

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

VIRNETX INC.,
Patent Owner.

Case IPR2015-00866 (Patent 8,458,341 B2)
Case IPR2015-00868 (Patent 8,516,131 B2)
Case IPR2015-00870 (Patent 8,560,705 B2)
Case IPR2015-00871 (Patent 8,560,705 B2)¹

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

ANDERSON, *Administrative Patent Judge*.

ORDER
Conduct of the Proceedings
37 C.F.R. § 42.5(a)(1)

¹ This Order addresses issues that are identical in all cases. The parties are not authorized to use this style heading for any subsequent papers.

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Apple Inc. (“Petitioner”) requested an oral hearing in each of these proceedings pursuant to 37 C.F.R. § 42.70 and VirnetX Inc. (“Patent Owner”) filed a Notice Regarding Oral Argument stating that if Petitioner requested oral argument, it would also present oral argument. *See*, Papers 29, 31.² We grant Petitioner’s request.

These proceedings will be heard on June 27, 2016. Each party will have 40 minutes of total argument time. Petitioner bears the ultimate burden of proof that the claims at issue in this review are unpatentable. Therefore, Petitioner will proceed first to present Petitioner’s case with regard to the challenged claims on which basis we instituted trial. Thereafter, Patent Owner will respond to Petitioners’ case and present argument regarding its motion to exclude (Paper 36). After that, Petitioner will make use of the rest of its time responding to Patent Owner. There are no motions to amend or other motions to be addressed at the hearing, and no rebuttal time will be allotted to Patent Owner.

There is a strong public policy interest in making all information presented in these proceedings public, as the review determines the patentability of claims in an issued patent and thus affects the rights of the public. This policy is reflected in part, for example, in 35 U.S.C. § 316(a)(1) and 35 U.S. C. § 326(a)(1), which provide that the filing of any *inter partes* review or post grant review be made available to the public, except that any petition or document filed with the intent that it be sealed shall, if accompanied by a motion to seal, be treated as sealed

² All citations are to papers filed in IPR2015-00866.

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pending the outcome of the ruling on the motion. Accordingly, we exercise our discretion to make the oral hearing publically available via in-person attendance.

Specifically, the hearing will commence at 1:30 PM Eastern Time, on the aforementioned date, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia, and it will be open to the public for in-person attendance. In-person attendance will be accommodated on a first come first serve basis.

The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing. Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served five business days before the hearing. The parties are directed to *CBS Interactive Inc. v. Helferich Patent Licensing, LLC*, IPR2013-00033, Paper 118 (Oct. 23, 2013), regarding the appropriate content of demonstrative exhibits.

Any issue regarding demonstrative exhibits should be resolved at least two business days prior to the hearing by way of a joint telephone conference call to the Board. The parties are responsible for requesting such a conference sufficiently in advance of the hearing to accommodate this requirement. Any objection to demonstrative exhibits that is not timely presented will be considered waived.

Demonstratives should be filed at the Board no later than *two days* before the hearing. A hard copy of the demonstratives should be provided to the court reporter at the hearing. Questions regarding specific audio-visual equipment should be directed to the Board at (571) 272-9797.

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Requests for audio-visual equipment are to be made 5 days in advance of the hearing date. The request is to be sent directly to Trials@uspto.gov. If the request is not received timely, the equipment may not be available on the day of the hearing. The parties are reminded that the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the hearing to ensure the clarity and accuracy of the reporter's transcript.

The parties also should note that at least one member of the panel will be attending the hearing electronically from a remote location, and that if a demonstrative is not filed or otherwise made fully available or visible to the judge presiding over the hearing remotely, that demonstrative will not be considered. If the parties have questions as to whether demonstrative exhibits would be sufficiently visible and available to all of the judges, the parties are invited to contact the Board at 571-272-9797. Documents presented on the Elmo projector may not be visible to remote judges, so please plan accordingly.

The Board expects lead counsel for each party (including each of the joined Petitioners) to be present in person at the oral hearing. However, lead or backup counsel of the presenting party may put forward the party's argument. If either party anticipates that its lead counsel will not be attending the oral hearing, the parties should initiate a joint telephone conference with the Board no later than *two business days* prior to the oral hearing to discuss the matter.

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ORDER

ORDERED that oral argument will be held in the identified cases on June 27, 2016, commencing at the time and place stated above; and

FURTHER ORDERED that a copy of this Order shall be filed in IPR2015-00866, IPR2015-00868, IPR2015-00870, and IPR2015-00871.

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