

# EXHIBIT 20

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

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

CERTIFIED COPY

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ORAL AND VIDEOTAPED DEPOSITION OF

MICHAEL SMITH

November 24th, 2008  
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ORAL AND VIDEOTAPED DEPOSITION OF MICHAEL SMITH,  
produced as a witness at the instance of the  
DEFENDANT, and duly sworn, was taken in the  
above-styled and -numbered cause on the 24th day of  
November, 2008, from 1:15 p.m. to 4:08 p.m., before  
Regenia Plant, CSR in and for the State of Texas,  
reported by machine shorthand, at the law offices of  
Siebman, Reynolds, Burg, Phillips & Smith, LLP, 713  
South Washington Avenue, Marshall, Texas, pursuant to  
the Federal Rules of Civil Procedure.

1 reporter please swear in the witness.

2 MICHAEL SMITH,  
3 after having been first duly sworn, testified as  
4 follows:

5 EXAMINATION

6 BY MR. BABCOCK:

7 Q. Would you state your name, sir.

8 A. Michael Charles Smith.

9 Q. Mr. Smith, let me hand you Exhibit 135, which  
10 is the notice of deposition today, which came with a  
11 subpoena; is that correct?

12 A. Yes.

13 Q. And after a couple of false starts, we have  
14 agreed that today will be the day we'll take your  
15 deposition, correct?

16 A. Correct.

17 Q. And your counsel has -- Mr. Siebman has  
18 provided me some documents. I have marked them as --  
19 as a bulk exhibit as 159 and I want to tender them to  
20 you and make sure that you agree that Exhibit 159  
21 consists of all the documents that you have produced  
22 pursuant to the subpoena.

23 A. That's correct, it does.

24 Q. All right. Thanks. If you'll hand them back  
25 to me, I'll probably talk about specific documents in

1 from the LBJ School at the University of Texas at  
2 Austin in 1989, and I received my law degree from  
3 Baylor Law School in 1992.

4 Q. When you attended Baylor Law School, did you  
5 know the plaintiff in this case, Eric Albritton?

6 A. No.

7 Q. How did you first meet Mr. Albritton?

8 A. I don't remember how I first met him. It  
9 would have just been practicing in the Eastern  
10 District sometime a number of years ago.

11 Q. Mr. Albritton is a -- a lawyer and so by  
12 practicing, you mean he's in the same profession that  
13 you are?

14 A. Yes, yes.

15 Q. Have you become a social friend of his?

16 A. Not outside of bar activities.

17 Q. What bar activities have you done with  
18 Mr. Albritton?

19 A. Eastern District Bench Bar Association. The  
20 Judge Ward Inn of Court. We may have been at  
21 Northeast Texas Bar events together, but I don't -- I  
22 frankly don't remember. But that sort of thing.

23 Q. All right, sir. Did you have any role in  
24 organizing the East Texas Bench Bar Conferences --

25 A. Yes.

1 you've known him, five or ten years, period?

2 A. I -- I would really be guessing because I  
3 don't really know which of the cases I've been in, he  
4 was actually involved in.

5 Q. Okay. Fair enough. During the time that you  
6 have known him, have you determined whether he has a  
7 reputation, be it good, bad, indifferent?

8 A. Yes.

9 Q. All right. And do you -- are you aware that  
10 you've been designated by Mr. Albritton as a witness  
11 on his reputation?

12 A. No, I wasn't aware of that.

13 Q. Okay. Well, Mr. Holmes can correct me if I'm  
14 wrong, but I think Mr. Albritton has done that. So my  
15 question to you is, what is his reputation.

16 A. I'm not aware of anything negative about his  
17 reputation in the -- in the legal community.

18 Q. Okay. Do you -- do you know whether he has  
19 -- I appreciate your saying you're not aware of  
20 anything negative. Are you -- do you think that he  
21 has a good reputation?

22 A. Generally, yes. I'm not aware of anything  
23 that would cause me to say that he doesn't.

24 Q. Okay. Has his reputation changed in the past  
25 five or ten years, how ever long you've known him?

1 A. No.

2 Q. Okay. Has he ever referred you a case?

3 A. Not that I know of.

4 Q. Okay. Have you ever referred him a case that  
5 you know of?

6 A. I may have referred a -- I don't think so. I  
7 might have sent a -- a call on a criminal case to him  
8 one time or -- or maybe -- there was one time in a  
9 civil case where someone was asking me to be local  
10 counsel and I think it was a civil rights case or  
11 something like that and he was one of the people that  
12 I -- that I referred them to.

13 Q. All right. Is there any reason why you  
14 wouldn't refer an appropriate case to him?

15 A. No.

16 Q. Okay. You are aware to some degree, I take  
17 it, that Mr. Albritton has sued Cisco and a fellow by  
18 the name of Rick Frenkel for defamation.

19 A. Yes.

20 Q. All right. Have you talked to Mr. Albritton  
21 about this case?

22 A. Not about this case, no.

23 Q. Okay.

24 A. Let -- let me qualify that.

25 Q. Sure.

1 that was filed in Gregg County by Mr. Albritton. I  
2 say defamation. I -- I don't know if that's exactly  
3 what it is. But there was a case filed by  
4 Mr. Albritton. There was another case filed by Johnny  
5 Ward in Texarkana, Arkansas Federal Court. And that's  
6 -- and then I knew that the -- the County Court at Law  
7 case, this case, had been removed to -- to a federal  
8 court in Tyler. That's all I really know about it.

9 Q. Okay. You said the -- you mentioned  
10 something called a -- a Web log. I've also heard that  
11 referred to as a blog. Have you --

12 A. Right.

13 Q. -- heard of that? Okay. Heard -- you're  
14 familiar with that term?

15 A. Yes.

16 Q. Okay. And I take it that you have one of  
17 those animals, a blog?

18 A. A couple actually.

19 Q. Okay. Could you tell me the names of your  
20 blogs?

21 A. The -- the legal Web log is EDTexweblog.  
22 It's Eastern District of Texas Federal Court Practice.  
23 And then I have a personal Web log, Puttering in the  
24 Study. And then I've kept at different times Web logs  
25 on my oldest son's cub scout troop and my wife's

1 blog that obviously talks about legal issues and  
2 certainly talks about legal issues in the district  
3 where you practice, are you writing as an attorney or  
4 are you writing as an author, a writer of things?

5 A. Well, more -- more as a writer of someone  
6 just pointing out here's some things that are going  
7 on. I'm not -- I'm not providing legal analysis of  
8 the issues in a particular case other than to just  
9 indicate how that might have relevance to -- to some  
10 issue.

11 Q. All right. I have looked at -- I have looked  
12 at your -- your blog that has -- covers a wide variety  
13 of topics and one of the issues that you have written  
14 about is the controversy about patent venue  
15 specifically focussing on the Eastern District of  
16 Texas, correct?

17 A. Yes.

18 Q. All right. And would you tell me in your own  
19 words, if you can, what you -- how you define the  
20 controversy, what you think it is, regarding the venue  
21 -- patent venue in the Eastern District of Texas.

22 A. I'm sorry. I don't -- I don't understand --  
23 you mean in the context of this case or --

24 Q. No. Just generally.

25 A. Well, if it's not in the context of this

1 case and on some opinions by the Federal Circuit in --  
2 on venue in a patent case.

3 Q. Okay. I don't want to take a lot of time on  
4 this, Mr. Smith, but just tell me generally what you  
5 have said about the patent reform legislation as it  
6 relates to venue in the Eastern District of Texas.

7 A. There were proposals in the -- well,  
8 technically, it's currently pending. There -- there  
9 have been proposals in that legislation to make  
10 changes to the venue statute that -- that controls the  
11 patent -- the venue statute that would apply in patent  
12 cases.

13 Q. Okay. And have you taken an editorial view  
14 or a writer's view or an author's view about the  
15 merits of this patent reform legislation, good, bad  
16 indifferent?

17 A. I don't know if I have on specific  
18 legislative proposals. I -- I can't recall without  
19 going back and looking at it what exactly I have said  
20 about the different proposals 'cause it keeps  
21 changing. I -- I probably have indicated that some of  
22 the -- a number of the legislative proposals I thought  
23 were -- were not a good solution.

24 Q. And the legislative proposals you're  
25 referring to are proposals that are designed to

1 restrict venue in patent cases such that it would be  
2 more difficult for plaintiffs to file patent lawsuits  
3 in the Eastern District of Texas?

4 A. Yes.

5 Q. Okay. And you -- and you think that's not a  
6 good solution for the --

7 A. I -- I don't think the specific proposals  
8 that they've put out are a good solution. There are  
9 -- there are some that I think might be, but not the  
10 ones -- not -- not the ones that I was speaking of.

11 Q. Okay. This fellow Michael Barclay with --  
12 from Wilson Sonsini --

13 A. Uh-huh.

14 Q. -- that you corresponded with by e-mail, do  
15 you know him personally?

16 A. No.

17 Q. And did you e-mail him before he e-mailed you  
18 or --

19 A. No.

20 Q. -- how did that start out?

21 A. I -- I think he e-mailed me first.

22 Q. Okay. Is that the only e-mail correspondence  
23 that you've had with Mr. Barclay?

24 A. No.

25 Q. Okay. You've had it on other topics?

1 you ever did?

2 A. Correct.

3 Q. Okay. And what caused you to write about  
4 this?

5 A. I saw that -- just based on -- on re-reading  
6 it here, I saw something on the Internet about this  
7 case and the facts that were described in whatever it  
8 was I saw just triggered something and I thought there  
9 might be something -- I -- I thought it might be an  
10 opportunity to talk about the filing system and -- and  
11 maybe kind of the facts on how things were changing  
12 and to relate a few interesting stories about the way  
13 we used to do this, file patent cases back in the old  
14 days with drop boxes.

15 Q. Okay. And -- and you -- you at that time, I  
16 think, maybe were the -- were you the chair of the  
17 rules -- local Eastern District Rules Committee?

18 A. Yes.

19 Q. Okay. And tell me what your sources were for  
20 this article that you wrote.

21 A. Some activity on the Internet. I don't  
22 recall what they were. And I think that was -- that  
23 was it in terms of sources. I -- I don't recall  
24 specifically what they were.

25 Q. Okay. Did you review the Patent Troll

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JOHN NOH,	)	
	)	
	)	
DEFENDANTS.	)	

REPORTER'S CERTIFICATION  
DEPOSITION OF MICHAEL SMITH  
NOVEMBER 24, 2008

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

That the witness, MICHAEL SMITH, 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 \_\_\_\_\_;

1 That the mount of time used by each party at the  
2 deposition is as follows:

3 MR. BABCOCK.....01 HOUR(S):53 MINUTE(S)

4 MR. McWILLIAMS.....00 HOUR(S):29 MINUTE(S)

5 MR. HOLMES.....00 HOUR(S):29 MINUTE(S)

6 MR. SIEBMAN.....00 HOUR(S):00 MINUTE(S)

7 That pursuant to information given to the  
8 deposition officer at the time said testimony was  
9 taken, the following includes counsel for all parties  
10 of record:

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9 That \$\_\_\_\_\_ is the deposition officer's  
10 charges to the Defendant Cisco Systems, Inc., for  
11 preparing the original deposition transcript and any  
12 copies of exhibits;

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

18 Certified to by me this 25th day of November,  
19 2008.

20 *Regenia Plant*

21 Regenia Plant, Texas CSR 7819  
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