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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE MANGROVE PARTNERS MASTER FUND, LTD.
Petitioner

v.

VIRNETX INC.
Patent Owner

Case IPR2015-01046
Patent 6,502,135

Patent Owner's Motion for Additional Discovery

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Other Authorities

77 Fed. Reg. 1575

I. Introduction and Precise Relief Requested

Patent Owner requests that the Board authorize the discovery contained in Exhibits 2039-2040. *See* 37 C.F.R. §§ 42.51(b)(2), 42.52(a). The Board authorized this motion in an email to the parties on December 4, 2015.

II. Background

The Mangrove Partners Master Fund, Ltd. is an entity set up in the Cayman Islands that has no control over its own actions. By design, it receives funding, operates, and pays out profits entirely at the discretion of others, including (1) Mangrove Partners (“the Mangrove Partners Hedge Fund”); (2) Nathaniel August (President and majority owner of the Mangrove Partners Hedge Fund); (3) The Mangrove Partners Fund, L.P. (“the US Feeder”); (4) The Mangrove Partners Fund (Cayman), Ltd. (“the Cayman Feeder”); (5) Mangrove Capital (the General Partner of the US Feeder); and (6) the investors in the US Feeder and the Cayman Feeder, as explained below.

The Board previously found that there were insufficient facts to show that these entities were real-parties-in-interest (“RPIs”). *See generally* Paper No. 19. While Patent Owner respectfully disagrees, the underlying facts do show at a minimum that there is more than a possibility and mere allegation that each of these entities is a RPI, thus supporting the requested discovery.

A. The Mangrove Entities

Nathaniel August is President and majority owner of the Mangrove Partners

Hedge Fund. (See Ex. 2002 at 1-2; Ex. 2001 at 3.) In its role as “investment manager,” the Mangrove Partners Hedge Fund has “*complete* discretion” to control the investments of the US Feeder, the Cayman Feeder, and Petitioner. (Ex. 2001 at 3, 17.) The Mangrove Partners Hedge Fund requires investors to provide a “minimum initial investment of \$1,000,000,” (Ex. 2001 at 6). Pursuant to a master-feeder structure, the investments would be fed into the US Feeder or the Cayman Feeder, and in turn funneled to Petitioner. (Ex. 2001 at 3-4; Ex. 2041 at 6-10; Ex. 2015 at 34-35.) Petitioner has not disputed that the funds from its investors were used for this proceeding.

The Mangrove Partners Hedge Fund and Nathaniel August have repeatedly signed documents on behalf of Petitioner, the US Feeder, the Cayman Feeder, and Mangrove Capital.¹ (See, e.g., Ex. 2007 at 11-12; Ex. 2008 at 12; Ex. 2009 at 11; Ex. 2010 at 11; Ex. 2011 at 11; Ex. Ex. 2012 at 11; Ex. 2013 at 5, 11.) These entities have also in the past publicly acted as a collective, referring to themselves as “Mangrove.” (Ex. 2014 at 1, 3, 4.) Thus, it is likely that these entities also acted collectively in controlling and funding this proceeding, including preparing

¹ Mangrove Capital is an “affiliate” of the Mangrove Partners Hedge Fund and “serves as the general partner of the US Feeder.” (*Id.* at 3.) The Mangrove Partners Hedge Fund and Mangrove Capital are “under common control.” (Ex. 2041 at 5.)

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