20 MR. McWILLIAMS: Objection. Form.

21 MR. BABCOCK: Objection. Form.

22 THE WITNESS: I don't agree.

23 BY MR. PATTON:

24 Q. You think that what you saw was a stamp,  
25 don't you?

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CERTIFICATE OF REPORTER

I, JANIS L. JENNINGS, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: November 20, 2008.

  
\_\_\_\_\_  
JANIS JENNINGS  
CSR NO. 3942, CLR, CRP