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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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| Proceeding | 91207333 |
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| Attachments | 00. IP APP Opp'n to Motion to Compel (REDACTED).pdf(115434 bytes) 01. Declaration of A. Buchner (REDACTED).pdf(162283 bytes) Declaration of A. Buchner - EX 01.pdf(87405 bytes) Declaration of A. Buchner - EX 02 (REDACTED).pdf(723155 bytes) Declaration of A. Buchner - EX 03.pdf(50347 bytes) Declaration of A. Buchner - EX 04 (REDACTED).pdf(301969 bytes) Declaration of A. Buchner - EX 05.pdf(155300 bytes) Declaration of A. Buchner - EX 06.pdf(188140 bytes) Declaration of A. Buchner - EX 07.pdf(189171 bytes) Declaration of A. Buchner - EX 08.pdf(188042 bytes) Declaration of A. Buchner - EX 09.pdf(262766 bytes) Declaration of A. Buchner - EX 10.pdf(78667 bytes) Declaration of D. Vetter (REDACTED).pdf(592518 bytes) Declaration of T. La Perle (REDACTED).pdf(154440 bytes) |

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I. INTRODUCTION

Through its discovery requests and now this Motion to Compel, Opposer RxD Media, LLC (“RxD”) seeks information and documents from Applicant IP Application Development LLC (“IPAD LLC”) far beyond the scope of the narrow issue before the Board in this opposition proceeding. The narrow issue is whether IPAD LLC’s IPAD mark for the Class 35, 38, 39, and 42 business, telecommunications, storage, and computer services listed in its intent-to-use applications (Ser. Nos. 77/927,446 and 77/913,563) is registrable in light of RxD’s alleged prior rights in IPAD for Class 42 services based on its minimal and descriptive alleged prior use of the phrase “IPAD.MOBI” in connection with its internet notepad services.

Contrary to the rules of discovery applicable to Board proceedings, RxD seeks to take the deposition of Douglas Vetter, a senior executive at non-party Apple, Inc. (“Apple”), merely because [REDACTED].
[REDACTED]. But Mr. Vetter was not involved in [REDACTED]. He has no recollection of [REDACTED]. He has no knowledge regarding [REDACTED]. In short, [REDACTED], and in doing so, [REDACTED], who IPAD LLC has already offered for a deposition. Mr. La Perle also [REDACTED], and has knowledge of [REDACTED], as well as [REDACTED]. Mr. La Perle—not Mr. Vetter—is the proper deponent.

In addition to seeking the needless and burdensome deposition of Mr. Vetter, RxD is also seeking to compel a host of irrelevant documents and information. Significantly, this is a marked change of position from RxD’s past practices. RxD and IPAD LLC engaged in nearly 15 months of discovery before RxD’s original counsel withdrew, and in that time the parties resolved numerous discovery issues without motion practice. Now, just three months after the proceedings have resumed, RxD’s new counsel is asking the Board to compel IPAD LLC to produce documents and information that have no bearing on the narrow issue of registrability before the Board.

For example, RxD seeks:

- valuations of the IPAD mark as used by third parties, which have no bearing on the issue of registrability;
- IPAD LLC's (and non-party Apple's) consideration and rejection of marks not at issue in this proceeding;
- the use by IPAD LLC or others of the IPAD mark on goods and services not listed in the challenged applications;
- IPAD LLC's knowledge of third-party use of the IPAD mark (both in connection with the services described in the challenged applications and beyond) including knowledge of use exclusively in foreign jurisdictions;
- testimony from litigation concerning only rights in foreign jurisdictions, which has no connection to this proceeding; and
- IPAD LLC's rights in and use of the IPAD mark outside the United States.

But this is a Board proceeding to oppose the registration of a mark in the United States, and the information RxD seeks is simply not appropriately-tailored discovery for such a narrow proceeding.

Moreover, RxD's overreaching is underscored by the fact that IPAD LLC has already propounded written discovery responses and produced over 1,000 pages of documents, including [REDACTED], and exemplars of its use of the IPAD mark. In short, as discussed more fully below, RxD's discovery tactics are improper and simply designed to harass IPAD LLC and non-party Apple.

II. RxD MISCONSTRUES THE BOARD'S DISCOVERY STANDARDS.

RxD fundamentally misunderstands (or deliberately misstates) the rules of discovery applicable to Board proceedings, and bases its arguments on a few cherry-picked quotations (taken out of context) from the Trademark Trial & Appeal Board Manual of Procedure ("TBMP"). For instance, RxD argues it is "entitled" or "presumptively" entitled to all of the types of information enumerated in the "Selected Discovery Guidelines" in Section 414 of the TBMP. (Dkt. No. 34 at 9–10.) However, these guidelines are simply an "illustrative" list of what may be (but is not always) relevant in a Board proceeding. TBMP § 414. They do not purport to be a list of what parties are guaranteed to get or even to which they are presumptively entitled.

Contrary to what RxD argues, the Board determines the propriety of all discovery on a *case-by-case* basis, and discovery is limited by Federal Rule of Civil Procedure 26(b)(2)(C), which provides that “[p]arties may obtain discovery regarding any non-privileged matter *that is relevant to any party’s claim or defense.*” TBMP § 402.01.¹ While the rules contemplate liberal discovery, the right to discovery is not unlimited. *Id.* Indeed, the Board must limit the extent of discovery otherwise allowed when (i) the discovery sought is cumulative or duplicative, or can be obtained from a more convenient, less burdensome, or less expensive source; (ii) the party seeking discovery has had ample opportunity to obtain information by discovery in the action; or (iii) the burden or expense outweighs its likely benefit considering, among other things, “*the needs of the case[,] . . . the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.*” *Id.* RxD must “act reasonably in framing discovery requests” and cannot use the discovery process as a “fishing expedition[.] . . .” TBMP § 402.01; *see also Luehrmann v. Kwik Kopy Corp.*, 2 U.S.P.Q.2d 1303, 1305 (T.T.A.B. 1987). “[T]he burden is on the party seeking discovery to establish that the information is relevant and necessary,” and “an order compelling discovery is an abuse of discretion if an adequate showing has not been made.” *Volkswagenwerk Aktiengesellschaft v. Thermo-Chem Corp.*, 1973 WL 19920, at *2 (T.T.A.B. Jan. 31, 1973) (denying motion to compel on these grounds); *accord Red Wing Co. v. J.M. Smucker Co.*, 59 U.S.P.Q.2d 1861, 1863 (T.T.A.B. 2001) (same); *see also*; TBMP § 410 n.7.

Importantly, “[t]he scope of discovery in Board proceedings . . . is generally *narrower* than in court proceedings, especially those [court proceedings] involving infringement and/or where both parties have made extensive use of the marks.” TBMP § 402.01 (citing *Frito-Lay N. Am. Inc. v. Princeton Vanguard LLC*, 2011 WL 6012209, at *4 (T.T.A.B. Nov. 16, 2011)). “Each party has a duty . . . to make a good faith effort *to seek only such discovery as is proper and relevant to the specific issues involved in the proceeding.*” *E.g., id.*; *Luehrmann*, 2 U.S.P.Q.2d at 1305; *see also C.H. Stuart Inc. v. S.S. Sarna, Inc.*, 1980 WL 39359, at *1 (T.T.A.B. Mar. 18, 1980) (granting protective order, finding requests “oppressive

¹ All emphasis added unless otherwise noted.

and nothing short of harassment of applicant” where requests were “*designed for use in an infringement action*” and opposer did not attempt “to fashion its discovery requests *specifically to the issues herein.*”).

III. RxD IS NOT ENTITLED TO DEPOSE NON-PARTY DOUGLAS VETTER.

RxD’s attempt to depose Douglas Vetter—a high-level executive and officer at non-party Apple—is illustrative of RxD’s improper discovery strategy and should be denied. First, because Mr. Vetter is a senior executive, RxD must show that he possesses unique, non-repetitive, personal knowledge of the relevant facts, and that RxD has exhausted other less intrusive methods of discovery. RxD has made no such showing. Mr. Vetter has no knowledge of relevant facts and IPAD LLC has offered another witness—Thomas La Perle—who [REDACTED] and has greater knowledge than Mr. Vetter of the relevant facts. Second, the information that RxD claims to need from Mr. Vetter about [REDACTED] has no bearing on the narrow issue in this proceeding of whether IPAD LLC’s registration of the IPAD mark in connection with the specific services listed in IPAD LLC’s intent-to-use trademark application is likely to cause confusion with RxD’s alleged mark. Accordingly, RxD’s motion to compel Mr. Vetter’s deposition should be denied and a protective order preventing Mr. Vetter’s deposition is warranted.²

² Even if RxD could make the requisite showing that Mr. Vetter possesses unique, non-repetitive, personal knowledge of the relevant facts, and that it has exhausted other less intrusive methods of discovery, RxD’s motion to compel Mr. Vetter’s deposition should be denied for the independent reason that RxD’s deposition notice served to secure his attendance is improper because he is not a party or an officer, director, or managing agent of a party to this proceeding. *See* TBMP § 404.03(a)(1). (Decl. of Douglas Vetter, filed concurrently herewith (“Vetter Decl.”) ¶ 2.) As RxD admits in its brief, IPAD LLC and Apple are “separate entities,” as evidenced by the fact that [REDACTED]. (Dkt. No. 34 at 12, Ex. 13 [REDACTED]); Decl. of Thomas La Perle, filed concurrently herewith (“La Perle Decl.”) ¶ 3.) *See also Townsend v. Clairol, Inc.*, 26 F. App’x 75, 78–79 (2d Cir. 2002) (rejecting claim that the “in-house counsel to the defendant’s parent company” could be compelled to testify in an action in which the parent was not a named party). Because Mr. Vetter is a non-party to this proceeding, RxD can secure his deposition only by serving a subpoena, which it has not done. *See* TBMP § 404.03(a)(2) (“If the proposed [nonparty] deponent is not willing to appear voluntarily, the deposing party must secure the deponent’s attendance by subpoena”); *Kellogg Co. v. New Gen. Foods, Inc.*, 1988 WL 252503, at *4 (T.T.A.B. Mar. 3, 1988) (granting party’s motion to quash notice to take the deposition of a former employee, holding that “it is clear that [plaintiff] cannot be compelled to produce a deponent not in [its] employ and [the former employee’s] deposition may only be taken pursuant to [his] voluntary appearance or a subpoena”). And IPAD LLC has *not* agreed to treat Apple as a party for purposes of these proceedings, contrary to RxD’s conclusory allegation to the contrary. (*See* Dkt. No. 34 at n.1.) Further,

A. Depositions of Senior Officers, like Mr. Vetter, Are Disfavored and a Protective Order is Warranted.

The Board and courts throughout the United States have long recognized the potential for harassment and burden in depositions of senior executives of large corporations. As the Board has stated, “[v]irtually every court which has addressed the subject has observed that the deposition of any official at the highest level or ‘apex’ of corporate management creates a tremendous potential for abuse and harassment.” *FMR Corp. v. Alliant Partners*, 51 U.S.P.Q.2d 1759, 1999 WL 696008, at *3 (T.T.A.B. 1999); *see also Affinity Labs of Tex. v. Apple Inc.*, No. C 09-4436, 2011 WL 1753982, at *15–17 (N.D. Cal. May 9, 2011); *Gauthier v. Union Pac. R.R. Co.*, No. 1:07-CV-12, 2008 WL 2467016, at *4 (E.D. Tex. June 18, 2008); *Celerity, Inc. v. Ultra Clean Holding, Inc.*, No. C -05-4374, 2007 WL 205067, at *3 (N.D. Cal. Jan. 25, 2007); *Baine v. Gen. Motors Corp.*, 141 F.R.D. 332, 335 (M.D. Ala. 1991). These concerns are particularly acute where, as here, the senior executive is not a party to the proceeding and works for one of the largest and most well-known companies in the world—a company that operates in fiercely competitive markets.

To address this risk of harassment and abuse, the Board has adopted a now well-recognized standard, which was articulated in what it characterized as the leading federal court decision on this subject. *FMR Corp.*, 1999 WL 696008, at *3 (citing *Salter v. Upjohn Co.*, 593 F.2d 649 (5th Cir. 1979)). In *Salter*, the court affirmed the district court’s requirement that deposing a corporation’s senior officer requires the requesting party to establish both that: (1) the officer possesses unique, non-repetitive, personal knowledge of the facts at issue in the case; and (2) the requesting party exhausted without success other less intrusive methods of discovery, such as depositions of employees with more knowledge of the facts at issue. *See Salter*, 593 F.2d at 651; Fed. R. Civ. P. 26(b)(2), (c). RxD has made no such showing in its motion.

the fact [REDACTED] does not make Apple a “party” to this proceeding for discovery purposes. *Benton v. Cameco Corp.*, 375 F.3d 1070, 1080 (10th Cir. 2004).

Further, the Board has held that it will grant a motion for a protective order to prohibit the deposition of a senior officer if the movant can demonstrate “through an affidavit or other evidence [either] that the official has no knowledge of the relevant facts or that there are other persons with equal or greater knowledge of the relevant facts.” *FMR Corp.*, 1999 WL 696008, at *6. Once the movant meets this initial burden, “then the burden shifts to the party seeking the deposition to show that the official has unique or superior personal knowledge of relevant facts.” *Id.* Only after a good faith effort to obtain discovery through less intrusive means may a party seeking an official’s deposition “file a motion to vacate or modify the protective order” on a showing “(1) that there is reasonable indication that the official’s deposition is calculated to lead to the discovery of admissible evidence, and (2) that the less intrusive methods of discovery are unsatisfactory, insufficient or inadequate.” *Id.*

Mr. Vetter is exactly the type of senior officer that this rule seeks to protect from harassing and abusive discovery. Mr. Vetter is the Vice President, Associate General Counsel, and Assistant Secretary at Apple. (Vetter Decl. ¶¶ 1–11.) *See also FMR Corp.*, 1999 WL 696008, at *1, 7 (granting protective order to quash deposition of opposer’s senior vice president); *Baine*, 141 F.R.D. at 335 (applying standard to quash the deposition of corporation’s vice president). Mr. Vetter is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (*Id.*) Mr. Vetter reports directly to the General

Counsel of Apple. (*Id.*) Preparing and sitting for a deposition would create an undue burden for Mr. Vetter (and non-party Apple) and detract from his important professional responsibilities. (*Id.* ¶ 12.)

Under this standard, as discussed below, IPAD LLC is entitled to a protective order for two independent reasons: First, Mr. Vetter has no knowledge of relevant facts, and second, Mr. La Perle (who

IPAD LLC already offered for deposition) has greater knowledge of the relevant facts in this case.

Second, RxD should seek the discovery it wants through other less intrusive and burdensome means.

1. Mr. Vetter Has No Knowledge of the Relevant Facts.

RxD seeks Mr. Vetter’s deposition to get discovery on the scope of the trademark license between Apple and IPAD LLC and speculates that it might lead to discovery on IPAD LLC’s (or Apple’s) intent and good faith in selecting the mark. (Dkt. No. 34 at 13.)

Even if IPAD LLC’s (or Apple’s) intent in selecting IPAD LLC’s mark were relevant, which it is not (*see* Section III.B, *infra*), Mr. La Perle can speak to that issue, given that he is the Director of Apple’s Trademark and Copyright Group and [REDACTED] for which [REDACTED]

[REDACTED]. Mr. Vetter, by contrast, has no knowledge of the information RxD claims it needs from him. As explained in his declaration, Mr. Vetter [REDACTED]

[REDACTED], [REDACTED] Vetter Dec. ¶¶ 1, 3–5.) Mr.

Vetter did not [REDACTED]. (*Id.* ¶ 7.) [REDACTED]

[REDACTED]. (*Id.* ¶ 4.) Mr. Vetter is not

responsible for Apple’s [REDACTED], [REDACTED]. (*Id.*

¶ 7.) Mr. Vetter’s only involvement is that [REDACTED]

[REDACTED]. (*Id.* ¶ 4.) *See also FMR Corp.*, 1999 WL 696008, at *7 (the “mere fact” that

corporate officers are named in the fund prospectus does not mean that they hold unique or superior

knowledge of the information sought about the adoption or selection of the mark or the marketing or

advertising of products.) He possesses no knowledge about the selection of IPAD LLC’s IPAD mark or

the filing of the intent-to-use applications that are the subject of this proceeding. (Vetter Decl. ¶ 8.) *See*

also Mulvey v. Chrysler Corp., 106 F.R.D. 364 (D.R.I. 1985) (refusing to allow deposition of Lee Iacocca

where Mr. Iacocca signed an affidavit expressing ignorance of facts sought by plaintiff). Thus, the Board

should grant IPAD LLC’s motion for a protective order because it has demonstrated that Mr. Vetter has

no knowledge of the information RxD purportedly seeks to gain from his deposition. *FMR Corp.*, 1999

WL 696008, at *6.

2. Mr. La Perle Has Equal or Greater Knowledge of the Information RxD Claims it Seeks from Deposing Mr. Vetter.

Even if Mr. Vetter had knowledge of the facts RxD purportedly seeks from him, IPAD LLC is entitled to a protective order for the independent reason that there is another person—Mr. La Perle—who has equal or greater knowledge of that information. Mr. La Perle was listed on IPAD LLC’s initial disclosures in this proceeding as someone who may have “discoverable information regarding the goods and services that IPAD LLC offers and intends to offer in the United States under the IPAD mark through itself and/or its licensees,” and was directly involved in the prosecution of the involved applications, and [REDACTED]. (Decl. of Allison W. Buchner, filed concurrently herewith (“Buchner Decl.”), Ex. 3 (IPAD LLC’s initial disclosures); La Perle Decl. ¶¶ 4–7.)

Moreover, on January 20, 2015, RxD served a Rule 30(b)(6) notice on IPAD LLC which includes numerous topics, including IPAD LLC’s efforts to license the IPAD Mark and the details of such licenses, the facts and circumstances surrounding the selection of the IPAD mark, and the facts and circumstances regarding when IPAD LLC and/or Apple first became aware of RxD’s alleged mark. (Buchner Decl., Ex. 5.) IPAD LLC informed RxD that Mr. La Perle will be the corporate witness for this deposition.³ (Dkt. No. 34, Ex. 8 at 1.) Accordingly, IPAD LLC’s motion for a protective order to prohibit the deposition of Mr. Vetter should be granted because Mr. La Perle has equal or greater knowledge of the information that RxD seeks. *FMR Corp.*, 1999 WL 696008, at *6.

3. RxD Can Obtain the Information It Allegedly Seeks through Other, Less Intrusive Means.

Lastly, RxD is not entitled to take Mr. Vetter’s deposition because it has not exhausted available, less intrusive methods of discovery to obtain the information it allegedly seeks. Indeed, the Board and courts regularly require interrogatories, requests for admission, and depositions of “lower-level” or more

³ RxD’s assertion that Mr. La Perle is a lawyer and thus will not be as good of a witness as Mr. Vetter because of privilege issues is unavailing. First, as Assistant General Counsel, Mr. Vetter is also a lawyer and thus the same concerns would apply to him. (Vetter Decl. ¶¶ 1, 11.) Moreover, Mr. La Perle will be able to testify about non-privileged issues about the scope of the license and intended use of the mark.

directly involved employees before allowing the deposition of a senior corporate officer, like Mr. Vetter. *FMR Corp.*, 1999 WL 696008, at *6.

Here, as noted above, RxD has served a notice for a Rule 30(b)(6) deposition that includes topics on the information that it seeks from Mr. Vetter. IPAD LLC has agreed to produce Mr. La Perle as the witness on these topics, and Mr. La Perle is also a [REDACTED]. Moreover, RxD could also have sought this information through interrogatories and requests for admission, but it did not.

RxD's focused effort to depose Mr. Vetter before it deposes Mr. La Perle and failure to serve written discovery requests to get this information suggests that its motives are suspect, *i.e.*, that RxD is more interested in harassing Apple and its senior executives than in discovering relevant information. Accordingly, RxD should not be permitted to depose Mr. Vetter.

B. The Information RxD Purportedly Seeks from Mr. Vetter Is Not Relevant to this Proceeding.

Even if Mr. Vetter were a proper deponent, the information that RxD seeks from his deposition is not relevant to this proceeding. RxD purports to need Mr. Vetter's deposition because he [REDACTED] [REDACTED]. (Dkt. No. 34 at 12–13.) [REDACTED] [REDACTED] [REDACTED] [REDACTED] (*Id.*, Ex. 13.) But RxD asserts that it needs to depose Mr. Vetter to discover [REDACTED] *Id.* at 13. However, [REDACTED]. This opposition proceeding involves the narrow issue of whether IPAD LLC's intended use of the IPAD mark in the United States for the Class 35, 38, 39, and 42 business, telecommunications, storage and computer services listed in its intent-to-use applications is registrable in light of RxD's alleged prior rights in IPAD for Class 42 services based on RxD's alleged prior use of "IPAD.MOBI" in connection with its internet notepad. [REDACTED] has no bearing on this issue. Even if [REDACTED]

[REDACTED] were relevant to this proceeding, Mr. La Perle is the proper person to ask about this, as IPAD LLC's response to RxD's Interrogatory No. 17 makes clear. (Dkt. No. 34, Ex. 12 at 10–11.) ("Mr. La Perle is expected to testify concerning [REDACTED]

[REDACTED]⁴

RxD also asserts that Mr. Vetter's testimony "might" lead to evidence about "Applicant's intent and good faith in adopting the mark." (Dkt. No. 34 at 13.) But RxD has not met its burden at all of showing that Apple's intent in selecting the mark is even at issue in this proceeding. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]. (See Dkt. No. 34 at 6; Buchner Decl., Ex. 2 (IPAD LLC's Resp. & Objs. to Opposer's 1st Set of Interrogs. & Reqs. for Prod. of Docs. & Things) at 7.) [REDACTED]⁵ [REDACTED]

[REDACTED] (Buchner Decl., Ex. 4 (IPAD LLC's 1st Am. Resps. & Objs. to RxD's 1st Set of Interrogs. & Reqs. for Prod. of Docs. & Things) at 3; La Perle Decl. ¶ 10.)⁶ Thus, there is no conceivable argument that IPAD LLC (or Apple) could have had the intent to trade on or cause confusion with RxD's alleged mark. On these facts,

⁴ The fact that RxD waited more than a year after [REDACTED] was produced to notice his deposition further belies RxD's assertion that it believes Mr. Vetter is a witness with relevant information, and instead shows that its insistence on deposing him is motivated by its desire to harass Apple via oppressive and burdensome discovery. (See Buchner Decl. ¶ 12.)

⁵ Tellingly, RxD did not seek to register its purported mark until March 12, 2010, shortly after Apple publicly announced the launch of its IPAD tablet computers, and RxD sought to register "IPAD" though its specimen of use makes clear that it had used "IPAD.MOBI" not "IPAD," and only descriptively. See App. Serial No. 77/958,000, Doc. No. 7 (Mar. 12, 2010) (Specimen). Apparently, RxD filed its application in hopes of using it to garner a windfall payment from Apple, and its unjustifiably broad discovery requests are merely an effort to harass IPAD LLC and non-party Apple to gain leverage.

⁶ To the extent that RxD seeks discovery regarding [REDACTED] the only person who would be knowledgeable of that matter is Mr. La Perle, who [REDACTED] (La Perle Decl. ¶ 8.) But as Mr. La Perle states in his declaration, [REDACTED] (Id. ¶¶ 8–9.)

IPAD LLC’s intent in selecting its mark is not relevant, and RxD has presented nothing to show otherwise. *See, e.g., 4 McCarthy on Trademarks & Unfair Competition* (“McCarthy”) § 23:110 (4th ed.) (noting that the junior user’s state of mind in selecting its mark may be relevant to the issue of likelihood of confusion, but *the only relevant “intent” is the intent to confuse or to trade on the plaintiff’s reputation by confusing customers*); *accord id.* § 23:113; *id.* § 23:115 (noting proof that alleged junior user knew of alleged senior user’s mark *when the junior user chose its mark* may be evidence of bad faith).

Regardless, to the extent that the Board believes that Apple’s (or IPAD LLC’s) intent in selecting the IPAD mark is an issue, Mr. La Perle would be able to answer such questions, as the Director of Apple’s Trademark and Copyright Group and [REDACTED]. He was also [REDACTED]; Mr. Vetter was not. And as discussed above in Section III.A, *supra*, [REDACTED], and this burden outweighs RxD’s strained relevance argument.

IV. RxD’S MOTION TO COMPEL PRODUCTION OF DOCUMENTS AND INTERROGATORY RESPONSES SHOULD BE DENIED.

Applying the above-stated general standards for discovery in Board proceedings, RxD’s written discovery requests that are the subject of this motion are overbroad and seek irrelevant information, or are moot because all responsive, non-privileged documents have been produced.⁷ Thus, as discussed below, RxD’s motion to compel should be denied for each of them.

A. RxD’s Interrogatory to Identify IPAD LLC’s Advertising Agencies Is Overbroad and Seeks Irrelevant Information.

RxD’s motion to compel IPAD LLC to identify all advertising and marketing agencies, and their most knowledgeable employees, engaged by IPAD LLC to “advertise, promote, or market services offered under the IPAD mark” in Interrogatory No. 21 should be denied.

⁷ For each of the discovery requests raised in RxD’s motion, IPAD LLC’s objections, as recited in full in its responses, are expressly reserved. (*See* Dkt. No. 34, Exs. 5–6.)

First, RxD has not met its burden at all of showing that the information sought by this Interrogatory is relevant. RxD claims that the identity of advertising and marketing agencies used by Apple (which is improperly included in RxD’s definition of “Applicant”) “may” lead to information concerning the selection of IPAD LLC’s mark and the distinctiveness of the mark. (Dkt. No. 34 at 13-14; *see also* n.9, *infra*.) But, as described above, Apple’s good faith or intent in selecting the IPAD mark is not at issue in this proceeding. This is so because [REDACTED] [REDACTED].⁸ And in any event, if that is RxD’s rationale, its Interrogatory is not [REDACTED] [REDACTED]. RxD’s claim that the information sought by Interrogatory No. 21 is relevant because it may be probative of the distinctiveness of IPAD LLC’s mark is similarly misplaced. (Dkt. No. 34 at 14.) RxD has not challenged the distinctiveness of IPAD LLC’s applied-for mark. (Dkt. No. 1.) RxD has opposed the registration of IPAD LLC’s mark solely on the basis that it is likely to cause confusion with RxD’s alleged prior trademark. (*Id.*) Accordingly, evidence relating to distinctiveness or secondary meaning of IPAD LLC’s mark is wholly irrelevant.

Second, this Interrogatory is grossly overbroad in that it seeks information relating to the promotion and marketing of all services offered under the “IPAD mark”—which include services *beyond* those specific business, telecommunications, computer, and storage services listed in the applications at issue. In fact, in all of its written discovery requests (including this one), RxD’s definition of “IPAD mark” is grossly overbroad because it is not limited to the services described in the challenged applications, but rather includes “the use of ‘IPAD’ to designate the source of goods and/or services offered by any party.” (*See* Buchner Decl., Ex. 6 (RxD’s 3d Set of Interrogs. to IPAD LLC) at 4; *id.*, Ex. 7 (RxD’s 3d Set of Reqs. for Prod. of Docs. & Things to IPAD LLC) at 3.) But it is well settled that IPAD LLC’s uses of the IPAD mark in connection with *other* goods and services that are not included in

⁸ Indeed, RxD does not even allege that [REDACTED] [REDACTED] (which, as discussed in Section III.B, *supra*, is unsupported), yet RxD’s interrogatories and document requests are unbounded as to time. This further underscores RxD’s overly broad requests and its overreaching in discovery.

the opposed applications are not relevant here, and are thus not discoverable.⁹ *See* TBMP § 414(11) (stating that parties thus “need not provide discovery with respect to those of its . . . goods and/or services that are not involved in the proceeding and have no relevance thereto.”); *see also In re Thor Tech, Inc.*, 2009 WL 1098997, at *4 (T.T.A.B. Apr. 22, 2009) (noting that registrability must be decided on the basis of the identification of good or services set forth in the application); *Volkswagenwerk*, 1973 WL 19920, at *1 (holding that applicant need not provide information as to its other marks or other products, or whether the involved mark is used on other products).

Moreover, this Interrogatory also is not limited to the United States, which goes far beyond the scope of this proceeding. TBMP § 414(13); *Double J of Broward Inc. v. Skalony Sportswear GmbH*, 21 U.S.P.Q.2d 1609, 1612–13 (T.T.A.B. 1991); *Oland’s Breweries [1971] Ltd. v. Miller Brewing Co.*, 189 U.S.P.Q. 481, 489 n.2 (T.T.A.B. 1975) (“[U]se and/or promotion of a mark confined to a foreign country . . . is immaterial to the ownership and registration thereof in the United States.”), *aff’d*, 548 F.2d 349 (C.C.P.A. 1976).

In short, this Interrogatory is grossly overbroad and seeks irrelevant information. The only reason RxD could possibly want the information sought by this Interrogatory is to enable it to [REDACTED], but without some valid basis to support the relevancy of this information, this is not a proper rationale for discovery.

B. RxD’s Interrogatory Regarding Alternative Marks Considered by IPAD LLC Overreaches and Seeks Irrelevant Information.

RxD’s motion to compel IPAD LLC to identify and explain its reasons for rejecting alternative marks that Apple considered before selecting the IPAD mark in Interrogatory No. 27 should be denied because this information is not relevant.

⁹ RxD’s definition of “Applicant” to include both IPAD LLC *and* Apple is similarly overly broad and improper. (Buchner Decl., Ex. 6 at 2; *id.* Ex. 7 at 2.) Apple is *not* the “applicant” here and is *not* a party to this proceeding. To the extent RxD seeks discovery from Apple, it must do so via proper third-party discovery. Fed. R. Civ. P. 26, 34; Trademark Rules of Practice 2.120. (*See also* n.2, *supra.*)

Alternative marks have no bearing on whether the applied-for IPAD marks are likely to cause confusion with RxD’s alleged mark. *See Frito-Lay*, 2011 WL 6012209, at *9 (denying as irrelevant document request concerning “any consideration of alternative names”). RxD’s reliance on TBMP § 414(4)—which states that “[i]nformation concerning a party’s selection and adoption of its involved mark is generally discoverable”—is misplaced. (Dkt. No. 34 at 14.) This guideline is expressly limited to the selection of the “*involved mark*” at issue, and does not encompass the selection or consideration of alternative marks that may have been considered but never adopted.

RxD also speculates (without support) that information regarding other marks that Apple considered is relevant to whether IPAD LLC “may have acted inequitably in adopting the IPAD mark,” and, if so, could be relevant to likelihood of confusion and IPAD LLC’s affirmative defenses. (Dkt. No. 34 at 14.) As discussed in Section III.B, *supra*, however, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Further, RxD is not entitled to this information to support its unclean hands claim. RxD’s unclean hands assertion is based on its claim that IPAD LLC adopted the IPAD mark while knowing of RxD’s use, which is unsupported by both the facts and law. [REDACTED]

[REDACTED] as discussed in Section III.B, *supra*. Even if that were not so, an allegation of mere knowledge, without more, is insufficient because “[m]ere awareness of a trademark owner’s claim to the same mark . . . does not amount to having unclean hands, nor establishes bad intent necessary to preclude laches and acquiescence defenses.” *Abraham v. Alpha Chi Omega*, 708 F.3d 614, 621 (5th Cir. 2013) (unclean hands bars equitable defenses “only where the . . . user ‘subjectively and knowingly’ intended to cause mistake or to confuse . . . buyers” with intent to capitalize “on the mark owner’s goodwill.”). Further, RxD’s attempts to get discovery on unclean hands must be denied where, as discussed above, [REDACTED], and RxD has offered no support for its assertion. *See Surefire, LLC v. Jetbeam USA*, No. 12-CV-121, 2014 WL

1512983, at *2 (S.D. Cal. Apr. 16, 2014) (denying motion to compel discovery about unclean hands based on mere assertion that party falsely advertised products where movant “presented no support for [its] assertion” and plaintiff “expressly stated that it does not advertise its products in [the accused] manner.”).

Finally, this Interrogatory (like RxD’s other requests), seeks information without limitation to the United States, which goes far beyond the scope of this proceeding. (*See* Section IV.A, *supra*.)

C. RxD’s Motion to Compel Information about IPAD LLC’s Officers, Directors, Members, and Managing Agents Is Overbroad and IPAD LLC Has Provided Sufficient Information.

RxD’s motion to compel IPAD LLC to produce documents and information to identify “all” of its officers, directors, members, and managing agents from July 2009 to the present in Interrogatory No. 28 and RFP No. 41 should be denied.

First, [REDACTED] [REDACTED].” (Dkt. No. 34, Ex. 8 at 5.) Because [REDACTED], RxD’s motion to compel is moot as to these Requests because there are no such people to disclose or identify.

Second, while it is true [REDACTED], this does not mean that RxD has no witness to depose. As discussed in Section III, *supra*, IPAD LLC has already identified [REDACTED], as [REDACTED]. (Dkt. No. 34, Ex. 5 (IPAD LLC’s Resps. & Objs. to RxD’s 3d Set of Interrogs.) at 10; *see* Dkt. No. 34 Ex. 8 at 5.) *See also Am. Optical Corp. v. Exomet, Inc.*, 181 U.S.P.Q. 120, 122 (T.T.A.B. 1974) (cited in TBMP § 414 n.20) (identifying one employee who is most knowledgeable was sufficient), *overruled in part on other grounds*. [REDACTED]. Thus, RxD’s motion to compel as to RFP No. 41 and Interrogatory No. 28 should be denied as moot. *Id.*

D. RxD’s Motion to Compel Information about Market Studies Is Overbroad and Seeks Irrelevant Information.

With regard to RFP Nos. 21–23, RxD moves to compel production of “any” and “all” “consumer or market studies or surveys” that IPAD LLC (1) “possess[es] or [is] aware of, that evidence the connotations that the IPAD Mark produces in the minds of Apple, Inc.’s consumers”; (2) “conducted, reviewed, or relied on” to select the services for the IPAD Mark; and (3) “ever relied on, or used” to “market and sell the iPad.” RxD’s motion as to these Requests should be denied.

First, these requests make no sense. RxD claims it needs the information sought by RFP Nos. to show the commercial connotation of the IPAD mark, but the distinctiveness of IPAD LLC’s mark is not at issue in this proceeding. (*See also* Section IV.A, *supra*.)

Second, these Requests are grossly overbroad. They seek information relating to the use of the IPAD mark in connection with goods and services other than those described in the challenged applications and relating to uses outside of the United States, neither of which is relevant to this proceeding. *See, e.g.*, TBMP § 414(11), (13); *In re Thor Tech*, 2009 WL 1098997, at *4; *Volkswagenwerk*, 1973 WL 19920, at *1; *Double J*, 21 U.S.P.Q.2d at 1612–13; *see also* Sections IV.A-B, *supra*.

E. RxD’s Motion to Compel Documents Concerning Knowledge of Third-Party Use, Trademark Search Reports, and Valuations Is Moot.

RxD moves to compel on RFP Nos. 30–32, which seek “all” documents about IPAD LLC’s knowledge of third-party use of the “IPAD Mark” on *any* goods/services, as well as “search reports or investigation reports” conducted by or on behalf of IPAD LLC regarding use of the IPAD mark by others, and “evaluation[s] or assessment[s] . . . including valuation[s]” of the IPAD mark by others. RxD’s motion to compel as to these Requests should be denied as moot and because they seek irrelevant information.

First, with respect to search reports and documents relating to IPAD LLC’s knowledge of third-party use of its IPAD mark, [REDACTED]

██████████. Moreover, prior to the filing of RxD’s motion to compel, ██████████
 ██████████

██████████. (Dkt. No. 34 Exs. 9 at 2, 11 at 1.) Given these representations, RxD had no grounds to move to compel as to RFP Nos. 30–31.

Second, ██████████
 ██████████. In any case, ██████████ have no bearing on this proceeding. Those types of documents tend to bear more on damages, which are not at issue in a TTAB opposition proceeding.

Finally, these Requests are overbroad in that they are not limited to the services disclosed in the challenged applications or to use within the United States. (*See* Section IV.A, *supra*.)

F. RxD’s Request for Production of All Testimony about the Acquisition of the IPAD Mark in Prior Litigations Seeks Irrelevant Information about Foreign Trademark Rights and RxD Already Has the Information to which It Could Be Entitled.

RxD moves to compel on RFP No. 35, seeking “all testimony” by IPAD LLC regarding acquisition of the “IPAD Mark” offered in or regarding the dispute between the Applicant and Shenzhen Proview Technology” (the “Proview Contract Litigation”). (Dkt. No. 34 at 17.) The Proview Contract Litigation was a contract dispute regarding ownership of a trademark registration in China, and is thus irrelevant to this proceeding.¹⁰ RxD’s motion to compel as to RFP No. 35 should be denied.

As an initial matter, even assuming that the Proview Contract Litigation is relevant to this proceeding, discovery would be limited to “the names of the parties thereto, the jurisdiction, the proceeding number, the outcome of the proceeding, and the citation of the decision (if published).” TBMP § 414(10); *see also Interbank Card Assoc. v. U.S. Nat’l Bank of Or.*, 197 U.S.P.Q. 127, 128

¹⁰ In its motion, RxD cites *Proview Electronics Co. Ltd., et al. v. Apple Inc., et al.*, No. 112-CV-219219, 2012 WL 590878 (Cal. Sup. Ct. Feb. 17, 2012), but even if the subject matter of that action were relevant, it was dismissed (in Apple’s favor) before any testimony was taken.

(T.T.A.B. 1975). As is shown from its motion, RxD has this information. (*See* Dkt. No. 34 at 6.) Thus, RxD’s motion is moot as to this Request because it is not entitled to any additional information.

In addition, it is well settled that information concerning a party’s foreign use of its mark is irrelevant to the issues in a Board proceeding, and thus is not discoverable. TBMP § 414(13); *Double J*, 21 U.S.P.Q.2d at 1612–13 (denying motion to compel information “concerning applicant’s foreign activities, including foreign trademark applications and/or registrations” as “not relevant to the issues in an opposition proceeding.”); *Oland’s Breweries*, 189 U.S.P.Q. at 489 n.7. RxD contends that this rule does not apply because “the issue is not Applicant’s foreign rights, but whether it acted fraudulently or inequitably in adopting the mark.” (Dkt. No. 34 at 17–18.) [REDACTED]

[REDACTED], and therefore is still irrelevant.

RxD claims that it is entitled to information about IPAD LLC’s marks in foreign jurisdictions because IPAD LLC bases its priority date in one of the challenged applications on an application from Trinidad & Tobago. (Dkt. No. 34 at 18.) There is no logic in RxD’s argument and no connection between [REDACTED]. The *Proview Contract Litigation* [REDACTED]. Applicants in the United States routinely file U.S. applications under Section 44 based on the filing date of a non-U.S. application, and this does not expand the scope of discovery on likelihood of confusion analyses in opposition proceedings to foreign marks.

Put simply, there is no justification for this material being produced. It is obvious that the only reason that RxD wants information relating to other litigations that have no bearing on this proceeding is to find out [REDACTED]

[REDACTED] This is not a proper rationale for seeking discovery.

G. RxD’s Motion to Compel Production of Steve Jobs’ Documents Is Overbroad, Intended to Harass, and Seeks Irrelevant Information in the Possession of a Non-Party.

RxD moves to compel documents responsive to RFP Nos. 38 and 39, which seek production of correspondence to and from Steve Jobs, Apple’s founder and former CEO, regarding the adoption of the IPAD mark and the use of the IPAD mark for the services described in the challenged applications.¹¹ RxD’s motion as to these Requests should be denied as irrelevant, overbroad and unduly burdensome.

As is well known, Mr. Jobs is deceased. [REDACTED]

[REDACTED] In any event, RxD has not satisfied its burden of showing that these documents are relevant to the claims and defenses in this proceeding. RxD argues that “information regarding the selection and adoption of a mark . . . is generally discoverable” because such information is “probative of Applicant’s intent and good faith in adopting the IPAD mark.” (Dkt. No. 34 at 19.) As described in Section III.B, however, [REDACTED]

[REDACTED]

[REDACTED]”¹²

With respect to RFP. No. 39, RxD seeks information about the use of the IPAD mark in connection with the services described in the involved applications. But the challenged applications are intent-to-use applications and no statement of use has been filed. Thus, it is unclear what “use” RxD is referring to, and RxD offers no explanation as to how Mr. Jobs’ communications are relevant to this proceeding.¹³

¹¹ Documents responsive to these requests, if any, [REDACTED] (See *supra*, n.2; Fed. R. Civ. P. 45.)

¹² At a minimum, RFP No. 38 should be narrowed to seek only those communications that bear on Apple’s (or IPAD LLC’s) knowledge of RxD prior to Apple’s conception of the IPAD mark.

¹³ RxD argues that Mr. Jobs’ documents are “particularly critical” given the “lack of witnesses” identified by IPAD LLC. But as described in Section II, *supra*, IPAD LLC has identified Mr. La Perle on its initial disclosures and has designated him as its Rule 30(b)(6) witness on the topics of IPAD LLC’s

In short, RxD’s vague and unsupported arguments regarding the relevancy of any of Mr. Jobs’ communications underscore its true purpose—to harass Apple and gain access to the confidential and much sought-after documents of Steve Jobs in an attempt to gain settlement leverage and to harass IPAD LLC and non-party Apple through burdensome and oppressive discovery.

H. RxD’s Motion to Compel Information about the [REDACTED] Is Moot and Seeks Production of a [REDACTED] for the Improper Purpose of Leveraging Settlement.

RxD moves to compel production of documents pursuant to RFP No. 36, which seeks “all documents and correspondence relating to the [REDACTED], Inc.,” and documents pursuant to RFP No. 42, which seeks “any assignments relating to or regarding” IPAD LLC’s rights in the IPAD mark. (Dkt. No. 34 at 18, 20–21.) RxD’s motion as to this Request should be denied as moot and irrelevant.

RxD’s motion is moot as to these requests because IPAD LLC [REDACTED]
[REDACTED]
[REDACTED]. (Dkt. No. 34 Ex. 8 at 6–7.)

RxD has now taken the position that IPAD LLC must also produce [REDACTED]
[REDACTED]. (Dkt. No. 34, Ex. 9 at 3.) RxD articulates no basis for the relevancy of [REDACTED], and there is none—[REDACTED]
[REDACTED]. The only reason that RxD wants to see [REDACTED]

selection of the IPAD mark, the facts and circumstances of IPAD LLC’s first knowledge of RxD’s purported mark, and the goods and services IPAD LLC and its licensees intend to offer in connection with the IPAD mark. RxD also argues that it needs access to Mr. Jobs’ correspondence in part because Mr. La Perle is an attorney, which is unavailing. Mr. La Perle is the Director of Apple’s Trademark and Copyright Group and [REDACTED] and can testify as to all non-privileged information relevant to these topics.

IPAD LLC or to inform its monetary demand for a possible settlement, but that is not a proper rationale for seeking discovery that is otherwise not relevant to the claims or defenses at issue.

V. RxD’S CHALLENGE TO IPAD LLC’S CONFIDENTIALITY DESIGNATIONS ARE UNTIMELY AND UNFOUNDED.

Finally, RxD’s challenge to IPAD LLC’s application of the “Trade Secret/Commercially Sensitive” designation to its Responses and Objections to RxD’s Third Set of Requests for Production of Documents and Things, and to RxD’s Third Set of Interrogatories to IPAD LLC (collectively, the “Responses”) is meritless. (Dkt. No. 34 at 22.)

First, RxD’s challenge is untimely. The Protective Order requires RxD to challenge designations “within 14 days following the production of the designated information.” (Dkt. No. 5 ¶ 14.) IPAD LLC served its Responses with the disputed designations on January 28, 2015, and told RxD that it would not agree to remove the designations on February 19, 2015. (Dkt. No. 34, Ex. 8 at 3.) However, RxD waited almost a month to file this motion. (*Compare id.*, with Dkt. No. 34.) There is no reason why RxD could not have filed this motion earlier, and RxD offers no explanation in its brief.

Moreover, IPAD LLC’s designations are proper. The Protective Order gives the parties discretion to designate materials as “Trade Secret/Commercially Sensitive” in order to protect them from public access and to keep them limited to review by the parties’ attorneys. (*See* Dkt. No. 5 ¶ 1.) The only categories of materials that cannot be so designated under the terms of the Protective Order are those materials that are publicly available or that were lawfully obtained from another source. (*See id.* ¶ 2.) Further, as IPAD LLC explained to RxD, it believes that the Responses contain substantive and competitive information that is confidential or trade secret in nature, including, among other things, potential future use of the IPAD mark, target demographics, clearance practices, and licensing arrangements. (*See* Dkt. No. 34 Ex. 8 at 3.) Moreover, IPAD LLC’s designations for its Responses are consistent with its prior designations for discovery responses in this proceeding to which RxD never objected. Indeed, the challenged Responses restate portions of earlier responses that were also designated as “Trade Secret/Commercially Sensitive,” and never challenged. Accordingly, the Board should reject

RxD's motion to strike the designation and for an order that IPAD LLC "refrain from such over-designation in the future."¹⁴

VI. CONCLUSION

For the foregoing reasons, IPAD LLC respectfully requests that the Board deny RxD's motion to compel in its entirety and grant IPAD LLC's request for a protective order.

Dated: April 13, 2015

Respectfully submitted,

/s/ Allison W. Buchner

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ATTORNEYS FOR APPLICANT
IP APPLICATION DEVELOPMENT LLC

¹⁴ RxD also moves to compel IPAD LLC to produce a privilege log, but IPAD LLC has already agreed to do so. (*See, e.g.*, Dkt. No. 34, Exs. 8 at 1, 7, 11.) Thus, RxD's motion to compel a privilege log should be denied as moot. RxD also seeks an extension in the discovery deadline, which makes no sense. Once RxD filed its Motion to Compel, discovery in this action was suspended, so once the Board rules on that motion, both parties will have the benefit of the time remaining in the discovery period. *See* TBMP § 2.120(e)(2). Notably, even *after* filing its Motion to Compel, RxD served additional discovery requests, further demonstrating its disregard for the Board's discovery rules. (Buchner Decl., Exs. 8–9.) *See also* TBMP § 2.120(e)(2) (prohibiting any party from serving additional discovery responses after a motion to compel is filed and the case is suspended).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing public version of IP APPLICATION DEVELOPMENT LLC'S OPPOSITION TO RXD MEDIA, LLC'S MOTION TO COMPEL AND MOTION FOR A PROTECTIVE ORDER IN CONNECTION WITH DEPOSITION OF NON-PARTY DOUGLAS VETTER, originally filed on April 13, 2015, was filed electronically on this 16th day of April, 2015, and a copy was electronically mailed to the following:

Cecil E. Key
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Attorneys for RxD Media, LLC

/s/ Allison W. Buchner

Allison W. Buchner

5. Attached as Exhibit 3 is a true and correct copy of IPAD LLC's Initial Disclosures.

6. Attached as Exhibit 4 is a true and correct copy of IPAD LLC's First Amended Responses & Objections to RxD's First Set of Interrogatories & Requests for Production of Documents & Things.

7. Attached as Exhibit 5 is a true and correct copy of RxD's notice of deposition, pursuant to Federal Rule of Civil Procedure 30(b)(6) to IPAD LLC and non-party Apple, Inc.

8. Attached as Exhibit 6 is a true and correct copy of RxD's Third Set of Interrogatories to IPAD LLC.

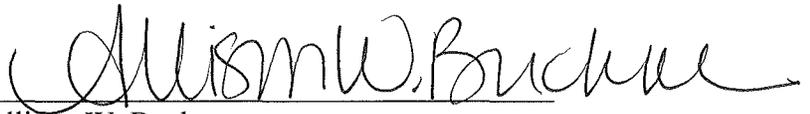
9. Attached as Exhibit 7 is a true and correct copy of RxD's Third Set of Requests for Production of Documents & Things to IPAD LLC.

10. Attached as Exhibit 8 is a true and correct copy of RxD's Fourth Set of Interrogatories to IPAD LLC, which RxD served on March 31, 2015 while its motion to compel (Dkt. No. 34) was pending.

11. Attached as Exhibit 9 is a true and correct copy of RxD's First Set of Requests for Admission to IPAD LLC, which RxD served on March 31, 2015 while its motion to compel (Dkt. No. 34) was pending.

12. On May 10, 2013, IPAD LLC produced the [REDACTED], bearing the Bates numbers IPADLLC_000149-52 (the "[REDACTED]"). Attached as Exhibit 10 is a true and correct copy of the production letter from IPAD LLC to RxD, dated May 10, 2013, which I understand accompanied the production containing the [REDACTED].

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 13, 2015.


Allison W. Buchner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing public version of DECLARATION OF ALLISON W. BUCHNER IN SUPPORT OF IP APPLICATION DEVELOPMENT LLC'S OPPOSITION TO RXD MEDIA, LLC'S MOTION TO COMPEL, originally filed on April 13, 2015, was filed electronically on this 16th day of April, 2015, and a copy was electronically mailed to the following:

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/s/ Allison W. Buchner

Allison W. Buchner

RxD Media, LLC v. IP Application Development LLC
Opposition Nos. 91207333, 91207598

APPLICANT'S EXHIBIT 1

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|--|---|--------------------------------|
| RXD MEDIA, LLC | : | |
| | : | |
| Opposer | : | |
| | : | |
| v. | : | Opposition No. 91207333 |
| | : | 91207598 |
| IP APPLICATION DEVELOPMENT LLC, | : | |
| | : | |
| Applicant. | : | |
| <hr style="width:40%; margin-left:0"/> | : | |

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE THAT pursuant to Rule 30 of the Federal Rules of Civil Procedure and TBMP § 404, Opposer RxD Media, LLC (“RxD”), by and through counsel, will take the deposition upon oral examination of Douglas Vetter at the law offices of Farney Daniels PC, 411 Borel Avenue, Suite 350, San Mateo, California 94401 or at an alternative location later stipulated by the parties, on February 4, 2015 beginning at 9:30 A.M.

The deposition will be recorded by stenographic means, and Opposer reserves the right to record the deposition by audio and/or audiovisual means. The deposition shall continue until completed or adjourned. All counsel are invited to attend to cross-examine.

Dated: January 20, 2015

Respectfully submitted,

RXD MEDIA, LLC
BY COUNSEL

/s/ Cecil E. Key
Cecil E. Key, Esq. (VSB #41018)
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CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2015, a true copy of the foregoing was electronically mailed to the following:

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/s/ Cecil E. Key
Cecil E. Key

RxD Media, LLC v. IP Application Development LLC
Opposition Nos. 91207333, 91207598

APPLICANT'S EXHIBIT 2

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

RxD Media, LLC

Opposer,

vs.

IP Application Development LLC

Applicant.

Opposition No.: 91207333
App. Serial No.: 77/927,446

Opposition No.: 91207598
App. Serial No.: 77/913,563

**APPLICANT'S RESPONSES AND OBJECTIONS TO
OPPOSER'S FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 33 and 34 of the Federal Rules of Civil Procedure, Applicant IP Application Development LLC, by its attorneys, hereby submits these responses and objections to Opposers' First Set of Interrogatories and Requests for Production of Documents and Things. The responses are limited to information available to Applicant at the present time and are provided without prejudice to its right to present additional or alternative information later in this proceeding.

GENERAL OBJECTIONS

Applicant objects to Opposer's General Definitions and Instructions and to each of these Interrogatories and Requests to the extent they exceed the requirements of the Trademark Rules of Practice and the Federal Rules of Civil Procedure, and to the extent that they seek information protected by the attorney-client privilege, the work product doctrine, or other legally recognized privileges and obligations.

In providing these responses, Applicant does not waive or intend to waive:

- * objections as to competency, relevance, materiality or admissibility;
- * rights to object on any ground to the use of any of the responses contained herein in this or any subsequent proceeding;
- * objections as to vagueness or ambiguity; or
- * rights to object on the same or other grounds to these or any further discovery requests in this proceeding.

Applicant objects to Opposer's Definition No. 1 as overly broad, unduly burdensome, and exceeding the requirements of the Trademark Rules of Practice and the Federal Rules of Civil Procedure insofar as Opposer seeks information in the possession, custody, or control of any person or entity other than Applicant [REDACTED]

Applicant objects to Opposer's Definition No. 5 as overly broad, unduly burdensome, and exceeding the requirements of the Trademark Rules of Practice and the Federal Rules of Civil Procedure.

Applicant objects to Opposer's Definition No. 6 as overly broad and unduly burdensome insofar and to the extent that it seeks the home addresses and home telephone numbers of any identified individuals and seeks information in the possession, custody, or control of any person or entity other than Applicant or its licensee Apple Inc. Applicant further objects to the definition of "identify" when used in reference to a business entity as vague, ambiguous, overly broad and unduly burdensome. Applicant further objects to the definition of "identify" when used in reference to a document as overly broad and unduly burdensome.

Applicant further objects to Opposer's Definition No. 16 as overly broad, unduly burdensome, and exceeding the requirements of the Trademark Rules of Practice and the Federal Rules of Civil Procedure.

The foregoing General Objections are hereby incorporated into Applicant's responses to each of the Interrogatories and Requests set forth below and are not waived by any of Applicant's individual responses.

INTERROGATORIES

INTERROGATORY NO. 1

Identify each predecessor, parent, subsidiary or related entity of Applicant.

Response:

Applicant objects to this Interrogatory on the grounds that the Interrogatory's request for "each predecessor, parent, subsidiary or related entity" of Apple Inc. is overly broad, unduly burdensome and not calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Applicant states that [REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 2

Identify all trademark applications and registrations owned by Applicant or a related entity in the United States identifying Applicant's IPAD mark alone or as a component to a composite mark.

Response:

Applicant objects to this Interrogatory on the grounds that it calls for publicly available information equally accessible to Opposer. Subject to and without waiving the foregoing

objections, Applicant states that [REDACTED]



INTERROGATORY NO. 3

Describe the relationship between Applicant IP Application Development LLC and Apple Inc.

Response:

Subject to and without waiving the foregoing objections, [REDACTED]

INTERROGATORY NO. 4

Identify any license agreements between Applicant IP Application Development LLC and Apple Inc. for the mark identified in Serial Nos. 77/927446 and 77/913563.

Response:

Subject to and without waiving the foregoing objections, Applicant states that [REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 5

Set forth fully the facts and reasons why Applicant, including its licensees, selected, adopted and thereafter used Applicant's mark.

Response:

Applicant objects to this Interrogatory insofar and to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine, or other legally cognizable privileges and obligations. Subject to and without waiving the foregoing objections, Applicant states that [REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 6

Identify all persons who participated in the consideration of, selection of, adoption of and/or development of Applicant's mark.

Response:

Applicant objects to the request for identification of "all persons" as overly broad and unduly burdensome. Subject to and without waiving the foregoing objections, Applicant states

[REDACTED]

INTERROGATORY NO. 7

Describe in detail the circumstances regarding when and how Applicant, including its licensees, first became aware of Opposer's mark, including the circumstances giving rise to or surrounding such knowledge, and including the identity of the persons most knowledgeable with the circumstances.

Response:

Applicant objects to this Interrogatory on the grounds that it seeks information protected by the attorney-client privilege, the work product doctrine, or other legally cognizable privileges and obligations.

INTERROGATORY NO. 8

Identify all investigations or searches conducted by Applicant or its licensee to identify whether or not Applicant's mark had been or was being used by others and identify the result of such investigation or search.

Response:

Applicant objects to this Interrogatory on the grounds that it seeks information protected by the attorney-client privilege, the work product doctrine, or other legally cognizable privileges and obligations. Applicant further objects that this Interrogatory is overly broad and unduly burdensome and seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence insofar as it requires Applicant to provide information concerning any use in a foreign country. Subject to and without waiving the foregoing objections, Applicant states that [REDACTED]

[REDACTED]

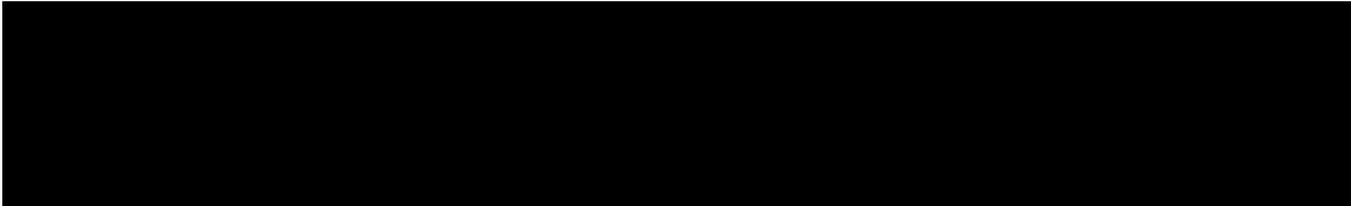
INTERROGATORY NO. 9

Identify every opinion, legal or otherwise, requested or received by Applicant or its licensee regarding the right to use Applicant's mark, including:

- a) the identity of the persons requesting the opinion,
- b) the date and substance of the opinion, and
- c) the persons receiving the opinion.

Response:

Applicant objects to this Interrogatory on the grounds that it seeks information protected by the attorney-client privilege, the work product doctrine, or other legally cognizable privileges and obligations. Subject to and without waiving the foregoing objections, Applicant states that



INTERROGATORY NO. 10

Identify all litigation, interferences, conflicts, opposition proceedings and other proceedings, including the ultimate conclusion or the present status, whether in the United States or a foreign country, involving Applicant's mark.

Response:

Applicant objects that this Interrogatory is overly broad and unduly burdensome and seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence insofar as it requires Applicant to provide information concerning proceedings in a foreign country. Subject to and without waiving the foregoing objections,

INTERROGATORY NO. 11

Identify every service in connection with Applicant has used or is using Applicant's mark.

Response:

Applicant objects that this Interrogatory is overly broad and unduly burdensome and seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence insofar as it requests information for services other than those identified in Application Serial Nos. 77/927,446 and 77/913,563. Applicant further objects to this Interrogatory on the grounds that it does not seek relevant information, as Applicant's Application Serial Nos. 77/927,446 and 77/913,563 were filed under Trademark Act Section 1(b) on an intent-to-use basis.

INTERROGATORY NO. 12

For each service identified in Interrogatory No. 11, identify the persons most knowledgeable about service.

Response:

Applicant incorporates its objections to Interrogatory No. 11 as if fully set forth herein.

INTERROGATORY NO. 13

For each service identified in Interrogatory No. 11, state the facts and circumstances that support the exact date, upon which Applicant intends to rely, of first use of Applicant's mark in connection with the service.

Response:

Applicant incorporates its objections to Interrogatory No. 11 as if fully set forth herein.

INTERROGATORY NO. 14

Describe the basis for Applicant's First Affirmative Defense in its Answer contending that Opposer's mark is merely descriptive.

Response:

Opposer's use of IPAD immediately describes the characteristics and function of Opposer's service. The average consumer will understand that Opposer's use of IPAD signifies an "internet pad." Opposer's own marketing demonstrates that IPAD is descriptive, as for three years Opposer referred to its service as an "Internet Notepad," modifying the reference only after retaining counsel. Opposer has testified that its online service consists of "pads," various modules in which users can place notes in various categories.

Applicant expects to identify further information in support of its First Affirmative Defense during the course of discovery in this matter.

INTERROGATORY NO. 15

Describe the basis for Applicant's Second Affirmative Defense in its Answer contending that Opposer's opposition is barred by laches, acquiescence and estoppel.

Response:

Opposer became aware that Applicant's licensee Apple Inc. was using IPAD on or around January 27, 2010, but did not raise any objection to Applicant's use or application for IPAD until shortly prior to its filing of Notices of Opposition in these matters. Opposer was further aware of Slate Computing (USA) LLC's Application Serial Nos. 85/014,225 and 85/014,233 for the mark IPAD, and has testified that [REDACTED]

that Applicant offers and intends to offer in the United States under the IPAD mark through itself and/or its licensees. Applicant reserves the right to identify additional witnesses at a future time, in accordance with the schedule set by the Board in this proceeding.

INTERROGATORY NO. 18

Identify each person who furnished information for Applicant's responses to the foregoing Interrogatories.

Response:

Subject to and without waiving the foregoing objections, Applicant states that Thomas R. La Perle, Director, Trademark & Copyright, at Apple Inc. furnished information related to the foregoing Interrogatories.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1

All documents and things that contain any information used to provide responses to Opposer's First Set of Interrogatories to Applicant.

Response:

Applicant hereby incorporates by reference the objections set forth in its responses to Opposer's First Set of Interrogatories. Subject to and without waiving the foregoing objections, Applicant states that it will produce non-privileged documents in its possession, custody or control that it reasonably believes to be responsive to this Request, at a time and place that is mutually agreed to by counsel for the parties.

REQUEST FOR PRODUCTION NO. 2

All documents and things evidencing or referring to any searches or investigations conducted by Applicant, or its licensee, in connection with Applicant's mark.

Response:

Applicant objects to this Request on the grounds that “any searches or investigations” is overly broad and unduly burdensome. Subject to and without waiving the foregoing objections, Applicant states that it is not aware of any non-privileged documents in its possession, custody or control that it reasonably believes to be responsive to this Request.

REQUEST FOR PRODUCTION NO. 3

All documents and things referring to any infringement or potential infringement of any rights in Applicant’s mark.

Response:

Applicant objects that this Request is overly broad and unduly burdensome and seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence insofar as it requires Applicant to provide information concerning proceedings in a foreign country. Subject to and without waiving the foregoing objections, Applicant states that it will produce non-privileged documents in its possession, custody or control that it reasonably believes to be responsive to this Request, at a time and place that is mutually agreed to by counsel for the parties.

REQUEST FOR PRODUCTION NO. 4

All documents and communications concerning any objection made by any person, other than a party to this proceeding, relating to Applicant’s use of Applicant’s mark in the United States.

Response:

Subject to and without waiving the foregoing objections, Applicant states that it will produce non-privileged documents in its possession, custody or control that it reasonably

believes to be responsive to this Request, at a time and place that is mutually agreed to by counsel for the parties.

REQUEST FOR PRODUCTION NO. 5

All documents mentioning, showing, referring to, or which supports a showing of when a person has been confused, mistaken or deceived between the source of Applicant's goods or services bearing Applicant's Mark and Opposer's services bearing Opposer's IPAD mark.

Response:

Subject to and without waiving the foregoing objections, Applicant states that it is not aware of any non-privileged documents in its possession, custody or control that it reasonably believes to be responsive to this Request.

REQUEST FOR PRODUCTION NO. 6

All documents relating to any investigation or search relating to whether Applicant's mark had been or was being used by others.

Response:

Subject to and without waiving the foregoing objections, Applicant states that it is not aware of any non-privileged documents in its possession, custody or control that it reasonably believes to be responsive to this Request.

REQUEST FOR PRODUCTION NO. 7

All documents relating or referring to any business, legal or other opinion with respect to Applicant's mark, including any opinion concerning the validity of Applicant's mark or concerning any possible conflict with the mark of any other person.

Response:

Applicant objects to this Request on the grounds that “any business . . . or other opinion” is vague, ambiguous, overly broad and unduly burdensome and seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, Applicant states that it is not aware of any non-privileged documents in its possession, custody or control that it reasonably believes to be responsive to this Request.

REQUEST FOR PRODUCTION NO. 8

All documents which relate to the circumstances regarding when and how Applicant, or its licensee, first became aware of Opposer’s mark, including the circumstances giving rise to or surrounding such knowledge.

Response:

Subject to and without waiving the foregoing objections, Applicant states that it is not aware of any non-privileged documents in its possession, custody or control that it reasonably believes to be responsive to this Request.

REQUEST FOR PRODUCTION NO. 9

Examples of advertisements, packaging, labels, displays and other materials created by or for Applicant’s mark showing Applicant’s use of Applicant’s mark in relation to its services described in Serial Nos. 77/927446 and 77/913563.

Response:

Applicant objects to this Request on the grounds that it does not seek relevant information, as Application Serial Nos. 77/927,446 and 77/913,563 were filed under Trademark Act Section 1(b) on an intent-to-use basis.

REQUEST FOR PRODUCTION NO. 10

All documents mentioning or referring to the use by Opposer of Opposer's Mark.

Response:

Subject to and without waiving the foregoing objections, Applicant states that it will produce non-privileged documents in its possession, custody or control that it reasonably believes to be responsive to this Request, at a time and place that is mutually agreed to by counsel for the parties.

REQUEST FOR PRODUCTION NO. 11

Documents identifying each predecessor, parent, subsidiary or related entity of Applicant identified in response to Interrogatory No. 1.

Response:

Applicant hereby incorporates by reference its objections to Interrogatory No. 1 as if fully set forth herein. Applicant further objects to the term "identifying" as vague and ambiguous.

REQUEST FOR PRODUCTION NO. 12

All trademark applications and registrations identified in response to Interrogatory No. 2.

Response:

Applicant objects to this Interrogatory on the grounds that it calls for publicly available information equally accessible to Opposer. Subject to and without waiving the foregoing objections, Applicant states that it will produce the trademark applications and registrations it identified in response to Interrogatory No. 2, at a time and place that is mutually agreed to by counsel for the parties.

REQUEST FOR PRODUCTION NO. 13

All documents concerning Applicant's selection, adoption or use of Applicant's mark, including documents identifying the persons involved in Applicant's selection and adoption of Applicant's mark.

Response:

Applicant objects that this Request is overly broad and unduly burdensome insofar as it requests "all" such documents. Subject to and without waiving the foregoing objections, Applicant states that it will produce non-privileged documents in its possession, custody or control regarding its selection of Applicant's mark that it reasonably believes to be responsive to this Request, at a time and place that is mutually agreed to by counsel for the parties. Applicant further states that it will produce a representative sample of non-privileged documents in its possession, custody or control regarding its adoption and use of Applicant's mark, at a time and place that is mutually agreed to by counsel for the parties.

REQUEST FOR PRODUCTION NO. 14

Documents demonstrating every service Applicant uses Applicant's mark in connection with as identified in response to Interrogatory No. 11, including documents evidencing the date of first use for each service.

Response:

Applicant hereby incorporates by reference its objections to Interrogatory No. 11 as if fully set forth herein.

REQUEST FOR PRODUCTION NO. 15

All documents Applicant intends to rely upon to support its First Affirmative Defense in its Answer contending that Opposer's mark is merely descriptive.

Response:

Applicant objects to this Request on the grounds that it requires Applicant to identify the evidence that it intends to introduce at trial before the trial period has begun. Applicant further objects to this Request on the grounds that it seeks information in the possession of Opposer. Subject to and without waiving the foregoing objections, Applicant states that it will produce non-privileged documents in its possession, custody or control that it reasonably believes to be responsive to this Request, to the extent known at the present time, at a time and place that is mutually agreed to by counsel for the parties.

REQUEST FOR PRODUCTION NO. 16

All documents Applicant intends to rely upon to support its Second Affirmative Defense in its Answer contending that Opposer's opposition is barred by laches, acquiescence and estoppel.

Response:

Applicant objects to this Request on the grounds that it requires Applicant to identify the evidence that it intends to introduce at trial before the trial period has begun. Applicant further objects to this Request on the grounds that it seeks information in the possession of Opposer. Subject to and without waiving the foregoing objections, Applicant states that it will produce non-privileged documents in its possession, custody or control that it reasonably believes to be responsive to this Request, to the extent known at the present time, at a time and place that is mutually agreed to by counsel for the parties.

REQUEST FOR PRODUCTION NO. 17

To the extent not produced in response to any of the preceding document requests, all documents that Applicant intends to rely upon in this Opposition to support its position that Applicant's mark is entitled to registration.

Response:

Applicant objects to this Request on the grounds that it requires Applicant to identify the evidence that it intends to introduce at trial before the trial period has begun. Subject to and without waiving the foregoing objections, Applicant states that it will produce non-privileged documents in its possession, custody or control that it reasonably believes to be responsive to this Request, to the extent known at the present time, at a time and place that is mutually agreed to by counsel for the parties.

REQUEST FOR PRODUCTION NO. 18

All license agreements between Applicant and Apple Inc. concerning the use of Applicant's mark.

Response:

Subject to and without waiving the foregoing objections, Applicant states that it will produce non-privileged documents in its possession, custody or control responsive to this Request, at a time and place that is mutually agreed to by counsel for the parties.

REQUEST FOR PRODUCTION NO. 19

All documents relating to the factual issues and opinions to be testified about by each expert witness Applicant intends to rely on, including documents related to the witness's identity, educational background, professional experience and qualifications as an expert.

Response:

Applicant hereby incorporates by reference its response to Interrogatory No. 16.

Applicant objects to this Interrogatory on the grounds that it requires Applicant to identify documents related to expert witnesses before the deadline provided for such disclosure.

Applicant further objects that this Request is overly broad and unduly burdensome insofar as it requests "all" such documents.

Date: March 21, 2013

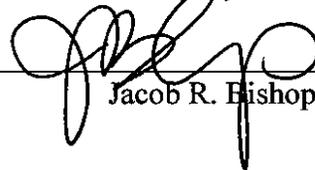
Attorneys for Applicant
IP Application Development LLC



Glenn A. Gundersen
Christine M. Hernandez
Jacob R. Bishop
Dechert LLP
Cira Centre, 2929 Arch Street
Philadelphia, PA 19104-2808
Telephone: 215-994-2183

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Applicant's Responses and Objections to Opposer's First Set of Interrogatories and Requests for Production of Documents and Things has been duly served by mailing such copy first class, postage prepaid to Nicole D. Galli, Benesch Friedlander Coplan & Aronoff LLP, 1650 Market Street, Suite 3611, Philadelphia, PA 19103, on March 21, 2013.



Jacob R. Bishop

RxD Media, LLC v. IP Application Development LLC
Opposition Nos. 91207333, 91207598

APPLICANT'S EXHIBIT 3

B. Categories of Documents and Things

Pursuant to Fed. R Civ. P. 26(a)(1)(B), Applicant states that it has the following categories of documents in its possession, custody or control, which may be used to support its claims in this proceeding: Non-privileged, non-confidential documents relating to the goods and services that Applicant offers and intends to offer in the United States under the IPAD mark through itself and/or its licensees.

Date: December 17, 2012

Attorneys for Applicant
IP Application Development LLC



Glenn A. Gundersen
Christine M. Hernandez
Jacob R. Bishop
Dechert LLP
Cira Centre, 2929 Arch Street
Philadelphia, PA 19104-2808
Telephone: 215-994-2183

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Initial Disclosures has been duly served by mailing such copy first class, postage prepaid to Nicole D. Galli, Benesch Friedlander Coplan & Aronoff LLP, 1650 Market Street, Suite 3611, Philadelphia, PA 19103, on December 17, 2012.



Jacob R. Bishop

RxD Media, LLC v. IP Application Development LLC
Opposition Nos. 91207333, 91207598

APPLICANT'S EXHIBIT 4

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

RxD Media, LLC

Opposer,

vs.

IP Application Development LLC

Applicant.

Opposition No.: 91207333
App. Serial No.: 77/927,446

Opposition No.: 91207598
App. Serial No.: 77/913,563

**APPLICANT'S FIRST AMENDED RESPONSES AND OBJECTIONS
TO OPPOSER'S FIRST SET OF INTERROGATORIES
AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 33 and 34 of the Federal Rules of Civil Procedure, Applicant IP Application Development LLC, by its attorneys, hereby submits these amended responses and objections to Opposers' First Set of Interrogatories and Requests for Production of Documents and Things. The responses are limited to information available to Applicant at the present time and are provided without prejudice to its right to present additional or alternative information later in this proceeding.

GENERAL OBJECTIONS

Applicant objects to Opposer's General Definitions and Instructions and to each of these Interrogatories and Requests to the extent they exceed the requirements of the Trademark Rules of Practice and the Federal Rules of Civil Procedure, and to the extent that they seek information protected by the attorney-client privilege, the work product doctrine, or other legally recognized privileges and obligations.

In providing these responses, Applicant does not waive or intend to waive:

- * objections as to competency, relevance, materiality or admissibility;
- * rights to object on any ground to the use of any of the responses contained herein in this or any subsequent proceeding;
- * objections as to vagueness or ambiguity; or
- * rights to object on the same or other grounds to these or any further discovery requests in this proceeding.

Applicant objects to Opposer's Definition No. 1 as overly broad, unduly burdensome, and exceeding the requirements of the Trademark Rules of Practice and the Federal Rules of Civil Procedure insofar as Opposer seeks information in the possession, custody, or control of any person or entity other than Applicant [REDACTED].

Applicant objects to Opposer's Definition No. 5 as overly broad, unduly burdensome, and exceeding the requirements of the Trademark Rules of Practice and the Federal Rules of Civil Procedure.

Applicant objects to Opposer's Definition No. 6 as overly broad and unduly burdensome insofar and to the extent that it seeks the home addresses and home telephone numbers of any identified individuals and seeks information in the possession, custody, or control of any person or entity other than Applicant or its licensee Apple Inc. Applicant further objects to the definition of "identify" when used in reference to a business entity as vague, ambiguous, overly broad and unduly burdensome. Applicant further objects to the definition of "identify" when used in reference to a document as overly broad and unduly burdensome.

Applicant further objects to Opposer's Definition No. 16 as overly broad, unduly burdensome, and exceeding the requirements of the Trademark Rules of Practice and the Federal Rules of Civil Procedure.

The foregoing General Objections are hereby incorporated into Applicant's responses to each of the Interrogatories and Requests set forth below and are not waived by any of Applicant's individual responses.

INTERROGATORIES

INTERROGATORY NO. 7

Describe in detail the circumstances regarding when and how Applicant, including its licensees, first became aware of Opposer's mark, including the circumstances giving rise to or surrounding such knowledge, and including the identity of the persons most knowledgeable with the circumstances.

Response:

Applicant objects to this Interrogatory on the grounds that it seeks information protected by the attorney-client privilege, the work product doctrine, or other legally cognizable privileges and obligations.

Amended Response:

Subject to and without waiving the foregoing objections, Applicant states that [REDACTED]

[REDACTED]

[REDACTED]

INTERROGATORY NO. 8

Identify all investigations or searches conducted by Applicant or its licensee to identify whether or not Applicant's mark had been or was being used by others and identify the result of such investigation or search.

Response:

Applicant objects to this Interrogatory on the grounds that it seeks information protected by the attorney-client privilege, the work product doctrine, or other legally cognizable privileges and obligations. Applicant further objects that this Interrogatory is overly broad and unduly burdensome and seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence insofar as it requires Applicant to provide information concerning any use in a foreign country. Subject to and without waiving the foregoing objections, Applicant states that Dechert LLP conducted a search regarding the IPAD mark at the request of Apple Inc.

Amended Response:

Applicant further refers to the document Bates-labeled IPAD_LLC000140 – IPADLLC_000148, and states that [REDACTED]

INTERROGATORY NO. 11

Identify every service in connection with Applicant has used or is using Applicant's mark.

Response:

Applicant objects that this Interrogatory is overly broad and unduly burdensome and seeks information neither relevant nor reasonably calculated to lead to the discovery of admissible evidence insofar as it requests information for services other than those identified in Application Serial Nos. 77/927,446 and 77/913,563. Applicant further objects to this Interrogatory on the grounds that it does not seek relevant information, as Applicant's Application Serial Nos. 77/927,446 and 77/913,563 were filed under Trademark Act Section 1(b) on an intent-to-use basis.

Amended Response:

Subject to and without waiving the foregoing objections, Applicant states that 



INTERROGATORY NO. 12

For each service identified in Interrogatory No. 11, identify the persons most knowledgeable about service.

Response:

Applicant incorporates its objections to Interrogatory No. 11 as if fully set forth herein.

Amended Response:

Subject to and without waiving the foregoing objections and response, Applicant states that in its Initial Disclosures it previously identified Thomas R. La Perle as having discoverable information regarding the goods and services that Applicant offers and intends to offer in the United States under the IPAD mark through itself and/or its licensees.

Date: November 1, 2013

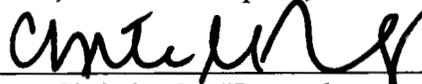


Glenn A. Gundersen
Christine M. Hernandez
Jacob R. Bishop
Dechert LLP
Cira Centre, 2929 Arch Street
Philadelphia, PA 19104-2808
Telephone: 215-994-2183

Attorneys for Applicant
IP Application Development LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Applicant's Amended Responses and Objections to Opposer's First Set of Interrogatories and Requests for Production of Documents and Things has been duly served by mailing such copy by Federal Express to Risto Pribisich, Benesch Friedlander Coplan & Aronoff LLP, 200 Public Square, Suite 2300, Cleveland, OH 44114, on November 1, 2013.



Christine M. Hernandez

RxD Media, LLC v. IP Application Development LLC
Opposition Nos. 91207333, 91207598

APPLICANT'S EXHIBIT 5

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|--------------------------------|
| RXD MEDIA, LLC | : | |
| | : | |
| Opposer | : | |
| | : | |
| v. | : | Opposition No. 91207333 |
| | : | 91207598 |
| IP APPLICATION DEVELOPMENT LLC, | : | |
| | : | |
| Applicant. | : | |
| <hr style="width: 40%; margin-left: 0;"/> | : | |

NOTICE OF DEPOSITION

PLEASE TAKE NOTICE THAT pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure and TBMP § 404, Opposer RxD Media, LLC (“RxD”), by and through counsel, will take the deposition upon oral examination of the corporate designee of IP Application Development LLC and Apple, Inc. (collectively “Applicants”) at the law offices of Farney Daniels PC, 411 Borel Avenue, Suite 350, San Mateo, California 94401 or at an alternative location later stipulated by the parties, on February 3, 2015 at 1:00 P.M. Applicants are requested to designate one or more persons as Applicants’ representative(s) to testify on their behalf as to each of the topics identified in Attachment A.

The deposition will be recorded by stenographic means, and Plaintiff reserves the right to record the deposition by audio and/or audiovisual means. The deposition shall continue until completed or adjourned. All counsel are invited to attend to cross-examine.

Dated: January 20, 2015

Respectfully submitted,

RXD MEDIA, LLC
BY COUNSEL

/s/ Cecil E. Key
Cecil E. Key, Esq. (VSB #41018)
Sara M. Sakagami (VSB #77278)

Counsel for RxD Media, LLC.

DiMUROGINSBERG, PC
1101 King Street, Suite 610
Alexandria, Virginia 22314
(703) 684-4333 (telephone)
(703) 548-3181 (facsimile)
e-mail: ckey@dimuro.com
e-mail: ssakagami@dimuro.com

CERTIFICATE OF SERVICE

I hereby certify that on January 20, 2015, a true copy of the foregoing was electronically mailed to the following:

Glenn A. Gundersen
Daniel P. Hope
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
glenn.gundersen@dechert.com
Daniel.Hope@dechert.com
Attorneys for IP Application Development LLC

/s/ Cecil E. Key
Cecil E. Key

ATTACHMENT "A"

A. DEFINITIONS

1. "RxD" or "Opposer" refers to Opposer RxD Media, LLC, Inc., its employees, agents, predecessors, successors, assigns and affiliates, regardless of whether it has been known or is now known by some other name(s).

2. "Applicant" refers to Applicant IP Application Development, LLC, all of its owners, partners, members, employees, agents, predecessors, successors, assigns and affiliates, regardless of whether it has been known or is now known by some other name(s).

3. "Apple" refers to Apple, Inc., all of its owners, partners, members, employees, agents, predecessors, successors, assigns and affiliates, regardless of whether it has been known or is now known by some other name(s).

4. "Applicant's Applications" collectively refers to the U.S. Application Serial Nos. 77/927,446 and 77/913,563 filed by IP Application Development LLC with the USPTO to federally register the IPAD Mark in the United States.

5. "IPAD Mark" refers to the term "IPAD" as used to designate the source of goods and/or services offered by any party.

6. "iPad" refers to the electronic touchscreen tablet sold by or on behalf of Apple, Inc.

7. "Opposer's Application" refers to the U.S. Application Serial No. 77/958,000 filed by RxD Media LLC with the USPTO to federally register the IPAD Mark in the United States.

8. "Opposition" or "Oppositions" refers to consolidated Opposition Nos. 91207333 and 91207598, both captioned *RXD Media, LLC v. IP Application Development LLC*, before the Trademark Trial and Appeal Board.

9. "Trinidad & Tobago Application" refers to Application No. 41168 that IP Application Development LLC filed in Trinidad and Tobago to register the IPAD Mark and that IP Application Development LLC cited as a basis for its claim of priority based on foreign filing as stated in U.S. Application Serial No. 77/913,563.

B. TOPICS

1. Applicant's corporate, operation and management structure, including its relationship with Apple, and the identity, title and roles of Applicant's employees responsible for the adoption of trademarks and prosecution of applications to register those trademarks.

2. Applicant's financial operations and bookkeeping.

3. The document retention and destruction policies from 2006 to the present for Applicant and Apple, and the location and maintenance of Applicant's and Apple's documents, including electronically stored information, from 2006 to the present.
4. Efforts undertaken to locate documents relevant to the Oppositions, including but not limited to efforts undertaken to locate documents responsive to Opposer's 1st, 2nd and 3rd set of Requests for Production of Documents.
5. The preparation and prosecution by Applicant of any applications to register the IPAD Mark, including Applicant's Applications and the Trinidad & Tobago Application.
6. All other trademark applications and registrations owned by Applicant or a related entity and covering services described in Applicant's Applications or the Trinidad & Tobago Application.
7. The facts and circumstances surrounding the consideration, selection, adoption and/or development of IPAD Mark, including the facts and circumstances surrounding any investigation or searches conducted by Applicant and/or Apple to identify whether or not the IPAD Mark had been or was being used by others at the time of filing of Trinidad & Tobago Application and Applicant's Applications, and all communications relating to the results of any such investigation or searches.
8. The facts and circumstances regarding when Applicant and/or Apple first became aware of Opposer's mark.
9. The facts and circumstances surrounding any acquisition of rights in and to the IPAD Mark, including the purchase of such rights from a third party.
10. Any efforts by Applicant to enforce the IPAD Mark, and any disputes with third parties other than Opposer regarding rights to use the IPAD Mark, including the claims and defenses asserted by the parties and final resolution of the matter.
11. All efforts by Applicant to license the IPAD Mark, including the details of any licenses that were entered into by Applicant and a third party.
12. The offering by Applicant or its licensees of services described in Applicant's Applications and the Trinidad & Tobago application, including the class of consumers to which those services are offered, the marks under which those services are offered, the channels of trade through which they are offered, and the locations through which they are offered.
13. Any plans or efforts by Applicant or its licensees to market and advertise services offered or intended to be offered under the IPAD Mark, including the classes of consumers, channels of trade, and locations through which the services are to be offered.

14. Any market studies conducted by Applicant or Apple regarding the connotation of the IPAD Mark in the minds of the consuming public, and the results of such studies.

15. Bases and support for Applicant's defenses to Opposer's allegations, including the affirmative defenses pled by Applicant.

RxD Media, LLC v. IP Application Development LLC
Opposition Nos. 91207333, 91207598

APPLICANT'S EXHIBIT 6

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|--------------------------------|
| RXD MEDIA, LLC | : | |
| | : | |
| Opposer | : | |
| | : | |
| v. | : | Opposition No. 91207333 |
| | : | 91207598 |
| IP APPLICATION DEVELOPMENT LLC, | : | |
| | : | |
| Applicant. | : | |
| <hr style="width: 40%; margin-left: 0;"/> | | |

**OPPOSER RXD MEDIA, LLC’S THIRD SET OF INTERROGATORIES
TO IP APPLICATION DEVELOPMENT LLC**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer RxD Media, LLC (“RxD”), by and through counsel, hereby serves this Third Set of Interrogatories to Applicant IP Application Development LLC (“Applicant”) to be answered fully in writing and under oath. These Interrogatories shall be answered in the time and manner prescribed by the Federal Rules of Civil Procedure and the Trademark Rules of Practice. All responses shall be delivered to the law offices of DiMuroGinsberg, P.C. located at 1101 King Street, Suite 610, Alexandria, VA 22314 and/or served by electronic means per the parties’ agreed practice.

DEFINITIONS

- 1. “Agreement” means a contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.
- 2. “Any” means one or more.
- 3. “Communication” means any disclosure, transfer, or exchange of information or opinion, however made.

4. As used herein, the terms “Applicant”, “you” and “yours” shall mean and include IP Application Development LLC, and Apple, Inc.; any of their licensees, parents, affiliates, subsidiaries, divisions, members, affiliate business entities, agents, employees and/or representatives, and all other persons or entities acting or purporting to act on behalf of, or under the direction or control of, any of the foregoing.

5. As used herein, the terms “RxD” or “Opposer” means RxD Media, LLC and any of its agents, employees, and/or representatives, and all other persons or entities acting or purporting to act on behalf of, or under the direction or control of, any of the foregoing.

6. “Document” means any written, recorded, or graphic material of any kind, whether prepared by you or any other person, that is in your possession, custody or control. The term includes but is not limited to contracts, leases, letters, diagrams, faxes, emails, memoranda, reports, records, specifications, bank statements, notes, notebooks, diaries, plans, sketches, blueprints, photographs, photocopies, charts, graphs, descriptions, drafts, minutes of meetings, notes, invoices, recordings, transcripts or summaries of conferences and/or telephone calls, ledgers, financial statements, and videos.

The term “document” also includes electronically stored data from which information can be obtained either directly or by translation through detection devices and readers; any such document is to be produced in a reasonably legible and usable form. The term “document” includes all drafts of a document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations.

Without limitation on the term “control” in the preceding paragraph, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person.

7. “Identify”, “identity” or “identification” shall mean with regard to:

a. an individual, shall mean to state his or her full name, present or last known residence address, or last known whereabouts, and present or last known position or business affiliation (designating which), job title, employment address, business and residence telephone numbers;

b. a firm, partnership, corporation, proprietorship, association, or other organization or entity, shall mean to state its full name and present or last known address and telephone number (designating which), or last known whereabouts;

c. a communication or statement shall mean to state: in the case of a document, the date, author, sender, recipient, type of document (*i.e.*, letter, memorandum, book, telegram, chart, etc.) or some other means of identifying it, and its present location or custodian; in the case of an oral communication, the date, subject matter, communicator, communicatee, nature of the communication, whether it was recorded, and any witness’ identity.

d. a document shall mean to state the type of document, any identifying number(s), the general nature of the subject matter, the date, author, sender, recipient, and its present location or custodian.

8. “Including” means including but not limited to.

9. The term “Applicant’s Applications” shall mean collectively U.S. Application Serial Nos. 77/927,446 and 77/913,563 filed by IP Application Development LLC with the USPTO to federally register the IPAD Mark in the United States.

10. The term “IPAD Mark” shall mean the term “IPAD” as used to designate the source of goods and/or services offered by any party.

11. The term “iPad” shall mean the electronic touchscreen tablet sold by or on behalf of Apple, Inc.

12. The term “Opposer’s Application” shall mean U.S. Application Serial No. 77/958,000 filed by RxD Media LLC with the USPTO to federally register the IPAD Mark in the United States.

13. The term “Opposition” or “Oppositions” refers to consolidated Opposition Nos. 91207333 and 91207598, both captioned *RXD Media, LLC v. IP Application Development LLC*, before the Trademark Trial and Appeal Board.

14. The term “Trinidad & Tobago Application” refers to Application No. 41168 that IP Application Development LLC filed in Trinidad and Tobago to register the IPAD Mark and that IP Application Development LLC cited as a basis for its claim of priority based on foreign filing as stated in U.S. Application Serial No. 77/913,563.

15. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

INSTRUCTIONS

1. Where knowledge or information in your possession is requested, such request includes knowledge of your shareholders, officers, directors, employees, agents, representatives and, unless privileged, your attorneys.

2. Pursuant to Fed. R. Civ. P. 26(e), you are under a duty seasonably to amend any answer to these interrogatories for which you learn that the answer is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to us during the discovery process or in writing.

3. For any interrogatory or part of an interrogatory which you refuse to answer under a claim of privilege, submit a sworn or certified statement from your counsel or one of your employees in which you identify the nature of the information withheld; specify the grounds of the claimed privilege and the paragraph of these interrogatories to which the information is responsive; and identify each person to whom the information, or any part thereof, has been disclosed.

4. Answer each interrogatory fully. If you object to any interrogatory, state the reasons for objection and answer to the extent the interrogatory is not objectionable. If you are unable to answer an interrogatory fully, provide as much information as is available, explain why your answer is incomplete, and identify or describe all other sources of more complete or accurate information.

5. For any record or document responsive to or relating to these interrogatories which is known to have been destroyed or lost, or is otherwise unavailable, identify such document by author, addressee, date, number of pages, and subject matter; and explain in detail the events leading to the destruction or loss, or the reason for the unavailability of such document.

INTERROGATORIES

19. WITHDRAWN AND RESERVED.

20. WITHDRAWN AND RESERVED.

21. Identify any and all advertising or marketing agencies, including in the identification the name of the employee(s) of such agencies having the most relevant knowledge, engaged by you to advertise, promote, or market services offered under the IPAD Mark.

22. Identify all trade channels or avenues, including the location and place of the business(es), through which you offer or distribute, or intend to offer or distribute, the services described in Applicant's Applications.

23. Identify, by registration or application number, the mark(s) under which you offer the services described in Applicant's Applications.

24. Identify the class(es) of consumers to whom you offer or intend to offer the services described in Applicant's Applications.

25. Identify all goods and services offered by any third party under the IPAD Mark of which you were aware at the time of the filing of the Trinidad & Tobago Application, including in the identification the name(s) of the party that offered the goods and services.

26. Describe all plans you have for expansion of the use of the IPAD Mark.

27. Identify and explain any decision by you to reject any alternative marks considered by you for use in connection with the services described in Applicant's Applications, including in the explanation the identity of the alternative marks that were considered, all persons involved in selecting and rejecting the alternative marks, and the bases for rejection of the alternative marks.

28. Identify all officers, directors and managing agents of IP Application Development, LLC from the time the Trinidad & Tobago Application was filed through to the present.

29. Identify, by application number, all trademark applications filed by you that have been suspended by the USPTO, citing Opposer's Mark as the reason for such suspension.

Dated: December 29, 2014

Respectfully submitted,

RXD MEDIA, LLC
BY COUNSEL

/s/ Cecil E. Key

Cecil E. Key, Esq. (VSB #41018)
Sara M. Sakagami (VSB #77278)

Counsel for RxD Media, LLC.

DIMUROGINSBERG, PC

1101 King Street, Suite 610
Alexandria, Virginia 22314
(703) 684-4333 (telephone)
(703) 548-3181 (facsimile)
e-mail: ckey@dimuro.com
e-mail: ssakagami@dimuro.com

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2014, a true copy of the foregoing was mailed postage pre-paid and electronically mailed to the following:

Glenn A. Gundersen
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
Email: glenn.gundersen@dechert.com

Attorneys for IP Application Development LLC

/s/ Cecil E. Key _____
Cecil E. Key

RxD Media, LLC v. IP Application Development LLC
Opposition Nos. 91207333, 91207598

APPLICANT'S EXHIBIT 7

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
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| RXD MEDIA, LLC | : | |
| | : | |
| Opposer | : | |
| | : | |
| v. | : | Opposition No. 91207333 |
| | : | 91207598 |
| IP APPLICATION DEVELOPMENT LLC, | : | |
| | : | |
| Applicant. | : | |
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**OPPOSER RXD MEDIA, LLC’S THIRD SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS
TO IP APPLICATION DEVELOPMENT LLC**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer RxD Media, LLC (“RxD”), by and through counsel, hereby serves this Third Set of Requests for Production of Documents and Things to Applicant IP Application Development LLC (“Applicant”) to be answered fully in writing and under oath. These Requests shall be answered in the time and manner prescribed by the Federal Rules of Civil Procedure and the Trademark Rules of Practice. All responses shall be delivered to the law offices of DiMuroGinsberg, P.C. located at 1101 King Street, Suite 610, Alexandria, VA 22314 and/or by electronic means per the parties’ agreed practice.

DEFINITIONS

1. “Agreement” means a contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.
2. “Any” means one or more.
3. “Communication” means any disclosure, transfer, or exchange of information or opinion, however made.

4. As used herein, the terms “Applicant”, "you" and "yours" shall mean and include IP Application Development LLC, and Apple, Inc.; any of their licensees, parents, affiliates, subsidiaries, divisions, members, affiliate business entities, agents, employees and/or representatives, and all other persons or entities acting or purporting to act on behalf of, or under the direction or control of, any of the foregoing.

5. As used herein, the terms “RxD” or “Opposer” means RxD Media, LLC and any of its agents, employees, and/or representatives, and all other persons or entities acting or purporting to act on behalf of, or under the direction or control of, any of the foregoing.

6. “Document” means any written, recorded, or graphic material of any kind, whether prepared by you or any other person that is in your possession, custody or control. The term includes but is not limited to contracts, leases, letters, diagrams, faxes, emails, memoranda, reports, records, specifications, bank statements, notes, notebooks, diaries, plans, sketches, blueprints, photographs, photocopies, charts, graphs, descriptions, drafts, minutes of meetings, notes, invoices, recordings, transcripts or summaries of conferences and/or telephone calls, ledgers, financial statements, and videos.

The term “document” also includes electronically stored data from which information can be obtained either directly or by translation through detection devices and readers; any such document is to be produced in a reasonably legible and usable form. The term “document” includes all drafts of a document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations.

Without limitation on the term “control” in the preceding paragraph, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person.

7. “Including” means including but not limited to.

8. The term “Applicant’s Applications” shall mean collectively U.S. Application Serial Nos. 77/927,446 and 77/913,563 filed by IP Application Development LLC with the USPTO to federally register the IPAD Mark in the United States.

9. The term “IPAD Mark” shall mean the term “IPAD” as used to designate the source of goods and/or services offered by any party.

10. The term “iPad” shall mean the electronic touchscreen tablet sold by or on behalf of Apple, Inc.

11. The term “Opposer’s Application” shall mean U.S. Application Serial No. 77/958,000 filed by RxD Media LLC with the USPTO to federally register the IPAD Mark in the United States.

12. The term “Opposition” or “Oppositions” refers to consolidated Opposition Nos. 91207333 and 91207598, both captioned *RXD Media, LLC v. IP Application Development LLC*, before the Trademark Trial and Appeal Board.

13. The term “Trinidad & Tobago Application” refers to Application No. 41168 that IP Application Development LLC filed in Trinidad and Tobago to register the IPAD Mark and that IP Application Development LLC cited as a basis for its claim of priority based on foreign filing as stated in U.S. Application Serial No. 77/913,563.

14. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

INSTRUCTIONS

1. These Requests seek all documents and things available to you, regardless of whether the documents and things are possessed directly by you, your agents, employees, directors, representatives, investigators, consultants, and unless privileged, attorneys.

2. If you object to any Request based on a claim of privilege, work-product doctrine, or other exemption from discovery, state the reasons for each objection and respond to the request to the extent not objectionable.

3. These Requests are continuing in nature. If you obtain additional information responsive to these Requests, you are required to supplement or amend your responses promptly in accordance with Rule 26(e) of the Federal Rules of Civil Procedure.

4. If any responsive document exists but is not in your possession, custody, or control and you are reasonably certain as to the whereabouts of the document, please provide the name and contact information of the custodian of the document.

5. The past tense shall be construed to include the present tense and vice versa to make the request inclusive rather than exclusive.

6. Regardless of whether any of these Requests, instructions, and definitions uses a term in the plural or singular form, the term shall be construed in both the singular and plural form as is necessary to require the most inclusive response.

DOCUMENTS REQUESTED

20. WITHDRAWN

21. Produce all consumer or market studies or surveys that you possess or are aware of, that evidence the connotations that the IPAD Mark produces in the minds of Apple, Inc.'s consumers.
22. Produce any consumer or market studies or surveys that you have conducted, reviewed, or relied on regarding the selection of services to be offered under the IPAD Mark.
23. Produce all consumer or market studies or surveys that you have ever relied on, or used, in your efforts to market and sell the iPad.
24. Produce documents sufficient to reflect, identify or describe the classes of current and/or targeted customers for services identified in Applicant's Applications.
25. Produce all documents relating to the marketing of any services offered in connection with the iPad.
26. Produce all documents and correspondence relating to the method and area of distribution of the services offered or to be offered under the IPAD Mark.
27. Produce documents sufficient to identify any consumer views or comments about any services offered under the IPAD Mark or in connection with the iPad.
28. Produce all documents reflecting the number of sales and profits from the sale of iPad since it was first introduced to the public.
29. Produce all documents reflecting any assessment, evaluation, or consideration of any method of describing the category to which services offered under the IPAD Mark belong.
30. Produce all documents and correspondence evidencing your knowledge of the use of the IPAD Mark by any third party, regardless of the type of goods and/or services offered under the IPAD Mark, at the time of the filing of the Trinidad & Tobago Application.

31. Produce all documents, search reports or investigation reports, conducted by you or on your behalf prior to the filing of Trinidad & Tobago Application regarding the use of the IPAD Mark by others.

32. Produce all documents and correspondence relating to any evaluation or assessment of the IPAD Mark as owned or used by others including, but not limited to, your valuation of any such IPAD Mark.

33. Produce documents sufficient to identify all goods and services with which Applicant or its licensees has used the IPAD Mark.

34. Produce all documents and correspondence relating to the Trinidad & Tobago Application, including the application documents and documents evidencing Applicant's ownership of the Trinidad & Tobago Application.

35. Produce all testimony by the Applicant regarding the acquisition of rights in the IPAD mark, including the testimony offered in or regarding the dispute between the Applicant and Shenzen Proview Technology.

36. Produce all documents and correspondence relating to the purchase of the IPAD Mark by the Applicant from Fujitsu, Inc.

37. Produce all promotional materials, including videos, public relation statements and other announcements, that you issued or published regarding the introduction of the iPad to the public.

38. Produce all documents and correspondence to and/or from Steve Jobs regarding the adoption of the IPAD Mark.

39. Produce all documents and correspondence to and/or from Steve Jobs regarding the use of the IPAD Mark for the services described in Applicant's Applications.

40. Produce documents sufficient to identify all goods and services offered by IP Application Development LLC, either directly or through its licensees.

41. Produce documents sufficient to identify all officers, directors, members, and managing agents of IP Application Development.

42. Produce any assignments relating to or regarding any rights Applicant purports to have in the IPAD Mark.

43. Produce all documents and things that contain any information used to provide responses to Opposer's Interrogatories Nos. 21 to 29.

Dated: December 29, 2014

Respectfully submitted,

RXD MEDIA, LLC
BY COUNSEL

/s/ Cecil E. Key

Cecil E. Key, Esq. (VSB #41018)
Sara M. Sakagami (VSB #77278)

Counsel for RxD Media, LLC.

DIMUROGINSBERG, PC

1101 King Street, Suite 610
Alexandria, Virginia 22314
(703) 684-4333 (telephone)
(703) 548-3181 (facsimile)

e-mail: ckey@dimuro.com

e-mail: ssakagami@dimuro.com

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2014, a true copy of the foregoing was mailed postage pre-paid and electronically mailed to the following:

Glenn A. Gundersen
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
Email: glenn.gundersen@dechert.com

Attorneys for IP Application Development LLC

/s/ Cecil E. Key _____
Cecil E. Key

RxD Media, LLC v. IP Application Development LLC
Opposition Nos. 91207333, 91207598

APPLICANT'S EXHIBIT 8

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|--------------------------------|
| RXD MEDIA, LLC | : | |
| | : | |
| Opposer | : | |
| | : | |
| v. | : | Opposition No. 91207333 |
| | : | 91207598 |
| IP APPLICATION DEVELOPMENT LLC, | : | |
| | : | |
| Applicant. | : | |
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**OPPOSER RXD MEDIA, LLC’S FOURTH SET OF INTERROGATORIES
TO IP APPLICATION DEVELOPMENT LLC**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer RxD Media, LLC (“RxD”), by and through counsel, hereby serves this Fourth Set of Interrogatories to Applicant IP Application Development LLC (“Applicant”) to be answered fully in writing and under oath. These Interrogatories shall be answered in the time and manner prescribed by the Federal Rules of Civil Procedure and the Trademark Rules of Practice. All responses shall be delivered to the law offices of DiMuroGinsberg, P.C. located at 1101 King Street, Suite 610, Alexandria, VA 22314 and/or served by electronic means per the parties’ agreed practice.

DEFINITIONS

1. “Agreement” means a contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.
2. “Any” means one or more.
3. “Communication” means any disclosure, transfer, or exchange of information or opinion, however made.

4. As used herein, the terms “Applicant”, “you” and “yours” shall mean and include IP Application Development LLC, and Apple, Inc.; any of their licensees, parents, affiliates, subsidiaries, divisions, members, affiliate business entities, agents, employees and/or representatives, and all other persons or entities acting or purporting to act on behalf of, or under the direction or control of, any of the foregoing.

5. As used herein, the terms “RxD” or “Opposer” means RxD Media, LLC and any of its agents, employees, and/or representatives, and all other persons or entities acting or purporting to act on behalf of, or under the direction or control of, any of the foregoing.

6. “Document” means any written, recorded, or graphic material of any kind, whether prepared by you or any other person, that is in your possession, custody or control. The term includes but is not limited to contracts, leases, letters, diagrams, faxes, emails, memoranda, reports, records, specifications, bank statements, notes, notebooks, diaries, plans, sketches, blueprints, photographs, photocopies, charts, graphs, descriptions, drafts, minutes of meetings, notes, invoices, recordings, transcripts or summaries of conferences and/or telephone calls, ledgers, financial statements, and videos.

The term “document” also includes electronically stored data from which information can be obtained either directly or by translation through detection devices and readers; any such document is to be produced in a reasonably legible and usable form. The term “document” includes all drafts of a document and all copies that differ in any respect from the original, including any notation, underlining, marking, or information not on the original. The term also includes information stored in, or accessible through, computer or other information retrieval systems (including any computer archives or back-up systems), together with instructions and all other materials necessary to use or interpret such data compilations.

Without limitation on the term “control” in the preceding paragraph, a document is deemed to be in your control if you have the right to secure the document or a copy thereof from another person.

7. “Identify”, “identity” or “identification” shall mean with regard to:

a. an individual, shall mean to state his or her full name, present or last known residence address, or last known whereabouts, and present or last known position or business affiliation (designating which), job title, employment address, business and residence telephone numbers;

b. a firm, partnership, corporation, proprietorship, association, or other organization or entity, shall mean to state its full name and present or last known address and telephone number (designating which), or last known whereabouts;

c. a communication or statement shall mean to state: in the case of a document, the date, author, sender, recipient, type of document (*i.e.*, letter, memorandum, book, telegram, chart, etc.) or some other means of identifying it, and its present location or custodian; in the case of an oral communication, the date, subject matter, communicator, communicatee, nature of the communication, whether it was recorded, and any witness’ identity.

d. a document shall mean to state the type of document, any identifying number(s), the general nature of the subject matter, the date, author, sender, recipient, and its present location or custodian.

8. “Including” means including but not limited to.

9. The term “Applicant’s Applications” shall mean collectively U.S. Application Serial Nos. 77/927,446 and 77/913,563 filed by IP Application Development LLC with the USPTO to federally register the IPAD Mark in the United States.

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15. “Person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

INSTRUCTIONS

1. Where knowledge or information in your possession is requested, such request includes knowledge of your shareholders, officers, directors, employees, agents, representatives and, unless privileged, your attorneys.

2. Pursuant to Fed. R. Civ. P. 26(e), you are under a duty seasonably to amend any answer to these interrogatories for which you learn that the answer is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to us during the discovery process or in writing.

3. For any interrogatory or part of an interrogatory which you refuse to answer under a claim of privilege, submit a sworn or certified statement from your counsel or one of your employees in which you identify the nature of the information withheld; specify the grounds of the claimed privilege and the paragraph of these interrogatories to which the information is responsive; and identify each person to whom the information, or any part thereof, has been disclosed.

4. Answer each interrogatory fully. If you object to any interrogatory, state the reasons for objection and answer to the extent the interrogatory is not objectionable. If you are unable to answer an interrogatory fully, provide as much information as is available, explain why your answer is incomplete, and identify or describe all other sources of more complete or accurate information.

5. For any record or document responsive to or relating to these interrogatories which is known to have been destroyed or lost, or is otherwise unavailable, identify such document by author, addressee, date, number of pages, and subject matter; and explain in detail the events leading to the destruction or loss, or the reason for the unavailability of such document.

INTERROGATORIES

40. Identify by name and home and business address, all Persons other than your counsel or those Persons identified in response to Opposer's Interrogatory No. 18 who

participated in the preparation of the Answers to Opposer RxD Media, LLC's First, Third and Fourth Sets of Interrogatories to IP Application Development LLC.

41. Identify by name and the position, all persons that possess records relevant to the issues in this Opposition, including but not limited to your affirmative defenses. This request includes identity of the custodians of records from whom Applicant collected documents in preparation of its Responses to Opposer RxD Media, LLC's First and Third Sets of Requests for Production of Documents and Things to IP Application Development LLC.

42. Identify all domain names registered by or on behalf of Applicant that incorporate the term "ipad," including in the identification the date the domain name was registered, the identification of the specific person or entity in whose name the domain name is registered, and whether the domain name is associated with an active website.

43. Identify the following Persons, including the relationship of each Person to Applicant: IP Application Development Limited; Farncombe International; Graham Robinson; Paul Joel Schmidt; Hayden Calvin Wood; and Jonathan Hargreaves.

44. Identify all stores or retail outlets through which Apple has sold or distributed goods or services under the IPAD Mark in Trinidad & Tobago from 2009 through to the present.

Dated: March 31, 2015

Respectfully submitted,

RXD MEDIA, LLC
BY COUNSEL

/s/ Cecil E. Key
Cecil E. Key, Esq. (VSB #41018)
Sara M. Sakagami (VSB #77278)

Counsel for RxD Media, LLC.

DiMUROGINSBERG, PC

1101 King Street, Suite 610

Alexandria, Virginia 22314

(703) 684-4333 (telephone)

(703) 548-3181 (facsimile)

e-mail: ckey@dimuro.com

e-mail: ssakagami@dimuro.com

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2015, a true copy of the foregoing was electronically mailed to the following:

Glenn A. Gundersen
Daniel Hope
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
Email: glenn.gundersen@dechert.com
Daniel.Hope@dechert.com

Attorneys for IP Application Development LLC

/s/ Sara M. Sakagami

Sara M. Sakagami

RxD Media, LLC v. IP Application Development LLC
Opposition Nos. 91207333, 91207598

APPLICANT'S EXHIBIT 9

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|---|---|--------------------------------|
| RXD MEDIA, LLC | : | |
| | : | |
| Opposer | : | |
| | : | |
| v. | : | Opposition No. 91207333 |
| | : | 91207598 |
| IP APPLICATION DEVELOPMENT LLC, | : | |
| | : | |
| Applicant. | : | |
| <hr style="width: 40%; margin-left: 0;"/> | | |
| | : | |

**OPPOSER RXD MEDIA, LLC’S FIRST SET OF REQUESTS FOR ADMISSIONS
TO IP APPLICATION DEVELOPMENT LLC**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer RxD Media, LLC (“RxD”), by and through counsel, hereby serves this First Set of Requests for Admissions to Applicant IP Application Development LLC (“Applicant”) to be answered fully in writing. These Requests for Admissions shall be answered in the time and manner prescribed by the Federal Rules of Civil Procedure and the Trademark Rules of Practice. All responses shall be delivered to the law offices of DiMuroGinsberg, P.C. located at 1101 King Street, Suite 610, Alexandria, VA 22314 and/or served by electronic means per the parties’ agreed practice.

DEFINITIONS

1. “Any” means one or more.
2. “Communication” means any disclosure, transfer, or exchange of information or opinion, however made.
3. As used herein, the terms “Applicant”, “you” and “yours” shall mean and include IP Application Development LLC, and Apple, Inc.; any of their licensees, parents, affiliates, subsidiaries, divisions, members, affiliate business entities, agents, employees and/or

representatives, and all other persons or entities acting or purporting to act on behalf of, or under the direction or control of, any of the foregoing.

4. As used herein, the terms “RxD” or “Opposer” means RxD Media, LLC and any of its agents, employees, and/or representatives, and all other persons or entities acting or purporting to act on behalf of, or under the direction or control of, any of the foregoing.

5. “Including” means including but not limited to.

6. The term “Applicant’s Applications” shall mean collectively U.S. Application Serial Nos. 77/927,446 and 77/913,563 filed by IP Application Development LLC with the USPTO to federally register the IPAD Mark in the United States.

7. The term “IPAD Mark” shall mean the term “IPAD” as used to designate the source of goods and/or services offered by any party.

8. The term “iPad” shall mean the electronic touchscreen tablet sold by or on behalf of Apple, Inc.

9. The term “Opposer’s Application” shall mean U.S. Application Serial No. 77/958,000 filed by RxD Media LLC with the USPTO to federally register the IPAD Mark in the United States.

10. The term “Opposition” or “Oppositions” refers to consolidated Opposition Nos. 91207333 and 91207598, both captioned *RXD Media, LLC v. IP Application Development LLC*, before the Trademark Trial and Appeal Board.

11. The term “Trinidad & Tobago Application” refers to Application No. 41168 that IP Application Development LLC filed in Trinidad and Tobago to register the IPAD Mark and that IP Application Development LLC cited as a basis for its claim of priority based on foreign filing as stated in U.S. Application Serial No. 77/913,563.

12. The term “person” means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

INSTRUCTIONS

1. These Admissions are continuing in character so as to require you to file supplementary answers if you obtain further or different information before trial.
2. Where knowledge or information in your possession is requested, such request includes knowledge of your shareholders, officers, directors, employees, agents, representatives and, unless privileged, your attorneys.
3. For any Admissions you deny in whole or in part, explain the basis of such denial.
4. For any Admissions you neither deny or admit in whole or in part, set forth in detail the reasons why you cannot truthfully admit or deny the matter.
5. For any Admissions you refuse to answer under a claim of privilege, submit a sworn or certified statement from your counsel or one of your employees in which you identify the nature of the information withheld; specify the grounds of the claimed privilege and the paragraph of these interrogatories to which the information is responsive; and identify each person to whom the information, or any part thereof, has been disclosed.
6. If you object to any Admissions, state the reasons for the objection.
7. For any record or document responsive to or relating to these Admissions which is known to have been destroyed or lost, or is otherwise unavailable, identify such document by author, addressee, date, number of pages, and subject matter; and explain in detail the events leading to the destruction or loss, or the reason for the unavailability of such document.

REQUESTS FOR ADMISSIONS

1. Admit that Applicant has never used the IPAD Mark in connection with the services described in Applicant's Applications.
2. Admit that Steve Jobs was not the only person "responsible for the selection of Applicant's Marks."
3. Admit that Steve Jobs was not the only person "responsible for the selection" of the IPAD Mark.
4. Admit that Steve Jobs was not an attorney.
5. Admit that the persons other than Steve Jobs who were "responsible for the selection of Applicant's Marks" included persons who were not attorneys.
6. Admit that the persons other than Steve Jobs who were "responsible for the selection of Applicant's Marks" included persons who were not acting as attorneys.
7. Admit that the persons other than Steve Jobs who were "responsible for the selection" of the IPAD Mark included persons who were not attorneys.
8. Admit that the persons other than Steve Jobs who were "responsible for the selection of Applicant's Marks" included persons who were not acting as attorneys.
9. Admit that Applicant investigated the availability of the term "IPAD" for use as a mark on multiple occasions prior to filing the Trinidad & Tobago Application.
10. Admit that Applicant was aware that third parties were using the term "IPAD" as a mark at the time that Applicant filed the Trinidad & Tobago Application.
11. Admit that the IPAD Mark was not the only mark Applicant considered adopting for use with the iPad device.

12. Admit that Applicant did not begin using the IPAD Mark for any purposes before 2010.

13. Admit that Thomas R. La Perle is not the only member of IP Application Development, LLC.

14. Admit that IP Application Development, LLC was not formed until January 11, 2010.

15. Admit that Apple engaged an advertising agency regarding the promotion of goods to be offered under the IPAD Mark.

16. Admit that Apple's website is not an advertising agency.

17. Admit that the services Applicant described in Applicant's Applications and declared it intends to offer include as part of those services allowing temporary use of web-based software applications.

18. Admit that the services Applicant described in Applicant's Applications and declared it intends to offer include as part of those services allowing the users to manage one or more databases via mobile access.

19. Admit that the services Applicant described in Applicant's Applications and declared it intends to offer include as part of those services allowing users to store and access their personal information.

20. Admit that at least some of the services described in Applicant's Applications will be cloud-based services.

21. Admit that at least some of the services described in Applicant's Applications will be offered via the Internet.

Dated: March 31, 2015

Respectfully submitted,

RXD MEDIA, LLC
BY COUNSEL

/s/ Cecil E. Key

Cecil E. Key, Esq. (VSB #41018)
Sara M. Sakagami (VSB #77278)

Counsel for RxD Media, LLC.

DIMUROGINSBERG, PC
1101 King Street, Suite 610
Alexandria, Virginia 22314
(703) 684-4333 (telephone)
(703) 548-3181 (facsimile)
e-mail: ckey@dimuro.com
e-mail: ssakagami@dimuro.com

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2015, a true copy of the foregoing was electronically mailed to the following:

Glenn A. Gundersen
Daniel Hope
DECHERT LLP
Cira Centre
2929 Arch Street
Philadelphia, PA 19104-2808
Email: glenn.gundersen@dechert.com
Daniel.Hope@dechert.com

Attorneys for IP Application Development LLC

/s/ Sara M. Sakagami

Sara M. Sakagami

RxD Media, LLC v. IP Application Development LLC
Opposition Nos. 91207333, 91207598

APPLICANT'S EXHIBIT 10

CHRISTINE M. HERNANDEZ

christine.hernandez@dechert.com

+1 215 994 2336 Direct

+1 215 655 2336 Fax

May 10, 2013

VIA FEDERAL EXPRESS

Nicole D. Galli
Benesch, Friedlander, Coplan & Aronoff LLP
One Liberty Place
1650 Market Street
Suite 3611
Philadelphia, Pennsylvania 19103-7301

Re: *RXD Media v. IP Application Development LLC*

Dear Nicole:

Enclosed is one disk containing the first installment of Applicant's production, Bates-stamped IPADLLC_000001 – IPADLLC_000207. Please note that certain documents have been labeled TRADE SECRET/COMMERCIALY SENSITIVE pursuant to the stipulated protective order in this matter.

Sincerely,

Christine M. Hernandez



Shipment Receipt

Address Information

| | |
|--|---|
| Ship to: Nicole D. Galli Benesch Friedlander Coplan & Aronof 1650 Market Street One Liberty Place - Suite 3611 PHILADELPHIA, PA 19103 US 2672072948 | Ship from: CHRISTINE HERNANDEZ DECHERT LLP CIRA CENTRE 2929 ARCH STREET PHILADELPHIA, PA 19104 US 2159942597 |
|--|---|

Shipment Information:

Tracking no.: 799734872481
Ship date: 05/10/2013
Estimated shipping charges: 10.45

Package Information

Service type: Standard Overnight
Package type: FedEx Pak
Number of packages: 1
Total weight: 1 LBS
Declared Value: 0.00 USD
Special Services:
Pickup/Drop-off: Use an already scheduled pickup at my location

Billing Information:

Bill transportation to: Philadelphia-137
Your reference: 977034
P.O. no.: 125175
Invoice no.:
Department no.:

Thank you for shipping online with FedEx ShipManager at fedex.com.

Please Note

FedEx will not be responsible for any claim in excess of \$100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of \$100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is \$500, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits. Consult the applicable FedEx Service Guide for details. The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable [FedEx Service Guide](#) or the FedEx Rate Sheets for details on how shipping charges are calculated.

Malia, Regina

From: trackingupdates@fedex.com
Sent: Monday, May 13, 2013 12:44 PM
To: Malia, Regina
Subject: FedEx Shipment 799734872481 Delivered

This tracking update has been requested by:

Company Name: DECHERT LLP
Name: CHRISTINE HERNANDEZ
E-mail: regina.malia@dechert.com

Our records indicate that the following shipment has been delivered:

Purchase order number: 125175
Reference: 977034
Ship (P/U) date: May 10, 2013
Delivery date: May 13, 2013 12:40 PM
Sign for by: M.KROUCH
Delivery location: PHILADELPHIA, PA
Delivered to: Receptionist/Front Desk
Service type: FedEx Standard Overnight
Packaging type: FedEx Pak
Number of pieces: 1
Weight: 1.00 lb.
Special handling/Services: Deliver Weekday
Tracking number: [799734872481](https://www.fedex.com/track/799734872481)

Shipper Information
CHRISTINE HERNANDEZ
DECHERT LLP
2929 ARCH STREET
CIRA CENTRE
PHILADELPHIA
PA
US
19104

Recipient Information
Nicole D. Galli
Benesch Friedlander Coplan
& Aronof
1650 Market Street
One Liberty Place - Suite
3611
PHILADELPHIA
PA
US
19103

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All weights are estimated.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. The [REDACTED] was prepared and approved by [REDACTED] [REDACTED] led by Thomas La Perle, Director of Trademark & Copyright at Apple, [REDACTED] [REDACTED] [REDACTED]. Thus, I believe that Mr. La Perle would be the appropriate witness on these issues.

6. I have no direct knowledge about [REDACTED] [REDACTED] in the [REDACTED].

7. I did not draft the [REDACTED], nor did I [REDACTED]. I am not responsible for Apple's compliance with [REDACTED] or how Apple [REDACTED].

8. I have no direct knowledge about [REDACTED] [REDACTED] [REDACTED]. I have no direct knowledge about [REDACTED] [REDACTED].

9. I have no direct knowledge of the facts relevant to this proceeding.

10. [REDACTED] [REDACTED]

11. [REDACTED] [REDACTED] [REDACTED]

[REDACTED]

12. [REDACTED]

[REDACTED]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 7, 2015.



Douglas Vetter

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing public version of DECLARATION OF DOUGLAS VETTER IN SUPPORT OF IP APPLICATION DEVELOPMENT LLC'S OPPOSITION TO RXD MEDIA, LLC'S MOTION TO COMPEL, originally filed on April 13, 2015, was filed electronically on this 16th day of April, 2015, and a copy was electronically mailed to the following:

Cecil E. Key
Sara M. Sakagami
DiMuro Ginsberg, PC
1101 King Street, Suite 610
Alexandria, Virginia 22314
ckey@dimuro.com
ssakagami@dimuro.com
Attorneys for RxD Media, LLC

/s/ Allison W. Buchner

Allison W. Buchner

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

RXD MEDIA, LLC,

Opposer,

v.

IP APPLICATION DEVELOPMENT LLC,

Applicant.

::
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:
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:
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:
:

Opposition No. 91207333
91207598

DECLARATION OF THOMAS LA PERLE IN SUPPORT OF
IP APPLICATION DEVELOPMENT LLC'S OPPOSITION TO
RXD MEDIA, LLC'S MOTION TO COMPEL

I, Thomas La Perle, declare as follows:

1. I am Director of the Trademark & Copyright Group at Apple Inc. ("Apple"). I am also Manager of Applicant IP Application Development LLC ("IPAD LLC"). I make this declaration based on my personal knowledge of the facts stated herein, and, if called as a witness, could and would testify to these facts.

2. IPAD LLC and Apple are separate entities. IPAD LLC is [REDACTED]
[REDACTED].

3. IPAD LLC [REDACTED] and Apple [REDACTED]; [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

10. [REDACTED]

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 9, 2015.



Thomas La Perle

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing public version of DECLARATION OF THOMAS LA PERLE IN SUPPORT OF IP APPLICATION DEVELOPMENT LLC'S OPPOSITION TO RXD MEDIA, LLC'S MOTION TO COMPEL, originally filed on April 13, 2015, was filed electronically on this 16th day of April, 2015, and a copy was electronically mailed to the following:

Cecil E. Key
Sara M. Sakagami
DiMuro Ginsberg, PC
1101 King Street, Suite 610
Alexandria, Virginia 22314
ckey@dimuro.com
ssakagami@dimuro.com
Attorneys for RxD Media, LLC

/s/ Allison W. Buchner

Allison W. Buchner