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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 (San Jose Division)

15 ILLINOIS COMPUTER RESEARCH, LLC,
16 Plaintiff and Counterclaim Defendant,
17 v.

18 FISH & RICHARDSON P.C.,
19 Defendant, Counterclaimant and Third-
20 Party Plaintiff,
21 v.

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

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

Case No. CV08-80074 MISC.

[Action pending in the United States District
Court for the Northern District of Illinois as
Case No. 07 C 5081]

**EX PARTE APPLICATION BY ILLINOIS
COMPUTER RESEARCH LLC AND
SCOTT C. HARRIS PURSUANT TO
LOCAL RULE 6.3 FOR ORDER
SHORTENING TIME FOR HEARING
ON MOTION OF ILLINOIS COMPUTER
RESEARCH LLC AND SCOTT C.
HARRIS UNDER FED.R.CIV.P. 45 TO
COMPEL RICHARD FRENKEL'S
DEPOSITION AND DOCUMENT
PRODUCTION IN APRIL 2008**

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Illinois Computer Research and Scott Harris (collectively "ICR") hereby move this Court,
3 pursuant to Local Rule 6-3, for an Order shortening the time for a hearing on their motion under
4 Fed.R.Civ.P. 45 to compel the deposition of Richard Frenkel.

5 ICR respectfully requests that the Court hear its Motion to Compel on April 22, 2008, or
6 as soon thereafter as the matter may be heard. This Application is made on the grounds that
7 hearing the Motion to Compel on a regular briefing schedule will cause ICR substantial harm.

8 ICR has filed a tortious interference claim against Fish & Richardson P.C. ("Fish"). The
9 tortious interference claim alleges that Fish purposefully and wrongfully interfered with ICR's
10 and Harris' ability to license the Harris patents. Fish is alleging unfounded ownership claims and
11 attempting to force ICR to abandon its claims for infringement by conveying rights to Fish.
12 Richard Frenkel, in his blog, Patent Troll Tracker, promoted Fish's ownership claims, creating
13 doubt among potential licensees and boosting Fish's claims to ownership of the Harris patents.

14 Frenkel, as the Director of Intellectual Property at Cisco Systems, has a clear association
15 with Fish & Richardson ("Fish") and its attorneys. In fact, Fish has represented Cisco in several
16 law suits such as Cisco Systems Inc. et al. v. GPNE Corp., Case No.1:07-cv-00671. In addition
17 to the professional relationship with Fish as in house counsel for Cisco Systems, Frenkel has
18 maintained a professional relationship with Kathi Lutton, the head of the firm's Global Litigation
19 Practice. Mr. Frenkel participated with Kathi Lutton and John Dragseth (another Fish attorney) in
20 a webinar on May 30, entitled *KSR*, Managing Intellectual Property. Given this association
21 between Fish and Frenkel, it appears that Frenkel was acting at Fish's behest to interfere with
22 ICR's ability to license its patent portfolio. Frenkel may be Fish's agent or may simply be acting
23 at Fish's direction. ICR is entitled to know the extent of the relationship and common interest
24 between Fish and Frenkel, because it directly impacts Fish's tortious interference with ICR's
25 licensing activity.

26 ICR seeks a limited deposition of Frenkel to establish the acts that he performed and his
27 relationship with Fish. The deposition is limited to specific topics concerning information
28 uniquely in the possession of Mr. Frenkel that is directly relevant to ICR's tortious interference

1 claim against Fish. Specifically, the topics relate to the numerous articles Mr. Frenkel posted on
2 his patent blog in support of Fish's tortious interference with ICR's licensing activity as well as
3 his relationship with the Fish firm which lead to his support of Fish's interference. There is no
4 other source for this information than Mr. Frenkel because he is the individual that performed that
5 acts at issue.

6 ICR filed a motion to compel Frenkel's deposition in April in order to comply with the
7 scheduling order in the case. Initial expert reports on the tortious interference claims are due on
8 June 30, 2008. ICR sought the deposition of Mr. Frenkel in April so that it could incorporate his
9 testimony into ICR's expert reports that are due in June. Under the 35 day briefing schedule, the
10 hearing for the Motion is not scheduled until May 13, 2008. Based upon a May 13, 2008 hearing
11 schedule, it is likely the deposition of Richard Frenkel will not take place until June 2008, leaving
12 little time for the completion of expert reports or remedy any issues that arise during the
13 deposition.

14 Frenkel and his employer, Cisco Systems, Inc. ("Cisco"), have filed motions to quash and
15 motions for a protective order. Both Cisco and Frenkel have raised privilege concerns that can
16 easily be addressed at the deposition on a question by question basis. In addition, Cisco and
17 Frenkel have raised concerns about the confidentiality of the deposition. These concerns are
18 remedied by paragraph 24 of the Stipulated Protective Order which addresses confidentiality for
19 third parties. (Docket No. 65).

20 ICR has attempted to obtain a stipulation to the time change. ICR conferred with counsel
21 for Mr. Frenkel and Cisco Systems, Inc., but agreement on a date for a hearing could not be
22 reached.

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1 For the foregoing reasons, and pursuant to Local Rule 6.3, ICR respectfully requests that
2 this Court grant its Application for an Order Shortening Time for Hearing on Motion Under
3 Fed.R.Civ.P. 45 of Illinois Computer Research LLC And Scott C. Harris to Compel Richard
4 Frenkel's Deposition and Document Production in April 2008.

5 DATED: April 11, 2008

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