UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE MANGROVE PARTNERS MASTER FUND, LTD.,

Petitioner,

v. VIRNETX INC.,

Patent Owner.

Case IPR2015-01047

Patent 7,490,151 B2

PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY

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I. Overview

Desperate to avoid the merits of the invalidity of its patent, Patent Owner has now submitted its Motion for Additional Discovery ("Motion") which is its fourth collateral attempt to attack these proceedings without addressing validity: 1) Patent Owner asserted the same or similar grounds in its Preliminary Patent Owner Statement (*see* Paper 9 at 3-11); 2) rehashed the same grounds in its request for reconsideration (*see* Paper 13 at 4-5); 3) raised entirely speculative grounds that RPX Corp. and/or Apple Corp. were controlling these proceedings in a November 10, 2015 conference call with the Board (Ex. 2037 at 12:4-13:21, 20:7-18); and 4) now brings the instant Motion. Patent Owner has also threatened to bring separate litigation in state or Federal court – regardless of any underlying merit to such claims -- to forestall a determination on the merits of the validity of its patents. *See, e.g.*, Paper No. 7 at 12-13, n.2.

All Patent Owner has presented in its Motion is that it would like broad RPI discovery and argued that such discovery likely exists. Patent Owner has not, however, demonstrated that any such discovery will be useful. Because Patent Owner's Motion fails to meet the "necessary in the interests of justice" standard for any of the additional discovery sought, the Motion should be denied in its entirety.

II. Response to Alleged "Petitioner Acknowledgements"

The additional discovery Patent Owner seeks generally falls into two categories: 1) discovery regarding investors in the Petitioner and 2) discovery regarding other Mangrove entities, including Mangrove Partners, Mangrove Partners Fund Ltd., Mangrove Partners Fund LP, Mangrove Capital (collectively "Mangrove-Named Entities") and Mr. Nathaniel August. Patent Owner's attempts to lump the investors with these other Mangrove-Named Entities and Mr. August, is both disingenuous and obfuscates the real issues.

During multiple meet-and-confer telephone conferences leading up to this Motion, much of Patent Owner's inquiries focused on the investors and in particular, Patent Owner's speculative – bordering on paranoid – belief that time-barred entities, namely Apple Corp. or RPX Corp., were investors in the Petitioner and were controlling these proceedings on behalf of Petitioner. *Cf.* Ex. 2037 at 12:4-13:21, 20:7-18. In response, Petitioner informed Patent Owner that neither Apple Corp. nor RPX Corp. are or were investors and that to best of the Petitioner's knowledge, no one affiliated with either entity is now or was ever an investor. Petitioner also informed Patent Owner that no investors were even aware of the present proceedings before they were filed and that the Petitioner's costs were borne solely by the Petitioner. Petitioner even offered to put all of these facts in a

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