

From: [Kushan, Jeffrey P.](#)
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Subject: Request for Conference Call in IPR2015-01046/IPR2015-01047
Date: Monday, May 4, 2020 4:20:18 PM
Attachments: [image001.png](#)

Your Honors,

Petitioners request a conference with the Board to obtain guidance (and authorization if required) on making a written request to withdraw application of the General Order issued by the Chief Judge on May 1 to these proceedings. Petitioners believe that these proceedings are not properly the subject of the order and should not be suspended, as any suspension will cause undue prejudice. Petitioners believe they are entitled to rehearing of the decision, but also recognize this is an unusual situation and that the Board may find that an alternative form of presenting Petitioners' request is more appropriate. Petitioners believe a 10 page brief will be sufficient and will be prepared to file it this week. Petitioners do not oppose VirnetX being authorized to file a response provided it is timely filed (i.e., within one week of Petitioners' brief). Petitioners also request expedited review of this request given the undue prejudice being caused by any further delay in the issuance of final written decisions in these proceedings.

Patent Owner requested that its position be added to this email. Patent Owner's position is as follows: Patent Owner opposes Petitioners' request to seek rehearing of Chief Judge Boalick's order exercising his discretion to hold the present IPRs in administrative abeyance "until the Supreme Court acts on a petition for certiorari or the time for filing such petitions expires." The Chief Judge's order was not a "decision" on any issue that entitles a party to seek rehearing under 37 C.F.R. 42.71(d), but rather a procedural mechanism employed to ensure judicial efficiency. Petitioners state that they will experience "undue prejudice" without explaining what it is or how such alleged prejudice would be different from that experienced by the many parties affected by the Chief Judge's order. Patent Owner does not believe a call is necessary to discuss overriding the Chief Judge's order as requested by Petitioners, but will be available at the proposed times if needed. Moreover, to the extent the Board grants Petitioners' request without a conference call, Patent Owner believes that a 3-page brief should be sufficient and that Patent Owner be allowed an equal page limit to respond to Petitioners' submission (with no further reply).

The parties are available for a call with the Board on Thursday, May 7, between 10 am and 2 pm eastern, and on Friday, May 8, between 10 am and 2 pm eastern.

Sincerely,

Jeff Kushan
JEFFREY P. KUSHAN

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