Paper No. _____
Filed: December 20, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE MANGROVE PARTNERS MASTER FUND, LTD. and APPLE INC.,
Petitioner

v.

VIRNETX INC.,
Patent Owner

Case IPR2015-01046[1]
Patent 6,502,135

Patent Owner's Opposition Brief

[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

Patent Owner VirnetX Inc. ("VirnetX") respectfully submits that Petitioners have failed to meet their burden to show that the challenged claims of U.S. Patent No. 6,502,135 ("the '135 patent") are unpatentable. Petitioners' arguments are foreclosed by the Federal Circuit's decision in *VirnetX Inc. v. Mangrove Partners Master Fund, Ltd.*, 778 F. App'x 897 (Fed. Cir. 2019), and the record evidence in this proceeding. In fact, the Federal Circuit rejected identical arguments—addressing the same patent and prior art—in *VirnetX Inc. v. Cisco Systems Inc.*, 767 F.3d 1308, 1323-24 (Fed. Cir. 2014).

II. The Federal Circuit's Decision

The Federal Circuit vacated the Board's claim constructions, imposed its own construction of the term "VPN," and directed the Board to construe the term "client computer." *VirnetX*, 778 F. App'x at 991. Invoking VirnetX's disclaimer, it held that the phrase "'VPN between the client computer and the target computer' requires *direct communication* between the client and target computers." *Id.* at 909-10 (emphasis added). The Federal Circuit also "agree[d] with VirnetX that the Board . . . fail[ed] to resolve the claim construction dispute as to the meaning of 'client [computer].'" The Board had "latch[ed] onto . . . out-of-context language" in finding that Kiuchi's client-side proxy could be the claimed "client computer," just because it was "associated with a user, however indirectly." *Id.* at 908, 909.

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