

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NEW BAY CAPITAL, LLC  
Petitioner

v.

VIRNETX, INC.  
Patent Owner

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Case IPR2013-00376 (Patent 7,490,151 B2)

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Before SALLY C. MEDLEY, MICHAEL P. TIERNEY, KARL D. EASTHOM,  
and STEPHEN C. SIU, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

JUDGMENT  
Termination of the Proceeding  
*37 C.F.R. § 42.73*

On November 6, 2013, Petitioner New Bay Capital, LLC (“New Bay”) filed an unopposed motion to terminate this proceeding, representing that New Bay is abandoning the contest. Paper 16 at 1. New Bay’s abandonment of the contest is construed as a request for entry of adverse judgment. 37 C.F.R. § 42.73(b)(4); *see*

**VIRNETX EXHIBIT 2040**

also 35 U.S.C. § 325(d) (describing effects of “the same or substantially the same prior art or arguments previously . . . presented to the Office”).

This case is in the preliminary proceeding stage; no institution of a trial has been made.<sup>1</sup> Based on the facts of this case, it is appropriate to enter judgment.<sup>2</sup> Therefore, the motion to terminate the proceeding is *granted*.

Accordingly, it is

ORDERED that New Bay’s unopposed motion to terminate is *granted*;

FURTHER ORDERED that the proceeding is *terminated*.

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<sup>1</sup> A preliminary proceeding begins with the filing of a petition for instituting a trial and ends with a written decision as to whether a trial will be instituted. 37 C.F.R. § 42.2.

<sup>2</sup> A judgment means a final written decision by the Board, or a termination of a proceeding. 37 C.F.R. § 42.2.

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