

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,

Petitioner,

v.

VIRNETX, INC.,

Patent Owner.

Case IPR2017-00337
Patent 9,038,163 B2

Before KARL D. EASTHOM, JENNIFER S. BISK, and
KEVIN C. TROCK, *Administrative Patent Judges*.

TROCK, *Administrative Patent Judge*.

ORDER
Trial Hearing
37 C.F.R. § 42.70

Petitioner has requested oral argument pursuant to 37 C.F.R. § 42.70(a). Paper 22. Patent Owner does not seek oral argument, but states that if Petitioner seeks oral argument and the Board grants that request or finds that oral argument would be helpful in deciding any of the issues, Patent Owner requests participation in oral argument to the same extent as Petitioner. Paper 24. The Petitioner's request for oral argument is hereby *granted* to the extent described below.

Each party will have 30 minutes to present its arguments.

Petitioner bears the ultimate burden of proof that the claims at issue in this review are unpatentable. *See* 35 U.S.C. § 316(e). At oral argument, therefore, Petitioner will proceed first to present its case on the grounds of patentability on which we instituted trial. Thereafter, Patent Owner will argue its opposition to Petitioner's case. To the extent Petitioner reserves rebuttal time, Petitioner then may make use of its rebuttal time responding to Patent Owner.

Oral argument will commence at **1:00 PM Eastern Time on Tuesday, February 27, 2018, at the U.S. Patent & Trademark Office, Madison Building East, Ninth Floor, 600 Dulany Street, Alexandria, Virginia**. All attendees will need a valid form of government-issued identification in order to enter the building and may be subject to security screening. The hearing will be open to the public for in-person attendance, and in-person attendance will be accommodated on a first-come, first-served basis. If the parties have any concern about disclosing confidential information, they are to contact the Board at least ten (10) business days before the hearing to discuss the matter. The Board will provide a court

reporter for the hearing and the reporter's transcript will constitute the official record of the oral argument.

At least seven (7) business days prior to oral argument, each party shall serve on the other party any demonstrative(s) it intends to use during oral argument. *See* 37 C.F.R. § 42.70(b). The parties shall also provide the demonstrative(s) to the Board at trials@uspto.gov at least five (5) business days prior to oral argument. **Demonstratives, however, are not evidence, but merely a visual aid at the oral arguments. Demonstratives may not introduce new evidence or raise new arguments, but instead, should cite to evidence in the record. Demonstratives shall not become part of the evidentiary record of this proceeding.**

The parties should attempt to resolve any objections to demonstratives prior to involving the Board. The parties must request a conference call with the Board at least three (3) business days before the hearing to present any unresolved objection regarding the propriety of any demonstrative. Any unresolved objection to demonstratives that is not timely presented will be considered waived. The Board asks the parties to confine demonstrative objections to those identifying egregious violations that are prejudicial to the administration of justice. To aid in the preparation of an accurate transcript, each party shall provide paper copies of its demonstratives to the court reporter on the day of the oral argument. Such paper copies shall **not** become part of the evidentiary record of this proceeding.

The parties are reminded that each presenter must identify clearly and specifically each demonstrative (e.g., by slide or screen number), paper, or exhibit referenced during the oral arguments to ensure the clarity and accuracy of the transcript. The parties also should note that at least one

member of the panel may be attending the oral argument electronically from a remote location and that if any demonstrative is not made fully available or visible to the entire panel, that demonstrative will not be considered.

Because of limitations of the audio transmission systems in the hearing rooms, the presenter may speak only when standing at the hearing room lectern. If the parties have questions as to whether demonstratives would be sufficiently visible and available to all of the judges, the parties are invited to contact the Board at (571) 272-9797.

The Board expects lead counsel for each party to be present in person at oral argument. If a party anticipates that its lead counsel will not be attending oral argument, the parties should request a joint telephone conference with the Board no later than seven (7) business days prior to the oral argument to discuss the matter. Any counsel of record, however, may present the party's arguments.

Lead counsel and back-up counsel may use portable computers in the hearing room at the counsel tables and at the hearing room lectern. Requests for audio-visual equipment are to be made five (5) business days in advance of the oral argument date. The requests are to be sent to Trials@uspto.gov. If the requests are not received timely, the equipment may not be available on the day of the hearing.

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ORDER

It is

ORDERED that oral argument for these proceedings shall take place beginning at 1:00 PM Eastern Time on Tuesday, February 27, 2018, at the U.S. Patent & Trademark Office, Madison Building East, Ninth Floor, 600 Dulany Street, Alexandria, Virginia.

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