

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

**VIRNETX INC., LEIDOS, INC., FKA SCIENCE
APPLICATIONS INTERNATIONAL
CORPORATION,**
Plaintiffs-Appellees

v.

APPLE INC.,
Defendant-Appellant

2021-1672

Appeal from the United States District Court for the Eastern District of Texas in No. 6:12-cv-00855-RWS, Judge Robert Schroeder, III.

Decided: March 31, 2023

JEFFREY A. LAMKEN, MoloLamken LLP, Washington, DC, argued for all plaintiffs-appellees. Plaintiff-appellee VirnetX Inc. also represented by RAYINER HASHEM, LUCAS M. WALKER; BRADLEY WAYNE CALDWELL, JASON DODD CASSADY, JOHN AUSTIN CURRY, Caldwell Cassady & Curry, Dallas, TX.

DONALD SANTOS URRABAZO, Urrabazo Law, P.C., Los

Angeles, CA, for plaintiff-appellee Leidos, Inc. Also represented by ANDY TINDEL, Mann, Tindel & Thompson, Tyler, TX.

WILLIAM F. LEE, Wilmer Cutler Pickering Hale and Dorr LLP, Boston, MA, argued for defendant-appellant. Also represented by MARK CHRISTOPHER FLEMING, LAUREN B. FLETCHER; BRITTANY BLUEITT AMADI, STEVEN JARED HORN, Washington, DC; THOMAS GREGORY SPRANKLING, Palo Alto, CA.

Before MOORE, *Chief Judge*, HUGHES and STARK, *Circuit Judges*.

STARK, *Circuit Judge*.

We previously affirmed that Apple’s VPN On Demand feature infringed claims of U.S. Patent Nos. 6,502,135 and 7,490,151. *VirnetX Inc. v. Apple Inc.*, 792 F. App’x 796, 813 (Fed. Cir. 2019). We remanded for further proceedings on damages. *Id.* Apple appealed the resulting damages award.

In the meantime, the Patent Trial and Appeal Board found both patents unpatentable. We have now affirmed that decision. *VirnetX Inc. v. Mangrove Partners Master Fund*, Nos. 20-2271, 20-2272 (Fed. Cir. Mar. 30, 2023).

The parties in this case agreed that if we affirmed the Board’s finding of unpatentability, then the Patent and Trademark Office would be obligated to cancel the claims of both patents and, therefore, VirnetX would no longer have a legally cognizable cause of action against Apple. See Oral Argument at 13:42-13:45, available at https://oralarguments.cafc.uscourts.gov/default.aspx?fl=21-1672_09082022.mp3 (VirnetX agreeing that in this eventuality it would be appropriate to “remand for dismissal because we’ve lost our cause of action”); Reply Br. 2. Now that we have affirmed the Board’s finding of

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unpatentability, VirnetX has lost its cause of action, and its dispute with Apple is moot. *See Fresenius USA, Inc. v. Baxter Int'l, Inc.*, 721 F.3d 1330, 1347 (Fed. Cir. 2013).

Accordingly, we vacate the district court's judgment and remand with instructions to dismiss the case as moot.

VACATED AND REMANDED

COSTS

Costs shall be assessed against Appellant.