IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

VirnetX Inc. and Science Applications International Corporation, Plaintiffs, v. Apple Inc., Defendant.	Civil Action No. 6:13-cv-581 Jury Trial Demanded

PLAINTIFF VIRNETX INC. AND PLAINTIFF SCIENCE APPLICATIONS INTERNATIONAL CORPORATION'S
COMPLAINT

Plaintiff VirnetX Inc. ("VirnetX") and Plaintiff Science Applications International Corporation ("SAIC") file this Complaint against Defendant Apple Inc. for patent infringement under 35 U.S.C. § 271 and in support thereof would respectfully show the Court the following:

THE PARTIES

1. Plaintiff VirnetX is a corporation organized and existing under the laws of the State of Delaware and maintains its principal place of business at 308 Dorla Court, Zephyr Cove, Nevada 89448.

2. Science Applications International Corporation ("SAIC") is a corporation formed under the laws of the state of Delaware with a principal place of business at 1710 SAIC Drive, McLean, Virginia 22102.

3. Defendant Apple, Inc. ("Apple") is a California corporation with its principal place of business at 1 Infinite Loop, Cupertino, California 95014.

JURISDICTION AND VENUE

4. This is an action for patent infringement arising under the patent laws of the United States, Title 35, United States Code. This Court has exclusive subject matter jurisdiction over this case for patent infringement under 28 U.S.C. § 1338.

5. Venue is proper in the Eastern District of Texas under 28 U.S.C. §§ 1391 and 1400(b).

6. This Court has personal jurisdiction over Defendant Apple. Apple has conducted and does conduct business within the State of Texas. Apple, directly or through subsidiaries or intermediaries (including distributors, retailers, and others), ships, distributes, offers for sale, sells, and advertises (including the provision of an interactive web page) its products and/or services in the United States, the State of Texas, and the Eastern District of Texas. Apple, directly and through subsidiaries or intermediaries (including distributors, retailers, and others), has purposefully and voluntarily placed one or more of its infringing products and/or services, as described below, into the stream of commerce with the expectation that they will be purchased and used by consumers in the Eastern District of Texas. These infringing products and/or services have been and continue to be purchased and used by consumers in the Eastern District of Texas. Apple has committed acts of patent infringement within the State of Texas and, more particularly, within the Eastern District of Texas.

ASSERTED PATENT

7. At 12:00 a.m. EDT on August 6, 2013 [e.g., 11:00 p.m. CDT on August 5, 2013], United States Patent No. 8,504,697 ("the '697 patent") entitled "System and Method Employing an Agile Network Protocol for Secure Communications Using Secure Domain Names" was duly and legally issued with Victor Larson, Robert Dunham Short, III, Edmund Colby

Munger, and Michael Williamson as the named inventors after full and fair examination. VirnetX, together with SAIC, owns all rights, title, and interest in and to the '697 patent[1] and possesses all rights of recovery under the '697 patent.

COUNT ONE
PATENT INFRINGEMENT BY APPLE

8. Plaintiffs incorporate by reference paragraphs 1-7 as if fully set forth herein. As described below, Apple has infringed and/or continues to infringe the '697 patent.

9. At least Apple's servers and other Apple computers that support the FaceTime functionality, when configured and operating in a system as specified by Apple, and Apple iPhone devices capable of using the FaceTime functionality, including the Apple iPhone 4, iPhone 4S, and iPhone 5; Apple iPod Touch devices capable of using the FaceTime functionality, including the Apple iPod Touch 4th Generation and iPod Touch 5th Generation; Apple iPad devices capable of using the FaceTime functionality, including the Apple iPad 2, iPad 3rd Generation, and iPad 4th Generation; the Apple iPad mini; and Apple computers capable of using the FaceTime functionality (*e.g.*, running the FaceTime for Mac application), including Apple computers running OS X 10.6.6 or higher, infringe at least system claims 14, 15, 17, 21-23, 26, 28, and 30 of the '697 patent. Apple makes and/or uses these systems and thus directly infringes at least claims 14, 15, 17, 21-23, 26, 28, and 30 of the '697 patent.

10. The use of at least Apple's servers and other Apple computers that support the FaceTime functionality, when configured and operating in a system as specified by Apple, and Apple iPhone devices capable of using the FaceTime functionality, including the Apple iPhone 4, iPhone 4S, and iPhone 5; Apple iPod Touch devices capable of using the FaceTime functionality, including the Apple iPod Touch 4th Generation and iPod Touch 5th Generation;

[1] SAIC maintains an equity interest and review rights related to the '697 patent.

Apple iPad devices capable of using the FaceTime functionality, including the Apple iPad 2, iPad 3rd Generation, and iPad 4th Generation; the Apple iPad mini; and Apple computers capable of using the FaceTime functionality (*e.g.*, running the FaceTime for Mac application), including Apple computers running OS X 10.6.6 or higher, as intended by Apple, infringes at least method claims 1, 2, 4, 8-10, 13, and 29 of the '697 patent. Apple uses these products and thus directly infringes at least claims 1, 2, 4, 8-10, 13, and 29 of the '697 patent.

11. In addition, Apple provided or currently provides at least Apple iPhone devices capable of using the FaceTime functionality, including the Apple iPhone 4, iPhone 4S, and iPhone 5; Apple iPod Touch devices capable of using the FaceTime functionality, including the Apple iPod Touch 4th Generation and iPod Touch 5th Generation; Apple iPad devices capable of using the FaceTime functionality, including the Apple iPad 2, iPad 3rd Generation, and iPad 4th Generation; the Apple iPad mini; and Apple computers capable of using the FaceTime functionality (*e.g.*, running the FaceTime for Mac application), including Apple computers running OS X 10.6.6 or higher, and media that store, cache, or distribute iPhone OS or iOS to others, such as resellers and end-user customers, in the United States who, in turn, use these products to infringe at least claims 1, 2, 4, 8-10, 13-15, 17, 21-23, 26, and 28-30 of the '697 patent.

12. Apple indirectly infringes the '697 patent by inducing infringement by others, such as resellers and end-user customers, in accordance with 35 U.S.C. § 271(b), because Apple actively induces infringement of the '697 patent by others, such as resellers and end-user customers.

13. Apple indirectly infringes the '697 patent by contributing to infringement by others, such as resellers and end-user customers, in accordance with 35 U.S.C. § 271(c),

because Apple offers to sell or sells within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

14. At least Apple's servers and other Apple computers that support the iMessage functionality, when configured and operating in a system as specified by Apple, and Apple iPhone devices capable of using the iMessage functionality, including the Apple iPhone 3GS, iPhone 4, iPhone 4S, and iPhone 5; Apple iPod Touch devices capable of using the iMessage functionality, including the Apple iPod Touch 3rd Generation, iPod Touch 4th Generation, and iPod Touch 5th Generation; Apple iPad devices capable of using the iMessage functionality, including the Apple iPad, iPad 2, iPad 3rd Generation, and iPad 4th Generation; the Apple iPad mini; and Apple computers capable of using the iMessage functionality (*e.g.*, running the Messages for Mac application), including Apple computers running OS X 10.7 or higher, infringe at least system claims 14, 15, 21-23, 26, 28, and 30 of the '697 patent. Apple makes and/or uses these systems and thus directly infringes at least claims 14, 15, 21-23, 26, 28, and 30 of the '697 patent.

15. The use of at least Apple's servers and other Apple computers that support the iMessage functionality, when configured and operating in a system as specified by Apple, and Apple iPhone devices capable of using the iMessage functionality, including the Apple iPhone 3GS, iPhone 4, iPhone 4S, and iPhone 5; Apple iPod Touch devices capable of using the iMessage functionality, including the Apple iPod Touch 3rd Generation, iPod Touch 4th Generation, and iPod Touch 5th Generation; Apple iPad devices capable of using the iMessage

functionality, including the Apple iPad, iPad 2, iPad 3rd Generation, and iPad 4th Generation; the Apple iPad mini; and Apple computers capable of using the iMessage functionality (*e.g.*, running the Messages for Mac application), including Apple computers running OS X 10.7 or higher, infringes at least method claims 1, 2, 8-10, 13, and 29 of the '697 patent. Apple uses these products and thus directly infringes at least claims 1, 2, 8-10, 13, and 29 of the '697 patent.

16. In addition, Apple provided or currently provides at least Apple iPhone devices capable of using the iMessage functionality, including the Apple iPhone 3GS, iPhone 4, iPhone 4S, and iPhone 5; Apple iPod Touch devices capable of using the iMessage functionality, including the Apple iPod Touch 3rd Generation, iPod Touch 4th Generation, and iPod Touch 5th Generation; Apple iPad devices capable of using the iMessage functionality, including the Apple iPad, iPad 2, iPad 3rd Generation, and iPad 4th Generation; the Apple iPad mini; and Apple computers capable of using the iMessage functionality (*e.g.*, running the Messages for Mac application), including Apple computers running OS X 10.7 or higher, and media that store, cache, or distribute iPhone OS or iOS to others, such as resellers and end-user customers, in the United States who, in turn, use these products to infringe at least claims 1, 2, 8-10, 13-15, 21-23, 26, and 28-30 of the '697 patent.

17. Apple indirectly infringes the '697 patent by inducing infringement by others, such as resellers and end-user customers, in accordance with 35 U.S.C. § 271(b), because Apple actively induces infringement of the '697 patent by others, such as resellers and end-user customers.

18. Apple indirectly infringes the '697 patent by contributing to infringement by others, such as resellers and end-user customers, in accordance with 35 U.S.C. § 271(c),

because Apple offers to sell or sells within the United States a component of a patented machine, manufacture, combination, or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial non-infringing use.

19. Apple's acts of infringement have caused damage to VirnetX. VirnetX is entitled to recover from Apple the damages sustained by VirnetX as a result of Apple's wrongful acts in an amount subject to proof at trial. In addition, the infringing acts and practices of Apple have caused, are causing, and, unless such acts and practices are enjoined by the Court, will continue to cause immediate and irreparable harm to VirnetX for which there is no adequate remedy at law, and for which VirnetX is entitled to injunctive relief under 35 U.S.C. § 283.

20. Apple has received actual notice of infringement prior to this lawsuit, including at least through previous cases against Apple, *VirnetX Inc. v. Cisco Inc.*, 6:10-cv-417 (E.D. Tex.) and *VirnetX Inc. v. Apple Inc.*, 6:12-cv-855 (E.D. Tex.), Apple's knowledge of the common specification between the '697 patent and related patents previously asserted against Apple, Apple's knowledge of VirnetX's ongoing prosecution efforts, publicly available copies of the Notice of Allowance and Issue Notification relating to the application that matured into the '697 patent, and Apple's knowledge of a meet-and-confer in 6:12-cv-855 relating to an amendment to add the '697 patent to that case. Apple has also received constructive notice as VirnetX marks its products in compliance with 35 U.S.C. § 287.

21. Apple has willfully infringed and/or does willfully infringe the '697 patent.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury for all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. A judgment that Apple has directly infringed the '697 patent, contributorily infringed the '697 patent, and/or induced the infringement of the '697 patent;

2. A preliminary and permanent injunction preventing Apple and its respective officers, directors, agents, servants, employees, attorneys, licensees, successors, and assigns, and those in active concert or participation with any of them, from directly infringing, contributorily infringing, and/or inducing the infringement of the '697 patent;

3. A judgment that Apple's infringement of the '697 patent has been willful;

4. A ruling that this case be found to be exceptional under 35 U.S.C. § 285, and a judgment awarding VirnetX to its attorneys' fees incurred in prosecuting this action;

5. A judgment and order requiring Apple to pay VirnetX damages under 35 U.S.C. § 284, including supplemental damages for any continuing post-verdict infringement up until entry of the final judgment, with an accounting, as needed, and treble damages for willful infringement as provided by 35 U.S.C. § 284;

6. A judgment and order requiring Apple to pay VirnetX the costs of this action (including all disbursements);

7. A judgment and order requiring Apple to pay VirnetX pre-judgment and post- judgment interest on the damages awarded;

8. A judgment and order requiring that in the event a permanent injunction preventing future acts of infringement is not granted, that VirnetX be awarded a compulsory ongoing licensing fee; and

9. Such other and further relief as the Court may deem just and proper.

DATED: August 5, 2013

Respectfully submitted,

McKOOL SMITH, P.C.

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