

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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1	UNITED STATES PATENT AND TRADEMARK OFFICE	
2	BEFORE THE PATENT TRIAL AND APPEAL BOARD	
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4	RPX CORPORATION, :	
5	Petitioner, : Case IPR	
6	v. : 2014-00171	
7	VIRNETX, INC. AND SCIENCE APPLICATION: Patent	
8	INTERNATIONAL CORPORATION, : 6,502,135	
9	Patent Owner :	
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12	CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER	
13	Telephonic Conference Call	
14	Held Before Judges Easthom, Siu, Tierney	
15	Thursday, January 16, 2014	
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TELEPHONIC CONFERENCE CALL HELD BEFORE JUDGES EASTHOM, SIU, TIERNEY CONDUCTED ON THURSDAY, JANUARY 16, 2013

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PROCEEDINGS

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

I note no one objected to or pointed out that they were not subject to the protective order.

Accordingly, everyone on the line today is subject to the boards default protective order. If there's any questions about that please speak up now or we'll begin. Hearing no objection, we'll begin today.

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

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

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was being sought in the district court litigation.
We've had time to do that and we've obtained copies of
the discovery request, and I'll be happy to discuss
them with you and get into any details that you want
to.
I'd just like to raise a couple of points
before I do that because I think they're relevant to
this type of discovery. The first point, Your Honor,
is that discovery that's sought in that district court
from RPX is for purposes of that litigation. Now, as
you'll know
MR. HOWISON: This is Greg Howison.
JUDGE TIERNEY: Thank you for joining, and
just confirming you're subject to the protective order?
MR. HOWISON: Yes, subject to the protective
order, yes.
JUDGE TIERNEY: Thank you. Mr. Palys,
please continue.

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

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

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

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

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

And then there's another litigation in the same district, Your Honor, against Microsoft

Corporation, and that's 613CD-351. There's actually another Civil Action Number for the Apple one I forgot

9 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. MR. PALYS: Sure. So back to that second 6 7 point --MR. ASHE: Your Honor, just since we're 8 9 discussing this litigation, we should note that RPX is not a party to any of the suits that were described. 10 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. MR. PALYS: Thank you, sir. Continuing on 16 17 with what I was saying, basically the point here is that to the extent RPX may be forced to give that 18 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.

And lastly, really, Your Honor, is that even

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

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

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

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

party. Please explain, first of all, why the discovery 1 2 would be sought against a nonparty here or a third party, and what is the scope of the discovery that is 3 being sought. You mentioned there was a overlap. 4 Could you give a few more details? 5 MR. PALYS: Sure. So the categories of 6 7 information sought in the RPX subpoenas, Your Honor, relates to -- the RPX's corporate structure, 8 9 organization, what it does, its interests, 10 relationship, communications with various companies 11 including Apple, Microsoft, Cisco, New Bay, et cetera, and that's the majority of the type of information 12 sought by the -- the discovery request in topics. 13 There's also another category that relates 14 to VirnetX's patents and the various IPR petitions, 15 real party in interest, and prior art related to 16 VirnetX's patents. 17 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
LO	it clear that when you're speaking you're speaking for
L1	VirnetX today?
L 2	MR. PALYS: Yes, Your Honor.
L3	JUDGE TIERNEY: Okay. Thank you.
L 4	MR. PALYS: Yes, Your Honor. So my point
L5	was is that there are issues relating to the
L6	litigation why that discovery be sought. One example
L7	would be estoppel issues under Section 315.
18	There could be entities that may be in
L9	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
2	estoppel may apply in terms of a litigation issue

JUDGE TIERNEY: Let's stop today. Is there any potential for estoppel if we ended the case today with a noninstitution?

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MR. PALYS: Well, my understanding is that estoppel doesn't apply until a final written decision.

JUDGE TIERNEY: But you've already sought discovery on an issue that is not an actual issue then. You've taken upon a potential issue that may or may not occur.

MR. PALYS: Well, yeah. Again, my -- let me -- I just want to say the reason why I brought up that I don't represent VirnetX in the litigation issue is not just to say I don't represent VirnetX, Your Honor. I just want to be clear that there's issues that litigation counsel may be best to address some of these issues.

So I want to make sure that I'm just mindful, and what I'm saying here has been my basis of representing VirnetX in these proceedings, but having said that, the idea that they're seeking discovery during discovery of a litigation I think that -- I don't see a -- I guess a problem with doing that

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

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

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

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

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

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

I mean, the point here is, Your Honor, we're

-- we think that the mechanisms for the proceedings

here are proper through additional -- the additional

discovery mechanisms and the rules allowing such

discovery for these IPR proceedings. There's -- the

fact that there's discovery ongoing in a litigation,

again it is focused toward those issues in a

litigation.

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

MR. MODI: Your Honor, I can try to maybe address that question. I'll try. So I think that the issue is similar as to what Mr. Palys was saying.

Obviously the reason the IPR issues are — were raised in those subpoenas to RPX in the district court, our understanding is again for issues raised in the district court yet, you know, we don't deny having looked at the discovery.

There is overlap in the type of discovery we

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

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

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

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

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

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

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

18 Honor's guidance where we go from here, but that's our 1 2 position. JUDGE TIERNEY: Anything else before I turn 3 it over to Apple -- I'll turn it over next to RPX, but 4 is there anything further from VirnetX? 5 MR. PALYS: No, Your Honor. 6 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. First with regard to the characterization of the 11 12 subpoenas that were served on RPX, I disagree with the 13 characterization that they're anything other than directed to these proceedings. 14 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

The issue regarding estoppel at a minimum is

respect to the district court, and that's one of

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ripeness.

not ripe in the district court, and therefore really isn't an explanation for the timing of these subpoenas being filed on RPX. The filing of the subpoenas on RPX coincided with VirnetX's request to access the documents that were filed under seal with the RPX petitions.

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Therefore, at least from the RPX

perspective, these — it seems to be a coordinated

effort to really, you know, squeeze the information out

of RPX. Just basically the district court subpoenas,

if it's not ripe and they're barred from using it in a

— because of the protective order, then really those

subpoenas amount to nothing more than harassment, and

that's RPX's position.

RPX has objected to the subpoenas that were served on it. It is continuing to go through the district court process, and the context in which I raised this issue on the last call related to the undue burden and delay that these subpoenas are causing RPX outside of the IPR proceeding, so I think those are important points to keep in mind as we go forward. Are there any other issues you'd like me to address?

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

 $\label{eq:JUDGE EASTHOM: No, I don't have any } \\ \text{questions.}$

JUDGE SIU: No questions.

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

MR. KUSHAN: Thank you, Your Honor. Well, first and foremost, we just want to reiterate our concern that all the things we're going through with the briefing or possible briefing in this issue not become a reason to delay any of the proceedings.

That's been our overarching concern with engagement of this issue.

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

privity.

2.

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

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

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

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

TELEPHONIC CONFERENCE CALL HELD BEFORE JUDGES EASTHOM, SIU, TIERNEY CONDUCTED ON THURSDAY, JANUARY 16, 2013

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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

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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	

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

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

JUDGE TIERNEY: Yes, I am.

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

JUDGE TIERNEY: Please advise me why, after the three calls, we would need more than five pages.

If you do need it, let me know now.

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

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

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

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

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

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

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

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

If you're seeking particular information from RPX you can identify it as RPX only information.

If it's from Apple it's Apple only. But it would be -the same discovery motion could be filed in each of the sets of cases. Is that appropriate?

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

JUDGE TIERNEY: Yes, they are.

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

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

JUDGE TIERNEY: Understood. Again, it's not entirely clear to me. That's why I'm trying to sort it 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
LO	would be related to the RPX matters.
l 1	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
2	with regard to the Apple werene Virgety on the same

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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

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

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

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

31 VirnetX. 1 2 JUDGE TIERNEY: At this point it hasn't been established that they're actually in -- that they're 3 one and the same, so I'd rather not require them to be 4 5 combined. They may have different interests in responding at this time, so my understanding would be 6 7 that Apple would file their opposition and RPX would file a separate opposition, but they would be filed in 8 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 one at this point that I need to be aware of? 12 MR. PALYS: No, Your Honor. 13 JUDGE TIERNEY: Okay. And this is just 14 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. JUDGE TIERNEY: Apple, do you have any 19 20 problems that I need to be aware of on a procedural level? 21

I have one procedural

MR. KUSHAN:

22

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

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

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

JUDGE TIERNEY: I'm amenable to a redacted

transcript. Having thought about it I'm not certain
that we would even need that many redactions, but I do
leave it to RPX and VirnetX as to that point. Would
there be a problem going through and filing a redacted
version of the transcript from the prior calls?
MR. MODI: Your Honor, there wouldn't be a
problem. In fact, we would prefer that. We were
actually going to raise that issue with the board.
JUDGE TIERNEY: Again, we understood that
they may need to be sealed because we didn't know where
the conversations would go. Looking back, I'm not sure
that we have information that would be necessarily
needed to be sealed, but again, I would leave that to
the parties discretion. Maybe they'll catch something
I would not be aware of.
Mr. Ashe or RPX, do you have any objection
to filing at a minimum a redacted version or making the
transcript in an unsealed version?
MR. ASHE: Probably no objection to a
redacted form. It was RPX had requested that it be
at least the last the second the transcript for

the second call be put under seal because there were

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

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

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

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

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

MR. ASHE: Okay. If I could just check with my client. Maybe the easier thing to do is just check with them first, and they may just agree to make the 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
L 0	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.
L 4	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
L7	steps based on the information contained in the
L 8	transcript.
L9	MR. ASHE: Okay. That sounds reasonable to
20	RPX.
21	JUDGE TIERNEY: Is there anything else we
2.2	need to discuss other than the transcripts going to

Apple since Apple raised the issue?

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

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

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

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

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

Is there anything else we need to cover?

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

privies.

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

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

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

2.0

my end, Mr. Modi. You're asking to file -- you said you want to put the motion under seal in case if you should choose to be referring to confidential information that's under the new protective order. You also mentioned doing a redacted version, but I couldn't hear on the phone here. Were you seeking additional time to file a redacted version?

MR. MODI: Yes, Your Honor, if we could just have a day or two to prepare the redacted version just to make sure. You know, we are obviously being sensitive to RPX and their confidential information.

If we could just get a day or two to file a redacted version obviously we'll get the under seal version on file within a week.

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

39 1 an objection. The unredacted version will contain no more information, should we put it that way. 3 It'll be the same information but having redactions. I have no problem having that come in on 4 5 the 27th, and then giving also a couple of extra days the redacted opposition would come in on the 3rd. Do I 6 7 have any objections to that time line starting with Apple? 8 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 make this simple. All papers, redacted, unredacted, 21

filed the 27th by the motion, and then redacted,

22

TELEPHONIC CONFERENCE CALL HELD BEFORE JUDGES EASTHOM. SIU, TIERNEY CONDUCTED ON THURSDAY, JANUARY 16, 2013

ē	40	
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.	

TELEPHONIC CONFERENCE CALL HELD BEFORE JUDGES EASTHOM, SIU. TIERNEY CONDUCTED ON THURSDAY, JANUARY 16, 2013

	4	1
1	everyone. We look forward to seeing the motions in	
2	opposition. Should anything arise before then that we	
3	need to be aware of please feel free to contact the	
4.	board. Until then, we're adjourned. Thank you,	
-5	everyone.	
6	MR. KUSHAN: Thank you.	
7	MR. ASHE: Thank you.	
8	MR. PALYS: Thank you.	
9	(The telephonic conference call was	
10	concluded at 4:41 p.m.)	
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I, Bonnie K. Panek, a Notary Public in and for The State of Texas, the officer before whom the foregoing proceedings were taken, do hereby certify that the foregoing transcript is a true and correct record of the proceedings; that said proceedings were taken by me stenographically and thereafter reduced to typewriting under my supervision; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

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

My commission expires: January 22, 2017

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THE STATE OF TEXAS

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