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

VIRNETX INC.,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**CASE NO. 6:11-CV-18**
	§	
MITEL NETWORKS CORP., et al.,	§	
	§	
Defendants.	§	
	§	

MEMORANDUM OPINION AND ORDER

This Memorandum Opinion construes the disputed claim terms in U.S. Patent Nos. 6,502,135 ("the '135 Patent"), 7,418,504 ("the '504 Patent"), and 7,921,211 ("the '211 Patent").

BACKGROUND

VirnetX Inc. ("VirnetX") asserts the three patents-in-suit against Mitel Networks Corporation; Mitel Networks, Inc. (collectively "Mitel"); Siemens Enterprise Communications GmBH & Co. KG; Siemens Enterprise Communications, Inc. (collectively "Siemens"); and Avaya Inc. ("Avaya") (collectively "Defendants"). The '135 Patent discloses a method of transparently creating a virtual private network ("VPN") between a client computer and a target computer. The '504 and '211 Patents disclose a secure domain name service.

The patents-in-suit are all related; Application No. 09/504,783 ("the '783 Application") is an ancestor application for every patent-in-suit. The '135 Patent issued on December 31, 2002, from the '783 Application. The '504 Patent issued from a continuation of a continuation-in-part of the '783 Application. Finally, the '211 Patent is a continuation of the application that resulted in the '504 patent.

This Court has recently construed all but one of the terms at issue. *See VirnetX, Inc. v. Cisco Systems, Inc.*, No. 6:10-cv-417 (E.D. Tex. Apr. 25, 2012) ("*Cisco*"). Further, many of those terms were construed by this Court in a previous case that involved the '135 Patent. *See VirnetX, Inc. v. Microsoft Corp.*, 2009 U.S. Dist. LEXIS 65667, No. 6:07cv80 (E.D. Tex. July 30, 2009) ("*Microsoft*"). Thus, this is the third time this Court has considered many of the terms at issue. Given the recent opinion construing most of these terms, the Court hereby incorporates the entirety of the reasoning therein. *See Cisco*, No. 6:10-cv-417 (E.D. Tex. Apr. 25, 2012). The opinion below addresses new arguments and new terms presented by the parties.

APPLICABLE LAW

"It is a 'bedrock principle' of patent law that 'the claims of a patent define the invention to which the patentee is entitled the right to exclude.'" *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Innova/Pure Water Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). In claim construction, courts examine the patent's intrinsic evidence to define the patented invention's scope. *See id.*; *C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 861 (Fed. Cir. 2004); *Bell Atl. Network Servs., Inc. v. Covad Commc'ns Group, Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001). This intrinsic evidence includes the claims themselves, the specification, and the prosecution history. *See Phillips*, 415 F.3d at 1314; *C.R. Bard, Inc.*, 388 F.3d at 861. Courts give claim terms their ordinary and accustomed meaning as understood by one of ordinary skill in the art at the time of the invention in the context of the entire patent. *Phillips*, 415 F.3d at 1312–13; *Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003).

The claims themselves provide substantial guidance in determining the meaning of particular claim terms. *Phillips*, 415 F.3d at 1314. First, a term's context in the asserted claim can be very instructive. *Id.* Other asserted or unasserted claims can also aid in determining the

claim's meaning because claim terms are typically used consistently throughout the patent. *Id.* Differences among the claim terms can also assist in understanding a term's meaning. *Id.* For example, when a dependent claim adds a limitation to an independent claim, it is presumed that the independent claim does not include the limitation. *Id.* at 1314–15.

"[C]laims 'must be read in view of the specification, of which they are a part.'" *Id.* (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc)). "[T]he specification 'is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.'" *Id.* (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)); *see also Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). This is true because a patentee may define his own terms, give a claim term a different meaning than the term would otherwise possess, or disclaim or disavow the claim scope. *Phillips*, 415 F.3d at 1316. In these situations, the inventor's lexicography governs. *Id.* Also, the specification may resolve ambiguous claim terms "where the ordinary and accustomed meaning of the words used in the claims lack sufficient clarity to permit the scope of the claim to be ascertained from the words alone." *Teleflex, Inc.*, 299 F.3d at 1325. But, "'[a]lthough the specification may aid the court in interpreting the meaning of disputed claim language, particular embodiments and examples appearing in the specification will not generally be read into the claims.'" *Comark Commc'ns, Inc. v. Harris Corp.*, 156 F.3d 1182, 1187 (Fed. Cir. 1998) (quoting *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988)); *see also Phillips*, 415 F.3d at 1323. The prosecution history is another tool to supply the proper context for claim construction because a patent applicant may also define a term in prosecuting the patent. *Home Diagnostics,*

Inc., v. Lifescan, Inc., 381 F.3d 1352, 1356 (Fed. Cir. 2004) ("As in the case of the specification, a patent applicant may define a term in prosecuting a patent.").

Although extrinsic evidence can be useful, it is "'less significant than the intrinsic record in determining the legally operative meaning of claim language.'" *Phillips*, 415 F.3d at 1317 (quoting *C.R. Bard, Inc.*, 388 F.3d at 862). Technical dictionaries and treatises may help a court understand the underlying technology and the manner in which one skilled in the art might use claim terms, but technical dictionaries and treatises may provide definitions that are too broad or may not be indicative of how the term is used in the patent. *Id.* at 1318. Similarly, expert testimony may aid a court in understanding the underlying technology and determining the particular meaning of a term in the pertinent field, but an expert's conclusory, unsupported assertions as to a term's definition is entirely unhelpful to a court. *Id.* Generally, extrinsic evidence is "less reliable than the patent and its prosecution history in determining how to read claim terms." *Id.*

LEVEL OF ORDINARY SKILL IN THE ART

The parties agree that a person of ordinary skill in the art would have a master's degree in computer science or computer engineering and approximately two years of experience in computer networking and computer network security.

CLAIM TERMS

virtual private network

VirnetX proposes "a network of computers which privately and directly communicate with each other by encrypting traffic on insecure communication paths between the computers." Defendants propose "a network of computers which privately and directly communicate with each other by encrypting traffic on insecure communication paths between the computers to accomplish both data security and anonymity, and in which a computer is able to address

additional computers over the network without additional setup." In *Cisco*, the Court construed this term as "a network of computers which privately and directly communicate with each other by encrypting traffic on insecure communication paths between the computers where the communication is both secure and anonymous."

The Court's *Cisco* analysis has already addressed the parties' arguments relating to the "secure and anonymous" limitation. *See Cisco*, slip op. at 5. Here, Defendants seek the additional limitation "and in which additional computers can be addressed over the network without additional setup." During reexamination of the '135 Patent, VirnetX argued that the Aventail reference did not disclose a VPN for three reasons. *See* Docket No. 165 attach. 5, at 5–6. The first of these arguments was that "Aventail has not been shown to demonstrate that computers connected via the Aventail system are able to communicate with each other as though they were on the same network." *Id.* at 5. Thereafter, VirnetX provides an example of a situation permitted by a VPN but not by Aventail. In the example, VirnetX explained that two computers (A and B) on a public network that each established independent VPN connections to a private network (containing computers X and Y) would have the ability to communicate with each other over the VPN. However, the same public computers employing the Aventail system would be unable to communicate with each other over the established Aventail (SOCKS) connections.

Defendants seek to impose the "without additional setup" limitation based on the following statement lifted from VirnetX's two paragraph example: "then A would nevertheless be able to address data to B, X, and Y without additional setup." *Id.* at 6. However, the example was provided to illustrate how multiple computers connected via Aventail were not able to "communicate with each other as though they were on the same network." *Id.* at 5. This feature of the VPN is captured with the "directly" limitation discussed in both *Cisco* and *Microsoft*.

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