

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

VIRNETX INC,
Patent Owner.

Case No. IPR2015-00810
U.S. Patent No. 8,868,705

Before KARL D. EASTHOM, JENNIFER S. BISK, and
GREGG I. ANDERSON, *Administrative Patent Judges*.

PETITIONER'S REPLY BRIEF

Table of Contents

I.	Introduction.....	1
II.	Claim Construction.....	1
III.	Beser and RFC 2401 Render Claims 1-4, 6-10, 12-26, and 28-34 Obvious...2	
	A. A Person of Ordinary Skill Would Have Combined Beser and RFC 2401	3
	B. Independent Claims 1 and 21	7
	1. Beser Teaches a Request to Lookup an IP Address	8
	2. Beser Teaches “Intercepting” a Request to Lookup an IP Address.....	12
	C. Dependent Claims	15
	1. Claims 3, 10, and 25	15
	2. Claims 4 and 26.....	16
	3. Claims 14 and 31.....	17
	4. Claims 18-20 and 22-24.....	18
	5. Claims 2, 6-9, 12, 13, 15-17, 28-30, and 32-34.....	18
IV.	Beser, RFC 2401, and Brand Render Claims 5, 11, and 27 Obvious	19
V.	RFC 2401 Is a Prior Art Printed Publication.....	19
	A. The Evidence Shows RFC 2401 Is a Prior Art Printed Publication ...	19
	B. Patent Owner’s Arguments Lack Any Merit	21
VI.	Dr. Tamassia’s Testimony Is Probative.....	23
VII.	Conclusion	25

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Arthrocare Corp. v. Smith & Nephew, Inc.</i> , 406 F.3d 1365 (Fed. Cir. 2005)	11
<i>Belden Inc. v. Berk-Tek LLC</i> , 805 F.3d 1064 (Fed. Cir. 2015)	24, 25
<i>Brand v. Miller</i> , 487 F.3d 862 (Fed. Cir. 2007)	1, 19, 24
<i>Poole v. Textron, Inc.</i> , 192 F.R.D. 494 (D. Md. 2000)	22
<i>Schumer v. Lab. Computer Sys., Inc.</i> , 308 F.3d 1304 (Fed. Cir 2002)	24
<i>Sundance, Inc. v. Demonte Fabricating Ltd</i> , 550 F.3d 1356 (Fed. Cir. 2008)	23
<i>Tempo Lighting Inc. v. Tivoli, LLC</i> , 742 F.3d 973 (Fed. Cir. 2014)	16, 25
<i>Titanium Metals Corp. of America v. Banner</i> , 778 F.2d 775 (Fed. Cir. 1985)	25
<i>U.S. v. Taylor</i> , 166 F.R.D. 356 (M.D.N.C.) <i>aff'd</i> , 166 F.R.D. 367 (M.D.N.C. 1996)	22
<i>Ultratec, Inc. v. Sorenson Commc'ns, Inc.</i> , No. 13-CV-346, 2014 WL 4829173 (W.D. Wis. Sept. 29, 2014)	22
<i>Guangdong Xinbao Elec. Appliances Holdings v. Adrian Rivera</i> , IPR2014-00042, Paper 50 at 22-23 (Feb. 6, 2015)	24
<i>LG Display Co., Ltd, v. Innovative Display Techs. LLC</i> , IPR2014- 01362, Paper 32 at 15-16 (Feb. 8, 2016)	25

Statutes

35 U.S.C. § 6.....25

Other Authorities

37 CFR 42.65(a).....25

Fed. R. Evid. 70223, 24

I. Introduction

In its Institution Decision, the Board correctly found that Beser and RFC 2401 render claims 1-4, 6-10, 12-26, and 28-34 of the '705 patent obvious and that Beser, RFC 2401, and Brand render claims 5, 11, and 27 obvious. Paper 8 (Dec.) at 13-23. In its Response ("Resp.") (Paper 25), Patent Owner advances a number of irrelevant challenges or clarifications to the Board's claim constructions, makes several narrow challenges to the substance of the Board's findings about Beser and RFC 2401, challenges whether RFC 2401 is a printed publication, and then concludes by asserting that the Board lacks the ability to compare the prior art to the challenged claims on its own and instead must rely on expert testimony. Each of Patent Owner's arguments lacks merit and should be rejected.

The Board's initial determination that the challenged claims are unpatentable is supported by more than substantial evidence and should be maintained.

II. Claim Construction

Petitioner believes that the constructions set forth in the petition represent the broadest reasonable constructions of the claims. However, in the Institution Decision, the Board correctly found that it need not adopt specific constructions here because under any reasonable construction, Beser and RFC 2401 (and Brand for certain claims) render the claims obvious.

Many of the terms Patent Owner construes in its Response are irrelevant to

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.