

Filed on behalf of Petitioner

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Paper No. __

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 SECOND 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 and the Protective Order filed in these proceedings as Ex. 1017, Petitioner RPX Corporation (“RPX”), by and through its counsel of record, moves to seal Exhibits 1029, 1031-1035, 1037-1043 and 1046 that accompany Petitioner’s Motion for Sanctions (hereafter “Sanctions Motion”) filed in IPR2015-01750 and IPR2015-01751, and the identical corresponding Exhibits 1129, 1131-1135, 1137-1143 and 1146 that accompany the identical Sanctions Motion filed in IPR2015-01752 (collectively hereafter “the Sensitive Exhibits”)². RPX also requests that the Sanctions Motion be sealed in all three proceedings. The Sensitive Exhibits, the Sanctions Motion and a redacted non-confidential version of the Sanctions Motion are being filed concurrently with this Motion to Seal. An executed copy of the Protective Order, as stipulated to by the parties, was filed by Petitioner RPX as Exhibit 1017 in IPRs 2015-01750 and -01751, and as Exhibit 1117 in IRP2015-01752.

In the Sanctions Motion, RPX requests as a sanction entry of a more restrictive Protective Order, filed as Ex. 1047, for all confidential material provided to AIT and filed in these proceedings. A redline version with respect to the original default Protective Order is also being filed as Ex. 1048. RPX

² The citations below are to the Exhibit numbers used in IPR2015-01750 and IPR2015-01751.

conferred with AIT in connection with entry of that more restrictive Protective Order (Ex. 1047) but AIT declined to consent to its entry.

The Sensitive Exhibits and the Sanctions Motion contain highly confidential and extremely sensitive information, including, *inter alia*, references to highly confidential IPR litigation strategy that RPX employs to pursue its business, references to highly confidential agreements and communication records, and sensitive details about how AIT failed to protect RPX's confidential information. RPX guards its confidential information to protect its own business as well as third parties and is contractually obligated to keep certain information confidential. RPX, therefore, respectfully requests that the Sensitive Exhibits in their entirety and portions of the Sanctions Motion be sealed. 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 CERTAIN 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 tips heavily in favor of protecting RPX's highly confidential information.

Exhibits 1029, 1031-1033, 1035, 1038-1039 and 1042-1043 are email exchanges between counsel for RPX and counsel for AIT that discuss RPX's confidential business information and include sensitive details about how AIT failed to protect RPX's confidential information. While AIT has not expressly designated any information in these email exchanges as being confidential, RPX requests that these exhibits be sealed in their entirety to ensure that no information is made public that either party intended to remain confidential. For the same reasons, all information from these email exchanges is redacted in the non-confidential version of the Sanctions Motion.

Exhibits 1040-1041 are Declarations of Nicholas S. Boeble and Frank Knuettel, II that were designated as Protective Order Material by AIT.

Exhibits 1034, 1037 and 1046, while public information, would reveal highly sensitive details about how AIT failed to protect RPX's confidential information in the context of the Sanctions Motion and should be sealed in these proceedings to safeguard RPX's confidential information.

As should be appreciated from the foregoing, the Sensitive Exhibits in their entirety, along with portions of the Sanctions Motion that reference them, contain or reference extremely sensitive information, including details of RPX's business

agreements with third parties. Such information should be kept under seal to protect not only RPX but also those third parties. Disclosure of this information would severely impact RPX's ability to conduct business by providing confidential information to others regarding RPX's business and by creating confidentiality concerns among third parties that interact with RPX. Accordingly, good cause exists for keeping the Sensitive Exhibits in their entirety and portions of the Sanctions Motion under seal.

To ensure that the public has access to a complete and understandable file history without disclosing RPX's confidential information, Petitioners have tailored the redactions in the Sanctions Motion as narrowly as possible. The information is submitted solely to address whether to sanction AIT. The public interest in this information is limited and the public does not require access to this information.

The Board recently held that good cause existed to keep similar information confidential. *See Unified Patents Inc. v. Dragon Intellectual Property, LLC*, IPR2014-01252, Paper 40 (Feb. 27, 2015) at 6 (holding good cause existed to seal the identities of Petitioner's members); at 6-7 (membership terms and business strategies are highly sensitive confidential information); and at 7 (financial information can be sealed where reasonable redactions were proposed and the financial information was not relevant to underlying arguments about real party in interest); see also *Farmwald and RPX v. Parkervision*, IPR2014-00948, Paper 58

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