

Jonathan Pearce

From: Rich Giunta [Rich.Giunta@WolfGreenfield.com]
Sent: Wednesday, December 16, 2015 6:37 AM
To: Jonathan Pearce
Cc: Elisabeth H. Hunt; Randy Pritzker; Virginia Weeks; Kala Sarvaiya
Subject: RE: RPX v AIT - Declarations of Knuettel and Boebel [A213-L15F15 A213-L15F16 and A213-L15F17] PROTECTIVE ORDER MATERIAL

Jonathan,

Your response is disappointing and raises additional concerns about whether AIT takes its obligations to protect RPX’s confidential information seriously. We will raise AIT’s non-compliance with the Board Order and our continued inability to understand the exact scope of the violation in our motion for sanctions.

Your suggestion that AIT may not be bound by the terms of the standard protective order unless and until the Board grants the motion to seal is wrong for numerous reasons. Among them, as the Board pointed out in its Order, AIT’s counsel agreed to abide by the terms of the standard PO and has signed the acknowledgement to that effect. RPX expects that AIT will comply with the protective order going forward.

Your assertion that it is difficult to “determine what RPX actually thinks is confidential” is meritless. If you believe that anything should not have been marked, please bring it to our attention. Your alleged confusion is not an excuse to ignore your obligations and surely you understand that [REDACTED] and documents concerning litigation strategy are highly confidential.

Rich

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This e-mail message and any attachments may contain confidential or privileged information. If you are not the intended recipient, please notify me immediately by replying to this message and destroy all copies of this message and any attachments. Thank you.

AIT Exhibit 2027
RPX v. AIT
IPR2015-01751

From: Jonathan Pearce [mailto:jpearce@socalip.com]
Sent: Tuesday, December 15, 2015 9:20 PM
To: Giunta, Rich

Cc: Hunt, Elisabeth; Pritzker, Randy; Weeks, Virginia; Kala Sarvaiya

Subject: RE: RPX v AIT - Declarations of Knuettel and Boebel [A213-L15F15 A213-L15F16 and A213-L15F17]
PROTECTIVE ORDER MATERIAL

Rich,

We disagree and do not believe that further declarations are necessary. The declarations, in fact, explicitly describe all of the “specific extent of Petitioner’s confidential information to which they were provided access” as required by the Board’s order. Your email seems particularly concerned with other “information,” oral or otherwise. Had other confidential information in any form have been shared, the declarants would have so declared.

You also appear to seek access to documents and communications protected by privilege. AIT will not provide you with copies of any such communication or document. To the extent that the draft POPR shared with Boebel and Knuettel included information identified by RPX as confidential, the same information appears in the POPR as filed. That is, there is nothing more of relevance in the draft that was not also in the final. If you remain dissatisfied, it would seem that another conference call with the Board is needed. If required by the Board, AIT is willing to submit the draft POPR for in camera review by the Board. We are confident that the Board will agree with us.

You have raised some new issues related to the protective order. Let me remind you that you failed to timely move for a protective order. After the Board authorized additional discovery on October 20, 2015 or certainly before RPX actually provided purported confidential information, RPX should have promptly moved for a protective order. Even now, the Board has yet to grant AIT’s motion filed by Mr. Sereboff in order to protect RPX’s purported confidential information. Further, RPX has also failed to accurately mark documents as confidential, and in particular marked many clearly public documents as confidential. By our estimates, more than one third of RPX’s production is improperly marked. As a result, it is difficult for anyone to determine what RPX actually thinks is confidential.

Finally, you are concerned about my filing of an Acknowledgement under the Protective Order. There is actually no requirement in the rules that counsel file an acknowledgement. On this point, the Protective Order Guidelines in Appendix B of the Trial Practice Guide section (d)(7) merely requires that “[a]ny person receiving confidential information during a proceeding before the Board shall, prior to receipt of any confidential information, *first sign* an Acknowledgement . . .” Similarly, section (f) imposes a duty to maintain the acknowledgements, stating “[e]ach party to the proceeding shall *maintain* a signed Acknowledgement from each person acting on its behalf who obtains access to confidential information . . . and shall produce an Acknowledgement to the Office upon request.” I further note that neither Virginia Weeks nor Randy Pritzker have filed Acknowledgements any of the requested IPRs. So, this should be a non-issue. Yet, to defuse it, please find my Acknowledgement attached.

/jonathan pearce/

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From: Rich Giunta [<mailto:Rich.Giunta@WolfGreenfield.com>]

Sent: Tuesday, December 15, 2015 2:03 PM

To: Kala Sarvaiya; Jonathan Pearce

Cc: Elisabeth H. Hunt; Randy Pritzker; Virginia Weeks

Subject: FW: RPX v AIT - Declarations of Knuettel and Boebel [A213-L15F15 A213-L15F16 and A213-L15F17]
PROTECTIVE ORDER MATERIAL

Jonathan and Kala,

RPX does not believe that the declarations from Mr. Knuettel and Mr. Boebel comply with the Board's Order of December 4, 2015. The Board ordered that: "Patent Owner also will provide to Petitioner, no later than December 14, 2015, Declarations from Mr. Boebel and Mr. Knuettel regarding the specific extent of Petitioner's confidential information to which they were provided access."

The declarations do not explain the "extent of [RPX's] confidential information to which [these gentleman] were provided access" and neither represents that the declarant considers the declaration to comply with that requirement. There are two major issues.

Limited to Documents

Both declarations limit themselves to explaining non-public "documents" the declarant was provided access to. The declarants do not state that they were not provided access to RPX's confidential information in other ways. For example, they do not state that they were not provided access to confidential information by having it shared with them orally. AIT is well aware that information can be communicated orally, as when it sought through discovery information about any communications between RPX and Salesforce relevant to the IPRs (Request No. 3) it defined communications to include information transmitted orally (definition 6 in Request for Production).

Mr. Knuettel limits his representation in paragraph 3 to not receiving "documents" identified as confidential by RPX prior to November 24, 2015. Given that Mr. Knuettel signed the protective order acknowledgement more than two weeks earlier, RPX is entitled, pursuant to the Board order, to know whether Mr. Knuettel was provided access to any RPX confidential information prior to November 24 via any other means, including oral communications. We also note that when Mr. Knuettel represents more broadly that he did not communicate "regarding ... any document identified as confidential by RPX" he limits his representation to "following November 27."

Mr. Boebel similarly limits his representations to documents and files and does not represent that access to RPX confidential information was not provided to him via any other means, including orally.

The Confidential Information Shared with Mr. Knuettel and Mr. Boebel is Not Identified

Mr. Kneuttel states that he received a "draft Patent Owner's Preliminary Response ("POPR")" and Mr. Boebel states that he received a ".pdf file ... relating to a timeline" and a "draft of the POPR." Neither declaration explains what RPX confidential information was in the draft POPR or the .pdf file, or whether they were provided any exhibits to the drafts that included RPX confidential information. This does not explain the "specific extent of Petitioner's confidential information to which they were provided access" as ordered by the Board.

Mr. Boebel also references "a brief comment to Douglas Sturgeon that was not substantive to the POPR" but does not explain the content or whether that conversation revealed any RPX confidential information.

Remedying Non-Compliance With the Board's Order

Please let us know if AIT will revise the declarations to bring them into compliance with the Board's order. If the disclosures referenced in the declarations are the only disclosures of any RPX confidential information to the declarants, it should be a simple matter for AIT to modify the declarations to state so explicitly so that the declarants swear that to be true, and to remove the numerous qualifiers mentioned above, including on the ways in which access may have been provided to RPX's confidential information. AIT also needs to identify the specific RPX confidential information that was in the drafts and .pdf file shown to these gentleman. The materials shown to the declarants can be attached to the declarations and the declarant can swear that that is the information they were shown. If AIT has work product concerns, RPX is open to any other reasonable suggestion AIT may have to identify to RPX and the Board the RPX confidential information that was shared with these gentleman.

Given that RPX's motion for sanctions is due in less than a week, please let us know ASAP what, if any, steps AIT is willing to take to remedy the above issues.

Protective Order Acknowledgement From Jonathan

Finally, we note that AIT has not filed a protective order acknowledgement from Jonathan. Please file the acknowledgement in each of the IPRs.

Rich

From: Anneliese Lomonaco [<mailto:alomonaco@socalip.com>]
Sent: Monday, December 14, 2015 9:08 PM
To: PTAB Rich Giunta; PTAB Elisabeth Hunt
Cc: Jonathan Pearce; Kala Sarvaiya
Subject: RPX v AIT - Declarations of Knuettel and Boebel [A213-L15F15 A213-L15F16 and A213-L15F17] PROTECTIVE ORDER MATERIAL

Counsel,

Please see the attached.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the "Declaration of Francis P. Knuettel, II" and the "Declaration of Nicholas S. Boebel" have been served by agreement of the parties via email on December 14, 2015, upon the following:

Richard F. Giunta:
Rgiunta-PTAB@wolfgreenfield.com

Elisabeth H. Hunt:
EHunt-PTAB@wolfgreenfield.com

Sincerely,

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