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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORP. and APPLE INC.
Petitioners

v.

VIRNETX INC.
Patent Owner

Case IPR2014-00404¹
Patent 7,987,274

**Patent Owner VirnetX's Motion for Rehearing of the Decision
to Institute and Join IPR2014-00484 Under 37 C.F.R. § 42.71(d)**

¹ Case IPR2014-00484 has been joined with this case.

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I. Introduction

The Board misapprehended or overlooked deficiencies in Apple's petition for *inter partes* review in IPR2014-00484 ("the '484 proceeding") and improperly instituted the petition based on evidence that was not of record in the proceeding. As a result of this oversight, the Board improperly joined Apple's petition to that in IPR2014-00404 ("the '404 proceeding"), further prejudicing Patent Owner VirnetX.

Throughout its petition, Apple repeatedly cites to an expert declaration to support and explain its unpatentability contentions for U.S. Patent No. 7,987,274 ("the '274 patent"). (*See generally* Petition in IPR2014-00484; Ex. 1011 in IPR2014-00484.)² But the declaration upon which Apple so heavily relies lacks any mention of either the '274 patent or the prior art references in Apple's petition. (Ex. 1011 in IPR2014-00484.) Nevertheless, the Board instituted Apple's petition, incorporating its analysis from the '404 proceeding, which cites to an entirely

² Apple was given a two-week extension to the five business day time period set in the Decision in IPR2014-00484 to refile its exhibits from IPR2014-00484 into IPR2014-00404. At the time of filing this Motion for Rehearing, Apple has not yet refiled its exhibits. Therefore, exhibits that are not yet of record in IPR2014-00404 are identified by the numbering set by Apple in IPR2014-00484.

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