

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

VIRNETX INC.,
Patent Owner.

Case No. IPR2015-01046¹
U.S. Patent No. 6,502,135 B1

**PETITIONERS' BRIEF ADDRESSING WHETHER THE BOARD SHOULD WITHDRAW
APPLICATION OF THE GENERAL ORDER TO THESE PROCEEDINGS**

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. Summary of Request

On May 1, 2020, the Chief Judge issued a General Order holding in abeyance all “cases remanded by the Federal Circuit under *Arthrex*”² pending further review. IPR2015-01046, Paper 106, 2 (PTAB May 1, 2020). That Order incorrectly included these proceedings, which were not remanded under *Arthrex* and do not properly raise any issues that turn on *Arthrex* or its future disposition. VirnetX’s appointments clause objection, improperly raised for the first time in a rehearing motion several months after the Federal Circuit remanded on other grounds, is outside the scope of the Federal Circuit’s remand, contrary to *Arthrex*, and meritless. Delaying these proceedings is highly prejudicial to Petitioner Apple, against whom VirnetX is pursuing over \$700 million in damages based on the patents. It also violates the Board’s obligation to promptly conclude IPR proceedings and is arbitrary and capricious. The Board should accordingly withdraw application of the General Order to both cases.

II. Background

The ’135 and ’151 patents are the subject of a decade-long dispute between Patent Owner VirnetX and one of the Petitioners, Apple. VirnetX first asserted the patents against Apple in 2010 in the Eastern District of Texas. In response, in 2011, Apple requested an *inter partes* reexamination against each patent. Both proceedings

² *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019).

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