Paper No. _____
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSOFT CORPORATION
Petitioner

v.

VIRNETX INC.
Patent Owner

Case IPR2014-00618
Patent 7,921,211

Patent Owner's Preliminary Response to Petition for *Inter Partes* Review of U.S. Patent No. 7,921,211

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I. Introduction

Patent Owner VirnetX Inc. respectfully submits this Preliminary Response in accordance with 35 U.S.C. § 313 and 37 C.F.R. § 42.107, responding to the Petition for *Inter Partes* Review (the "Petition") filed by Microsoft Corporation against U.S. Patent No. 7,921,211 ("the '211 patent"). VirnetX requests that the Board not institute *inter partes* review for several reasons.

First, the Petition fails to comply with 37 C.F.R. § 42.6(a)(2)(ii) because it uses a font that the Board has deemed noncompliant for being too narrow. The result is that Microsoft's Petition contains additional arguments that it could not otherwise have made if written in a compliant font.

Second, this proceeding is duplicative of other actions before the Office and should be dismissed under 35 U.S.C. § 325(d). The Office currently has two *inter partes* reexamination proceedings against the '211 patent. Another set of Office proceedings against the '211 patent, as Microsoft requests here, is unnecessary and burdens both the Office and VirnetX. In addition, the primary prior art reference Microsoft relies on here is already being considered by the Office in a reexamination of the '211 patent. Section 325(d) was designed to avoid the type of serial challenge Microsoft requests.

Third, Microsoft proposes redundant grounds without identifying how any one ground improves on any other, violating Board precedent requiring petitioners to identify differences in the proposed rejections.

Finally, Microsoft proposes incorrect claim constructions. Because its unpatentability challenges are premised on incorrect claim constructions, Microsoft has not met its burden of demonstrating a reasonable likelihood of proving unpatentability of any '211 patent claim.

II. The Petition Fails to Meet the Requirements for Instituting an *Inter Partes* Review

A. The Petition Fails to Comply with 37 C.F.R. § 42.6(a)(2)(ii)

The Board has held that Arial Narrow font does not comply with the requirements of 37 C.F.R. § 42.6(a)(2)(ii). *See, e.g., Boku, Inc. v. Xilidev, Inc.*, CBM2014-00140, Paper No. 4 at 2 (June 12, 2014). Microsoft's Petition uses this font, so it fails to comply with 37 C.F.R. § 42.6(a)(2)(ii). This is not merely a procedural defect, but instead affects the substance of the Petition. In *Boku*, the petitioner had to drop an entire seven-page argument to ensure that its petition was page-compliant when converted to an appropriate font. *Boku, Inc. v. Xilidev, Inc.*, CBM2014-00140, Paper No. 5 at 1 (June 16, 2014) ("The font change has caused Petitioners to remove all arguments with respect to claim 17 and to submit them in a second petition."). Microsoft's Petition is already 58 pages long in Arial Narrow, so Microsoft would similarly need to remove content to comply with 37 C.F.R.

§ 42.6(a)(2)(ii). Like in *Boku*, the Board should find that Microsoft's Petition is defective. Accordingly, the Board should not institute Microsoft's defective Petition. If the Board sees fit to allow Microsoft to file a corrected petition, it should only permit Microsoft to remove arguments and not make other substantive changes.

B. Microsoft's Petition Should Be Denied Under 35 U.S.C. § 325(d)

The Office may deny institution of an IPR if the same or similar prior art has already been presented in another Office proceeding. 35 U.S.C. § 325(d) ("In determining whether to institute or order a proceeding under . . . chapter 31 [addressing IPR, among other things], the Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office" (emphases added)); *see also* 77 Fed. Reg. 48756, 48765 (Aug. 14, 2012); 77 Fed. Reg. 48680, 48685, 48702 (Aug. 14, 2012). The purpose of this provision is to avoid "serial challenges" and the resulting burden on the patent owner and Office in managing multiple proceedings involving the same patent. (Ex. 2022 (157 Cong. Rec. S1041-42 (daily ed. Mar. 1, 2011) (statement of Sen. Kyl).)

The Board has followed 35 U.S.C. § 325(d) to deny IPR petitions where the same prior art or arguments were presented during examination of the challenged patent or during a prior IPR. *See, e.g., Prism Pharma Co., Ltd., v. Choongwae*

Pharma Corp., IPR2014-00315, Paper No. 14 at 12-13 (July 8, 2014) (denying IPR petition where "[t]he same prior art . . . and arguments" were "previously presented to the Office" during examination); *Medtronic, Inc. v. Robert Bosch Healthcare Sys., Inc.*, IPR2014-00436, Paper No. 17 at 11-12 (June 19, 2014) (denying IPR petition because repetitive arguments and prior art references were raised in petition vis-à-vis earlier IPR proceeding); *Intelligent Bio-Systems, Inc. v. Illumina Cambridge Ltd.*, IPR2013-00324, Paper No. 19 at 6-7 (Nov. 21, 2013) (denying IPR petition where three prior art references were raised in earlier IPR and three were newly raised).

Like the petitions in *Prism Pharma* (involving prior examination) and *Medtronic* and *Intelligent Bio-Systems* (involving prior IPRs), Microsoft's Petition relies on prior art and arguments already presented to the Office. There are currently two *inter partes* reexaminations pending before the Office involving the '211 patent, which have been assigned Control Nos. 95/001,789 (the "'789 reexamination") and 95/001,856 (the "'856 reexamination"). As Microsoft acknowledges, *Provino* is already involved in the '789 reexamination. (Pet. at 1-2 (citing Ex. 1016).) The '856 reexamination remains pending and involves other references. (Ex. 1017.)

Because the Office is already handling two *inter partes* reexaminations involving the '211 patent—one of which involves *Provino*, the lead reference

asserted here by Microsoft—this Petition presents a serial challenge of the type 35 U.S.C. § 325(d) was enacted to prevent. Neither the Board nor VirnetX should be forced to assume the burden of handling duplicative proceedings challenging the '211 patent, involving repeated evaluations of the same prior art references and arguments. Accordingly, the Board should exercise its discretion and deny the Petition under 35 U.S.C. § 325(d).

C. The Board Should Not Institute Based on the Petition's Redundant Grounds

The Petition includes a section titled "Redundancy," which does not assert or explain why the proposed grounds of rejection in the Petition are not redundant in view each other or those in the Microsoft's Petitions for *Inter Partes* Review in IPR2014-00615 ("the '615 Petition") and IPR2014-00616 ("the '616 Petition"). Instead, the Petition simply alleges that Microsoft's three petitions against the '211 patent present "just a few grounds." (Pet. at 57-58.) This allegation is incorrect, as the three petitions present a total of 13 grounds against the '211 patent. (Pet. at 4 (four grounds); '616 Pet. at 4 (five grounds); '615 Pet. at 4 (four grounds).) In addition, Microsoft gives no justification based on the Board's jurisprudence regarding redundancy, so its redundant grounds should be rejected.

The Board does not consider redundant grounds of rejection because it must issue a final written decision within one year of institution (or 18 months for good cause). *Liberty Mut. Ins. Co. v. Progressive Cas. Ins. Co.*, CBM2012-00003,

Paper No. 7 (Oct. 25, 2012). Redundant grounds place a significant burden on the Board and the patent owner, and cause unnecessary delay that jeopardizes meeting the statutory deadline for final written decisions. *Id*.

Because "[t]he Board seeks to streamline and converge issues at all phases of the proceeding . . . at [the] time of institution the Board analyzes the petition on a claim-by-claim, ground-by-ground basis, to eliminate redundant grounds." *Idle Free Sys., Inc. v. Bergstrom, Inc.*, IPR2012-00027, Paper No. 26 at 3 (June 11, 2013). The redundancy inquiry does not focus on "whether the applied prior art disclosures have differences, for it is rarely the case that the disclosures of different prior art references, will be literally identical." *EMC Corp. v. Personal Web Techs., LLC*, IPR2013-00087, Paper No. 25 at 3 (June 5, 2013). Instead, the Board considers "whether the petitioner articulated a meaningful distinction in terms of relative strengths and weaknesses with respect to application of the prior art disclosures to one or more claim limitations." *Id*. at 3-4. The petitioner carries the burden of articulating that "meaningful distinction." *ScentAir Techs., Inc. v. Prolitec, Inc*., Case IPR2013-00180, Paper No. 18 at 3 (Aug. 26, 2013).

In *Liberty Mutual*, the Board identified two types of redundant rejections: (1) "horizontally" redundant rejections and (2) "vertically" redundant rejections. *Liberty Mutual*, CBM2012-00003, Paper No. 7 at 3. The Board explained that horizontally redundant rejections apply "a plurality of prior art references . . . not

in combination to complement each other but as distinct and separate alternatives." *Id*. Vertical redundancy "exists when there is assertion of an additional prior art reference to support another ground of unpatentability when a base ground already has been asserted against the same claim without the additional reference and the Petitioner has not explained what are the relative strength and weakness of each ground." *Id*. at 12.

Here, Microsoft's anticipation grounds based on *Provino* are vertically redundant in view its obviousness grounds for common claims, which also involve *Provino*. In particular, Microsoft contends that *Provino* anticipates claims 1, 2, 6, 14-17, 19-23, 26-41, 43-47, and 50-60,[1] but Microsoft also asserts redundant obviousness grounds for many of these claims that are also based on *Provino*. (Pet. at 4.)

The Petition also involves horizontal redundancy. In particular, the Petition proposes an anticipation ground for claims 1, 2, 6, 14-17, 19-23, 26-41, 43-47, and 50-60, which is horizontally redundant in view of Microsoft's anticipation ground for claims 1, 2, 6, 14-17, 19-23, 26-41, 43-47, and 50-60 in the '616 Petition and Microsoft's anticipation ground for claims 1, 2, 6, 14-17, 19-23, 26-31, 33-41, 43-

[1] The heading of Section V.A in the Petition, which refers to claims "1, 2, 6, 14-17, 19-23, 26-28, 33-41, 43-47, 50-52, and 57-60," is apparently a typographical error. (*See* Pet. at 13.)

47, 50-55, and 57-60 in the ’615 Petition. In addition, the obviousness grounds that Microsoft presents in this Petition for claims 16, 20, 21, 27, 29-33, 35, 40, 44, 45, 51, 53-56, 57, and 59 are horizontally redundant in view of Microsoft’s obviousness grounds for overlapping claims in the ’615 Petition and the ’616 Petition.

Microsoft does not “articulate[] a meaningful distinction in terms of relative strengths and weaknesses with respect to application of the prior art disclosures to one or more claim limitations” for each of its redundant grounds. *EMC Corp. v. Personal Web Techs., LLC*, IPR2013-00087, Paper No. 25 at 3-4 (June 5, 2013) (emphases added). Through its redundancy section, Microsoft has essentially admitted that it proposes redundant grounds but has not explained why any of its grounds are not redundant. (*See* Pet. at 57-58.) Consequently, the Board should deny Microsoft’s redundant grounds. *ScentAir Techs., Inc. v. Prolitec, Inc.*, IPR2013-00180, Paper No. 18 at 3 (Aug. 26, 2013).

III. The Petition’s Claim Constructions Are Flawed and Should Be Rejected

Microsoft proposes several defective claim constructions that do not represent the broadest reasonable interpretation (“BRI”) of the claims. Because it is based on incorrect claim constructions, the Petitioner cannot demonstrate a reasonable likelihood of prevailing for any claim of the ’211 patent.

A. Overview of the ’211 Patent

The ’211 patent discloses several embodiments of a domain name service (“DNS”) system for establishing a secure communication link, such as a virtual private network (“VPN”) communication link, between devices connected to a network. In one embodiment, a novel, specialized DNS system receives a DNS request and automatically facilitates the establishment of a secure communication link between two devices. (Ex. 1001 at 39:30-35.)

The ’211 patent distinguishes the claimed DNS service system from a conventional DNS scheme that merely returns a requested IP address and/or public key:

> Conventional Domain Name Servers (DNSs) provide a look-up function that returns the IP address of a requested computer or host. For example, when a computer user types in the web name “Yahoo.com,” the user’s web browser transmits a request to a DNS, which converts the name into a four-part IP address that is returned to the user’s browser.
>
> . . .
>
> One conventional scheme that provides secure virtual private networks over the Internet provides the DNS server with the public keys of the machines that the DNS server has the addresses for. This allows hosts to retrieve automatically the public keys of a host that the host is to communicate with so that the host can set up a VPN without having the user enter the public key of the destination host. One

> implementation of this standard is presently being developed as part of the FreeS/WAN project (RFC 2535).
>
> The conventional scheme suffers from certain drawbacks. For example, any user can perform a DNS request. Moreover, DNS requests resolve to the same value for all users.
>
> According to certain aspects of the invention, a specialized DNS server traps DNS requests and, if the request is from a special type of user (e.g., one for which secure communication services are defined), the server does not return the true IP address of the target node, but instead automatically sets up a virtual private network between the target node and the user.

(*Id.* at 38:58-39:35.)

Compared with a conventional DNS known at the time of filing the ’211 patent—which is described as merely returning a requested IP address and/or public key—the claimed DNS service system of the ’211 patent supports establishing a secure communication link and provides an indication of the same. (*See, e.g.*, *id.* at 55:38-46, 57:38-46, 59:9-60:8.) For example, in FIGS. 26 and 27 of the ’211 patent, reproduced below, a DNS server 2602 including a DNS proxy 2610 supports establishing a VPN link between a computer 2601 and a secure target site 2604. (*Id.* at 39:51-41:43.)

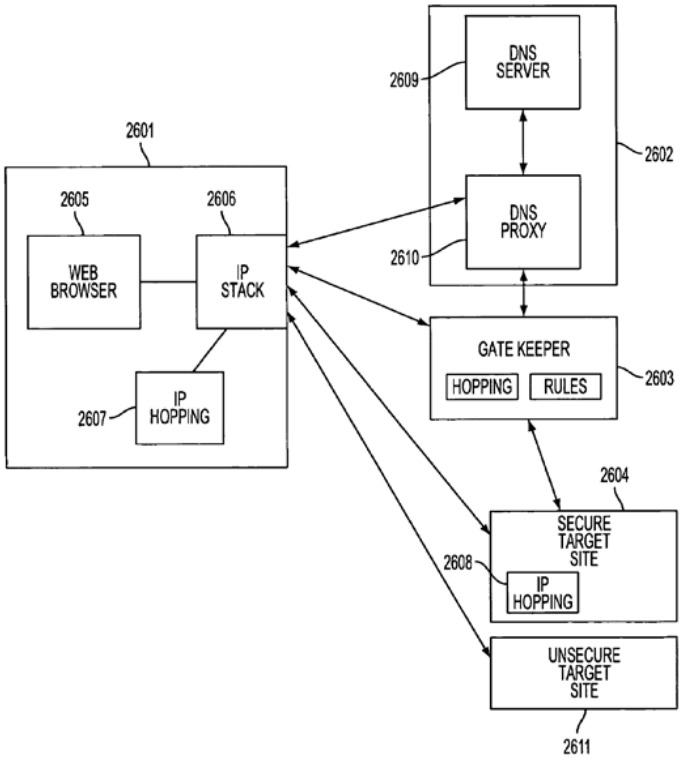

FIG. 26

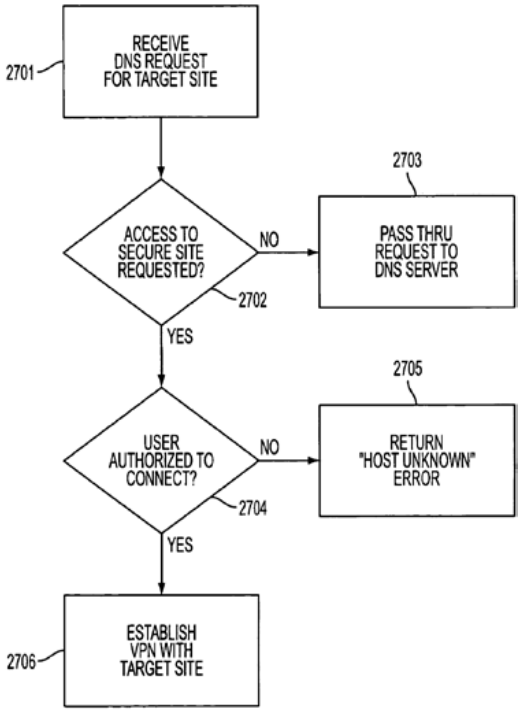

FIG. 27

Here, the DNS server 2602 receives a DNS request for a target site from computer 2601. (*Id.* at 40:32-35.) A DNS proxy 2610 at the DNS server 2602 determines whether the target site is a secure site. (*Id.* at 39:57-59, 40:32-39.) If access to a secure site has been requested, the DNS proxy 2610 determines whether the computer 2601 is authorized to access the site. (*Id.* at 40:40-42.) If so, the DNS proxy 2610 transmits a message to gatekeeper 2603 to create a secure communication link (e.g., a VPN link) between computer 2601 and secure target site 2604. (*Id.* at 39:63-66.) In this example, the gatekeeper 2603 allocates resources (in this case, IP hop blocks) for the secure communication link to the computer 2601 and secure target site 2604. (*Id.* at 39:66-40:3.) The DNS proxy

2610 then responds to the computer 2601's DNS request with an address received from the gatekeeper 2603. (*Id.* at 40:3-7.) In this manner, the specialized DNS service system supports establishing a secure communication link, doing more than a conventional DNS server at the time of the invention.

B. Level of Ordinary Skill in the Art

A person of ordinary skill in the art at the relevant time would have had a master's degree in computer science or computer engineering and approximately two years of experience in computer networking and computer security. In litigation related to VirnetX's patents, this level of skill was adopted by a host of companies, including Apple, Inc.; Cisco Systems, Inc.; NEC Corporation; NEC Corporation of America; Aastra USA, Inc.; Aastra Technologies Ltd.; Mitel Networks Corp.; Mitel Networks, Inc.; Siemens Enterprise Communications GmbH & Co. KG; Siemens Enterprise Communications, Inc.; and Avaya Inc. (Ex. 2023 at 4, Memorandum Opinion and Order in *VirnetX Inc. v. Mitel Networks Corp. et al.*, Case No. 6:11-CV-18 (E.D. Tex. Aug. 1, 2012); Ex. 1015 at 5, Memorandum Opinion and Order in *VirnetX Inc. v. Cisco Systems, Inc. et al.*, Case No. 6:10-CV-417 (E.D. Tex. April 25, 2012).)

Microsoft largely agrees with VirnetX's proposed level of skill, contending through its expert that "one of ordinary skill . . . would have a Master's degree in computer science or computer engineering, or in a related field such as electrical

engineering, as well as about two years of experience in computer networking and in some aspect of security with respect to computer networks." (Ex. 1023 at 3, ¶7.)

Because so many companies have agreed that VirnetX's proposed level of skill is correct and because Microsoft's proposed level of skill is similar in most respects, the Board should adopt VirnetX's proposed level of skill.

C. "Domain Name" (Claims 1, 2, 15-17, 20, 21, 26, 35-37, 39, 40, 44, 45, 50, 59, and 60)[2]

VirnetX's Proposed Construction	Microsoft's Proposed Construction
A name corresponding to a network address	A name corresponding to a network address

The parties agree that "domain name" should be construed to mean "a name corresponding to a network address." (Pet. at 6.) This construction is consistent with the patent specification, which gives examples of Internet Protocol and other types of networks in which domain names correspond to network addresses. (*See e.g.,* Ex. 1001 at 4:12-13, 5:6-8, 9:17-18; 16:22-29; 21:20-22.) VirnetX requests that the Board adopt the parties' agreed construction.

[2] VirnetX identifies only the challenged claims that expressly recite the terms at issue. Claims that depend from the identified claims may also implicitly contain the terms.

D. "Domain Name Service System" (Claims 1, 14-17, 19, 20, 23, 27, 33, 35, 36, 41, 51, 57, 59, and 60)

VirnetX's Proposed Construction	Microsoft's Proposed Construction
No construction necessary	No construction necessary

"Domain name service system" need not be construed. It is the subject of independent claim 1, for example, which already defines its characteristics: "a domain name service system configured and arranged to be connected to a communication network, store a plurality of domain names and corresponding network addresses, receive a query for a network address, and indicate in response to the query whether the domain name service system supports establishing a secure communication link." Since the claims themselves define the characteristics of the domain name service system, no further construction is necessary. Microsoft agrees, stating that "it is reasonable, for purposes of this proceeding in which the broadest reasonable construction standard applies, to consider the term 'domain name service system' as encompassing any system with the characteristics described by the claims." (Pet. at 6.)

E. The "Indication" Phrases (Claims 1, 17, 36, 41, and 60)

VirnetX's Proposed Construction	Microsoft's Proposed Construction
No construction necessary	A visible or non-visible message or signal that the DNS system supports establishing a secure communication link, including the establishment of the secure communication link itself

Claim 1 of the '211 patent recites the phrase "indicate in response to the query whether the domain name service system supports establishing a secure communication link." Independent claim 36 recites "indicating in response to the query whether the domain name service system supports establishing a secure communication link." And independent claim 60 recites "indicating whether the domain name service system supports establishing a secure communication link." For simplicity, VirnetX refers to these features as the "indication" phrases, and they do not require construction.

As recognized by the district court in related litigations involving the '211 patent, the plain meaning of the "indication" phrases is readily understandable, so they do not require further construction. (*See* Ex. 1015 at 27-28, 31, Memorandum Opinion and Order in the '417 Litigation (E.D. Tex. Apr. 25, 2012); Ex. 2023 at 10, Memorandum Opinion and Order in *VirnetX Inc. v. Mitel Networks Corp. et al.*, Case No. 6:11-CV-18 (E.D. Tex. Aug. 1, 2012).)

Microsoft construes the "indication" phrases to mean "a visible or non-visible message or signal that the DNS system supports establishing a secure

communication link, including the establishment of the secure communication link itself." (Pet. at 7-8.) This construction reads in several features that are not required by the intrinsic record. For example, the claims do not limit the "indication" to any specific embodiment, such as "a visible or non-visible message or signal." (*See* Ex. 1015 at 27-28, "Neither the specification nor the claim language provides a basis for limiting 'indicating' to a visual indicator.")

Microsoft's construction also improperly equates *establishing* a secure communication link with *indicating* whether the domain name service system supports establishing a secure communication link. The claim language distinguishes these two functions, separately reciting "establishing a secure communication link," (*see, e.g.*, Ex. 1001 at 55:38-39, claim 1 preamble), and "indicate in response to the query whether the domain name service system supports establishing a secure communication link," (*see, e.g.*, *id.* at 55:44-46). By equating the two through its claim construction, Microsoft effectively reads the indication phrases out of the claims. Microsoft's construction should be rejected.

F. "Secure Communication Link" (Claims 1, 16, 17, 22, 26-29, 33, 35, 36, 40, 41, 46, 50-53, 57, and 59-60)

VirnetX's Proposed Construction	Microsoft's Proposed Construction
A direct communication link that provides data security through encryption	A direct communication link that provides data security through encryption

The parties agree that a "secure communication link" in the context of the '211 patent claims means "a direct communication link that provides data security through encryption." (*See* Pet. at 8-9.) This construction is supported by the intrinsic record. For example, the patent specification discloses techniques for implementing a secure communication link using encryption. (*See, e.g.*, Ex. 1001 at 3:10-67 (describing "the Tunneled Agile Routing Protocol (TARP) [that] uses a unique two-layer encryption format").) The specification also discloses that its later-discussed embodiments can use the earlier-discussed principles of encryption, identifying "different embodiments or modes that can be employed using the aforementioned principles." (*Id.* at 24:33-34; *see also id.* at 33:66-67 ("The following describes various improvements and features that can be applied to the embodiments described above.").)

The specification also refers to the "FreeS/WAN" project as a conventional scheme of creating a "VPN"—a type network that may comprise secure communication links. (Ex. 1001 at 39:18-29.) The FreeS/WAN glossary of terms in the '211 patent's prosecution history explains that a VPN is "a network which

can safely be used as if it were private, even though some of its communication uses insecure connections. All traffic on those connections is encrypted." (Ex. 2026 at 24, Glossary for the Linux FreeS/WAN Project.) This definition is also consistent with other definitions of VPN, including one that states: "VPNs enjoy the security of a private network via access control and *encryption* . . . ." (Ex. 2027 at 8, *McGraw-Hill Computer Desktop Encyclopedia* (9th ed. 2001) (emphasis added).)

Requiring encryption is also consistent with a district court's construction of "secure communication link," which is identical to the parties' proposed construction here. (Ex. 2038 at 1, Order in *VirnetX Inc. v. Cisco Systems, Inc. et al.*, Case No. 6:10-CV-417 (E.D. Tex. Oct. 4, 2012).) This construction was urged by Apple and the other litigation defendants. They argued the construction was necessary because "VirnetX unequivocally disclaimed 'secure communications links' that are not encrypted." (Ex. 2039, Motion for Reconsideration in *VirnetX v. Cisco Systems, Inc. et al.*, Case No. 6:10-CV-417 (E.D. Tex. June 21, 2012) at 1, 2.) They cited file history passages in a '211 patent reexamination as support. (*See, e.g., id.* at 2, citing Ex. 2043 at 28.) VirnetX did not oppose defendants' construction, and the district court adopted their proposed construction in full. (Ex. 2038 at 1.)

For these reasons, the Board should adopt the parties' agreed construction of "secure communication link," which is "a direct communication link that provides data security through encryption."[3]

G. "Transparently" (Claims 27 and 51)

VirnetX's Proposed Construction	Microsoft's Proposed Construction
The user need not be involved in creating the secure communication link	The user need not be involved in creating the [secure communication link]/[secure link]

The '211 patent specification and claims define the term "transparently" to mean that "the user need not be involved in creating the secure communication link." Claim 27, for example, recites, "wherein the domain name service system is

[3] In IPR2014-00237 and -00238, the Board preliminarily construed "secure communication link" in the context of related U.S. Patent No. 8,504,697 to mean "a transmission path that restricts access to data, addresses, or other information on the path, generally using obfuscation methods to hide information on the path, including, but not limited to, one or more of authentication, encryption, or address hopping." (*See, e.g.*, IPR2014-00237, Paper No. 15 at 10 (May 14, 2014).) VirnetX respectfully disagrees with aspects of the Board's construction and will present additional evidence and argument supporting its construction in those proceedings.

configured to enable establishment of a secure communication link between a first location and a second location transparently to a user at the first location." Because the establishment of the secure communication link is transparent to the user, the broadest reasonable interpretation of "transparently" is that the user need not be involved in creating the secure communication link. The specification confirms this understanding. (*See, e.g.*, Ex. 1001 at 41:61-62, ". . . transparently to the user (i.e., the user need not be involved in creating the secure link).")

Microsoft agrees with this construction, although it adds that the link may be a secure communication link or a secure link. (Pet. at 9.) The challenged claims of the '211 patent, however, all recite a secure communication link, so Microsoft's construction strays from the claim language to the extent it refers to a secure link.

H. "Between [A] and [B]" (Claims 16, 27, 33, 40, 51, and 57)

VirnetX's Proposed Construction	Microsoft's Proposed Construction
No construction necessary	Extend from one endpoint to the other

Challenged claims 16, 27, 33, 40, 51, and 57 all include a phrase written in the form "between [A] and [B]." These phrases require no construction, as each phrase uses plain and ordinary language that is readily apparent to a person of ordinary skill in the art, and the specification and prosecution history does not identify alternate meanings.

Microsoft's construction does not add any clarity to the meaning of these phrases. Indeed, Microsoft does not dispute that the meaning of these phrases is

clear from the specification and claim language. Nor does Microsoft dispute that the plain and ordinary meaning of these phrases encompasses its construction. Therefore, no construction is necessary and the terms should be given their plain and ordinary meaning.

IV. If Trial Is Instituted, VirnetX Requests an 18-Month Schedule

For the reasons discussed, Microsoft's Petition cannot be instituted. If trial is instituted in this matter, however, it would be very difficult to complete the proceeding within one year. As explained above, for the '211 patent alone, there are two *inter partes* review petitions and two pending *inter partes* reexaminations. And, as the Board is aware, there are also numerous other pending *inter partes* review petitions and reexaminations involving related patents. (*See* Patent Owner's Mandatory Notices Pursuant to 37 C.F.R. § 42.8, Paper No. 4 at 2-7 (identifying copending matters).) The sheer number of issues, the overlapping issues (e.g., claim construction), the need for consistency, and other interplay between the numerous proceedings renders their administration complex for the Board and the parties. Thus, if instituted, there is good cause for the Board to set an 18-month schedule for this proceeding pursuant to 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.100(c).

V. Conclusion

For these reasons, VirnetX respectfully requests that the Board deny the petition for *inter partes* review.[4]

Respectfully submitted,

Dated: July 17, 2014

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Counsel for VirnetX Inc.

[4] If trial is instituted, VirnetX reserves its rights to raise additional arguments as to why Microsoft has failed to carry its burden and why the claims should be confirmed.

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that I caused to be served on the counsel for Petitioner a true and correct copy of the foregoing Patent Owner's Preliminary Response to Petition for *Inter Partes* Review of U.S. Patent No. 7,921,211 by electronic means on July 17, 2014 as follows:

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