

Filed on behalf of Petitioner

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Paper No. \_\_\_

UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE PATENT TRIAL AND APPEAL BOARD

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RPX Corporation

*Petitioner*

v.

Applications in Internet Time, LLC

*Patent Owner*

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Case IPR2015-01750  
Patent 8,484,111 B2

Case IPR2015-01751  
Case IPR2015-01752  
Patent 7,356,482 B2<sup>1</sup>

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**PETITIONER'S MOTION FOR ATTORNEYS' FEES**

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

Pursuant to the Board’s order dated May 6, 2016 (Paper 58 in IPR2015-01750 and -01752 and Paper 60 in IPR2015-01751; hereafter “Order”), RPX submits this Motion For Attorneys’ Fees.

The Board authorized the parties, via this Motion and an opposition, to “submit additional briefing on the extent of attorneys’ fees requested ... includ[ing] specific information as to the total amount of fees requested, details regarding the tasks performed underlying those fees, and reasons why the amount of those fees are reasonable.” Order at 14. The Order by its terms does not authorize further briefing on **whether** sanctions are appropriate, but rather solely on the **extent** of the attorneys’ fees. The question of **whether** sanctions are warranted is addressed in prior briefing, and the Board has already found that AIT breached the protective order and that RPX has “suffered harm” as a result of AIT’s conduct. Order at 3-7.

As discussed in its Motion for Sanctions (Paper 34), RPX requests only attorneys’ fees incurred after AIT’s repeated breach on November 30, which AIT committed after having been apprised of previous breaches. RPX remains uncompensated for outside counsel’s work prior to November 30 in dealing with the initial breaches (including the significant email exchanges with AIT’s counsel cited as Exs. 1029-1033, 1035 and 1036<sup>2</sup>), RPX’s own time and effort (e.g., via in-

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<sup>2</sup> Citations herein are to the Exhibit numbers used in IPR2015-01750 and -01751.

house counsel and other employees) in addressing AIT's breaches (including significant work after the repeated breach on November 30), and any and all harm to its client relationships and its business, including harm the Board found "that RPX has suffered" due to the disclosure of its confidential information to Messrs. Boebel and Knuettel. Order at 7.

As the Board also found, "RPX has suffered harm to the extent that it had to expend time and money enforcing clear terms of the Protective Order that AIT should have been following without RPX's efforts." Order at 7. The money that RPX had to expend included attorneys' fees for preparing and filing the Motion for Sanctions (and its accompanying Motion to Seal (Paper 31)), which the Board found meritorious and granted in part. The awarded sanctions included declarations that AIT had previously failed to provide and that the Board determined were "necessary, both to clarify the scope of the disclosure of RPX's confidential information and to comply with [the Board's] prior Order (Paper 23)." Order at 9. In addition, although the Board denied entry of RPX's specific proposed revised Protective Order, in ruling on the Motion for Sanctions the Board did enter a new and more restrictive Protective Order "given AIT's previous disregard of its obligations under the Protective Order." Order at 12.

The spreadsheet submitted as Exhibit 1050 provides a list of the time entries for which RPX seeks an award of attorneys' fees, including the timekeepers'

descriptions of the tasks performed. The hourly fees reflected on RPX's invoices for these time entries total \$15,952.90, but due to a discount extended to RPX on these charges, the total fees paid by RPX on these entries and requested in this motion is \$13,559.97. All of the time entries listed in Exhibit 1050 were incurred by RPX's outside counsel subsequent to AIT's November 30 breach and relate solely to addressing AIT's breaches of the protective order. These charges are conservative and understate the actual time and fees expended in several respects.

Partially redacted invoices from RPX's counsel to RPX for services rendered in December 2015 and January 2016 are submitted herewith as Exhibits 1051 and 1052. The time charges invoiced are for lead counsel Richard Giunta (listed as R. Giunta or RFG) and backup counsel Elisabeth Hunt (listed as E. Hunt or EHH) and for paralegal support from Virginia Weeks (listed as V. Weeks or VLW). The invoices are redacted to remove entries that did not involve addressing AIT's breaches. Some entries involved days where counsel addressed AIT's breaches but also did other substantive work on these proceedings. Those entries are shown in Exhibits 1051 and 1052, but their dollar values are not included in the listing of Exhibit 1050 and the total fees requested by this motion. (A listing of the mixed time entries that were incurred at least partially due to AIT's breaches, but for which attorneys' fees are not being requested, is provided separately as Exhibit 1053.) RPX would prefer to avoid any dispute about the extent of "partial"

time charges attributable to addressing AIT's breaches, and simply will forego asking the Board to be reimbursed for any of those time charges. Thus, the only time charges totaled in Exhibit 1050 are those in which the entirety of the work was performed solely because of AIT's breaches of the protective order. In addition, the fees charged for many of the line item entries in Exhibits 1051 and 1052 is well below what would have been charged if the services had been billed at the timekeepers' standard billable rates.

The requested fees of \$13,599,97 are reasonable. The total services performed after November 30 in connection with AIT's breaches and reflected in the time entries listed in both Exhibits 1050 and 1053 include extensive email correspondence with AIT's counsel (e.g., Exs. 1036, 1038, 1039, 1042, 1043) addressing whether there was a breach (including "enforcing clear terms of the Protective Order that AIT should have been following without RPX's efforts") (Exs. 1031, 1038; Order at 7), negotiating with AIT whether it would provide declarations that explained the scope of the breach, preparing for and conducting a telephone conference with the Board to explain AIT's conduct and request authorization to file a motion for sanctions, collecting and preparing 24 new exhibits to support the motion for sanctions, preparing a detailed and fact-intensive 15-page motion for sanctions, redacting the motion for sanctions, preparing and filing a motion to seal the motion for sanctions, and redacting and moving to seal

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