

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,
Petitioner

v.

VIRNETX INC.,
Patent Owner

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

PATENT OWNER VIRNETX INC.'S NOTICE OF APPEAL

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

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
Madison Building East, 10B20
600 Dulany Street
Alexandria, VA 22314-5793

Notice is hereby given, pursuant to 37 C.F.R. § 90.2(a), that Patent Owner VirnetX Inc. (“VirnetX”) appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision on Remand entered on July 14, 2020 (Paper 122) (the “Final Written Decision”) by the United States Patent and Trademark Office, Patent Trial and Appeal Board (the “Board”), and from all underlying orders, decisions, rulings, and opinions, including, but not limited to, the Decision Granting In Part Patent Owner’s Motion for Additional Discovery, entered on October 23, 2019 (Paper 97) and the Decision Denying Patent Owner’s Request on Rehearing of Order Regarding Additional Discovery, entered on July 14, 2020 (Paper 121). Copies of the Final Written Decision, the Decision Granting In Part Patent Owner’s Motion for Additional Discovery, and the Decision Denying Patent Owner’s Request on Rehearing of Order Regarding Additional Discovery are attached.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), VirnetX indicates that the issues on appeal include, but are not limited to whether the Board’s decisions contravene the Appointments Clause and should be vacated under *Arthrex, Inc. v.*

Smith & Nephew, Inc., 941 F.3d 1320 (Fed. Cir. 2019), whether the Board's use of joinder to consider new issues and evidence introduced by a joined party contravenes 35 U.S.C. § 315(c) and *Facebook, Inc. v. Windy City Innovations, LLC*, --- F.3d. ----, 2020 WL 5267975 (Fed. Cir. Sept. 4, 2020), the Board's interpretation and application of 35 U.S.C. § 315(b)-(c), the Board's denial of discovery sought by VirnetX, the Board's determination of unpatentability of claims 1, 2, 6-8, and 12-14 of U.S. Patent No. 7,490,151 under 35 U.S.C. § 102 and/or 35 U.S.C. § 103, and any findings or determinations supporting or related to those rulings including, without limitation, the Board's construction and application of the claim language, the Board's interpretation of the references, and the Board's interpretation of expert evidence.

Simultaneous with this submission, a copy of this Notice of Appeal is being filed with the Board. In addition, the Notice of Appeal and the required fee are being filed electronically with the Clerk of Court for the United States Court of Appeals for the Federal Circuit.

Respectfully submitted this 14th day of September, 2020.

By: /Naveen Modi/

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Counsel for VirnetX Inc.

CERTIFICATE OF SERVICE

The undersigned certifies that, in addition to being filed electronically through Patent Trial and Appeal Board End to End (PTAB E2E), the original version of this Notice of Appeal was filed by overnight express delivery on September 14, 2020 with the Director of the United States Patent and Trademark Office, at the following address:

Office of the General Counsel
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

The undersigned also certifies that a true and correct copy of this Notice of Appeal and the required fee were filed electronically via CM/ECF on September 14, 2020, with the Clerk of Court for the United States Court of Appeals for the Federal Circuit.

The undersigned also certifies that a true and correct copy of this Notice of Appeal was served on September 14, 2020 on counsel of record for Petitioners by electronic mail (by agreement of the parties) at the following addresses:

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