

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

**VIRNETX INC. AND
SCIENCE APPLICATIONS
INTERNATIONAL CORPORATION,**

Plaintiffs,

v.

APPLE INC.

Defendant.

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**Civil Action No. 6:12-cv-855
LEAD CONSOLIDATED CASE**

JURY TRIAL DEMANDED

APPLE'S RESPONSIVE CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

INTRODUCTION1

APPLICABLE LAW2

ARGUMENT4

I. Previously Construed Claim Terms4

 A. “Virtual Private Network”4

 1. The Court Properly Construed “Virtual Private Network” to Require Both Data Security and Anonymity.4

 2. No Basis Exists for the Court to Rule on the Alleged “Claim Scope” of Anonymity.6

 B. “Generating from the Client Computer . . .”7

 C. “An Indication That the Domain Name Service System Supports Establishing a Secure Communication Link” / “Indicate in Response to the Query Whether the Domain Name Service System Supports Establishing a Secure Communication Link”9

 1. This Court Should Bind VirnetX to Its “Clear and Unequivocal” Reexamination Disclaimers.9

 2. This Court Should Reject VirnetX’s “Alternate” Construction.12

 D. “Domain Name” and “Secure Communication Link”13

II. Claim Terms Not Previously Construed14

 A. “Intercept” / “Intercepting”14

 1. The Prosecution History Forbids VirnetX’s Attempts to Equate “Intercepting” with “Receiving.”15

 2. The Specification and Extrinsic Evidence Support Apple’s Proposed Construction.15

 B. “Wherein the Secure Communication Service Uses the Secure Communication Link to Communicate at Least One of Video Data and Audio Data between the First Network Device and the Second Network Device”19

 C. “Determine/Determining . . . Is Available for a Secure Communications Service”19

 D. “Domain Name Lookup”21

 E. “Securely Communicate” / “Sending a Message Securely”22

 F. “Non-Secure Communication Link”24

 G. “Requesting and Obtaining Registration of a Secure/Unsecured Name”25

H. “Message”25

III. Terms Included in Apple’s Motion for Summary Judgment of Indefiniteness28

CONCLUSION.....30

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
<i>Bicon, Inc. v. Straumann Co.</i> , 441 F.3d 945 (Fed. Cir. 2006).....	3
<i>Biogen Idec., Inc. v. GlaxoSmithKline LLC</i> , 713 F.3d 1090 (Fed. Cir. 2013).....	11, 18
<i>C.R. Bard, Inc. v. U.S. Surgical Corp.</i> , 388 F.3d 858 (Fed. Cir. 2004).....	3
<i>Innova/Pure Water, Inc. v. Safari Water Filt. Sys., Inc.</i> , 381 F.3d 1111 (Fed. Cir. 2004).....	2
<i>Interactive Gift Express, Inc. v. Compuserve Inc.</i> , 256 F.3d 1323 (Fed. Cir. 2001).....	3
<i>K2 Corp. v. Salomon S.A.</i> , 191 F.3d 1356 (Fed. Cir. 1999).....	13
<i>Markman v. Westview Instruments, Inc.</i> , 52 F.3d 967 (Fed. Cir. 1995), <i>aff'd</i> , 517 U.S. 370 (1996).....	2, 3
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005).....	2, 3, 5, 25
<i>Renishaw PLC v. Marposs Societa' per Azioni</i> , 158 F.3d 1243 (Fed. Cir. 1998).....	3
<i>Skyhook Wireless, Inc. v. Google, Inc.</i> , C.A. No. 10–11571–RWZ, 2014 WL 898595 (D. Mass. Mar. 6, 2014).....	28
<i>SuperGuide Corp. v. DirecTV Enters., Inc.</i> , 358 F.3d 870 (Fed. Cir. 2004).....	7
<i>Tempo Lighting, Inc. v. Tivoli, LLC</i> , 742 F.3d 973 (Fed. Cir. 2014).....	27
<i>Vitronics Corp. v. Conceptronic, Inc.</i> , 90 F.3d 1576 (Fed. Cir. 1996).....	3
Statutes	
35 U.S.C § 112.....	28

...

INTRODUCTION

The six patents-in-suit—U.S. Patent Nos. 6,502,135 (“the ’135 patent”) (Ex. 1); 7,418,504 (“the ’504 patent”) (Ex. 2); 7,490,151 (“the ’151 patent”) (Ex. 3); 7,921,211 (“the ’211 patent”) (Ex. 4); 8,051,181 (“the ’181 patent”) (Ex. 5); and 8,504,697 (“the ’697 patent”) (Ex. 6)—concern technology familiar to this Court. As VirnetX notes in its Opening Claim Construction Brief, this Court has conducted three *Markman* proceedings involving several of these patents, as well as other related patents.¹ Only two patents—the ’181 and ’697 patents—are patents that this Court has not previously addressed. Nevertheless, both of these “new” patents stem from the same family to which the remaining patents-in-suit belong and are based on similar disclosures.

Despite this Court’s three previous claim-construction orders, VirnetX urges the Court to reconsider those previous rulings and issue new constructions for key claim terms. The Court has consistently construed these terms—including the phrases “virtual private network” and “generating from the client computer . . .” addressed in VirnetX’s brief—in several cases involving the patents-in-suit. VirnetX does not—and cannot—point to any change in circumstances or in law that justifies reconsideration of these constructions. And VirnetX’s stated basis of alleged “misconduct” in the *Cisco* trial has already been rejected by the Court. On multiple occasions, this Court has refused to issue VirnetX’s proposed constructions for these terms, and it should refuse to do so once again.

In contrast to VirnetX’s approach, Apple largely focuses its proposed constructions on the two patents new to the Court. Although related to the other patents-in-suit, the ’181 and ’697

¹ See Ex. 7, *VirnetX Inc. v. Microsoft Corp.*, Case No. 07-cv-80, Dkt. No. 246 (hereinafter, “*Microsoft*”); Ex. 8, *VirnetX Inc. v. Cisco Sys. Inc.*, Case No. 10-cv-417, Dkt. No. 266 (hereinafter, “*Cisco*”); Ex. 9, *VirnetX Inc. v. Mitel Networks, Corp.*, Case No. 11-cv-18, Dkt. No. 307 (hereinafter, “*Mitel*”).

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