

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

Before LYNNE E. PETTIGREW, MITCHELL G. WEATHERLY, and
JENNIFER MEYER CHAGNON, *Administrative Patent Judges*.

CHAGNON, *Administrative Patent Judge*.

ORDER

Conduct of the Proceedings

37 C.F.R. § 42.5

Authorizing Motion for Sanctions

37 C.F.R. § 42.12

Authorizing Motion to Withdraw Counsel

37 C.F.R. § 42.10(e)

¹ This order addresses issues common to all cases; therefore, we issue a single order to be entered in each case.

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On December 3, 2015, a conference call was held among counsel for both parties and Judges Pettigrew, Weatherly, and Chagnon. During the call, several issues were raised, each of which is discussed below.

Additional Briefing on Identification of Real-Parties-In-Interest:

In its Preliminary Response (Paper 21², “Prelim. Resp.”), Patent Owner, Applications In Internet Time, LLC, raises the issue of whether Petitioner, RPX Corporation, has identified properly all real-parties-in-interest (“RPI”) in these proceedings. *See* Prelim. Resp. 2–20. Petitioner requested authorization to file a reply to the Preliminary Response, limited to the issue of whether all RPIs have been identified. Patent Owner did not oppose Petitioner’s request, but requested authorization to file a sur-reply. During the call, we authorized Petitioner to file a reply, limited to the issue of the identification of real-parties-in-interest. The reply is limited to fifteen (15) pages and is to be filed by December 14, 2015. We also authorized Patent Owner to file a sur-reply, similarly limited in subject matter. The sur-reply is limited to five (5) pages and is to be filed no later than seven (7) business days after the date on which Petitioner files its reply.

As indicated during the call, Petitioner may include relevant testimonial evidence with its reply. Patent Owner will have an opportunity to cross-examine any such witnesses if trial is instituted in these proceedings.

Protective Order:

With its Preliminary Response, Patent Owner filed a Motion for Entry of Protective Order, Motion to Seal, and Motion to Redact. Paper 19. The

² The relevant papers have been filed in each of the three cases. Citations are to the papers filed in IPR2015-01750 for convenience.

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Motion requests entry of the Default Protective Order set forth in the Office Patent Trial Practice Guide. *Id.* at 1 (citing 77 Fed. Reg. 48,756, 48,771 (Aug. 14, 2012)). During the call, we reminded the parties that a protective order is not automatically entered in Board proceedings. Instead, as required by the rule, unless otherwise ordered a party must file a motion requesting that the default or other proposed protective order be entered by the Board. 37 C.F.R. § 42.54(a); *see* Trial Practice Guide, 77 Fed. Reg. at 48,760.

A proposed protective order must accompany the motion. *See* 37 C.F.R. § 42.54(a). No such proposed order was submitted with Patent Owner's Motion. It is our understanding the parties previously agreed to be bound by the Standing Default Protective Order (Trial Practice Guide, 77 Fed. Reg. at App. B). During the call, we instructed the parties that Petitioner or Patent Owner is to file, as an exhibit, a signed copy of the proposed protective order. An additional motion accompanying the exhibit is not necessary.

Authorization to File Motion for Sanctions:

During the call, Petitioner set forth several alleged violations by Patent Owner of the protective order,³ and requested authorization to file a Motion for Sanctions, based on these alleged violations. In particular, Petitioner alleges that Patent Owner's counsel has disclosed Petitioner's confidential information to unauthorized individuals, namely Mr. Nick Boebel and Mr. Francis P. Knuettel, II. *See also* Papers 15, 16 (copies of the standard acknowledgement for access to protective order material, signed by Mr. Boebel and Mr. Knuettel, respectively).

³ Although a protective order has not yet been entered in these proceedings, the parties indicated during the call that they were operating with the understanding that the Standing Default Protective Order set forth in the Trial Practice Guide applied to these proceedings.

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Based on the information presented during the call, we authorized Petitioner to file a Motion for Sanctions, based on the alleged protective order violations. The Motion is limited to fifteen (15) pages, and is to be filed by December 21, 2015. Patent Owner is authorized to file an Opposition to the Motion, also limited to fifteen (15) pages and to be filed no later than twelve (12) business days after the date on which Petitioner files its Motion. As discussed during the call, Patent Owner also will provide to Petitioner, no later than December 14, 2015, Declarations from Mr. Boebel and Mr. Knuettel regarding the specific extent of Petitioner's confidential information to which they were provided access.

Withdrawal of Counsel:

During the call it also was brought to our attention that Patent Owner had filed Amended Patent Owner Mandatory Notice Information, attempting to withdraw Mr. Steven Sereboff as counsel in these proceedings.

See Paper 22. Counsel may not withdraw from a proceeding before the Board without authorization for such withdrawal. *See* 37 C.F.R. § 42.10. During the call, we authorized Patent Owner to file, in each proceeding, a motion under 37 C.F.R. § 42.10(e) requesting withdrawal of lead counsel and substitution of new lead counsel.

Accordingly, it is:

ORDERED that Petitioner is authorized to file in each proceeding a reply to the Preliminary Response, on the issue of the identification of real-parties-in-interest, limited to fifteen (15) pages, by December 14, 2015;

FURTHER ORDERED that Patent Owner is authorized to file in each proceeding a sur-reply, limited to five (5) pages, no later than seven (7) business days after the date on which Petitioner files its reply;

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FURTHER ORDERED that the parties will submit in each proceeding, as an exhibit, a signed copy of the proposed protective order;

FURTHER ORDERED that Petitioner is authorized to file in each proceeding a Motion for Sanctions, limited to fifteen (15) pages, by December 21, 2015;

FURTHER ORDERED that Patent Owner is authorized to file in each proceeding an Opposition to the Motion for Sanctions, limited to fifteen (15) pages, no later than twelve (12) business days after the date on which Petitioner files its Motion;

FURTHER ORDERED that Patent Owner will provide to Petitioner, no later than December 14, 2015, Declarations from Mr. Boebel and Mr. Knuettel regarding the specific extent of Petitioner's confidential information to which they were provided access;

FURTHER ORDERED that Patent Owner is authorized to file a Motion under 37 C.F.R. § 42.10(e) to Withdraw Lead Counsel, and designating one attorney as lead counsel and listing all attorneys that are back-up counsel.

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