

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>  
U.S. Patent No. 8,560,705

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**PETITIONERS' OPPOSITION TO  
PATENT OWNER'S MOTION TO EXCLUDE**

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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.

**Table of Contents**

I. Introduction.....1

II. Argument .....1

    A. Exhibits 1025 and 1037 Are Not Hearsay.....1

    B. Exhibits 1029 and 1031-1033 Are Admissible Under Fed. R. Evid. 807.....2

    C. Exhibits 1037 and 1039 Are Admissible Under Fed. R. Evid. 803(17) and/or 807.....9

    D. Exhibits 1005, 1010, 1014, 1020, and 1040-1042 Are Relevant.....13

III. Conclusion .....15

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
<b>Cases</b>	
<i>Apple Inc. v. Smartflash LLC</i> , CBM2014-00180, Paper 50 (Sep. 25, 2015) .....	14
<i>CA Inc. v. Simplecom Inc.</i> , 780 F. Supp. 2d 169 (E.D. N.Y. 2009) .....	3
<i>Conoco Inc. v. Dept. of Energy</i> , 99 F.3d 387 (Fed. Cir. 1996) .....	9, 11
<i>Doe v. United States</i> , 976 F.2d 1071 (7th Cir. 1992), <i>cert. denied</i> 510 U.S. 812 (1993) .....	3
<i>Ericsson Inc. v. Intellectual Ventures I LLC</i> , IPR2014-00527, Paper 41 (May 18, 2015).....	7, 10
<i>HTC Corp. v. Advanced Audio Device, LLC</i> , IPR2014-01157, Paper No. 41 (Jan. 22, 2016).....	2
<i>IBM Corp. v. Intellectual Ventures II LLC</i> , IPR2015-00089, Paper 44 (Apr. 25, 2016).....	3, 9
<i>OddzOnProducts, Inc. v. Just Toys, Inc.</i> , 122 F.3d 1396 (Fed. Cir. 1997) .....	13
<i>PGMedia, Inc. v. Network Solutions, Inc.</i> , 51 F. Supp. 2d 389 (S.D.N.Y. 1999) .....	8
<i>Poole v. Textron, Inc.</i> , 192 F.R.D. 494 (D. Md. 2000) .....	6
<i>QSC Audio Prods., LLC v. Crest Audio, Inc.</i> , IPR2014-00127, Paper 43 (Apr. 29, 2015).....	11
<i>Ultratec, Inc. v. Sorenson Commc'ns, Inc.</i> , No. 13-CV-346, 2014 WL 4829173 (W.D. Wis. Sept. 29, 2014).....	6
<i>United States v. North</i> , 910 F.2d 843 (D.C. Cir. 1990) <i>cert. denied</i> 500 U.S. 941 (1991).....	3

**Statutes**

35 U.S.C. § 316(b) .....7

**Other Authorities**

37 C.F.R. 42.1(b) .....7

37 C.F.R. § 42.65 .....14

Fed. R. Civ. P. 32(a)(8).....7

Fed. R. Evid. 401 .....13, 14

Fed. R. Evid. 402 .....14

Fed. R. Evid. 801(c)(2) .....1

Fed. R. Evid. 803(16).....10

Fed. R. Evid. 803(17).....9, 10, 11

Fed. R. Evid. 807 .....*passim*

## **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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