

**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., APPLE INC., and  
BLACK SWAMP IP, LLC,  
Petitioners,

v.

VIRNETX INC.,  
Patent Owner.

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Case Nos. IPR2015-01046,<sup>1</sup> -01047<sup>2</sup>  
U.S. Patent Nos. 6,502,135 & 7,490,151

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**PETITIONER MANGROVE'S RESPONSES TO  
PATENT OWNER'S NOTICE OF DEPOSITION OF  
THE MANGROVE PARTNERS MASTER FUND, LTD.**

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<sup>1</sup> Apple Inc., who filed a petition in IPR2016-00062, has been joined as a Petitioner in IPR2015-01046.

<sup>2</sup> Apple Inc. and Black Swamp IP, LLC, which filed a petitions in IPR2016-00063 and IPR2016-00167, respectively, have been joined as Petitioners in IPR2015-01047.

Patent Owner VirnetX Inc.’s (“VirnetX”) Notice of Deposition of Petitioner The Mangrove Partners Master Fund, Ltd. (“Mangrove”) requests a deposition with a designated person “with sufficient knowledge and preparation to testify on all information known or reasonably available” to Petitioner Mangrove on four deposition topics. Paper 81 (“Mot.”), Appx. C at 1. As explained in Petitioners’ concurrently filed Partial Opposition to VirnetX’s Motion, and consistent with VirnetX’s Request for Deposition of Apple Inc. in IPR2014-00171, Petitioner Mangrove has responded “to [these] topic[s] in writing instead of providing a witness, effectively treating the topic[s] as ... an interrogatory.” *See RPX Corp. v. VirnetX Inc.*, IPR2014-00171, Ex. 2026, 1.

#### **VIRNETX’S MANGROVE DEPOSITION TOPIC NO. 1**

Communications concerning RPX and VirnetX or VirnetX patents, including communications between Mangrove Partners and RPX concerning VirnetX or VirnetX patents. (Mot. Appx. C at 3.)

#### **MANGROVE’S RESPONSE TO MANGROVE DEPOSITION TOPIC NO. 1**

Petitioner Mangrove objects to this deposition topic for lacking clarity as to whether it should be read “RPX and (VirnetX or VirnetX patents)” or “(RPX and VirnetX) or VirnetX Patents.” *See Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 26 at 6–7 (PTAB Mar. 5, 2013) (“*Garmin*”) (Factor 4). For the purposes of responding to this deposition topic, and in light of the Federal

Circuit’s mandate, Petitioner Mangrove presumes the former interpretation, *i.e.*, “... RPX and (VirnetX or VirnetX patents) ....” Petitioner Mangrove further objects to this deposition topic as overbroad and unduly burdensome for requesting information known or reasonably available about communications dated on or after the date of institution in this proceeding, *i.e.*, October 7, 2015. *See Garmin* at 6–7 (Factors 1 & 5); *Power Integrations, Inc. v. Semiconductor Components Indus., LLC*, 926 F.3d 1306, 1314–15 (Fed. Cir. 2019) (“The focus of § 315(b) is on institution.”); *Wi-Fi One, LLC v. Broadcom Corp.*, 878 F.3d 1364, 1373 (Fed. Cir. 2018) (en banc) (“[T]he time-bar determination may be decided fully and finally at the institution stage.”).

Subject to the foregoing objection(s), Petitioner Mangrove has undertaken a reasonable search for communications prior to October 7, 2015, and has identified no communications concerning RPX and VirnetX or VirnetX patents, including communications between Mangrove Partners and RPX concerning VirnetX or VirnetX patents.

## **VIRNETX’S MANGROVE DEPOSITION TOPIC NO. 2**

Communications concerning RPX and patent office proceedings, including communications between Mangrove Partners and RPX concerning patent office proceedings, such as any agreements or discussions between RPX and Mangrove Partners with respect to patent office proceedings, such as IPR2015-01046 or

IPR2015-01047, prior art, filing, funding, compensation, and/or preparation of any papers. (Mot. Appx. C at 3.)

## **MANGROVE’S RESPONSE TO MANGROVE DEPOSITION TOPIC NO. 2**

Petitioner Mangrove objects to this RFP as overbroad and unduly burdensome for requesting information about communications dated on or after the date of institution in this proceeding. *See Garmin* at 6–7 (Factors 1 & 5); *Power Integrations*, 926 F.3d at 1314–15; *Wi-Fi One*, 878 F.3d at 1373. Petitioner Mangrove further objects to this RFP as overbroad and unduly burdensome for requesting production of “[c]ommunications, documents, or things concerning RPX and patent office proceedings” that are *not* “communications between Mangrove Partners and RPX, or any documents or things concerning such communications, concerning patent office proceedings ....” The former language would encompass, for example, purely internal-to-Mangrove documents describing RPX’s business model that mention post-grant proceedings generically, which would not be relevant to show any relationship between Mangrove and RPX.

Subject to the foregoing objection(s), Petitioner Mangrove has undertaken a reasonable search for communications prior to October 7, 2015, and has identified no communications between Mangrove Partners and RPX concerning patent office proceedings, such as any agreements or discussions between RPX and Mangrove Partners with respect to patent office proceedings, such as IPR2015-01046 or

IPR2015-01047, prior art, filing, funding, compensation, and/or preparation of any papers.

### **VIRNETX’S MANGROVE DEPOSITION TOPIC NO. 3**

Mangrove Partners’ acquisition of RPX stock, including Mangrove Partners’ reasons for acquiring RPX stock and any underlying agreements surrounding Mangrove Partners’ acquisition of RPX stock. (Mot. Appx. C at 3.)

### **MANGROVE’S RESPONSE TO MANGROVE DEPOSITION TOPIC NO. 3**

Petitioner Mangrove objects to this deposition topic as overbroad and unduly burdensome for requesting information about communications dated on or after the date of institution in this proceeding. *See Garmin* at 6–7 (Factors 1 & 5); *Power Integrations*, 926 F.3d at 1314–15; *Wi-Fi One*, 878 F.3d at 1373. Petitioner Mangrove further objects to this deposition topic as overbroad and unduly burdensome for requesting the production of *all* information about “Mangrove Partners’ acquisition of RPX stock,” rather than information sufficient to show “Mangrove Partners’ reasons for acquiring RPX stock and any underlying agreements surrounding Mangrove Partners’ acquisition of RPX stock.” *See Garmin* at 6–7 (Factor 5). The former language would encompass, for example, needlessly duplicative information which is not relevant to show any relationship between Mangrove and RPX.

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