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15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 ILLINOIS COMPUTER RESEARCH, LLC,
18 Plaintiff and Counterclaim Defendant

19 vs.

20 FISH & RICHARDSON P.C.,
21 Defendant, Counterclaimant and Third
Party Plaintiff,

22 vs.

23 SCOTT C. HARRIS,
24 Third-Party Defendant, Counterclaimant,

25 vs.

26 FISH & RICHARDSON P.C.,
27 Defendant, Counterclaimant, Third
Party Plaintiff and Counterclaim
28 Defendant

Miscellaneous Action No.

CV 08-80075 MISC.

DECLARATION OF RICHARD
FRENKEL IN SUPPORT OF
RICHARD FRENKEL'S AND CISCO
SYSTEMS, INC.'S MOTIONS TO
QUASH SUBPOENA AND MOTIONS
FOR PROTECTIVE ORDER

JF

HRL

Filed

APR 07 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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J.M.

1 DECLARATION OF RICHARD FRENKEL

2 I, RICHARD FRENKEL, declare and state as follows:

3 I make this declaration in support of my Notice of Motion; Motion to Quash Subpoena;
4 Motion for Protective Order; and Memorandum of Points and Authorities, and in support of Cisco
5 Systems, Inc.'s Notice of Motion; Motion to Quash Subpoena Served on Richard Frenkel; Motion
6 for Protective Order; and Memorandum of Points and Authorities. I have personal knowledge of
7 the following facts and, if called as a witness, could and would testify thereto.

8 1. I am an attorney and member of the California Bar since 1999, and am licensed to
9 practice in California.

10 2. I have worked at Cisco since February 2006 as an attorney in the Intellectual
11 Property Legal Department. As of April 2007, my full title became Director, Intellectual Property
12 – Consumer & Emerging Technologies. Among my responsibilities since April 2007 has been
13 oversight of certain patent litigation and other disputes involving the company, and management
14 of employees doing the same.

15 3. On May 9, 2007, I began a news-oriented website called “Patent Troll Tracker.”
16 My stated goal, in my very first post, was “to educate the world on how many patent cases are out
17 there that are filed by trolls.” I continued that education by providing regular news articles about
18 cases filed by non-practicing entities colloquially known as “patent trolls.”

19 4. The Patent Troll Tracker website continued until late February 2008. During these
20 nine months, I published over 180 articles about different facets of patent litigation and “patent
21 trolls.”

22 5. Patent Troll Tracker was published regularly. For example, I had a monthly
23 installment where I would review the patent litigation statistics from the previous month, and
24 report on litigation filed by non-practicing entities. I call this my “Troll Call.” Besides the
25 monthly feature, I would try to have an assortment of stories, about two or three per week,
26 focusing on different interesting cases and the debate on patent reform issues.

27 6. Until earlier this year, I published the Patent Troll Tracker website anonymously.
28 In September 2007, Chicago attorney Raymond P. Niro (“Niro”) contacted me, seeking to find

1 out my true identity. Niro is well known for writing articles and giving interviews describing
2 himself as the best protector of “patent trolls,” such as a July 20, 2006 article in *IP Law &*
3 *Business* featuring Niro, titled “Meet the Original Patent Troll.” Starting with his mid-September
4 2007 contact to me, Niro began giving interviews publicly decrying my website, and wrote me
5 several emails. I responded to some of his correspondence in my own website.

6 7. In late November 2007, I learned that Niro was offering a \$5,000 reward for
7 information leading to my identity. Later, he increased that reward to \$10,000, and then to
8 \$15,000. When news stories on other websites and magazines began discussing Niro’s reward,
9 someone evidently posted a comment on the website Slashdot, which Niro claimed to be a death
10 threat against him and his family. After Niro emailed me about this, I explained to him that I had
11 no control over Slashdot, and had nothing to do with whoever posted there. I told him that I
12 sympathized with him, and I wrote an article on my website discouraging this kind of behavior
13 and encouraging civility.

14 8. I voluntarily disclosed my identity on my website on February 23, 2008. My
15 understanding is that Niro claims that he did not have to pay the reward.

16 9. After I revealed myself to be an attorney employed by Cisco, my employer and I
17 were sued in Texas for defamation relating to an article I posted on October 18, 2007. As a result
18 of the defamation lawsuit and related investigations, and since the Patent Troll Tracker website is
19 a website that is published solely by me, I decided to temporarily suspend the website. I intend to
20 resume the publication in the near future, after taking time to attend to some of the legal matters
21 that need my immediate attention. When I resume the publication, I intend to continue to
22 regularly report on patent reform issues as well as patent litigation filed across the country,
23 focusing primarily on news about patent litigation filed by people or entities that are not making
24 any products or providing any services related to the patents. At that time, the website will again
25 be open to the public.

26 10. Niro was a guest on an internet radio program (“Lawyer 2 Lawyer”) on March 27,
27 2008, and repeated his criticisms of my website announcing that “I am going to be taking his
28 deposition in a case shortly.” *Id.* He also made reference to the Arkansas and Texas litigation

1 where I am a defendant along with Cisco, stating that "I know Johnny Ward (the Arkansas
2 Plaintiff) very well and I know Eric [Albritton] (the Texas plaintiff) too." He then commented on
3 the litigation in a way unfavorable to me.

4 11. On the morning of Saturday, March 29, as I was leaving the house, I found a
5 subpoena on my doorstep.

6 12. The subpoena at issue comes from a case pending in the United States District
7 Court for the Northern District of Illinois, Eastern Division, Case No. 07-C-5081, Illinois
8 Computer Research, LLC v. Google, Inc. A true and correct copy of the subpoena is attached
9 hereto as Exhibit A-1. My understanding is that the subpoena was issued at the request of the
10 Plaintiff/Counterclaim Defendant Illinois Computer Research ("ICR") and a third party defendant
11 and counterclaimant Scott C. Harris ("Harris"). The Defendant and Counter-Plaintiff is Fish &
12 Richardson P.C. ("Fish"). ICR and Harris are represented by Raymond Niro of Niro, Scavone,
13 Haller and Niro. The only cited relationship in the subpoena that I am alleged to have with the
14 Chicago case is as "a close associate of Fish."

15 13. It is not true that I am a close associate of Fish. I have never been employed by
16 Fish, and during my career as a patent litigator before joining Cisco, I was personally adverse to
17 Fish in at least two cases. When I joined Cisco, I learned that Fish was adverse to Cisco in a case
18 pending in the District of Massachusetts. Up until this case was resolved in mid-October 2007,
19 this conflict prevented Cisco from hiring Fish.

20 14. In mid-November, it is my understanding that Cisco hired Fish to take over
21 representation of Cisco in a patent infringement case pending in Delaware. Although I do not
22 have direct responsibility for this Delaware litigation involving Fish, I have been indirectly
23 involved in that litigation.

24 15. As part of the ICR/Harris subpoena, I am being asked to testify about and produce
25 documents regarding confidential sources and unpublished information that I have used to gather
26 and report news about patent litigation on my Patent Troll Tracker website. The subpoena also
27 attempts to compel me to testify about and to produce unpublished documents that I obtained and
28 used for preparation of my communications to the public on my Patent Troll Tracker website.

1 For example, Request No. 6 asks for "Investigative materials, sources for, and procedure for
2 Patent Troll Tracker blog articles identified in Exhibits A to C."

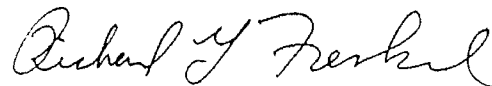
3 16. Throughout the entire publication of Patent Troll Tracker, I have been engaged in
4 newsgathering activities for the purpose of reporting on news about patent litigation and the
5 debate regarding patent reform. I am concerned that if I am forced to produce unpublished
6 information and to testify about and produce such material that it will result in a serious detriment
7 to my ability to gather and disseminate this news.

8 17. For example, many of the ideas for my articles originated from tips readers would
9 send me about patent lawsuits that were filed, or publicly-available corporate filings by shell
10 corporations revealing the identity of their true owners. Should I be compelled to reveal my
11 sources for these stories, readers will be less likely in the future to provide me with such
12 information.

13 18. Moreover, the subpoena deposition topics and document requests are so grossly
14 overbroad and are not properly limited to relevant and non-privileged information in the
15 ICR/Harris/Fish litigation. As such, complying with the subpoena would impose an undue
16 burden upon me to attempt to comply. The subpoena, which I found on my doorstep on Saturday
17 morning, March 29, 2008, only gave me nine days to produce numerous documents and only ten
18 days before it required me to appear for a deposition. My objections for each and every
19 document requested are set out by my counsel, George L. McWilliams, as an exhibit to his
20 declaration, attached to Richard Frenkel's Notice of Motion; Motion to Quash Subpoena; Motion
21 for Protective Order; and Memorandum of Points and Authorities. I incorporate those objections
22 by reference herein.

23 I declare under penalty of perjury that the foregoing is true and correct.

24 Executed on April 4, 2008.

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26
27 Richard Frenkel

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