

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 Nos. IPR2015-01046,¹ -01047²
U.S. Patent Nos. 6,502,135 & 7,490,151

**PETITIONER MANGROVE'S RESPONSES TO
PATENT OWNER'S REQUESTS FOR PRODUCTION FROM
THE MANGROVE PARTNERS MASTER FUND, LTD.**

¹ Apple Inc., who filed a petition in IPR2016-00062, has been joined as a Petitioner in IPR2015-01046.

² Apple Inc. and Black Swamp IP, LLC, which filed a petitions in IPR2016-00063 and IPR2016-00167, respectively, have been joined as Petitioners in IPR2015-01047.

Patent Owner VirnetX Inc.’s (“VirnetX”) Requests for Production (“RFP”) of Petitioner The Mangrove Partners Master Fund, Ltd. (“Mangrove”) include four separate requests. Paper 81 (“Mot.”), Appx. C at 1. As explained in Petitioners’ concurrently filed Partial Opposition to VirnetX’s motion, Petitioner Mangrove responds as follows.

VIRNETX’S MANGROVE RFP NO. 1

Communications, documents, or things concerning RPX and VirnetX or VirnetX patents, including communications between Mangrove Partners and RPX, or any documents or things relating to such communications, concerning VirnetX or VirnetX patents. (Mot. Appx. A at 3.)

MANGROVE’S RESPONSE TO MANGROVE RFP NO. 1

Petitioner Mangrove objects to this RFP for lacking clarity as to whether it should be read “RPX and (VirnetX or VirnetX patents)” or “(RPX and VirnetX) or VirnetX Patents.” *See Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 26 at 6–7 (PTAB Mar. 5, 2013) (“*Garmin*”) (Factor 4). For the purposes of responding to this RFP, and in light of the Federal Circuit’s mandate, Petitioner Mangrove presumes the former interpretation, *i.e.*, “... RPX and (VirnetX or VirnetX patents) ...” Petitioner Mangrove further objects to this RFP as overbroad and unduly burdensome for requesting the production of communications, documents, or things dated on or after the date of institution in

this proceeding, *i.e.*, October 7, 2015. *See Garmin* at 6–7 (Factors 1 & 5); *Power Integrations, Inc. v. Semiconductor Components Indus., LLC*, 926 F.3d 1306, 1314–15 (Fed. Cir. 2019) (“The focus of § 315(b) is on institution.”); *Wi-Fi One, LLC v. Broadcom Corp.*, 878 F.3d 1364, 1373 (Fed. Cir. 2018) (en banc) (“[T]he time-bar determination may be decided fully and finally at the institution stage.”).

Subject to the foregoing objection(s), Petitioner Mangrove has undertaken a reasonable search for communications, documents, or things that existed prior to October 7, 2015, and located no responsive communications, documents, or things concerning RPX and VirnetX or VirnetX patents, including communications between Mangrove Partners and RPX, or any documents or things relating to such communications, concerning VirnetX or VirnetX patents.

VIRNETX’S MANGROVE RFP NO. 2

Communications, documents, or things concerning RPX and patent office proceedings, including communications between Mangrove Partners and RPX, or any documents or things concerning such communications, concerning patent office proceedings, such as any agreements or discussions between RPX and Mangrove Partners with respect to patent office proceedings, such as IPR2015-01046 or IPR2015-01047, prior art, filing, funding, compensation, and/or preparation of any papers. (Mot. Appx. A at 4.)

MANGROVE’S RESPONSE TO MANGROVE RFP NO. 2

Petitioner Mangrove objects to this RFP as overbroad and unduly burdensome for requesting the production of communications, documents, or things dated on or after the date of institution in this proceeding. *See Garmin* at 6–7 (Factors 1 & 5); *Power Integrations*, 926 F.3d at 1314–15; *Wi-Fi One*, 878 F.3d at 1373. Petitioner Mangrove further objects to this RFP as overbroad and unduly burdensome for requesting production of “[c]ommunications, documents, or things concerning RPX and patent office proceedings” that are *not* “communications between Mangrove Partners and RPX, or any documents or things concerning such communications, concerning patent office proceedings” The former language would encompass, for example, purely internal-to-Mangrove documents describing RPX’s business model that mention post-grant proceedings generically, which would not be relevant to show any relationship between Mangrove and RPX.

Subject to the foregoing objection(s), Petitioner Mangrove has undertaken a reasonable search for communications, documents, or things that existed prior to October 7, 2015, and located no responsive communications between Mangrove Partners and RPX, or any documents or things concerning such communications, concerning patent office proceedings, such as any agreements or discussions between RPX and Mangrove Partners with respect to patent office proceedings,

such as IPR2015-01046 or IPR2015-01047, prior art, filing, funding, compensation, and/or preparation of any papers.

VIRNETX'S MANGROVE RFP NO. 3

Communications, documents, or things, concerning Mangrove Partners' acquisition of RPX stock, including communications, documents, or things concerning Mangrove Partners' reasons for acquiring RPX stock and any underlying agreements surrounding Mangrove Partners' acquisition of RPX stock. (Mot. Appx. A at 4.)

MANGROVE'S RESPONSE TO MANGROVE RFP NO. 3

Petitioner Mangrove objects to this RFP as overbroad and unduly burdensome for requesting the production of communications, documents, or things dated on or after the date of institution in this proceeding. *See Garmin* at 6–7 (Factors 1 & 5); *Power Integrations*, 926 F.3d at 1314–15; *Wi-Fi One*, 878 F.3d at 1373. Petitioner Mangrove further objects to this RFP as overbroad and unduly burdensome for requesting the production of *all* “[c]ommunications, documents, or things, concerning Mangrove Partners' acquisition of RPX stock,” rather than “[c]ommunications, documents, or things” sufficient to show “Mangrove Partners' reasons for acquiring RPX stock and any underlying agreements surrounding Mangrove Partners' acquisition of RPX stock.” *See Garmin* at 6–7 (Factor 5). The

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