UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,
Petitioner,

v.

VIRNETX INC.,
Patent Owner.

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Case IPR2014-00484
Patent 7,987,274 B2

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

TIERNEY, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I.   BACKGROUND

A.   Introduction

Petitioner, Apple Inc., filed a Petition requesting inter partes review of claims 1–5, 7, 8, 10, 12, 13, 15, 17 and 18 of U.S. Patent No. 7,987,274 B2 ("the '274 Patent," Ex. 1027) pursuant to 35 U.S.C. §§ 311–319.   Paper 1 ("Pet."). Patent Owner, VirnetX Inc., filed a Preliminary Response. Paper 8 ("Prelim. Resp.").

We have jurisdiction under 35 U.S.C. § 314, which provides that an inter partes review may not be instituted unless "the Director determines that the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

We determine based on the record that Petitioner has demonstrated, under 35 U.S.C. § 314(a), that there is a reasonable likelihood of unpatentability with respect to all of the challenged claims, claims 1–5, 7, 8, 10, 12, 15, and 17.

Petitioner relies on the following prior art:

US 6,225,993 B1 (Lindblad)	May 1, 2001	(Ex. 1009)
US 8,200,837 B1 (Bhatti)	June 12, 2012	(Ex. 1010)
US 6,496,867 B1 (Beser)	December 17, 2002	(Ex. 1031)

Takahiro Kiuchi and Shigekoto Kaihara, "*C-HTTP – The Development of a Secure, Closed HTTP-based Network on the Internet*," Proceedings of the Symposium on Network and Distributed System Security, IEEE, 1996 (Ex. 1004, "Kiuchi").

S. Kent et al., *Security Architecture for the Internet Protocol*, Network Working Group, Request For Comments: 2401 1–66 (Nov. 1998) (Ex. 1032, "RFC 2401").

M. Handley et al., *SIP: Session Initiation Protocol*, Network Working Group, Request For Comments: 2543 1–153 (Mar. 1999) (Ex. 1033, "RFC 2543").

Petitioner contends that the challenged claims are unpatentable under 35 U.S.C. § 102 and/or § 103 based on the following specific grounds (Pet. 3, 17-57):

Reference(s)	Basis	Claims challenged
Kiuchi	§ 102	1–4, 7, 8, 10, 12, 15, and 17
Kiuchi and Lindblad	§ 103	5
Kiuchi and Bhatti	§ 103	1–4, 7, 8, 10, 12, 15, and 17
Kiuchi, Bhatti and Lindblad	§ 103	5
Beser	§ 102	1–5, 7–8, 10, 12–13, 15, and 17-18
Beser and RFC 2401	§ 103	1–5, 7–8, 10, 12–13, 15, and 17–18
Beser and Kiuchi	§ 103	1–5, 7–8, 10, 12–13, 15, and 17–18
Beser and RFC 2543	§ 103	17

See id.

B.   *Related District Court Proceeding and Inter Partes Reviews*

Patent Owner asserted the '274 Patent in VirnetX Inc. v. Microsoft Corp., No. 6:13-cv-00351-LED (E.D. Tex. filed 2013). *See* Pet. 2. The '274 Patent also is challenged in Cases IPR2014-00403, IPR2014-00404 and IPR2014-00483. Decisions to Institute were issued on July 31, 2014 in both IPR2014-00403 and IPR2014-00404. In particular, the Board instituted trial in IPR2014-00403 on

claims 1–5, 7, 8, 10, 12, 13, 15, 17, and 18, and in IPR2014-00404 on claims 1–5, 7, 8, 10, 12, 15, and 17.

C.   The '274 Patent

The '274 Patent discloses secure networks. For example, the '274 Patent describes creating a secure communication link in the form of a virtual private network ("VPN") link. Ex. 1027, 46:64–67.

For purposes of the instant Decision to Institute ("Decision"), we adopt and rely upon our decision in *Microsoft Corp. v. VirnetX Inc*., Case IPR2014-00404 (PTAB July 31, 2014) (Paper 13) ("the '404 Decision"), including the description of the '274 Patent in the '404 Decision at 3.

D.   Illustrative Claim

Claim 1, the sole independent claims, follows:

> 1.   A method of accessing a secure network address, comprising:
> sending a query message from a first network device to a secure domain service, the query message requesting from the secure domain service a secure network address for a second network device;
> receiving at the first network device a response message from the secure domain name service containing the secure network address for the second network device; and
> sending an access request message from the first network device to the secure network address using a virtual private network communication link.

II.   ANALYSIS

A.   *Claim Interpretation*

Consistent with the statute and the legislative history of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 329 (Sept. 16, 2011) ("AIA"), the Board interprets claim terms by applying the broadest reasonable interpretation in the context of the specification in which the claims appears. 37 C.F.R. § 42.100(b); *see* Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012).

Both Petitioner and Patent Owner propose several definitions for certain claim terms. The definitions and arguments in support thereof are the same as those presented in the related '404 IPR. For purposes of this Decision, the Board adopts and relies upon the claim constructions outlined in the '404 Decision at 4–9.

B.   *Redundancy*

Patent Owner contends that the Board should not institute a trial in light of the Petition's presentation of redundant grounds. Prelim. Resp. 9. Patent Owner states that redundant grounds place a significant burden on the Board and Patent Owner and cause unnecessary delay. *Id.*

According to Patent Owner, the Petition is redundant to the '403 and '404 Petitions, which challenge common claims of the '274 Patent. *Id*. at 10–11. Patent Owner states that the Petitioner fails to articulate a meaningful distinction in terms of relative strengths and weaknesses with respect to the application of the prior art disclosures and that the Board should deny the redundant grounds. *Id*. We agree-in-part.

As explained below, Petitioner presents several grounds that are identical to those presented and instituted in the '404 proceeding. Further, Petitioner presents

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