

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

<b>VIRNETX INC. and SCIENCE APPLICATIONS INTERNATIONAL CORPORATION,</b>	§	
	§	
	§	
<b>Plaintiffs,</b>	§	
	§	<b>CASE NO. 6:12-CV-855</b>
<b>vs.</b>	§	
	§	
<b>APPLE, INC.,</b>	§	
	§	
<b>Defendant.</b>	§	

**MEMORANDUM OPINION AND ORDER**

This Memorandum Opinion construes the disputed claim terms in U.S. Patent Nos. 6,502,135 (“the ’135 Patent”), 7,418,504 (“the ’504 Patent”), 7,490,151 (“the ’151 Patent”), 7,921,211 (“the ’211 Patent”), 8,051,181 (“the ’181 Patent”), and 8,504,697 (“the ’697 Patent”) (collectively, “the patents-in-suit”). Also before the Court is Defendant Apple, Inc.’s (“Apple”) Motion for Summary Judgment of Indefiniteness (Docket No. 148). On May 20, 2014, the parties presented arguments on the disputed claim terms at a *Markman* hearing. For the reasons stated herein, the Court adopts the constructions set forth below and **DENIES** the Motion for Summary Judgment.

**BACKGROUND**

VirnetX, Inc. (“VirnetX”) and Science Applications International Corporation (“SAIC”) assert six patents against Apple. The ’135 Patent discloses a method of transparently creating a virtual private network (“VPN”) between a client computer and a target computer. The ’504 and ’211 Patents disclose a secure domain name service. The ’151 Patent discloses a domain name service capable of handling both standard and non-standard domain name service queries. The

'181 Patent discloses a method of establishing a secure communication link. The '697 Patent discloses a method of communicating between network devices.

The patents-in-suit are all related; Application No. 09/504,783 (“the '783 Application”) is an ancestor application for every patent-in-suit. The '135 Patent issued on December 31, 2002, from the '783 Application. The '151 Patent issued from a divisional of the '783 Application. The '181 Patent issued from a divisional of a continuation-in-part of the '783 Application. The '504 Patent issued from a continuation of a continuation-in-part of the '783 Application. The '211 Patent issued from a continuation of the application that resulted in the '504 patent. The '697 Patent issued from a continuation of a continuation of the application that resulted in the '211 Patent. The '135 and '151 Patents share a common specification, as do the '504, '211, and '697 Patents.

The Court has already construed some of the terms at issue. *See VirnetX, Inc. v. Microsoft Corp.*, No. 6:07-cv-80, Docket No. 246 (E.D. Tex. July 30, 2009) (“*Microsoft*”); *VirnetX, Inc. v. Cisco Systems, Inc., et al.*, No. 6:10-cv-417, Docket No. 266 (E.D. Tex. Apr. 25, 2012) (“*Cisco*”); *VirnetX, Inc. v. Mitel Networks Corporation, et al.*, No. 6:11-cv-18, Docket No. 307 (E.D. Tex. Aug. 1, 2012) (“*Mitel*”). The *Microsoft* case involved the '135 Patent; the *Cisco* case involved the '135, '504, '151, and '211 Patents; and the *Mitel* case involved the '135, '504, and '211 Patents.

#### **APPLICABLE LAW**

“It is a ‘bedrock principle’ of patent law that ‘the claims of a patent define the invention to which the patentee is entitled the right to exclude.’” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Innova/Pure Water Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). In claim construction, courts examine the patent’s intrinsic evidence to define the patented invention’s scope. *See id.*; *C.R. Bard, Inc. v. U.S.*

*Surgical Corp.*, 388 F.3d 858, 861 (Fed. Cir. 2004); *Bell Atl. Network Servs., Inc. v. Covad Commc'ns Group, Inc.*, 262 F.3d 1258, 1267 (Fed. Cir. 2001). This intrinsic evidence includes the claims themselves, the specification, and the prosecution history. See *Phillips*, 415 F.3d at 1314; *C.R. Bard, Inc.*, 388 F.3d at 861. Courts give claim terms their ordinary and accustomed meaning as understood by one of ordinary skill in the art at the time of the invention in the context of the entire patent. *Phillips*, 415 F.3d at 1312–13; *Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003).

The claims themselves provide substantial guidance in determining the meaning of particular claim terms. *Phillips*, 415 F.3d at 1314. First, a term's context in the asserted claim can be very instructive. *Id.* Other asserted or unasserted claims can also aid in determining the claim's meaning because claim terms are typically used consistently throughout the patent. *Id.* Differences among the claim terms can also assist in understanding a term's meaning. *Id.* For example, when a dependent claim adds a limitation to an independent claim, it is presumed that the independent claim does not include the limitation. *Id.* at 1314–15.

“[C]laims ‘must be read in view of the specification, of which they are a part.’” *Id.* (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 979 (Fed. Cir. 1995) (en banc)). “[T]he specification ‘is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.’” *Id.* (quoting *Vitronics Corp. v. Conception, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)); see also *Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). This is true because a patentee may define his own terms, give a claim term a different meaning than the term would otherwise possess, or disclaim or disavow the claim scope. *Phillips*, 415 F.3d at 1316. In these situations, the inventor's lexicography governs. *Id.* Also, the specification may resolve ambiguous claim

terms “where the ordinary and accustomed meaning of the words used in the claims lack sufficient clarity to permit the scope of the claim to be ascertained from the words alone.” *Teleflex, Inc.*, 299 F.3d at 1325. But, “[a]lthough the specification may aid the court in interpreting the meaning of disputed claim language, particular embodiments and examples appearing in the specification will not generally be read into the claims.” *Comark Commc’ns, Inc. v. Harris Corp.*, 156 F.3d 1182, 1187 (Fed. Cir. 1998) (quoting *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1571 (Fed. Cir. 1988)); *see also Phillips*, 415 F.3d at 1323. The prosecution history is another tool to supply the proper context for claim construction because a patent applicant may also define a term in prosecuting the patent. *Home Diagnostics, Inc., v. Lifescan, Inc.*, 381 F.3d 1352, 1356 (Fed. Cir. 2004) (“As in the case of the specification, a patent applicant may define a term in prosecuting a patent.”).

Although extrinsic evidence can be useful, it is “less significant than the intrinsic record in determining the legally operative meaning of claim language.” *Phillips*, 415 F.3d at 1317 (quoting *C.R. Bard, Inc.*, 388 F.3d at 862). Technical dictionaries and treatises may help a court understand the underlying technology and the manner in which one skilled in the art might use claim terms, but technical dictionaries and treatises may provide definitions that are too broad or may not be indicative of how the term is used in the patent. *Id.* at 1318. Similarly, expert testimony may aid a court in understanding the underlying technology and determining the particular meaning of a term in the pertinent field, but an expert’s conclusory, unsupported assertions as to a term’s definition is entirely unhelpful to a court. *Id.* Generally, extrinsic evidence is “less reliable than the patent and its prosecution history in determining how to read claim terms.” *Id.*

Apple also contends that some claims at issue are invalid for indefiniteness. A claim is invalid under 35 U.S.C. § 112 ¶ 2 if it fails to particularly point out and distinctly claim the subject matter that the applicant regards as the invention. The party seeking to invalidate a claim under 35 U.S.C. § 112 ¶ 2 as indefinite must show by clear and convincing evidence that the claim, viewed in light of the specification and prosecution history, does not “inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2129, 2130 n.10 (2014); see *Intellectual Prop. Dev., Inc. v. UA-Columbia Cablevision of Westchester, Inc.*, 336 F.3d 1308, 1319 (Fed. Cir. 2003).

### LEVEL OF ORDINARY SKILL IN THE ART

The parties agree that a person of ordinary skill in the art would have a master’s degree in computer science or computer engineering as well as two years of experience in computer networking and computer network security.

### AGREED CLAIM TERMS

In the Joint Claim Construction Chart (Docket No. 113-1, Ex. A) the parties agreed to the construction of the following terms:

Claim Term	Agreed Construction
secure target web site	a secure web site on the target computer
automatically initiating the VPN	initiating the VPN without involvement of a user
DNS proxy server	a computer or program that responds to a domain name inquiry in place of a DNS
automatically initiating an encrypted channel	initiating the encrypted channel without involvement of a user
automatically creating a secure channel	creating the secure channel without involvement of a user
automatically creating an encrypted channel	creating the encrypted channel without involvement of a user
secure server	a server that requires authorization for access and that can communicate in an encrypted channel

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