

# Exhibit B

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14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

16  
17 CISCO SYSTEMS, INC., a Delaware  
corporation, and CISCO TECHNOLOGY,  
18 INC., a California corporation,

19 Plaintiffs and Counterclaim  
20 Defendants

21 v.

22 DEXON COMPUTER, INC.,

23 Defendant, Counterclaim  
24 Plaintiff and Third Party  
25 Plaintiff

26 v.

27 ATLANTIX GLOBAL SYSTEMS  
INTERNATIONAL, LLC, BIZCOM  
ELECTRONICS, INC., DIGI DEVICES  
ONLINE, ENTERPRISE BUSINESS  
28 TECHNOLOGIES, INC., FIBER CABLE

CASE NO: 3:20-cv-04926-CRB

**COUNTERCLAIM PLAINTIFF DEXON  
COMPUTER, INC.'S OPPOSITION TO  
COUNTERCLAIM DEFENDANTS CISCO  
SYSTEMS, INC. AND CISCO  
TECHNOLOGY, INC.'S MOTION TO  
DISMISS**

1 CONNECTIONS, MJSI, MULTIMODE  
2 TECHNOLOGIES, LLC, NETWORK  
3 REPUBLIC, OPTIMUM DATA, INC.,  
4 PARAGON, PURE FUTURE  
5 TECHNOLOGY, INC., SEASTAR IT  
6 TRADING LLC, SERVER TECH  
7 SUPPLY, SOFTNETWORKS, INC.,  
8 STRADA NETWORKS, LLC,  
9 TEKSAVERS, UNLIMITED NETWORK  
10 SOLUTIONS, and WISECOM  
11 TECHNOLOGIES,

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Third Party Defendants

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4 *Aerotec Int’l, Inc. v. Honeywell Int’l, Inc.*,

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14 *Brantley v. NBC Universal, Inc.*,

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20 *Cisco Systems, Inc. v. Beccela’s Etc., LLC*,

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22 *Cisco Systems Inc. v. Link US, LLC*,

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24 *City of Anaheim v. S. California Edison Co.*,

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