

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 (Patent 7,356,482 B2)

IPR2015-01752 (Patent 7,356,482 B2)

Before SCOTT R. BOALICK, *Chief Administrative Patent Judge*, JACQUELINE WRIGHT BONILLA, *Deputy Chief Administrative Patent Judge*, and SCOTT C. WEIDENFELLER, *Vice Chief Administrative Patent Judge*.

PER CURIAM.

PANEL CHANGE ORDER
Conduct of the Proceedings
37 C.F.R. § 42.5

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IPR2015-01751, IPR2015-01752 (Patent 7,356,482 B2)

The above-captioned IPRs are on remand to the Board from the United States Court of Appeals for the Federal Circuit. *See Applications in Internet Time LLC v. RPX Corp.*, 897 F.3d 1336, 1358 (Fed. Cir. 2018) (vacating and remanding the Board’s final written decisions because the Board “neither considered the full range of relationships under [35 U.S.C.] § 315(b) and the common law” that may make a certain party a real party in interest “nor properly applied the principles articulated in the Trial Practice Guide”).

These IPRs raise important issues, including the determination of a “real party in interest” (“RPI”) within the meaning of the petition requirement of 35 U.S.C. § 312(a)(2) and the 35 U.S.C. § 315(b) one-year time bar. In addition, the Federal Circuit remanded the above-captioned cases to the Board before the Supreme Court issued its decision in *Thryv, Inc. v. Click-To-Call Techs., LP*, 140 S. Ct. 1367, 1370 (2020), which held that § 314(d) prohibits judicial review of Board decisions regarding § 315(b) time bar determinations, and before the Federal Circuit issued its decision in *ESIP Series 2, LLC v. Puzhen Life USA, LLC*, 958 F.3d 1378, 1386 (Fed. Cir. 2020), which held that § 314(d)’s prohibition of judicial review extends to RPI determinations.

In addition, these IPRs present unique scheduling and timing issues. The Federal Circuit remanded these IPRs on July 9, 2018, and the mandate issued on October 30, 2018. After receiving the mandate from the Federal Circuit, the Board authorized further discovery and set forth a briefing schedule on remand for the parties to address “whether Salesforce.com, Inc. must be identified as a real party-in-interest or privy” of Petitioner RPX Corporation. IPR2015-01750, Paper 87 at 2. On April 25, 2019, approximately six months after the mandate issued, the Board held an oral hearing on the issue of whether Salesforce.com is a real party-in-interest or privy. About two months later, on June 24, 2019, the Supreme Court

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granted certiorari in *Thryv*, which implicated the reviewability of the issue on remand. On April 20, 2020, the Supreme Court issued its decision in *Thryv*, prohibiting further judicial review of the issue in these IPRs. On April 30, 2020, Petitioner filed a motion to stay these IPRs pending a motion it filed with the Federal Circuit to recall the mandate. On May 29, 2020, the Federal Circuit denied the motion to recall the mandate, and on August 24, 2020, the Board issued an order dismissing the motion to stay by Petitioner. In the meantime, on August 3, 2020, Patent Owner filed a petition for a writ of mandamus to compel the Board to issue a decision on remand in these IPRs. On August 7, 2020, Patent Owner withdrew the writ of mandamus in view of an agreement with the Office to issue a decision on remand by September 9, 2020.

Given the complexities of the proceedings, under SOP 1, the parties are notified that the panel has changed in the above-referenced proceedings to a panel of the most senior administrative patent judges available. *See* PTAB Standard Operating Procedure 1, Rev. 15. Review of the issues by this senior panel will help to best ensure compliance with relevant precedent and the Federal Circuit's mandate under the unique timing and scheduling considerations in these cases on issues that also will have applicability in future cases. The pending issues are of particular importance in view of recent precedent. *Thryv*, 140 S. Ct. at 1370; *ESIP*, 958 F.3d at 1386. The issue on remand is fully briefed and, therefore, no further briefing is necessary. *See* IPR2015-01750, Papers 98, 100, 101.

Accordingly, based on the foregoing and pursuant to SOP 1, it is:

ORDERED that the panel in these proceedings is changed to the panel identified in the case caption.

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