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

VIRNETX, INC.	)	
	)	DOCKET NO. 6:10cv417
-vs-	)	
	)	Tyler, Texas
	)	9:00 a.m.
CISCO SYSTEMS, INC., ET AL	)	January 5, 2012

TRANSCRIPT OF MARKMAN HEARING
BEFORE THE HONORABLE LEONARD DAVIS,
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

(SEE SIGN-IN SHEETS DOCKETED IN THIS CASE.)

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the addressing scheme that is used to achieve a virtual private network.

Because, Your Honor, there was no disclaimer of an indirect communication here, because this was in the context of an explanation to the Patent Office why Aventail is not a virtual private network, there was no change of the claim terms. There was no change in the specification. This is not a portion of the prosecution history that amounts to any kind of unequivocal disclaimer. But it certainly is not any kind of suggestion that a break in the directness of a electromechanical connection from one wire to computer to computer to the actual reality of modern networks is utterly unwarranted.

THE COURT: Okay. Thank you.

Response, Mr. Desmarais?

MR. DESMARAIS: Yes, Your Honor. Thank you. Let me just start right out and say that is not what we are arguing. We are not arguing it has to be one wire, and we are not arguing it has to be an electromechanical connection. Not at all. These products go over the network, and we are not disputing that.

What we are arguing is exactly what they said to the Patent Office, so let me show you that.

Slide 23, please.

After Your Honor's patent order, the Patent Office

rejected all the claims on the '135 and '180 patents. Those patents were dead on arrival. They were rejected over this Aventail reference, which I have shown a picture of here on Slide 23.

VirnetX, if they wanted to get these patents out of the Patent Office, had to distinguish their VPN from what you see in that picture. That is what they did, and they did it unequivocally.

If you look on Slide 24, this is what VirnetX said to the Patent Office to get these patents issued. Third, Aventail has not been shown to disclose a VPN because computers connected according to Aventail do not communicate directly with each other.

And if you look at the picture down below, Your Honor, before we go on, it is not the Internet cloud in between the target and the client that we are talking about. It is that server that I made yellow. Okay. So we are not saying that these products don't go over the Internet. Of course, they do.

Let's look at what VirnetX said they meant by directly. They said -- and we can jump down to the yellowed, red-underlined part. "All communications between the client and target stop and start at the intermediate SOCKS server." That is the one I colored yellow in the photo -- in the picture.

The client cannot open a connection with the target itself. Therefore, one skilled in the art would not have considered the client and target to be virtually on the same private network. Instead, the client computer and target computer are deliberately separated by an intermediate SOCKS server. There is a huge difference between what happens in the Internet and a terminating server.

In the Internet -- the Internet is connected -- and I am going to show you some photos of that -- some diagrams of that -- by a bunch of routers that just take in a packet and send a packet out. A server actually receives a communication and processes it. It is two very different functions.

THE COURT: But are you saying that the firewall or routers or switches would be included?

MR. DESMARAIS: I can show you exactly if we look at Slide 28, please.

THE COURT: Would that prevent a direct communication?

MR. DESMARAIS: Not the Internet, not routers, not things that are -- if you look at Slide 28 we can sort of talk about it more concretely.

If you look at Slide 28, what VirnetX told the Patent Office is, in fact, entirely consistent with what they show in their patent. So the top two figures here on Slide 28, Your Honor, are from the patent; and the bottom figure is

from Aventail, the prior art. So you see in that figure on the top left where I colored it in yellow, those are all Internet routers.

And you see the VirnetX box 100 at the top left is the client set and the box 110 at the bottom right is the target set. So you see the client and the target are the only two computer-type apparatuses in between the Internet. So the client calls up the target. They certainly use the Internet and they get routed across the Internet. But coming out of the Internet on the other side is the target. There is not an intermediate server that the client had targeted. Instead, they target the target computer. That is the difference --

THE COURT: Are you talking about an intermediate server that does something?

MR. DESMARAIS: Exactly. Yes. So, for instance, let me give you an example. I am a client, and I want to call Mr. Williams. If I send a message to Your Honor and I say -- I call you up, I transfer the message to you, and then you get the message, you open it, you process it, and you decide I'm going to send it to Mr. Williams, then I have opened up a communication with you. It goes to Mr. Williams, but I opened up the communication to you.

If I am sending a communication to Mr. Williams, it is addressed to Mr. Williams and I send it and all you do is grab it and give it to him and don't do anything to it, then

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