

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

VIRNETX INC.,
Patent Owner

Case No. IPR2015-01047¹
Patent No. 7,490,151

PETITIONERS' OBJECTIONS TO EVIDENCE

¹ Apple Inc. and Black Swamp, LLC, who filed petitions in IPR2016-00063 and IPR2016-00167, respectively, have been joined as Petitioners in the instant proceeding.

Petitioners file and serve the following timely objections to evidence that Patent Owner served on March 21, 2016. *See* 37 C.F.R. § 42.64(b)(1).

Exhibits 2040, 2041, and 2056 are objected to for lacking relevance. *See* Fed. R. Evid. (FRE) 401-403. For example, the portions of these exhibits cited by Patent Owner are irrelevant to whether Kiuchi discloses a claimed “[DNS] request” under any proposed construction. **Exhibit 2041** is additionally irrelevant for containing testimony involving a different claim interpretation and different claim interpretation standard than the one at issue in this proceeding. *See* FRE 401-403.

Exhibit 2042-2049, 2054, and 2055 are objected to for lacking relevance. *See* FRE 401-403. For example, these exhibits do not support Patent Owner’s characterizations and are irrelevant to Patent Owner’s arguments that rely on them.

Exhibit 2050 is objected to for lacking relevance, foundation, personal knowledge, exceeding the scope of lay testimony, and for containing inadmissible hearsay. *See* FRE 801-807. For example, Exhibit 2050 contains attachments that Dr. Short does not authenticate, are not otherwise authenticated, and are not self-authenticating. *See* FRE 901-903. Exhibit 2050 also contains testimony that exceeds the proper scope of lay witness testimony because, for example, Dr. Short testifies as to scientific, technical, or other specialized knowledge. *See* FRE 701(c). Exhibit 2050 also contains testimony on matters of which there is insufficient evidence to support that Dr. Short has personal knowledge. *See* FRE

602. As another example, Exhibit 2050 presents expert opinion but Patent Owner has not shown Dr. Short to be an expert. *See* FRE 702. Dr. Short's declaration also does not present the bases for his opinions. *See* FRE 702(b); *see also* 37 C.F.R. § 42.65(a).

Exhibits 2050-2053 are objected to for lacking relevance. *See* FRE 401-403. For example, Patent Owner relies on these exhibits as evidence of secondary considerations of non-obviousness but failed to establish nexus to any allegedly novel element of the claims.

Exhibit 2058 is objected to for lacking relevance. *See* FRE 401-403. In addition, this exhibit is objected to as including numerous e-mails that are neither cited to, nor relied upon in Patent Owner's response.

Dated: March 28, 2016

/Jeffrey P. Kushan/
Jeffrey P. Kushan
Reg. No. 43,401
SIDLEY AUSTIN LLP
Attorney for Petitioner Apple

/Thomas H. Martin/
Thomas H. Martin
Reg. No. 34,383
MARTIN & FERRARO, LLP
Attorney for Petitioner Black Swamp

Respectfully Submitted,

/Abraham Kasdan/
Abraham Kasdan
Reg. No. 32,997
WIGGIN & DANA LLP

James T. Bailey
Reg. No. 44,518
THE LAW OFFICE OF JAMES. T. BAILEY
Attorneys for Petitioner Mangrove

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2016, a copy of the foregoing has been served in its entirety by e-mail on the following counsel of record for patent owner:

Joseph E. Palys
josephpalys@paulhastings.com

Naveen Modi
naveenmodi@paulhastings.com

Dated: March 28, 2016

Respectfully Submitted,

/Jeffrey P. Kushan/
Jeffrey P. Kushan
Reg. No. 43,401
SIDLEY AUSTIN LLP
Attorney for Petitioner Apple

/Abraham Kasdan/
Abraham Kasdan
Reg. No. 32, 997
WIGGIN & DANA LLP

/Thomas H. Martin/
Thomas H. Martin
Reg. No. 34,383
MARTIN & FERRARO, LLP
Attorney for Petitioner Black Swamp

James T. Bailey
Reg. No. 44,518
THE LAW OFFICE OF JAMES. T. BAILEY
Attorneys for Petitioner Mangrove