

Filed on behalf of: RPX Corporation

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RPX CORPORATION,
Petitioner,

v.

VIRNETX, INC. AND SCIENCE APPLICATION
INTERNATIONAL CORPORATION,
Patent Owner

Case IPR2014-00173
Patent 7,490,151

PETITIONER'S MOTION TO EXPUNGE

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PETITIONER'S MOTION TO EXPUNGE

I. Statement of Precise Relief Request Under § 42.22(a)(1)

Petitioner RPX Corporation (“RPX”) moves to expunge from the record all documents (exhibits, pleadings, and orders) that have been filed under seal in this proceeding. Alternatively, in the event such relief is not granted, RPX moves to expunge from the record in their entirety Exhibits 2040, 2041, 2045, 2052 and certain information contained in Papers 34, 45, 48, and Exhibits 2039, 2042-2044, 2046-2051, 2054 (for which redacted versions are submitted herewith).

RPX has conferred with VirnetX, Inc. (“VirnetX”) and Apple Inc. (“Apple”) prior to filing this motion. The parties’ positions are delineated below. VirnetX opposes RPX’s motion in certain respects, but has represented that it does not intend to file a separate opposition.

II. Statement of Reasons for Relief Requested Under § 42.22(a)(2)

A. Procedural Background

RPX’s Petition for *Inter Partes* Review was accompanied by a motion to seal two exhibits submitted with the Petition. Thereafter, with the Board’s approval, RPX and Apple reviewed and redacted various documents (*e.g.*, telephonic transcripts, pleadings, exhibits, and orders) containing information considered to be confidential by RPX and/or Apple. After consultation with VirnetX, redacted versions of the documents became publicly available on the PRPS. Therefore, this document review process throughout the proceeding has

generated two categories of documents: 1) unredacted versions designated for access by the "Parties and Board Only" and 2) corresponding redacted versions designated for public access. *See, e.g.*, Exhibits 2001, 1074-1076; Exhibit 1077, page 31, line 22 to page 35, line 18.

In the "Decision - Denial of Institution of *Inter Partes* Review" (Paper 48), the Board stated the following:

This Decision is sealed due to protected material asserted by the parties. After receiving the Decision, the parties jointly may request a redacted version of the Decision. After consideration of the joint request, or, if no request is filed, the Board will issue a subsequent public Decision. [Paper 48, p. 2, footnote 2].

In accordance with the above-identified instructions in the Decision, RPX, VirnetX and Apple jointly submitted a proposed redacted version of the Decision which included redactions proposed by Apple and RPX and to which VirnetX had no objection. (Paper 51).

In the "Order – Conduct of the Proceedings" (Paper 52), the Board stated the following:

The Board has reviewed the proposed redacted decision and holds that it strikes the appropriate balance between the public's interest in maintaining a complete and understandable file history and

the parties' interest in protecting sensitive information. Accordingly, the Board enters the redacted decision and orders that the redacted decision be made available to the public. [Paper 52, p. 2].

RPX submits that the information in the redacted version of the Decision entered by the Board in Paper 52 is commensurate in form and substance to the information redacted by RPX and/or Apple in previously submitted documents.

During a conference call on June 10, 2014, the parties and the Board discussed a procedure whereby RPX, VirnetX and Apple would confer prior to filing this motion to expunge, thereby providing Apple an opportunity to propose expungement of confidential information and providing VirnetX an opportunity to consider any opposition to the motion. (Exhibit 1079, page 24, line 21 to page 26, line 7).

B. Expungement of All Documents Filed under Seal

Apple has proposed that all the documents that are currently under seal (*i.e.*, the unredacted documents presently designated for access by the "Parties and Board Only") should be expunged. Apple believes that expungement of those documents would strike the appropriate balance between maintaining a complete and relevant file history and Apple's interest in protecting its sensitive information. Further, Apple maintains that this position is consistent with the

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