

Additional Slides

The Federal Circuit ordered the Board to further examine (1) RPX’s business model, (2) “RPX’s explanation of its own interests in the IPRs,” (3) Salesforce’s relationship with RPX, (4) the relevance of “the fact that Salesforce and RPX had overlapping Board members,” and (5) Salesforce’s interest in the IPRs and “whether RPX can be said to be *representing that interest*.” *AIT*, 1351, 1353-54.

RPX Opening Brief (Paper 98) at 4-5

§ 315(b) analysis. For example, the Board did not meaningfully examine two factors the Trial Practice Guide deems “[r]elevant”: Salesforce’s relationship with RPX and “the nature of” RPX as an entity. 77

AIT, 897 F.3d at 1351

AIT, 897 F.3d at 1353

a proxy of Springpath. *Id.* at 16. Here, the Board’s failure to consider Salesforce’s interest in the IPRs, its decision not to examine critically either RPX’s business model, its underestimation of the relevance, in the context presented here, of the fact that Salesforce and RPX had overlapping members on their respective boards of directors, J.A. 1401, and its decision to accept at face value RPX’s explanation of its own interest in the IPRs indicates that the Board did not adequately assess whether Salesforce actually “desire[d] review of the patent[s].” 77 Fed. Reg. at 48,759.

AIT, 897 F.3d at 1354

tion. The point is not to probe RPX’s interest (it does not need any); rather, it is to probe the extent to which Salesforce—as RPX’s client—has an interest in and will benefit from RPX’s actions, and inquire whether RPX can be said to be representing that interest after examining its relationship with Salesforce. The

AIT suggested certain pieces of evidence might “imply” RPX filed these IPRs to pursue Salesforce’s interests. *See, e.g., AIT*, 1352. Messrs. Chuang and Chiang address this evidence point-by-point, explaining how the evidence implies no such thing. *See* § II below citing, e.g., Ex. 1073, ¶¶ 30 (“the Federal Circuit’s above statements [about RPX’s business model, the reasons RPX files IPRs and the reasons clients join RPX] are wrong in several respects”), 31 (“Contrary to the Federal Circuit opinion’s mistaken inference, the prospect of RPX filing an IPR petition in the event that a client is sued by an NPE is not a ‘key reason clients pay RPX.’”); *see also AIT*, 1342 (referencing a “very significant payment shortly before the IPR petitions at issue here were filed” despite the Board’s citation of undisputed evidence that the payment amount and timing were unrelated to the IPRs), 1351 (citing the same evidence from RPX’s website and public filings that the Board (DI, 9) correctly noted *AIT* took out of context and/or mischaracterized), 1362 (Judge Reyna suggesting Salesforce may be insured by RPX when that has *never* been the case), 1354 (alleging the Board underestimated the relevance of a common board member, despite the Board correctly finding the board member “was not involved in the decision to file the instant Petition” (DI, 13)).

RPX Opening Brief (Paper 98) at 5-6

The Best Practices Guide had three purposes: (1) identify validity challenge candidates that would best serve RPX's interests; (2) "ensure RPX is complying with all contractual obligations" relating to confidential information received from patent owners under non-disclosure; and (3) "ensure that RPX would accurately name all [RPIs] under the evolving law on RPI for all future petitions RPX filed." Ex. 1090, ¶ 16; Ex. 2018, 1.

RPX Opening Brief (Paper 98) at 14

the Patent Trial and Appeal Board. When RPX petitions for review of a patent before the Patent Trial and Appeal Board, RPX considers the facts in light of the current case law to determine who the correct real parties in interest are. When RPX concludes, after considering the facts in light of the current law, that a client or other party is a real party in interest, RPX follows one of only two options: either RPX names that party as a real party in interest or co-petitioner in the proceeding, or RPX chooses not to file the petition. When RPX concludes, after considering the facts in light of the current law, that no client or party other than RPX is a real party in interest, RPX correctly names itself as the sole real party in interest in the proceeding. RPX follows its Best Practices (Ex. 2018) to ensure that RPX remains the sole real party in interest going forward in preparing and prosecuting proceedings in which the facts and law indicate that no other party is a real party in interest at the time the patent is identified as a candidate for a validity challenge.

Selection Criteria

The identification team will identify potential candidates based, in part, on the following factors -- candidate challenges will be chosen based on the totality of the circumstances, which may also take into account feedback received from other RPX team members:

Best Practices Guide (Ex. 2018) at 1 (cited Opening Brief at 13-18)

Best Practices

RPX best practices help ensure that RPX is complying with all contractual obligations and to ensure that RPX is and will be deemed by the PTAB and district courts as the sole real party-in-interest in all validity challenges unless another real party-in-interest is expressly identified. These best practices may be adjusted from time to time.

Best Practices Guide (Ex. 2018) at 1 (cited Opening Brief at 13-18)

"AIT's characterization of the Best Practices Guide as an alleged 'willful blindness' document designed to conceal the identity of unnamed RPIs is blatantly false." Ex. 1090, ¶ 19. The "Best Practices Guide was developed to ensure that RPX complies with the law and always names the proper RPI(s) in all IPRs[.]" *Id.* AIT's mischaracterization of the Best Practices Guide as a bad faith document with no legitimate purpose is refuted not only by Mr. Chiang's sworn testimony, but also by the fact that the document has purposes entirely unrelated to RPI, including to ensure RPX complies with its confidentiality obligations. *Id.*, ¶ 16; Ex. 2018, 1.

RPX Opening Brief (Paper 98) at 14

Second Chuang Dec. (Ex. 1073) ¶ 40 (cited Opening Brief at 16)

18. With respect to ensuring that RPX would comply with the law on RPI and accurately name all RPIs in all future petitions RPX filed, after RPX's petitions were denied in the *VirnetX Decisions*, the validity challenge identification team believed it to be paramount that in future petitions where RPX *was indeed* the sole RPI, it was not sufficient that RPX believed itself to be the sole RPI; but, additionally, best practices needed to be developed and followed to ensure that RPX would be "deemed by the PTAB and district courts as the sole real party-in-interest in all validity challenges unless another real party-in-interest is expressly identified." Accordingly, we reviewed various legal sources including the PTAB's Trial Practice Guide, *In reGuan, Taylor v. Sturgell*, and the *VirnetX Decisions*, and developed a set of best practices for RPX to abide by in selecting validity challenge candidates, where those best practices sought to conservatively restrict communications with third parties. The set of best practices we developed broadly (a) disallow RPX to take into account any suggestion for filing a validity challenge from any third party if that party would not agree to be named an RPI, (b) disallow RPX to discuss forthcoming validity challenges (e.g., by discussing strategy, feedback, or otherwise) with third parties who are not named RPIs, and (c) ensure that no unnamed third party could exert control over any aspect of RPX's validity challenge proceedings.

Chiang Dec. (Ex. 1090) ¶ 18 (cited Opening Brief at 14-15)

Best Practices

RPX best practices help ensure that RPX is complying with all contractual obligations and to ensure that RPX is and will be deemed by the PTAB and district courts as the sole real party-in-interest in all validity challenges unless another real party-in-interest is expressly identified. These best practices may be adjusted from time to time.

Best Practices Guide (Ex. 2018) at 1 (cited Opening Brief at 13-18)

19. It was the belief of the validity challenge identification team that compliance with the Best Practices Guide would ensure under the RPI law that RPX would not only in fact *be* the sole RPI when RPX filed future petitions alone, but would also be "deemed" as such by the PTAB and the courts. AIT's characterization of the Best Practices Guide as an alleged "willful blindness" document designed to conceal the identity of unnamed RPIs is blatantly false. The Best Practices Guide was developed to ensure that RPX complies with the law and always names the proper RPI(s) in all IPRs going forward from when the Best Practices Guide was developed.

Chiang Dec. (Ex. 1090) ¶ 19 (cited Opening Brief at 14-16)

RPX admits to serving as “an extension of the client’s in-house legal team” that helps “selectively clear” liability for infringement as part of its “patent risk management solutions.” Depending on the nature of the parties’

AIT Opposition (Paper 100) at 37

Our insight into the patent market allows RPX to serve as an extension of a client’s in-house legal team to better inform its long-term IP strategy. As necessary, we schedule client briefings to discuss our assessments of open market opportunities, relevant litigation landscape activity, key players and trends, as well as to provide specific technical and strategic analyses on potential threats.

Ex. 2006 (cited Opening Brief at 21; Second Chuang Dec., Ex. 1073, ¶ 35)

We can help after a litigation has begun

RPX is uniquely able to help members of our client network quickly and cost-effectively extricate themselves from NPE lawsuits. Our central, trusted position in the market enables us to negotiate with plaintiffs, acquire a license to the litigated patent and selectively clear our clients from the suit. Through June 30, 2014, we had achieved more than 575 dismissals for our clients in 74 litigations.

Ex. 2007 (cited Opening Brief at 22; Second Chuang Dec., Ex. 1073, ¶ 31)

Our Solution and Benefits to Our Clients

Ex. 2008 (cited Opening Brief at 22; Second Chuang Dec., Ex. 1073, ¶ 9)

We have pioneered an approach to help operating companies mitigate and manage patent risk and expense by serving as an intermediary through which they can participate more efficiently in the patent market. Operating companies that join our network pay an annual subscription fee and gain access to our patent risk management solutions. The subscription fee is typically based on a fee schedule that is tied to a client’s revenue or operating income and remains in place over the life of a membership, with adjustments limited to Consumer Price Index increases. By offering a fee schedule that does not change based on our patent asset acquisitions, we divorce the amount of fees charged from the value of our patent assets. We believe our pricing structure creates an alignment of interests with our clients, allowing us to be a trusted intermediary for operating companies in the patent market.

Defensive Patent Aggregation

The core of our solution is defensive patent aggregation, in which we acquire patent assets that are being or may be asserted against our current and prospective clients. We then provide our clients with a license to these patent assets to protect them from potential patent infringement assertions. We acquire patent assets from multiple parties, including operating companies, individual inventors, NPEs and bankruptcy trustees. We also acquire patent assets in different contexts, including when they are made available for sale or license by their owners or to resolve threatened or pending litigation against our clients or prospective clients.

RPX's argument also conflicts with RPX's public statements that its interests are "100% aligned" with those of clients such as Salesforce. Ex. 2015. RPX's arguments also conflicts with its statement that RPX serves as "an extension of the client's in-house legal team." Ex. 2006. RPX's arguments here also conflicts with its public statement that it "represent[s] clients who are accused of patent infringement, acting as their proxy to 'selectively clear' liability for infringement as part of RPX's 'patent risk management solutions,'" including "attacking patents that are or will likely be asserted against its clients." Exs. 2006–2008. RPX's only contradiction of these statements are declarations of RPX attorney-employees Chuang and Chiang

AIT Opposition (Paper 100) at 15

The essence of RPX's business model is to "serve as an extension of the client's in-house legal team," and to represent clients who are accused of patent infringement, acting as their proxy to "selectively clear" liability for infringement as part of RPX's "patent risk management solutions." See Ex. 2006; Ex. 2007; Ex. 2008 at 3-5, 26, 53. RPX's services include attacking patents that are or will likely be asserted against its clients. See, e.g., Ex. 2008 at 4 (services "include [] the facilitation of challenges to patent validity").

AIT Discovery Motion (Paper 8) at 1-2 (cited Reply at 6, 10)

We provide compelling cost savings

RPX's interests are 100% aligned with those of our clients. We work to ensure that each RPX client avoids more in legal costs and settlements each year than they pay RPX in subscription fees. We quantify the cost savings we have delivered collaboratively with the client. Together, we review the RPX acquisitions relevant to the client and determine a specific "avoided cost". The cumulative avoided cost is applied against the client's annual fee to calculate the dollar savings we have delivered for the year. We have been very successful delivering cost savings to the more than 220 members of our network and have had a consistently strong renewal rate each year.

Ex. 2015 (cited Opening Brief at 22; Second Chuang Dec., Ex. 1073, ¶ 36)

Our insight into the patent market allows RPX to serve as an extension of a client's in-house legal team to better inform its long-term IP strategy. As necessary, we schedule client briefings to discuss our assessments of open market opportunities, relevant litigation landscape activity, key players and trends, as well as to provide specific technical and strategic analyses on potential threats.

Ex. 2006 (cited Opening Brief at 21; Second Chuang Dec., Ex. 1073, ¶ 35)

- alleging **RPX** made a "public statement" characterizing itself as "attacking patents" "as [its clients'] proxy" when **RPX made no such statement**. Opposition, 15 (citing Exs. 2006-2008). AIT falsely attributed to RPX attorney argument quoted from AIT's pre-institution briefing, *Id.*, quoting Paper 8, 1-2 (*without attribution*).

Reply (Paper 101) at 6

AIT made much of the amounts Salesforce paid RPX. POPR, 11-12. But Salesforce's fees are [REDACTED]. Ex. 1073, ¶¶ 17-18; Ex. 1020, 1; Ex. 2019; Ex. 1081. Salesforce's 2015 fee, for example (Ex. 2019), was [REDACTED] (Ex. 1019, Attachment A, 23), and [REDACTED] (not of record but publicly available in RPX's later 10-K's).

RPX Opening Brief (Paper 98) at 26



Salesforce membership agreement dated [REDACTED] (Ex. 1020) at 1 (cited Opening Brief at 26)

VII. THE AIT-SALESFORCE LITIGATION AND CBMS

37. RPX has had no involvement in the AIT-Salesforce Litigation

(*Applications in Internet Time, LLC v. Salesforce.com, Inc.*, No. 3:13-CV-00628,

D. Nev.). RPX has had no contact with AIT related to the AIT-Salesforce

Litigation, has provided no direction to Salesforce in relation to the AIT-Salesforce

Litigation, and has no ability to control Salesforce's actions or positions in the

AIT-Salesforce Litigation. I had a telephone call with ██████████ of Salesforce

on January 7, 2014 (the only call I had with anyone from Salesforce on that day),

during which I provided a small amount of information that we at RPX knew about

the AIT-Salesforce Litigation, but I did not provide any direction or advice to

Salesforce regarding the litigation. RPX knew very little about the AIT-Salesforce

Litigation, and to the best of my recollection, the primary information I provided to

Salesforce was the information that RPX had had previous encounter with AIT's

litigation counsel.

Second Chuang Dec. (Ex. 1073) ¶ 37 (cited Opening Brief at 27)

39. RPX also had no involvement in the covered business method review

proceedings (CBMs) that Salesforce filed against the AIT Patents. In relation to

those proceedings, RPX had no contact with AIT, provided no direction to

Salesforce, and had no ability to control Salesforce's actions or positions.

Second Chuang Dec. (Ex. 1073) ¶ 39 (cited Opening Brief at 27)

a. January 2014 Communication

During a January 7, 2014 phone call, RPX indicated it was aware of the AIT-Salesforce Litigation, did not know AIT's expectations for its litigation campaign, but had previously communicated with AIT's outside counsel in unrelated NPE matters. *Id.*, ¶ 23. RPX provided no direction or advice to Salesforce regarding the litigation, about which RPX knew little. Ex. 1073, ¶ 37.

RPX Opening Brief (Paper 98) at 28, *citing* First Chuang Dec. (Ex. 1019) ¶ 23, Second Chuang Dec. (Ex. 1073) ¶ 37

c. August 2014 Communication

During an August 14, 2014 call to "address other issues," Salesforce informed RPX that Salesforce had filed CBM petitions against the AIT Patents and was no longer was interested in RPX reaching out to AIT. Ex. 1019, ¶ 26.

RPX Opening Brief (Paper 98) at 29, *citing* First Chuang Dec. (Ex. 1019) ¶ 26

b. February and June 2014 Communications

During a February 24, 2014 meeting and a June 30, 2014 call, both to discuss other topics, Salesforce expressed interest in RPX reaching out to AIT regarding AIT's expectations for its litigation campaign, but RPX never did so.

Ex. 1019, ¶¶ 24-25.

RPX had no obligation to reach out to AIT, and if RPX had done so it would have been on RPX's behalf—not Salesforce's. Ex. 1095, 39:17-40:6. RPX "would not reach out on behalf of Salesforce; ... we never reach out to an NPE or patent owner on behalf of a client. What we do - - the purpose of reaching out is to understand what expectations might be for a potential transaction where ***RPX would acquire***, potentially, license rights under their portfolio for the RPX membership." Ex. 1095, 39:25-40:6; *see id.*, 40:7-17 ("I interpreted their request as suggesting we should explore a potential membership deal with AIT"); *id.*, 40:18-23 ("membership deal ... is a relatively typical transaction where ***RPX acquires*** either the patents or the right to license the patents -- sublicense the patents to its membership.").

RPX Opening Brief (Paper 98) at 28-29, *citing* First Chuang Dec. (Ex. 1019) ¶¶ 24-25, Chuang Depo. (Ex. 1095) at 39:17-40:23

d. March 2015 Communication

In a “routine communication” on March 11, 2015, after denial of Salesforce’s CBM petitions, RPX asked if Salesforce would like RPX to try to obtain information from AIT, and Salesforce indicated it was not interested. *Id.*, ¶ 27; Ex. 1090, ¶ 32. “This would **not** have involved RPX taking any action in a representative capacity on Salesforce’s behalf. RPX would simply have communicated with AIT in an attempt to learn, for example, [REDACTED]. This would have been an example of RPX collecting market intelligence and sharing that data with a client, which is part of RPX’s core defensive patent aggregation service.” Ex. 1090, ¶ 32.

Before the March 11, 2015 call, RPX’s validity challenge identification team had **already** decided (in February 2015) to propose to [REDACTED] that RPX file IPR petitions challenging the AIT Patents. *Id.*, ¶ 33. A validity challenge was not a topic of consideration or discussion during the March 11, 2015 call, which “did not relate to, and did not affect or change, the determination to propose filing the AIT IPR petitions.” *Id.*, ¶¶ 32-33.

RPX Opening Brief (Paper 98) at 30, *citing* First Chuang Dec. (Ex. 1019) ¶ 27; Chiang Dec. (Ex. 1090) ¶¶ 32-33

e. April/May 2015 Communication

RPX “finally approved the proposal to file the AIT IPR petitions” on March 19, 2015. *Id.*, ¶¶ 33-35. Thereafter, out of an abundance of caution and consistent with the Best Practices Guide, RPX sought to avoid any communications with any third party about the AIT Patents. *Id.*, ¶¶ 34-35. That is why when Salesforce began to bring up the AIT-Salesforce Litigation during a call in April or May 2015, RPX immediately indicated it was not inclined to discuss that matter, and the discussion turned elsewhere. *Id.*; Ex. 1019, ¶ 28.

RPX Opening Brief (Paper 98) at 30-31, *citing* Chiang Dec. (Ex. 1090) ¶¶ 33-35, First Chuang Dec. (Ex. 1019) ¶ 28

First, Mr. Chiang’s sworn testimony is unequivocal, “nothing in that phone call indicated a ‘change of heart’ by Salesforce. Salesforce began to bring up the **subject** of the AIT-Salesforce Litigation, but did not indicate what Salesforce was intending to say about that subject.” Ex. 1090, ¶ 34 (emphasis original). The subject was immediately dropped and “RPX never learned what Salesforce had intended to say on the subject of the AIT-Salesforce Litigation.” *Id.* Salesforce gave no indication (express, implied, or otherwise) that it desired **any** action by RPX related to AIT. *Id.*, ¶¶ 34-35.

RPX Opening Brief (Paper 98) at 32, *citing* Chiang Dec. (Ex. 1090) ¶¶ 34-35

Second, any suggestion that RPX declined to discuss the AIT-Salesforce Litigation in the April/May 2015 call for an improper “willful blindness” purpose is unsupported and refuted by the evidence. RPX declined to discuss the AIT-Salesforce Litigation on that call “because RPX had *already* approved the determination to file the AIT IPR petitions, and in compliance with RPX’s Best Practices Guide, RPX wished to ensure that it did ‘not discuss forthcoming validity challenges with third parties’ who were not ‘a real party-in-interest.’” *Id.*

Third, when RPX made the final decision to file these IPRs, Salesforce had most recently indicated it was *uninterested* in RPX doing anything with respect to AIT. *Id.*, ¶¶ 32-35. The evidence establishes RPX did *not* “subjectively believe” Salesforce desired an RPX-filed IPR, as would be required for “willful blindness.” *Id.*; see *AIT*, 1355, citing *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 769 (2011).

RPX Opening Brief (Paper 98) at 32-33, citing Chiang Dec. (Ex. 1090) ¶¶ 32-35

Finally, the premise that RPX was working to ascertain whether Salesforce wanted RPX to file an IPR is directly refuted by all the evidence of record. Crediting AIT’s speculation would require ignoring the sworn testimony of two witnesses—Messrs. Chuang and Chiang, both lawyers in good standing—that directly refute it. Mr. Chiang is unequivocal: “RPX never worked in any way to ascertain Salesforce’s desires with respect to RPX challenging the AIT Patents’ validity, and never received any indication of Salesforce desiring RPX to file such a challenge.” Ex. 1090, ¶ 35. RPX was not seeking to, and did not need to, ascertain Salesforce’s desires because RPX made the decision to file these IPRs solely to pursue RPX’s *own* interests, not Salesforce’s. Ex. 1073, ¶ 38; Ex. 1090, ¶¶ 20-30; Ex. 1019, ¶¶ 7-12, 41-44.

RPX Opening Brief (Paper 98) at 33, citing Chiang Dec. (Ex. 1090) ¶¶ 20-30, First Chuang Dec. (Ex. 1019) ¶¶ 7-12, 41-44, Second Chuang Dec. (Ex. 1073) ¶ 38

The limited communication between RPX and Salesforce about the AIT litigation is far less relevant than communications the Federal Circuit and the Board have found do not make an unnamed party an RPI or privy. *Wi-Fi Remand*, 1337 (petitioner Broadcom indemnified defendants and filed amicus brief in appeal from district court); *WesternGeco*, 1322 (petitioner communicated with litigation defendants about whether prior art status of reference was disputed at trial); *Google v. Seven Networks*, 22 (petitioner cooperated with unnamed party “to file joint proposed claim constructions and joint validity contentions” in litigation).

Reply (Paper 101) at 13

a. Existence of Single Time-Barred Defendant Weighed in Favor

RPX wanted to prevent future lawsuits seeking nuisance settlements and, based on its NPE experience, believed those odds increase dramatically once the only defendant in the initial lawsuit becomes time-barred. *Id.*, ¶ 26. RPX believed “AIT would be emboldened by the CBM denial and seek to extract nuisance settlements from a large number of other companies unless RPX or another party challenged the patents via IPR *before* AIT filed additional lawsuits.” *Id.* (emphasis original). To prevent future lawsuits, RPX had to file an IPR “as soon as practicable after the initial defendant had lost its ability to challenge the patents before the PTAB.” *Id.*

The existence of a single time-barred defendant made it unlikely another party would file an IPR before AIT sued other parties, which increased the likelihood that RPX would not waste resources preparing a petition “only to have someone else file first.” Ex. 1019, ¶¶ 43, 47.

Thus, the existence of a single time-barred defendant weighed in favor of RPX filing the IPRs for reasons entirely unrelated to that defendant being an RPX client, and unrelated to extricating that defendant from litigation. Ex. 1090, ¶ 26.

RPX Opening Brief (Paper 98) at 43-44, *citing* Chiang Dec. (Ex. 1090) ¶ 26, First Chuang Dec. (Ex. 1019) ¶¶ 43, 47

To the contrary, that the single time-barred defendant was an RPX client weighed *against* RPX filing the IPRs. Ex. 1090, ¶ 28. RPX was concerned about “(a) the risk of costly protracted discovery associated with a likely RPI challenge by [AIT], [which would subject Salesforce’s confidential business information to discovery,] (b) the likelihood that [Salesforce] would react negatively if RPX’s IPRs were not successful in invalidating the AIT Patents (because an unsuccessful validity challenge would likely embolden the plaintiff patent owner), (c) the likelihood that [Salesforce] would react negatively if RPX took claim construction positions in the AIT IPRs that might be inconsistent with claim construction positions [Salesforce] planned to advance to support non-infringement positions in the litigation, and (d) the limited breadth (i.e., only a single defendant rather than many defendants) of the patent assertion campaign by [AIT] at the time the IPRs were filed.” *Id.*; see also Ex. 1019, ¶ 46.

RPX’s concerns were real. Costs of discovery and briefing on RPI in these proceedings have been substantial. And as AIT’s unauthorized disclosures demonstrate (see Paper 58), RPX’s concern about risks of revealing Salesforce’s confidential information was prescient.

RPX Opening Brief (Paper 98) at 44-45, *citing* Chiang Dec. (Ex. 1090) ¶ 28, First Chuang Dec. (Ex. 1019) ¶ 46

RPX had (and still has) no idea what Salesforce’s litigation strategy is, what (if any) invalidity challenges Salesforce might wish to bring in the litigation, or what claim construction positions Salesforce might advance to support non-infringement positions. Ex. 1090, ¶ 36; Ex. 1019, ¶ 46.

AIT suggested there was an absence of evidence “that RPX *actually believed* Salesforce would have reacted negatively” to RPX’s IPRs. *AIT*, 1355 (emphasis original). But Mr. Chiang makes clear he and the other members of RPX’s validity challenge identification team “considered it a *significant possibility* that Salesforce might react negatively to RPX’s *filing* of the AIT IPR petitions, and that Salesforce might have *adverse interests* in any IPR filed by RPX.” Ex. 1090, ¶ 36; Ex. 1094, 70:25-71:18; see also Ex. 1019, ¶ 46.

Mr. Chuang provided unrebutted testimony explaining the above-discussed potential conflicts of (1) the IPRs “emboldening [AIT] if unsuccessful,” (2) “creating conflicts with [Salesforce’s] litigation strategy,” and (3) being “forced in discovery” to disclose Salesforce’s confidential information. Ex. 1019, ¶ 46. Mr. Chiang corroborates Mr. Chuang’s testimony, providing additional evidence of those ways Salesforce’s and RPX’s interests may conflict. Ex. 1090, ¶ 36.

RPX Opening Brief (Paper 98) at 45-46, *citing* Chiang Dec. (Ex. 1090) ¶ 36, Chiang Depo. (Ex. 1094) at 70:25-71:18, First Chuang Dec. (Ex. 1019) ¶ 46

5. RPX Overcame Concerns About the Defendant Being an RPX Client

Regarding concerns about an RPI dispute, RPX believed it was “correct on the merits and would prevail in any RPI challenge.” Ex. 1090, ¶ 28; *see id.*, ¶¶ 32-36.

Regarding concerns that Salesforce would be upset if RPX’s IPRs were unsuccessful or inconsistent with Salesforce’s litigation positions, RPX “felt very strongly that the AIT Patents were facially invalid and that we had developed strong prior art grounds that would provide multiple independent bases to successfully invalidate the patents, such that we should not allow the concerns of an uninvolved party to influence our independent decision to file.” *Id.*, ¶ 28; Ex. 1094, 74:16-75-20.

Although only one defendant had been sued when the IPRs were filed, RPX was confident “AIT would sue other constituents of the software industry once it had extracted a settlement from the then-sole defendant in suit.” Ex. 1090, ¶ 28; *see also* Ex. 1019, ¶¶ 42-43.

Thus, despite the concerns associated with the sole defendant being an RPX client, RPX “decided to move forward with the AIT IPRs because the AIT Patents were overall very strong candidates for invalidation when the selection criteria in our Best Practices Guide were evaluated collectively.” Ex. 1090, ¶ 28. *See* Ex. 1019, ¶ 47 (“benefits to RPX ... outweighed any potential risks to its relationship with Salesforce”).

RPX Opening Brief (Paper 98) at 46-47, *citing* Chiang Dec. (Ex. 1090) ¶ 28, 32-36, Chiang Depo. (Ex. 1094) at 74:16-75:20, First Chuang Dec. (Ex. 1019) ¶¶ 42-43, 47

d. RPX's Public Materials Do Not Represent That RPX Has Authority To File IPRs for Clients

AIT faulted the Board for not considering *AIT*'s theory that "RPX had apparent authority to file the IPR petitions to benefit Salesforce, pointing to RPX's public statement that its 'interests are 100% aligned with those of [its] clients'."

AIT, 1357.

AIT's theory mischaracterizes the evidence, because "the statement that *AIT* quoted from RPX's 'FAQs' webpage (Ex. 2015) was clearly unrelated to IPRs, and in no way provided or suggested that RPX had any 'apparent authority' to file IPR petitions to benefit anyone." Ex. 1073, ¶ 36. The statement that RPX's "interests

are 100% aligned with those of [its] clients," relates to RPX's core patent aggregation service; not IPRs. *Id.* Indeed, as discussed in §§ II.D.3-6 below, "when RPX files IPRs solely in its own name, its interests may *not* be 100% aligned with its clients'." *Id.*

AIT's apparent authority theory also fails as a matter of law. *See* § III.C.4 below.

RPX Opening Brief (Paper 98) at 22-23, *citing* Second Chuang Dec. (Ex. 1073) ¶ 36

We provide compelling cost savings

RPX's interests are 100% aligned with those of our clients. We work to ensure that each RPX client avoids more in legal costs and settlements each year than they pay RPX in subscription fees. We quantify the cost savings we have delivered collaboratively with the client. Together, we review the RPX acquisitions relevant to the client and determine a specific "avoided cost". The cumulative avoided cost is applied against the client's annual fee to calculate the dollar savings we have delivered for the year. We have been very successful delivering cost savings to the more than 220 members of our network and have had a consistently strong renewal rate each year.

Ex. 2015 (cited Opening Brief at 22; Second Chuang Dec., Ex. 1073, ¶ 36)

29. To my knowledge, RPX has never had any authority (express, implied, apparent, or otherwise) to act on Salesforce's behalf (as Salesforce's agent, proxy, attorney-in-fact, or any other way) in challenging the validity of any patent (via IPR or any other type of validity challenge). To my knowledge, no suggestion was ever made to the validity challenge identification team that RPX had any such authority to act on Salesforce's behalf or that RPX should be motivated to file IPRs for Salesforce's benefit. I was involved in overseeing the preparation of the *AIT* IPR petitions and RPX's prosecution of the *AIT* IPRs, and RPX never conducted any aspect of the proceeding on Salesforce's behalf and instead pursued only RPX's own interests.

Chiang Dec. (Ex. 1090) ¶ 29 (cited Opening Brief at 22)

As additional evidence that Salesforce should be named an RPI in this proceeding, Patent Owner argues that “Salesforce is an important RPX client” and points to evidence of payments made by Salesforce to RPX. Prelim. Resp. 11 (citing Ex. 2019 (RPX/Salesforce billing information)). In particular, Patent Owner points to an increase in fees paid by Salesforce to RPX from 2014 to 2015, as well as the timing of the 2015 payment, and argues that “the sensible inference here is that Salesforce advanced RPX the cost of the petitions in [this and the related] IPRs.” *Id.* at 12; *see also id.*

RPX, however, provides evidence that these payments, and the timing thereof, were based on the '111 patent was asserted against Salesforce. Reply 10; Exs. 1020–1022. Because we find Patent

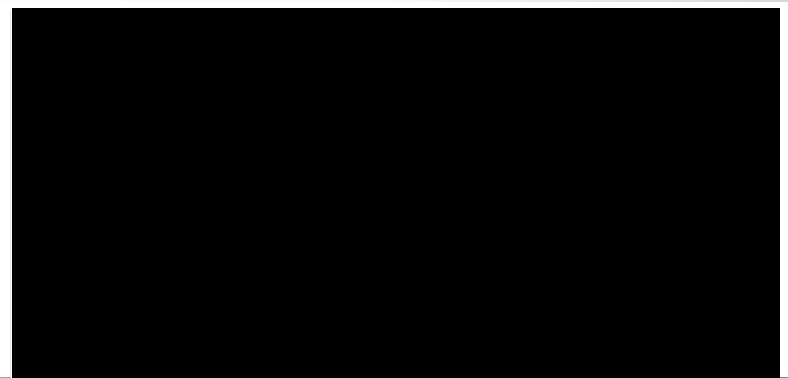
Institution Decision (Paper 51) at 12-13

Neither the amount nor the timing of Salesforce’s payments was determined or affected *in any way* by these IPRs. Ex. 1073, ¶ 19. That Salesforce made “a very significant payment shortly before the IPR petitions” were filed (*AIT*, 1342) is a coincidental consequence of the terms of Salesforce’s membership agreement.

See *Unified Patents v. Barkan Wireless Holdings*, IPR2018-01186, Paper 24, 7 (“*Barkan*”) (finding Unified Patents the sole RPI, crediting evidence that “Petitioner’s members pay annual membership fees according to a schedule that sets member fees based on a member’s annual gross revenue.”).



Salesforce membership agreement dated [REDACTED] (Ex. 1020) at 1 (cited Opening Brief at 26)



Salesforce membership agreement dated [REDACTED] (Ex. 1020) at 6 (cited Opening Brief at 25)

RPX Opening Brief (Paper 98) at 25-26

RPX: RPX's Services to Salesforce Do Not Include IPRs Reply (Paper 101) at 9

- Salesforce membership agreement:
Ex. 1020 ([REDACTED])
cited Opening Brief at 23, Reply at 9-10
- Salesforce Third Amendment: Ex. 1077
([REDACTED] expressly
[REDACTED])
cited Reply at 9-10
- Other RPX/Salesforce Agreements:
Exs. 1021-1022, 1076-1079
cited Reply at 10
- RPX Form Membership Agreements:
Ex. 1074, Ex. 1075
cited Opening Brief at 9, Reply at 10
- Second Chuang Dec. (Ex. 1073)
¶¶ 4-7, 12-36
cited Opening Brief at 9-12, 14-16, 18-27, 31, 40, 63
- Chiang Dec. (Ex. 1090) ¶ 29
cited Opening Brief at 25
- Chuang Depo. (Ex. 1095) at 64:24-65:8
cited Opening Brief at 23
- Salesforce payment records:
Exs. 2019, 1081
cited Reply at 10
- Public documents AIT itself cites:
Exs. 2006-2008, 2015
cited Reply at 10

AIT: IPRs Are Part of the Membership Agreement AIT Opposition (Paper 100) at 16

The most important documents – those comprising the Membership Agreement – readily cover services from RPX to Salesforce such as IPRs, reaching out and information sharing, even though not specified in those documents. Chuang and Chiang cite no basis for their opinions, and cannot, because there is no evidence that supports their opinions.

AIT Opposition (Paper 100) at 32

The focus is on Salesforce. There is no testimony from Salesforce. NONE. The natural inference is that Salesforce is an RPI and therefore could not aver to the contrary. Without testimony of Salesforce, RPX cannot overcome that inference, and RPX cannot carry its burden of persuasion.

AIT Opposition (Paper 100) at 17

20. RPX had no communication with Salesforce whatsoever regarding the filing of IPR petitions against the AIT Patents before the AIT IPRs were filed. Salesforce did not request that RPX file the AIT IPRs, was not consulted about the decision by RPX to file the IPRs, and did not communicate with RPX about the searching for or selection of prior art asserted in the AIT IPRs, the selection of counsel for the IPRs, the selection of an expert for the IPRs, or any other aspect of the IPRs. RPX had no obligation (contractual or otherwise) to Salesforce to file the AIT IPRs and Salesforce did not fund the AIT IPRs.

21. Subsequent to the filing of the AIT IPRs, the only communications between RPX and Salesforce regarding the AIT IPRs have been driven by AIT's discovery requests and were in connection with [REDACTED]

First Chuang Dec. (Ex. 1019) ¶¶ 20-21
(cited Opening Brief at 3, Reply at 17)

AIT's allegation that absence of "testimony from Salesforce" supports an "inference... that Salesforce is an RPI" (Opposition, 17) is nonsense, effectively alleging Salesforce must *become* involved for RPX to prove Salesforce is *uninvolved*. Salesforce has no power to submit testimony or "complain" (Opposition, 19) *because* it is uninvolved in these IPRs.

Reply (Paper 101) at 29

2 A Not to my knowledge. Where we file our -- any
3 petition solely naming RPX as the sole real party in
4 interest, we retain all control over it.
5 Q Okay.
6 A No company has a right to ask us to modify how
7 we prosecute those petitions in any manner.

Chiang Depo. (Ex. 1094) at 156:2-7 (cited Opening Brief at 3)

Salesforce.”). On this point, Chiang admitted that, aside from RPX’s alleged “primary motivation” for filing the petitions, “per se it leaves room for other motivations.” Ex. 1094, p. 51, line 10 (Chiang depo.). Indeed, “RPX has many reasons for filing IPR petitions.” Ex. 1019, para. 6 (Chuang 1st dec.). There is limited evidence of what RPX’s other motivations and reasons were. None of that evidence *excludes* helping Salesforce.

AIT Opposition (Paper 100) at 11

Messrs. Chuang and Chiang explain RPX’s motivations for filing these IPRs. Brief, 36-47. The *primary* motivation was benefitting RPX’s reputation (Brief, 10-11, 41-42), and two others were addressing public questioning of the quality/value of poor patents and establishing a credible validity challenge threat for future acquisition pricing. Brief, 37-42. AIT’s assertion that Mr. Chiang “admitted” RPX’s “primary motivation” “leaves room for other motivations” blatantly mischaracterizes his testimony, which said precisely the opposite. Opposition, 11; *see* § I.D above. AIT’s speculation that phantom “other motivations” included “helping Salesforce” (Opposition, 11-13) is refuted by sworn testimony. Ex. 1090, ¶ 27 (“any potential ancillary benefit to Salesforce was never... a positive motivating factor”); Ex. 1094, 55:20-22 (“I can’t think of any motivation that falls outside... my declaration.”); Brief, 36-47.

Reply (Paper 101) at 14-15

4 Q So when you say that RPX's primary motivation
5 or primary purpose was for its reputation, would you
6 agree that this leaves room for other motivations or
7 purposes?

8 MR. GIUNTA: Objection to form.

9 THE WITNESS: I wouldn't say it leaves room
10 for -- per se it leaves room for other motivations. But
11 certainly there's a connotation if you're saying primary
12 purpose, then there can be one secondary purpose, for
13 example.

Chiang Depo. (Ex. 1094) at 51:9-10 (cited Opposition at 11, Reply at 6)

20 A I -- I can't think of any motivation that
21 falls outside of the scope of paragraph 21 and 23 in my
22 declaration.

Chiang Depo. (Ex. 1094) at 55:20-22 (cited Reply at 15)

benefit Salesforce. Within the team, any potential ancillary benefit to Salesforce was never discussed by the validity challenge identification team as a positive motivating factor for challenging the AIT Patents' validity, and I did not consider any potential ancillary benefit to Salesforce to be a motivating factor.

Chiang Dec. (Ex. 1090) ¶ 27 (cited Opening Brief at 44, Reply at 15)

CAFC Op. at 1351-1352 (emphasis added). In addition to the numerous factors specified in its “best practices” policy, RPX could have considered others. Ex. 1095, p. 80, lines 15-19 (Chuang depo.). In this case, though, RPX has not disclosed what other factors it might have considered. Again, none of those factors precludes providing a benefit to its client Salesforce, which is the only relevant inquiry here.

AIT Opposition (Paper 100) at 13

38. If RPX had wanted to help extricate Salesforce from the AIT-Salesforce Litigation, or if Salesforce had wanted RPX to do so, the most straightforward way would have been for RPX to engage AIT in settlement discussions and pursue a potential acquisition of the AIT Patents or sublicensing rights to them, as RPX has successfully done in over 1,200 other cases. Indeed, AIT's counsel made multiple offers to engage in settlement discussion, but RPX consistently refused. See, e.g., Ex. 1082 (AIT counsel's September 8, 2015, first [...] ignoring AIT's settlement invitation). That RPX has remained committed to the AIT IPRs and has refused to even discuss the possibility of settlement with AIT demonstrates that RPX's own business interests are and have been RPX's primary motivation behind the AIT IPRs, and that RPX's conduct of the AIT IPRs is not determined by and does not represent Salesforce's interests.

Second Chuang Dec. (Ex. 1073) ¶ 38 (cited Opening Brief at 42)

27. The validity challenge identification team never received any suggestion from anyone outside the team to challenge the AIT Patents' validity to benefit Salesforce. Within the team, any potential ancillary benefit to Salesforce was never discussed by the validity challenge identification team as a positive motivating factor for challenging the AIT Patents' validity, and I did not consider any potential ancillary benefit to Salesforce to be a motivating factor.

Chiang Dec. (Ex. 1090) ¶ 27 (cited Opening Brief at 44)

24. I also agree with the statements in ii 38 of Exhibit 1073. If RPX's intention had been to help extricate Salesforce from its lawsuit with AIT, RPX would have engaged with AIT's multiple overtures toward settlement, for example to at least explore the potential terms of a license. RPX did not engage with AIT's settlement overtures, because RPX's motivation was to invalidate the AIT Patents for RPX's own business reasons, and not to end Salesforce's lawsuit. Even if Salesforce had settled out of the lawsuit on its own during the pendency of the AIT IPRs, RPX have continued to prosecute the IPRs given that RPX's intention was to invalidate the AIT Patents in RPX's own interests.

Chiang Dec. (Ex. 1090) ¶ 24 (cited Opening Brief at 42)

Even RPX admits that the Membership Agreement does not fully delineate its relationship with Salesforce. RPX admits that it has provided several benefits to Salesforce: patent licenses, information and “reaching out.” See Ex. 1073, para. 8 (Chuang 2nd dec.) and Ex. 1095, p. 65, lines 9-16, p. 116, line 7 – p. 117, line 9 (Chuang depo.). Yet, the Membership Agreement *specifies* [REDACTED] Ex 1020, Section 2. IPRs fall naturally in the spectrum between the patent license benefits specified in the Membership Agreement, and the information sharing and reaching-out that RPX admits it [REDACTED] Salesforce without a written obligation to do so. See also Ex. 2006 (“More generally, our clients receive quarterly reports on our portfolio activity; monthly, customized reports on our acquisition pipeline; and a weekly subscription to summaries on significant IP industry news and developments. We also sponsor periodic networking and education events for our clients.”)

AIT Opposition (Paper 100) at 14

23. RPX has never had any authority (express, implied, apparent, or otherwise) to act on Salesforce's behalf (as Salesforce's agent, proxy, attorney-in-fact, or any other way) in challenging the validity of any patent (via *inter partes* review or any other type of validity challenge). As discussed in ifif 10-11, 16, 19 above, the typical RPX membership in general, and Salesforce's RPX membership in particular, does not include certain services outside of RPX's core defensive patent aggregation solution, and does not include RPX filing patent validity challenges on Salesforce's behalf. It would not have been reasonable for Salesforce to have had any expectation that RPX would file or pursue the AIT

core solution.”) Another example of an additional service for which a client must contract specifically, explicitly and separately is RPX's participation as a filer of a patent validity challenge for the benefit of the client, and since 2014 RPX has also required that contracting client to be named as a co-filer of the validity challenge. (See § VI below.) For each of the above-referenced additional services, unless a client contracts specifically, explicitly and separately for that service, RPX does *not* provide that service to the non-contracting client. A non-contracting client would have no reasonable expectation that RPX would provide any of these additional services to the client who has not contracted and paid for the additional service(s). I have served in a leadership role for Client Relations I Client Services at RPX for more than six years, and am unaware of any non-contracting client ever expressing an expectation that the non-contracting client should or would receive from RPX any of the above-referenced additional services that the non-contracting client did not specifically, explicitly and separately contract for.

Second Chuang Dec. (Ex. 1073) ¶ 10 (cited Opening Brief at 11-13)

IPRs on Salesforce's behalf, just as it would not be reasonable for any RPX client to expect RPX to file or pursue a validity challenge against a patent that had been asserted against that client, absent the client specifically, explicitly and separately contracting for RPX to do so.

Second Chuang Dec. (Ex. 1073) ¶ 23 (cited Opening Brief at 25)

Attorney argument, such as that presented by Chuang and Chiang, is not evidence.⁷ *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1246 (Fed. Cir. 2018). Couching attorney argument within a self-serving declaration does not make it evidence. The declarations of Chuang and Chiang about RPX's business and its relationship with Salesforce, as related to RPI, is mere opinion and conjecture. They do not cite any documentary evidence in support of their opinions about the services Salesforce purchases from RPX. And most of their testimony is hearsay recitations about communications or actions by others within RPX, or worse at Salesforce, who did not provide testimony at all.

AIT Opposition (Paper 100) at 32

Second Chuang Dec. (Ex. 1073) cites:

Exs. 1020-1022 (agreements) – ¶ 12, 14-15, 17-20
Exs. 1074, 1075 (form agreements) – ¶¶ 4-7, 14-15, 21
Exs. 1076-1080 (agreements) – ¶ 13
Exs. 1082-1089 (emails) – ¶ 38
Exs. 2006-2007, 2015 (RPX website) – ¶¶ 31, 35-36
Ex. 2008 (RPX 10-K) – ¶¶ 3, 8-11, 34-35
Ex. 2018 (Best Practices) – ¶¶ 26, 40
Ex. 2019, 1081 (payment records) – ¶¶ 17-20

First Chuang Dec. (Ex. 1019) cites:

Attachment A (RPX 10-K) – ¶ 7
Attachment B (RPX website) – ¶ 8
Attachment C (ADA, EFF websites) – ¶ 41
Exs. 1020-1022 (agreements) – ¶¶ 33, 45
Ex. 1024 (Tech tags) – ¶ 37
Ex. 1025 (email) – ¶ 21
Ex. 2018 (Best Practices) – ¶¶ 14-15, 39, 43, 45
Ex. 2022 (communications) – ¶ 32
Ex. 2025 (Best Practices) – ¶ 39

Chiang Dec. (Ex. 1090) cites:

AIT Patents – ¶ 21
Ex. 1013 (Examiner Note) – ¶ 21
Exs. 1091-1092 (communications) – ¶ 6
Ex. 1093 (complaint) – ¶ 22
Ex. 2008 (RPX 10-K) – ¶ 32
Ex. 2018 (Best Practices) –
¶¶ 12-13, 16-18, 25-26, 35
Ex. 2025 (Best Practices) – ¶ 13

Providing Complementary Solutions – We believe we can offer complementary solutions that further mitigate patent risks and expenses for operating companies, including the facilitation of challenges to patent validity, coordinating prior art searches, and other services intended to improve patent quality and reduce expenses for our clients.

2013 RPX 10-K (Ex. 2008) at 4 (cited Opening Brief at 12)

11. The mention in RPX's 2013 Form 10-K Annual Report of "facilitation of challenges to patent validity" (Ex. 2008 at 4) does *not* refer to RPX filing a patent validity challenge on behalf of an unnamed client, and I am unaware of anything that would reasonably indicate to any client or prospect that it does.

"[F]acilitation of challenges to patent validity" refers to RPX providing some assistance that would aid (i.e., "facilitate") in some way a client's *own* validity challenge, where the client is a named filer of the validity challenge. This could

be, for example, in the form of RPX providing potentially relevant prior art to the client, which the client could utilize in the client's own validity challenge. RPX

does not file validity challenges in its own name while acting on behalf of an unnamed client. In cases where RPX participates as a filer of a patent validity

challenge for the benefit of a specific client, the client must contract specifically, explicitly and separately for that service, and since 2014 RPX has required the client to participate as a named co-filer of the validity challenge. (See § VI below.)

clients." As discussed above in if 11, "the facilitation of challenges to patent validity" does *not* mean RPX will file IPRs in its own name on behalf of unnamed clients who have been sued by NPEs. It means that RPX may *facilitate* a client's *own* validity challenge, where the client is a named filer of the validity challenge. As discussed above in iff 10-11, 25-27, RPX does not file IPRs for the benefit of specific clients unless those clients specifically contract for that service and are named as co-petitioners. Salesforce has never contracted for any validity challenge service from RPX.

Second Chuang Dec. (Ex. 1073) ¶ 34 (cited Opening Brief at 19)

Second Chuang Dec. (Ex. 1073) ¶ 11 (cited Opening Brief at 13, 19)

AIT makes much of RPX gathering and sharing market intelligence with its clients without explicitly describing this in the membership agreement.

Opposition, 14. But “reaching out” to patent owners and gathering information are “an inherent” and “necessary part” of RPX’s core “transactional acquisition” service, because RPX cannot acquire/license patent rights without “reaching out” to patent owners, and must gather information from clients and others to understand the market and identify acquisition targets. Ex. 1095, 65:9-16, 116:7-117:9; *see also* Brief, 9, *citing* Ex. 2008, 1-4.

Reply (Paper 101) at 11

9 Q We talked earlier about reaching out.
10 Is reaching out something that's specified as a
11 service that RPX provides to its members?
12 MR. GIUNTA: Objection. Form.
13 THE WITNESS: I would say that the need to reach
14 out to NPEs is a necessary part of our core services in
15 order to explore the range of transactional opportunities
16 available to RPX.

Chuang Depo. (Ex. 1095) at 65:9-16 (cited Reply at 11)

6 BY MR. SEREBOFF:

7 Q Now, in your second declaration, Mr. Chuang, in
8 paragraph 8, I recalled that you talk about information
9 gathering as part of RPX's core services.

10 Could you please explain to me this business of
11 RPX gathering information and providing information to its
12 members as part of the core services?

13 MR. GIUNTA: Objection. Form and scope.

14 THE WITNESS: Yeah. So it's really a -- we view
15 it as a -- an inherent part of our core services from the
16 standpoint of we are -- in order for us to be successful
17 doing these transactions and understanding best what the
18 values of these rights should be, we collect and aggregate
19 as much information as we can, public -- and mostly public
20 information, and we, as part of our regular interaction
21 with our clients, try to get that information to our
22 clients because it's helpful to them, but it's also
23 helpful for us for them to know it because it facilitates
24 the conversations that we want to have with them to try to
25 understand how to prioritize and value the different
1 opportunities that we see in the market.

Chuang Depo. (Ex. 1095) at 116:7-117:9 (cited Reply at 11)

Chuang is likewise unreliable. As even Chuang admits there were relevant communications between RPX and Salesforce which were not disclosed in discovery but which he described in his deposition. Ex. 1095, p. 47, lines 16-24 (Chuang depo.). Such a glaring oversight reflects the utter lack of reliability of both Chuang as a witness and RPX's discovery responses.

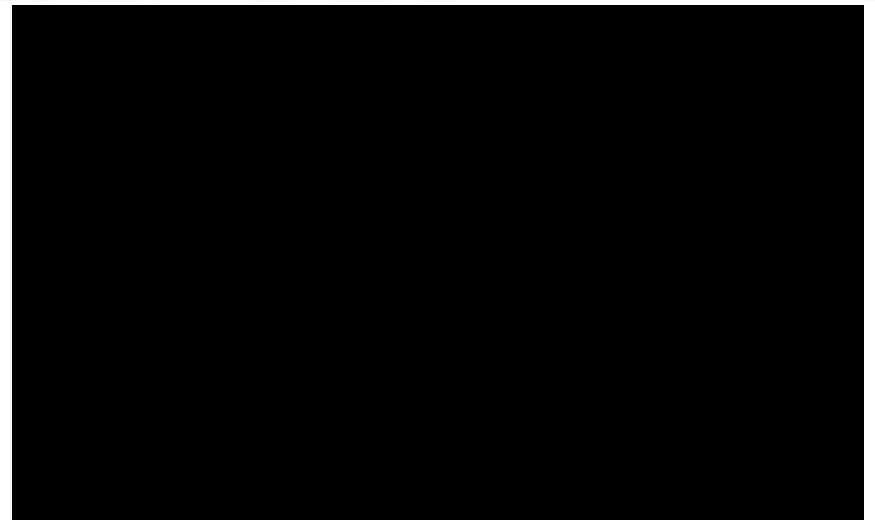
AIT Opposition (Paper 100) at 34

21. Subsequent to the filing of the AIT IPRs, the only communications between RPX and Salesforce regarding the AIT IPRs have been driven by AIT's discovery requests and were in connection with [REDACTED] [REDACTED], to notify Salesforce regarding any potential production of Salesforce's confidential information. These communications consisted of a phone call between [REDACTED] [REDACTED] and [REDACTED] [REDACTED] of RPX and [REDACTED] [REDACTED] and [REDACTED] [REDACTED] of Salesforce on [REDACTED] [REDACTED] and an email from [REDACTED] [REDACTED] of RPX and [REDACTED] [REDACTED] of Salesforce (Bates Range RPX000047-RPX000067), which together informed Salesforce of the existence of the AIT IPRs and AIT's discovery requests seeking Salesforce confidential information (e.g., Salesforce's membership agreement with RPX).

First Chuang Dec. (Ex. 1019) ¶ 21 (cited Reply at 17)

16 Now, paragraph 21 of your first declaration
17 further references an e-mail from [REDACTED]. Do you
18 see that?
19 A Yes.
20 Q Same sentence.
21 And can you tell me where that e-mail is listed
22 in any of these two exhibits?
23 MR. GIUNTA: Objection. Form.
24 THE WITNESS: I can't find it.

Chuang Depo. (Ex. 1095) at 47:16-24 (cited Opposition at 34, Reply at 17)



Ex. 1025 (filed in 2015) (RPX000047-RPX000067) (cited Reply at 17)

Furthermore, conflicts in the testimony of Chuang and Chiang demonstrate that neither is reliable. Indeed, there can be no doubt that statements in the Chiang declaration were wrong. Early in his declaration, Chiang states,

5. All communications from before November 3, 2015, between RPX and Salesforce.com, Inc. (“Salesforce”) regarding AIT or any AIT patent were served on AIT on November 3, 2015, and all such communications from between November 3, 2015, and December 7, 2015, were served on AIT on December 7, 2015.

This statement is entirely FALSE. No such communications were ever served by RPX on AIT. AIT is utterly in the dark about those communications, and so is the Board. Further proof of Chiang as an unreliable witness arises from his deposition in which he attested to the truth of those statement in his declaration, Ex. 1094, p. 78, line 19 – p. 81, line 2 (Chiang depo.), even though they were false.

AIT Opposition (Paper 100) at 33-34

Re: RPX v. Applications in Internet Time, LLC
Case Nos. IPR2015-01750; IPR2015-01751; and IPR2015-01752

Dear Counsel,

Please find enclosed for service copies of the Petitioner’s Updated List of Exhibits and Exhibit as filed in each of the above-referenced matters with the PTAB today.

Please also note that earlier this afternoon a document production was served upon you via secure LeapFILE Transfer to the service email address listed above. This was a copy of a communication dated December 1, 2015. This document, had it existed at the time RPX’s document production was due, would have been responsive to document Request No. 3 in the above-identified proceedings.

If you have problems downloading this LeapFILE transfer, please let me know.

December 2015 service email to AIT (Ex. 1097) (cited Reply at 17)

RPX has produced an e-mail dated [REDACTED] (Bates Range RPX000047-RPX000067) and a Declaration of William W. Chuang (“the Declaration”) (Bates Range RPX000099-RPX000223) that summarizes oral communications that occurred between RPX and Salesforce employees relating to the Challenged Patents, the Related IPR Proceedings and/or the Salesforce Litigation. To the best of RPX’s knowledge, as explained in the Declaration, these are the only communications between RPX and Salesforce relating to the Challenged Patents, the Related IPR Proceedings, or the Salesforce Litigation, whether by name, code name or euphemism, and there have been no such communications between outside lawyers acting on behalf of RPX and Salesforce.

RPX has also produced a Daily Litigation Alert e-mail dated November 11, 2013, (Bates Range RPX000038-RPX000046) that mentions the filing of the Salesforce Litigation. As explained in the Declaration, it is possible that one or more Salesforce employees may have received this e-mail; however, it is not known to RPX whether any Salesforce employees were subscribers to that particular Daily Litigation Alert.

RPX November 2015 Discovery Responses (Ex. 1096) at 3 (cited Reply at 17)

D. AIT Makes Repeated Blatant Misrepresentations

AIT has misrepresented the facts before (*see* Paper 51 (“Decision-Institution”), 9-10; Paper 28, 15), and is at it again:

- alleging “Chiang admitted” RPX’s primary motivation for filing the petitions “per se... leaves room for other motivations” (Opposition, 11), when Mr. Chiang said the *exact opposite*: “I wouldn’t say it leaves room for – per se it leaves room for other motivations.” Ex. 1094, 51:9-10.
- alleging an “utter lack of reliability” of Mr. Chuang and RPX’s discovery responses because an email allegedly was “not disclosed in discovery” (Opposition, 34, *citing* Ex. 1095, 47:16-24), even though it *was produced* as RPX000047-RPX000067 *and filed* as Ex. 1025.
- alleging RPX’s petition for certiorari sought review of whether “the Federal Circuit’s ‘benefits-plus-relationship’ test is incorrect” (Opposition, 8), when the *only* question presented was “[w]hether 35 U.S.C. § 314(d) bars judicial review.” Cert. Pet., 2019 WL 697664, i.
- alleging *RPX* made a “public statement” characterizing itself as “attacking patents” “as [its clients’] proxy” when *RPX made no such statement*. Opposition, 15 (citing Exs. 2006-2008). AIT falsely attributed to RPX attorney argument quoted from *AIT’s* pre-institution briefing. *Id.*, quoting Paper 8, 1-2 (*without attribution*).

Reply (Paper 101) at 5-6

2. AIT's Acquiescence Theory Fails

AIT's new (*waived*) theory that Salesforce somehow made RPX its proxy by "acquiescence" is ungrounded in fact or law.

Whether Salesforce [REDACTED] (Opposition, 18) has no bearing on whose interests RPX represents in these IPRs. Salesforce's "[REDACTED]" annual fee (*id.*), [REDACTED], pays for rights under *thousands* of patents. Brief, 23-26; *see* § II.B.1 above. Speculation that "Salesforce did not protest... [REDACTED]" (Opposition, 19) is unsupported, and even if true, would be unremarkable since Salesforce's [REDACTED] [REDACTED]. Ex. 1073, ¶¶ 17-19. AIT misleadingly quotes Mr. Chuang's testimony that Salesforce was [REDACTED] (Opposition, 26), omitting that *what* Salesforce was [REDACTED] [REDACTED]—had *nothing* to do with IPRs. Ex. 1095, 60:21-61:4.

Reply (Paper 101) at 28-29

16. To infer any kind of corporate relationship between two otherwise unrelated corporations² – that there is an “overlap” between the corporations – merely because one individual sits on each of their boards of directors is, quite simply, wrong. As noted in the Spencer Stuart Index (Exhibit 1067) at page 17, 62.5% of independent directors of S&P 500 companies serve on two or more public company boards of directors. For example, General Colin Powell, in

Lipshaw Dec. (Ex. 1066) ¶ 16 (cited Opening Brief at 35-36, Reply at 16)

41. Prior to the filing of the AIT IPR petitions and for some time afterward, I was unaware that Mr. Sanford Robertson served on Salesforce's board of directors, and I was unaware that there was any member of RPX's board of directors who was a member of Salesforce's board of directors.

Second Chuang Dec. (Ex. 1073) ¶ 41 (cited Opening Brief at 36)

51. I personally attended meetings with the validity challenge identification team where the decision was made to recommend to the approval committee the filing of the AIT IPRs, and no mention was ever made of Mr. Robertson, the fact that he serves on the Board of Salesforce, or that any member of RPX had received any suggestion from Mr. Robertson that RPX should consider filing the AIT IPRs.

First Chuang Dec. (Ex. 1019) ¶ 51 (cited Opening Brief at 36)

21. Service as an independent director of two or more public companies would not, by itself, suggest any relationship (controlling or otherwise) between two unrelated public companies.

Lipshaw Dec. (Ex. 1066) ¶ 21 (cited Opening Brief at 35-36, Reply at 16)

14. During the time period when RPX considered and ultimately decided to file the AIT IPR petitions, and up through the time RPX filed the AIT IPR petitions, I was not aware that Mr. Sanford Robertson served on the board of directors of Salesforce. Prior to and at the time RPX filed the AIT IPR petitions, I was unaware that any member of RPX's board of directors was a member of Salesforce's board of directors.

15. I was one of the three members of the validity challenge identification team that identified the AIT Patents as candidates for IPRs, and I have first-hand knowledge of the reasons RPX decided to file the petitions for the AIT IPRs. The validity challenge identification team received no suggestion from Mr. Robertson or any other member of RPX's board of directors that RPX should consider filing the petitions for the AIT IPRs, and no input whatsoever from any member of RPX's board of directors relating in any way to RPX's decision to file the petitions for the AIT IPRs, to the substance of those petitions, or to any aspect of the manner in which RPX prepared or prosecuted those IPRs. To my knowledge, Mr.

Chiang Dec. (Ex. 1090) ¶¶ 14-15 (cited Opening Brief at 36, Reply at 14-15)