

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 IPR2014-00177
Patent 7,418,504

PETITIONER'S OPPOSITION
(To Patent Owner's Motion for Discovery)



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[REDACTED]

PETITIONER'S OPPOSITION
(To Patent Owner's Motion for Discovery)

I. INTRODUCTION

The Patent Owner's Motion for Additional Discovery (Paper No. 17; "POM") should be denied because it is grounded in speculation, not a showing that the requested additional discovery is in the interests of justice. RPX is the sole real party in interest as reflected by the undisputed facts already of record in these proceedings.

II. REASONS THE PATENT OWNER'S MOTION SHOULD BE DENIED

In the paragraph bridging pages 3-4, POM sets forth various rationales for the requested discovery. However, each of the stated rationales is based on speculation [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

POM does not cite a shred of evidence to support its speculative rationales. Moreover, the proffered rationale for discovery of any and all communications, agreements, payments, etc. among Apple, RPX, Sidley Austin, Howison & Arnott, and ASHE, P.C. is based on speculation that *contradict the undisputed facts*, including at least the following:

○ [REDACTED]

○ [REDACTED]

○ RPX retained Sidley Austin to assist RPX's existing outside patent counsel (Howison & Arnott) to prepare petitions based on the existing publicly available petitions filed by New Bay and Apple. (Ex. 1084, p. 7, lines 7-15).

○ The difference between the starting point (publicly available petitions and declarations) and the ending point (RPX's petitions and declaration) is a matter of public record. The PTAB and VirnetX have expressly noted that the RPX petitions and the Apple/New Bay petitions are similar. (Ex. 1085, p. 40, ln. 20 to

p. 41, ln. 3, p. 42, lns. 5-8, p. 53, ln. 22 to p. 54, ln. 1, p. 54, lns. 7-8, p. 55, lns. 1-3).

- The *metadata* associated with RPX's petitions is attributable to Sidley Austin acting in its capacity as RPX's counsel. (Ex. 1086, p. 13, ln. 12 to p. 16, ln. 14, p. 28, lns. 5-11). Sidley Austin did not sign the RPX petitions and is not RPX's counsel of record before the PTAB.

- The RPX petitions certify that the decision to file the petitions, the content of the petitions, and prosecution of the IPRs have been at the sole discretion of RPX. (*See, e.g.*, Petition at pp. 3-4 (Paper No. 4); Ex. 2001, p. 61, lns. 8-21, p. 63, ln. 15 to p. 65, ln. 6).

Faced with these *undisputed* facts, POM turns to speculation that is based on misstatements of fact. For example, at page 1, last line; page 2, last line; page 3, first line, POM uses the terms "Apple's attorneys" and "Apple's counsel" to refer to Sidley Austin acting in its capacity as RPX's counsel. While this play on words in POM aims to fuel the speculative nature of the motion, it is a misstatement of fact. Also, on page 5, at lines 1 and 10-12, POM states that RPX and Apple are "sharing" counsel. This is another significant misstatement of fact. RPX separately retained Sidley Austin to assist RPX's existing counsel in the

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