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 No. 2015-01750
Patent No. 8,484,111 B2

Case 2015-01751
Case 2015-01752
Patent No. 7,356,482

PATENT OWNER'S SUR-REPLY[1]

[1] This is a single Sur-Reply addressed to all three cases and, therefore, the identical document is being filed in each case. All cites herein to the record of these cases are in the order set forth above.

Patent Owner (AIT) thanks the Board for the opportunity to present this sur-reply, limited to addressing partial quotations in Petitioner's (RPX) Reply Brief, which are misleading and out of context. (Dkt. 72/74/72). RPX's partial quotes relate to interpretation of an important term here, "change."

The full quotes demonstrate that AIT was arguing for a broader meaning of the term and against the defendant's effort to narrow it. RPX's Reply Brief asserts that AIT's construction of "change" in these proceedings is inconsistent with its litigation position. (Dkt. 70, p. 2, 9-11 / Dkt. 72, p. 2, 7-8 / Dkt. 70, p. 1, 6-7). In support, RPX excerpts short quotations from AIT's Reply Claim Construction Brief in that litigation (Ex. 1060/1060/1160). In context, however, it becomes clear that AIT has been consistent in the IPR proceedings and the district court litigation (i.e., that "changes" must arise from changes external to the application program). The full quotes demonstrate that AIT was arguing against the defendant's efforts to narrow the term in two ways.

First, RPX asserts, "AIT told the Nevada District Court that even under the narrower claim construction standard applicable there, 'changes' means broadly '**any** type of change that may have an impact on the user's business'" (Dkt. 70, p. 2 / Dkt. 72, p. 2-3 / Dkt. 70, p. 1-2) (emphasis RPX's). Similar assertions by RPX are

repeated elsewhere. (Dkt. 70, p. 10 / Dkt. 72, p. 7 / Dkt. 70, p. 6) This partial quotation is lifted from the paragraph shown below (Ex. 1060/1060/1160, p. 7):

> Salesforce also erroneously contends that the "changes that affect . . ." limitations should be limited to three specific categories of "modifications to regulatory, technological, or social requirements." Salesforce asserts that "the specification does not identify any other categories of material changes detected by the claimed change management layer," but this is incorrect. (Def. Br. at 20:8-13). The specification states that the change management layer "includes one or more change agents that . . . identify and bring to the user's attention relevant regulatory *and nonregulatory changes* found on the Web that may affect a user's business." (Boebel Decl., Ex. 1 ('482 patent, at 9:34-38)). In other words, the specification describes that the change management layer can detect any type of change that may have an impact on the user's business, not just changes within certain categories of subject matter.

As seen in context, AIT was simply arguing against defendant Salesforce's attempt to limit "change" to three specific categories (i.e., regulatory, technological, or social requirements). The final clause in the last sentence demonstrates this: "not just changes *within certain categories* of subject matter." RPX's omission of the final clause in the last sentence, and its omission of the entire paragraph, causes its partial quotation to be misleading.

Second, RPX asserts, "AIT told the Nevada District Court that even under the narrower claim construction standard applicable there, … the specification

'do[es] not exclude the possibility that the detected changes are changes to information that is **internal** to the system." (Dkt. 70, p. 2 / Dkt. 72, p. 2-3 / Dkt. 70, p. 1-2) (emphasis RPX's). Similar assertions by RPX are repeated elsewhere. (Dkt. 70, p. 10 / Dkt. 72, p. 7 / Dkt. 70, p. 6). RPX's partial quotation is lifted from the paragraph shown below (Ex. 1060/1060/1160, p. 5-6):

> Salesforce's proposed constructions for the "changes that affect . . ." limitations in the patents-in-suit should be rejected because those proposed constructions are unduly narrow. As discussed in AIT's opening brief, there is no support in the patent for Salesforce's proposed language that the changes must be limited to information "stored in a third party repository." Salesforce incorrectly relies on portions of the specification describing instances where the detected changes are changes to information that is stored outside of the claimed system. But these statements do not exclude the possibility that the detected changes are changes to information that is internal to the system, rather than "stored in a third party repository." Indeed, in one of the passages cited by Salesforce, the specification states that "[t]he internet is *one source* of information on regulatory changes that is both prompt and cost-effective." (Boebel Decl., Ex. 1 ('482 patent, at 10:24-26)) (emphasis added). The specification therefore explicitly states that the Internet is only one of many possible sources of information regarding changes that affect an application.

As seen in context, AIT was simply arguing against defendant Salesforce's attempt to limit "changes" to information in a "third party repository." AIT opens the paragraph by protesting the "unduly narrow" construction proposed by Salesforce. RPX's partial quotation omits the final clause in the same sentence

which makes plain that AIT was simply arguing against Salesforce's unduly narrow construction.

Note the use of the term "system" in the full paragraph versus "application." Consider, too, how RPX has used the partial quotation about a "system" to argue that AIT was inconsistent in statements about an "application." In this proceeding, AIT argues that the claimed "changes" are "external to an *application program*." Compare this with AIT's construction in the district court litigation -- that the change can be "internal to the *system*." That is, "changes" are external to the *application* but may be internal to an overall *system* that includes the application. The Board may wish to consider testimony of the experts relevant to "application" differing from "system." (See e.g., Ex. 2032, ¶¶ 36, 53 (citing Ex. 1002, ¶ 29), 60-61, 79-80; Ex. 1002, ¶ 19). Therefore, here too, RPX's omission of the final clause in the last sentence, and its omission of the entire paragraph, causes its partial quotation to be misleading when read absent the surrounding context.

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