

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 B2¹

Before LYNNE E. PETTIGREW, MITCHELL G. WEATHERLY, and
JENNIFER MEYER CHAGNON, *Administrative Patent Judges*.

CHAGNON, *Administrative Patent Judge*.

ORDER

Granting Petitioner's Motion for Attorneys' Fees
37 C.F.R. §§ 42.5, 42.12

¹ This order addresses issues common to all cases; therefore, we issue a single order to be entered in each case.

I. INTRODUCTION

As authorized by the Board in an order mailed May 6, 2016 (Paper 58²), Petitioner, RPX Corporation (“RPX”), filed a Motion for Attorneys’ Fees. Paper 61 (“Mot.”). Patent Owner, Applications In Internet Time, LLC (“AIT”) filed an Opposition to RPX’s Motion. Paper 66 (“Opp.”). For the reasons set forth below, RPX’s Motion is *granted*.

II. ANALYSIS

In our decision on RPX’s Motion for Sanctions, we previously determined both that AIT’s conduct constituted a breach of the Protective Order, and that RPX suffered harm as a result of the breach. Paper 58, 3–7. RPX has requested attorneys’ fees in the total combined amount of \$13,559.97,³ across all three proceedings. Mot. 3, 5; *see* 37 C.F.R. § 42.12(b)(6). RPX represents that the fees cover the work of RPX’s outside counsel “subsequent to AIT’s November 30 breach and relate solely to addressing AIT’s breaches of the protective order.” *Id.* at 3; *see* Ex. 1050. RPX also represents that time entries involving work addressing AIT’s breaches of the protective order *and* other substantive work on the proceedings are not included in the total fees requested by the Motion. Mot. 3; *see* Ex. 1053. RPX asserts that the requested fees are reasonable,

² The relevant papers filed in each of the three cases are identical. Citations are to the papers filed in IPR2015-01750 for convenience.

³ We note RPX includes two different figures for the amount of fees requested in its Motion. *See, e.g.*, Mot. 3 (listing \$13,559.97), 4 (listing \$13,599.97), 5 (listing \$13,599.97). We presume the disparity is due to a typographical error, and understand the request to be for \$13,559.97, consistent with the amount shown in Exhibit 1050.

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and “well below the actual cost to perform all the work incurred as a result of AIT’s sanctionable conduct.” *See* Mot. 4–5.

AIT asserts that an award of attorneys’ fees “would be both unjust and unwarranted.” Opp. 1. AIT further asserts that the “requested attorney fees would be virtually nothing if not for [RPX’s] lack of any real effort at cooperation to remedy the breach.” *Id.* at 2.

In particular, AIT argues that our entry of a revised protective order “implicitly acknowledges that there was ambiguity regarding whether or not Mr. Sturgeon was or is a ‘party’ within the meaning of the Default Protective Order.” Opp. 4; *see* Paper 58, 15; Ex. 3001. We do not find AIT’s reliance on *Intri-Plex Technologies. v. Saint-Gobain Performance Plastics Rencol Ltd.*, Case IPR2014-00309 (PTAB Mar. 30, 2015) (Paper 84) persuasive. In *Intri-Plex*, there was a dispute as to whether the party to whom confidential documents were disclosed was, in fact, an officer of the company, and whether, as such, he was considered a “party” under the default Protective Order.⁴ *Intri-Plex*, Paper 84, slip op. at 5. However, even if the Default Protective Order is ambiguous regarding whether AIT’s President, Mr. Sturgeon, is considered a “party,” it is not so with respect to Messrs. Boebel and Knuettel. *See* Paper 58, 5. As discussed in our decision on RPX’s Motion for Sanctions, disclosure of RPX’s confidential information to Messrs. Boebel and Knuettel without prior agreement of the parties was a clear, unambiguous violation of the Protective Order. *Id.* at 5–6.

⁴ Further, in *Intri-Plex*, all of the disclosed materials ultimately were unsealed, and, thus, there was no actual harm attributable to the disclosure. *Intri-Plex*, Paper 84, slip op. at 5–6.

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AIT also argues that it had already agreed to provide explanatory declarations regarding the scope of the protective order breach, prior to any Board order to do so. Opp. 3; Paper 23. As we noted in our decision on RPX’s Motion for Sanctions, however, the declarations originally provided by AIT were deficient. *See* Paper 58, 8–11.

AIT further argues that “[a]ward of attorney fees for the expense of filing an unnecessary sanctions motion is the very definition of not-proportionate.” Opp. 5 (citing *Square, Inc. v. Think Comput. Corp.*, Case CBM2014-00159 (PTAB Nov. 27, 2015) (Paper 48)). In *Square, Inc.*, the panel denied Petitioner’s Motion for Sanctions, because it was “unable to discern harm to Petitioner sufficient to warrant sanctions at this time.” *Square, Inc.*, Paper 48, slip op. at 2–3. Further, the conduct in *Square, Inc.* did not deal with violations of the Protective Order, but instead was related to alleged harassment of Petitioner’s expert witness. *Id.* at 1–2. We do not find AIT’s reliance on *Square, Inc.* persuasive.

Based on the particular facts and circumstances in these proceedings, we determine that an award of attorneys’ fees is warranted. Further, we determine that the amount requested by RPX is reasonable.

III. ORDER

Accordingly, it is

ORDERED that RPX’s Motion for Attorneys’ Fees is *granted*; and

FURTHER ORDERED that, within ten (10) business days of this order, AIT will pay RPX attorneys’ fees, in the amount of \$13,559.97.

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