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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE MANGROVE PARTNERS MASTER FUND, LTD.,
Petitioner

v.

VIRNETX INC.
Patent Owner

Case IPR2015-01047
Patent No. 7,490,151

Patent Owner's Request for Rehearing Under 37 C.F.R. § 42.71(d)(1)

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I. INTRODUCTION AND PRECISE RELIEF REQUESTED

Patent Owner VirnetX Inc. requests rehearing of the Patent Trial and Appeal Board's Decision entered October 7, 2015 ("Decision"), instituting an *inter partes* review of U.S. Patent No. 7,490,151 ("the '151 patent"). As explained in Patent Owner's Preliminary Response (Paper No. 9), the Petition (Paper No. 2) should be denied because it fails to properly name all of the real parties-in-interest ("RPIs"), as required by 35 U.S.C. § 312(a)(2).

The Decision declined to address the RPI issue at the "preliminary stage" because the "present record does not reflect that Petitioner is precluded from modifying the named real-parties-in-interest to include any of the entities (or subset thereof) cited by Patent Owner [and] the record [does not] indicate that any such modification would result in rendering this proceeding improper." (Decision at 8.) But the Board's findings are contrary to section 312(a)(2), which states that "[a] petition filed under section 311 may be considered *only if* . . . the petition identifies all real parties in interest." As such, the Board should grant this request and deny the Petition.

Moreover, numerous other decisions by the Board have held that section 312(a)(2) permits consideration of a petition *only if* it includes a proper RPI designation. Given the inconsistency between the Decision and the Board's other decisions on this issue, Patent Owner suggests rehearing by an expanded panel that

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