

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 8,484,111 B2

Case IPR2015-01751
Case IPR2015-01752
Patent 7,356,482 B2¹

**PETITIONER'S FIFTH MOTION TO SEAL
UNDER 37 C.F.R. §§ 42.14 AND 42.54**

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

Pursuant to 37 C.F.R. §§ 42.14. and 42.54, the Revised Protective Order entered by the Board (*see* Ex. 3001), and the Board’s authorization e-mail of March 11, 2019, Petitioner RPX Corporation (“Petitioner” or “RPX”), by and through its counsel of record, moves to seal: (1) portions of Patent Owner’s Opposition Brief (Paper 100)² filed on March 22, 2019 in these remand proceedings for IPR2015-01750, IPR2015-01751 and IPR2015-01752 (collectively, “Remand Proceedings”); (2) portions of Petitioner’s Reply Brief filed herewith in these Remand Proceedings; and (3) portions of Exhibit 1096 that accompany Petitioner’s Reply Brief.

Petitioner’s Reply Brief, Exhibit 1096, and redacted non-confidential versions of the Petitioner’s Reply Brief, Exhibit 1096, and Patent Owner’s Opposition Brief are being filed concurrently with this Motion.

Patent Owner’s Opposition Brief, Petitioner’s Reply Brief, and Exhibit 1096 contain highly confidential and extremely sensitive information, including, *inter alia*, highly confidential IPR litigation strategy that RPX employs to pursue its business, and highly confidential agreements, financial information, communication records, and references thereto. RPX guards its confidential information to protect its own business as well as third parties, and is contractually obligated to keep certain of this information confidential. RPX, therefore,

² This Motion uses the Exhibit numbers and Paper numbers from IPR2015-01750.

respectfully requests that the redacted portions of Patent Owner’s Opposition Brief, the redacted portions of Petitioner’s Reply Brief, and the redacted portions of Exhibit 1096 be kept under seal. Sealing this information falls squarely within the Board’s authority to “[require] that a trade secret or other confidential ... commercial information not be revealed or be revealed only in a specified way...” 37 C.F.R. § 42.54(a)(7).

I. GOOD CAUSE EXISTS FOR SEALING RPX’S SENSITIVE CONFIDENTIAL INFORMATION

In deciding whether to seal documents, the Board must find “good cause,” and must “strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” *Garmin v. Cuozzo*, IPR2012-00001, Paper 36 (April 5, 2013). Here, the balance weighs heavily in favor of protecting RPX’s highly confidential information.

As discussed in detail below, Patent Owner’s Opposition Brief, Petitioner’s Reply Brief, and Exhibit 1096, for which redacted non-confidential versions are being filed concurrently herewith, reference sensitive confidential information, including information from the “Unredactable Exhibits” subject to Petitioner’s pending Fourth Motion to Seal filed on March 1, 2019 (Paper 97) and from other sensitive documents that the Board has already sealed in these proceedings in response to one or more previous motions to seal filed by Petitioner. To ensure

that the public has access to a complete and understandable file history without disclosing RPX's confidential information, Petitioner has tailored its redactions as narrowly as possible.

As discussed below, even if the Board finds the existence of some of the confidential information to be relevant, the specific details revealed in the documents is not necessary for the public to understand these proceedings, and the harm to RPX of disclosure of such details far outweighs any public need to access this detailed information.

The information Petitioner hereby moves to seal falls into five categories addressed separately below. There is good cause for sealing the information in each of these categories, and there are different reasons for the sensitivity of the information in each. If the Board were to decide that the information in any particular category should not be kept under seal, Petitioner requests the opportunity to provide revised redacted copies of the documents to preserve the confidentiality of the other categories of sensitive information.

A. Confidential Agreements

The Board previously granted (in Paper No. 53) Petitioner's motion (in Paper No. 27) to seal Exhibits 1020-1022, which are confidential agreements that detail sensitive confidential aspects of business relationships involving third parties, including highly confidential and sensitive financial terms. These

agreements, by their explicit terms, require RPX to keep them confidential (Ex. 1020 at §§ 4 and 9.9), and the Board recognized that their sensitive details should be kept under seal to protect not only RPX but also third parties with whom RPX has confidential business relations. *See* Paper No. 53.

On March 1, 2019, as part of these Remand Proceedings, Petitioner also moved to seal additional confidential agreements, which include highly confidential terms and aspects of business relationships, and by their explicit terms require that RPX treat them as confidential. *See* Paper No. 97 at 5-6.

References in Patent Owner's Opposition Brief, Petitioner's Reply Brief, and Exhibit 1096 to the detailed information in the above confidential agreements, which RPX is obligated to treat as confidential, correspond to the following redactions:

- Patent Owner's Opposition Brief at 1, 2, 8, 10, 14, 15, 16, 18, 19, 25, 26, 27, 29, 35, 36, 40.
- Petitioner's Reply Brief at 2, 7, 9, 11, 28, 29.
- Ex. 1096 at 1, 2, 3.

As explained in Petitioner's Fourth Motion to Seal (Paper No. 97 at 6-7), as a result of the appellate proceedings, some of RPX's previously confidential information, including that Salesforce was an RPX client when these IPRs were filed, is no longer confidential. *See Applications in Internet Time, LLC v. RPX*

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