

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Apple Inc.  
Petitioner,

v.

VirnetX, Inc. and Science Application International Corporation,  
Patent Owner

Patent No. 6,502,135

Issued: Dec. 31, 2002

Filed: Feb. 15, 2000

Inventors: Edmund C. Munger, *et al*

Title: Agile Network Protocol For Secure Communications With Assured System  
Availability

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*Inter Partes* Review No. 2013-00348

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**PETITION FOR INTER PARTES REVIEW**

**VIRNETX EXHIBIT 2009**  
**New Bay Capital v. Virnetx**

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**Attachment A. Proof of Service of the Petition**

**Attachment B. List of Evidence and Exhibits Relied Upon in Petition**

**I. COMPLIANCE WITH REQUIREMENTS FOR A PETITION FOR INTER PARTES REVIEW**

**A. Certification the '135 Patent May Be Contested by Petitioner**

Petitioner certifies it is not barred or estopped from requesting *inter partes* review of U.S. Patent No. 6,502,135 (the '135 patent) (Ex. 1001). Neither Petitioner, nor any party in privity with Petitioner, has filed a civil action challenging the validity of any claim of the '135 patent. The '135 patent has not been the subject of a prior *inter partes* review by Petitioner or a privy of Petitioner.

Petitioner also certifies this petition for *inter partes* review is filed within one year of the date of service of a complaint alleging infringement of a patent. Petitioner was served with a complaint alleging infringement of the '135 patent on **December 31, 2012**, which led to Civil Action No. 6:12-cv-00855-LED in the Eastern District of Texas. Ex. 1050. Because the date of this petition is less than one year from December 31, 2012, this petition complies with 35 U.S.C. § 315(b).

Petitioner notes it was previously served with a complaint asserting infringement of the '135 patent in August of 2010, which led to Civil Action No: 6:10-cv-417. During that action, the District Court established an additional civil action, Civil Action No. 6:13-cv-00211-LED, on February 26, 2013 (also pending in the Eastern District of Texas). The August 2010 complaint does not foreclose the present petition, as Patent Owner served a **new complaint** on Petitioner asserting infringement of the '135 patent in **December of 2012**.

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