

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE INC.,  
Petitioner,

v.

VIRNETX INC.,  
Patent Owner.

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Case IPR2015-01009  
Patent 8,843,643 B2

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Before KARL D. EASTHOM, ROBERT J. WEINSCHENK, and  
BETH Z. SHAW, *Administrative Patent Judges*.

WEINSCHENK, *Administrative Patent Judge*.

FINAL WRITTEN DECISION  
*35 U.S.C. § 318(a) and 37 C.F.R. § 42.73*

## I. INTRODUCTION

Apple Inc. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 1–9, 12–24, and 27–32 of U.S. Patent No. 8,843,643 B2 (Ex. 1001, “the ’643 patent”). VirnetX Inc. (“Patent Owner”) filed a Preliminary Response (Paper 6, “Prelim. Resp.”) to the Petition. On October 29, 2015, we instituted an *inter partes* review of claims 1–9, 12–24, and 27–32 (“the challenged claims”) of the ’643 patent on the following grounds:

<b>Claim(s)</b>	<b>Statutory Basis</b>	<b>Applied Reference(s)</b>
1–9, 12, 14, 17–24, 27, and 29	35 U.S.C. § 102(a)	Microsoft Windows 2000 Professional Resource Kit (2000) (Ex. 1005, “Windows Resource Kit”)
1, 13, 15–17, 28, and 30–32	35 U.S.C. § 103(a)	Windows Resource Kit; Microsoft Internet Explorer 5 Resource Kit (1999) (Ex. 1006, “IE5 Resource Kit”); and Elgamal et al., U.S. Patent No. 5,657,390 (issued Aug. 12, 1997) (Ex. 1007, “Elgamal”)

Paper 9 (“Dec. on Inst.”), 9.

After institution, Patent Owner filed a Response (Paper 15, “PO Resp.”) to the Petition, and Petitioner filed a Reply (Paper 23, “Pet. Reply”) to the Response. An oral hearing was held on July 19, 2016, and a transcript of the hearing is included in the record. Paper 32 (“Tr.”).

We issue this Final Written Decision pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons set forth below, Petitioner has shown by a preponderance of the evidence that claims 1–9, 14, 17–24, and 29 of the ’643 patent are unpatentable, but Petitioner has not shown by a preponderance of the evidence that claims 12, 13, 15, 16, 27, 28, and 30–32 of the ’643 patent are unpatentable.

A. *Related Proceedings*

The parties indicate that the Petition in this case is related to the petition for *inter partes* review in IPR2015-01010, which also involves the '643 patent. Pet. 2; Paper 5, 2. Patent Owner indicates that certain patents related to the '643 patent are at issue in various *inter partes* reviews, reexaminations, and district court cases. Paper 5, 2–12.

B. *The '643 Patent*

The '643 patent relates to, *inter alia*, establishing a secure communication link between a computer and a server without a user of the computer having to enter any identification information, passwords, or encryption keys. Ex. 1001, col. 48, l. 66–col. 49, l. 1, col. 50, ll. 9–16. For example, a user of a computer may connect to a non-secure server by entering a domain name for the non-secure server in a Web browser. *Id.* at col. 49, ll. 21–32. The user then can enable a secure communication mode simply by clicking a “go secure” hyperlink in the Web browser. *Id.* at col. 50, ll. 9–12. The '643 patent explains that a software module on the computer automatically replaces the domain name for the non-secure server with a secure domain name. *Id.* at col. 50, ll. 22–25. The software module then sends a query using the secure domain name to a secure domain name service (“SDNS”). *Id.* at col. 50, ll. 49–53. In response to the query, the SDNS returns an address for a secure server. *Id.* at col. 51, ll. 39–42. The computer then accesses the secure server through a virtual private network (“VPN”) communication link. *Id.* at col. 51, ll. 57–59.

C. *Illustrative Claim*

Claims 1 and 17 are independent. Claim 1 is reproduced below.

1. A method for establishing an encrypted communication link between a first device and a second device over a communication network, the method comprising:

enabling, at the first device, a secure communication mode without a user entering any cryptographic information for establishing the secure communication mode; and

establishing, based on a determination that the secure communication mode has been enabled, the encrypted communication link between the first device and the second device over the communication network, the establishing including:

constructing a domain name based on an identifier associated with the second device;

sending a query using the domain name;

receiving, in response to the query, at least one network address associated with the domain name; and

initiating establishment of the encrypted communication link between the first device and the second device over the communication network using the at least one network address and encrypted communication link resources received from a server that is separate from the first device.

Ex. 1001, col. 55, ll. 46–67.

## II. ANALYSIS

### A. *Claim Construction*

The claims of an unexpired patent are interpreted using the broadest reasonable interpretation in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b); *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2144–45 (2016). The parties propose construing several claim terms in the '643 patent. Pet. 8–14; PO Resp. 4–22. For the reasons discussed below, we determine that no claim terms require express construction to resolve the parties' disputes regarding the asserted grounds

of unpatentability in this case. *See infra* Sections II.B–II.C; *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (“[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.”).

B. *Anticipation of Claims 1–9, 12, 14, 17–24, 27, and 29 by Windows Resource Kit*

Petitioner argues that claims 1–9, 12, 14, 17–24, 27, and 29 are anticipated by Windows Resource Kit. Pet. 3. A claim is anticipated if each limitation of the claim is disclosed in a single prior art reference arranged as in the claim. *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008). We have considered the parties’ arguments and supporting evidence. We determine that Petitioner has shown by a preponderance of the evidence that claims 1–9, 14, 17–24, and 29 are anticipated by Windows Resource Kit, but Petitioner has not shown by a preponderance of the evidence that claims 12 and 27 are anticipated by Windows Resource Kit.

1. *Overview of Windows Resource Kit*

Windows Resource Kit is a guide for installing, configuring, and supporting Windows 2000. Ex. 1005, xxxiii. Windows Resource Kit describes, *inter alia*, configuring a computer with Windows 2000 to communicate with other computers on a network. *Id.* at 948. For example, Windows Resource Kit explains that a user can select a security policy on a Windows 2000 computer to ensure that communications with other computers are secure. *Id.* at 1021–1025. Windows Resource Kit also describes the Domain Name System (“DNS”) that a Windows 2000 computer uses to communicate with other computers on a network. *Id.* at 964. Specifically, Windows Resource Kit explains that a Windows 2000 computer sends a query containing a domain name associated with another

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