

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC.,
Petitioner,

v.

VIRNETX INC.,
Patent Owner.

Cases IPR2016-00331 & IPR2016-00332
Patent 8,504,696 B2

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

EASTHOM, *Administrative Patent Judge*.

ORDER¹
Trial Hearing
35 U.S.C. § 326(a)(10) and 37 C.F.R. § 42.70

¹ This Trial Hearing Order applies to each case. The parties are not authorized to use this heading style.

Cases IPR2016-00331 & IPR2016-00332
Patent 8,504,696 B2

Both parties have requested oral argument pursuant to 37 C.F.R. § 42.70(a) in each of the above-captioned cases. *See, e.g.*, IPR2016-00331, Papers 19 & 21. The requests are *granted*.

As requested, each party will have 45 minutes total for its presentation for both cases. *See id.* Each party may divide its time among the two cases as desired. The oral hearing will commence at **10:00 AM Eastern Time**, on **Monday, March 27, 2017**. The hearing will be open to the public for in-person attendance on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. In-person attendance will be accommodated on a first-come, first-served basis. The Board will provide a court reporter for the hearing, and the reporter's transcript will constitute the official record of the hearing. The hearing transcript will be entered in the record of each case.

Petitioner bears the ultimate burden of proof that the challenged patent claims are unpatentable. Therefore, at the oral hearing, Petitioner will proceed first to present its case with respect to the challenged claims and grounds on which the Board instituted trial. Petitioner may reserve some of its time for rebuttal. Patent Owner then will respond to Petitioner's initial presentation. Thereafter, Petitioner may use any time it has reserved to rebut Patent Owner's presentation. On rebuttal, Petitioner will be restricted to only those matters raised by Patent Owner in its presentation.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the hearing. The parties shall meet and confer to discuss and resolve any objections to demonstrative exhibits. Any party with unresolved objections must file a list of those objections with the

Cases IPR2016-00331 & IPR2016-00332
Patent 8,504,696 B2

Board at least two business days before the hearing. For each objection, the list must identify with particularity which portions of the demonstrative exhibits are subject to the objection and may include a short, one-sentence statement explaining the objection. No argument or further explanation is permitted. The Board will consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections. Any objection to demonstrative exhibits not timely presented will be considered waived.

Each party also shall file its demonstrative exhibits with the Board as a separate exhibit **at least two business days** prior to the hearing. A hard copy of the demonstratives should be provided to the court reporter at the hearing. *See CBS Interactive Inc. v. Wireless Sciences LLC*, Case IPR2013-00033 (PTAB Oct. 23, 2013) (Paper 118) (for guidance regarding the proper content of demonstrative exhibits). Demonstrative exhibits do not constitute evidence and may not introduce new evidence or arguments. Instead, demonstrative exhibits should cite to evidence in the record. The presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the hearing to ensure the clarity and accuracy of the reporter's transcript.

The Board expects lead counsel for each party to be present at the oral hearing, although any backup counsel may make the actual presentation, in whole or in part. Requests for audio-visual equipment are to be made **at least five days** in advance of the hearing date. The requests must be sent to **Trials@uspto.gov** by e-mail. Without a timely request, the equipment may not be available on the day of the hearing.

Cases IPR2016-00331 & IPR2016-00332
Patent 8,504,696 B2

PETITIONER:

Jeffrey P. Kushan
Thomas A. Broughan, III
SIDLEY AUSTIN LLP
jkushan@sidley.com
tbroughan@sidley.com
iprnotices@sidley.com

PATENT OWNER:

Joseph E. Palys
Naveen Modi
PAUL HASTINGS LLP
josephpalys@paulhastings.com
naveenmodi@paulhastings.com
PH-VirnetX-IPR@paulhastings.com