

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

VIRNETX, INC. AND SCIENCE
APPLICATIONS INTERNATIONAL
CORP.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

§
§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 6:07-CV-80 (LED)

MICROSOFT'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

Jared Bobrow (*Pro Hac Vice*)
Lead Attorney
Matthew D. Powers
Paul Ehrlich (*Pro Hac Vice*)
Thomas B. King (*Pro Hac Vice*)
WEIL, GOTSHAL & MANGES LLP
201 Redwood Shores Parkway
Redwood Shores, CA 94065

Elizabeth Stotland Weiswasser (*Pro Hac Vice*)
Timothy E. DeMasi (*Pro Hac Vice*)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, NY 10153-0119

Nicolas Barzoukas (SBN: 00783611)
WEIL, GOTSHAL & MANGES LLP
700 Louisiana, Suite 1600
Houston, TX 77002

Eric H. Findlay (SBN: 00789886)
RAMEY & FLOCK
100 East Ferguson, Suite 500
Tyler, TX 75702

**ATTORNEYS FOR DEFENDANT
MICROSOFT CORPORATION**

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION.....	1
II. LEGAL FRAMEWORK	1
III. THE PATENTS-IN-SUIT	2
IV. THE DISPUTED CLAIM TERMS.....	3
A. “Virtual Private Network (VPN)”	3
1. Microsoft’s Construction Gives VPN Its Ordinary Meaning in the Context of the Patents-In-Suit.....	3
2. VirnetX’s Proposed Construction Is Wrong.....	8
a. VirnetX’s Encryption Clause Is Not Supported By The Evidence.....	8
b. VirnetX’s Expansion Clause Is Not Supported By The Evidence	11
B. Preamble: “Transparently Creating A Virtual Private Network (VPN)”.....	12
1. “Transparently” In The Preamble Is Not A Limitation.....	12
2. If Limiting, The “Transparently” Phrase Applies To The Client And Target Computers, Not A “User”	13
C. “Domain Name Service (DNS)”	14
1. The Ordinary Meaning Of DNS In The Context Of The Patents Is The Internet- standard “Domain Name Service”	14
2. VirnetX’s Patents Attempt To Build Upon The Existing DNS Infrastructure...	16
3. VirnetX’s Proposed Construction Is Wrong.....	18
D. “Domain Name”	19
1. Microsoft’s Construction Is Consistent With The Ordinary Meaning And The Intrinsic Evidence	19
2. VirnetX’s Criticisms Of Microsoft’s Construction Are Baseless.....	21
E. “Web Site”.....	22

- 1. Microsoft’s Construction Gives “Web Site” Its Ordinary Meaning Consistent With Its Use In The Patents.....23
- 2. VirnetX’s Proposed Construction Is Fatally Overbroad And Inconsistent With The Intrinsic Evidence25
- F. “Secure Web Site”27
 - 1. The Patents Establish That Web Sites Are “Secure” By Virtue Of Restricting Access To Authorized Users28
- G. “Determining Whether The Dns Request Transmitted In Step (1) Is Requesting Access To A Secure Web Site”29
 - 1. The Claim Language Strongly Supports Microsoft’s Construction30
 - 2. The Specification Confirms Microsoft’s Construction31
 - 3. VirnetX’s Non-Construction Proposal Should Be Rejected32
- H. “Automatically Initiating the VPN”33
 - 1. The Claim Language Illustrates That “Automatically” Precludes The Client Or Target From Requesting VPN Initiation33
 - 2. The Specification Supports Microsoft’s Construction.....34
- I. “DNS Proxy Server”35
 - 1. The DNS Proxy Server Must Be Separate From The Client Computer35
 - 2. The DNS Proxy Server Must Check The DNS Request37
- J. “Enabling A Secure Communication Mode Of Communication At The First Computer Without A User Entering Any Cryptographic Information For Establishing The Secure Communication Mode Of Communication”37
 - 1. The Intrinsic Evidence Does Not Support Redrafting The Claims.....38
 - 2. The Court Should Not Redraft The ’759 Patent Claims To “Preserve Validity”40
 - 3. “Cryptographic Information”41
- K. “Secure Communication Link”42
- L. “Virtual Private Network Communication Link”43

- M. “Secure Domain Name Service,” “Secure Domain Name” And “Secure Computer Network Address”43
 - 1. “Secure Domain Name Service” Implements DNS For Nonstandard Top-Level Domain Names45
 - 2. “Secure Domain Names” Are Specified To Include Only Non-standard Top-Level Domain Names47
 - 3. “Secure” Computer Network Addresses Require Authorization For Access48
- V. CONCLUSION50

TABLE OF AUTHORITIES

CASES	<u>Page</u>
<i>Acumed LLC v. Stryker Corp.</i> , 483 F.3d 800 (Fed. Cir. 2007).....	9, 35
<i>AquaTex Industrial v. Techniche Solutions</i> , 419 F.3d 1374 (Fed. Cir. 2005).....	15, 25
<i>C.R. Bard, Inc. v. U.S. Surgical Corp.</i> , 388 F.3d 858 (Fed. Cir. 2004).....	44
<i>Catalina Marketing International, Inc. v. Coolsavings.com, Inc.</i> , 289 F.3d 801 (Fed. Cir. 2002).....	12, 13
<i>Chimie v. PPG Industrial, Inc.</i> , 402 F.3d 1371 (Fed. Cir. 2005).....	18, 19
<i>Curtiss-Wright Flow Control Corp. v. Velan, Inc.</i> , 438 F.3d 1374 (Fed. Cir. 2006).....	30
<i>DSW, Inc. v. Shoe Pavilion, Inc.</i> , 537 F.3d 1342 (Fed. Cir. 2008).....	41
<i>Decisioning.com, Inc. v. Federated Department Stores, Inc.</i> , 527 F.3d 1300 (Fed. Cir. 2008).....	3
<i>Electro-Scientific Industrial, Inc. v. Dynamic Details, Inc.</i> , 307 F.3d 1343 (Fed. Cir. 2002).....	13
<i>Helmsderfer v. Bobrick Washroom Equipment, Inc.</i> , 527 F.3d 1379 (Fed. Cir. 2008).....	24, 27
<i>Honeywell International Inc. v. ITT Industrial, Inc.</i> , 452 F.3d 1312 (Fed. Cir. 2006).....	45
<i>Kyocera Wireless Corp. v. ITC</i> , 545 F.3d 1340 (Fed. Cir. 2008).....	3
<i>LG Electronics, Inc. v. Bizcom Electrics, Inc.</i> , 453 F.3d 1364 (Fed. Cir. 2006).....	17
<i>Mangosoft, Inc. v. Oracle Corp.</i> , 525 F.3d 1327 (Fed. Cir. 2008).....	28

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.