

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

VirnetX Inc.,

Plaintiff,

v.

Cisco Systems, Inc., Apple Inc.,
Aastra USA, Inc., Aastra Technologies Ltd.,
NEC Corporation, and NEC Corporation of
America,

Defendants.

Civil Action No. 6:10-cv-00417-LED

JURY TRIAL DEMANDED

DEFENDANTS' RESPONSIVE CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

I. INTRODUCTION1

II. LEGAL STANDARDS1

III. PATENTS-IN-SUIT1

IV. DISPUTED CLAIM CONSTRUCTIONS2

 A. Disputes Concerning Virtual Private Networks 2

 1. Virtual Private Network..... 2

 2. Virtual Private Link 7

 3. Secure Server 8

 4. Secure Communication Link 10

 B. Disputes Relating to Domain Names..... 11

 1. Domain Name 11

 2. Domain Name Service 13

 3. Secure Domain Name Service 14

 4. Domain Name Service System 16

 5. DNS Proxy Server 17

 C. Disputes Concerning Indicating, Indications, and Indicate 19

 1. An Indication That The Domain Name Service System Supports Establishing A
 Secure Communication Link 19

 D. Disputes Concerning the Scope of Virtual Private Networks 21

 1. “Between [A] and [B]” 21

 2. Target Computer 22

 E. Disputes Relating to Websites 25

 1. Web Site..... 25

 2. Secure Web Computer 27

 F. Disputes pertaining to the ‘759 Patent..... 28

| | |
|--|----|
| 1. Cryptographic Information | 28 |
| 2. Enabling A Secure Communication Mode Of Communication | 29 |
| G. Dispute Regarding The “Generating” Limitation..... | 30 |

TABLE OF AUTHORITIES

Cases

Am. Piledriving Equip. v. Geoquip, Inc.,
637 F.3d 1324 (Fed. Cir. 2011) 7

Ciena Corp. v. Nortel Networks Inc.,
No. 2:05-CV-14, 2006 U.S. Dist. LEXIS 97450 (E.D. Tex. Apr. 25, 2006)..... 17, 21

Eon-Net LP v. Flagstar Bancorp,
653 F.3d 1314 (Fed. Cir. 2011) 18

Every Penny Counts, Inc. v. Am. Express Co.,
563 F.3d 1378 (Fed. Cir. 2009) 4

Golden Hour Data Sys. v. emsCharts, Inc.,
614 F.3d 1367 (Fed. Cir. 2010) 18

i4i Ltd. P’ship v. Microsoft Corp.,
598 F.3d 831 (Fed. Cir. 2010) 24

Lindemann Maschinenfabrik GMBH v. Am. Hoist & Derrick Co.,
730 F.2d 1452 (Fed. Cir. 1984) 26

Merck & Co., Inc. v. Teva Pharms. USA, Inc.,
395 F.3d 1364 (Fed. Cir. 2005) 24

Microsoft Corp. v. Multi-Tech. Sys.,
357 F.3d 1340 (Fed. Cir. 2003) 17

Momentum Golf, Inc. v. Swingrite Golf Corp.,
187 F. App’x. 981 (Fed. Cir. 2006) 6

Omega Eng’g., Inc. v. Raytek Corp.,
334 F.3d 1314 (Fed. Cir. 2003) 10

On Demand Mach. Corp. v. Ingram Indus.,
442 F.3d 1331 (Fed. Cir. 2006) 30

Phillips v. AWH Corp.,
415 F.3d 1303 (Fed. Cir. 2005) 12

Seachange Int’l, Inc. v. C-COR Inc.,
413 F.3d 1361 (Fed. Cir. 2005) 7

Vivid Techs., Inc. v. Am. Science & Eng’g, Inc.,
200 F.3d 795 (Fed. Cir. 1999) 7

I. INTRODUCTION

To prevail at trial in its litigation against Microsoft, VirnetX relied on this Court's constructions of key language from the patents-in-suit—such as “virtual private network” and “secure domain name.” VirnetX then turned around and told the Patent Office that this Court's constructions were *wrong*. Specifically, in distinguishing prior art in subsequent reexamination proceedings, VirnetX argued that the terms “virtual private network” and “secure domain name” contain limitations found nowhere in this Court's constructions.

Now VirnetX seeks to reverse course once again. While conceding that its reexamination arguments require narrowing of this Court's prior definition of “secure domain name,” VirnetX asks this Court not only to disregard its reexamination arguments concerning “virtual private network,” but also to revisit and *broaden* the construction of that language from the *Microsoft* case. VirnetX should not be permitted to expand and contract the scope of the asserted claims to suit whatever validity or infringement dispute it currently confronts. Defendants' proposed claim constructions avoid that result by applying settled claim construction principles to interpret the asserted claims consistent with VirnetX's statements to the Patent Office, both in the original applications and during subsequent reexamination proceedings.

II. LEGAL STANDARDS

This Court is familiar with the pertinent claim construction principles. For convenience, Defendants cite to relevant authority in the body of the brief.

III. PATENTS-IN-SUIT

The six Patents-in-Suit are closely related. The specifications of the '135 and '151 Patents are substantively identical, as are the specifications of the '180, '759, '504, and '211

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.