

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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THE MANGROVE PARTNERS MASTER FUND, LTD., APPLE INC., AND  
BLACK SWAMP, LLC,  
Petitioner

v.

VIRNETX INC.,  
Patent Owner

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Case IPR2015-01047<sup>1</sup>  
Patent No. 7,490,151

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**PATENT OWNER VIRNETX INC.'S NOTICE OF APPEAL**

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<sup>1</sup> 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 entered on September 9, 2016, (Paper 80) (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, as well as the Board’s Decision on Request for Rehearing, entered on October 20, 2016 (Paper 83). A copy of the Final Written Decision and the Decision on Request for Rehearing is 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, the Board’s interpretation and application of 35 U.S.C. § 312(a)(2), the Board’s interpretation and application of 35 U.S.C. § 315(b)-(c), 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 35 U.S.C. § 103, and any finding 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 20th day of December, 2016.

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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 hand on December 20, 2016 with the Director of the United States Patent and Trademark Office, at the following address:

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

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 December 20, 2016, 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 December 20, 2016 on counsel of record for Petitioner Apple Inc. by electronic mail (by agreement of the parties) at the following address:

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