

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 NOTICE OF DEPOSITION OF
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") Notice of Deposition of Petitioner The Mangrove Partners Master Fund, Ltd. ("Mangrove") requests a deposition with a designated person "with sufficient knowledge and preparation to testify on all information known or reasonably available" to Petitioner Mangrove on four deposition topics. Paper 81 ("Mot."), Appx. C at 1. As explained in Petitioners' concurrently filed Partial Opposition to VirnetX's Motion, and consistent with VirnetX's Request for Deposition of Apple Inc. in IPR2014-00171, Petitioner Mangrove has responded "to [these] topic[s] in writing instead of providing a witness, effectively treating the topic[s] as ... an interrogatory." *See RPX Corp. v. VirnetX Inc.*, IPR2014-00171, Ex. 2026, 1.

VIRNETX'S MANGROVE DEPOSITION TOPIC NO. 1

Communications concerning RPX and VirnetX or VirnetX patents, including communications between Mangrove Partners and RPX concerning VirnetX or VirnetX patents. (Mot. Appx. C at 3.)

MANGROVE'S RESPONSE TO MANGROVE DEPOSITION TOPIC NO. 1

Petitioner Mangrove objects to this deposition topic 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 deposition topic, 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 deposition topic as overbroad and unduly burdensome for requesting information known or reasonably available about communications 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 prior to October 7, 2015, and has identified no communications concerning RPX and VirnetX or VirnetX patents, including communications between Mangrove Partners and RPX concerning VirnetX or VirnetX patents.

VIRNETX’S MANGROVE DEPOSITION TOPIC NO. 2

Communications concerning RPX and patent office proceedings, including communications between Mangrove Partners and RPX 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. C at 3.)

MANGROVE’S RESPONSE TO MANGROVE DEPOSITION TOPIC NO. 2

Petitioner Mangrove objects to this RFP as overbroad and unduly burdensome for requesting information about communications 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 prior to October 7, 2015, and has identified no communications between Mangrove Partners and RPX 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 DEPOSITION TOPIC NO. 3

Mangrove Partners’ acquisition of RPX stock, including Mangrove Partners’ reasons for acquiring RPX stock and any underlying agreements surrounding Mangrove Partners’ acquisition of RPX stock. (Mot. Appx. C at 3.)

MANGROVE’S RESPONSE TO MANGROVE DEPOSITION TOPIC NO. 3

Petitioner Mangrove objects to this deposition topic as overbroad and unduly burdensome for requesting information about communications 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 deposition topic as overbroad and unduly burdensome for requesting the production of *all* information about “Mangrove Partners’ acquisition of RPX stock,” rather than information 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 former language would encompass, for example, needlessly duplicative information which is not relevant to show any relationship between Mangrove and RPX.

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.