

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

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

PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY

¹ This motion addresses issues common to all three cases. As required by the Board's October 2, 2015 order in each, the word-for-word identical paper is filed in each proceeding identified in the heading.

Exhibit List

Exhibit	Description
2001	Patent Owner's Proposed Discovery Requests to Petitioner
2002	Complaint filed in <i>Applications in Internet Time, LLC v. Salesforce Inc.</i> , No. 3:13-cv-00628 (D.Nev.), filed on November 8, 2013.
2003	Return of Service of Summons in a Civil Action in <i>Applications in Internet Time, LLC v. Salesforce Inc.</i> , No. 3:13-cv-00628 (D.Nev.), dated November 20, 2013.
2004	Docket Report for <i>Applications in Internet Time, LLC v. Salesforce Inc.</i> , No. 3:13-cv-00628 (D.Nev.)
2005	Scheduling Order in <i>Applications in Internet Time, LLC v. Salesforce Inc.</i> , No. 3:13-cv-00628 (D.Nev.) dated May 18, 2015.
2005	RPX Presentation, "The Market for Patents and Patent Litigation" (May 21, 2012).
2006	RPX's "Client Relations" webpage at http://www.rpxcorp.com/rpx-membership/rpx-client-relations/ .
2007	RPX's "Why Join" webpage, "We can help" expanded, at http://www.rpxcorp.com/why-join-rpx/ .
2008	RPX's 2013 Annual Report.
2009	RPX Board of Directors, http://www.rpxcorp.com/rpx-team/
2010	Salesforce Board of Directors, http://www.salesforce.com/company/leadership/board-of-directors/
2011	Sandy Robertson's bio from Francisco Partners' website, http://www.franciscopartners.com/team/sanford-robertson
2012	T4A.org directors and members, http://www.t4a.org/about-us/board/
2013	T4A.org About Us page, http://www.t4a.org/about-us/
2014	"Tech Billionaire Marc Benioff Donates Generously To Politicians And This Is What He Wants In Return," http://www.businessinsider.com/what-marc-benioff-wants-from-politicians-2014-9
2015	RPX's "Why Join" webpage, "We provide" expanded, at http://www.rpxcorp.com/why-join-rpx/
2016	RPX's head office location, http://www.rpxcorp.com/about-rpx/
2017	Salesforce's head office location, http://www.salesforce.com/company/locations/

I. Relief Requested

Patent Owner Applications in Internet Time, LLC (AIT) asks the Board to compel Petitioner RPX Corporation (RPX) to produce documents relevant to identifying real-parties-in-interest, as set forth in the proposed document requests provided as Exhibit 2001. The Board authorized this motion in its October 1, 2015 Order. Paper 7 at 3. Patent Owner expects that the requested discovery, together with additional information, will make a compelling showing that RPX is the agent of un-named third party Salesforce.com, Inc. (Salesforce), thus establishing that the petitions are time-barred under 35 U.S.C. § 315(b).

II. Factual Background

AIT is a consulting company with patented technology that enables individuals to develop and deploy business applications through a meta-data driven application platform without being dependent on complex programming. It has three patents and one pending application, all related by continuation.

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”).

At first, petitioner’s choice to challenge two AIT patents would seem to be an odd one: AIT has not sued or threatened to sue RPX on any patent, AIT never offered to license any patent to RPX, and RPX does not make, use or sell any commercial product relevant to AIT’s patents. RPX seemingly has no interest at all of its own, and therefore could not be a real party in interest.

The underlying facts, however, offer a straight-forward explanation: Salesforce is the principal, RPX is the agent, and Salesforce is therefore the true real party in interest. As counsel for RPX admitted during the hearing, RPX has filed seven groups of IPRs, and in at least two, real party in interest (RPI) has been addressed. In one group, the Board denied institution of RPX’s petitions for IPR, finding that RPX acted as proxy for its time-barred client, Apple, Inc. *See RPX Corp. v. VirnetX, Inc.*, IPR2014-00171, Paper 57 at 7-10 (June 23, 2014). In the second case, the Board found reason to believe that RPX was again acting as a proxy and concealing the real party in interest. See Decision Granting Patent Owner’s Motion for Additional Discovery, *Farmwald v. ParkerVision, Inc.*, IPR2014-00946, IPR2014-00947 and IPR2014-00948, Paper 25, 23, 23,

respectively (Feb. 20, 2015) (patent owner alleged that RPX is acting as the proxy for its client Qualcomm).²

Sometimes, as in *VirnetX*, RPX acts overtly on behalf of its clients. After losing in *VirnetX* though, one naturally expected RPX to learn from its mistakes. That seems to be the case here and in *ParkerVision*. After *VirnetX*, like a dutiful agent (or extension of an in-house legal team), RPX seems to have taken a more autonomous guise in its IPR efforts. Nonetheless, RPX continues to act with apparent authority and for the benefit of its principal/client.

The issue of real party interest has evolved, and the Board continues to recognize new fact patterns which demonstrate the presence of an un-named RPI. As stated in the Trial Practice Guide, whether a party who is not a named participant in a given proceeding is a “real party-in-interest” to that proceeding “is a highly fact-dependent question.” 77 Fed. Reg. at 48,759 (citing *Taylor v. Sturgell*, 533 U.S. 880 (2008)). “[T]he spirit of that formulation as to IPR . . . proceedings means that, at a general level, the ‘real party-in-interest’ is the party that *desires review* of the patent. Thus, the ‘real party-in-interest’ may be the

²Because of its procedural posture, the ultimate issue of RPI in *ParkerVision* has not been addressed by the Board.

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