From: Mike Alder
To: PTABNPR2018
Subject: New Claim Construction Standard
Date: Thursday, June 21, 2018 12:20:04 PM
Attachments: image001.png

This letter was composed by a poster on the InvestorVillage VHC board (I recommend you visit and read to understand better our frustration at the unethical behavior). His wording superbly summarizes my experience and feeling so I join him in extolling you to implement PTO-P-2018-0036 ASAP. His letter below with my signature.

Sir/Madam: Ref. PTO-P-2018-0036 I strongly support, and urge adoption of, the proposed rule that is the subject of your May 3, 2018 notice, subject as above. It is absolutely necessary that the proposed rule be adopted as soon as possible for a multitude of reasons, including beginning the restoration of our patent system to global preeminence, encouraging innovation, and fulfillment of the spirit and original purpose underlying the AIA. At the end of this email, I will submit an example of the damage that occurs when two different legal standards are used to examine the same patent. Chief Justice Robert's alluded to this possibility in the recent Cuozzo case adjudicated by the US Supreme Court. Of critical importance, I urge further that the new rule be implemented so as to be applicable to any USPTO post grant proceeding that is at any stage, including those that have been made the subject of a final order and that are now, or sufficiently recent that they could be, in the appellate process. More specifically, USPTO should, sua sponte, vacate all PTAB orders that have been issued for all post grant proceedings in which any claims construction standard other than Phillips was used, in which the result was adverse to the patent-holder, and where the order has been appealed (and remains in any stage thereof) or remains subject to appeal. This implementation step, also, is necessary in order to achieve the goals of the AIA, basic fairness, conservation of litigation expense, and for purposes of judicial economy. I also urge that the rule change be expanded to be made applicable to all post grant reviews/reexaminations/IPRs (regardless of their statutory basis), so that whenever a claims construction is at issue in any USPTO post grant proceeding, under any statute, only one standard, Phillips, is used. As a long time investor in VirnetX stock (since 2010), I have watched my share price be plummet from a high of $41 after the Microsoft (2010) and Apple (2012) jury trials concluded that VirnetX's patents were both valid and infringed, to a $3.30 share price today. The difference in stock price fully a result of the passage and interpretation of the AIA Patent Act in September of 2011. The passage of the AIA in 2011, subjected VirnetX to a law that did not exist when they incurred the expense of two jury trials and risked their capital in defending their patent rights. How can the law "reach back" and force a retrial of already adjudicated patents? The passage of the AIA created two standards of evidence and put a former Google executive in charge of the USPTO. The AIA (as interpreted by the USPTO office) allowed anyone, regardless of whether there existed a valid business connection or relationship between the companies, to request an IPR. This created a "hedge fund" windfall as any hedge fund could short a stock (as they did with VirnetX) knowing that virtually any IPR would be accepted by the PTAB. After the request of the IPR and the resultant acceptance of the IPR by the PTAB, the stock of the accused company normally plummets as what occurred with my VirnetX's stock, and the shorting hedge fund requesting the IPR profits from their request. Finally, how can the "rule of law" possibly support the reversal of patent validity and infringement determined by five jury trials, two rulings by different District Court Judges (Judge Davis and Judge Schroeder) and the overview and rulings of a former

Chief Justice of the CAFC (Chief Judge Radar) and a current Chief Justice of the CAFC (Chief Judge Prost)? The difference in evidential standards and the "double jeopardy" inflicted on VirnetX is a aberration of the rule of law and needs to be immediately remedied. I thank you for considering my information and I am hopeful that justice for patent holders and investors alike can be restored by using one evidential standard (Phillips), allowing only proven "real parties of interest" to initiate an IPR and by not allowing a retroactive "look back" into already adjudicated and ruled on patents. Sincerely Yours. Ihor T. Nakonecznyj

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