

Filed on behalf of: RPX Corporation

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RPX CORPORATION,
Petitioner,

v.

VIRNETX, INC. AND SCIENCE APPLICATION
INTERNATIONAL CORPORATION,
Patent Owner

Case IPR2014-00172
Patent 6,502,135

**PETITIONER'S RESPONSE TO THE BOARD'S MARCH 17, 2014 ORDER
(Regarding Real Party in Interest)**

Table of Contents

	<u>Page</u>
I. Factual Background	1
II. RPX Is the Only Real Party in Interest in Its Inter Partes Reviews	2
1. RPX and Apple Do Not Have a “Substantive Legal Relationship” That Qualifies Under <i>Taylor</i> ’s Second Exception	3
2. RPX Is Not an Agent or Representative of Apple for Purposes of <i>Taylor</i> ’s Fifth Exception	5

Table of Authorities

	<u>Page</u>
<u>Cases</u>	
<i>Aevoe Corp. v. AE Tech Co.</i> , 727 F.3d 1375 (Fed. Cir. 2013)	10
<i>Arviv Reexamination Proceeding, In re</i> , Control No. 95/001,526, Decision Dismissing § 1.182 and § 1.183 Petitions (Apr. 18, 2011)	8-9
<i>Chicago, R.I. & P. Ry. Co. v. Schendel</i> , 270 U.S. 611 (1926).....	9
<i>Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litig., In re</i> , 504 F. App'x 900 (Fed. Cir. 2013).....	10
<i>General Foods Corp. v. Massachusetts Dep't of Pub. Health</i> , 648 F.2d 784 (1st Cir. 1981).....	4
<i>Gonzalez v. Banco Cent. Corp.</i> , 27 F.3d 751 (1st Cir. 1994)	8
<i>Guan Inter Partes Reexamination Proceeding, In re</i> , Control No. 95/001,045, Decision Vacating Filing Date (Aug. 25, 2008).....	10
<i>Litchfield v. Crane</i> , 123 U.S. 549 (1887).....	4, 7
<i>Rumford Chem. Works v. Hygienic Chem. Co. of New Jersey</i> , 215 U.S. 156 (1909).....	7
<i>Taylor v. Sturgell</i> , 553 U.S. 880 (2008).....	<i>passim</i>
<i>Unified Patents, Inc. v. Clouding IP, LLC</i> , IPR2013-00586, Decision (Mar. 21, 2014).....	8
<i>United States v. Bhatia</i> , 545 F.3d 757 (9th Cir. 2008)	8
<i>Virginia Hosp. Ass'n v. Baliles</i> , 830 F.2d 1308 (4th Cir. 1987).....	8
<i>Zoll Lifecor Corp. v. Philips Elecs. N.A. Corp.</i> , IPR2013-00609, Decision (Mar. 20, 2014).....	9

Statutes and Rules

35 U.S.C. § 311(a)2, 4
35 U.S.C. § 315(b)9
Fed. R. Civ. P. 65(d)(2)(C)10

Other Authorities

Office Patent Trial Practice Guide, 77 Fed. Reg. 48756 (Aug. 14, 2012).....4
Restatement (Second) of Judgments § 39 cmt. c (1982)8
18A Charles Alan Wright et al., *Federal Practice and Procedure*,
§ 4454 at 434 (2d ed. 2002).....9

Petitioner RPX Corp. is the only real party in interest in these *inter partes* reviews. Under the framework of *Taylor v. Sturgell*, 553 U.S. 880 (2008), RPX has no “pre-existing ‘substantive legal relationship[.]’” such as that of licensor, assignee, or successor, *id.* at 894, for any patent at issue; and RPX is expressly not a “designated representative” or “agent,” *id.* at 895, of Apple Inc. or any other relevant entity. Accordingly, RPX has the right to petition in its own name.

Patent Owner VirnetX, Inc. fails to fit RPX within any of *Taylor*’s categories. VirnetX effectively concedes that it cannot prove Apple had control over RPX’s decision to file the present IPR petitions or RPX’s conduct in litigating them. Instead, VirnetX relies on factually overstated and legally deficient allegations that Apple partially funded RPX and gave it access to Apple’s counsel. Under settled law, those allegations do not establish real-party-in-interest status. The Board should grant the RPX petitions and institute the requested IPRs.

I. Factual Background

RPX was founded as a Delaware corporation in July 2008 and issued shares to the public in May 2011. At the end of 2013, RPX had more than 160 customers for its patent services. RPX’s services include obtaining patent rights for its customers, facilitating settlement of active litigation, gathering and analyzing market intelligence and data, providing insurance against patent litigation risks, and other services to reduce patent risk to customers and to help rationalize the market

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