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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RPX CORPORATION
Petitioner

v.

VIRNETX INC.
Patent Owner

Case IPR2014-00171
Patent 6,502,135

**Patent Owner's Motion for Discovery
from RPX Corporation and Apple, Inc.**

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I. Precise Relief Requested

VirnetX requests that the Board authorize the discovery from RPX and Apple contained in Exhibits 2002-2005. *See* 37 C.F.R. §§ 42.51(b)(2), 42.52(a).

II. Factual Background

RPX provides defensive patent services to its clients. It acts “as an extension of a client’s in-house legal team” and “as a trusted intermediary,” and when litigation arises, “selectively clear[s its] clients from the suit.” (Exs. 2006, 2007 at 3, 2008.) To fund these services, RPX collects fees from its clients. (Ex. 2007 at 9.) [REDACTED] (Ex. 1073 at 1.) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(*Id.* at 1-2; *see also* Ex. 2001 at 64:15-18.)

[REDACTED], RPX petitioned for IPR of four VirnetX patents Apple was found to infringe. (Ex. 2009.) RPX contends the grounds in its petitions are “substantially identical” to the time-barred, non-instituted Apple petitions. (Pet. at 6; Exs. 2010-2016.) But this is not an instance where the petitions were merely copied or modified from the public record. [REDACTED]

[REDACTED]

[REDACTED] (Ex. 2001 at 7:11-18; Ex. 1074 at 8:1-5, 25:13-14.) RPX also obtained access to Apple's alleged expert, Michael Fratto, who submitted declarations with the Apple and RPX petitions. (*See, e.g.*, Exs. 1003 and 2017.)

RPX has also advanced Apple's interests in these proceedings. Shortly after the RPX petitions were filed, it came to light that the petitions neglected to challenge three claims Apple was found to infringe. Over the next two days, corrected petitions were filed solely to add new challenges to the infringed claims, much to Apple's benefit. (*See* Ex. 2009; Ex. 1074 at 16:15-17:11.) RPX also requested that these proceedings be expedited, but RPX makes no products that could infringe VirnetX's patents. The urgency must be so RPX can "selectively clear" Apple from its suit with VirnetX.

[REDACTED], throughout these proceedings, they have attempted to give the impression they are operating independently to avoid real-party-in-interest ("RPI") and privity issues. For example, RPX and Apple took care not to share with the Board the relationship between RPX and Apple's counsel. (*See* Ex. 2001 at 69:6-71:4, demonstrating how both Apple and RPX refused to answer the Board's question about whether Apple had provided any assistance regarding the RPX petitions.) It was not until VirnetX mentioned the metadata in the RPX petitions (Ex. 2001 at 71:11-22), which demonstrates that Apple's counsel was involved with the RPX petitions (Ex. 1074 at 13:12-18:11),

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