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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 IPR2014-00172

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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,	:	
v.	:	2014-00171
VIRNETX, INC. AND SCIENCE APPLICATION	:	Patent
INTERNATIONAL CORPORATION,	:	6,502,135
	:	
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

Reported by: Bonnie Panek



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

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

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

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

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



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

7 Therefore, at least from the RPX  
8 perspective, these -- it seems to be a coordinated  
9 effort to really, you know, squeeze the information out  
10 of RPX. Just basically the district court subpoenas,  
11 if it's not ripe and they're barred from using it in a  
12 -- because of the protective order, then really those  
13 subpoenas amount to nothing more than harassment, and  
14 that's RPX's position.

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



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 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 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 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 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

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