

No. 19-

IN THE
Supreme Court of the United States

APPLE INC.,

Petitioner,

v.

VIRNETX INC., LEIDOS, INC.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. A patented invention often makes but a small contribution to a complex end-product's value. Thus, for well over a century, this Court has enforced the rule that a patentee must apportion damages for infringement so that any recovery is limited only to the value of its patented invention, not the value created by the numerous other features of an end-product in which the patented invention is included. The Federal Circuit, however, now permits patentees to recover damages that extend far beyond the value of the patented invention whenever the patentee proves damages based on prior licenses, as they commonly do.

The question presented is whether the Federal Circuit's reliance on prior licenses to ascertain infringement damages, without satisfying apportionment rules, conflicts with this Court's precedent requiring apportionment "in every case." *Garretson v. Clark*, 111 U.S. 120, 121 (1884).

2. The Patent and Trademark Office (PTO) may invalidate patent claims after issuing them. This Court has held that when patent claims are invalidated, the invalidation applies in pending litigation.

The question presented is whether intervening PTO invalidations apply in all pending cases, including appeals that remain pending at the rehearing or certiorari stage.

PARTIES TO THE PROCEEDING BELOW

The parties to the proceedings below were petitioner Apple Inc., respondents VirnetX Inc. and Leidos, Inc., and Cisco Systems, Inc.

CORPORATE DISCLOSURE STATEMENT

Petitioner Apple Inc. has no parent corporation. No publicly held corporation owns 10% or more of Apple's stock.

RELATED PROCEEDINGS

VirnetX Inc. v. Cisco Systems, Inc., No. 18-1197
(Fed. Cir.) (judgment issued Jan. 15, 2019)

VirnetX Inc. v. Cisco Systems, Inc., No. 13-1489
(Fed. Cir.) (opinion and judgment issued Sept. 16,
2014)

VirnetX Inc. v. Apple Inc., No. 6:10-cv-417 (E.D.
Tex.) (final judgment issued Sept. 29, 2017)

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