

VIRNETX, INC. v. CISCO SYSTEMS, INC., Appeal No. 2013-1489 (Fed. Cir. September 16, 2014). Before Prost and Chen. Appealed from E.D. Tex. (Judge Davis).

Background:

VirnetX sued Apple, asserting that Apple's FaceTime and VPN On Demand features infringe four patents related to providing security over networks. The district court construed the claimed "secure communication link" as a direct communication link that provides data security, not adopting Apple's proposed construction to include anonymity in the communication link. VirnetX's damages expert provided three reasonable royalty theories, which the district court admitted over Apple's challenges.

The jury found that Apple infringed the patents, that none of the infringed claims were invalid, and awarded VirnetX \$368,160,000 in reasonable royalty damages. Apple appealed.

Issues/Holdings:

- 1) Did the district court err in construing "secure communication link"? Yes, reversed.
- 2) Did the district court err in admitting the testimony of VirnetX's damages expert on the royalty base? Yes, remanded, with damages award vacated.

Discussion:

When read in light of the entire specification, the term "secure communication link" requires anonymity. The addition of anonymity is presented as one of the primary inventive contributions of the patent. The Summary of the Invention and Detailed Description consistently and repeatedly discuss security in conjunction with anonymity to characterize the invention. The Federal Circuit disagreed with VirnetX's argument that a single place in the specification that discusses security without anonymity should lead to a different result, because that disclosure relates to conventional architecture of the prior art. Further, the specification in several instances uses the terms "secure communication link" and "VPN" interchangeably, suggesting that the inventors intended the term to encompass the anonymity provided by a VPN.

The Federal Circuit agreed with Apple's argument that the testimony of VirnetX's expert on the proper royalty base should have been excluded. The testimony improperly relied on the entire market value of Apple's products without demonstrating that the patented features drove the demand for those products. The royalty should have been apportioned down to a reasonable estimate of the value of the claimed technology, or else the expert should have established that the patented technology drove demand for the entire product.

The Federal Circuit also agreed with Apple's argument that the testimony of VirnetX's expert concerning damages based on application of the Nash Bargaining Solution with a 50/50 starting point should have been excluded. The testimony improperly assumed that each party would take 50% of the incremental profits associated with the use of the patented technology. The use of the 50/50 starting point was insufficiently grounded in the specific facts of the case.