UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RPX CORPORATION,
Petitioner

v.

APPLICATIONS IN INTERNET TIME LLC,
Patent Owner

Case IPR2015-01750
US Patent No. 8,484,111 B2

Case IPR2015-01751
Case IPR2015-01752
Patent 7,356,482 B2[1]

PATENT OWNER'S OPPOSITION TO PETITIONER'S THIRD MOTION TO SEAL

[1] The word-for-word identical paper is filed in each proceeding identified in the heading.

TABLE OF AUTHORITIES

Cases

Acxiom Corp. v Phoenix Licensing, LLC, Case No. CBM2015-00134 (November 19, 2015) 1
First Data Corp. v Cardsoft, LLC, Case No. IPR2014-00715 (October 17, 2014) 1, 4
Gnosis S.P.A. v South Alabama Medical Science Foundation, IPR2013-00116 (October 9, 2013) 3
Microsoft Corp. v Enfish, LLC, Case No. IPR2013-0059 (June 17, 2014) 3
RPX Corp v. VirnetX, Inc., IPR2014-00171 ..... 2, 3, 5

Other Authorities

Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,759-60 (Aug. 14, 2013) 2

RPX moved to seal certain pleadings and exhibits which it claims have its confidential information (the "Motion"). Patent Owner files this paper, styled as an "opposition," but primarily writes in the public interest. Specifically, "[t]here is a strong public policy for making all information filed in a quasi-judicial administrative proceeding open to the public, especially in an *inter partes* review, which determines the patentability of claims in an issued patent, and, therefore, affects the rights of the public." *First Data Corp. v Cardsoft, LLC*, Case IPR2014-00715, Paper 10, p. 2 (October 17, 2014). In this context, Patent Owner writes more as an *amicus, in pro publica*, than as an adversary to the movant. Patent Owner is concerned that zealous sealing will prevent the public from understanding the Board's decision.

In these three related IPRs, two primary issues are raised in the petitions and preliminary responses: (a) the merits of petitioner's invalidity arguments, and (b) whether Petitioner has failed to name a real party in interest (RPI). The Motion applies only to the RPI issue. Regardless of the Board's decision on these two issues, "[c]onfidential information relied upon in a decision to grant or deny a request to institute ordinarily will be made public." *Acxiom Corp. v Phoenix Licensing, LLC*, Case No. CBM2015-00134 et al, Paper 22, p. 6 (November 19, 2015). A determination that a petitioner has failed to name an RPI is a decisive

issue in IPR proceedings and the required inquiry is a "highly fact-dependent question" Decision Granting Patent Owner's Motion for Additional Discovery, Paper 11, at p. 4 (citing Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,759-60 (Aug. 14, 2013)). Therefore, the Board should strongly favor a clear public record.

The Petitioner has previously attempted to withhold purported confidential information related to RPI determinations from the public record. In *RPX Corp. v. VirnetX, Inc.*, Petitioner argued unsuccessfully that its client was not an RPI. Later, on Petitioner's motion to expunge "confidential" information, the Board thoughtfully considered each item and whether it should be sealed or redacted. IPR2014-00171, Paper 62 (September 9, 2014). The Board's decision resulted in publication of at least some information that Petitioner had identified as "confidential."

Based upon at least Petitioner's experience in *RPX v VirnetX* and prior to filing the three petitions here:

- Petitioner was well aware that RPI is an issue in IPRs. (e.g., Ex. 2018).
- Petitioner also knew that RPI was likely to be of significance in these petitions because of its own position relative to its clients. (e.g., *RPX v. VirnetX*, Paper 62; Ex. 2018).

- Petitioner knew that its "confidential" relationship with a client/un-named RPI would likely become public because it would become the subject of an RPI dispute. (*RPX Corp v. VirnetX, Inc.*, IPR2014-00171, paper 62).
- Petitioner knew that the Board would scrutinize its efforts to keep information relevant to the RPI issue from the public record. (*Id.*).

As the Board is aware, the RPI issue is generic – it applies to all *inter partes* reviews, covered business method reviews and post grant reviews. The RPI issue arises often before the Board, yet the precedent on this issue is limited. The dearth of available precedent suggests that there is a strong public interest in the Board's decision on RPI here. The Motion therefore "needs to show that the movant's need for confidentiality outweighs the strong public interest in having an open record." *Microsoft Corp. v Enfish, LLC*, Case No. IPR2013-0059 et al, Paper 27, p. 3 (June 17, 2014).

Patent Owner leaves to the Board's good judgment whether Petitioner would leave sufficient information in the public record to allow the public to clearly discern the parties' arguments. Precedent clearly states, "[t]he thrust of the parties' arguments must be clearly discernable from the redacted versions of the documents." *Gnosis S.P.A. v South Alabama Medical Science Foundation*, IPR2013-00116, Paper 29, p. 2 (October 9, 2013). A sealed record of the scope

DOCKET ALARM

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.