CONFIDENTIAL - PROTECTIVE ORDER MATERIAL

Paper No					
Filed:	March	21,	2016		

Filed on behalf of: VirnetX Inc.

By:

Joseph E. Palys Naveen Modi

Paul Hastings LLP

875 15th Street NW

Washington, DC 20005

Telephone: (202) 551-1996

Telephone: (202) 551-1996

Telephone: (202) 551-1996

Telephone: (202) 551-1996 Telephone: (202) 551-1990 Facsimile: (202) 551-0496 Facsimile: (202) 551-0490

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,
Petitioner

v.

VIRNETX INC., Patent Owner

Case IPR2015-01047¹ Patent 7,490,151

Patent Owner's Response

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



Find authenticated court documents without watermarks at docketalarm.com.

CONFIDENTIAL - PROTECTIVE ORDER MATERIAL Case No. IPR2015-01047

TABLE OF CONTENTS

I.	Intro	duction1			
II.	Claim Construction				
	A.	"DNS Request" (Claims 1, 7, and 13)			
	B.	"Determining" (Claims 1, 7, 13)			
	C.	"Secure Server" (Claims 1, 2, 6-8, 12-14)			
	D.	"Client" (Claims 1, 2, 6-8, 12-14)			
	E.	"Between [A] and [B]" (Claims 1, 2, 6-8, 12-14)			
	F.	Other Terms		11	
III.	Kiuchi Does Not Anticipate Claims 1, 2, 6-8, and 12-14			12	
	A.	Kiuchi's Disclosure			
	B.	Kiuc	chi Does Not Anticipate Independent Claim 1	13	
		1.	Kiuchi Does Not Disclose the Recited DNS Features	13	
		2.	Kiuchi Does Not Disclose a "Determining Whether the Intercepted DNS Request Corresponds to a Secure Server"	17	
		3.	Kiuchi Does Not Disclose a "Automatically Initiating an Encrypted Channel Between the Client and the Secure Server"	17	
			a) The Theory Advanced by Petitioners Mangrove and Apple Is Deficient	18	
			b) The Theory Advanced by Petitioner Black Swamp Is Deficient	19	
		4.	Kiuchi Does Not Disclose a "Domain Name Server (DNS) Proxy Module" that Performs the Recited Claim Steps "for Each Intercepted DNS Request"	23	



CONFIDENTIAL - PROTECTIVE ORDER MATERIAL

Case No. IPR2015-01047

	C.	Kiud	chi Does Not Anticipate Independent Claims 7 and 13	24
	D.		chi Does Not Anticipate Dependent Claims 2, 6, 8, 12, and	25
IV.			mbined with Rescorla and/or RFC 1034 Do Not Render laims 1, 2, 6-8, and 12-14	27
	A.	Rescorla and/or RFC 1034 Do Not Remedy the Deficiencies of Kiuchi		
	В.	Long-Felt Need, Failure of Others, Skepticism, Commercial Success, and Praise and Acceptance by Others Demonstrate Nonobviousness		29
		1.	Long-Felt Need	29
		2.	Failure of Others	31
		3.	Skepticism	32
		4.	Commercial Success	33
		5.	Praise and Acceptance by Others	34
		6.	Nexus Between the Objective Evidence of Nonobviousness and the Claimed Invention	35
V.	Dr. O	Guerin	's Testimony Should be Accorded Little, If Any Weight	36
	A.	Dr. Guerin Did Not Properly Analyze the Claims36		
				37
	C.	Petitioner Black Swamp Was Improperly Joined		
VI.	Petit	ioners	Have Failed to Prove All References Are Prior Art	40
	A.		tioners Do Not Establish by a Preponderance of the lence that RFC 1034 or Rescorla Was Publicly Accessible	41



CONFIDENTIAL - PROTECTIVE ORDER MATERIAL

Case No. IPR2015-01047

	В.	The Additional Evidence Presented by Petitioner Apple Is Insufficient to Establish by a Preponderance of the Evidence that RFC 1034 Was Publicly Accessible			
		1.	RFC	1034	43
		2.	Resc	orla	44
VII.	Revie	ew is E	Barred	by 35 U.S.C. §§ 312(a)(2) and 315(b)-(c)	45
	A.			n Filed by Mangrove Fails to Name All of the Real nterest	46
		1.	The	Complex Web of Mangrove Entities	46
			a)	The Mangrove Entities	47
			b)	The Unnamed Investors	50
			c)	Recent Representations to the United States Securities and Exchange Commission	51
		2.	RPX	Corporation	52
					54
		4.	Failu	re to Identify All RPIs Prohibits Review	56
	B.	Revie	ew is I	Barred by 35 U.S.C. § 315(b)-(c)	57
37111	Cono	lucion			60



CONFIDENTIAL - PROTECTIVE ORDER MATERIAL Case No. IPR2015-01047

TABLE OF AUTHORITIES

	Page(s)
Cases	
Aceto Agricultural Chems. Corp. v. Gowan Co., IPR2015-01016, Paper No. 15 (Oct. 2, 2015)	56, 57
Apple Inc. v. DSS Technology Management, Inc., IPR2015-00369, Paper No. 9 (June 25, 2015)	41
Apple Inc. v. VirnetX Inc., IPR2014-00404, Paper No. 42 (July 29, 2015)	15
Aspex Eyewear, Inc. v. Concepts In Optics, Inc., 111 F. App'x 582 (Fed. Cir. 2004)	36, 37
Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc., IPR2013-00453, Paper No. 88 (Jan. 6, 2015)	56
Becton, Dickenson & Co. v. Tyco Healthcare Group, LP, 616 F.3d 1249 (Fed. Cir. 2010)	19
Brand v. Miller, 487 F.3d 862 (Fed. Cir. 2007)	36
Brown & Williamson Tobacco Corp. v. Philip Morris Inc., 229 F.3d 1120 (Fed. Cir. 2000)	33
Bruckelmyer v. Ground Heaters, Inc., 445 F.3d 1374 (Fed. Cir. 2006)	40
Butamax Adv. Biofuels LLC v. Gevo, Inc., IPR2014-00581, Paper No. 8 (Oct. 14, 2014)	39
Centricut, LLC v. Esab Group, Inc., 390 F.3d 1361 (Fed. Cir. 2004)	36
In re Cuozzo, 793 F.3d 1297 (Fed. Cir. 2015)	4
Cuozzo Speed Techs., LLC v. Lee, No. 15-446, 2016 WL 205946 (U.S. Jan. 15, 2016)	4



DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

