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NUMBER

September 13, 2012

12-396

BY HAND DELIVERY

The Honorable Lisa R. Barton
Acting Secretary, U.S. International Trade Commission
500 E Street, S.W., Room 112
Washington, D.C. 20436

2913

Office of the
Secretary
Int'l Trade Commission

**RE: In the Matter of Certain Devices with Secure Communication Capabilities,
Components Thereof, and Products Containing the Same**

Dear Secretary Barton:

Enclosed for filing on behalf of VirnetX, Inc. ("VirnetX") and Science Applications International Corporation ("SAIC") (collectively, "Complainants") are the documents listed below in support of Complainants request that the Commission institute an investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337. Requests for confidential treatment of Confidential Exhibit Nos. 3C, 4C, 5C, 6C, 7C, 36-1C, 36-2C, 42C, 53C, 72C, 91C, and 122C is transmitted concurrently herewith.

Complainants have requested, but have not yet received, an updated original certified copy of the Patent Assignment and File History for U.S. Patent 8,051,181. We will submit original certified copies as soon as the copies are received from the United States Patent and Trademark Office.

Accordingly, Complainants submit the following documents for filing:

1. One (1) original and eight (8) copies of the verified non-confidential Complaint pursuant to 19 C.F.R. §§ 201.6(a) and (c), 210.4(f)(2), and 210.8(a) (original and one copy unbound, without tabs pursuant to 19 C.F.R. § 201.8(d));
2. One (1) CD containing a copy of the non-confidential exhibits to the Complaint pursuant to 19 C.F.R. §§ 201.6(a), 210.4(f)(2), and 210.8(a);
3. One (1) CD containing a copy of the confidential version of the exhibits to the Complaint pursuant to 19 C.F.R. §§ 201.6(c), 210.4(f)(2), and 210.8(a);

4. One (1) additional copy of the Complaint and one (1) CD containing the non-confidential exhibits for service upon the proposed respondent; and one (1) additional copy of a CD containing the confidential exhibits for service upon counsel for the respondent once appropriate subscriptions to the protective order have been filed, pursuant to 19 C.F.R. §§ 210.8(a) and 210.11 (a)(l);
5. One (1) certified copy of U.S. Patent No. 8,051,181 ("the '181 patent") is included as Exhibit 1 to the Complaint pursuant to 19 C.F.R. § 210.12(a)(9)(i);
6. One (1) copy¹ of the assignment for the '181 patent is included as Exhibit 2 to the Complaint pursuant to 19 C.F.R. § 210.12(a)(9)(i);
7. One (1) original² and three (3) CDs loaded with the prosecution history of the '181 patent are included as Appendix A pursuant to 19 C.F.R. § 210.12(c)(1);
8. Four (4) CDs loaded with each technical reference mentioned in the prosecution history of the '181 patent are included as Appendix B pursuant to 19 C.F.R. § 210.12(c)(2);
9. Eight (8) copies of the Statement of Public Interest pursuant to 19 C.F.R. § 210.8(b); and
10. Two letters pursuant to Commission Rule 201.6(b) requesting confidential treatment of Confidential Exhibit Nos. 3C, 4C, 5C, 6C, 7C, 36-1C, 36-2C, 42C, 53C, 72C, 91C; and 122C.

Thank you for your attention to this matter.

Respectfully submitted,



Douglas Cawley

Enclosures:

¹ Complainants have requested, but have not yet received, a certified copy of the corrected '181 patent assignment. A prior certified copy (uncorrected) has been submitted as Exhibit 2. Complainants will submit an original corrected certified copy as soon as the copy is received from the United States Patent and Trademark Office.

² Complainants have requested, but have not yet received, a certified copy of the corrected prosecution history of the '181 patent. A prior certified copy (uncorrected) has been submitted as Appendix A. Complainants will submit an original corrected certified copy as soon as the copy is received from the United States Patent and Trademark Office.

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Acting Secretary, U.S. International Trade Commission
500 E Street, S.W., Room 112
Washington, D.C. 20436

**RE: In the Matter of Certain Devices with Secure Communication Capabilities,
Components Thereof, and Products Containing the Same**

Dear Secretary Barton:

McKool Smith, P.C. represents complainant VirnetX, Inc. ("VirnetX"). VirnetX, by counsel, hereby requests, pursuant to 19 C.F.R. § 201.6, confidential treatment of the confidential business information contained in Confidential Exhibit Nos. 3C, 4C, 5C, 6C, 36-1C, 36-2C, 42C, 53C, 72C, and 91C to Complainants Section 337 Complaint transmitted herewith.

Confidential treatment is sought for the following Confidential Exhibits:

1. Confidential Exhibit No. 3C, which is a copy of a patent and license agreement;
2. Confidential Exhibit No. 4C, which is a copy of a security agreement;
3. Confidential Exhibit No. 5C, which is a copy of an amendment to a license agreement;
4. Confidential Exhibit No. 6C, which is a copy of an amendment to a license agreement
5. Confidential Exhibit No. 36-1C, which describes, among other things, facts and information supporting the domestic industry;
6. Confidential Exhibit No. 36-2C, which describes, among other things, facts and information supporting the domestic industry;
7. Confidential Exhibit No. 42C, which is a copy of a license agreement;

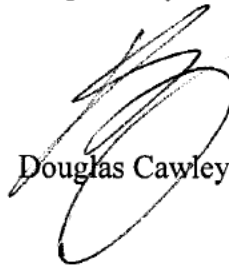
8. Confidential Exhibit No. 53C, which is a copy of a license agreement;
9. Confidential Exhibit No. 72C, which is a copy of a license agreement; and
10. Confidential Exhibit No. 91C, which is a copy of a license agreement.

The information contained in these exhibits identified above qualifies as confidential information pursuant to 19 C.F.R. § 201.6 because it is not available to the public; unauthorized disclosure of such information could cause substantial harm to VirnetX's competitive position; and the disclosure of the information for which VirnetX seeks confidential treatment could impair the Commission's ability to obtain information necessary to perform its statutory functions.

I certify that the confidential business information in Confidential Exhibits 3C, 4C, 5C, 6C, 36-1C, 36-2C, 42C, 53C, 72C, and 91C or substantially-identical information is not reasonably available to the public and warrants confidential treatment under Commission Rule 201.6.

Thank you for your attention to this matter.

Respectfully submitted,



Douglas Cawley

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September 13, 2012

BY HAND DELIVERY

The Honorable Lisa R. Barton
Acting Secretary, U.S. International Trade Commission
500 E Street, S.W., Room 112
Washington, D.C. 20436

**RE: In the Matter of Certain Devices with Secure Communication Capabilities,
Components Thereof, and Products Containing the Same**

Dear Secretary Barton:

Urrabazo Law, P.C. represents complainant Science Applications International Corporation ("SAIC"). SAIC, by counsel, hereby requests, pursuant to 19 C.F.R. § 201.6, confidential treatment of the confidential business information contained in Confidential Exhibit Nos. 3C, 4C, 5C, 6C, 7C, and 122C to Complainants Section 337 Complaint transmitted herewith.

Confidential treatment is sought for the following Confidential Exhibits:

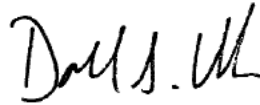
1. Confidential Exhibit No. 3C, which is a copy of a patent and license agreement;
2. Confidential Exhibit No. 4C, which is a copy of a security agreement;
3. Confidential Exhibit No. 5C, which is a copy of an amendment to a license agreement;
4. Confidential Exhibit No. 6C, which is a copy of an amendment to a license agreement;
5. Confidential Exhibit No. 7C, which discloses the identity of all licensees of the asserted patent; and,
6. Confidential Exhibit No. 122C, which is a copy of a professional services contract.

The information contained in these exhibits identified above qualifies as confidential information pursuant to 19 C.F.R. § 201.6 because it is not available to the public; unauthorized disclosure of such information could cause substantial harm to SAIC's competitive position; and the disclosure of the information for which SAIC seeks confidential treatment could impair the Commission's ability to obtain information necessary to perform its statutory functions.

I certify that the confidential business information in Confidential Exhibits 3C, 4C, 5C, 6C, 7C, and 122C or substantially-identical information is not reasonably available to the public and warrants confidential treatment under Commission Rule 201.6.

Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Donald S. Urrabazo". The signature is stylized with a large "D" and a prominent "U".

Donald S. Urrabazo

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

In the Matter of

**CERTAIN DEVICES WITH SECURE
COMMUNICATION CAPABILITIES,
COMPONENTS THEREOF, AND PRODUCTS
CONTAINING THE SAME**

Investigation No. 337-TA-_____

**VIRNETX, INC. AND
SCIENCE APPLICATIONS INTERNATIONAL CORPORATION'S
STATEMENT OF PUBLIC INTEREST**

Pursuant to Commission Rule 210.8(b), Complainants VirnetX, Inc. ("VirnetX") and Science Applications International Corporation ("SAIC") (collectively, "Complainants") submit this Statement of Public Interest in connection with the remedial orders they seek against proposed respondent Apple Inc. ("Apple" or "Respondent").

Complainants seek a permanent limited exclusion order specifically directed to Respondent and its products, excluding from entry into the United States certain devices with secure communication capabilities, components thereof, and products containing the same that infringe one or more of the asserted claims of U.S. Patent No. 8,051,181 ("the '181 patent"), including computers (Mac), cellular telephones (iPhone), and portable computing devices (iPad, iPod Touch) (collectively, "Accused Products"). Complainants also seek a permanent cease and desist order prohibiting Respondent from engaging in the importation, sale for importation, marketing and/or advertising, distribution, offering for sale, sale, sale after importation, or other transfer within the United States of these same certain devices with secure communication capabilities, components thereof, and products containing the same that infringe one or more of the asserted claims of the '181 patent. If the Commission issues these remedial orders as a result

of this Investigation, there will be little or no adverse effect on public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers, and the public interest will be served by the issuance of the remedial orders.

Issuance of the requested remedy orders including a permanent limited order is necessary to provide effective relief, and as such the public interest will be served by issuing the requested remedial orders and protecting important intellectual property rights in the United States.

I. EXPLANATION OF HOW THE ARTICLES POTENTIALLY SUBJECT TO THE ORDERS ARE USED IN THE UNITED STATES.

The Accused Products include, but are not limited to, Apple's iPhone 4, iPhone 4S, iPhone 5, iPad 2, new iPad (3rd generation or iPad 3), iPod Touch (4th or 5th generation), and Macs running on the "Lion" or "Mountain Lion" operating system. In particular, the Accused Products are those with Apple's Facetime application. The FaceTime application is largely an entertainment application that, as Apple describes, allows users to "catch up, hang out, joke around, and stay in touch with just a click." <http://www.apple.com/mac/facetime/>.

II. IDENTIFICATION OF ANY PUBLIC HEALTH, SAFETY, OR WELFARE CONCERNS IN THE UNITED STATES RELATING TO THE REQUESTED RELIEF.

The issuance of an exclusion order and a cease and desist order would have little or no adverse effect upon the public health, safety, or welfare in the United States. The products at issue are not medical devices, are not health-related, and are not essential for public health. The products are not of the type raising public health, safety, or welfare concerns that historically, have been cited by the Commission. *See Certain Fluidized Supporting Apparatus and Components Thereof*, Inv. No. 337-TA-182/188, Comm'n Op., 1984 ITC LEXIS 256, at **1, 35-37 (Oct. 1984) (denying exclusion of hospital burn beds); *Certain Inclined-Field Acceleration*

Tubes, Inv. No. 337-TA-67, Comm'n Order (Dec. 1980) (denying exclusion for nuclear energy parts); and *Certain Automatic Crankpin Grinders*, Inv. No. 337-TA-60, Comm'n Order (Dec. 1979) (denying exclusion of automotive parts needed to manufacture fuel efficient automobiles on the timetable mandated by Congress). Here, the Accused Products are computers, cellular telephones, and portable computing devices containing an application largely used for entertainment and personal communication purposes and communications in the United States, the exclusion of which would not adversely impact the public interest.

Moreover, in the event of a finding of a violation of Section 337, issuance of an exclusion order and a cease and desist order would—far from adversely impacting competitive conditions in the United States—have the beneficial effect of protecting intellectual property rights, which is in the public interest. *See, e.g., Certain Two-Handle Centerset Faucets and Escutcheons, and Components Thereof*, Inv. No. 337-TA-422, Comm'n Op. at 9; and *Certain Battery-Powered Toy Vehicles*, Inv. No. 337-TA-314, Comm'n Op. at 11 (Apr. 10, 1991).

**III. LIKE OR DIRECTLY COMPETITIVE ARTICLES THAT
COMPLAINANTS, ITS LICENSEES, AND/OR THIRD PARTIES MAKE
ARE READILY AVAILABLE AND COULD REPLACE THE SUBJECT
ARTICLES.**

The Accused Products in this investigation, including computers, cellular telephones, and portable computing devices, are limited to the products of one particular supplier, Apple. As such, there are many directly competitive products that could replace the Accused Products from multiple suppliers.

**IV. COMPLAINANTS AND ITS LICENSEES HAVE THE CAPACITY TO
REPLACE THE VOLUME OF ARTICLES SUBJECT TO THE
REQUESTED RELIEF IN A COMMERCIALY REASONABLE TIME IN
THE UNITED STATES.**

The presence of an adequate supply of substitute products is sufficient to override any public interest concerns. *Certain Lens-Fitted Film Packages (LFFPs)*, Inv. No. 337-TA-406,

Comm'n Op., 1999 ITC LEXIS 202, at *40 (June 28, 1999). Complainants believe that VirnetX's licensees and/or third-party suppliers will have the capacity to replace the volume of products potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time. There is no evidence that the Accused Products have qualities, performance, or functionality of such overwhelming superiority over similar, competitive products supplied by VirnetX's licensees and/or third-parties in the United States market such that they are in any way indispensable to the public or unavailable from alternative sources in the event the Commission issues the orders sought in the Complaint. The United States personal electronics market is sufficiently developed and competitive to produce and supply competitive products in the absence of the Accused Products.

V. THE REQUESTED RELIEF WILL NOT ADVERSELY IMPACT UNITED STATES CONSUMERS.

United States consumers have many options when buying personal electronic devices and computers. Personal electronic devices and computers are common consumer electronic products for which there are many suppliers and highly competitive markets. Thus, competing products exist and are readily available to replace the infringing products. Accordingly, it is unlikely that consumers would experience any impact if the requested exclusion orders were obtained. Given that competing products are easily available in the United States from other sources in the United States, the public interest should not bar issuance of any remedial orders. *See Certain Wireless Commc'n Devices, Portable Music and Data Processing Devices, Computers and Components Thereof*, Inv. No. 337-TA-745, 2012 ITC LEXIS 1217, at *2–4, *10–11 (May 9, 2012) (recommended determination on remedy and bond).

Dated: September 14, 2012

Respectfully submitted,

McKool Smith, P.C.

By: /s/ Douglas Cawley

Douglas Cawley

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Counsel for Complainant VirnetX, Inc.

By: /s/ Donald Urrabazo

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Arturo Padilla

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*Counsel for Complainant Science
Applications International Corporation*

UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.

In the Matter of

**CERTAIN DEVICES WITH SECURE
COMMUNICATION CAPABILITIES,
COMPONENTS THEREOF, AND PRODUCTS
CONTAINING THE SAME**

Investigation No. 337-TA-_____

**COMPLAINT OF VIRNETX, INC. AND
SCIENCE APPLICATIONS INTERNATIONAL CORPORATION
UNDER SECTION 337 OF THE TARIFF ACT OF 1930, AS AMENDED**

COMPLAINANTS

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TABLES OF SUPPORTING MATERIALS

INDEX OF EXHIBITS

| Exhibit No. | Description |
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| 1 | Certified Copy of U.S. Patent No. 8,051,181 |
| 2 | Certified Copy of the Recorded Assignments for U.S. Patent No. 8,051,181 ¹ |
| 3C | CONFIDENTIAL The Patent and License Assignment Agreement (PLAA) between VirnetX and SAIC |
| 4C | CONFIDENTIAL Security Agreement between VirnetX and SAIC |
| 5C | CONFIDENTIAL Amendment No. 1 to PLAA between VirnetX and SAIC |
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¹ Prior certified copy (uncorrected) submitted. A certified copy of the corrected '181 patent assignments has been ordered and will be submitted upon receipt.

| Exhibit No. | Description |
|--------------------|---|
| 33 | Photo Indicating Apple New iPad (3 rd Generation or iPad 3) is Marked as Assembled in China |
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| 52 | Microsoft - PeerChannel Security |
| 53C | CONFIDENTIAL Patent License Agreement between VirnetX and Aastra USA Inc. |
| 54 | Communications Equipment Company Overview of Aastra USA, Inc. |
| 55 | Aastra 2011 Annual Report |
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|--------------------|---|
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| 79 | Mitel 5312/5324 IP Phones SIP User and Administrator Guide |
| 80 | Mitel 5320/5330/5340 IP Phones SIP User and Admin Guide Release 8.0 |
| 81 | Mitel 5330/5340 IP Phones SIP User and Admin Guide Release 7.2 UR1 |
| 82 | Mitel 3000 Communications Systems (up to 52 users) |
| 83 | Mitel Discovery Series |
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| Exhibit No. | Description |
|--------------------|---|
| 102 | Exemplary Domestic Industry Chart for Claim 2 of U.S. Patent No. 8,051,181 for NEC UNIVERGE SV8300 IP Telephony and Unified Communications System |
| 103 | Exemplary Domestic Industry Chart for Claim 2 of U.S. Patent No. 8,051,181 for NEC UNIVERGE SV8500 IP Telephony and Unified Communications System |
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| 122C | CONFIDENTIAL Professional Services Contract |

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| | Description |
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| A | Certified Copy of Prosecution History of U.S. Patent No. 8,051,181 ² |
| B | Copies of Technical References from Prosecution History for U.S. Patent No. 8,051,181 |

² A certified copy of the prosecution history of the '181 patent is on file with the Commission. *See* Inv. No. 337-TA-818, Document ID 466278. Complainants have requested, but have not yet received, a certified copy of the corrected prosecution history of the '181 patent. A prior certified copy (uncorrected) has been submitted as Appendix A. Complainants will submit an original corrected certified copy as soon as the copy is received from the United States Patent and Trademark Office.

I. INTRODUCTION

1. VirnetX, Inc. (“VirnetX”) and Science Applications International Corporation (“SAIC”) file this Complaint under Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, based on the unlawful importation into the United States, the sale for importation, and the sale within the United States after importation by owners, importers, or consignees of certain devices with secure communication capabilities, components thereof, and products containing the same (collectively “Accused Products”) that infringe at least claims 1, 2, 5-9, 14, 15, 17-19, 22, 24, and 26-29 of U.S. Patent No. 8,051,181 (“the ‘181 patent” or the “Asserted Patent”).

2. The proposed respondent is Apple Inc. (“Apple,” “proposed respondent” or “respondent”).

3. A certified copy of the ‘181 patent is attached as Exhibit 1. A certified copy of the recorded assignments³ for the ‘181 patent is attached as Exhibit 2. VirnetX owns the ‘181 patent by assignment. Copies of agreements between VirnetX and SAIC concerning the patent in suit are attached as Exhibit 2 and Confidential Exhibits 3C-6C (“Patent Agreements”). SAIC was previously found by the Commission to be a necessary party to an action asserting the ‘181 patent in Inv. No. 337-TA-818. VirnetX and SAIC’s rights are identified in the Patent Agreements. *See, e.g.*, Confidential Exhibits 3C-6C.

4. An industry as required by 19 U.S.C. §§ 1337 (a)(2) and (a)(3)(A), (B), and/or (C) exists and/or is in the process of being established.

5. VirnetX and SAIC seek as relief an exclusion order, barring from entry into the United States infringing devices with secure communication capabilities, components thereof,

³ A certified copy of the recorded assignments of the ‘181 patent is on file with the Commission. *See* Inv. No. 337-TA-818, Document ID 465058 (File ID 683168). Complainants have requested, but have not yet received, a new certified copy of the assignments of the ‘181 patent. Complainants will submit a new certified copy in this Investigation as soon as the copy is received from the United States Patent and Trademark Office.

and products containing the same, manufactured or imported by or on behalf of respondent. VirnetX and SAIC also seek orders directing respondent and its related entities to cease and desist the importation into the United States, the sale for importation, and the sale after importation of infringing devices with secure communication capabilities, components thereof, and products containing the same, and to cease and desist all domestic commercial activity relating to those infringing goods.

II. THE PARTIES

A. Complainants

6. VirnetX is a corporation organized under the laws of Delaware with its principal place of business at 308 Dorla Court, Suite 206, in Zephyr Cove, Nevada. VirnetX previously had its principal place of business at 5615 Scotts Valley Drive, Suite 110, in Scotts Valley, California.

7. VirnetX is an Internet security software and technology company. VirnetX's software and technology solutions, including its secure domain name registry and GABRIEL Connection Technology™ ("GABRIEL"), are designed to facilitate secure communications and to create a secure environment for real-time communication applications such as instant messaging, VoIP, smart phones, eReaders and video conferencing. VirnetX's security software and technology provide benefits to customers, developers, and manufacturers of chips, servers, smart phones, tablets, e-Readers, laptops, net books and other devices, within the IP-telephony, mobility, fixed-mobile convergence and unified communications markets.

8. VirnetX's GABRIEL Connection Technology practices at least one claim of the '181 patent.

9. VirnetX's patent portfolio includes 20 U.S. and 26 international patents and over 120 pending applications. VirnetX has licensed its patents, including the '181 patent. A list of such licensees is attached as Confidential Exhibit 7C.

10. SAIC is a leading provider of scientific, engineering, systems integration and technical services and solutions. SAIC has an interest in the relevant domestic industry under the Patent Agreements. Exhibit 2 and Confidential Exhibits 3C-6C.

11. On August 20, 2012, the Commission in the 337-TA-818 investigation determined not to review the ALJ's initial determination (Order No. 15) or Order No. 14 where the ALJ found that VirnetX does not possess all substantial rights in the '181 patent, and therefore lacks prudential standing to assert the '181 patent in that investigation absent the joinder of SAIC as a co-complainant. SAIC joins in this complaint as a co-complainant.

B. Proposed Respondent

12. Apple is a corporation organized under the laws of California with its principal place of business at One Infinite Loop in Cupertino, California. Apple, among other things, designs, manufactures or has manufactured, and sells accused products with secure communication capabilities, including Apple's iPhone 4, iPhone 4S, iPhone 5, iPad 2, New iPad (3rd generation or iPad 3 or iPad mini), iPod Touch (4th or 5th generation), and its Macintosh computers with the OS X Lion or Mountain Lion operating systems.

13. The accused products include the infringing FaceTime application. Apple pre-installs FaceTime on the infringing devices with secure communication capabilities, components thereof, and products. FaceTime is largely an entertainment application that Apple manufactures, has manufactured, distributes, imports into the United States, sells for importation, and/or sells after importation in the United States.

14. According to Apple, it “designs, manufactures and markets mobile communication and media devices, [and] personal computers [Its] products and services include iPhone®, iPad®, Mac®, iPod®, Apple TV®, a portfolio of consumer and professional software applications, the iOS and Mac OS® X operating systems, [and] iCloud®.” Exhibit 8 at 1. Apple’s “Mac desktop and portable systems feature . . . [Apple’s] Mac OS X Lion operating system.” *Id.* at 3. Upon information and belief, Apple introduced the ninth major release of its OS X operating system called OS X Mountain Lion in July 2012. *See* Exhibit 10 at 1 (“With OS X Mountain Lion, your Mac is more than full-featured, it’s fully loaded.”); *cf.* Exhibit 8 at 5 (Mac OS X Lion is the eighth major release of Mac OS X and became available in July 2011.).

15. In June 2010, Apple “introduced the iPhone 4 featuring . . . FaceTime® video calling.” Exhibit 8 at 4. On September 12, 2012, Apple introduced the iPhone 5 with FaceTime. *See* Exhibit 26 at 8.

16. Apple’s iPad 2 and New iPad (3rd generation or iPad 3) also include the FaceTime video calling feature. Exhibits 9, 11. On information and belief, Apple plans to introduce a new iPad in October 2012. *See* Exhibit 27 (iPad mini). On information and belief, this new iPad will include iOS featuring FaceTime. *See* Exhibit 17 at 7-8.

17. Apple’s “iPod line of portable digital music and media players [includes the] iPod touch.” Exhibit 8 at 4. “The iPod touch is a flash-memory-based iPod with a widescreen display and a Multi-Touch user interface. [Apple’s] latest iPod touch, introduced in September 2010, includes features such as . . . FaceTime video calling.” *Id.* Apple introduced a new iPod Touch (5th generation) with FaceTime on September 12, 2012. *See* Exhibit 28 at 1, 6, 7, and 12 (identifying iPod touch (5th generation)).

18. According to Apple, FaceTime “make[s] video calls to iPad 2, iPhone 4, the new iPod touch, or another Mac.” Exhibit 9. On information and belief, Apple’s FaceTime is an entertainment application that allows FaceTime users to video-chat by making a telephone call. “FaceTime closes the distance between you and the people you care about — from miles to inches.” Exhibit 11 at 6. “[N]ever miss another wink, smile, air kiss, or eye roll.” Exhibit 17 at 7.

19. According to Apple, “Substantially all of the Company’s hardware products are manufactured by outsourcing partners primarily located in Asia.” Exhibit 8 at 7. “Single-sourced outsourcing partners in Asia perform final assembly of substantially all of the Company’s hardware products.” *Id.* at 8.

20. “As of September 24, 2011, [Apple] owned a manufacturing facility in Cork, Ireland . . . and facilities in Elk Grove, California, that included warehousing and distribution operations.” Exhibit 8 at 20.

21. Upon information and belief, Apple is involved in at least the manufacture, importation into the United States, sale for importation, sale after importation in the United States, and/or the distribution in or into the United States of Accused Products.

III. THE TECHNOLOGY AND PRODUCTS AT ISSUE

22. VirnetX’s technology generally concerns secure communications, and it addresses certain drawbacks to conventional Internet communications. Namely, the Internet is designed to be “open” so that it would encourage and enable widespread communication. At the time of the inventions, conventional Domain Name Servers were part of this open network and were known to work well for returning IP addresses for DNS requests as well as other functions. Conventional DNS was (and is) used when computers wanted to establish simple communications. For example, when a computer asks a DNS to resolve www.yahoo.com, there

is nothing beyond Yahoo's IP address that, that computer needs to download Yahoo's web page. The conventional DNS can also be used when a computer wants to establish an encrypted connection with a well-known web server, such as www.target.com. Even though some information with Target could be encrypted, such as payment information, Target's website is an open system in that Target wants as many people as possible to visit and shop for goods. But not all communications are open because not all networks desire to have widespread, open communication. For example, computers or users may want to establish a "secure communication link." Secure communication links, however, are complicated to configure, unlike a connection to www.yahoo.com or an encrypted connection to www.target.com. For these reasons, conventional DNS was not typically thought to be relevant to the creation of secure communication links, and they were often manually set up by IT professionals. These disadvantages of conventional Internet communications are discussed in the '181 patent. *See* Exhibit 1 ('181 patent at col.38 l.54 to col.39 l.25). Along the same lines, mobile, peer-to-peer communications are different from the "open" Internet communication used with well-known websites, in that these communications are typically between a relatively small number of computers with changing IP addresses. This is very different from the type of communication contemplated in the design of conventional DNS.

23. In this context, it is easy to see why the public DNS system had no role in establishing secure communication links. Some conventional name servers could provide a certificate, but it was left up to the client computer to determine how to use that information, as well as how to manage queries and responses without encryption. This is because conventional domain name servers were intended to facilitate interconnectivity between all computers for many types of communication, which is a fundamental reason for the success of the Internet. In

other words, they were designed to give responses to anyone who asks, regardless of the purpose. And for this reason, conventional name servers were not designed to use, establish, or build upon the trustworthiness of client computers to establish secure communication links. In this regard, conventional name servers left it completely up to the clients to establish trust.

24. VirnetX's inventors, however, realized that they could use a special name service—a secure name service discussed and claimed in the '181 patent—to help establish secure communications while overcoming disadvantages of the conventional domain name servers. The '181 patent discloses and claim methods and apparatuses for communicating with a secure name server and communicating over a secure communication link. VirnetX's sole product, GABRIEL Connection Technology, practices claims of the '181 patent by enabling a device running GABRIEL to communicate with a secure name service to establish a secure communication link and then communicating over the established secure communication link.

25. The technology and products at issue generally concern secure communication applications between certain Apple products, including the latest iPhones, iPads, iPods, and Macintosh computers.

IV. THE ASSERTED PATENT—U.S. Patent No. 8,051,181

A. Background and Ownership

26. The '181 patent, entitled “Method for Establishing Secure Communication Link Between Computers of Virtual Private Network,” lists Victor Larson, Robert Durham Short, III, Edmund Colby Munger, and Michael Williamson as co-inventors. The '181 patent issued on November 1, 2011. Exhibit 1; *see also id.* (certificate of correction, Jan. 3, 2012). The '181 patent is one of VirnetX's twenty U.S. patents.

27. The '181 patent issued from application number 11/679,416, filed on February 27, 2007, and is a continuation of application No. 10/702,486, filed on Nov. 7, 2003, now U.S. Pat.

No. 7,188,180, which is a division of application No. 09/558,209, filed on Apr. 26, 2000, now abandoned, which is a continuation-in-part of application No. 09/504,783, filed on Feb. 15, 2000, now U.S. Pat. No. 6,502,135, which is a continuation-in-part of application No. 09/429,643, filed on Oct. 29, 1999, now U.S. Pat. No. 7,010,604, the subject matter of which derives from provisional U.S. application No. 60/106,261, filed on Oct. 30, 1998, and provisional U.S. application No. 60/137,704, filed on Jun. 7, 1999.

28. VirnetX owns the '181 patent by assignment. VirnetX and SAIC's rights with respect to the '181 patent are described in Exhibit 2 and Confidential Exhibits 3C-6C.

29. The '181 patent is valid, enforceable, and in full force and effect.

30. This Complaint is accompanied by a certified copy⁴ and three copies of the prosecution history of the '181 patent and by four copies of all cited references. Appendices A and B.

B. Nontechnical Description of the '181 Patent

31. The '181 patent generally describes a method for establishing and/or using a secure communications link between two computer devices.⁵

C. Foreign Counterparts to the '181 Patent

32. The following are believed to be foreign counterparts to the '181 patent:

| | | | | | |
|---------------------------|-----------|----------------|------------|--|--|
| | | | | | |
| Patent Cooperation Treaty | NAT PHASE | PCT/US01/13261 | 04/25/2001 | | |
| European Patent | Published | 01932629.7 | 04/25/2001 | | |

⁴ A certified copy of the prosecution history of the '181 patent is on file with the Commission. See Inv. No. 337-TA-818, Document ID 466278. Complainants have requested, but have not yet received, a new certified copy of the prosecution history of the '181 patent. Complainants will submit a new certified copy in this Investigation as soon as the copy is received from the United States Patent and Trademark Office.

⁵ No part of this Complaint, including any section herein or Exhibit hereto, construes, or is intended to construe, the specification, file history, or claims of the '181 patent.

| | | | | | |
|----------------------------|-----------|-------------|------------|---------|-----------|
| Convention | | | | | |
| European Patent Convention | Published | 06014499.5 | 04/25/2001 | | |
| European Patent Convention | Published | 06014500.0 | 04/25/2001 | | |
| European Patent Convention | Published | 10012356 | 04/25/2001 | | |
| European Patent Convention | Published | 10012357 | 09/30/2010 | | |
| European Patent Convention | Published | 10012236 | 09/30/2010 | | |
| Hong Kong | Published | 07109112.7 | 08/21/2007 | | |
| Hong Kong | Published | 07109113.6 | 08/21/2007 | | |
| Japan | Granted | 2001-583006 | 04/25/2001 | 4756811 | 6/10/2011 |
| Japan | Published | 2010-239225 | 04/25/2001 | | |
| Japan | Published | 2011-085051 | 04/07/2011 | | |
| Japan | Published | 2011-085052 | 04/07/2011 | | |

33. No other foreign patents or patent applications corresponding to the '181 patent have been filed, abandoned, withdrawn, or rejected.

D. Licensees

34. Attached as Confidential Exhibit 7C is a list of licensees of the '181 patent. *See also* Confidential Exhibits 42C, 53C, 72C, 91C, and 122C.

V. UNLAWFUL AND UNFAIR ACTS OF RESPONDENT

35. On information and belief, Apple and its Accused Products directly and/or indirectly infringe at least claims 1, 2, 5-9, 14, 15, 17-19, 22, 24, and 26-29 of the '181 patent. Discovery may reveal that Apple and its Accused Products infringe additional claims of the '181 patent.

36. On information and belief, Apple, among other things, manufactures, has manufactured, distributes, imports into the United States, sells for importation, and/or sells after importation devices that operate in a manner covered by the asserted claims of the '181 patent.

37. On information and belief, exemplary products that infringe one or more asserted claims of the Asserted Patent include, but are not limited to, Apple's iPhone 4, iPhone 4S, iPhone 5, iPad 2, new iPad (3rd generation or iPad 3 or iPad mini), iPod Touch (4th or 5th generation), and Macs running on the "Lion" and "Mountain Lion" operating system.⁶ Discovery may reveal additional products that infringe. This identification of specific products or types of products is intended only to be exemplary and is not intended to limit the scope of the investigation or remedy, which should extend to all infringing goods.

38. A claim chart is included hereto for all asserted independent claims of the '181 patent. Attached as Exhibit 13 is a chart that applies independent claims 1, 2, 24, 26, 28, and 29 of the '181 patent to representative Accused Products. *See also* Exhibits 9-11, 14-28.

39. On information and belief, Apple manufactures, has manufactured, distributes, imports into the United States, sells for importation, and/or sells after importation devices that practice all elements of the asserted claims, thereby directly and indirectly infringing those claims.

40. On information and belief, Apple directly infringes claims 1, 28, and 29 of the '181 patent by importing into the United States, selling for importation, and/or selling after importation certain devices with secure communication capabilities, components thereof and products containing the same.

41. On information and belief, Apple directly infringes claims 2, 5-9, 14, 15, 17-19, 22, 24, 26, and 27 of the '181 patent by using and testing certain devices with secure communication capabilities, components thereof and products containing the same.

⁶ On information and belief, Apple plans to release a new iPad "mini" in October 2012. *See* Exhibit 27.

42. On information and belief, Apple indirectly infringes claims 1, 2, 5-9, 14, 15, 17-19, 22, 24, and 26-29 of the '181 patent by contributing to the direct infringement of others, including users of the accused devices with secure communication capabilities, components thereof and products containing the same that are elements of VirnetX's patented invention and/or by providing devices with secure communication capabilities, components thereof and products containing the same that are materials or apparatuses for use in practicing VirnetX's patented methods and apparatuses, and constitute a material part of the invention. Apple knew or was willfully blind that the same was 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. *See infra* Complaint ¶¶ 50–52.

43. On information and belief, Apple further actively induces others, including users of the accused devices with secure communication capabilities, components thereof and products containing the same to directly infringe asserted claims 2, 5-9, 14, 15, 17-19, 22, 24, 26, and 27 of the '181 patent by providing directions, demonstrations, guides, and/or manuals that encourage and facilitate others to perform actions known and intended by Apple to be acts of infringement. *See* Exhibits 14 and 15. Upon information and belief, Apple knew or was willfully blind that its actions would cause infringement of the '181 patent and did so with intent to encourage infringement. *See infra* Complaint ¶¶ 50–52.

44. Apple knew of or was willfully blind to the existence of the '181 patent at least because on November 1, 2011, a district court action was brought against Apple alleging that it infringes the '181 patent. *See infra* Complaint ¶¶ 50–52.

VI. SPECIFIC INSTANCES OF UNFAIR IMPORTATION AND SALE

45. Upon information and belief, Apple imports into the United States, sells for importation, and/or sells within the United States after importation products and/or products that

infringe the asserted claims. Upon information and belief, Apple's accused products are manufactured abroad, imported, sold for importation, and sold after importation into the United States by Apple or its authorized agents.

46. Prior to the filing of this Complaint, exemplary accused Apple products were purchased in the United States. Exhibits 29 and 30. Exhibits 31-35 show that those items were assembled abroad.

VII. TARIFF CLASSIFICATION UNDER THE HARMONIZED TARIFF SCHEDULE

47. The products as to which VirnetX seeks exclusion include, without limitation, computers classified under subheading 8471.30.0100, 8471.49.0000, 8471.50.0150, HTSUS, cellular telephones classified under subheading 8517.12.0050, HTSUS, and portable computing devices classified under subheading 8471.30.0100, 8528.59.1500, or 8471.41.01, HTSUS.

VIII. RELATED LITIGATION

48. On August 11, 2010, VirnetX filed a complaint in the U.S. District Court for the Eastern District of Texas against Apple, among others. In that lawsuit, VirnetX alleges that Apple infringes U.S. Patent No. 6,502,135, U.S. Patent No. 7,418,504, U.S. Patent No. 7,490,151, and U.S. Patent No. 7,921,211. That action, styled *VirnetX Inc. v. Cisco Systems, Inc. et al.*, Civil Action No. 6:10-cv-417, is pending.

49. There are no developments in *VirnetX Inc. v. Cisco Systems, Inc. et al.*, Civil Action No. 6:10-cv-417 with respect to the '181 patent.

50. On November 1, 2011, VirnetX filed a complaint in the U.S. District Court for the Eastern District of Texas alleging that Apple infringes the '181 patent. That action, styled *VirnetX Inc. v. Apple Inc.*, Civil Action No. 6:11-cv-563, is currently stayed.

51. On November 4, 2011, VirnetX filed a complaint in the United States International Trade Commission under Section 337 of the Tariff Act of 1930, as amended. On December 1, 2011, the Commission issued a Notice of Institution of an Investigation on the basis of VirnetX's complaint. That investigation, 337-TA-818, was terminated based on the absence of an indispensable party—SAIC—who is named as a co-complainant in this complaint.

52. On March 28, 2012, concurrent with the then-ongoing 337-TA-818 investigation, Apple filed an *inter partes* reexamination of the '181 patent proceeding before the USPTO. A reexamination was ordered on June 4, 2012. On the same day, the examiner issued a non-final office action. A decision on a petition for extension of time to reply to the office action in reexamination was granted on June 27, 2012. The Patent Owner's Response to Office Action of June 4, 2012 was filed on September 4, 2012. The '181 patent reexamination is pending.

53. There are no other related litigation matters.

IX. DOMESTIC INDUSTRY

A. VirnetX's Activities and Investments in Plant and Equipment, and/or Employment of Labor or Capital

54. Pursuant to Section 337 (a)(2) and (a)(3)(A), a domestic industry exists or, in the alternative, is in the process of being established by virtue of VirnetX taking the necessary tangible steps to establish a domestic industry in the United States and there being a significant likelihood that the domestic industry requirement will be satisfied in the future by VirnetX's significant investments in plant and equipment and/or its significant employment of labor or capital made with respect to VirnetX's sole product, the GABRIEL Connection Technology, protected by the '181 patent. GABRIEL Connection Technology™ was developed by VirnetX scientists and engineers to empower individuals, organizations of all sizes and government agencies to establish and administer their own private network enclaves across the Internet.

These enclaves provide security for encrypted data within the enclave and cryptographic authentication of all of its participants. Instead of networks being secured by physical barriers, they are defined cryptographically, thereby allowing secure domains to extend beyond the physical protections of the enclave participants.

55. VirnetX has made a significant investment in plant and equipment in the United States, including at its current facility in Zephyr Cove, Nevada and its prior facility in Scotts Valley, California, with respect to VirnetX's technology protected by the Asserted Patent, including its GABRIEL Connection Technology. Further details of VirnetX's significant investments in plant and equipment are provided in Confidential Exhibit No. 36-1C ¶ 2.

56. Alternatively, or in addition, pursuant to Section 337 (a)(2) and (a)(3)(B), a domestic industry exists or is in the process of being established by virtue of VirnetX's significant employment of labor or capital with respect to articles protected by the '181 patent.

57. VirnetX has made a significant employment of labor or capital in the United States, including at its facilities in Zephyr Cove, Nevada and Scotts Valley, California, with respect to VirnetX's technology protected by the Asserted Patent, including its GABRIEL Connection Technology. Further details of VirnetX's significant employment of labor or capital are provided in Confidential Exhibit No. 36-1C ¶ 3.

58. In the alternative, VirnetX is taking necessary tangible steps to establish domestic industry by investing in plant and equipment and/or labor or capital. These steps include VirnetX's past, present, and ongoing expenditures on its plant and equipment and on its employees, including executives, managers, engineers, technicians, or software specialists. *See supra* Complaint ¶¶ 55 and 57 and Confidential Exhibit No. 36-1C ¶¶ 2 and 3. VirnetX has and continues to use its plant and equipment in the testing and development and licensing of

GABRIEL Connection Technology. *See infra* Complaint ¶¶ 64-65. VirnetX has and continues to compensate its employees in connection with the development of VirnetX's technology, including GABRIEL Connection Technology, which is protected by the '181 patent.

59. Additionally, VirnetX has a significant likelihood of establishing a domestic industry by investing in plant and equipment and/or labor or capital. VirnetX's GABRIEL Connection Technology functions on various operating systems such as Linux, Android, and OS X, and is being developed for iOS. *See infra* Complaint ¶ 65. VirnetX continues to invest in its plant and equipment in furtherance of this development effort, among other, and other activities, such as marketing and licensing. VirnetX's technology is only months away from being released. VirnetX has and continues to compensate its engineers, technicians, or software specialists to develop VirnetX's technology targeting scaling work by 2012 and an upcoming 2013 launch of VirnetX's product. Further, in connection with VirnetX's imminent release of its technology, VirnetX will continue to compensate its executive and managers to, among other things, market and license VirnetX's technology, including GABRIEL Connection Technology, which is protected by the '181 patent.

60. There is a nexus between VirnetX's significant investments in plant and equipment and its significant employment of labor or capital and the technology that practices the Asserted Patent. As shown in the chart attached as Exhibit 37, VirnetX's GABRIEL Connection Technology practices at least claim 2 of the '181 patent. *See also* Exhibits 38 and 39. VirnetX reserves the right to demonstrate at the evidentiary hearing that its GABRIEL Connection Technology practices other claims of the '181 patent.

61. In view of at least the foregoing, and pursuant to 19 U.S.C. § 1337(a)(3)(A) and/or (B), a domestic industry exists or, in the alternative, is in the process of being established

by virtue of VirnetX's significant investment in its plant and equipment and/or its significant employment of labor or capital with respect to technology protected by the Asserted Patent.

B. VirnetX's Engineering and Research and Development

62. Pursuant to Section 337 (a)(2) and (a)(3)(C), a domestic industry exists or, in the alternative, is in the process of being established by virtue of VirnetX taking the necessary tangible steps to establish an engineering and research and development domestic industry in the United States and there being a significant likelihood that the engineering and research and development domestic industry requirement will be satisfied in the future by VirnetX's substantial investments in the exploitation of the '181 patent through engineering and research and development.

63. VirnetX incorporates paragraphs 54 to 61 by reference as though specifically set forth herein.

64. VirnetX has made a substantial investment in the exploitation of the '181 patent through its engineering and research and development activities in the United States, including at its facilities in Zephyr Cove, Nevada and Scotts Valley, California. These substantial investments include engineering and research and development activities designed to exploit the '181 patent, and other efforts to engage potential investors, manufacturers, or licensees, and VirnetX's efforts to foster propagation or use of the '181 patent as well as efforts to facilitate or hasten the practical application of that invention by bringing it to market. Further details of VirnetX's substantial investment in the exploitation of the '181 patent through its engineering and research and development activities are provided in Confidential Exhibit No. 36-1C ¶ 4.

65. In the alternative, VirnetX is taking necessary tangible steps to establish a domestic industry by investing in engineering and research and development. These steps include testing and scaling simulations of VirnetX's GABRIEL Connection Technology code,

completing development so that VirnetX's technology works with thousands of users, and updating GABRIEL Connection Technology to function on various operating systems including iOS. Additionally, VirnetX has a significant likelihood of establishing a domestic industry by investing in engineering and research and development because VirnetX's GABRIEL Connection Technology functions on various operating systems such as Linux, Android, and OS X, has been tested on several hundred simulated users, and is in great demand as reflected in VirnetX's share price and increased level of licensing interest to VirnetX's technology and intellectual property. *See supra* Complaint ¶ 59.

66. There is a nexus between VirnetX's substantial investment in the exploitation of the '181 patent through its engineering and research and development and the Asserted Patent.

67. In view of at least the foregoing, and pursuant to 19 U.S.C. § 1337(a)(3)(C), a domestic industry exists or, in the alternative, is in the process of being established by virtue of VirnetX's substantial investments in the exploitation of the '181 patent through engineering and research and development.

C. The Activities and Investments of VirnetX's Licensees

1. Microsoft Corporation

68. VirnetX has licensed its patent portfolio, including the '181 patent to Microsoft Corporation ("Microsoft"). A copy of the license agreement is attached as Confidential Exhibit 42C pursuant to 19 C.F.R. § 210.12(a)(9)(iv).

69. On information and belief, a domestic industry exists or, in the alternative, is in the process of being established by virtue of the activities and investments of VirnetX's licensee Microsoft pursuant to 19 U.S.C. § 1337(a)(3)(A), (B), and/or (C).

70. On information and belief, Microsoft engages in manufacturing, sales, customer support, and engineering and research and development activities in the United States with

respect to Microsoft's licensed Windows Peernet Application Programming Interfaces (APIs) that practice at least one claim of the '181 patent. On information and belief, Microsoft's domestic investments in plant and equipment and in the employment of labor or capital are significant. On information and belief, Microsoft's investments in the exploitation of the '181 patent through engineering and research and development is substantial.

71. Microsoft "creat[es] technology that transforms the way people work, play, and communicate." Exhibit 43 at 3. Microsoft "develop[s] and market[s] software, services, and hardware that deliver[s] new opportunities, greater convenience, and enhanced value to people's lives." *Id.*

72. During fiscal years 2012, 2011, and 2010, Microsoft's research and development expense was \$9.8 billion, \$9.0 billion, and \$8.7 billion, respectively. Exhibit 43 at 9. These amounts represented 13%, 13%, and 14%, respectively, of revenue in each of those years. *Id.* Microsoft plans to continue to make significant investments in a broad range of research and product development efforts. *Id.*

73. Microsoft's main research and development facilities are located in the United States, in Redmond, Washington, and it also operates research and development facilities in other parts of the United States. Exhibit 43 at 9.

74. As of June 30, 2012, Microsoft had 55,000 full-time employees in the United States, with large numbers of employees devoted to product research and development, sales and marketing, product support and consulting services, manufacturing and distribution, and general and administration. Exhibit 43 at 13.

75. On information and belief, a significant and/or substantial portion of the foregoing relates to products and technology that exploit the patent in suit.

76. On information and belief, there is a nexus between Microsoft's significant investments in plant and equipment and its significant employment of labor or capital and between its licensed articles that practice the Asserted Patent. On information and belief, there is a nexus between Microsoft's substantial investment in the exploitation of the '181 patent through its engineering and research and development and the Asserted Patent.

77. As shown in the chart attached as Exhibit 44, Microsoft's licensed Windows Peernet APIs practices at least claim 2 of the '181 patent. *See also* Exhibits 45-52. VirnetX reserves the right to demonstrate at the evidentiary hearing that Microsoft's Peernet APIs practice other claims of the '181 patent.

78. In view of at least the foregoing, and pursuant to 19 U.S.C. § 1337(a)(3)(A), (B), and/or (C), a domestic industry exists or, in the alternative, is in the process of being established by virtue of the activities and investments of VirnetX's licensee Microsoft.

2. Aastra USA Inc.

79. VirnetX has licensed its patent portfolio, including the '181 patent to Aastra USA Inc. ("Aastra"). A copy of the license agreement is attached as Confidential Exhibit 53C pursuant to 19 C.F.R. § 210.12(a)(9)(iv).

80. On information and belief, a domestic industry exists or, in the alternative, is in the process of being established by virtue of the activities and investments of VirnetX's licensee Aastra pursuant to 19 U.S.C. § 1337(a)(3)(A), (B), and/or (C).

81. On information and belief, Aastra engages in manufacturing, sales, customer support, and engineering and research and development activities in the United States with respect to Aastra's licensed Pointspan SPN and Encrypted IP Phones/PBX that practice at least one claim of the '181 patent. On information and belief, Aastra's domestic investments in plant and equipment and in the employment of labor or capital are significant. On information and

belief, Aastra's investments in the exploitation of the '181 patent through engineering and research and development is substantial.

82. Aastra designs, develops, manufactures, and sells voice over Internet protocol contact center solutions for enterprises in various countries, in pertinent part, in the United States. Exhibit 54 at 1.

83. For example, during fiscal years 2011, 2010, and 2009, Aastra's research and development expense was C\$63 million, C\$69 million, and C\$81.8 million, respectively. Exhibit 55 at 10. These amounts represented 9.1%, 9.7%, and 9.8%, respectively, of revenue in each of those years. *Id.* Aastra plans to continue to invest in research and development as this is a strategic part of Aastra's business. *Id.* at 20. On information and belief, Aastra's research and development expenses are similar with respect to fiscal year 2012.

84. Aastra's place of business in the United States is 2811 Internet Blvd., Frisco, Texas 75034. Exhibits 54 and 55 at 71. On information and belief, Aastra's Frisco, Texas facility is a physical plant in the United States in which Aastra has made and/or currently makes significant investments with respect to articles protected by at least one claim of the '181 patent.

85. On information and belief, Aastra has employees devoted to product research and development, sales and marketing, product support and consulting services, and administration at its Frisco, Texas plant. Exhibit 56.

86. On information and belief, a significant and/or substantial portion of the foregoing relates to products and technology that exploit the patent in suit.

87. On information and belief, there is a nexus between Aastra's significant investments in plant and equipment and its significant employment of labor or capital and between its licensed articles that practice the Asserted Patent. On information and belief, there is

a nexus between Aastra's substantial investment in the exploitation of the '181 patent through its engineering and research and development and the Asserted Patent.

88. As shown in the chart attached as Exhibit 57, Aastra's licensed Pointspan SPN and Encrypted IP Phones/PBX practice at least claim 2 of the '181 patent. VirnetX reserves the right to demonstrate at the evidentiary hearing that Aastra's Pointspan SPN and Encrypted IP Phones/PBX practice other claims of the '181 patent.

89. In view of at least the foregoing, and pursuant to 19 U.S.C. § 1337(a)(3)(A), (B), and/or (C), a domestic industry exists or, in the alternative, is in the process of being established by virtue of the activities and investments of VirnetX's licensee Aastra.

3. Mitel Networks Corporation

90. VirnetX has licensed its patent portfolio, including the '181 patent to Mitel Networks Corporation ("Mitel"). A copy of the license agreement is attached as Confidential Exhibit 72C pursuant to 19 C.F.R. § 210.12(a)(9)(iv).

91. On information and belief, a domestic industry exists or, in the alternative, is in the process of being established by virtue of the activities and investments of VirnetX's licensee Mitel pursuant to 19 U.S.C. § 1337(a)(3)(A), (B), and/or (C).

92. On information and belief, Mitel engages in manufacturing, sales, customer support, and engineering and research and development activities in the United States with respect to Mitel's licensed secure servers and secure IP phones sold in combination with licensed secure servers ("Secure Mitel Servers and Secure Mitel IP Phones") that practice at least one claim of the '181 patent. On information and belief, Mitel's domestic investments in plant and equipment and in the employment of labor or capital are significant. On information and belief, Mitel's investments in the exploitation of the '181 patent through engineering and research and development is substantial.

93. “Mitel is a global provider of business communications and collaboration software and services.” Exhibit 73 at 2. Mitel’s solutions are “scalable and flexible, and easy to deploy, manage and use . . . [and] interoperate with various systems supplied by other vendors, which allows [Mitel’s] customers to utilize their existing communications infrastructure and gives them the flexibility to choose the solutions that best address their individual business needs.” *Id.*

94. For example, during fiscal years 2011, 2010, 2009, and 2008, Mitel’s research and development expense was \$61.3 million, \$57.6 million, \$66.2 million, and \$69.4 million, respectively. Exhibit 73 at 26. These amounts represented 10.4%, 9.6%, 9.7%, and 10.6%, respectively, of revenue in each of those years. *Id.* Mitel has invested heavily in the research and development of their products and plans to continue to make significant investments to develop and bring their products to market. *Id.* at 2. On information and belief, Mitel’s research and development expenses are similar with respect to fiscal year 2012.

95. Mitel has research and development facilities in the United States, in Chandler, Arizona and Tempe, Arizona. Exhibit 73 at 23. Mitel has 97,000 square feet of property at their Chandler, Arizona facility and 68,000 square feet of property at their Tempe, Arizona facility. *Id.* In fiscal year 2013, Mitel is relocating from its Chandler, Arizona and Tempe, Arizona facilities to two locations in Mesa, Arizona. *Id.* Mitel’s sales and research and development facility in Mesa, Arizona has 83,000 square feet and the second location for warehouse purposes has 38,000 square feet. *Id.*

96. As of April 30, 2012, Mitel has 321 employees in their research and development department, primarily located in two locations: Ottawa, Canada and Chandler, Arizona. Exhibit 73 at 6. As of April 30, 2012, Mitel has 1,809 employees in their Mitel Communications

Solutions (MCS) business unit, which provides a wide range of IP telephony platforms and unified communications and collaboration solutions. *Id.* at 2-3. As of April 30, 2012, Mitel has 104 employees in their NetSolutions business unit, which is a communications service provider focused on delivering subscription-based telecommunications solutions and services to business customers, including connectivity, network services and hosted applications. *Id.* at 7, 9. Mitel's network services are "offered in the United States only." *Id.* at 7.

97. On information and belief, a significant and/or substantial portion of the foregoing relates to products and technology that exploit the patent in suit.

98. On information and belief, there is a nexus between Mitel's significant investments in plant and equipment and its significant employment of labor or capital and between its licensed articles that practice the Asserted Patent. On information and belief, there is a nexus between Mitel's substantial investment in the exploitation of the '181 patent through its engineering and research and development and the Asserted Patent.

99. As shown in the chart attached as Exhibit 74, Mitel's Secure Mitel Servers and Secure Mitel IP Phones practice at least claim 2 of the '181 patent. *See also* Exhibits 75-90. VirnetX reserves the right to demonstrate at the evidentiary hearing that Mitel's Secure Mitel Servers and Secure Mitel IP Phones practice other claims of the '181 patent.

100. In view of at least the foregoing, and pursuant to 19 U.S.C. § 1337(a)(3)(A), (B), and/or (C), a domestic industry exists or, in the alternative, is in the process of being established by virtue of the activities and investments of VirnetX's licensee Mitel.

4. NEC Corporation and NEC Corporation of America

101. VirnetX has licensed its patent portfolio, including the '181 patent to NEC Corporation and NEC Corporation of America (collectively, "NEC"). A copy of the license agreement is attached as Confidential Exhibit 91C pursuant to 19 C.F.R. § 210.12(a)(9)(iv).

102. On information and belief, a domestic industry exists or, in the alternative, is in the process of being established by virtue of the activities and investments of VirnetX's licensee NEC pursuant to 19 U.S.C. § 1337(a)(3)(A), (B), and/or (C).

103. On information and belief, NEC engages in sales, service, customer support, and engineering and research and development activities in the United States with respect to NEC's licensed encryption-supported IP PBXs and IP phones (handsets and softphones) that practice at least one claim of the '181 patent. On information and belief, NEC's domestic investments in plant and equipment and in the employment of labor or capital are significant. On information and belief, NEC's investments in the exploitation of the '181 patent through engineering and research and development is substantial. *See* Exhibit 93 (During fiscal years 2012, 2011, 2010, 2009, and 2008, NEC's United States sales were ¥224,126 million, ¥211,096 million, ¥226,424 million, ¥300,026 million, and ¥371,448 million); Exhibit 97 (NEC United States offices).

104. "NEC [Corporation] aims 'to be a leading global company leveraging the power of innovation to realize an information society friendly to humans and the earth.'" Exhibit 92 at 5. "NEC Corporation of America is a leading technology provider of strategic IT and communications solutions. . . . NEC Corporation of America leverages NEC's global network of resources and experience to help customers achieve a competitive edge." Exhibit 94. "As a major business resident in the United States for more than 40 years, NEC Corporation of America delivers one of the industry's broadest portfolios of technology solutions and professional services, including unified communications, wireless, voice and data, managed services, [and] server and storage infrastructure[.]" Exhibit 95.

105. For example, during fiscal years 2012, 2011, 2010, 2009, and 2008, NEC's research and development expense was ¥161,968 (\$1,975) million, ¥176,514 million, ¥275,970

million, ¥346,529 million, and ¥352,200 million, respectively. Exhibit 92 at 3-4. These amounts represented 5.3%, 5.7%, 7.7%, 8.2%, and 7.6%, respectively, of revenue in each of those years. *Id.* at 4. NEC has invested heavily in the research and development of their products and plans to continue to make significant investments in R&D. “Going forward, by continuing to implement market-oriented R&D activities, NEC will work to continuously drive innovation to support the NEC Group with an emphasis on enhancing R&D efficiency and accelerating the commercialization of new technologies.” *Id.* at 27. On information and belief, NEC’s research and development expenses are similar with respect to fiscal year 2012.

106. “NEC Laboratories America, Inc. (NEC Labs) is the US-based part of NEC’s global network of research laboratories.” Exhibit 96. NEC Labs “primary focus is on technology research and early market validation in support of NEC’s core businesses globally and in the US.” *Id.* NEC has research and development facilities in the United States, in Princeton, New Jersey and Cupertino, California. Exhibits 98 and 99. NEC’s Princeton laboratory is situated on a twenty-one-acre site. Exhibit 99. NEC’s Princeton laboratory “provides an intellectual and physical environment designed to promote scientific interactions and the well-being of its staff.” *Id.* On information and belief, NEC Labs employs 120 employees. Exhibit 96.

107. On information and belief, a significant and/or substantial portion of the foregoing relates to products and technology that exploit the patent in suit.

108. On information and belief, there is a nexus between NEC’s significant investments in plant and equipment and its significant employment of labor or capital and between its licensed articles that practice the Asserted Patent. On information and belief, there is a nexus between NEC’s substantial investment in the exploitation of the ‘181 patent through its engineering and research and development and the Asserted Patent.

109. As shown in the charts attached as Exhibits 100-104, NEC's encryption-supported IP PBXs and IP phones (handsets and softphones) practice at least claim 2 of the '181 patent. *See also* Exhibits 105-121. VirnetX reserves the right to demonstrate at the evidentiary hearing that NEC's encryption-supported IP PBXs and IP phones (handsets and softphones) practice other claims of the '181 patent.

110. In view of at least the foregoing, and pursuant to 19 U.S.C. § 1337(a)(3)(A), (B), and/or (C), a domestic industry exists or, in the alternative, is in the process of being established by virtue of the activities and investments of VirnetX's licensees NEC Corporation and NEC Corporation of America.

111. The list of licensees, *supra* Complaint Part IX, Section C, sub-sections 1 through 4 is complete as of September 14, 2012. As stated in Part IX, Section D, *infra*, VirnetX's licensing activities are ongoing.

D. VirnetX's Licensing of the '181 Patent

112. Pursuant to Section 337 (a)(2) and (a)(3)(C), a domestic industry exists or, in the alternative, is in the process of being established by virtue of VirnetX taking the necessary tangible steps to establish a licensing domestic industry in the United States and there being a significant likelihood that the licensing domestic industry requirement will be satisfied in the future by VirnetX's substantial investments in the exploitation of the '181 patent through licensing.

113. VirnetX has made and continues to make a substantial investment in the exploitation of the '181 patent through its licensing activities in the United States. Further details of VirnetX's substantial investment in the exploitation of the '181 patent through its licensing activities are provided in Confidential Exhibit No. 36-1C ¶¶ 5-8.

114. VirnetX also has made substantial investments in exploiting its patent portfolio, including the '181 patent, through litigation activities, which are related to its efforts to license that patent. Confidential Exhibit 36-1C ¶ 9.

115. In the alternative, VirnetX is taking necessary tangible steps to establish a domestic industry to exploit the '181 patent through its licensing efforts. These steps include licensing activities that resulted in numerous licenses, for example, Microsoft in 2010 and most recently in this year, Aastra, Mitel, and NEC. VirnetX continues licensing discussions with other companies. VirnetX has licensed its patent portfolio, including the '181 patent, *see* Confidential Exhibits 42C, 53C, 72C, and 91C, and continues to make substantial investments in licensing its patent portfolio, including the licensing of the Asserted Patent. *See, e.g.,* Confidential Exhibit 36-1C ¶¶ 5 and 8. VirnetX has a significant likelihood of establishing a domestic industry to exploit the '181 patent through its licensing efforts because there has been an increased level of licensing interest to VirnetX's technology and intellectual property. On August 1, 2012, VirnetX published its royalty rates and licensing guidelines relating to VirnetX's past and ongoing licensing program to assist in all future license negotiations. *See* Exhibits 40 and 41.

116. There is a nexus between VirnetX's substantial investments and (i) the Asserted Patent, (ii) the licensing of that Asserted Patent, and (iii) the United States.

117. In view of at least the foregoing, and pursuant to 19 U.S.C. § 1337(a)(3)(C), a domestic industry exists or, in the alternative, is in the process of being established by virtue of VirnetX's substantial investment in its licensing activities.

X. RELIEF REQUESTED

Wherefore, by reason of the foregoing, Complainants request that the U.S. International Trade Commission:

118. Institute an immediate investigation pursuant to Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, with respect to violations of Section 337 based on the importation into the United States, the sale for importation into the United States, and the sale within the United States after importation of devices with secure communication capabilities, components thereof, and products containing the same, that infringe one or more asserted claims of the Asserted Patent;

119. Determine that there has been a violation of Section 337 based on said unlawful acts;

120. Issue a permanent exclusion order pursuant to 19 U.S.C. § 1337(d) excluding from entry into the United States all infringing articles that are manufactured, imported, or sold by or on behalf of the proposed respondent, its affiliates, subsidiaries, successors, or assigns that infringe at least one claim of the Asserted Patent;

121. Issue permanent cease and desist orders pursuant to 19 U.S.C. § 1337(f) prohibiting proposed respondent from engaging in unlawful importation of, sale within the United States after importation of, the distribution and transfer of, and all other commercial activities relating to, devices with secure communication capabilities, components thereof, and products containing the same, that infringe at least one claim of the Asserted Patent;

122. Impose a bond upon respondent should it continue to import infringing articles during the 60-day-Presidential review period Pursuant to 19 U.S.C. § 1337(j); and,

123. Issue such other and further relief as the Commission deems just and proper.

Dated: September 14, 2012

Respectfully submitted,

McKool Smith, P.C.

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*Counsel for Complainant Science
Applications International Corporation*

VERIFICATION BY COMPLAINANT VIRNETX

I, Sameer Mathur, am the Vice-President of Corporate Development and Product Marketing of VirnetX, Inc. I am duly authorized to sign the foregoing Complaint under Section 337 of the Tariff Act of 1930, as Amended ("Complaint") on behalf of Complainant VirnetX, Inc. I have read the Complaint and am familiar with the allegations and statements contained therein. In accordance with the provisions of 19 C.F.R §§ 210.4(c) and 210.12(a), I hereby declare that, to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

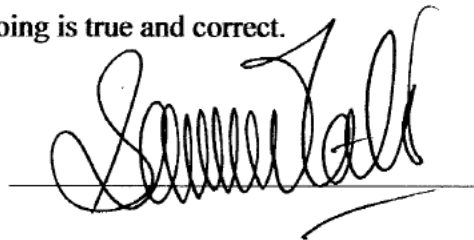
1. The Complaint is not being filed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

2. The claims and other legal contentions set forth in the Complaint are warranted by existing law or by a good faith, non-frivolous argument for extension, modification, or reversal of existing law, or by the establishment of new law; and

3. The allegations and other factual contentions have evidentiary support, or where specifically identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on September 13, 2012.

A handwritten signature in black ink, appearing to read 'Sameer Mathur', is written over a horizontal line.

VERIFICATION BY COMPLAINANT SAIC

I, Michael B. Lachuk, am the Deputy General Counsel of Science Applications International Corporation (SAIC). I am duly authorized to sign the foregoing Complaint under Section 337 of the Tariff Act of 1930, as Amended ("Complaint") on behalf of Complainant SAIC. I have read the Complaint and am familiar with the allegations and statements contained therein. In accordance with the provisions of 19 C.F.R §§ 210.4(c) and 210.12(a), I hereby declare that, to the best of my knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

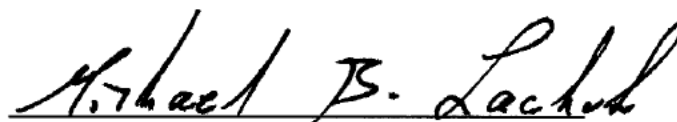
1. The Complaint is not being filed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

2. The claims and other legal contentions set forth in the Complaint are warranted by existing law or by a good faith, non-frivolous argument for extension, modification, or reversal of existing law, or by the establishment of new law; and

3. The allegations and other factual contentions have evidentiary support, or where specifically identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on September 11, 2012.



Name: Michael B. Lachuk
Title: Deputy General Counsel
Science Applications International Corporation