

**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. 6,502,135

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**PETITIONERS' REMAND BRIEF**

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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.

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## I. Introduction

In its Final Written Decision (Paper 71, “Final Decision”), the Board correctly concluded that claims 1, 3-4, 7-8, 10, and 12 of the ’135 patent (“challenged claims”) are unpatentable. Patent Owner VirnetX Inc. (“VirnetX”) appealed, and on July 8, 2019, the U.S. Court of Appeals for the Federal Circuit vacated the Final Decision and remanded for further consideration of certain issues. *VirnetX Inc. v. Mangrove Partners Master Fund, Ltd.*, 778 F. App’x 897 (Fed. Cir. 2019) (“CAFC Dec.”). None of those remanded issues warrants the Board reaching a different determination.

First, Kiuchi anticipates the challenged claims because the communications between Kiuchi’s user agent (a “*client computer*”) and origin server (a “*target computer*”) are “direct.” Most notably, requests in Kiuchi’s system directly address the desired server and resource, and thus satisfy even VirnetX’s opaque definition of “direct” communications. And while VirnetX has criticized the Kiuchi system for using proxies that supposedly “break” these “direct” communications between Kiuchi’s user agent and origin server, those criticisms ring hollow—VirnetX’s expert admitted that examples in the ’135 patent itself using operations indistinguishable from those in Kiuchi’s system do not “break” direct communications. VirnetX does not dispute that Kiuchi’s user agent is a “*client computer*” even under its narrow construction, so the only finding the Board need

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