

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN DEVICES WITH SECURE
COMMUNICATION CAPABILITIES,
COMPONENTS THEREOF, AND
PRODUCTS CONTAINING THE SAME**

Investigation No. 337-TA-818

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN
INITIAL DETERMINATION TERMINATING THE INVESTIGATION DUE TO LACK
OF STANDING AND ORDER NO. 14 DENYING COMPLAINANT'S RENEWED
MOTION TO AMEND THE COMPLAINT AND NOTICE OF INVESTIGATION;
TERMINATION OF THE INVESTIGATION**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 15) of the presiding administrative law judge ("ALJ") terminating the above-captioned investigation due to lack of standing of complainant VirnetX, Inc. ("VirnetX") of Zephyr Cove, Nevada. The Commission has also determined not to review the ALJ's Order No. 14 denying complainant's renewed motion to amend the complaint and notice of investigation to add Science Applications International Corporation ("SAIC") as a complainant. The Commission has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 7, 2011, based on a complaint filed by VirnetX. 76 *Fed. Reg.* 76435-36. The complaint alleges a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. §

1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices with secure communication capabilities, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent No. 8,051,181 (“the ‘181 patent”). The complaint further alleges the existence of a domestic industry. The Commission’s notice of investigation named Apple Inc. (“Apple”) of Cupertino, California as the sole respondent. No Commission investigative attorney is participating in this investigation.

On April 30, 2012, Apple moved to terminate the investigation based on VirnetX’s lack of standing pursuant to Commission rule 210.21(a)(1). VirnetX filed an opposition to the motion.

The ALJ issued the subject ID on July 18, 2012, granting Apple’s motion for termination of the investigation. He found that VirnetX does not possess all substantial rights in the ‘181 patent, and therefore lacks standing to assert the patent in this investigation. On the same date, the ALJ issued Order No. 14 denying VirnetX’s renewed motion to amend the complaint and notice of investigation to add SAIC as a complainant. VirnetX petitioned for review of the ALJ’s ID and Order No. 14 on July 27, 2012, and Apple filed a response in opposition on August 3, 2012.

Having reviewed the record including the parties’ briefing, the Commission has determined not to review the ALJ’s ID or Order No. 14, and has terminated the investigation.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and in sections 210.21 and 210.42(h) of the Commission’s Rules of Practice and Procedure, 19 C.F.R. §§ 210.21, 210.42(h).

By order of the Commission.

Lisa R. Barton
Acting Secretary to the Commission

Issued: August 20, 2012