UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

New Bay Capital, LLC,

Petitioner,

V.

VirnetX, Inc.

Patent Owner.

IPR2013-00375

Patent 6,502,135
Issue Date: Dec. 31, 2002
Title: AGILE NETWORK PROTOCOL FOR SECURE COMMUNICATIONS
WITH ASSURED SYSTEM AVAILABILITY

PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 6,502,135

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
PO Box 1450
Alexandria, Virginia 22313–1450



TABLE OF CONTENTS

I. COMPLIANCE WITH FORMAL REQUIREMENTS	1
A. REAL PARTIES-IN-INTEREST	1
B. STANDING	
C. RELATED MATTERS	1
D. NOTICE OF LEAD AND BACKUP COUNSEL	
E. SERVICE INFORMATION	
F. PROOF OF SERVICE ON THE PATENT OWNER	
G. FEE	
II. STATEMENT OF PRECISE RELIEF REQUESTED	
III. FACTUAL BACKGROUND	
A. The '135 Patent	
B. Original Prosecution History of the '135 Patent	
A. Legal Standards	
B. Proposed Claim Constructions	
V. FULL STATEMENT OF THE REASONS FOR CANCELLATION OF	10
CLAIMS	19
A. Claims 1, 3, 7 and 8 are Unpatentable Over Kiuchi	19
B. Request 1 – Claims 1, 3, and 7 are Anticipated by Kiuchi and Claim 8 is	
Obvious over Kiuchi	
Ground 1. Claim 1 is Anticipated by Kiuchi	28
Ground 2. Claim 3 is Anticipated by Kiuchi	32
Ground 3. Claim 7 is Anticipated by Kiuchi	32
Ground 4. Claim 8 Would Have Been Obvious in view of Kiuchi	34
C. Request 2 – Claims 1, 3, 7 and 8 are Anticipated by Kiuchi	37
Ground 5. Claim 1 is Anticipated by Kiuchi	
Ground 6. Claim 3 is Anticipated by Kiuchi	44
Ground 7. Claim 7 is Anticipated by Kiuchi	44
Ground 8. Claim 8 is Anticipated by Kiuchi	45
D. Request 3 – Claims 1, 3, 7 and 8 are Unpatentable over Dalton in view of	•
Kiuchi	47
Ground 9. Claim 1 Would Have Been Obvious over Dalton/Kiuchi	51
Ground 10. Claim 3 Would Have Been Obvious over Dalton/Kiuchi	56
Ground 11. Claim 7 Would Have Been Obvious over Dalton/Kiuchi	57



Ground 12.	Claim 8 Would H	ave Been Obviou	us over Dalton/K	luchi58
VI. CONCLUSI	ION			59



TABLE OF AUTHORITIES

Cases
AirCraft Medical LTD. v. Verathon Inc., Reexam. Control No. 95/000,161, Appeal
2012-007851, p. 16 (PTAB Dec. 11, 2012)
Data General Corp. v. Johnson, 78 F.3d 1556, 1565 (Fed.Cir.1996)
Garmin Int'l Inc. v. Cuozzo Speed Technologies, Inc., IPR2012-00001, Paper 15
(PTAB, Jan. 9, 2013)
<i>In re Morris</i> , 127 F.3d 1048, 1056 (Fed. Cir. 1997)9
<i>Key Pharmaceuticals v. Hercon Laboratories Corp.</i> , 161 F.3d 709, 715, 48 USPQ2d 1911, 1916 (Fed. Cir. 1998)
KSR Intern. Co. v. Teleflex Inc., 550 U.S. 398, 401; 127 S.Ct. 1727, 173 (2007)37
Multiform Desiccants, Inc. v. Medzam, Ltd., 133 F.3d 1473, 1477 (Fed. Cir.1998) 9
RenishawPLC v. Marposs Societa per Azioni, 158 F.3d 1243, 1249 (Fed. Cir.
1998)
Sakraida v. Ag Pro, Inc., 425 U.S. 273, 282, 96 S.Ct. 1532 (1976)
VirnetX Inc. and Science Applications International Corporation v. Apple Inc., Case No. 6:12cv855 (E.D. Tex.)
VirnetX Inc. v. Apple Inc., Case No. 6:13cv211, (E.D. Tex.)
VirnetX Inc. v. Cisco Systems, et al., Case No. 6:10cv417
VirnetX Inc. v. Cisco Systems, et al., Case No. 6:10cv417 (E.D. Tex.)
VirnetX Inc. v. Cisco Systems, et al., Case No. 6:10cv417, (E.D. Tex.)
VirnetX Inc. v. Mitel Networks Corp., et al., Case No. 6:11cv18, (E.D. Tex.)
VirnetX Inc., et al. v. Microsoft Corporation, Case No. 6:13cv351, (E.D. Tex.)2
VirnetX Inc.v. Microsoft Corporation, Case No. 6:07 CV 80
VirnetX v. Microsoft Corporation, Case No. 6:07 CV 80 (E.D. Tex. 2007)
VirnetX, Inc. v. Microsoft Corporation, Case No. 6:07cv80, (E.D. Tex.)
VirnetX, Inc. v. Microsoft Corporation, Case No. 6:10cv94, (E.D. Tex.)2
York Prods., Inc. v. Central Tractor Farm & Family Ctr., 99 F.3d 1568,1572 (Fed. Cir. 1996)
,
Statutes
35 U.S.C. §102(b)
35 U.S.C. §103(a)
35 U.S.C. §301(a)(2),(d)
35 USC §317(b)
Treatises
18 Susan Bandes & Lawrence B. Solum, Moore's Federal Practice §134-30, at 134-63 (3d ad 1998)



Regulations	
37 C.F.R. §42.100(b)	9
37 C.F.R. §42.15(a)	5



DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

