

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NEW BAY CAPITAL, LLC,
Petitioner,
v.

VIRNETX, INC.
Patent Owner.

Case IPR2013-00376
Patent 7,490,151

UNOPPOSED MOTION TO TERMINATE

Pursuant to 37 C.F.R. §42.73(b)(4) and the Board's Order of November 1, 2013, Petitioner New Bay Capital, LLC ("New Bay") moves to terminate the present inter partes review proceeding. Termination is appropriate because New Bay is abandoning this contest, VirnetX does not oppose and a trial has not been instituted.

The Board makes reference to estoppel in discussing 35 U.S.C. §325(d). This statute merely notes that "the Director may take into account whether, and reject the petition or request because, the same or substantially the same..." As for estoppel as set forth in 35 U.S.C. §315(e), said estoppel does not attach because there will not be a final written decision under 35 U.S.C. §318(a).

For the foregoing reasons, termination is respectfully requested.

Dated: November 6, 2013

Respectfully submitted,

/Robert M. Asher, #30,445/

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November 2013, the foregoing UNOPPOSED MOTION TO TERMINATE was served as agreed via email to counsel of record for patent owner:

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Dated: November 6, 2013

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