Filed on behalf of Petitioner by:
Richard F. Giunta, Reg. No. 36,149
Elisabeth H. Hunt, Reg. No. 67,336
Randy J. Pritzker, Reg. No. 35,986
WOLF, GREENFIELD & SACKS, P.C.
600 Atlantic Avenue
Boston, MA 02210
617.646.8000

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.

IPR2015-01750
Patent 8,484,111 B2

IPR2015-01751
IPR2015-01752
Patent 7,356,482 B2[1]

PETITIONER'S MOTION TO STAY REMAND PROCEEDINGS

[1] This identical paper is being filed in each proceeding identified in the above heading that the Board authorized the parties to use. Paper 116 at 3. Paper and Exhibit numbers used herein are from IPR2015-01750.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

REGULATIONS

I. STATEMENT OF PRECISE RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.20(a) and the Board's Order (Paper 116) authorizing this motion, Petitioner respectfully requests that the Board stay these remand proceedings pending a decision from the Federal Circuit on RPX's Motion to Recall the Mandate, Vacate the Court's Judgment, and Reinstate the Appeal for a Merits Decision in Light of the Supreme Court's Decision in *Thryv v. Click-To-Call*. Ex. 1103 ("RPX's Recall Motion").

II. GOOD CAUSE EXISTS TO GRANT A STAY

A. The Supreme Court Has Made Clear That These Cases Should Not Have Been Remanded

The Federal Circuit vacated the Board's Final Written Decisions ("FWDs") that found the challenged claims unpatentable, and remanded solely for reconsideration of the Board's determination that the Petitions were not time barred under 35 U.S.C. § 315(b). *Applications in Internet Time v. RPX*, 897 F.3d 1336 (Fed. Cir. 2018) ("*AIT*"); Paper 84. In *Thryv v. Click-to-Call*, No. 18-916, slip op. (Apr. 20, 2020) ("*Thryv*"), the Supreme Court held that under 35 U.S.C. § 314(d), a Board determination of no time bar under § 315(b) is nonappealable and unreviewable by the Federal Circuit. *Id*., 2, 6-14. Contrary to AIT's counsel's representation (Ex. 1102 at 9), *Thryv* is explicit that its holding of nonappealability applies to no-time-bar determinations addressed in FWDs. *Id*., 14.

In view of *Thryv*, RPX filed its Recall Motion requesting that the Federal

Circuit recall its mandate, vacate its judgment vacating the Board's FWDs, and reinstate AIT's appeal to address the merits of the Board's findings that the challenged claims are unpatentable. The Supreme Court has made clear that the Federal Circuit had no authority to review the Board's determination that RPX's petitions were not time-barred, and thus that these cases should not have been remanded for further analysis on the time bar issue.

B. Staying These Proceedings Would Afford the Federal Circuit an Opportunity to Determine How These Cases Should Be Handled in View of *Thryv*

The Federal Circuit did not have the benefit of the Supreme Court's guidance in *Thryv* when it remanded these cases. It does now. Staying these proceedings now would afford the Federal Circuit the opportunity to consider the parties' briefing on RPX's Recall Motion and determine whether the Court believes it to be appropriate to recall its mandate.

C. The Supreme Court Made Clear That Congress Intended for the Board's Work in Finding the Claims Unpatentable Not to Be Undone

Thryv noted that an important reason Congress made no-time bar determinations nonappealable is the AIA's emphasis on "weed[ing] out bad patent claims efficiently." *Id*., 8. The Board's § 315(b) findings are nonappealable to ensure that the Board's "adjudication of the merits" is preserved, and to ensure that the Board's work not be "undone" and "the cancelled claims resurrected" by

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.