

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE MANGROVE PARTNERS MASTER FUND, LTD., APPLE INC., and
BLACK SWAMP IP, LLC,
Petitioners,

v.

VIRNETX INC.,
Patent Owner.

Case Nos. IPR2015-01046,¹ -01047²
U.S. Patent Nos. 6,502,135 & 7,490,151

**PETITIONER MANGROVE'S RESPONSES TO
PATENT OWNER'S INTERROGATORIES**

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

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

The Board granted in part Patent Owner VirnetX Inc.'s ("VirnetX") motion for additional discovery ("Mot.") of Petitioner The Mangrove Partners Master Fund, Ltd. ("Mangrove") in the form of up to "10 interrogatories, inclusive of any subparts, limited to a pre-institution time frame and on topics no broader than the requested deposition topics in Appendices C and D of the Motion." *E.g.*, IPR2015-01046, Paper 88 ("Order"), 28. VirnetX served the same 10 interrogatories on Petitioner Mangrove in each of IPR2015-01046 and IPR2015-01047.

Petitioner Mangrove's responses in this paper employ the definitions of terms as they were provided by VirnetX in its discovery requests. Also, by providing these responses, Petitioner Mangrove does not waive in any manner any applicable attorney-client privilege or attorney work product.

MANGROVE'S GENERAL OBJECTIONS

Petitioner Mangrove generally objects to each of VirnetX's interrogatories to the extent they request information, knowledge, or evidence that first came into existence only after October 7, 2015, and its responses below therefore are "limited to a pre-institution time frame." *See* Order 28. Petitioner Mangrove further generally objects to each of VirnetX's interrogatories as overbroad and unduly burdensome for requesting "*all* facts and circumstances concerning" its subject matter, which may encompass needlessly duplicative information not relevant to show any relationship between Petitioner Mangrove and RPX or Apple. *See*

Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC, IPR2012-00001, Paper 26 at 6–7 (PTAB Mar. 5, 2013) (“*Garmin*”) (Factors 1 & 5). The extent to which Petitioner Mangrove has responded to each interrogatory is explained below.

VIRNETX’S INTERROGATORY NO. 1

Describe all facts and circumstances concerning each communication between Mangrove Partners and RPX prior to October 7, 2015, concerning VirnetX.

MANGROVE’S RESPONSE TO VIRNETX’S INTERROGATORY NO. 1

Subject to the foregoing general objection(s), Petitioner Mangrove has undertaken a reasonable inquiry and is aware of no communications between Mangrove Partners and RPX prior to October 7, 2015, concerning VirnetX. *See also* Ex. 1050, 1–2.

VIRNETX’S INTERROGATORY NO. 2

Describe all facts and circumstances concerning each communication between Mangrove Partners and RPX prior to October 7, 2015, concerning proceedings before the U.S. Patent and Trademark Office.

MANGROVE’S RESPONSE TO VIRNETX’S INTERROGATORY NO. 2

Subject to the foregoing general objection(s), Petitioner Mangrove has undertaken a reasonable inquiry and is aware of no communications between

Mangrove Partners and RPX prior to October 7, 2015, concerning proceedings before the U.S. Patent and Trademark Office. *See also* Ex. 1050, 2–3.

VIRNETX’S INTERROGATORY NO. 3

Describe all facts and circumstances concerning each communication between Mangrove Partners and any person not part of Mangrove Partners prior to October 7, 2015, concerning both RPX and VirnetX.

MANGROVE’S RESPONSE TO VIRNETX’S INTERROGATORY NO. 3

Petitioner Mangrove objects to this interrogatory as overbroad and unduly burdensome for requesting information about “communication[s] between Mangrove Partners and *any person* not part of Mangrove Partners,” instead of only about communications between Mangrove Partners and either of RPX or Apple. *See Garmin*, Paper 26 at 6–7 (Factors 1 & 5). VirnetX represented that it would request “discovery narrowly focuse[d] on the relationship between Mangrove and RPX” (Mot. 6), and the Board agreed that “limiting [discovery] to communications between Mangrove and RPX ... appears reasonable under the interests of justice, because [VirnetX] seeks discovery about that relationship.” Order 21–22. Allowing discovery of communications other than those between Mangrove Partners and either RPX or Apple is not reasonable under the interests of justice. *See Garmin*, Paper 26 at 6–7 (Factors 1 & 5). Petitioner Mangrove also objects to the scope of

this interrogatory to the extent it seeks discovery of communications that concern either RPX or VirnetX, but not both entities.

Subject to the foregoing general and specific objection(s), Petitioner Mangrove has undertaken a reasonable inquiry and is aware of no communications between Mangrove Partners and any person not part of Mangrove Partners prior to October 7, 2015, concerning both RPX and VirnetX.

VIRNETX'S INTERROGATORY NO. 4

Describe all facts and circumstances concerning each communication between Mangrove Partners and any person not part of Mangrove Partners prior to October 7, 2015, concerning challenges to VirnetX's patents.

MANGROVE'S RESPONSE TO VIRNETX'S INTERROGATORY NO. 4

Petitioner Mangrove objects to this interrogatory as overbroad and unduly burdensome for requesting information about “communication[s] between Mangrove Partners and *any person* not part of Mangrove Partners,” instead of only about communications with RPX or Apple. *See Garmin*, Paper 26 at 6–7 (Factors 1 & 5). VirnetX represented that it would request “discovery narrowly focuse[d] on the relationship between Mangrove and RPX” (Mot. 6), and the Board agreed that “limiting [discovery] to communications between Mangrove and RPX ... appears reasonable under the interests of justice, because [VirnetX] seeks discovery about that relationship.” Order 21–22. Allowing discovery of communications other than

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