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Federal Circuit Denies RPX's Request for en banc Review in Applications in Internet Time v. RPX

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Continuing [our coverage](#) of the Federal Circuit's *Applications in Internet Time, LLC v. RPX Corp.* ("Internet Time") decision, on Tuesday, October 23, 2018, the Federal Circuit [denied](#) RPX's request to rehear the case *en banc*. *Internet Time* held that the Patent Trial and Appeal Board ("PTAB") must use a flexible approach when determining what entities constitute real parties in interest for the purpose of *inter partes* review ("IPR"). See [Applications in Internet Time, LLC v. RPX Corp.](#), 897 F.3d 1336 (July 9, 2018) ("Internet Time"). Petitioners for IPR challenging a patent must identify all real parties in interest in their petition. 35 U.S.C. § 312(a)(2). The Director is not authorized to institute trial on the petition if the petitioner, real party in interest, or privy of the petitioner, was served with an infringement complaint for the patent in question more than one year before the petition's filing. See 35 U.S.C. § 315(b).

In *Internet Time*, patent owner Applications in Internet Time, LLC ("AIT") argued that RPX should have named Salesforce, Inc. ("Salesforce"), who is an RPX member, as a real party in interest and failed to do so. AIT further argued that since Salesforce was time barred RPX's petition should be time barred as well. The PTAB disagreed and invalidated claims of the challenged patent. In overturning the PTAB the Federal Circuit found that the PTAB applied an unduly narrow definition of real party in interest. While the panel did not articulate a specific test for determining whether a party is a real party in interest, the panel did criticize the PTAB for failing to "take[] 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 petitioner." *Internet Time*, 897 F.3d at 1351.

Now that RPX's request has been denied, barring a further petition to the Supreme Court, the case is remanded back to the PTAB panel for reconsideration of whether Salesforce was a real party in interest that should have been named in RPX's petition for IPR. The outcome of this case could have vast implications for identifying a real party in interest in IPRs. Stay tuned to Mintz's coverage for further developments as the case heads back to the PTAB.

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