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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.
Petitioner

v.

VIRNETX INC.
Patent Owner

Case IPR2016-00062
Patent 6,502,135

**Patent Owner's Preliminary Response
to Petition for *Inter Partes* Review
of U.S. Patent No. 6,502,135**

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I. Introduction

Board decisions and sound policy support denying Apple's Petition, which is the eleventh Office challenge to U.S. Patent No. 6,502,135 ("the '135 patent"). Apple initiated six of these challenges (including the instant challenge), either by itself or, as the Board found, through its "proxy" RPX Corporation. IPR2014-00171, Paper No. 57 at 7 (redacted) (June 5, 2014) (finding that "RPX is Apple's proxy"); IPR2014-00172, Paper No. 57 at 7 (redacted) (June 5, 2014) (same finding).

Apple's Petition here should be denied for at least two reasons. First, the Petition is time-barred under 35 U.S.C. § 315(b). Apple's joinder motion should not alter the outcome dictated by § 315(b). Second, the Petition represents a serial attack on the '135 patent that seeks to replicate issues and evidence already before the Office, and should be denied under 35 U.S.C. §§ 315(d) and 325(d).

II. Apple Remains Time-Barred and Institution Is Precluded by Statute

It is undisputed that VirnetX served Apple with "a complaint" alleging infringement of the '135 patent more than one year before the Petition was filed. For this reason, Apple's earlier petitions for *inter partes* review challenging the '135 patent in IPR2013-00348 and IPR2013-00349, along with the one filed by RPX in IPR2014-00171 and IPR2014-00172 (in both of which RPX was found to be Apple's proxy), were correctly denied as time-barred under 35 U.S.C. § 315(b).

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