IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

VirnetX Inc.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 6:11-cv-563
vs.	§	
	§	
Apple Inc.,	§	
	§	
Defendant.	§	
	§	
	§	

PLAINTIFF VIRNETX INC.'S ORIGINAL COMPLAINT

Plaintiff VirnetX Inc. ("VirnetX") files this Complaint against Defendant Apple Inc. for patent infringement under 35 U.S.C. § 271 and in support thereof would respectfully show the Court the following:

THE PARTIES

1. Plaintiff VirnetX is a corporation organized and existing under the laws of the State of Delaware, and maintains its principal place of business at 308 Dorla Court, Suite 206, Zephyr Cove, Nevada 89448.

2. Defendant Apple Inc. ("Apple" or "Defendant") is a California corporation with its principal place of business at 1 Infinite Loop, Cupertino, California 95014. On information and belief, Apple regularly conducts and transacts business in Texas, throughout the United States, and within the Eastern District of Texas, and as set forth below, has committed and continues to commit, tortious acts of patent infringement within and outside of Texas and within the Eastern District of Texas.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. § 1338.

4. Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391 and 1400(b).

5. This Court has personal jurisdiction over Defendant. Defendant has conducted and does conduct business within the State of Texas. Defendant, directly or through subsidiaries or intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, sells, and advertises (including the provision of an interactive web page) its products and/or services in the United States, the State of Texas, and the Eastern District of Texas. Defendant, directly and through subsidiaries or intermediaries (including distributors, retailers, and others), has purposefully and voluntarily placed one or more of its infringing products and/or services, as described below, into the stream of commerce with the expectation that they will be purchased and used by consumers in the Eastern District of Texas. These infringing products and/or services have been and continue to be purchased and used by consumers in the Eastern District of Texas. Defendant has committed acts of patent infringement within the State of Texas and, more particularly, within the Eastern District of Texas.

ASSERTED PATENT

6. On November 1, 2011, United States Patent No. 8,051,181 ("the '181 patent") entitled "Method for Establishing Secure Communication Link Between Computers of Virtual Private Network," was duly and legally issued with Victor Larson, Robert Durham Short, III, Edmund Colby Munger, and Michael Williamson as the named inventors after full and fair

examination. VirnetX is the owner of all rights, title, and interest in and to the '181 patent and possesses all rights of recovery under the '181 patent.

COUNT ONE

PATENT INFRINGEMENT BY APPLE

7. VirnetX incorporates by reference paragraphs 1-6 as if fully set forth herein. As described below, Apple has infringed and/or continues to infringe the '181 patent.

8. At least Apple's iPhone 4, iPhone 4S, iPod Touch, iPad 2, and Macintosh computers with the "Lion" operating system directly or indirectly infringe at least claims 1, 2, 4-12, 17, 19, 21, 22, 24-29 of the '181 patent. Apple makes, uses, sells, offers to sell, and imports these products and thus directly infringes the '181 patent.

9. Apple indirectly infringes the '181 patent by contributing to infringement by others, such as resellers and end-user customers, in accordance with 35 U.S.C. § 271(c), because Apple offers to sell or sells within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

10. Apple indirectly infringes by inducing infringement by others, such as resellers and end-user customers, in accordance with 35 U.S.C. § 271(b), because Apple actively induces infringement of the '181 patent by others, such as resellers and end-user customers.

11. Apple has infringed and/or continues to infringe one or more claims of the '181 patent as set forth above. Apple is liable for direct infringement, as well as indirect infringement by way of inducement and/or contributory infringement, for the '181 patent pursuant to 35

U.S.C. § 271 (a), (b), (c), and/or (f) as set forth above. For VirnetX's claims of indirect infringement, Apple's resellers, consultants, and/or end-user customers are direct infringers of the '181 patent.

12. Apple's acts of infringement have caused damage to VirnetX. VirnetX is entitled to recover from Apple the damages sustained by VirnetX as a result of Apple's wrongful acts in an amount subject to proof at trial. In addition, the infringing acts and practices of Apple have caused, are causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to VirnetX for which there is no adequate remedy at law, and for which VirnetX is entitled to injunctive relief under 35 U.S.C. § 283.

13. Apple has received actual notice of infringement by virtue of the filing of this lawsuit.

DEMAND FOR JURY TRIAL

VirnetX hereby demands a jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, VirnetX prays for the following relief:

1. A judgment that Apple has directly infringed the '181 patent, contributorily infringed the '181 patent, and/or induced the infringement of the '181 patent;

2. A preliminary and permanent injunction preventing Apple and its respective officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from directly infringing, contributorily infringing, and/or inducing the infringement of the '181 patent;

3. This case be found an exceptional case, entitling VirnetX to attorneys' fees incurred in prosecuting this action;

4. A judgment and order requiring Defendant to pay VirnetX damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, and treble damages for willful infringement as provided by 35 U.S.C. § 284;

5. A judgment and order requiring Defendant to pay VirnetX the costs of this action (including all disbursements);

6. A judgment and order requiring Defendant to pay VirnetX pre-judgment and post-judgment interest on the damages awarded;

7. A judgment and order requiring that in the event a permanent injunction preventing future acts of infringement is not granted, that VirnetX be awarded a compulsory ongoing licensing fee; and

8. Such other and further relief as the Court may deem just and proper.

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