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IPR2015-01750, Paper 128
IPR2015-01751, Paper 128
IPR2015-01752, Paper 126
Entered: October 2, 2020

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 IPR2015-01750
Patent 8,484,111 B2

Case IPR2015-01751
Case 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*.

BOALICK, *Chief Administrative Patent Judge*.

JUDGMENT
Final Decision on Remand
Terminating Institution
35 U.S.C. §§ 314, 315

IPR2015-01750 (Patent 8,484,111 B2)
IPR2015-01751, IPR2015-01752 (Patent 7,356,482 B2)

I. INTRODUCTION

We address these cases on remand after a decision by the U.S. Court of Appeals for the Federal Circuit in *Applications in Internet Time, LLC v. RPX Corp.*, 897 F.3d 1336 (Fed. Cir. 2018) (“*AIT*”) (*see* Paper 110¹). Upon review, we follow the Federal Circuit’s admonition that “Congress intended that the term ‘real party in interest’ have its expansive common-law meaning.” *AIT*, 897 F.3d at 1351. We approach the inquiry by focusing on the “two related purposes” of the real party in interest (“RPI”) requirement set forth in the legislative history, i.e., to preclude parties from getting “two bites at the apple” by: (1) ensuring that third parties who have sufficiently close relationships with IPR petitioners are bound by the outcome of instituted IPRs in final written decisions under 35 U.S.C. § 315(e), the IPR estoppel provision; and (2) safeguarding patent owners from having to defend their patents against belated administrative attacks by related parties via 35 U.S.C. § 315(b). *Id.* at 1350. As stated by the Federal Circuit, “[d]etermining whether a non-party is a ‘real party in interest’ demands a flexible approach that takes into account both equitable and practical considerations, with an eye toward determining whether the non-party is a clear beneficiary that has a preexisting, established relationship with the petitioner.” *Id.* at 1351.

As explained below, when considering the entirety of the evidentiary record, including evidence relating to RPX’s business model and RPX’s

¹ Unless otherwise indicated, citations herein are to the papers and exhibits filed in IPR2015-01750. The same or similar papers and exhibits also have been filed in IPR2015-01751 and IPR2015-01752.

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relationship with Salesforce, who would have benefited from IPRs filed by RPX, in view of the two purposes of the RPI provision in § 315(b), as noted above, as well as equitable and practical considerations, we determine that Salesforce is a real party in interest of RPX.

II. BACKGROUND

A. *Proceedings at PTAB*

Petitioner, RPX Corporation (“RPX”), filed Petitions for *inter partes* review of claims 13–18 of U.S. Patent No. 8,484,111 B2 (Ex. 1001, “the ’111 patent”) (Paper 1); and claims 1–59 of U.S. Patent No. 7,356,482 B2 (IPR2015-01751 Ex. 1001, “the ’482 patent”) (IPR2015-01751, Paper 1; IPR2015-01752, Paper 1). Patent Owner, Applications in Internet Time, LLC (“AIT”), filed a Preliminary Response in each proceeding. Paper 21, Paper 26 (redacted version) (“Prelim. Resp.”); IPR2015-01751, Paper 20, Paper 26 (redacted version); IPR2015-01752, Paper 20, Paper 26 (redacted version). The Board also authorized additional briefing on RPI issues. *See* Paper 28, Paper 29 (redacted version); Paper 38, Paper 37 (redacted version) (the same documents also were filed in IPR2015-01751, Papers 28, 29, 38, 37 and IPR2015-01752, Papers 28, 29, 38, 37). AIT alleged Salesforce.com, Inc. (“Salesforce”) should have been named as an RPI in these proceedings, and because Salesforce was served with a complaint alleging infringement of the challenged patents² more than one year before the filing of the

² We refer to the ’111 patent and the ’482 patent, collectively, as “the challenged patents.”

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petitions, the proceedings are time-barred pursuant to 35 U.S.C. § 315(b).
See Prelim. Resp. 2–20.

Taking into account that briefing, the Board instituted the instant *inter partes* reviews, and later issued Final Written Decisions, determining that RPX demonstrated by a preponderance of the evidence that the challenged claims were unpatentable. Paper 51³; IPR2015-01751, Paper 51⁴; IPR2015-01752, Paper 51⁵. AIT appealed to the Federal Circuit the Board’s determinations that these claims were unpatentable, as well as the determination that Salesforce was not an RPI and thus that the proceedings were not time-barred pursuant to § 315(b). *See* Paper 83.

B. Proceedings at the Federal Circuit

In its decision on appeal, issued July 9, 2018 (unsealed July 24, 2018), the Federal Circuit determined that “the Board applied an unduly restrictive test for determining whether a person or entity is a ‘real party in interest’ within the meaning of § 315(b) and failed to consider the entirety of the evidentiary record in assessing whether § 315(b) barred institution of these IPRs,” vacated the Final Written Decisions, and remanded for further proceedings consistent with its decision. *AIT*, 897 F.3d at 1339. The mandate issued on October 30, 2018. Paper 111.

In its analysis of the term “real party in interest,” the Federal Circuit noted various aspects of the AIA that suggest that the term should “sweep[.]”

³ A public version is available as Paper 60 in IPR2015-01750.

⁴ A public version is available as Paper 62 in IPR2015-01751.

⁵ A public version is available as Paper 60 in IPR2015-01752.

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broadly. *Id.* at 1346–47. It held that “the focus of the real-party-in-interest inquiry is on the patentability of the claims challenged in the IPR petition, bearing in mind who will benefit from having those claims canceled or invalidated” (*id.* at 1348), and that, ultimately, the determination of who is an RPI should consider “who, from a ‘practical and equitable’ standpoint, will benefit from the redress that the chosen tribunal might provide” (*id.* at 1349). It also noted that the common law of real party in interest was designed to protect parties from multiple lawsuits, and it pointed out that the purpose of the RPI provision in IPRs was to protect patent holders from multiple petitions. *Id.* at 1349–50.

Based on the foregoing, the Court concluded that the Board had applied too-narrow a definition, had failed to adequately consider the evidence that Salesforce was an RPI to RPX’s IPRs, and appeared to have placed the burden on AIT rather than RPX. *Id.* at 1358. The court further stated that “the Board may authorize additional discovery relevant to whether Salesforce is *either* a real party in interest *or* a privy of RPX for purposes of § 315(b).” *Id.*

C. *Proceedings on Remand*

After the Federal Circuit’s remand decision, the Board authorized post-remand briefing and discovery related to the question of whether Salesforce should have been identified as a real party in interest or privy. *See* Paper 84 (addressing the scope of factual and legal issues to be addressed on remand); Paper 87 (setting discovery and briefing schedule);

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