

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

VIRNETX INC.,  
Patent Owner.

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Case No. IPR2015-01046<sup>1</sup>  
Patent No. 6,502,135

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**PETITIONER APPLE'S MOTION FOR ADMISSION *PRO HAC VICE* OF  
SCOTT M. BORDER PURSUANT TO 37 C.F.R. § 42.10(c)**

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

Petitioner Apple Inc. (“Apple”) respectfully requests that the Board recognize Scott M. Border, Esq. as *pro hac vice* counsel for Apple for this proceeding. Petitioner The Mangrove Partners Fund, Ltd. has indicated they do not oppose this motion. Patent Owner has indicated the following: “VirnetX opposes the *pro hac vice* motion to the extent that it continues to oppose Apple’s involvement in IPR2015-01046 and IPR2015-01047.”

## **I. BACKGROUND**

Apple’s Motion for *Pro Hac Vice* Admission is being filed pursuant to and in compliance with the Notice of Filing Date Accorded to Petition and Time Period for Filing Patent Owner Preliminary Response, which was filed April 24, 2015 (Paper 4) (the “Notice”). The Notice authorizes parties to file motions for *pro hac vice* admission under 37 C.F.R. § 42.10(c). Further to the Notice, such “motions shall be filed in accordance with the ‘Order – Authorizing Motion for *Pro Hac Vice* Admission’ in Case IPR2013-00639 ” (the “Order”).

## **II. TIME OF FILING**

This Motion for *Pro Hac Vice* admission is being filed in accordance with the Notice Authorizing the Filing of a Motion for *Pro Hac Vice* admission, and is filed greater than 21 days after that Notice.

## **III. STATEMENT OF FACTS**

As required by the Order, the following statement of facts, supported by the attached Declaration of Scott M. Border in Support of Motion for *Pro Hac Vice*

Admission (Ex. 1028), shows that there is good cause for the Patent Trial and Appeal Board (“Board”) to recognize Mr. Border *pro hac vice* in this proceeding. As required by 37 C.F.R. § 42.10(c), Apple’s lead counsel, Jeffrey P. Kushan, is a registered practitioner experienced in proceedings before the USPTO.

Mr. Border is an experienced litigation attorney. Mr. Border has been a litigating attorney for more than seven years, and has been involved in numerous patent litigation cases in federal courts and matters before the Board. Mr. Border’s experience includes representing a wide range of clients in complex intellectual property litigation, and he has appeared as counsel for Apple in a number of litigation matters before the International Trade Commission, and various District Courts. Mr. Border has also appeared *pro hac vice* in other matters before the Board.<sup>2</sup> Mr. Border is a member in good standing of the Virginia State Bar and the District of Columbia Bar, with no suspensions or disbarments from practice, nor any application for admission to practice denied, nor any sanctions or contempt citations, and is admitted to practice in the United States Court of Appeals for the Federal Circuit, as well as the United States District Courts for the Northern

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<sup>2</sup> Mr. Border was admitted *pro hac vice* in IPR2013-00292, IPR2014-00039, IPR2014-00040, IPR2014-00481, IPR2014-00482, IPR2015-00074, IPR2015-00810, IPR2015-00811, IPR2015-00812, IPR2015-00866, IPR2015-00868, IPR2015-00870, and IPR2015-00871.

District of Florida, Eastern District of Texas, and Eastern District of Virginia. His mailing address is at Sidley Austin LLP, 1501 K Street, N.W., Washington, D.C. 20005, his email address is sborder@sidley.com, and his direct dial is (202) 736-8818.

Mr. Border has worked with lead counsel in most aspects of his participation in this proceeding. As such, he has reviewed and is very familiar with (i) U.S. Patent No. 6,502,135, the patent at issue in this proceeding, (ii) the prior art relied upon in Apple's Petition, (iii) the legal and factual arguments that have been addressed by Apple, and (iv) the developments in this proceeding since the filing of Apple's Petition, as well as the developments in related matters before the Board. Mr. Border has also been involved in a number of other proceedings before the Board, has been admitted *pro hac vice* as backup counsel in other matters before the Board, and is familiar with its established practices. Accordingly, he has established familiarity with the subject matter at issue in these proceedings and the conduct of these proceedings to date.

Mr. Border has read and will comply with the Office Patent Trial Practice Guide and the Board's Rules for Practice for Trials set forth in part 42 of 37 C.F.R., and he agrees to be subject to the USPTO Rules of Professional Conduct set forth in 37 C.F.R. §§11.01 *et seq.*, and to disciplinary jurisdiction under 37 C.F.R. §11.19(a).

**IV. ANALYSIS**

The facts contained in the Statement of Facts above, and contained in the Border Declaration, establish that there is good cause to admit Mr. Border *pro hac vice* in this proceeding under 37 C.F.R. § 42.10(c). Apple's lead counsel is a registered practitioner, Mr. Border is an experienced litigating attorney, and Mr. Border has an established familiarity with the subject matter at issue in these proceedings.

**V. CONCLUSION**

Therefore, Apple respectfully submits that there is good cause for the Board to recognize Mr. Border as *Pro Hac Vice* for Apple during these proceedings. Petitioner's Motion for *Pro Hac Vice* Admission is accompanied by a Declaration of Scott M. Border as required by the Order.

Dated: January 27, 2016

Respectfully Submitted,

/Jeffrey P. Kushan/  
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