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Paper No. 83
Filed: October 4, 2019

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. 6,502,135

PETITIONERS' PARTIAL OPPOSITION TO PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY

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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

There is no secret conspiracy between Mangrove and RPX or Apple. As VirnetX itself recognized in 2015, Mangrove initiated these proceedings as part of a short-selling investment strategy: it "pursued short positions in the publicly traded stock of … VirnetX Holding Corporation," and filed the present IPRs "to encourage such a drop in VHC's stock price." Paper 9, 5. When VirnetX's "abuse of process" complaints failed to prevent institution (*see* Paper 11, 8–9), it promptly forgot its prior explanation and came up with a new one: a supposed conspiracy involving RPX and Apple. *See* Paper 44, 52–54; Paper 81 ("Mot."), 6–13.

VirnetX's conspiracy theory has no basis in reality. Mangrove's acquisition of some publicly-traded shares of RPX did not make RPX a real party in interest or privy to Mangrove. The evidence already in this record coupled with Mangrove's voluntary productions and responses prove there was no connection between Mangrove and RPX that could support a RPI/privity theory. VirnetX cannot show good cause for its remaining requests and its fishing expedition should be denied.

II. Background

A. The Apple IPRs

VirnetX sued Apple on the '135 and '151 patents twice: first in 2010, and again in 2012. Apple filed *inter partes* reexamination requests against both patents in 2011, which remain pending largely as the result of an unprecedented campaign

of delay by VirnetX. *See* Paper 53, 4–5. After the AIA's *inter partes* review provisions came into force in September of 2012, Apple filed IPRs against the '135 and '151 patents within one year of having been served with VirnetX's second complaint. *See* IPR2013-00348, -349, -354. VirnetX successfully argued that § 315(b) runs from the first complaint, not just any complaint, and the Apple IPRs were denied on December 13, 2013. *E.g.*, IPR2013-00348, Paper 14.

B. The RPX IPRs

RPX provides a variety of patent-related services to its clients. *See* Ex. 2054, 6–7. RPX pre-emptively purchases patents to avoid lawsuits, settles with litigants on behalf of its members, and occasionally challenges patents of dubious quality at the Patent Office. *See id.* But VirnetX cites no instance of RPX ever using anonymous third parties to file IPRs on its behalf, and Petitioners know of none.

In 2015, RPX apparently concluded that VirnetX's patents were of dubious quality, and filed IPRs challenging them. *E.g.*, IPR2014-00171. Far from hiding its relationship with its clients such as Apple, RPX filed (under seal) its addendum agreement with its petitions. *See, e.g.*, IPR2014-00171, Paper 1, 2–3 (Nov. 20, 2013); Exs. 1072–73. RPX argued that, despite the agreement, it was the only RPI: it had "sole discretion over and controls the decision of which patents to contest," the "conduct … and the decision to continue to terminate," and "for payment of any expenses of preparing and filing petitions …." IPR2014-00171, Ex. 1072. The

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