

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)

Record of Oral Hearing
Held: February 27, 2018

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

Case IPR2017-00337
(Patent 9,038,163 B2)

APPEARANCES:

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The above-entitled matter came on for hearing on Tuesday, February 27, 2018, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

1 PROCEEDINGS

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3 JUDGE EASTHOM: Welcome everybody. This is IPR2017-00337,
4 U.S. Patent Number 9,038,163. We have Judge Trock over in California.
5 Judge Bisk, to my right, and I'm Judge Easthom. Why don't we have Patent
6 Owner -- and this is Apple, Inc. versus Virnetx, Inc. So, why don't we just
7 have Petitioner introduce yourself for the record, please.

8 MR. KISHHAN: Thank you, Your Honor, Jeff Kushan from Sidley,
9 Austin. With me, Joe Loy from Kirkland, who will be doing the argument,
10 and Scott Border from Sidley.

11 JUDGE EASTHOM: Could you repeat that, please? I was rustling
12 with papers, my mistake.

13 MR. KISHHAN: Sure. Jeff Kushan from Sidley, and lead counsel
14 Joseph Loy from Kirkland and Ellis, who will be doing the argument, and
15 Scott Border also from Sidley.

16 JUDGE EASTHOM: Thank you.

17 JUDGE BISK: Is that microphone on?

18 MR. KUSHAN: Can you hear?

19 JUDGE EASTHOM: Can you hear, Judge Trock?

20 JUDGE TROCK: I can hear counsel, I can hear you Judge Easthom.

21 JUDGE EASTHOM: Okay. Thank you. For Virnetx?

22 MR. ZEILBERGER: Good afternoon, Your Honor, Daniel Zeilberger
23 with Virnetx and I'm joined by
24 Naveen Modi.

25 JUDGE EASTHOM: Welcome. We have 30 minutes per side.
26 Petitioner, you have the burden, you'll go first. Patent Owner can respond

1 but if Patent Owner wants to also -- we have a Motion to Exclude, they can
2 bring that up on their half and then whatever rebuttal you want to say we'll
3 go forward with that. We'll reserve time if you ask for it.

4 MR. LOY: Thank you, Your Honor. May I approach with copies of
5 the demonstratives?

6 JUDGE EASTHOM: Sure, thank you.

7 MR. LOY: Good afternoon, Your Honors. I would like to reserve 10
8 minutes for my time for rebuttal, if I may. Slide 2, we're here today to
9 discuss whether certain claims of the '163 patent are obvious in view of three
10 references; Beser, RFC 2401, and RFC 2543. I plan to focus my discussion
11 today on the issues raised by Patent Owner in its response, and I'm happy to
12 answer any questions that the Board has as I proceed. Claim 4 -- slide 4,
13 rather. Claim 1 of the '163 patent is illustrative of the challenged claims.

14 It includes a method for connecting two network devices over a
15 communication network comprising several steps. There's a receiving step,
16 receiving a request to lookup a network address, including -- they're based
17 on an identifier which can be either a domain name, a VOIP phone number,
18 or an e-mail address. The evaluating step, that requests to determine if the
19 identifier is registered with a name service, and that name service can be a
20 domain name, for example -- domain name service, rather, for example.

21 And then a determining step, whether the second network device is
22 available to communicate through a direct encrypted communication link.
23 Now, the technologies described in the '163 patent including DNS servers,
24 domain names, and VPNs were all well-known in the prior art as of the time
25 of the effective filing date of the '163 patent, which is February 15th of
26 2000. Slide 5, please, the prior art references in the petition include the two

1 references that are illustrated here on slide 5, the Beser reference depicted as
2 figure 1 at the upper left-hand corner, and figure 6 on the right, as well as
3 RFC 2401 which is the IPsec protocol.

4 Now, the basic idea behind Beser is that there's a creation of an IP
5 tunnel. There's negotiation of IP addresses between a first network device
6 and a trusted third-party device, which enables to end user devices an
7 originating and a terminating device to communication securely using a
8 tunnel, so that each side knows the private IP address of the other. Now, we
9 combine in this petition the IPsec protocol, which is an IEP publication that
10 discloses end-to-end encryption, it allows, when combined with Beser, for
11 two end user devices to communicate through an end-to-end encrypted
12 tunnel.

13 Slide 6, finally, the third reference at issue in this is a combination
14 with RFC 2543, which is the IPsec protocol -- sorry, the SIP protocol. The
15 SIP protocol has another layer which, again, is the same architecture of
16 Beser. You have an originating device that sends an invite message through
17 to a terminating device. That's a process through a location service which
18 looks up the identifier of the originating device or the terminating device,
19 and then sends on an invite message through to the terminating device. In
20 which case a VOIP phone, for instance, the phone rings and if the end user
21 determines that they would like to accept the call there's an opinion to
22 accept, in which case a message is then -- an accept message, 200, is then
23 returned through to the originating device and an acknowledgement message
24 goes back to allow the two devices to negotiate an IP tunnel and, again, have
25 a secure and anonymous communication link.

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