

Paper No. _____
Filed: January 17, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE MANGROVE PARTNERS MASTER FUND, LTD. and APPLE INC.,
Petitioner

v.

VIRNETX INC.,
Patent Owner

Case IPR2015-01046¹
Patent 6,502,135

Patent Owner's Sur-Reply Brief

¹ Apple Inc., who filed a petition in IPR2016-00062, has been joined as a Petitioner in the instant proceeding.

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I. Introduction

As VirnetX previously demonstrated, Petitioners’ grounds of unpatentability are deficient in a number of ways. Petitioners’ reply brief tries to argue otherwise. As explained below, those arguments are without merit.

II. Claim Construction

A. “Client Computer”

1. Petitioners’ Proposed Construction Finds No Support in the Claim Language

Petitioners’ claim construction argument is based on a faulty premise—that the term “client computer,” in its “plain and ordinary meaning,” denotes “a ‘computer from which a data request to a server is generated.’” (Petitioner’s Reply Remand Brief, Paper 97 (“Reply”) at 1.) That argument is unsound. Petitioners’ original basis for their proposed construction—as reflected in their opening brief on remand—was the assertion that this is how a skilled artisan would have understood the term “client computer.” (Petitioners’ Remand Brief, Paper 95 (“PRB”) at 6-7.) In its opposition brief, VirnetX demonstrated that Petitioners’ support for that assertion—a claim that both their and VirnetX’s experts “agreed that a skilled person would have understood a conventional ‘client’ to be any application that generates a request for data from a server” (PRB at 7)—mischaracterized expert testimony. (Patent Owner’s Opposition Brief, Paper 96 (“Opp.”) at 7-8.) Neither expert

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