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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner

v.

VIRNETX INC.
Patent Owner

Case IPR2015-00812
Patent No. 8,850,009

Patent Owner's Request for Rehearing Under 37 C.F.R. § 42.71(d)(1)

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I. STATEMENT OF THE PRECISE RELIEF REQUESTED

Patent Owner VirnetX Inc. requests rehearing of the Patent Trial and Appeal Board's Decision entered September 11, 2015 ("Decision"), instituting an *inter partes* review of U.S. Patent No. 8,850,009 ("the '009 patent"). As explained in Patent Owner's Preliminary Response (Paper No. 6), the Petition (Paper No. 1) fails to establish a reasonable likelihood of prevailing with respect to any claim of the '009 patent and should be denied. Nonetheless, the Board instituted review and in doing so, it legally erred and overlooked certain matters with respect to whether Apple met its burden to show that one of the references at issue is a printed publication.

II. LEGAL STANDARD

"A party dissatisfied with a decision may file a request for rehearing." 37 C.F.R. § 42.71(d). "The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply." *Id.*

Institution decisions are reviewed on rehearing for an abuse of discretion. *See* 37 C.F.R. § 42.71(c). An abuse of discretion occurs when a "decision [i]s based on an erroneous conclusion of law or clearly erroneous factual findings, or . . . a clear error of judgment." *Apple Inc. v. DSS Technology Management, Inc.*, IPR2015-00369, Paper No. 14 at 3 (August 12, 2015) (hereinafter *DSS Technology*

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