

No. _____

IN THE
Supreme Court of the United States

APPLE INC.,
Petitioner,
v.

VIRNETX INC., LEIDOS, INC.,
Respondents.

**APPLICATION TO THE HON. CHIEF JUSTICE JOHN G. ROBERTS, JR.
FOR A 60-DAY EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FEDERAL CIRCUIT**

Pursuant to Rule 13.5 of the Rules of this Court, Applicant Apple Inc. (Apple) moves for an extension of time of 60 days, up to and including December 30, 2019, within which to file a petition for a writ of certiorari.

1. Applicant will seek review of the judgments in *VirnetX Inc. v. Cisco Systems, Inc.*, 767 F.3d 1308 (Fed. Cir. 2014) (*VirnetX I*), and *VirnetX Inc. v. Cisco Systems, Inc.*, No. 18-1197 (Fed. Cir. Aug. 1, 2019) (*VirnetX II*). A copy of the decision in *VirnetX I*, dated September 16, 2014, is attached as Exhibit 1. A copy of the decision in *VirnetX II*, dated January 15, 2019, is attached as Exhibit 2. A copy of the Federal Circuit's subsequent order denying Apple's Petition for Rehearing and Rehearing En Banc in *VirnetX II*, dated August 1, 2019, is attached as Exhibit 3. The current deadline for filing a petition for writ of certiorari is October 30, 2019. This application is filed more than 10 days before the date the petition is due. *See* Sup. Ct. R. 13.5. The jurisdiction of this Court is based on 28 U.S.C. § 1254(1).

2. This case arises from a long-running, multi-patent, and multi-proceeding dispute. VirnetX Inc. (VirnetX) sued Apple in August 2010 for allegedly infringing four of VirnetX's patents. The underlying controversy has since led to judgments totaling more than a billion dollars and has spawned numerous parallel proceedings in both federal court and the Patent Office. Notably, the Patent Office has held all of the patent claims asserted against Apple to be unpatentable; some of these decisions have been affirmed by the Federal Circuit, while others are at various stages before the Patent Office or on appeal.

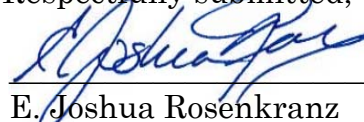
3. Good cause exists for an extension because of the press of business on other pending matters that have thus far affected counsel's availability and will continue to do so. The undersigned has been responsible for a petition for writ of certiorari in *DISH Network L.L.C. v. Krakauer*, No. 18-1518 (4th Cir.), filed in this Court on October 15, 2019; oral argument in *Ward v. Apple Inc.*, No. 18-16016 (9th Cir.), heard on October 16, 2019; an opening brief in *Bio-Rad Laboratories, Inc. v. 10x Genomics, Inc.*, Nos. 19-2255 & 19-2285 (Fed. Cir.), due October 18, 2019; a reply brief in *Arconic Inc. v. APC Investment Co.*, No. 19-55181 (9th Cir.), due November 5, 2019; and an answering brief in *Egenera, Inc. v. Cisco Systems, Inc.*, No. 19-2015 (Fed. Cir.), due November 19, 2019. In addition, co-counsel Mark S. Davies is responsible for a brief in opposition in *Amarin Pharma, Inc. v. International Trade Commission*, S. Ct. No. 19-152, due November 4, 2019; a response/reply in *Variety Stores, Inc. v. Walmart Inc.*, No. 19-1601 (4th Cir.), due November 8, 2019; a brief in opposition in *Regents of the University of Minnesota v.*

LSI Corp., S. Ct. No. 19-337, due November 14, 2019; and an opening brief in *CCC Information Services Inc. v. Tractable Inc.*, No. 19-1997 (7th Cir.), due December 6, 2019.

4. An extension is warranted because this case presents fundamental and complex issues of patent law — including the Federal Circuit’s interpretation of this Court’s requirement, set forth in *Garretson v. Clark*, 111 U.S. 120 (1884), that patent damages must always be apportioned to reflect the value of the patented invention. The questions presented in Apple’s petition will have a significant impact on U.S. patent law’s careful balancing between the private interests of the patentee and the public interest in promoting innovation. *See Motion Picture Patents Co. v. Universal Film Mfg. Co.*, 243 U.S. 502, 511 (1917). An extension of time will help to ensure that the petition effectively presents the important issues raised by these complex, interrelated cases.

5. For the foregoing reasons, Applicant hereby requests that an extension of time be granted, up to and including December 30, 2019, within which to file a petition for writ of certiorari.

Respectfully submitted,



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