Case IPR2014-00177

		Paper No
Filed o	on behalf of: RPX Corporation	Filed: March 28, 2014
By:	Oliver R. Ashe, Jr., Esq.	Gregory M. Howison
	ASHE, P.C.	HOWISON & ARNOTT, LLP
	11440 Isaac Newton Sq. North	Lincoln Centre II
	Suite 210	5420 LBJ Freeway, Suite 660
	Reston, VA 20190	Dallas, Texas 75240
	Tel.: (703) 467-9001	Tel.: (972) 680-6050
	Fax: (703) 467-9002	Fax: (972) 479-0464
	E-mail: oashe@ashepc.com	E-mail: ghowison@dalpat.com
	UNITED STATES PATENT AN	D TRADEMARK OFFICE
	BEFORE THE PATENT TRIAI	
		7 AND ALLEAD DUAND

RPX CORPORATION, Petitioner,

v.

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

Case IPR2014-00177 Patent 7,418,504

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



Table of Contents

			Page
I.	Factu	aal 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 Taylor's Second Exception	3
	2.	RPX Is Not an Agent or Representative of Apple for Purposes	
		of Taylor's Fifth Exception	5



Table of Authorities

	Page
Cases	
Aevoe Corp. v. AE Tech Co., 727 F.3d 1375 (Fed. Cir. 2013)	10
Arviv Reexamination Proceeding, In re, Control No. 95/001,526, Decision Dismissing § 1.182 and § 1.183 Petitions (Apr. 18, 2011)	8-9
Chicago, R.I. & P. Ry. Co. v. Schendel, 270 U.S. 611 (1926)	9
Cyclobenzaprine Hydrochloride Extended-Release Capsule Patent Litig., In re, 504 F. App'x 900 (Fed. Cir. 2013)	10
General Foods Corp. v. Massachusetts Dep't of Pub. Health, 648 F.2d 784 (1st Cir. 1981)	4
Gonzalez v. Banco Cent. Corp., 27 F.3d 751 (1st Cir. 1994)	8
Guan Inter Partes Reexamination Proceeding, In re, Control No. 95/001,045, Decision Vacating Filing Date (Aug. 25, 2008)	10
Litchfield v. Crane, 123 U.S. 549 (1887)	4, 7
Rumford Chem. Works v. Hygienic Chem. Co. of New Jersey, 215 U.S. 156 (1909)	7
Taylor v. Sturgell, 553 U.S. 880 (2008)	passim
Unified Patents, Inc. v. Clouding IP, LLC, IPR2013-00586, Decision (Mar. 21, 2014)	8
United States v. Bhatia, 545 F.3d 757 (9th Cir. 2008)	8
Virginia Hosp. Ass'n v. Baliles, 830 F.2d 1308 (4th Cir. 1987)	8
Zoll Lifecor Corp. v. Philips Elecs. N.A. Corp., 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. 48,756 (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 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



DOCKET

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

