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Transcript of **TELEPHONIC CONFERENCE CALL HELD
BEFORE JUDGES EASTHOM, SIU, TIERNEY**

Date: January 16, 2014

Case: RPX CORPORATION v. VIRNEXT, INC. AND SCIENCE
APPLICATION INTERNATIONAL CORPORATION

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RPX Corporation Exhibit 1077
RPX Corporation v. VirnetX, Inc. et al.
Case IPR2014-00171

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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RPX CORPORATION,	:	
	:	Case IPR
Petitioner,	:	2014-00171
v.	:	Patent
VIRNETX, INC. AND SCIENCE APPLICATION	:	6,502,135
INTERNATIONAL CORPORATION,	:	
Patent Owner	:	

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CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

Telephonic Conference Call

Held Before Judges Easthom, Siu, Tierney

Thursday, January 16, 2014

4:00 p.m.

Job No.: 51086

Pages: 1 - 42

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A P P E A R A N C E S C O N T I N U E D

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 J O S E P H A . M I C A L L E F , E S Q U I R E

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E X H I B I T S

(None.)

1 P R O C E E D I N G S

2 JUDGE TIERNEY: Due to the issues that were
3 raised previously, I'm going to begin the call by
4 asking is everyone on the line at this point in time
5 subject to the protective order. If not, please speak
6 up.

7 I note no one objected to or pointed out
8 that they were not subject to the protective order.
9 Accordingly, everyone on the line today is subject to
10 the boards default protective order. If there's any
11 questions about that please speak up now or we'll
12 begin. Hearing no objection, we'll begin today.

13 VirnetX, I believe we left off with some
14 questions and concerns possibly about a discovery that
15 was occurring in district court, and we wanted to have
16 a few more details, so I'd like you to begin today by
17 giving us a little background on the district court
18 action and just a brief overview of the nature and
19 scope of the discovery to date in those cases as it may
20 pertain to this proceeding today.

21 MR. PALYS: Sure, Your Honor. Yeah, as we
22 left off the board asked us to look into what discovery

1 was being sought in the district court litigation.
2 We've had time to do that and we've obtained copies of
3 the discovery request, and I'll be happy to discuss
4 them with you and get into any details that you want
5 to.

6 I'd just like to raise a couple of points
7 before I do that because I think they're relevant to
8 this type of discovery. The first point, Your Honor,
9 is that discovery that's sought in that district court
10 from RPX is for purposes of that litigation. Now, as
11 you'll know --

12 MR. HOWISON: This is Greg Howison.

13 JUDGE TIERNEY: Thank you for joining, and
14 just confirming you're subject to the protective order?

15 MR. HOWISON: Yes, subject to the protective
16 order, yes.

17 JUDGE TIERNEY: Thank you. Mr. Palys,
18 please continue.

19 MR. PALYS: Thank you, sir. Now, you're
20 going to see there is some overlap with the type of
21 information that's sought in the district court and
22 with the real party of interest issues that we're

1 discussing in these proceedings, but that overlap in
2 the discovery itself is for purposes of that
3 litigation.

4 The second point, Your Honor, is that
5 currently RPX in that district court proceeding is
6 refusing to provide any discovery in that litigation
7 and, in fact, RPX had objected to that discovery before
8 Mr. Ashe even raised this issue on the call last week.

9 JUDGE TIERNEY: Mr. Palys, could you please
10 clarify for us? You say that litigation. Give us a
11 little background on what you're referring to as that
12 litigation.

13 MR. PALYS: Sure. I'm sorry, sir. So
14 there's litigation between VirnetX and Apple. I'm
15 looking up the captions right now, sir. There's a
16 matter, Civil Action Number 611CD-563, and that's
17 pending in the Eastern District of Texas, Tyler
18 Division, and that's against Apple, Incorporated.

19 And then there's another litigation in the
20 same district, Your Honor, against Microsoft
21 Corporation, and that's 613CD-351. There's actually
22 another Civil Action Number for the Apple one I forgot

1 to mention, Your Honor. I think they're the same
2 action, just different action numbers. That's
3 612CD-855, and in these -- that's what I was referring
4 to with those litigations.

5 JUDGE TIERNEY: Thank you.

6 MR. PALYS: Sure. So back to that second
7 point --

8 MR. ASHE: Your Honor, just since we're
9 discussing this litigation, we should note that RPX is
10 not a party to any of the suits that were described.

11 JUDGE TIERNEY: That's right. That was
12 clear from the caption at this point. Let's let Mr.
13 Palys have the floor and go over the details and then
14 you will have an opportunity to chime in, but let's
15 finish up with Mr. Palys.

16 MR. PALYS: Thank you, sir. Continuing on
17 with what I was saying, basically the point here is
18 that to the extent RPX may be forced to give that
19 discovery in those litigations, I should say, because
20 there's two of them, we don't know when and if that may
21 be.

22 And lastly, really, Your Honor, is that even

1 if RPX is forced by court order or otherwise to give
2 the discovery that's being sought in there it's covered
3 by a protective order, and we raised this I believe
4 last week if that's so.

5 Even if the discovery is available in the
6 litigation for purposes of that litigation we can't use
7 it here in these proceedings, and I believe there is
8 some -- at least some -- at least one board decision
9 where the board has basically left issues of the
10 protective order at the district court level to the
11 district court.

12 So basically given the speed of these
13 proceedings, we believe the proper mechanism here is to
14 address the real party of interest issues in these
15 proceedings through the additional discovery mechanisms
16 provided under the rules in Garmin, and so I just
17 wanted to make sure the board is aware of those issues
18 here. I'm happy to go into the discovery that's being
19 sought and any details that the board may want to.

20 JUDGE TIERNEY: Well, we're talking in
21 general discovery sought. It has been mentioned at
22 least from the caption it would appear RPX is not a

1 party. Please explain, first of all, why the discovery
2 would be sought against a nonparty here or a third
3 party, and what is the scope of the discovery that is
4 being sought. You mentioned there was a overlap.
5 Could you give a few more details?

6 MR. PALYS: Sure. So the categories of
7 information sought in the RPX subpoenas, Your Honor,
8 relates to -- the RPX's corporate structure,
9 organization, what it does, its interests,
10 relationship, communications with various companies
11 including Apple, Microsoft, Cisco, New Bay, et cetera,
12 and that's the majority of the type of information
13 sought by the -- the discovery request in topics.

14 There's also another category that relates
15 to VirnetX's patents and the various IPR petitions,
16 real party in interest, and prior art related to
17 VirnetX's patents.

18 JUDGE TIERNEY: Okay. So they were seeking
19 discovery in the district court specific to the IPRs?

20 MR. PALYS: That's right.

21 JUDGE TIERNEY: Okay. And how does that
22 pertain to the district court litigation?

1 MR. PALYS: Well, as I understand it there's
2 several issues, I believe, and again I just want to
3 make sure the record is clear that we don't represent
4 VirnetX in the litigation, but for terms of --

5 JUDGE TIERNEY: Let me stop there. Do you
6 represent VirnetX today?

7 MR. PALYS: Yes, Your Honor.

8 JUDGE TIERNEY: Okay. So you're
9 representing VirnetX in general, so I just want to keep
10 it clear that when you're speaking you're speaking for
11 VirnetX today?

12 MR. PALYS: Yes, Your Honor.

13 JUDGE TIERNEY: Okay. Thank you.

14 MR. PALYS: Yes, Your Honor. So my point
15 was -- is that there are issues relating to the
16 litigation why that discovery be sought. One example
17 would be estoppel issues under Section 315.

18 There could be entities that may be in
19 privity with RPX, and if -- for example, if these IPR
20 proceedings proceed and there's an estoppel that
21 applies, the issue of who's in privity with that
22 estoppel may apply in terms of a litigation issue.

1 because there's a time frame, as you know, to seek the
2 discovery.

3 And the estoppel issues that may occur will
4 eventually -- may occur after the -- if an estoppel
5 issue raises, and of course there's also broader
6 discovery in district court under at least the federal
7 rules that apply there, too.

8 JUDGE TIERNEY: I would like to know for
9 purposes of today if VirnetX obtained information it
10 thought was pertinent to this case through their
11 discovery in the district court litigation would you
12 then try and bring that to our attention?

13 MR. PALYS: If it was relevant to this case,
14 absolutely, Your Honor, but the issue here is that --
15 as I kind of pointed out in the beginning is that it's
16 not available.

17 We can't use it under the protective order
18 right now, so basically again RPX is refusing to
19 provide any discovery, but if they are for some reason,
20 if they're compelled to produce this discovery and
21 there's some overlap of information that's relevant to
22 the narrow issues that we're discussing for these

1 proceedings, well, certainly we would raise that to the
2 board's attention.

3 I mean, the point here is, Your Honor, we're
4 -- we think that the mechanisms for the proceedings
5 here are proper through additional -- the additional
6 discovery mechanisms and the rules allowing such
7 discovery for these IPR proceedings. There's -- the
8 fact that there's discovery ongoing in a litigation,
9 again it is focused toward those issues in a
10 litigation.

11 JUDGE TIERNEY: Forgetting the focus to the
12 litigation issues, but their focus right now is on the
13 second category to the IPR issues apparently.

14 MR. MODI: Your Honor, I can try to maybe
15 address that question. I'll try. So I think that the
16 issue is similar as to what Mr. Palys was saying.
17 Obviously the reason the IPR issues are -- were raised
18 in those subpoenas to RPX in the district court, our
19 understanding is again for issues raised in the
20 district court yet, you know, we don't deny having
21 looked at the discovery.

22 There is overlap in the type of discovery we

1 will be seeking from the board. You know, that's --
2 obviously was the purpose of the last three calls, not
3 including this one, but that discovery always was
4 intended for use in the district court, and one issue
5 we have is RPX, if and when it gives VirnetX any
6 information in those litigations, we may not even know
7 what the information is because it's presumably going
8 to be marked under the protective order in those cases.

9 So we may not be -- even though VirnetX may
10 have that information, Your Honor, or VirnetX's counsel
11 might have it, as counsel for VirnetX in these IPR
12 proceedings we may never see that information, so
13 that's the issue we're having.

14 But we can assure you that the discovery
15 that we're seeking is for purposes of the district
16 court, and as you're well aware to the extent that
17 discovery is improper for the district court obviously
18 RPX has already objected and that's an issue for the
19 district court to decide, and presumably it will decide
20 that issue at some point.

21 As we stand today, RPX has objected to every
22 single request in the district court, and it has

1 clearly told VirnetX it does not intend to provide any
2 documents or testimony, so I feel the issue may be moot
3 at this point. Again, we're happy to seek the board's
4 guidance on this issue. If RPX on this call today
5 tells us they are willing to give information in the
6 district court we are more than happy to withdraw the
7 request here, Your Honor.

8 We are trying to figure out how do we get
9 this information in front of Your Honor in these IPR
10 proceedings, because again given the speed of the
11 proceedings we may be in a situation where let's say
12 RPX is compelled to produce that discovery by the
13 district court in the district court litigation. It
14 may be too late. These proceedings may be well
15 underway.

16 And we obviously would like to bring these
17 issues up to the board now through the mechanisms
18 provided by Garmin, through the AIA, and as you're well
19 aware the trial practice guide actually does say one of
20 the issues that should be raised early in the cases is
21 the real party in interest, and that's precisely what
22 we've done here, so we would of course seek Your

1 Honor's guidance where we go from here, but that's our
2 position.

3 JUDGE TIERNEY: Anything else before I turn
4 it over to Apple -- I'll turn it over next to RPX, but
5 is there anything further from VirnetX?

6 MR. PALYS: No, Your Honor.

7 JUDGE TIERNEY: Okay. RPX, if you'd like to
8 address some of the issues that were raised you may do
9 so now.

10 MR. ASHE: Okay. Thank you, Your Honor.
11 First with regard to the characterization of the
12 subpoenas that were served on RPX, I disagree with the
13 characterization that they're anything other than
14 directed to these proceedings.

15 And the discovery that they're seeking in
16 the district court is essentially the same as what
17 they're driving for here, and that is the underlying
18 facts for the real party in interest, and I think that
19 Your Honor has touched on the appropriate issue with
20 respect to the district court, and that's one of
21 ripeness.

22 The issue regarding estoppel at a minimum is

1 JUDGE TIERNEY: Not at this time. I'll turn
2 it over to Judge Siu, Judge Easthom. Any questions you
3 have before we go to Apple?

4 JUDGE EASTHOM: No, I don't have any
5 questions.

6 JUDGE SIU: No questions.

7 JUDGE TIERNEY: Okay. At this time we'll
8 get give the floor to Apple to see if there are any
9 comments Apple would like to provide on this issue.

10 MR. KUSHAN: Thank you, Your Honor. Well,
11 first and foremost, we just want to reiterate our
12 concern that all the things we're going through with
13 the briefing or possible briefing in this issue not
14 become a reason to delay any of the proceedings.
15 That's been our overarching concern with engagement of
16 this issue.

17 I think we look at this issue with kind of a
18 jaded eye because there's an issue of futility. We
19 assume that even if you were to authorize discovery
20 you're going to end up with where you are today with
21 your knowledge of what you know, and what we believe is
22 from what you already know there's no basis for

1 privity.

2 We would welcome, you know, if the board
3 deems it appropriate a briefing of the issue to make
4 sure that there's a clear record as to why you would or
5 would not grant any discovery, but we look at this with
6 primarily a concern, it being another diversionary
7 tactic that might be used to delay the proceedings.

8 And one question I do have is logistical,
9 and that is the issues that relate to the privity
10 question I think pertain to the RPX petitions. I don't
11 think there's been any question that Apple's petitions
12 against the 697 patent are timely filed, and there is
13 no privity issue, and so if you were to authorize
14 briefing we just want to make sure we understand how we
15 would participate in that briefing.

16 And just as a housekeeping matter, we are
17 wondering how to get copies of confidential deposition
18 transcripts that are not being filed in our petitions,
19 so those are the issues I wanted to raise.

20 JUDGE TIERNEY: Is there anything else from
21 -- I'll go back to VirnetX before we take a few moments
22 by the panel and discuss the matter. Anything from

1 VirnetX you need to reply to before we take a brief
2 recess?

3 MR. PALYS: No, Your Honor. Unless you have
4 any questions for us we're open.

5 JUDGE TIERNEY: I have no questions at this
6 time. I note it's about 4:19. I'd like to confer with
7 my colleagues for a couple of minutes. We'll be back
8 on the line in approximately three or four minutes.
9 Please have your phones stay on the line while we
10 discuss the matter. Thank you.

11 (There was a brief recess in the
12 proceedings.)

13 JUDGE TIERNEY: The panel has conferred.
14 Judge Siu, are you back on line?

15 JUDGE SIU: Yes, I'm back on line.

16 JUDGE TIERNEY: Judge Easthom, are you back
17 on line?

18 JUDGE EASTHOM: Yes, I am.

19 JUDGE TIERNEY: Thank you. Just to confirm
20 the parties are back on the line, do we have a
21 representative from VirnetX?

22 MR. PALYS: Yes, Your Honor.

1 JUDGE TIERNEY: RPX?

2 MR. ASHE: Yes, Oliver Ashe.

3 MR. KUSHAN: And Jeff Kushan.

4 JUDGE TIERNEY: Good. The panel has
5 conferred and come to the following decision. At this
6 time we will authorize briefing, but a very limited
7 briefing on the issue, whether or not additional
8 discovery shall be granted. A briefing will be limited
9 to five pages given that we've already had extensive
10 discussions.

11 We've had three phone calls already going
12 into these issues. The question then becomes of
13 timing. I believe at the last call we were going to
14 have approximately a week given for filing a motion on
15 discovery, for additional discovery. I would like to
16 start with VirnetX whether or not that one week is
17 still appropriate.

18 MR. PALYS: Yes, Your Honor. Of course
19 we'll entertain anything, earlier dates if the board
20 would like to discuss that.

21 JUDGE TIERNEY: I leave it up to you. You
22 would be the ones filing the motion. If you'd like it

1 sooner, that would be fine with us. If you need a
2 week, that's fine. If you need longer, let's discuss.

3 MR. MODI: Your Honor, I think a week would
4 be fine. I did want to get clarification on the page
5 limitations, Your Honor. I assume you're saying one
6 motion for all -- both the IPRs?

7 JUDGE TIERNEY: Yes, I am.

8 MR. MODI: Okay. Your Honor, of course
9 we'll do our best to meet the limitation, but it may be
10 nice to just have a couple of extra pages, but of
11 course we'll go with the board's discretion on the
12 pages.

13 JUDGE TIERNEY: Please advise me why, after
14 the three calls, we would need more than five pages.
15 If you do need it, let me know now.

16 MR. MODI: Your Honor, obviously we haven't,
17 you know, written the motion, and if I may just given
18 we have to go through and, you know, make our case I
19 was just thinking that five pages may be just -- you
20 know, we were thinking more like seven. It wasn't
21 going to be a lot. We were just thinking a couple of
22 extra pages might be helpful, Your Honor.

1 JUDGE TIERNEY: I'll exercise discretion
2 today. I will give the seven pages absent an objection
3 from my colleagues. I do not hear an objection from my
4 colleagues. I will go ahead and we will as a panel
5 then give seven pages. Again, we want this kept
6 focused given the amount of discussion we've already
7 had on these issues.

8 I think the question then becomes for
9 purposes of putting in oppositions, we do have two
10 separate parties that are challenging the VirnetX
11 patents. There are two different cases, and
12 particularly there's the Apple cases and there's also
13 the RPX cases. How do we handle those as a procedural
14 matter? Should we have Apple respond and oppose?

15 Let's back up. Is VirnetX seeking the
16 additional discovery in the Apple cases, or is it
17 solely in the RPX cases you'll be seeking additional
18 discovery?

19 MR. PALYS: Well, Your Honor, I'm glad you
20 asked that question because I did have a question for
21 the board on this. To answer your question, we're
22 seeking discovery in the RPX matters, but because Apple

1 is involved with these RPI issues we're actually going
2 to ask the board's guidance on this.

3 We understand that your order -- correct me
4 if I'm wrong, sir -- relates to seeking additional
5 discovery from RPX, but we were wondering what the
6 procedures or what guidance the board can give us for
7 seeking discovery from Apple on these issues, and it
8 probably -- I think we should be in the RPX matter, so
9 I think that might be under 4252. I'm not quite sure.
10 I just wanted to seek the board's guidance on this.

11 JUDGE TIERNEY: Well, this is an interesting
12 case because there are different patents involved,
13 separate families. However, if you are -- and I wasn't
14 clear. If you are seeking information from Apple would
15 it be appropriate then to just have the same motion
16 filed in both sets of cases but being clear as to who
17 you're seeking which information from?

18 If you're seeking particular information
19 from RPX you can identify it as RPX only information.
20 If it's from Apple it's Apple only. But it would be --
21 the same discovery motion could be filed in each of the
22 sets of cases. Is that appropriate?

1 MR. PALYS: Well, the question I have, or I
2 guess the comment, Your Honor, is that the Apple
3 matters that I think Mr. Kushan raises, they're
4 different patents --

5 JUDGE TIERNEY: Yes, they are.

6 MR. PALYS: -- that are raised, so that's
7 why we're seeking narrow discovery regarding the
8 patents related to the RPX matters. I'm not sure if it
9 would be appropriate to seek discovery in those Apple
10 matters. Of course we'll be happy to entertain however
11 the board would like to proceed, but we were thinking
12 more of maybe it has to go procedurally in the RPX
13 matters, but of course we'll follow the board's
14 guidance.

15 MR. KUSHAN: Well, Your Honor, I guess the
16 question I'm still wondering, is VirnetX seeking
17 discovery of Apple or are they seeking discovery only
18 of RPX, because that will influence I think our views
19 on the level of our participation.

20 JUDGE TIERNEY: Understood. Again, it's not
21 entirely clear to me. That's why I'm trying to sort it
22 out as to who the discovery is actually being sought

1 from. VirnetX, will you be seeking documents,
2 information from Apple through the additional discovery
3 motions?

4 MR. PALYS: Yes, Your Honor, that's the
5 intention. We are just seeking guidance on how to do
6 that, so we will be seeking from RPX and Apple.

7 JUDGE TIERNEY: So it would be Apple, but it
8 would not be pertaining to the 850 or 697 patent?

9 MR. PALYS: That's correct, Your Honor. It
10 would be related to the RPX matters.

11 JUDGE TIERNEY: And with regard to the RPX
12 it would be third party essentially request?

13 MR. PALYS: Exactly. That's what I was
14 seeking guidance on. If we seek discovery from the
15 Apple in the RPX matters I think it's third party
16 discovery. That's what I was seeking guidance on, Your
17 Honor.

18 MR. ASHE: I'm just wondering are there
19 still requests for reconsideration pending with respect
20 to these -- the patents that are involved in the RPX
21 versus VirnetX? Are there -- is that case still alive
22 with regard to the Apple versus VirnetX on the same

1 patents, and does that play into the equation of third
2 party versus not third party?

3 JUDGE TIERNEY: Who is that question
4 directed to, Mr. Ashe?

5 MR. ASHE: I was just throwing it out for --
6 I did not direct it to anyone.

7 (Laughter.)

8 MR. KUSHAN: Obviously we would say yes, I
9 think we would, but it's up to the panel I guess to
10 decide where the cases sit at this point with the
11 rehearing motion.

12 MR. PALYS: I tell you what, I know it's a
13 question. I'll just do the opposite of Mr. Kushan.

14 (Laughter.)

15 MR. PALYS: Sorry, Your Honor.

16 JUDGE TIERNEY: Not a problem. So there are
17 rules basically saying that if you wish to seek
18 information via subpoena you can come to us. As long
19 as you're seeking information you must come to us
20 before you seek a subpoena, so there is contemplation
21 of getting information via third party.

22 It's unusual because the third party is

1 actually present and it's in the same family of cases,
2 so it's a little more unusual situation. What I'd like
3 to do in this situation, and I'd like to discuss it
4 with the parties, is the motion would then be filed at
5 -- what I'm saying is because it's directed to the
6 information regarding that RPX challenge patents the
7 motion should go in the RPX cases.

8 However, as far as an opposition RPX clearly
9 would be able to oppose, and I want to understand -- I
10 would also be wanting to authorize, because the third
11 parties actually could be impacted and its present, I
12 want to know are there any objections to having Apple
13 file a opposition in the RPX cases. I'm going to start
14 off with VirnetX. Do you see any objections that I
15 need to be aware of?

16 MR. PALYS: No objections on the substance,
17 Your Honor. I think obviously that's fair to give
18 Apple an opportunity to respond. Just procedurally I
19 guess what I would ask is that if they're going to file
20 an opposition would that be a combined joint opposition
21 so that way VirnetX is not getting I guess arguments
22 from -- like double the amount of arguments against

1 VirnetX.

2 JUDGE TIERNEY: At this point it hasn't been
3 established that they're actually in -- that they're
4 one and the same, so I'd rather not require them to be
5 combined. They may have different interests in
6 responding at this time, so my understanding would be
7 that Apple would file their opposition and RPX would
8 file a separate opposition, but they would be filed in
9 the RPX cases.

10 I'll start again going back to VirnetX. Do
11 you have -- I'm not hearing an objection. Do you have
12 one at this point that I need to be aware of?

13 MR. PALYS: No, Your Honor.

14 JUDGE TIERNEY: Okay. And this is just
15 procedurally. RPX, do you have any procedural
16 objections to having Apple file their oppositions in
17 your IPRs?

18 MR. ASHE: No, Your Honor.

19 JUDGE TIERNEY: Apple, do you have any
20 problems that I need to be aware of on a procedural
21 level?

22 MR. KUSHAN: I have one procedural

1 clarification we need. We are not able to see any
2 confidential information that has been filed in the RPX
3 petitions and, for example, there's now going to be two
4 transcripts that are under seal.

5 And I would ask, you know, if it's possible
6 for us to, you know, unseal the transcripts giving the
7 parties with interests impacted by doing that an
8 opportunity to perhaps redact the transcript so that we
9 can share the information with our client for one
10 reason, and also to use it in connection with filing an
11 opposition.

12 And I'm raising it now simply because it is
13 a procedural question as I heard -- you know, as I've
14 gone through this from memory the issues that have been
15 discussed I'm not clear what information merits
16 confidentiality, and obviously I'm not going to presume
17 to know what each party's oppositions are, but if
18 there's a possibility of creating a redacted public
19 versions of these transcripts it would be helpful so
20 that we could interact with our client and file our
21 oppositions.

22 JUDGE TIERNEY: I'm amenable to a redacted

1 transcript. Having thought about it I'm not certain
2 that we would even need that many redactions, but I do
3 leave it to RPX and VirnetX as to that point. Would
4 there be a problem going through and filing a redacted
5 version of the transcript from the prior calls?

6 MR. MODI: Your Honor, there wouldn't be a
7 problem. In fact, we would prefer that. We were
8 actually going to raise that issue with the board.

9 JUDGE TIERNEY: Again, we understood that
10 they may need to be sealed because we didn't know where
11 the conversations would go. Looking back, I'm not sure
12 that we have information that would be necessarily
13 needed to be sealed, but again, I would leave that to
14 the parties discretion. Maybe they'll catch something
15 I would not be aware of.

16 Mr. Ashe or RPX, do you have any objection
17 to filing at a minimum a redacted version or making the
18 transcript in an unsealed version?

19 MR. ASHE: Probably no objection to a
20 redacted form. It was -- RPX had requested that it be
21 at least the last -- the second -- the transcript for
22 the second call be put under seal because there were

1 issues of confidentiality, et cetera, so I think a
2 redacted form probably would not be a problem.

3 I would have to check with my client before
4 agreeing that, you know, the transcripts could be made
5 available just generally to the public, and I'm not
6 saying that they would object to that, but if -- it's
7 something I would require clearance from them before.

8 JUDGE TIERNEY: Understood. Again, we have
9 not acted on any motions to sealing these. Filing a
10 redacted transcript would be very beneficial.

11 Obviously there is a public interest in getting
12 information out to the public where you have a case.

13 So there's a preference to trying to file
14 redacted information rather than just carte blanche
15 sealing an entire document. If you can find those
16 portions which you believe to be confidential and
17 redact those only and file a redacted copy I would
18 appreciate it.

19 MR. ASHE: Okay. If I could just check with
20 my client. Maybe the easier thing to do is just check
21 with them first, and they may just agree to make the
22 transcript publicly available and then we don't have to

1 go through the redaction process and all of that.

2 JUDGE TIERNEY: That would help moot the
3 issue.

4 MR. ASHE: Yeah, exactly, so, you know, I
5 think that's something that I can probably accomplish
6 this afternoon or tomorrow morning, and how you want me
7 to convey that, you know, whatever you want I can do.

8 MR. KUSHAN: Maybe in the interests of
9 efficiency maybe the panel could just simply authorize
10 a filing either of the transcript or a redacted copy by
11 RPX, and then it should just come in whichever form is
12 appropriate.

13 MR. ASHE: I think that makes sense.

14 JUDGE TIERNEY: RPX is authorized to file
15 either the redacted or unredacted version. If we could
16 have it by Monday so that Apple may take the necessary
17 steps based on the information contained in the
18 transcript.

19 MR. ASHE: Okay. That sounds reasonable to
20 RPX.

21 JUDGE TIERNEY: Is there anything else we
22 need to discuss other than the transcripts going to

1 Apple since Apple raised the issue?

2 MR. KUSHAN: No, Your Honor, that takes care
3 of the question that I had raised.

4 JUDGE TIERNEY: So going back to what my
5 understanding is, I just want to confirm with the
6 parties to see if there's something more we need to
7 discuss.

8 My understanding is what we're authorizing
9 today was that VirnetX would file a motion for
10 additional discovery. The motion for additional
11 discovery won't be directed to RPX's petitions, the
12 patents involved there, but it will be seeking
13 information not only of RPX but also of Apple.

14 Accordingly, the board has taken it, in
15 light of the specific request authorized an opposition
16 be filed in the RPX petitions by not just RPX but also
17 an opposition would be filed by Apple, the third party
18 for those cases. The motions as well as the
19 oppositions would be limited to seven pages each.

20 RPX and Apple would not need to file a joint
21 motion given that it's not been shown at this time that
22 they are one in the same real party in interest or

1 privies. Is there anything else we need to cover?

2 MR. MODI: Your Honor, I just -- I have two
3 points that I wanted to make just so the record is
4 clear. With respect to the transcripts from the first
5 -- or the transcript I should say from the first call,
6 Your Honor, if you recall in that call we did discuss
7 the Apple IPRs -- the two Apple IPRs also, so when we
8 actually filed our transcript we filed it in all cases,
9 the two Apple IPRs and in the seven RPX IPRs under
10 seal, so I just wanted to make sure the record
11 reflected that and there was no misunderstanding on
12 anyone's part. That's one point.

13 The second point I want to make, Your Honor,
14 is with respect to the motion that VirnetX will be
15 filing, as you can appreciate it may actually discuss
16 the addendum that RPX said is confidential, which, you
17 know, they've said they're going to be filing a
18 redacted version or an unsealed addendum.

19 To the extent it remains confidential we
20 just seek permission now to file that motion under
21 seal. We would be happy to file a redacted version of
22 that motion as well. If you could just give us a

1 couple of days extra to file a redacted version we
2 would appreciate that, so those are the two points I
3 wanted to make.

4 JUDGE TIERNEY: Apologies. You faded out on
5 my end, Mr. Modi. You're asking to file -- you said
6 you want to put the motion under seal in case if you
7 should choose to be referring to confidential
8 information that's under the new protective order. You
9 also mentioned doing a redacted version, but I couldn't
10 hear on the phone here. Were you seeking additional
11 time to file a redacted version?

12 MR. MODI: Yes, Your Honor, if we could just
13 have a day or two to prepare the redacted version just
14 to make sure. You know, we are obviously being
15 sensitive to RPX and their confidential information.
16 If we could just get a day or two to file a redacted
17 version obviously we'll get the under seal version on
18 file within a week.

19 JUDGE TIERNEY: All right. Here's what I'm
20 looking at. The sealed version would come in on the
21 23rd. An opposition also under seal would come in a
22 week later is what I'm currently thinking unless I have

1 an objection. The unredacted version will contain no
2 more information, should we put it that way.

3 It'll be the same information but having
4 redactions. I have no problem having that come in on
5 the 27th, and then giving also a couple of extra days
6 the redacted opposition would come in on the 3rd. Do I
7 have any objections to that time line starting with
8 Apple?

9 MR. KUSHAN: A minor issue --

10 (Laughter.)

11 MR. KUSHAN: I'm so sorry. It's just
12 because in order for us to communicate with our client
13 we have to go with the redacted versions of these
14 documents, and so if there's a way of just having us
15 file with -- maybe a week from the 27th. I don't want
16 more time.

17 JUDGE TIERNEY: Why don't --

18 MR. KUSHAN: I just want a week from the
19 redacted version.

20 JUDGE TIERNEY: All right. So let's just
21 make this simple. All papers, redacted, unredacted,
22 filed the 27th by the motion, and then redacted,

1 unredacted oppositions come in on the 3rd. This is
2 just for one -- you know, one day, file both. Any
3 objections to that starting with VirnetX?

4 MR. PALYS: No, Your Honor.

5 JUDGE TIERNEY: Apple?

6 MR. KUSHAN: We're good. Thank you.

7 JUDGE TIERNEY: RPX?

8 MR. ASHE: No, Your Honor.

9 JUDGE TIERNEY: Okay. We now have a little
10 simpler -- I'm looking at January 27th, the motion --
11 or I'm sorry, February 3rd, the opposition. They will
12 be seven pages each. Is there anything else we need to
13 discuss today before we adjourn? I'm going to start
14 with VirnetX since you began the call. Would you like
15 to have a word before we adjourn?

16 MR. PALYS: No, Your Honor.

17 JUDGE TIERNEY: Apple?

18 MR. KUSHAN: No, Your Honor.

19 JUDGE TIERNEY: And we're going to leave
20 last but not least, RPX.

21 MR. ASHE: No, Your Honor. Thank you.

22 JUDGE TIERNEY: All right. Thank you,

1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC
2 I, Bonnie K. Panek, a Notary Public in and
3 for The State of Texas, the officer before whom the
4 foregoing proceedings were taken, do hereby certify
5 that the foregoing transcript is a true and correct
6 record of the proceedings; that said proceedings were
7 taken by me stenographically and thereafter reduced to
8 typewriting under my supervision; and that I am neither
9 counsel for, related to, nor employed by any of the
10 parties to this case and have no interest, financial or
11 otherwise, in its outcome.

12 IN WITNESS WHEREOF, I have hereunto set my
13 hand and affixed my notarial seal this 17th day of
14 January, 2014.

15 My commission expires: January 22, 2017

16

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18

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Bonnie K. Panek

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<p style="text-align: center;">A</p> <p>able 30:9 32:1</p> <p>absent 25:2</p> <p>absolutely 14:14</p> <p>access 19:4</p> <p>accomplish 35:5</p> <p>acted 34:9</p> <p>action 6:18 8:16,22 9:2 9:2</p> <p>actual 13:7</p> <p>addendum 37:16,18</p> <p>additional 10:15 15:5,5 23:7 23:15 25:16,17 26:4 28:2 36:10 36:10 38:10</p> <p>address 10:14 13:15 15:15 18:8 19:22</p> <p>adjourn 40:13,15</p> <p>adjourned 41:4</p> <p>advise 24:13</p> <p>affixed 42:13</p> <p>afternoon 35:6</p> <p>agree 34:21</p> <p>agreeing 34:4</p> <p>ahead 25:4</p> <p>AIA 17:18</p>	<p>alive 28:21</p> <p>allowing 15:6</p> <p>amenable 32:22</p> <p>amount 19:13 25:6 30:22</p> <p>answer 25:21</p> <p>anyone's 37:12</p> <p>Apologies 38:4</p> <p>apparently 15:13</p> <p>APPEAL 1:2</p> <p>appear 10:22</p> <p>Apple 4:2 8:14,18,22 11:11 18:4 20:3 20:8,9 25:12,14 25:16,22 26:7 26:14,20,20 27:2,9,17 28:2,6 28:7,15,22 30:12,18 31:7 31:16,19 35:16 36:1,1,13,17,20 37:7,7,9 39:8 40:5,17</p> <p>Apple's 21:11</p> <p>APPLICATION 1:7</p> <p>applies 12:21</p> <p>apply 12:22 13:5 14:7</p> <p>appreciate 34:18 37:15 38:2</p> <p>appropriate 18:19 21:3 23:17 26:15,22 27:9 35:12</p>	<p>approximately 22:8 23:14</p> <p>arguments 30:21,22</p> <p>ARNOTT 2:10</p> <p>art 11:16</p> <p>Ashe 2:3,4 5:5,12,14 8:8 9:8 18:10 23:2,2 28:18 29:4,5 31:18 33:16,19 34:19 35:4,13,19 40:8 40:21 41:7</p> <p>asked 6:22 25:20</p> <p>asking 6:4 38:5</p> <p>assume 20:19 24:5</p> <p>assure 16:14</p> <p>attention 14:12 15:2</p> <p>AUSTIN 4:5</p> <p>authorize 20:19 21:13 23:6 30:10 35:9</p> <p>authorized 35:14 36:15</p> <p>authorizing 36:8</p> <p>available 10:5 14:16 34:5 34:22</p> <p>Avenue 3:14</p> <p>aware 10:17 16:16 17:19 30:15 31:12,20 33:15 41:3</p> <p style="text-align: center;">B</p>	<p>5:16</p> <p>back 9:6 21:21 22:7,14 22:15,16,20 25:15 31:10 33:11 36:4</p> <p>background 6:17 8:11</p> <p>barred 19:11</p> <p>based 35:17</p> <p>basically 9:17 10:9,12 14:18 19:10 29:17</p> <p>basis 13:18 20:22</p> <p>Bay 11:11</p> <p>began 40:14</p> <p>beginning 14:15</p> <p>BEHALF 2:2 3:2 4:2</p> <p>believe 6:13 10:3,7,13 12:2 20:21 23:13 34:16</p> <p>beneficial 34:10</p> <p>best 13:15 24:9</p> <p>blanche 34:14</p> <p>board 1:2 6:22 10:8,9 10:17,19 16:1 17:17 21:2 23:19 25:21 26:6 27:11 33:8 36:14 41:4</p> <p>boards 6:10</p> <p>board's 15:2 17:3 24:11</p>	<p>26:2,10 27:13</p> <p>Bonnie 1:22 42:2</p> <p>brief 6:18 22:1,11</p> <p>briefing 20:13,13 21:3,14 21:15 23:6,7,8</p> <p>bring 14:12 17:16</p> <p>broader 14:5</p> <p>brought 13:11</p> <p>burden 19:19</p> <p style="text-align: center;">C</p> <p>C 2:1 3:1,1 4:1,1 5:1 6:1</p> <p>call 1:13 6:3 8:8 17:4 19:18 23:13 33:22 37:5,6 40:14 41:9</p> <p>calls 16:2 23:11 24:14 33:5</p> <p>caption 9:12 10:22</p> <p>captions 8:15</p> <p>care 36:2</p> <p>carte 34:14</p> <p>case 1:5 13:2 14:10,13 24:18 26:12 28:21 34:12 38:6 42:10</p> <p>cases 6:19 16:8 17:20 25:11,12,13,16 25:17 26:16,22 29:10 30:1,7,13 31:9 36:18 37:8</p>
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