

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORP. and APPLE INC.,
Petitioner

v.

VIRNETX, INC.,
Patent Owner

Case IPR2014-00403
Patent 7,987,274

Before MICHAEL P. TIERNEY, KARL D. EASTHOM, and STEPHEN C. SIU,
Administrative Patent Judges.

Petitioner's Reply

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The Board correctly found Provino to anticipate claims 1, 7, 8, 10, 12, 13, 15 and 17. Paper No. 13 (“Dec.”) at 12-21. It also correctly found Provino in view of Kosiur to render claims 2-5 obvious and, in view of Xu, to render claim 18 obvious. *Id.* These findings are supported by more than substantial evidence and should be maintained.

I. Claim Construction

A. The Broadest Reasonable Interpretation Applies

Patent Owner challenges the Board's determinations as being based on an improper use of the broadest reasonable interpretation standard (BRI), because its ability to amend the claims was “severely restricted.” Patent Owner Response, Paper No. 26 (Resp.) at 2-3. But Patent Owner never sought to amend its claims, and the Federal Circuit has recently rejected that precise theory as a reason for the Board to not employ BRI in IPR proceedings. *In re Cuozzo Speed Techs., LLC*, 2015 WL 44866, *7 (Fed. Cir. Feb. 4, 2015). Patent Owner also contends the Board erred by not employing constructions adopted by a district court in related litigation, but those constructions rest on a different claim construction standard and are not binding on nor are entitled to deference by the Board. *See In re Swanson*, 540 F.3d 1368, 1377-78 (“considering an issue at the district court is not equivalent to the PTO having had the opportunity to consider it”). Patent Owner's attack on the Board's use of the BRI standard is a transparent attempt to import

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