

Mangrove Partners Master Fund v. VIRNETX: Additional Discovery Regarding Real-Party-In-Interest Denied IPR2015-01046

Article By:

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Takeaway: Merely alleging that funds from a hedge fund are being used in a proceeding, without more, is insufficient to constitute more than a mere possibility that something useful will be discovered as evidence of a real-party-in-interest.

In its [Decision](#), the Board denied Patent Owner's Motion for Additional Discovery. The Board had previously authorized Patent Owner to file a Motion for Additional Discovery regarding whether additional parties should have been named as a real-party-interest (RPI) in the instant proceeding. The Board had also authorized Petitioner to file an Opposition thereto.

Patent Owner argued that "Nathaniel August is President and majority owner of the Mangrove partners Hedge Fund" and that "the Mangrove Partners Hedge Fund has 'complete discretion' to control the investments of the US Feeder, the Cayman Feeder, and Petitioner." The Board stated that even if this were assumed to be true, Patent Owner failed to assert or provide a sufficient showing that Mangrove Partners hedge fund also has "complete discretion" and control over the preparation or filing of the Petition. In response, Patent Owner asserted that (1) Mangrove Partners provides investment management services on a discretionary basis to the Funds, and (2) funds from investors were used for the instant proceeding. The Board was unpersuaded as neither assertion pertains to the Petition. The Board also noted that Patent Owner's theory would incorrectly capture as a RPI every major shareholder who invests in a corporation or fund.

Patent Owner argued that Petitioner's silence in denying involvement of other Mangrove entities in the instant proceeding is evidence of an issue in naming the RPI. Petitioner also asserted that Petitioner's counsel had indicated a willingness to negotiate if Patent Owner waived its right to challenge Petitioner's failure to identify properly the RPI. The Board again stated that even if this were assumed true, it does not constitute more than a mere possibility that something useful will be discovered.

The Board determined that Patent Owner had not demonstrated sufficiently that its request for additional discovery shows more than a mere possibility that something useful will be discovered. Thus, the Board determined that Patent Owner's request had failed to demonstrate that additional discovery is necessary in the interest of justice under 35 U.S.C. § 316(a)(5).

THE MANGROVE PARTNERS MASTER FUND, LTD. v. VIRNETX INC., IPR2015-01046

Paper 25: Decision Denying Motion for Additional Discovery

Dated: December 21, 2015

Patents: 6,502,135

Before: Michael P. Tierney, Karl D. Easthom, Stephen C. Siu

Written by: Siu

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National Law Review, Volume V, Number 362

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