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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 VirnetX Inc. et al.,

12 Plaintiffs,

13 vs.

14 Apple Inc.,

15 Defendant.

Case No. 6:11-cv-563 & 6:12-cv-855 (Eastern
District of Texas)

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17 **NON-PARTY RPX CORPORATION'S OBJECTIONS AND RESPONSES TO**
18 ***SUBPOENA AD TESTIFICANDUM AND DUCES TECUM***

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27 **VIRNETX EXHIBIT 2019**
RPX v. VirnetX
28 **Trial IPR 2014-00171**

1 Non-party RPX Corporation (“RPX”) states its objections and responses to the subpoena
2 *ad testificandum* and *duces tecum* (the “Subpoena”) issued on behalf of VirnetX Inc.
3 (“Requesting Party”) in connection with *VirnetX Inc. et al. v. Apple Inc.*, Case Nos. 6:11-cv-563
4 and 6:12-cv-855 (E.D. Tex.) (the “Action”) (and collectively with *VirnetX Inc. et al. v. Microsoft*
5 *Corporation*, Case No. 6:13-cv-351 (E.D. Tex.), the “Underlying Litigation”). RPX reserves
6 the right to supplement any of its responses and/or objections set forth herein at any time in the
7 future.

8 **GENERAL OBJECTIONS**

9 1. RPX objects to the Subpoena to the extent that it is unduly burdensome, overly
10 broad, not reasonably calculated to lead to the discovery of admissible evidence, and does not
11 comply with the admonition of Fed. R. Civ. P. 45(c)(1) that subpoenas to third parties should
12 “avoid imposing undue burden or expense on a person subject to the subpoena.”

13 2. RPX objects to the Subpoena on the ground that it is an impermissible attempt to
14 obtain discovery related to seven (7) petitions for *inter partes* review (“IPR”) filed in the United
15 States Patent and Trademark Office by RPX that challenge the validity of various VirnetX patents.
16 An IPR is a highly specialized administrative proceeding that has its own rules to provide limited
17 discovery, and allows discovery only where the parties agree or as authorized by a three-member
18 panel of administrative patent judges at the Patent Trial and Appeal Board (“PTAB”). The
19 Subpoena is clearly designed to circumvent the statutes, regulations, and practice guidelines
20 governing the limited discovery in an IPR and to obtain information related to the IPRs filed by
21 RPX. The Subpoena does not seek information relevant to the claims and defenses of any party to
22 the Action under whose authority it purports to issue.

23 3. RPX objects to the Subpoena on the ground that it violates the privacy and First
24 Amendment rights of freedom of association and freedom to petition the government of RPX and
25 its directors, offices, employees, and customers.

26 4. RPX objects to the Subpoena to the extent it is identical to or seeks the same
27 information as any discovery requests that have been served on current or former parties to the
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1 Action or current or former parties to the Underlying Litigation, or which can be more readily
2 obtained from a party to the Underlying Litigation.

3 5. RPX objects to the Subpoena to the extent it calls for the production of documents
4 that are publicly available.

5 6. RPX objects to the Subpoena to the extent it calls for production of documents that
6 are not within the possession, custody, or control of RPX. RPX further objects to the Subpoena to
7 the extent it calls for documents that may be more readily obtained from another source.

8 7. RPX objects to the Subpoena on the ground that it purports to require RPX to
9 produce documents on January 13, 2014, 4 days prior to the date for which the deposition was
10 noticed.

11 8. RPX objects to the Subpoena to the extent that the timeframe for compliance is
12 unreasonable in light of the number and scope of the requests contained in the Subpoena.

13 9. RPX objects to the Subpoena to the extent it requires disclosure of privileged or
14 other protected matter, including but not limited to documents protected by the attorney-client
15 privilege and/or attorney work-product doctrine. The inadvertent production of documents
16 protected by any evidentiary or other privilege shall not be deemed a waiver of such privilege.

17 10. RPX objects to the Subpoena to the extent it calls for documents and/or testimony
18 containing trade secrets or other confidential research, development, or commercial information or
19 other sensitive or confidential information protected by constitutional, statutory, or common law
20 rights of privacy. RPX further objects to the Subpoena as it seeks disclosure of highly confidential
21 information that, if divulged, could harm RPX's business interests and/or legal rights. RPX
22 further objects to the Subpoena to the extent it calls for information subject to any confidentiality
23 agreements or obligations, or any applicable court order. Requesting Party has not shown a
24 substantial need for such information and has not shown that RPX can produce documents without
25 undue hardship.

26 11. RPX objects to the Subpoena to the extent it seeks information beyond the scope of
27 permissible discovery under the Federal Rules of Civil Procedure, any local rule, or any court
28 order. RPX further objects to the Subpoena to the extent it seeks information that is neither

1 relevant to the subject matter of the litigation nor reasonably calculated to lead to the discovery of
2 admissible evidence.

3 12. RPX objects to the Subpoena to the extent that it is vague, ambiguous, indefinite,
4 duplicative, cumulative, unintelligible, or otherwise unclear as to the information it seeks. RPX
5 further objects to the Subpoena to the extent it purports to require non-Party RPX to identify and
6 interpret ambiguities in the Subpoena drafted by Requesting Party.

7 13. RPX objects to the Subpoena on the ground that it is overly broad, unduly
8 burdensome, or oppressive, particularly where the request for production and/or testimony is
9 unduly burdensome in light of the costs necessary to investigate and the confidential nature of the
10 information as weighed against the relevance of and Requesting Party's accessibility to and need
11 for the requested information.

12 14. RPX objects to the Subpoena on the grounds that the cost of identifying, locating,
13 collecting, reviewing, and copying the documents, and other associated costs of production, as
14 well as the cost of identifying and preparing a witness to testify, will be substantial. RPX reserves
15 the right to request that Requesting Party reimburse RPX's production costs, witness costs, and
16 attorneys' fees, including the costs of producing a privilege log, assuming such a log is necessary.

17 15. RPX objects to the Subpoena to the extent it purports to require RPX to draw a
18 legal conclusion concerning the meaning or application of any terms or phrases used.

19 16. RPX objects to any form of production of electronically stored information that
20 imposes any differing or additional obligations from those set forth in the Federal Rules of Civil
21 Procedure.

22 17. RPX objects to the Subpoena to the extent it seeks electronically stored information
23 that is not reasonably accessible to RPX because of undue burden or cost. RPX further objects to
24 the Subpoena to the extent it seeks electronically stored information that is back-up data on the
25 grounds that it is not reasonably accessible to RPX.

26 18. RPX objects to the Subpoena to the extent it does not include reasonable temporal
27 and/or geographic limitations on the documents to be searched and produced.

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1 19. RPX objects to the Subpoena to the extent it would require RPX to produce
2 documents and/or provide testimony that may be subject to confidentiality agreements with third
3 parties.

4 20. RPX objects to the Subpoena to the extent that the Definitions and Instructions
5 contained therein will impose an undue burden or expense on RPX.

6 **SPECIFIC OBJECTIONS**

7 RPX hereby incorporates by reference each General Objection set forth above into each
8 Specific Objection. From time to time, a Specific Objection may repeat a General Objection for
9 emphasis or for some other reason. The failure to include any General Objection in any Specific
10 Objection shall not be interpreted as a waiver of any General Objection to that response. RPX
11 separately responds and objects to each Request as follows:

12 **REQUESTS FOR PRODUCTION**

13 **REQUEST FOR PRODUCTION NO. 1:**

14 Documents that describe, identify, refer to, or relate to the Company's corporate structure
15 and organization, including organization charts.

16 **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

17 In addition to the General Objections set forth above, which are expressly incorporated as
18 if set forth fully herein, RPX objects to this Request as overly broad, unduly burdensome, and not
19 reasonably calculated to lead to the discovery of admissible evidence in this action. RPX further
20 objects to this Request as an impermissible attempt to circumvent the IPR discovery process.
21 RPX further objects to this Request to the extent that, as RPX is a public company, the
22 information sought is publicly available.

23 **REQUEST FOR PRODUCTION NO. 2:**

24 Documents that describe, identify, refer to, or relate to the Company's formation, including
25 any membership or partnership agreements and articles of formation.

26 **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

27 In addition to the General Objections set forth above, which are expressly incorporated as
28 if set forth fully herein, RPX objects to this Request as overly broad, unduly burdensome, and not

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