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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.

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.

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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

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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

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