

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

JOHN WARD, JR.

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§
§

v.

C.A. NO. 08-4022

JURY TRIAL DEMANDED

CISCO SYSTEMS, INC AND
RICK FRENKEL

**CISCO SYSTEMS, INC.’S MOTION TO DISMISS FOR IMPROPER VENUE,
OR IN THE ALTERNATIVE, MOTION TO TRANSFER VENUE**

TO THE HONORABLE COURT:

Defendant Cisco Systems, Inc. (“Cisco”) files this its Motion to Dismiss for Improper Venue, or in the Alternative, Motion to Transfer Venue to the United States District Court for the Eastern District of Texas, Tyler Division (“Tyler Division”), as follows:

Cisco respectfully requests that the Court:

1. Dismiss or transfer Plaintiff John Ward, Jr.’s (“Ward”) case for improper venue pursuant to Rule 12(b)(3) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1406(a) because venue is improper in this district under to 28 U.S.C. § 1391. Venue in this district is not proper because: Frenkel is not an Arkansas resident, so this is an improper district under 28 U.S.C. § 1391(a)(1); none of the events or omissions giving rise to the lawsuit occurred in Arkansas, so this is an improper district under 28 U.S.C. § 1391(a)(2); and the Tyler Division is a proper venue under 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to this lawsuit occurred in Gregg County, Texas, so this is an improper venue under 28 U.S.C. § 1391 (a)(3). Accordingly, Cisco seeks transfer this action to the United States District Court for the Tyler Division pursuant to 28 U.S.C. § 1406(a).

2. Dismiss or transfer Ward's case pursuant to 28 U.S.C. § 1631 because this court does not have personal jurisdiction over Frenkel because Frenkel does not have sufficient minimum contacts with Arkansas and because asserting jurisdiction over Frenkel would offend traditional notions of fair play and substantial justice. Accordingly, Cisco seeks transfer this action to Tyler Division pursuant to 28 U.S.C. § 1406(a).

3. Transfer this action to the Tyler Division pursuant to 28 U.S.C. 1404(a) because this case could have been brought in the Tyler Division, and transfer to the Tyler Division would promote convenience and is in the interest of justice. In particular, transfer to the Tyler Division would promote judicial economy because it would allow for consolidation of this case with an almost identical case pending there.

In support of this Motion, Cisco attaches the following:

- Plaintiff's First Amended Petition in *John Ward, Jr. v. Cisco Systems, Inc. and Richard Frenkel*, Civil Action No. 2007-2502-A in the District Court for the 188th Judicial District of Gregg County, Texas (the "State Court Case"), a true and correct copy of which is attached as Exhibit A;
- Notice of Non-Suit in the State Court Case, a true and correct copy of which is attached as Exhibit B.
- Plaintiff's Original Petition¹ in *Eric Albritton v. Cisco Systems, Inc. and Richard Frenkel*, Civil Action Number 6:08-cv-89, in the United States District Court for the Eastern District of Texas, Tyler Division (the "Albritton Case"), a true and correct copy of which is attached as Exhibit C.
- Cisco's Original Answer in the Albritton Case, a true and correct copy of which is attached as Exhibit D.

WHEREFORE, PREMISES CONSIDERED, Cisco respectfully requests that its Motion to Dismiss, or in the Alternative, Motion to Transfer be in all things granted; that this cause of action be dismissed for improper venue, or in the alternative, transferred to the Tyler Division of

¹ The Albritton Case was originally filed in state court but has been removed to federal court.

the Eastern District of Texas; and that Cisco be granted such other relief, both at law and in equity, as the Court deems just and proper.

Respectfully submitted,

JACKSON WALKER L.L.P.

By: 

Richard E. Griffin

Arkansas Bar No.: 63020

Email: rgriffin@jw.com

Charles L. Babcock²

Federal Bar No.: 10982

Email: cbabcock@jw.com

Crystal J. Parker³

Federal Bar No.: 621142

Email: cparker@jw.com

1401 McKinney

Suite 1900

Houston, Texas 77010

(713) 752-4200

(713) 752-4221 – Fax

ATTORNEY FOR DEFENDANT
CISCO SYSTEMS, INC.

² Pro Hac Vice pending.

³ Pro Hac Vice pending.

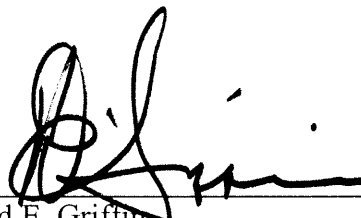
CERTIFICATE OF SERVICE

This is to certify that on this 8th day of April, 2008, a true and correct copy of the foregoing Cisco Systems, Inc.'s Motion to Dismiss for Improper Venue, or in the Alternative, Motion to Transfer Venue was served electronically, upon:

Nicholas H. Patton
Patton, Tidwell & Schroeder, LLP
4605 Texas Boulevard
Texarkana, Texas 75503
Attorney for Plaintiff John Ward, Jr.

Michael D. Barnes
Wright, Lindsey & Jennings LLP
200 West Capitol Avenue
Little Rock, Arkansas 72201
Attorney for Defendant Richard Frenkel

George L. McWilliams
406 Walnut
P.O. Box 58
Texarkana, Texas 75504-0058
Attorney for Defendant Richard Frenkel



Richard E. Griffin