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IPR2016-00331, Paper No. 28

IPR2016-00332, Paper No. 28

571-272-7822

May 9, 2017

RECORD OF ORAL HEARING

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,

Petitioner,

vs.

VIRNETX INC.,

Patent Owner.

Case IPR2016-00331

Case IPR2016-00332

Patent 8,504,696 B2

Oral Hearing Held: Monday, March 27, 2017

Before: MICHAEL P. TIERNEY, KARL D. EASTHOM, and
STEPHEN C. SIU, Administrative Patent Judges.

The above-entitled matter came on for hearing on Monday,
March 27, 2017, at 10:00 a.m., in Hearing Room B, taken at the U.S. Patent
and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

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PROCEEDINGS

1
2 JUDGE EASTHOM: Welcome, everyone. The two
3 cases are IPR2016-00331 and IPR2016-00332. The patent
4 being challenged by Apple Inc., the Petitioner, is 8,504,696
5 B2, and the Patent Owner is VirnetX Inc. Counsel for
6 Petitioner, can you please introduce yourselves for the record.

7 MR. KUSHAN: Sure. Jeff Kushan, and with me is
8 Sam Dillon and Scott Border, from Sidley Austin.

9 JUDGE EASTHOM: Welcome. And for Patent
10 Owner?

11 MR. ZEILBERGER: Your Honor, Daniel
12 Zeilberger and I'm joined by Naveen Modi.

13 JUDGE EASTHOM: Welcome.

14 Okay. We've set it up 45 minutes per side for both
15 cases. Petitioner will proceed first. You want to reserve any
16 rebuttal time?

17 MR. KUSHAN: Yes, your Honor, we'd like to
18 reserve 20 minutes.

19 JUDGE EASTHOM: Okay. Are you going to
20 argue both of them together, and then?

21 MR. KUSHAN: Yes. Our attention is to address --
22 there are two grounds. There's the Aventail reference and the

1 Beser reference. I'm going to cover Aventail and then my
2 colleague, Mr. Border, will cover the Beser reference. We are
3 hoping we could do that rather efficiently.

4 JUDGE EASTHOM: Sequentially?

5 MR. KUSHAN: Yes.

6 JUDGE EASTHOM: Okay. I guess we will keep it
7 all in one transcript then. And it sounds like a plan, then.
8 Whenever you are ready, please proceed.

9 MR. BORDER: Your Honor, may I approach?

10 JUDGE EASTHOM: Yes.

11 (Mr. Border proffers documents to the Panel.)

12 JUDGE EASTHOM: Thank you.

13 MR. KUSHAN: Good morning. I'm going to be
14 addressing, as I mentioned, the Aventail reference. I'd also
15 like to also touch on a couple of other issues that relate to
16 earlier proceedings -- that have occurred in earlier draft
17 proceedings that have now become final decisions.

18 Let me go ahead and start by going to Slide 2. As
19 you are aware, these are the grounds that are at issue in the
20 two proceedings, the 331 and 332 proceeding. The 332
21 proceeding relates to the Aventail; 331 is based on Beser.

22 If you go to Slide 4, please. This is the Claim 1

1 from the '696 Patent. And as you can see, it has three
2 elements or three steps that are performed in the Claim: The
3 intercepting step, the determining step, and the initiation of
4 the VPN communication link. We have seen these claims
5 before. They are very similar to a number of other patents in
6 this family, and particularly the focus has been on the
7 determining step, the interception step, and the establishment
8 step. In this case, the dispute seems to focus on the
9 determining step and the initiation step. I don't know that
10 there is much in the dispute at this point over interception
11 over either Aventail or Beser.

12 What I'd like to do -- go to Slide 5. This is just a
13 quick summary of the proceedings that are now final. A
14 number of the IPR proceedings of other family members of
15 this patent family have gone up to the Federal Circuit and the
16 Federal Circuit has issued decisions and a mandate has been
17 issued in four of those proceedings to date. I will note that
18 the first one there is a period where I don't know -- I don't
19 think that the period for seeking cert to the Supreme Court has
20 expired, but for the other three, they have. So we look at
21 those decisions as being final. There is no further proceedings
22 available in any of those. And that has some implications for

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