

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
Patent No. 8,484,111 B2

Case IPR2015-01751
Case IPR2015-01752¹
Patent 7,356,482 B2

DECLARATION OF JEFFREY M. LIPSHAW

¹ The word-for-word identical paper is served in each proceeding identified in the heading.

RPX Exhibit 1066

I, Jeffrey M. Lipshaw, declare:

1. I have been retained by RPX Corporation (“RPX”) to render an expert opinion in the above-captioned matters on the legal and practical import, if any, of an individual sitting as a director on the boards of directors of two or more otherwise independent companies with no corporate relationship. I am being compensated for my time at a rate of \$800 per hour, plus actual expenses. My compensation is not dependent in any way upon the outcome of RPX’s petitions or any related matters.

I. BACKGROUND AND QUALIFICATIONS

2. My qualifications for forming the opinions set forth in this declaration are summarized in the following paragraphs and explained in more detail in my curriculum vitae, which is attached as Exhibit 1065. Exhibit 1065 also includes a list of my publications.

3. I received a Bachelor of Arts degree in history from the University of Michigan in 1975, graduating with High Distinction. I received a Juris Doctor degree from Stanford University in 1979.

4. I am presently employed as a Professor of Law at the Suffolk University Law School in Boston, Massachusetts. I have been a member of the faculty since 2007 and tenured since 2013.

5. Before joining the faculty, I spent twenty-six years as a lawyer and business executive, most recently serving as Senior Vice-President, General Counsel and Secretary for Great Lakes Chemical Corporation, a Fortune 850 company based in Indianapolis, Indiana, and listed on the New York Stock Exchange. There, I counseled the company's Board of Directors in its compliance with its corporate duties, Sarbanes-Oxley and New York Stock Exchange governance requirements, led the company's efforts in significant acquisitions and dispositions, and managed a law department with an internal and external annual budget of over \$10 million.

6. At Suffolk, I have taught basic and advanced courses in the business law curriculum, including LLCs and Partnerships, Corporations, Business Entity Fundamentals, Securities Regulation, and Entrepreneurship, Venture Capital, and the Law. I am the author of a casebook on unincorporated business entities and I have written extensively on, among other things, corporate and business law issues.

II. MATERIALS REVIEWED AND CONSIDERED

7. In connection with providing this declaration, I have reviewed the following documents:

- The decision of the United States Court of Appeals for the Federal Circuit in *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336

(Fed. Cir. 2018) (hereinafter “the Federal Circuit Opinion”), specifically the discussion at page 1354 of the opinion in which the court stated that the PTAB “underestimate[ed] the relevance . . . of the fact that Salesforce and RPX had overlapping members on their respective boards of directors”;

- The decision of the Patent Trial and Appeal Board in *Cisco Systems, Inc. v. Hewlett Packard Enterprise Co.*, No. IPR 2017-01933 (PTAB Mar. 16, 2018) (hereinafter “the Cisco Decision”), specifically pages 14-15 of the Cisco Decision reflecting the PTAB’s discussion of Cisco’s investment in SpringPath and attainment of “board-level representation”;

- IPR 2017-01933, No. 2003-61 Exhibit – Confirmed Cisco Did Invest in SpringPath (PTAB Dec. 21, 2017) (Exhibit 1072) (hereinafter “the Cisco Exhibit”);

- The 2018 United States Spencer Stuart Board Index (Exhibit 1067) (hereinafter “Spencer Stuart Index”);

- The Notice of 2018 Annual Meeting and 2018 Proxy Statement of salesforce.com, inc., (hereinafter “Salesforce”) filed with the Securities and Exchange Commission on May 2, 2018 (Exhibit 1068) (hereinafter “Salesforce Proxy Statement”); and

- The Notice of Annual Meeting and Proxy Statement of RPX Corporation, filed with the Securities and Exchange Commission on April 27, 2017 (Exhibit 1069) (hereinafter “RPX Proxy Statement”).

8. In addition to the above documents, for purposes of rendering the opinions contained in this declaration, I have consulted the additional sources—namely, the statutes, regulations, rules, and additional exhibits (Exhibits 1070 and 1071)—referenced below.

III. SANFORD ROBERTSON’S BOARD SERVICE AS AN INDEPENDENT DIRECTOR

9. As I understand the matter, the sole basis for the reference in the Federal Circuit Opinion to “Salesforce and RPX [having] overlapping members on their respective boards of directors” is the fact that Sanford Robertson has served simultaneously as a director of Salesforce and as a director of RPX. It appears to be undisputed that Sanford Robertson served simultaneously as a director of Salesforce and as a director of RPX. According to the Salesforce Proxy Statement (Exhibit 1068), Sanford Robertson has served as a director of Salesforce since 2003, is an independent director, and has served as the Lead Independent Director since June 2007. According to the RPX Proxy Statement (Exhibit 1069), Sanford Robertson served as a director of RPX since 2011 and was an independent director. Mr. Robertson’s service as a director concluded when RPX was acquired in June 2018.

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