UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

VIRNETX INC.,
Patent Owner.

Case No. IPR2015-01047[1]
U.S. Patent No. 7,490,151

PETITIONERS' OPPOSITION TO PATENT OWNER'S MOTION TO EXCLUDE

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

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I. Introduction

The evidence of record establishes that Exhibits 1010, 1012-1014, 1029, 1031-1034, 1037, 1039-1042 and 1044 are admissible. Patent Owner has failed to show otherwise, and thus, its motion must be denied. *See* Paper 66 ("Mot.").

II. Argument

A. Exhibits 1029 and 1031-1033 Are Admissible Under Fed. R. Evid. 807.

Patent Owner seeks to exclude Exhibits 1029 and 1031-1033 as inadmissible hearsay, Mot. at 3-5, but these exhibits, to the extent they are hearsay, fall within an exception to the hearsay rule. Under Federal Rule of Evidence 807, a "statement is not excluded by the rule against hearsay" if: "(1) the statement has equivalent circumstantial guarantees of trustworthiness; (2) it is offered as evidence of a material fact; (3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and (4) admitting it will best serve the purposes of these rules and the interests of justice." Fed. R. Evid. 807(a). The testimony's proponent must also give (5) "reasonable notice of the intent to offer the statement and its particulars." Fed. R. Evid. 807(b). Courts are accorded wide discretion in applying this exception. *IBM Corp. v. Intellectual Ventures II LLC*, IPR2015-00089, Paper 44 at 55-56 (Apr. 25, 2016) (*citing Doe v. United States*, 976 F.2d 1071, 1076–77 (7th Cir. 1992), *cert. denied* 510 U.S. 812 (1993); *United States v. North*, 910 F.2d 843,

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