UNITED STATES PATENT AND TRADEMARK OFFICE

_____

BEFORE THE PATENT TRIAL AND APPEAL BOARD

_____

MICROSOFT CORPORATION,
Petitioner

v.

VIRNETX, INC.,
Patent Owner

_____

U.S. Patent No. 6,502,135

(Trial No. _____)

_____

**MOTION FOR JOINDER UNDER 35 U.S.C. § 315(c) AND
37 C.F.R. § 42.122(b)**

Mail Stop Patent Board
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-

TABLE OF CONTENTS

I. STATEMENT OF RELIEF REQUESTED

Microsoft Corporation ("Microsoft") submits concurrently herewith a Petition for *inter partes* review of claims 1, 3, 4, 7, 8, 10, 12, and 13 of U.S. Patent No. 6,502,135 ("the '135 patent") ("Petition"). The Petition is being filed within one year of service by VirnetX, Inc. ("VirnetX") of a complaint against Microsoft alleging infringement of the '135 Patent.[1] As such, Microsoft respectfully submits that, for at least the reasons outlined in the Petition, 35 U.S.C. § 315(b) is inapplicable and does not bar institution of the *inter partes* review of the '135 patent that is requested in Microsoft's Petition.

---

[1] The '135 patent is the subject of Civ. Act. No. 6:13-cv-00351-LED (E.D. Tex), which was filed April 22, 2013 ("the 2013 VirnetX litigation"). The complaint in the 2013 VirnetX litigation was served on April 23, 2013. VirnetX has also asserted the '135 patent against Microsoft in two prior instances: VirnetX, Inc. v. Microsft Corporation (Case No. 6:07-cv-80 (E.D. Tex.), filed February 2007, and VirnetX, Inc. v. Microsoft (Case No. 6:10-cv-94 (E.D. Tex.), filed March 2010. These prior litigations were dismissed pursuant to a settlement agreement that expressly preserved Microsoft's ability to later challenge the validity of the patents-in-suit.

If, however, the Board decides that 35 U.S.C. § 315(b) is applicable and bars
Microsoft from instituting an *inter partes* review of the '135 patent, Microsoft
moves for joinder, pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. § 42.122(b), with
respect to the pending *inter partes* review designated as IPR2014-00171 ("the RPX
IPR") and requested by RPX Corporation ("RPX"), upon institution of the RPX
IPR.

In accordance with the Board's Representative Order identifying matters to
be addressed in a motion for joinder (IPR2013-00004, Paper No. 15)[2], Microsoft
submits that: (1) joinder is appropriate because it will promote efficient
determination of the validity/invalidity of the '135 patent without prejudice to the
existing parties; (2) the grounds of unpatentability raised in Microsoft's Petition
are a subset of those at issue in the RPX IPR; (3) joinder would not affect the
timely completion of that proceeding; and (4) Microsoft is willing to accept
reasonable restrictions on briefing and discovery that will minimize the burden of

---

[2] A motion for joinder should: (1) set forth the reasons why joinder is
appropriate; (2) identify any new grounds of unpatentability asserted in the
petition; (3) explain what impact (if any) joinder would have on the trial
schedule for the existing review; and (4) address specifically how briefing
and discovery may be simplified. *See Kyocera Corporation v. Softview LLC,*
IPR2013-00004, Paper No. 15 at 4 (April 24, 2013).

joiner on the Board and on the parties. Moreover, absent joinder, Microsoft's interests will not be fully and fairly represented in the RPX IPR.

Accordingly, if the Board declines to institute the *inter partes* review of the '135 patent requested in the attached Petition, Microsoft respectfully asks the Board to grant Microsoft joinder.

II.   BACKGROUND AND RELATED PROCEEDINGS

VirnetX has asserted varying sets of claims of the '135 patent against various defendants in numerous law suits.[3] Microsoft has been targeted in three (3) of those law suits, most recently in Civ. Act. No. 6:13-cv-00351-LED (E.D. Tex), filed April 22, 2013 ("the 2013 VirnetX litigation").[4]

---

[3] The '135 patent is the subject of the following ongoing civil actions: (i) Civ. Act. No. 6:13-cv-00211-LED (E.D. Tex.), filed February 26, 2013; (ii) Civ. Act. No. 6:12-cv-00855-LED (E.D. Tex.), filed November 6, 2012; (iii) Civ. Act. No. 6:10-cv-00417-LED (E.D. Tex.), filed August 11, 2010; (iv) Civ. Act. No. 6:11-cv-00018-LED (E.D. Tex), (iv) Civ. Act. No. 6:13-cv-00351-LED (E.D. Tex), filed April 22, 2013 ("the 2013 VirnetX litigation"); (v) Civ. Act. No. 6:10-cv-00094 (E.D. Tex); and (vi) Civ. Act. No. 6:07-cv-00080 (E.D. Tex).

[4] *See* FN 1 of the instant motion, above at page 2.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.

fastcase®
Smarter legal research.