Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

VIRNETX INC.,
Patent Owner.

Case No. IPR2015-00870
U.S. Patent No. 8,560,705

PETITIONER'S OPPOSITION TO
PATENT OWNER'S MOTION TO EXCLUDE

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I. Introduction

The evidence of record establishes that Exhibits 1001-1006, 1009-1011, 1013-1041, 1043-1049, 1051-1054, 1060, 1063-1065, and 1071 are admissible. Patent Owner has failed to show otherwise, and thus, its motion must be denied. *See* Paper 30("Mot.").

II. Argument

A. Exhibits 1060 and 1063-1065 Are Admissible

Patent Owner moves to exclude Exhibits 1060 an 1063-1065 as inadmissible hearsay. Mot. at 2-5. That motion should be denied, as these exhibits qualify for the residual exception to hearsay. Fed. R. Evid. 807.

Under Federal Rule of Evidence 807, a "statement is not excluded by the rule against hearsay" if: "(1) the statement has equivalent circumstantial guarantees of trustworthiness; (2) it is offered as evidence of a material fact; (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and (4) admitting it will best serve the purposes of these rules and the interests of justice." Fed. R. Evid. 807(a). The proponent of the testimony must also give (5) "an adverse party reasonable notice of the intent to offer the statement and its particulars." Fed. R. Evid. 807(b). Courts are accorded wide discretion in applying this exception. *Doe v. United States*, 976 F.2d 1071, 1076–77 (7th Cir. 1992), *cert. denied* 510 U.S. 812 (1993);

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