

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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RPX CORPORATION,  
Petitioner

v.

APPLICATIONS IN INTERNET TIME LLC,  
Patent Owner

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Case IPR2015-01750  
US Patent No. 8,484,111 B2

Case IPR2015-01751  
Case IPR2015-01752  
Patent 7,356,482 B2<sup>1</sup>

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PATENT OWNER'S OPPOSITION TO MOTION FOR SANCTIONS

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<sup>1</sup> The word-for-word identical paper is filed in each proceeding identified in the heading.

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## I. Introduction

At the outset, one must wonder whether Petitioner's motion for sanctions is premature. No protective order has been entered. No motion to seal has been entered. Yet, Petitioner erroneously suggests that inadvertent disclosures rose to the level of sanctionable conduct. They do not.

Petitioner acted hastily to request leave to file a sanctions motion. Now, with a full description of the relevant facts, it is clear that no Board action is needed. The facts demonstrate that there was little, if any confidential information, that Patent Owner's inadvertent disclosure was incredibly limited, that Patent Owner has already taken sufficient remedial action, and Petitioner suffered no harm. In this light, Petitioner's proposed sanctions make no sense.

The primary considerations in making a determination on a motion for sanctions are "(i) whether a party has performed conduct that warrants sanctions; (ii) whether the moving party has suffered harm from that conduct; and (iii) whether the sanctions requested are proportionate to the harm suffered by the moving party." *Square, Inc. v. Think Computer Corp.*, CBM 2014-00159, Paper 48 at 2 (citing *Ecclesiastes 9:10-11-12, Inc. v. LMC Holding Co.*, 497 F.3d 1135, 1143 (10th Cir. 2007)). Petitioner's motion fails on all three points. This brief

addresses the three *Square* requirements in reverse order because this highlights why the motion should be denied.

## **II. Petitioner’s proposed sanctions are not needed and are not proportionate.**

Here, all of Patent Owner’s conduct was inadvertent and, once discovered, was admitted and has been corrected. Because Petitioner has suffered no harm, any sanction is disproportionate.

### **A. Petitioner’s request for additional declarations is unnecessary.**

The Board already entered an Order (Paper 23) requiring declarations from two individuals “regarding the specific extent of Petitioner’s confidential information to which they were provided access.” The declarants unequivocally confirmed that they saw *only* a draft of the Patent Owner’s Preliminary Response (“POPR”). (Ex. 1040, ¶¶ 4-9<sup>2</sup>; Ex. 1041, ¶¶ 4-7; Ex. 2027, p. 2, ¶ 1). As directed by the Board, had either individual received access to any other confidential information, one or both would have so declared (Ex. 2027, p. 1, ¶ 1). Likewise, Patent Owner unequivocally confirmed to Petitioner that for all “information identified by Petitioner as confidential, the same information appears in the POPR as filed.” (Ex. 2027, p. 2, ¶ 2).

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<sup>2</sup> One declarant separately confirms that he saw a .pdf “timeline”. ) Ex. 1040, ¶ 4.

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