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

 3
   VIRNETX, INC.                    )
 4                                      DOCKET NO. 6:10cv417
      -vs-                          )
 5                                      Tyler, Texas
                                    )   12:05 p.m.
 6  APPLE, INC.                         November 5, 2012

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 8                 TRANSCRIPT OF TRIAL
                    AFTERNOON SESSION
 9         BEFORE THE HONORABLE LEONARD DAVIS,
      UNITED STATES CHIEF DISTRICT JUDGE, AND A JURY
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12              A P P E A R A N C E S

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14  FOR THE PLAINTIFFS:

15
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24  Proceedings taken by Machine Stenotype; transcript was
   produced by a Computer.
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1   Let's go back to that construction and

2   see it real quick.

3   Q.   (By Mr. Curry) We see that direct

4   communication link that provides data security through

5   encryption in Judge Davis's instruction.

6   Does Kiuchi teach a secure communication link?

7   A.   No. Because it does not meet that

8   construction that we've been given by the Court. It

9   can't meet that. And, therefore, that claim element is

10   missing from Kiuchi. It doesn't teach that.

11   Q.   And just fundamentally, why doesn't Kiuchi

12   teach a secure communication link?

13   A.   Well, at a basic level, Kiuchi is teaching --

14   is a system that prevents direct communication. It's

15   keeping networks apart while still allowing a browser

16   computer to retrieve resources from an origin server, as

17   we see over here on the board.

18   Q.   Since Kiuchi doesn't teach a secure

19   communication link, can it anticipate any claim of the

20   '504 or '211 patents?

21   A.   No, it can't. That secure communication link

22   is required in all of the claims of the '504 and '211

23   patents. So it's missing from all of them; therefore,

24   those can't be anticipated.

25   Q.   Are the proxy servers in Kiuchi terminating

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1 servers?

2   A.   Yes, they are. What the proxy servers do --

3 as we see in the middle of the communication, a proxy

4 server will terminate communication from one computer.

5 So there will be the connection on one side of it. It

6 will process the data, and then there will be a

7 connection on the other side of it.

8   Q.   In -- excuse me -- are all parties in

9 agreement that a terminating server prevents direct

10 communication?

11   A.   Yes.

12   Q.   And who told us that?

13   A.   As we saw, that's from Mr. Desmarais, Apple's

14 lawyer.

15   Q.   And does the HTTP flow through a proxy server?

16   A.   No, it doesn't. These are HTTP proxy servers.

17 What they do is, they take in an HTTP request. For

18 example, the client-side proxy could take in an HTTP

19 request from one of the client computers on the left on

20 one connection, a TCP connection. It will process it

21 and generate a distinct request and forward that on by

22 another new connection.

23   Q.   Now, is the failure to teach a secure

24 communication link the only reason that Kiuchi does not

25 invalidate Claim 1 of the '504 patent?

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1   that I've explained, Kiuchi cannot anticipate this,

2   because it doesn't meet each and every element

3   identically and, therefore, it's valid.

4   Q.   Let me move on to Claim 13 of the '151 patent.

5   Is this claim similar to Claim 1 of the '151

6   patent?

7   A.   Yes, it is. And the limitations that are

8   missing are similar as well. In the first case, it's

9   missing the sent-by-a-client, and in this case, the

10 other missing limitation is that there's not a secure

11 channel between the client and the server.

12   And for the reasons I said there wasn't an

13 encrypted channel, there's not a secure channel.

14   Q.   Let's move on to the '135 patent.

15   Does Kiuchi teach a VPN?

16   A.   No, it does not. The way we can look at that

17 is that we need to look at the construction for VPN; and

18 then we can see, for example, a network of computers

19 which privately and directly communicate with each

20 other. And let's just stop there for the moment.

21   The computers in Kiuchi don't directly

22 communicate. Dr. Alexander has identified the VPN as

23 running from the client-side proxy to the origin server.

24 That communication is not direct. That communication

25 passes through the server-side proxy.

1   And as we know, a server-side proxy is a

2   terminating server. It's going to prevent direct

3   communication. Kiuchi is quite clear that there is not

4   to be that direct communication.

5   Q.   So did you find this element missing in Claim

6   1 of the '135?

7   A.   Yes, I did.

8   Q.   What does that necessarily mean about all

9   claims of the '135 patent?

10   A.   Well, all the claims of the '135 patent

11 require a VPN. Since Kiuchi doesn't teach that, then

12 Kiuchi can't anticipate those claims.

13   Q.   I want to move on to Claim 8.

14   In this claim, what does Dr. Alexander

15 identify as the DNS proxy server in Kiuchi?

16   A.   For this claim, he has identified it as the

17 C-HTTP name server up there at the top.

18   Q.   Is that -- is that consistent with his

19 analysis for the '151 patent?

20   A.   No. In the '151 patent, he puts the DNS proxy

21 at the client-side proxy.

22   Q.   Well, in any event, does the C-HTTP name

23 server, the thing that Dr. Alexander identified here as

24 the DNS proxy server, perform this step of the claim?

25   A.   No. What this claim is requiring is that the