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Restrictions on Accessing and Disseminating Information on the Internet: False Information and Contracts

Class 9 – October 31, 2008

SI 519 / PubPol 688

Bryce Pilz

Fall 2008

Schedule

- 2:10 – Intro; Announcements
- 2:20 – Student Presentation: Database Protection
- 2:35 – Student Presentation: Rights of Publicity and Personality
- 2:45 – Student Presentation: “Cybergripe Sites”
- 2:55 – Defamation
- 3:15 – Contractual Restrictions
- 3:35 – Election Law Restriction
- 3:45 – Break
- 4:00 – Guest Speaker: © in Libraries

Intro

Patent Trolltracker Blog

- Anonymous “Patent Trolltracker” website followed “patent troll” issue

Patent Trolltracker Blog

- Upset prominent plaintiffs' patent litigator
- Offered “bounty” of \$15,000 for anyone that unmasked the Patent Trolltracker

Patent Trolltracker Blog

- October 2007 - Dennis Crouch, author of “PatentlyO” blog reported on suspicious activity on E.D. Tx docket

PatentlyO

- **Preemptive Strike:** In another preemptive strike, on October 15th, ESN sued Cisco for infringing Patent No. 7,283,519. Unfortunately, the patent did not issue until the 16th of October. [[Link](#)]

Source: <http://www.patentlyo.com/patent/2007/10/patent-office-h.html>

Case 5:07-cv-00156-DF-CMC Document 1-1 Filed 10/15/2007

Source: <http://www.patentlyo.com/patent/law/ESN.Complaint.pdf>

Patent troll tracker unmasked

May pack it in

By [Nick Farrell](#): Wednesday, 27 February 2008, 7:36 AM

Source: <http://www.theinquirer.net/gb/inquirer/news/2008/02/27/patent-troll-tracker-unmasked>

My name is Rick Frenkel. I started in IP over 10 years ago, as a law clerk at Lyon & Lyon in Los Angeles. After a few years there as a law clerk and attorney, I litigated patent cases for several years at Irell & Manella. Two years ago I moved to the Valley and went in-house at Cisco. In my career, I have represented plaintiffs, defendants, large companies, small companies, individual inventors, universities, and everything in between. I currently work at Cisco.

Source: <http://opendotdotdot.blogspot.com/2008/02/let-us-now-praise-patent-troll-trackers.html>

I got a couple of anonymous emails this morning, pointing out that the docket in ESN v. Cisco (the Texas docket, not the Connecticut docket), had been altered. One email suggested that ESN's local counsel called the EDTX court clerk, and convinced him/her to change the docket to reflect an October 16 filing date, rather than the October 15 filing date. I checked, and sure enough, that's exactly what happened - the docket was altered to reflect an October 16 filing date and the complaint was altered to change the filing date stamp from October 15 to October 16. Only the EDTX Court Clerk could have made such changes.

Of course, there are a couple of flaws in this conspiracy. First, ESN counsel Eric Albritton signed the Civil Cover Sheet stating that the complaint had been filed on October 15. Second, there's tons of proof that ESN filed on October 15. Heck, Dennis Crouch may be subpoenaed as a witness!

You can't change history, and it's outrageous that the Eastern District of Texas may have, wittingly or unwittingly, helped a non-practicing entity to try to manufacture subject matter jurisdiction. *This is yet another example of the abusive nature of litigating patent cases in the Banana Republic of East Texas.*

(n.b.: don't be surprised if the docket changes back once the higher-ups in the Court get wind of this, making this post completely irrelevant).

Source: http://thepriorart.typepad.com/the_prior_art/2008/03/ward-jr-may-hav.html

Defamation?

BARBARA BUNCAN, I
BY

JOHN WARD, JR.

Plaintiff

V.

**CISCO SYSTEMS, INC. and
RICHARD FRENKEL**

Defendants.

§
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IN THE DISTRICT COURT

188th JUDICIAL DISTRICT

OF GREGG COUNTY, TEXAS

PLAINTIFF'S FIRST AMENDED PETITION


Source: <http://www.patentlyo.com/patent/law/ESN.Complaint.pdf>

2. All DOCUMENTS REFERRING or RELATING to comments, emails, COMMUNICATIONS or responses to THE BLOGS regarding (1) the integrity, reputation or ability of ERIC M. ALBRITTON; (2) the filing of Civil Action No. 5:07-CV-00156, styled *ESN, LLC v. Cisco Systems, Inc.*, in the United States District Court for the Eastern District of Texas; or (3) the October 16-17, 2007 postings on www.trolltracker.blogspot.com. [[File Attachment: albrittonsubpoena.pdf](#) (109 KB)]

Source: <http://www.patentlyo.com/patent/2008/08/albritton-v-p-1.html>

This blog is open to invited readers only

<http://trolltracker.blogspot.com/>

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Password

[Forgot your password?](#)

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This is not recommended for shared computers!

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Defamation

- Elements

- 1) False statement of fact (or understood as such) about plaintiff
- 2) Unprivileged communication to another
- 3) Damage
- 4) If public figure → malice on part of defendant

Defamation

- Libel v. slander????
- Per se defamation?
 - Professional character
 - Crime of moral turpitude
 - Unchaste (if unmarried)
 - STDs

Defamation Defenses

- Truth!!!
- Privilege (in court)
- Opinion
- Fair comment on matter of public interest

First Amendment Concerns

- Public figures must prove malice
 - NYT v. Sullivan (1964)

Barrett v. Rosenthal

- 230(c)(1) of 1996 Telecommunications Act
 - Protects service providers and other internet publishers
- Does protection extend to party that publishes defamatory content of another

Contractual Restrictions

- What is a contract?
 - Meeting of minds (offer and acceptance)
 - Consideration
 - Some terms are implied
- Issues for e-contracts
 - Formation: clickwrap
 - Enforceability (contracts of adhesion)

Second Life Case

- Terms of Use Enforceable?
- Unconscionability
 - Procedural
 - Substantive
- How to create enforceable terms for using digital content?
- As a user, how do you analyze terms that concern you?

Election Laws

DAILY KOS

DKOS DAILY TRACKING POLL

OBAMA	51
MCCAIN	45

Results for 10/31
Research 2000
10/28-10/30, MoE 3%.
[Internals](#) | [Trendlines](#)

dKos Polls

- CA-04-10/26
- FL-25-10/26
- NV-03-10/26
- WA-08-10/26
- FL-21-10/26
- MD-01-10/26
- WV-Pres-10/26

(More...)

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Recommended Diaries

Stay The F*ck In Line.
by [JeffLieber](#)
241 comments

Florida GOP County Chair: Help!Black People are Voting!!!
by [fladem](#)
439 comments

An 'Idiot Wind'
by [teacherken](#)
188 comments

Thank You Markos Moulitsas
by [millwx](#)

Universal Registration
by [georgia10](#)
Fri Oct 31, 2008 at 07:30:03 AM PDT

Last week, the always insightful Rick Hansen of the [Election Law blog](#) penned a piece in Salon regarding the need for a simplified, fair, and universal voter registration system. The entire piece is a must read, but this part was particularly pragmatic, and it reiterates ideas that many of us in the election reform community have been advocating for a while:

The solution is to take the job of voter registration for federal elections out of the hands of third parties (and out of the hands of the counties and states) and give it to the federal government. The Constitution grants Congress wide authority over congressional elections. The next president should propose legislation to have the Census Bureau, when it conducts the 2010 census, also register all eligible voters who wish to be registered for future federal elections. High-school seniors could be signed up as well so that they would be registered to vote on their 18th birthday. When people submit change-of-address

Source: <http://www.dailykos.com/>

Kos

- Not owned or controlled by a political party
- Provides political commentary, akin to editorials

Vote Swapping

- First Amendment Protection?
- What exceptions would we make to the First Amendment?

Election Law

- Exceptions to First Amendment