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. IPR2015-01046[1]
U.S. Patent No. 8,560,705

PETITIONERS' OPPOSITION TO
PATENT OWNER'S MOTION TO EXCLUDE

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[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

The evidence of record establishes that Exhibits 1005, 1010, 1014, 1020, 1025, 1029, 1031-1033, 1037, and 1039-1042 are admissible. Patent Owner has failed to show otherwise, and thus, its motion must be denied. *See* Paper 59 ("Mot.").

II. Argument

A. Exhibits 1025 and 1037 Are Not Hearsay.

Patent Owner moves to exclude Exhibits 1025 and 1037 as inadmissible hearsay. Mot. at 2-3. But none of these exhibits are hearsay because they are not being offered for the truth of their contents. Fed. R. Evid. 801(c). Under Federal Rule of Evidence 801(c), "Hearsay means a statement that… (2) a party offers in evidence *to prove the truth of the matter asserted* in the statement." Fed. R. Evid. 801(c)(2) (emphasis added).

In related proceedings, Patent Owner has mischaracterized Dr. Guerin's testimony in IPR2014-00401 about the term "VPN." Petitioners rely on Exhibit 1025, Dr. Guerin's declaration from IPR2014-00401, to preemptively refute Patent Owner's mischaracterizations of that testimony. Paper 5 (Corr. Pet.) at 10-11. Thus, Petitioners reliance on Exhibit 1025 is not for the truth of its contents. Furthermore, Patent Owner had the opportunity to, and could have, cross-examined Dr. Guerin on any statements in Exhibit 1025 if it had desired. It did not.

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