

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,
Petitioners,

v.

VIRNETX INC.,
Patent Owner.

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

PETITIONERS' IDENTIFICATION OF REPLY ARGUMENTS

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

The Board authorized Patent Owner to identify “sections of the [reply briefs] believed by Patent Owner to be improper,” and authorized Petitioners to identify where those sections “were previously presented” or how they are responsive to Patent Owner’s Response. As explained below, no identified section is improper.

Position #1: Patent Owner argues that Petitioners newly rely on an alternative mapping of the claimed “*client*” and “*secure server*” to the user agent and server-side proxy. Paper 61, 1-2. The Petition explained “[t]he user agent is a “client,” under that term’s broadest reasonable interpretation, because the user agent is a computer or program from which a data request to a server is generated.” Pet., 26. The Petition also explained “both the server-side proxy and origin server are [] secure servers, under that term’s broadest reasonable interpretation.” Pet., 28; *see also* IPR2016-00167, Pet., 14, 16-17. Dr. Guerin similarly testified that “[b]oth the server-side proxy and origin server are secure servers.” Ex. 1003, ¶29.

Position #2: Patent Owner argues that Petitioners newly rely on Kiuchi’s appendices to argue Kiuchi’s hostname corresponds to an institution’s server-side proxy. Paper 61, 2. Dr. Guerin relied on the entirety of Kiuchi’s disclosure, including appendices, to conclude that the client-side proxy, using the hostname of the server-side proxy, requests and receives the server-side proxy’s IP address in response to the C-HTTP name request. *See, e.g.*, Ex. 1003, ¶29 (citing Ex. 1002, 72-73 (Appendix 2)). The Petition then relied on Dr. Guerin’s understanding of

this functionality to explain how Kiuchi anticipates the claims. *See, e.g.*, Pet., 30-31 (citing Ex. 1003, ¶¶23-25, 28-29, 31). The Petition also explained that “the hostname ... designates the server-side proxy,” Pet., 27, and if “the requested server-side proxy associated with the hostname is registered in the closed network, then the client-side proxy receives, from the C-HTTP server, the IP address ... of the server-side proxy.” Pet., 29 (alterations and quotations omitted). The sections of the Reply identified by Patent Owner also respond to its contention (Resp., 15-16; Ex. 2038, ¶¶43-44) that the hostname refers only to the origin server, and not the server-side proxy. *See* Reply, 5-8.

Position #3: Patent Owner argues that Petitioners newly rely on the collective actions of the client-side proxy and C-HTTP name server for the claimed “*determining*” step. Paper 61, 2. The Petition explained that “the client-side proxy determines whether the request corresponds to a secure server by asking ‘the C-HTTP name server.’” Pet., 28-29. The C-HTTP name server then “determines whether a ‘server-side proxy [associated with the hostname] is registered,” Pet., 22, and, if so, sends a response with the server-side proxy’s IP address, Pet., 22. The Petition then explained how Kiuchi’s client-side proxy and C-HTTP name server are both involved in the claimed “*determining*.” Pet. 28-29, 30-31; *see also* Pet., 47 (“[T]he function of DNS proxy is distributed across the client-side proxy and the C-HTTP name server.”).

Position #4: Patent Owner argues that Petitioners newly rely on RFC 1945 (Ex. 1014) as defining HTTP/1.0 as used in Kiuchi. Paper 61, 2-3. Dr. Guerin explicitly relied on RFC 1945 as defining HTTP/1.0 as used in Kiuchi. Ex. 1003, ¶18; Pet., 25-26 (citing same). Petitioners reliance' on RFC 1945 to show the meaning of "host" in the context of HTTP/1.0, Reply, 6, is also responsive to Patent Owner's argument equating a URL's "host" with the entire URL, Resp., 16.

Petitioner Apple Inc.'s Separate Reply Filing: Patent Owner argues that Petitioner Apple "goes beyond responding to Patent Owner's Response" because Patent Owner "did not suggest changes to the schedule." Paper 61, 3. Patent Owner did, however, urge the Board to "terminate this proceeding" regardless of a § 315(b) issue if it found a missing RPI. Resp., 56-57. Petitioner Apple explained that, even if an RPI was mistakenly omitted, the Board should exercise its discretion to maintain the current schedule of this proceeding due to Patent Owner's behavior in this and related proceedings before the Office. Paper 59.

For the foregoing reasons, Petitioners' papers are proper.

Dated: May 19, 2016

/ Jeffrey P. Kushan/
Jeffrey P. Kushan
Reg. No. 43,401
Sidley Austin LLP
Attorney for Petitioner Apple

/Thomas H. Martin/
Thomas H. Martin

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

Reg. No. 34,383

MARTIN & FERRARO, LLP

Attorney for Petitioner Black Swamp

Attorneys for Petitioner Mangrove

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.