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

Proceeding	91207333
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Attachments	RxD Opposition to Applicant MSJ_Redacted.pdf(384651 bytes ) Decl of B. Clements in support of RxD Opp to MSJ.pdf(218450 bytes ) Decl. of S. Sakagami in support of RxD Opp to MSJ.pdf(162021 bytes ) BC_Ex 1.pdf(325594 bytes ) BC_Ex 2.pdf(343896 bytes ) BC_Ex 3.pdf(574084 bytes ) BC_Ex 4.pdf(2175372 bytes ) BC_Ex 5.pdf(867666 bytes ) BC_Ex 6.pdf(75994 bytes ) BC_Ex 7.pdf(57208 bytes ) BC_Ex 8.pdf(148127 bytes ) BC_Ex 9.pdf(231807 bytes ) BC_Ex 10.pdf(139357 bytes ) BC_Ex 11.pdf(136237 bytes ) BC_Ex 12.pdf(41623 bytes ) BC_Ex 13.pdf(1185844 bytes ) BC_Ex 14.pdf(997249 bytes ) BC_Ex 15.pdf(970404 bytes ) BC_Ex 16.pdf(983475 bytes ) BC_Ex 17.pdf(1039646 bytes ) BC_Ex 18.pdf(149021 bytes ) BC_Ex 19.pdf(157631 bytes ) BC_Ex 20.pdf(165948 bytes ) BC_Ex 21.pdf(10420 bytes ) BC_Ex 22.pdf(6398 bytes ) SS_Ex A.pdf(4952915 bytes ) SS_Ex B.pdf(6620 bytes ) SS_Ex C.pdf(6680 bytes ) SS_Ex D.pdf(190154 bytes ) SS_Ex E.pdf(6577 bytes ) SS_Ex F.pdf(191256 bytes ) SS_Ex G.pdf(6577 bytes ) SS_Ex H.pdf(6571 bytes ) SS_Ex I.pdf(290323 bytes ) SS_Ex J.pdf(6577 bytes ) SS_Ex K.pdf(533181 bytes ) SS_Ex L.pdf(212809 bytes )

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

**RXD MEDIA, LLC,** :  
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 **Opposer,** :  
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 **v.** : **Opposition No. 91207333**  
 : **91207598**  
 **IP APPLICATION DEVELOPMENT LLC,** :  
 :  
 **Applicant.** :  
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**OPPOSER RXD MEDIA, LLC’S OPPOSITION TO  
APPLICANT’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and § 528.02 of the Trademark Trial & Appeal Board Manual of Procedure (“TBMP”), Opposer RxD Media, LLC (“RxD”), by and through counsel, hereby submits its opposition to Applicant IP Application and Development LLC’s (“Applicant”) Motion for Summary Judgment (hereinafter “Motion”). For reasons set forth below, Applicant’s Motion must be denied.

**INTRODUCTION**

Applicant’s Motion is grounded on multiple fallacies, that once dispelled, compel denial in all respects. The first such fallacy is the legally erroneous position that distinctiveness must be measured at the time Applicant filed its applications. That position has long since been rejected by the Office, the Board, and the courts. The second fallacy is that RxD is not entitled to service mark rights because it has a small business, even though it has undisputed priority of use as a service mark, has exclusively used its IPAD service mark for over 8 years, has demonstrated double-digit growth in traffic to its iPad site and in subscriptions to its iPad service, and has experienced interference in its ability to advertise as a result of the use by Apple, a junior user and Applicant’s alter ego, of the same mark for an unrelated product. If that were

the law, or the result of the application of the law, no small business would be able to protect its marks against a larger entity that decides it wants to control all uses of the same mark without regard to the prior rights of others. The final fallacy is that the issue of distinctiveness is dispositive of the Oppositions. Under any outcome, RxD is entitled to defend its rights against confusion or false association as to source, sponsorship or affiliation, as a result of Applicant/Apple's junior use of an identical mark. Thus, there is no set of facts by which the Oppositions can be dismissed as Applicant is requesting.

## **RESPONSES TO APPLICANT'S EVIDENCE AND STATEMENT OF FACTS**

### **I. Motion to Strike Applicant's Improperly Submitted Exhibits**

RxD hereby moves to strike the following documents submitted by Applicant as exhibits to the Declaration of Phil Hill in support of Applicant's Motion:

- Motion Ex. 18<sup>1</sup>: a document with the file name "Awesome Dave.pdf".
- Motion Ex. 19: a document with file name "Business plan page 1 to 3.pdf".
- Motion Ex. 20: a document with file name "iPad Original from July 2007.pdf".
- Motion Ex. 21: email chain between D. Wiles and B. Clements.
- Motion Ex. 22: email chain between D. Wiles and B. Clements.
- Motion Ex. 26: Apr. 6, 2002 article from *The Courier-Mail*.
- Motion Ex. 27: Apr. 17, 2000 article from *The Times*.
- Motion Ex. 39: email chain between D. Wiles and B. Clements.
- Motion Ex. 69: Trademark clearance search results.

While the Board may consider documents produced in response to discovery requests, the above documents do not comport with Trademark Rule 2.127(e)(2). Applicant has failed to produce and identify the requests to which the above documents are responsive, and is therefore

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<sup>1</sup> All documents referred to as "Motion Ex." are exhibits to Phil Hill's Declaration in Support of IP Application Development LLC's Motion for Summary Judgment.

not in compliance with the Rule. The Board should therefore strike the documents from evidence, and not consider them in determining the merits of Applicant's Motion.

## **II. Objections to Applicant's Statements of Purported Fact**

In addition to the motion to strike outlined above, RxD also presents the following objections to Applicant's statements of purported fact and evidence Applicant seeks to have considered in support of those statements.

### **A. Statement: "RxD created IPAD.MOBI as a 'Mobile Internet Notepad'" (Motion at 2-4).**

RxD denies this statement, and further objects to the statement of purported facts pursuant to Fed. R. Evid. 106 and 403. RxD created a site through which it offers its IPAD brand personal information storage and retrieval services. Those services include the storage and retrieval of a wide range of information, including audio and video content. Ex. P<sup>2</sup>, Keith Clements 30(b)(6) Dep. ("KC Dep.") at 161:8-162:11; Ex. 1<sup>3</sup>, Printout of RxD's IPAD Site. RxD never considered its service to be a "notepad," but utilized the term in a slogan to describe some capabilities to consumers who otherwise had no idea of the nature of RxD's services. Clements Decl., ¶¶ 6-7; Ex. 2, RxD Suppl. Answer to Applicant's Interrog. No. 1, at 2-3.

### **B. Statement: "IPAD.MOBI was never a business success" (Motion at 4-6).**

RxD objects to this statement of purported facts pursuant to Fed. R. Evid. 106 and 403. Applicant misstated and misrepresented the testimony of Keith Clements. Mr. Clements actually testified that it was financially irresponsible for Mr. Clements to not take advantage of tax relief

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<sup>2</sup> All alphabetical exhibits referenced herein are Exhibits to the Declaration of Sara M. Sakagami ("Sakagami Decl.") filed concurrently herewith in support of RxD Media, LLC's Opposition to IPAD LLC's Motion for Summary Judgement.

<sup>3</sup> All numerical exhibits referenced herein are Exhibits to the Declaration of Brian Clements ("Clements Decl.") filed concurrently herewith in support of RxD Media, LLC's Opposition to IPAD LLC's Motion for Summary Judgement.

benefits while he invested substantial money into RxD, and that RxD believes it would be a potential waste to invest in advertising while its ads are being rejected due to the mistaken belief that RxD does not have the right to use IPAD as a service mark. Ex. P, KC Dep. at 117:3-118:12, 241:22-242:16; *see also* Clements Decl., ¶ 11; Ex.12, S. Nelson Apr. 12, 2011 email to B. Clements; Ex. 8, AdWords Campaign Status. RxD has therefore delayed further investment in its business until it can resolve the question of its rights in its mark. Ex. P, KC Dep. at 117:3-118:9. Moreover, Applicant's statement that "RxD has produced *no* evidence whatsoever of unsolicited media coverage" (Motion at 5) is blatantly untrue: RxD did receive unsolicited recognition of its IPAD brand service when it launched, and that information was produced to Applicant during discovery. Clements Decl., ¶ 12; *see also* Part V(B), *infra*.

RxD further objects to Applicant's assertions regarding whether RxD's subscribers are inside or outside the U.S. as irrelevant and inadmissible under Fed. R. Evid. 401 and 403. RxD's rights flow from use in commerce. The trademark statute expressly states that a service mark is used in commerce when the services are rendered in the U.S. and a foreign country and the party rendering the services is engaged in commerce in connection with the services. 15 U.S.C. § 1127. "Commerce" is any commerce that Congress can regulate. *Id.* Commerce between U.S. citizens, such as RxD, and those of other countries is commerce that Congress can regulate. U.S. CONST., art. I, Sec. 8, Cl. 3; *Int'l Bancorp, LLC v. Societe des Bains de Mer et du Cercle des Etrangers a Monaco*, 329 F.3d 359, 363–64 (4th Cir. 2003); *Balmora LLC v. Bayer Consumer Care AG*, -- F.3d --, 2016 WL 1135518, at \*7 n.6 (4<sup>th</sup> Cir. Mar. 23, 2016) ("commerce is not limited to purchases and sales within the territorial limits of the United States").

**C. Statement: "RxD knew before selecting its alleged IPAD mark that Apple was developing a tablet computer called the 'IPAD'" (Motion at 6).**

RxD objects to this statement of purported facts pursuant to Fed. R. Evid. 106 and 401. Apple was working on a tablet computer, but “IPAD” was [REDACTED]. Ex. N, Thomas LaPerle 30(b)(6) Dep. (“LaPerle Dep.”) at 56:25-57:9. [REDACTED] 2009, two years after RxD adopted and began using its mark, and [REDACTED]. *Id.* at 54:20-56:24. Any statements about Apple’s plans in 2007 were no more than unsubstantiated rumor, and neither those rumors, Apple’s [REDACTED], nor RxD’s knowledge of such rumors is relevant to the consideration of service mark rights.

**D. Statement: “Apple launched the IPAD tablet device and applied to register its IPAD trademark” (Motion at 6-8.)**

RxD objects to this statement of purported facts pursuant to Fed. R. Evid. 106 and 403. Apple did not adopt the mark IPAD until 2009. Prior to that time, it was [REDACTED]. Ex. N, LaPerle Dep. at 56:25-57:9. Apple knew that the [REDACTED] Applicant cites to in its Motion were not sufficient to identify [REDACTED], such as RxD. *Id.* at 101:4-104:7. In 2006, when [REDACTED], Apple’s [REDACTED]. Ex. T, Common Law Trademark Search and Website Printouts of Trademark Users. And, Apple’s outside attorneys were [REDACTED]. Ex. N, LaPerle Dep. at 105:23-107:2. Thus, Apple willfully blinded itself to uses of IPAD as a mark that began [REDACTED]. *See Global-Tech Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2068-69 (2011) (doctrine of willful blindness applies to prevent parties from avoiding a finding of intent by “shielding themselves from clear evidence of critical facts that are strongly suggested by the circumstances”).

**E. Statement: “After Apple announced its IPAD tablet computer, RxD attempted to manufacture trademark rights in ‘IPAD’” (Motion at 8).**

RxD objects to this statement of purported facts pursuant to Fed. R. Evid. 106 and 403. Registration is not required for a party to have valid service mark rights, which can only be acquired through use. *Couture v. Playdom, Inc.*, 778 F.3d 1379, 1380-81 (Fed. Cir. 2015). RxD, as the senior user, cannot be said to be “manufacturing rights” by filing its application to federally register its mark. Moreover, RxD has frequently and regularly used the IPAD mark without any logo. Ex. 2, at 4. Applicant’s statements regarding RxD’s use of its logo are misleading. Moreover, when Brian Clements, RxD’s president, informed David Wiles, RxD’s website developer, that he wanted to be careful about uses that could be alleged to be descriptive only after Applicant’s then-counsel raised the issue in the course of pre-opposition discussions with RxD’s original counsel. Clements Decl., ¶7. Until that point, no allegation of descriptiveness of RxD’s IPAD service mark had been made, including by the USPTO. *Id.*

RxD further objects to the statement regarding RxD’s purported knowledge of Apple’s use of “i-formative” marks as irrelevant pursuant to Fed. R. Evid. 401 and unfairly misleading under Fed. R. Evid. 403. Any general knowledge RxD may have had about Apple’s use of “i” with other terms has no bearing on the issues in this opposition when Apple [REDACTED] [REDACTED] years after RxD adopted and began using the IPAD mark for its services.

**F. Statement: “Apple supported its trademark applications with secondary meaning evidence and the PTO published them” (Motion at 9).**

RxD objects to this statement of purported facts pursuant to Fed. R. Evid. 106 and 403. The only secondary meaning evidence submitted by Apple was in regard to a tablet computer device. App. No. 77/913563, Req. for Reconsideration (Apr. 28, 2012), at 154-183. The use for

goods, such as a computer, does not establish distinctiveness for a service. *In re Rogers*, 53 U.S.P.Q.2d. 1747, 1744 (TTAB 1999). Rights in a service mark can only be established by rendering services under the mark. *Couture*, 778 F.3d at 1380-81 (Fed. Cir. 2015). Apple,

[REDACTED], and therefore could not have established secondary meaning. *Id.*

**G. Statement: “The PTO refused RxD’s application on descriptiveness grounds pursuant to the PTO’s I-formative marks rule” (Motion at 9-10).**

RxD objects to this statement pursuant to Fed. R. Evid. 106 and 403. The examiner did not issue a rejection based on descriptiveness before this opposition was filed. The rejection occurred only after Apple, seeking to exert its influence over *ex parte* examination despite the pendency of these Board proceedings, filed a protest that prompted the Deputy Commissioner to direct the examiner to consider the question of descriptiveness. Ex. U, D. Cendali Dec. 9, 2015 Ltr. to Deputy Comm’r. Even then, the examiner made clear that RxD may submit evidence and arguments to overcome the rejection, and that in any event, RxD can register its mark on the Supplemental Register, which registration can be enforced against junior uses such as Applicant and Apple. App. No. 77/958000, Office Action (Jan. 21, 2016), at 3. RxD is still within the allowed time for filing its response, and the examiner’s rejection is merely preliminary.

**H. Statement: “Myriad examples of third-party use of ‘I’ and ‘Pad’ confirm that RxD’s alleged ‘IPAD’ mark is descriptive” (Motion at 10-12).**

RxD objects to this statement of purported facts pursuant to Fed. R. Evid. 106 and 403. RxD’s use of IPAD is exclusive as to services, as evidence produced by Applicant and Apple has proven, and RxD has never “admitted” that there are any other parties actually offering services under the IPAD brand. RxD objects to the definitions and third party uses cited by Applicant in

support of the purported meaning of the terms “i” and “pad” because those definitions are not limited to mid-2009, the date Applicant asserts is critical to the issues presented by its motion. (Motion at 13.) Rather, the evidence almost exclusively postdates the date of RxD’s first use of IPAD as a service mark, the date of filing of RxD’s IPAD application, the date Apple announced and released the iPad tablet computer, and the date these opposition proceedings were filed.

In addition, recent evidence indicates that while “i” was previously used by those such as Apple to signal internet capability, consumers no longer view the “i” component as having that significance. *See* Clements Decl., ¶ 6; Ex. 3, Quinten Plummer, *Apple iPhone, iPad, iMac, iPod: Here’s What The ‘i’ Means* (“i” can mean “individual”, “inspire”, “inform”, “instruct” or “intuitive”). Thus, to the extent the postdated definitions and uses are to be considered, the current view is that “i” does not necessarily mean “internet.”

Regarding the term “pad,” the definitions do not indicate that consumers will, upon encountering RxD’s mark, immediately conclude that “pad” means “notepad” for several reasons. The cites consistently indicate that “pad” has several meanings, such as a living place or dwelling (RxD’s original intended meaning) or, in the computer and electronics area, a tablet computer. *See* Ex. Q, Brian Clements Dep. (“BC Dep.”) at 69:10-14; Motion Ex. 41 (“may refer to” one of several meanings, including a tablet computer or computer component); Motion Ex. 52 (person’s residence, launch point, computer component); Motion Ex. 53 (a dwelling place, platform or launch area, temporary living quarters); Motion Ex. 54 (launch area or living quarters); Motion Ex. 55 (“a person’s house or apartment”); Motion Ex. 56 (launch area, residence); and Motion Ex. 57 (dwelling). Other cites consistently show “pad” as describing an actual good, and not, as relevant here, services. *See, e.g.*, Motion Exs. 61 and 67 (uses of “-Pad” marks for type of tablet computer called a “digital notepad”); Motion Exs. 63-68, 67 (use of “-

Pad” marks for software). The remaining cites are inapposite either because the mark was not considered descriptive or the nature of the goods (software) clearly described an attribute of that software. Motion Ex. 62 (EASYPAD registered but not considered descriptive); Motion Ex. 66 (STICKYPAD used for digital representation of “sticky notes”).

### III. RxD Counterstatement of Facts

1. RxD has priority of use of IPAD as a mark. Applicant admits that RxD began offering its services as of September 1, 2007. (Motion at 3). RxD has used the mark continuously and without interruption in offering its services since that date. Clements Decl., ¶¶ 3-4; Ex. 2. RxD’s use has been substantially exclusive. [REDACTED] over two years after RxD adopted and began using its IPAD service mark, and neither RxD, [REDACTED]. Motion at 8; Ex. W, Apple Trademark Clearance Search.

2. [REDACTED]. Ex. N, LaPerle Dep. at 118:3-119:2. The only uses of the mark have been [REDACTED]. [REDACTED]. *Id.*; Ex. C, Applicant’s First Am. Answer to RxD’s First Set of Interrog., at 5; *see also* Ex. R, Apple Trademark List. Neither Applicant nor Apple have [REDACTED]. [REDACTED]. Ex. AA, Email Exchanges between C. Key and A. Buchner; Ex. O, Douglas Vetter Dep. (“Vetter Dep.”) at 62:24-63:2; 67:15-19.

3. Apple is not merely [REDACTED] Applicant; [REDACTED]. [REDACTED]. For example, Apple [REDACTED]. [REDACTED]. Ex. V, Applicant Written Consent of Member, at 1. Apple also [REDACTED].

[REDACTED].  
Ex. N, La Perle Dep. at 50:17-21, 139:7-19. [REDACTED]

[REDACTED]. *Id.* at 104:9-14. [REDACTED]

[REDACTED]. *Id.*, at 69:12-70:5.

Applicant [REDACTED]

[REDACTED]. *Id.*, at 34:2-6; 55:19-59:2. Apple is therefore a separate entity in name, but in substance is the same as Applicant.

4. Until prompted by Apple, the examiner did not reject RxD's application based on an assertion of descriptiveness. In the office action, the examiner indicated that RxD is at least entitled to registration on the Supplemental Register due to its continued actual use, and that such registration will be enforceable against junior users, which, as noted above, included Applicant and Apple. Motion Ex. 41 at 3.

5. The person primarily responsible for choosing the IPAD mark for Applicant was [REDACTED]. Ex. B, Applicant's Resp. to RxD's First Set of Interrog., at 5. [REDACTED]  
[REDACTED]. Ex. S, S. Jobs. Jul. 24, 2006 Email to P. Schiller. Mr. LaPerle, who was [REDACTED]  
[REDACTED]. Ex.N, LaPerle Dep. at 57:20-58:12. Rather, [REDACTED] very broad group of services in Classes 35, 38, 41 and 42. *See* App. No. 77/927446, Application (Feb. 3, 2010); App. No. 77/913563, Application (Jan. 16, 2010). Likewise, the [REDACTED]  
[REDACTED]. Ex. O, Vetter Dep.

at 28:11-19. Apple [REDACTED]

[REDACTED]. Ex. O, LaPerle

Dep. at 57:20-58:12; Ex. O, Vetter Dep. at 27:14-18.

## ARGUMENT

### IV. Legal Standards

#### A. Summary Judgment

Summary judgment is only appropriate if there is no set of facts upon which the nonmoving party can prevail. *Olde Time Foods, Inc. v. Roundy's Inc.*, 961 F.2d 200, 202 (Fed. Cir. 1992). Where there is any material issue of fact to be decided, summary judgment must be denied. *Id.* In assessing a summary judgment motion, the evidence and all reasonable inferences drawn therefrom must be viewed in the light most favorable to the nonmovant. *Id.*

The only issue presented by Applicant in its motion is the alleged descriptiveness of RxD's mark. Accordingly, any material issue of fact that remains to be decided regarding the distinctiveness of RxD's mark will require denial of the motion.

#### B. Distinctiveness

A mark is inherently distinctive if it is at least suggestive, i.e., some degree of imagination on the part of the consumer is required to determine the relationship of the mark to the goods or services with which it is used. *DeGidio v. West Group Corp.*, 355 F.3d 506, 513 (6th Cir. 2004); *In re Shutts*, 217 USPQ 363, 364-65 (TTAB 1983). Where express explanation of the nature of the services is required to explain that relationship because consumers would not immediately understand the relationship between the mark and the services, the explanation is evidence that the mark is suggestive. *In re Apple*, 2012 WL 3992899 at \*6 (TTAB Feb. 1, 2013)(nonprecedential).

A mark that is descriptive is also sufficiently distinct if it has acquired distinctiveness, also known as secondary meaning. 15 U.S.C. § 1052(f). Acquired distinctiveness is determined by considering a number of factors, all of which are designed to demonstrate that the mark has obtained recognition as an indicator of source in the minds of the relevant consumers. *Qualitex Co. v. Jacobson Products Co., Inc.*, 514 U.S. 159, 163 (1995). These factors include the length of time the mark has been continuously used, the extent such use has been exclusive, advertising efforts and revenues realized, unsolicited publicity of the mark, and other evidence of consumer recognition. *Bd. Of Trustees of Univ. of Alabama v. Pitts*, 107 U.S.P.Q.2d 2001, 2013 WL 4397047, at \*14 (TTAB 2012); *Frank Lin Distillers Prod. Ltd. v. NJoy Spirits LLC*, 2016 WL 837731, at \*6 (TTAB Feb. 5, 2016)(nonprecedential).

Rights in a service mark can only be acquired through rendering services under the mark in commerce, and not merely advertising or offering of the services. *Couture*, 778 F.3d at 1380-81. Use in commerce includes any use in an area that Congress can regulate, including transactions with foreign nationals. 15 U.S.C. § 1142; U.S. CONST., Art. I, Sec. 8, Cl. 3. For services, use is expressly defined by statute as including rendering services from the U.S. to those in foreign countries. 15 U.S.C. § 1127.

Five or more years of continuous use of a service mark creates a presumption that the mark has acquired distinctiveness. 15 U.S.C. § 1052(f). Likewise, the quantum of advertising of and revenues from the offering of services under the mark is relevant to demonstrating that the mark has acquired distinctiveness. J. Thomas McCarthy, 2 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION § 15:30 (4<sup>th</sup> ed. 2016); *General Food Corp. v. MGD Partners*, 224 U.S.P.Q. 479, 1984 WL 63162, at \*8 (TTAB 1984). The amount of advertising and sales, while relevant, is not, however, sufficient in and of itself. TMEP § 1212.06(b); *General Food*, 1984

WL 63162, at \*8. Nor is a survey necessary or conclusive as to distinctiveness. *Bd. Of Trustees of Univ. of Alabama v. Pitts*, 2013 WL 4397047, at \*17 (survey not required and highly probative only if mark is highly descriptive). Rather, the question is whether there is substantial evidence to support a conclusion that consumers recognize the mark as an identifier of source. *See id.*, at \*14 (“There is no fixed rule for the amount of proof necessary to demonstrate acquired distinctiveness”).

In an *inter partes* matter where the dispute involves the question of priority between two descriptive marks, the first party to establish distinctiveness will prevail. *Id.* In an opposition proceeding, distinctiveness is to be measured at the time of decision regarding registerability or protectibility, not at the time the opposition was filed. *Gen. Foods Corp. v. MGD Partners*, 224 U.S.P.Q. 479, 486 (TTAB 1984). To make that determination, facts based on events that occurred subsequent to the filing date of an application at issue may be considered. *Id.*; *McCormick & Co. v. Summers*, 354 F.2d 668, 674 (CCPA 1966).<sup>4</sup>

Also in the *inter partes* context, intentional usurpation of the senior user’s mark by the junior user is evidence that the senior user’s mark is distinctive. *M. Kramer Mfg. Co. v. Andrews*, 783 F.2d 421, 448 (4<sup>th</sup> Cir. 1986) (“evidence of intentional, direct copying establishes a prima facie case of secondary meaning”). Such intent can be established when the junior user has willfully blinded itself to the rights of the senior user. *Global-Tech*, 131 S. Ct. at 2068-69.

## **V. There is Substantial Evidence That RxD’s IPAD Mark Is Distinctive, Either Inherently Or Through Acquired Distinctiveness**

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<sup>4</sup> Applicant’s suggestion that the distinctiveness analysis must be cut off at the time Applicant filed its application, *see* Motion at 13, is wrong both legally and factually. It has long been established that distinctiveness is to be assessed at the time registrability is being considered. TMEP § 1212.01; 2 MCCARTHY § 15:71; *McCormick & Co. v. Summers*, 354 F.2d 668, 674 (CCPA 1966) (“registrability of a mark must be determined on the basis of facts as they exist at the time when the issue of registrability is under consideration”). The registrability of RxD’s application is still being considered at Apple’s insistence. *See* Part II(G), *supra*. And, Applicant did not assert acquired distinctiveness until after RxD had been using its mark for over 4 years. *See* App. No. 77/927446, Req. for Reconsideration (Feb. 21, 2012); App. No. 77/913563, Req. for Reconsideration (Apr. 18, 2012).

**A. Substantial Evidence Demonstrates That RxD's IPAD Mark is Suggestive**

The record contains substantial evidence, including that produced and presented by Applicant, that RxD's IPAD mark is suggestive. As Applicant points out, distinctiveness must be measured in the context of the services with which the mark is used. TMEB § 1209.01(b); *In re Apple*, 2012 WL 3992899, at \*4. In this case, the issue is services that were, and are, unique in the context of the IPAD mark.

Firstly, there is no indication that IPAD inherently describes the remote storage and access to all manner of personal information on a mobile platform, including photos and videos. RxD's founder, Brian Clements, adopted IPAD as an alternative to his original choice, "MPad," when he discovered the latter choice was not available. Clements Decl., ¶ 5; Ex. 2, at 3. The "I" component was chosen as an analog to "my" to signal the personal nature of the services being offered. Clements Decl., ¶ 6. "Pad" was chosen in both instances to reinforce the concept of the landing spot or residence where the information is stored and can be retrieved on a mobile platform. *Id.*

The very dictionary definitions that Applicant relies on support the definitions Mr. Clements had in mind. Those dictionaries consistently refer to "pad" as meaning a dwelling, launch spot, or residence. *See Part II(H), supra*. At the point that RxD adopted its mark, however, the market for services like RxD's was in its infancy. Ex. 2, at 2-3. Consumers simply did not make the connection between "IPAD" and a remote personal storage space. Clements Decl., ¶ 6.

That result is not surprising. There is no logical connection between "pad" and remote online storage and access to information. Moreover, even assuming that "I" was regularly understood by consumers to mean "internet," the concept of internet storage of personal

information was incongruous in 2007 when RxD adopted and began using its mark. *Id.*; Ex. 2. That incongruity indicates that IPAD in the context of RxD’s services is suggestive. *See In re Robbins Industries, Inc.*, 2001 WL 326677 (TTAB Apr. 2, 2001)(nonprecedential)(finding that incongruity of two terms viewed as a whole creates a suggestive mark).

As a result of this incongruity and the consumers’ inability to immediately grasp the nature of RxD’s services, RxD had to use a slogan to signal to consumers and potential consumers the nature of its services. Clements Decl., ¶6; Ex. 2, at 2-3. That alone is evidence that imagination was necessary for the consumers to make the connection between “IPAD” and services for the remote storage and retrieval of personal information. *In re Apple*, 2012 WL 3992899 at \*6.

The facts here are analogous to those presented in a prior Board decision brought by Apple regarding another mark. In *In re Apple, Inc.*, Apple challenged the rejection of the mark OPENCL on the grounds that the mark was merely descriptive of “application programming interface computer software for use in developing applications for execution on central processing units (CPU) or graphic processor units (GPU), sold as an integral component of computer operating software.” 2012 WL 3992899, at \*1. There was considerable evidence that “OpenCL” meant “Open Computing Language,” and that it was the name used by Apple for a “programming language to allow computer programmers to write software for devices with multiple types of processors.” *Id.*, at \*3. The evidence included published statements by relevant industry participants, including Apple licensees under the mark, and dictionary definitions. *Id.*, at \*5-\*6. The Board nevertheless found the mark to be suggestive because of the unique nature of the product (“the first truly open and royalty-free programming system for general-use computations on heterogeneous systems”), and the fact that “OpenCL” was not

universally defined as “Open Computing Language.” *Id.* The Board therefore concluded that rather than demonstrating that the mark is merely descriptive, the industry statements and definitions demonstrated that the “companies and authors believed that they needed to spell out the connection between OpenCL and ‘Open Computing Language’ because the readers would not immediately understand that the mark OpenCL means ‘Open Computing Language.’” *Id.*, at \*6.

The same reasoning applies here. RxD’s IPAD mark is unique in the area of the remote personal storage services; neither Apple nor any other party has offered comparable services under the mark. RxD adopted slogans and campaigns to spell out the connection between IPAD and the services because subscribers and potential subscribers had no frame of reference to make that connection on their own. Under these conditions, there is substantial evidence that RxD’s IPAD mark is suggestive.

Nothing Applicant has cited or relied on suggests a different conclusion. All the evidence Applicant relies on to establish the meaning of “IPAD” in the minds of consumers is for a tablet computer, a physical good. *See* Part II(H), *supra*. That “IPAD” was descriptive of those goods is not surprising because, in the context of computers, “pad” was regularly understood to be a tablet computer. *Id.* That understanding is intuitive because tablet computers physically resemble a pad. There is no such correlation regarding metaphysical storage of information. Applicant therefore relies heavily on the presumption that “i-formative” marks mean internet-enabled. (Motion at 10-11). But, the distinctiveness of RxD’s mark must be measured based on present-day understandings, and in the present day, consumers do not necessarily view “I” as meaning “internet.” *See* Clements Decl., ¶ 6; Ex. 3.

In short, when the IPAD mark is considered in the context of RxD's services, rather than that of physical goods, and in light of (1) the evidence of the multiple meanings of the constituent terms of the IPAD mark, (2) the evidence of the present-day understandings of those terms, and (3) the evidence of RxD's steps to educate consumers about the nature of its IPAD services, there can be no doubt that substantial evidence supports the conclusion that RxD's mark is suggestive.

**B. Alternatively, Substantial Evidence Demonstrates That RxD's IPAD Mark Has Acquired Distinctiveness**

Even if the IPAD mark were to be considered descriptive in the context of RxD's services, there is substantial evidence that the mark has acquired distinctiveness. As the evidence described below demonstrates, RxD has used the mark exclusively in the field of services on a mobile platform for over 8 years, and has continuously advertised and promoted its IPAD services, which are offered through its IPAD website, throughout that time. When the service was launched in 2007, RxD received several favorable reviews on the uniqueness of its service, and began to experience growth of its business. Since Apple began offering its iPad tablet computer in 2010, however, RxD's ability to further advertise and promote its services has been limited due to the mistaken belief by advertisers that it is Apple, and not RxD, that has the exclusive rights to use IPAD for RxD's services. That has limited RxD's ability to grow its business more robustly, but even so, RxD has experienced continued growth in visits to its IPAD website, and a steady increase in subscribers to its IPAD services. The only criticism that can be levied is that RxD is a small business, but that does not prevent it from having legitimate service mark rights, particularly when there is evidence that Apple willfully blinded itself to the superior rights of others, specifically including RxD.

The substantial evidence of RxD's rights in its IPAD mark includes the following.



Philadelphia Phans article; Ex.17, Eva's Mobile Review of RxD. In the Mobilopen.org posting, RxD's services were described as "unique and the first of its kind." *Id.*

RxD has continuously advertised its IPAD services since 2007. RxD has consistently advertised its services since 2007. *See* Clements Decl., ¶ 10; Exs. 6-7, AdMob Earnings; Ex. 9, AdWords Ad Campaign Summary; Ex.11, AdWords Ad Campaign Summary; Ex. 10, Bing Ads Summary. RxD's ads have prominently featured its IPAD word mark, and invited consumers to "store & access your personal info" using the service. *See, e.g.*, Ex. 9, at RxD0002059. RxD's advertising has been limited because, as an online business, it advertises through online channels. On multiple occasions, RxD's advertising efforts were stunted, or rejected outright, based on the mistaken belief by the advertising agency that Apple had rights to the IPAD mark for RxD's services. Clements Decl., ¶ 13-14; Ex.12, S.Nelson April 11, 2011 email to B. Clements; Ex. 8. Despite these limitations, RxD has continuously received interest in its IPAD services as shown by the continuous visits to and views of its IPAD website located at [ipad.mobi](http://ipad.mobi). The metrics tracked by the service providers show that RxD has received tens of thousands of views per year based on searches for "IPAD." B. Clements Decl. ¶¶13-14; Ex. 20, Jan to Oct 2015 Summary of IPAD Site Statistics. For example, from 2009 through the third quarter of 2015, the number of hits grew from over 21,000 hits and over 12,000 views from over 3,000 visitors, to over 34,000 hits and over 26,000 views from over 5,000 visitors. *Id.*; Ex. 18, 2009 IPAD Site Statistics. Thus, in the time since Apple/Applicant decided to adopt but has not used the mark for services, RxD has experienced a 62% increase in traffic to its IPAD site, a 217% increase in views, and a 60% increase in the number of visitors per year. These statistics demonstrate consistent growth in exposure of RxD's IPAD services to subscribers and potential subscribers that RxD has been able to achieve as a result of its long-term exclusive use.

RxD has enjoyed a continuous increase in subscribers to its IPAD service. RxD's efforts have resulted in a significant increase in subscribers since the launch of its IPAD services through to today. By mid-2012, RxD had approximately 2200 subscribers to its IPAD service. Clements Decl., ¶15; Ex. 21, Subscriber List. By the end of 2015, RxD had over 3,000 subscribers to its IPAD service. Clements Decl., ¶15; Ex. 22, List of Subscribers. Thus, through its efforts and the recognition it received for its unique services, RxD has achieved approximately 36% growth in subscribers just in the time these opposition proceedings have been pending.

RxD has at all times offered its IPAD services from the U.S. Clements Decl., ¶ 14; Ex.2, at 2. RxD's subscribers are and have been both in the U.S. and various foreign countries, such as China, Russia, etc. B. Clements Decl., ¶¶13-14; Ex. 22. As this demonstrates, RxD has through its efforts in interstate commerce obtained recognition for its IPAD services both nationally and internationally.

The fact that RxD's revenues have been negligible does not, under these circumstances, negate a conclusion of acquired distinctiveness. RxD's business model, which is typical of many online service providers, seeks to obtain subscribers to attract advertisers. Such providers often offer subscriptions for free to attract subscribers and advertisers. Thus, it is not uncommon for such providers to experience years of slow revenue growth as they build their subscriber base. B. Clements Decl., ¶¶8-9; Ex. 5. RxD's situation has been exacerbated by the limitations, described above, on its ability to further advertise and promote its IPAD services due to perceived association of RxD's IPAD services with Apple. Those limitations are precisely the reason RxD brought these proceedings to vindicate its service mark rights. Ex. P, KC Dep. at

118:2-12. Thus, the fact that its revenues have not been robust is insufficient to overcome the clear success it has enjoyed in the growth in the number of subscribers.

When all of this evidence is considered in the light most favorable to RxD, as it must be, Applicant's summary judgment motion must be dismissed. RxD has offered its IPAD services continuously for over 8 years. That use entitles RxD to a presumption that its IPAD mark has, at a minimum, obtained acquired distinctiveness. There is no justification for ignoring or setting aside that presumption. Through its continued advertising efforts, and despite being inhibited by Apple's interference, RxD has obtained unsolicited recognition for its services and increased its subscription rate by 36% in the past 3 years alone.

Applicant seeks to ignore this undisputed evidence of successful use, and focus instead on disparaging the quantum of data regarding that use. Legally, that is an erroneous approach; the amount of advertising and revenue is only relevant if there is evidence that such efforts have resulted in recognition of the mark by consumers as a source of RxD's services. *See* TMEP § 1212.06(b) ("The ultimate test is...Applicant's success, rather than its efforts [i.e. amount of advertising expenditure], in educating the public...").

Applicant's motion must therefore be denied because, to the extent RxD's IPAD mark is not considered suggestive as it should be, there is substantial evidence that, applying the legal analysis advocated by Applicant, RxD's mark has acquired distinctiveness.

#### **VI. Applicant Has Not Acquired Distinctiveness Before RxD**

Applicant's position that it has superior rights to the IPAD service mark is, at best, disingenuous. Despite [REDACTED], and despite applying to register the mark for services over six years ago, neither Applicant nor Apple, the real party in interest, has [REDACTED]

[REDACTED]. See Part II, *supra*. Applicant may point to [REDACTED]  
[REDACTED]. Ex. N., LaPerle Dep. 118:3-119:2; Ex. O, Vetter Dep. 42:12-19. However, review of the evidence produced by Applicant and Apple indicates that the mark [REDACTED]. See, e.g., Ex. Y, Apple website print out (“iPad...enabling...employees to work in astounding new ways.”); Ex. Z, How to Succeed at Marketing the iPad, at IPADLLC\_000892-93 (“The App Store is what sets the iPhone apart from other devices. The iPad is going to hinge on what other content...gets created.”). Such cursory use of the mark geared toward promoting the sale of the *device* is insufficient for registering the mark for *services*. *In re Dr Pepper Co.*, 836 F.2d 508, 510 (Fed. Cir. 1987) (mere advertising of one’s own goods, or incidental activity such as repair or replacement of one’s own merchandise, is not a “service” within the purview of the trademark laws). According to its very own “first to distinctiveness” analysis, then (*see* Motion at 14), Applicant cannot have acquired distinctiveness before RxD.

**VII. Applicant’s Motion Must Also Be Denied Because It Is At Best Premature**

Summary judgment must be denied where material facts remain to be decided. *Olde Time Foods, Inc.*, 961 F.2d at 202. There are several such material facts in this case.

First, the question of the distinctiveness of RxD’s mark is still before the examiner and that is so because it was raised at Apple’s behest. The initial determination of distinctiveness of RxD’s IPAD mark has not yet been made. Clearly, Apple, Applicant’s alter ego, was not content with leaving that issue to the Board. Having prompted the process, Applicant cannot now object to trusting the examiner’s decision in the first instance.

Second, RxD has concurrently moved to amend the Notices of Opposition to assert, based on the evidence adduced during discovery, both that Applicant’s IPAD mark has not

acquired secondary meaning and that Applicant did not have a *bona fide* intent to use when it filed its application, and that to the extent Applicant/Apple has used the mark, such use is actionable as unfair competition. The mark at issue here is a service mark, and rights in a service mark can only be obtained by rendering those services in commerce. *Couture*, 778 F.3d at 1380-81. Neither Applicant nor [REDACTED], however, has ever rendered any IPAD branded services in commerce. Applicant has established that consumers recognize IPAD as a mark for a tablet computer, which are goods, but such recognition does not necessarily transfer to services, *In re Rogers*, 53 U.S.P.Q.2d. at 1744, and there is no evidence that it has transferred here. More to the point, Apple has never had a [REDACTED]. Instead, [REDACTED]. Ex. S; Part III(5), *supra*. That, of course, is improper. And there is no objective evidence of a *bona fide* intent to use on the part of Apple or Applicant. If RxD prevails on these allegations, as the evidence indicates it will, Applicant's applications will be dismissed and RxD will prevail in its opposition.

Finally, Applicant is asking that RxD's opposition be dismissed if its motion is granted. (Motion at 1.) However, the opposition can only be dismissed if there is no set of circumstances by which RxD can establish priority of rights in the IPAD mark for RxD's services. As the examiner has found, RxD will be entitled, at a minimum, to register its mark on the Supplemental Register. App. No. 77/958000, Office Action (Jan. 21, 2016), at 3. That registration will be enforceable against junior users, including Applicant and Apple. Moreover, to the extent Applicant/Apple has used the mark for the described services, such use is likely to cause confusion, to cause mistake, or to deceive as to the affiliation, connection, or association of RxD with Applicant/Apple, and is therefore actionable under the trademark laws. 15 U.S.C. §

1125(a). In that event, RxD's opposition would be sustained, even if, as Applicant incorrectly asserts, RxD does not have a separately protectable mark. *See Belmora*, 2016 WL 1135518, at \*6-\*7.

Thus, there are no set of circumstances by which all of RxD's claims can be dismissed based on the present motion.

### **VIII. Applicant's Ad Hominem Attacks Ultimately Support RxD's Position**

Applicant, and the real party in interest Apple, resort to a number of ad hominem attacks that are relevant to the issues presented by Applicant's Motion in only one sense: they betray a primary fallacy upon which Applicant's Motion is based. Applicant on multiple occasions asserts that RxD is attempting to "manufacture" rights to essentially extort a monetary payment from Apple. (Motion at 2). This is not the first time that Applicant/Apple has levied this charge, and RxD repeats now what it said then. The only time the issue of money has been raised, it has been Apple that raised it. (*See Paper 46, Reply to Mot. to Compel at 3.*) As RxD has made clear, it is seeking to vindicate its service mark rights because it is clear that such vindication is necessary to allow RxD to build its IPAD business. Ex. P, KC Dep. at 118:2-12.

Applicant is essentially taking the position that only the largest entities are entitled to service mark rights, and that the only motivation smaller entities, such as RxD, can have is to extort money from those much larger competitors. The law has long since rejected that proposition. *See, e.g., Big-O Tire Dealers, Inc. v. Goodyear Tire & Rubber Co.*, 561 F.2d 1365, 1372 (10<sup>th</sup> Cir. 1977). This is a case where the smaller user is the undisputed senior user, which, under the trademark law, means it has superior rights. Moreover, the evidence adduced during discovery demonstrates that Apple intentionally sought to blind itself to any third party rights that might interfere with Apple's goal of controlling rights to all uses of the IPAD mark once

[REDACTED]. Apple could afford to take that risky position because of its view, as confirmed by Applicant's motion, that smaller senior users such as RxD are not entitled to their rights.

Applicant's/Apple's views that rights of smaller companies are inferior to companies like Apple based solely on size is flatly contrary to law, and its legally unsupportable position should be rejected out of hand.

### CONCLUSION

For the foregoing reasons, Applicant's Motion for Summary Judgment should be denied. The only issue raised in the motion is the alleged lack of distinctiveness of RxD's IPAD service mark, but there is substantial evidence that the mark is suggestive or, in the alternative, has acquired secondary meaning. The relief Applicant is requesting, that the Oppositions be dismissed, cannot be granted for these reasons, and because Applicant cannot show that it acquired rights to use IPAD as a service mark before RxD. The Oppositions must therefore be allowed to move forward on all the issues set forth in RxD's motion to amend its notices of opposition being submitted concurrently herewith.

Dated: April 6, 2016

Respectfully submitted,

RXD MEDIA, LLC  
BY COUNSEL

*/s/ Cecil E. Key*  
\_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 6, 2016, a true copy of the foregoing was mailed postage pre-paid and electronically mailed to the following:

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*/s/ Cecil E. Key*

\_\_\_\_\_

Cecil E. Key

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

<b>RXD MEDIA, LLC,</b>	:	
	:	
<b>Opposer,</b>	:	
	:	
<b>v.</b>	:	<b>Opposition No. 91207333</b>
	:	<b>91207598</b>
<b>IP APPLICATION DEVELOPMENT LLC,</b>	:	
	:	
<b>Applicant.</b>	:	
_____	:	

**DECLARATION OF BRIAN CLEMENTS IN SUPPORT OF  
RXD MEDIA, LLC'S OPPOSITION TO  
IP APPLICATION DEVELOPMENT LLC'S MOTION FOR SUMMARY JUDGMENT**

I, Brian Clements, hereby declare as follows:

1. My name is Brian Clements, and my address is 234 Bradley Court, Holland, Pennsylvania 18966. I am over the age of 18, and I make this declaration based on my personal knowledge and experience. If called upon, I am competent and will testify to the matters set forth in this declaration.

2. I am a founder of RxD Media, LLC ("RxD"), the Opposer in the opposition proceedings identified above. I am the president of RxD and have been since its founding. I also am and have been involved as a founder and officer of other companies that, like RxD, offer products and services through online channels.

3. In 2007, RxD adopted the mark IPAD for use in connection with offering the storage of personal information and files on a mobile platform that would allow the information and files to be accessed for modification or retrieval on a mobile device, such as a phone. RxD began rendering its services under the IPAD mark on September 1, 2007. The services were and are rendered through RxD's IPAD website located at [ipad.mobi](http://ipad.mobi). True and correct copies of

screen shots showing the various types of information, including photos and videos, that can be stored and accessed as part of the IPAD service, and which were produced to Applicant with production numbers RXD0001893-96, are attached as Exhibit 1.

4. Details regarding RxD's adoption and use of the IPAD mark, including the reasons that the mark was chosen, were provided to Applicant in *Opposer RxD Media, LLC Supplemental Response to Applicant's Interrogatory No. 1*. A true and correct copy of RxD's supplemental response is attached hereto as Exhibit 2. A primary consideration in choosing a name for RxD's service was to limit the number of characters, and thus keystrokes, that would be needed to type in the name of the service because it was anticipated (and hoped) that users would access RxD's services from their mobile phones. In 2007, most mobile phones were "flip phones," with a small, limited keypad that, unlike a QWERTY keyboard, did not have a dedicated key for all letters of the alphabet.

5. Thus, RxD rejected the name it originally considered, "MyPad," because it determined that the name would likely be considered too long by subscribers who might have to enter it on a flip phone. RxD then considered shortening the name to "MPAD," but discovered that name was not available for all the uses that RxD intended. RxD therefore chose IPAD because it had a sufficiently small number of characters (four) and had a similar connotation to "MyPad." *Id.* at 3.

6. As stated in RxD's supplemental response, the "I" in "IPAD" was intended to represent the personal nature of the services, and because "I" is synonymous with "my." Exhibit 2, at 3. My understanding is that "I" is not universally thought by consumers to mean "internet" or "internet enabled." As explained in RxD's supplemental response, RxD's experience when it began offering its IPAD services was that potential subscribers did not understand or appreciate

the nature of those services because, in 2007, they had no frame of reference by which to understand the unique service RxD was offering. For that reason, RxD adopted a slogan to educate potential subscribers about the nature of its IPAD services. *Id.*, at 2-3. It has also been reported that current consumers do not associate the “I” in IPAD with “internet.” See Quinten Plummer, *Apple iPhone, iPad, iMac, iPod: Here’s What The ‘i’ Means*, Tech. Times (Feb. 20, 2016), <http://www.techtimes.com/articles/135191/2016220/apple-iphone-ipad-imac-ipod-heres-what-the-i-means.htm>, attached as Exhibit 3.

7. RxD never considered IPAD as describing its services. To the contrary, that is why RxD adopted the slogan as described above. In addition, RxD did not receive any indication from the U.S. Patent and Trademark Office prior to the filing of the opposition proceedings that the examiner considered RxD’s IPAD mark descriptive. The first suggestion RxD received of any assertion that its mark was descriptive was from Applicant’s counsel in the course of discussions with RxD’s counsel at that time concerning extensions of time to file the oppositions. While RxD did not, and still does not, believe that its mark describes its services, it nevertheless took Applicant’s allegations into consideration in an effort to avoid a potentially costly legal issue. That consideration was the purpose behind, for example, my instructions to David Wiles, the developer hired by RxD to work on its IPAD site. See Motion Exhibit 39.

8. RxD employs a business model that is fairly standard in the online industry. A general description of online models can be found in the following article: David Chaffey, 8 *Online Revenue Model Options for Internet Business*, Smart Insights (Jan. 11, 2011) at <http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/>, attached as Exhibit 4. RxD began offering subscriptions to its IPAD services at no charge, with the goal of eventually charging for

subscriptions, but also attracting advertising as the subscription numbers increase. For this model, the value of the advertising is anticipated to be greater than what could be achieved from increasing subscription costs. For that reason, even well-known, established companies have employed the same business model as RxD. A report regarding one such company, Microsoft, can be found at <http://www.ibtimes.com/real-reason-tech-giants-are-offering-everyone-free-storage-1612492>, attached as Exhibit 5.

9. Based on my experience in the industry, it is not uncommon for companies that employ a business model similar to RxD's to experience low, even zero, revenue for several years.

10. RxD has consistently advertised its services since its IPAD services were first offered. Attached are true and correct copies of the following documents evidencing advertising of RxD's IPAD services:

- a. Exhibit 6, AdMob Account Summary (Oct. 27, 2008-Jun. 29, 2010), as produced to Applicant with production numbers RXD000463-64.
- b. Exhibit 7, AdMob Account Summary (Aug. 2, 2008-Oct. 10, 2008), as produced to Applicant with production number RXD000465.
- c. Exhibit 8, Google AdWords Campaign Status (Mar. 15, 2011-Mar. 28, 2011), as produced to Applicant with production number RXD0001309.
- d. Exhibit 9, YouTube Promoted Videos Campaign (Mar. 2, 2011-Feb. 8, 2016), as produced to Applicant with production numbers RXD0002059-60.
- e. Exhibit 10, Bing Ads Summary (Jan. 25, 2014-Jan. 25, 2016), as produced to Applicant with production numbers RXD0002037-2040.

- f. Exhibit 11, Google AdWords Campaign Summary (Feb. 12, 2015-Feb. 8, 2016), as produced to Applicant with production number RXD0002192.

11. RxD has experienced difficulties over the years advertising its IPAD services. Consistent with its business model, RxD primarily advertises online. In January 2010, RxD's IPAD site experienced a dramatic spike in the number of views that corresponded with Apple's January 27, 2010 announcement of the launch of its iPad tablet computer. Subsequently, and online advertisers rejected RxD's advertisements based on a mistaken belief that RxD has no rights in the IPAD mark for its services. Attached are true and correct copies of the following documents reflecting rejections RxD has received from online advertisers:

- a. Exhibit 12, S. Nelson April 22, 2011 Email to B. Clements, which was produced to Applicant with production number RXE0002237, stating that "problem still exists with the TM" for RxD's advertisement campaign.
- b. Exhibit 8, RxD's AdWords campaign status, which was produced to Applicant with production number RXD0001309, showing "Disapproved" for "Trademark terms."

12. Upon launching of its IPAD services, RxD received positive media coverage and reviews for its innovative services. For example:

- a. RxD's website through which its IPAD services are offered was selected in August 2007 to be featured in the dotMobi Showcase at <http://mtld.mobi/showcase>. A true and correct copy of an email from V. Hedderel to B. Clements reflecting the selection, which was produced to Applicant with production numbers RXD000030-33, is attached as Exhibit 13.

- b. RxD's IPAD services were identified as a "Showcase" product by MobiThinking. A true and correct copy of the MobiThinking "Showcase" page identifying RxD's IPAD services, which was produced to Applicant with production number RXD000021, is attached as Exhibit 14.
- c. In May 2008, RxD's IPAD site was identified as an "excellent mobile website," and its IPAD services were chosen as a finalist for service of the year by mobility.mobi. A true and correct copy of the MobiEnthusiast publication regarding RxD's IPAD services, which was produced to Applicant with production number RXD000022, is attached as Exhibit 15.
- d. RxD's IPAD site and IPAD services were featured and described in a March 2009 blog posting on the Philadelphia Phans mobile site. A true and correct copy of the Philadelphia Phans blog posting, which was produced to Applicant with production number RXD000052, is attached as Exhibit 16.
- e. In 2008, RxD's IPAD services were favorably reviewed, and described as "unique and the first of its kind" in a posting regarding "Eva's mobile review" on Mobilopen.org. A true and correct copy of the posting, which was produced to Applicant with production number RXD000067, is attached as Exhibit 17.

13. From 2007 through to the present, RxD has continuously and consistently received a high volume of traffic on its IPAD website through which its IPAD services are offered. For example:

- a. A true and correct copy of the 2009 website statistics for RxD's IPAD site, which was produced to Applicant with production number RXD000367, is

attached as Exhibit 18. As Exhibit 16 shows, by 2009, the year before Applicant filed the applications that RxD is opposing, and the year before Apple introduced its iPad tablet computer, RxD's IPAD site received over 21,000 hits and over 12,000 page views from over 3,000 visitors. *Id.*, at 1. The largest number of views were by far from the U.S., and the top keyword term searched was "ipad." *Id.*, at 3, 9.

- b. A true and correct copy of the 2012 website statistics for the IPAD site, which was produced to Applicant with production number RXD000370, is attached as Exhibit 19. In 2012, the year that the present proceedings were filed, RxD's IPAD site received over 23,000 hits and almost 16,000 page views from over 3,000 visitors. *Id.*, at 1. The largest number of views were again from the U.S., and again, the top keyword term searched was "ipad." *Id.* at 3, 9.
- c. A true and correct copy of the January-October 2015 website statistics for the IPAD site, which was produced to Applicant with production number RXD000925, is attached as Exhibit 20. During the first ten months in 2015, RxD's IPAD site received over 34,000 hits and well over 26,000 page views from over 5,000 visitors. *Id.*, at 1. A large number of views came from the U.S., but even larger numbers came from visitors in China and Ukraine. *Id.* at 4. "Ipad" was one of the top keyword terms searched. *Id.* at 9.

14. As the above statistics demonstrate, RxD's IPAD site, and thus its IPAD services, has received steadily increasing recognition in the online channels through which the services are offered. While the IPAD services have always been rendered from the U.S., and the largest

number of views of the IPAD site have been from the U.S., RxD has, as the statistics also demonstrate, achieved significant interest from numerous countries outside the U.S.

15. The national and international recognition RxD has received for its IPAD services has resulted in a consistent increase in subscribers to RxD's IPAD service. By 2012, two years after Apple introduced its iPad tablet computer, RxD had 2200 subscribers for its IPAD services. A true and correct copy of RxD's IPAD subscriber list reflecting the 2012 numbers, which was produced to Applicant with production numbers RXD000388-433, is attached as Exhibit 21. That number continued to grow despite the issues with RxD's IPAD advertising described above, and by the end of 2015, there were over 3,000 subscribers from the U.S. and around the world to RxD's IPAD services. A true and correct copy of RxD's IPAD subscriber list reflecting the 2015 numbers, which was produced to Applicant with production numbers RXD0001833, is attached as Exhibit 22.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Date: April 5, 2016

/s/ Brian Clements  
Brian Clements

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

<b>RXD MEDIA, LLC,</b>	:	
	:	
<b>Opposer,</b>	:	
	:	
<b>v.</b>	:	<b>Opposition No. 91207333</b>
	:	<b>91207598</b>
<b>IP APPLICATION DEVELOPMENT LLC,</b>	:	
	:	
<b>Applicant.</b>	:	
_____	:	

**DECLARATION OF SARA M. SAKAGAMI  
IN SUPPORT OF RXD MEDIA, LLC’S OPPOSITION TO  
IP APPLICATION DEVELOPMENT, LLC’S MOTION FOR SUMMARY JUDGMENT**

I, Sara S. Sakagami, hereby declare the following:

1. I am over 18 years of age and competent to attest to the matters set forth herein.
2. I am an attorney licensed to practice law in the Commonwealth of Virginia, and counsel of record for the Opposer RxD Media, LLC (“RxD”) in this matter. As counsel for RxD, I am familiar with the files, documents, correspondence, and posture of the proceedings in this case. This declaration is submitted in support of RxD’s Opposition to Applicant IP Application Development LLC’s (“Applicant”) Motion for Summary Judgment.
3. Attached as Exhibit A is a true and correct copy of RxD’s First Sets of Interrogatories and Requests for Production of Documents and Things to Applicant, dated February 14, 2013.
4. Attached as Exhibit B is a true and correct copy of Applicant’s Responses and Objections to RxD’s First Sets of Interrogatories and Requests for Production of Documents and Things, dated March 21, 2013. Applicant marked this document “TRADE SECRET/COMMERCIALY SENSITIVE” pursuant to the Protective Order entered in this proceeding, and therefore the document is redacted from the public filing.
5. Attached as Exhibit C is a true and correct copy of Applicant’s First Amended Responses and Objections to RxD’s First Sets of Interrogatories and Requests for Production of

Documents and Things, dated November 1, 2013. Applicant marked this document “TRADE SECRET/COMMERCIALY SENSITIVE” pursuant to the Protective Order entered in this proceeding, and therefore the document is redacted from the public filing.

6. Attached as Exhibit D is a true and correct copy of RxD’s Third Set of Interrogatories to Applicant, dated December 29, 2014.

7. Attached as Exhibit E is a true and correct copy of Applicant’s Responses and Objections to RxD’s Third Set of Interrogatories to Applicant, dated January 28, 2015. Applicant marked this document “TRADE SECRET/COMMERCIALY SENSITIVE” pursuant to the Protective Order entered in this proceeding, and therefore the document is redacted from the public filing.

8. Attached as Exhibit F is a true and correct copy of RxD’s Third Set of Request for Production of Documents and Things, dated December 29, 2014.

9. Attached as Exhibit G is a true and correct copy of Applicant’s Responses and Objections to RxD’s Third Set of Requests for Production of Documents and Things to Applicant, dated January 28, 2015. Applicant marked this document “TRADE SECRET/COMMERCIALY SENSITIVE” pursuant to the Protective Order entered in this proceeding, and therefore the document is redacted from the public filing.

10. Attached as Exhibit H is a true and correct copy of Applicant’s First Supplemental Responses and Objections to RxD’s Third Set of Requests for Production of Documents and Things to Applicant, dated January 28, 2015. Applicant has designated this document “TRADE SECRET/COMMERCIALY SENSITIVE” pursuant to the Protective Order entered in this proceeding, and therefore the document is redacted from the public filing.

11. Attached as Exhibit I is a true and correct copy of RxD’s subpoena *duces tecum* to Apple Inc. (“Apple”), which was served upon Apple on October 22, 2015.

12. Attached as Exhibit J is a true and correct copy of Apple’s Objections and Responses to RxD’s subpoena, dated November 2, 2015. Apple has designated this document “TRADE SECRET/COMMERCIALY SENSITIVE” pursuant to the Protective Order entered in the U.S. District Court for the Northern District of California, and therefore the document is

redacted from the public filing.

13. Attached as Exhibit K is a true and correct copy of Applicant's First Set of Request for Production, dated December 17, 2012.

14. Attached as Exhibit L is a true and correct copy of Applicant's Second Set of Request for Production and Inspection of Documents and Things dated January 6, 2016.

15. Attached as Exhibit M is a true and correct copy of Applicant's First Set of Interrogatories, dated December 17, 2012.

16. Exhibit 2 to the Declaration of Brian Clements in Support of RxD's Opposition to Applicant's Motion for Summary Judgment is a true and correct copy of RxD's Supplemental Response to Applicant's Interrogatory No. 1, produced in response to Applicant's First Set of Interrogatories. (Ex. M).

17. Exhibits 1 & 6-22 to the Declaration of Brian Clements in Support of RxD's Opposition to Applicant's Motion for Summary Judgment are true and correct copies of documents produced by RxD in response to Applicant's First and Second Sets of Request for Production of Documents. (Exs. A & F). Exhibits 6-12 and 18-22 have been previously designated as "CONFIDENTIAL" pursuant to the Protective Order entered in this proceeding. Therefore Exhibits 21 and 22 are redacted from the public filing. RxD hereby removes confidential designations of Exhibits 6-12 and 18-20, and therefore these documents do not require redaction from the public filing.

18. Attached as Exhibit N is a true and correct copy of excerpts from the deposition transcript of Thomas LaPerle in his capacity as an individual and as the Fed. R. Civ. P. 30(b)(6) corporate designee of both Applicant and Apple. Applicant and Apple have designated portions of this transcript as "TRADE SECRET AND COMMERCIALY SENSITIVE" pursuant to the Protective Orders entered in this proceeding and in the U.S. District Court for the Northern District of California, and therefore those portions are redacted from the public filing.

19. Attached as Exhibit O is a true and correct copy of excerpts from the deposition transcript of Douglas Vetter. Applicant and Apple have designated portions of this transcript as "TRADE SECRET AND COMMERCIALY SENSITIVE" pursuant to the Protective Orders

entered in this proceeding and in the U.S. District Court for the Northern District of California, and therefore those portions are redacted from the public filing.

20. Attached as Exhibit P is a true and correct copy of excerpts from the deposition transcript of Keith Clements in his capacity as an individual and as the Fed. R. Civ. P. 30(b)(6) corporate designee of RxD. RxD has designated portions of this transcript as “CONFIDENTIAL” pursuant to the Protective Order entered in this proceeding. However, RxD hereby removes the confidential designation from the excerpts attached hereto, and therefore Exhibit P does not require redaction from the public filing.

21. Attached as Exhibit Q is a true and correct copy of excerpts from the deposition transcript of Brian Clements.

22. Attached as Exhibit R is a true and correct copy of Apple Trademark List webpage, which was captured on April 4, 2016 and is available at [www.apple.com/legal/intellectual-property/trademark/appletmlist.html](http://www.apple.com/legal/intellectual-property/trademark/appletmlist.html).

23. Attached as Exhibit S is a true and correct copy of July 24, 2006 email from Steve Jobs to Phil Schiller, which Apple produced in response to RxD’s subpoena *duces tecum*, (Ex. I), bearing the bates number APL-RXDMEDIA\_00000137. Apple has designated this document “TRADE SECRET/COMMERCIALY SENSITIVE” pursuant to the Protective Order entered in the U.S. District Court for the Northern District of California, and therefore the document is redacted from the public filing.

24. Attached as Exhibit T is a true and correct copy of trademark clearance search, which Applicant produced in response to RxD’s First and Third Sets of Request for Production of Documents and Things, (Exs. A & F), bearing the bates numbers IPADLLC\_005340-5413. Applicant has designated this document “TRADE SECRET/ COMMERCIALY SENSITIVE” pursuant to the Protective Order entered in this proceeding, and therefore is redacted from the public filing.

25. Attached as Exhibit U is a true and correct copy of Dale Cendali’s December 9, 2015 letter of protest to Deputy Commissioner of U.S. Patent and Trademark Office, which Applicant produced in response to RxD’s First and Third Sets of Requests for Production of

Documents and Things, (Exs. A & F), bearing the bates numbers IPADLLC\_008217-19.

26. Attached as Exhibit V is a true and correct copy of Applicant's Written Consent of Member dated January 11, 2010, which Applicant produced in response to RxD's First and Third Sets of Request for Production of Documents and Things, (Exs. A & F), bearing the bates numbers IPADLLC\_001290-91. Applicant has designated this document "HIGHLY CONFIDENTIAL" pursuant to the Protective Order entered in this proceeding, and therefore the document is redacted from the public filing.

27. Attached as Exhibit W is a true and correct copy of trademark clearance search results. Which Applicant produced in response to RxD's First and Third Sets of Request for Production of Documents and Things, (Exs. A & F), bearing the bates numbers IPADLLC\_008145-78. Applicant has designated this document "TRADE SECRET/ COMMERCIALY SENSITIVE" pursuant to the Protective Order entered in this proceeding, and therefore the document is redacted from the public filing.

28. Attached as Exhibit X is a true and correct copy of Google search results for "ipad" dated July 9, 2009, which was produced by Applicant in response to RxD's First Set of Request for Production of Documents and Things, (Ex. A), bearing the bates numbers IPADLLC\_000140-48. Applicant has designated this document "HIGHLY CONFIDENTIAL" pursuant to the Protective Order entered in this proceeding, and therefore the document is redacted from the public filing.

29. Attached as Exhibit Y is a true and correct copy of Apple's website titled "iPad in Business", that was produced by Applicant in response to RxD's First and Third Set of Request for Production of Documents and Things, (Exs. A & F), bearing the bates numbers IPADLLC\_001506-09.

30. Attached as Exhibit Z is a true and correct copy of an article on [www.cnet.com](http://www.cnet.com), which was produced by Applicant in response to RxD's First and Third Set of Request for Production of Documents and Things, (Exs. A & F), bearing the bates numbers IPADLLC\_000891-95.

31. Attached as Exhibit AA is a true and correct copy of a January 28, 2016 email

from Cecil Key, RxD's counsel of record, to Allison Buchner, counsel of record for Applicant, and a February 3, 2016 email from Allison Buchner to Cecil Key in response. Applicant has not designated the email as "CONFIDENTIAL," however, in the abundance of caution, RxD is redacting a portion of the Buchner email from the public filing.

32. I have reviewed documents produced by Applicant and Apple in response to RxD's First and Third Set of Request for Production of Documents and Things and subpoena *duces tecum*, and found no documents that can be categorized as Applicant's or Apple's internal business plans or product map for services to be rendered under the IPAD mark.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: April 6, 2016

/s/ Sara M. Sakagami  
Sara M. Sakagami

# **EXHIBIT 1**

---

# IPAD

---





IPAD™ is first of its kind for the mobile web. Create your own personal information directories, create multiple lists, including To Do, Grocery, and much more. IPAD™ will then store your personal information, and you will be able to access it on any mobile device at any time without synchronization.

Personal File Storage

Calendar

Directory List

To Do List

Grocery List

Personal Info Storage List

Gift List

Home

Logout

Favorite Site List

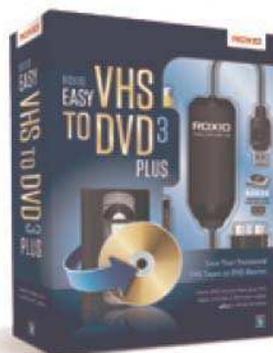
Holiday & Vacation List

Tutorials

Logout

About

© IPAD™.mobi 2007-2013  





## **EXHIBIT 2**

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

<b>RXD MEDIA, LLC</b>	:	
	:	
<b>Opposer,</b>	:	
	:	
<b>v.</b>	:	<b>Opposition No. 91207333</b>
	:	<b>91207598</b>
<b>IP APPLICATION DEVELOPMENT LLC,</b>	:	
	:	
<b>Applicant.</b>	:	
	:	

---

**OPPOSER RXD MEDIA, LLC SUPPLEMENTAL RESPONSE TO APPLICANT'S  
INTERROGATORY NO. 1**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, Opposer RxD Media, LLC ("RxD"), by and through counsel, hereby submit its supplemental response to Applicant IP Application Development LLC's Interrogatory No. 1.

**OBJECTIONS AND RESPONSES**

**INTERROGATORY NO. 1**

For each calendar year for 2007 through the present, provide a detailed description of the use (as defined in Paragraph L of the Applicant's First Set of Document Requests) that Opposer made of Opposer's IPAD Mark during that year.

**RESPONSE:**

RxD incorporates the General Objections as if set forth in full herein. Additionally, RxD objects to this Interrogatory on the grounds that it calls for a narrative response more suitable for a deposition. Subject to and without waiving the foregoing objections, RxD responds that its use in commerce of its IPAD mark began in the summer of 2007. RxD's service allows users to take and store mobile notes without having to synchronize to other devices by providing temporary use of a web-based software application for mobile-access database management. RxD has continuously offered this service under its IPAD mark to registered user since its inception in 2007. The only changes made to the services have been enhancements to some features.

**SUPPLEMENTAL RESPONSE:**

RxD objects to Interrogatory No. 1 as vague and ambiguous as to the term “use,” which, contrary to Applicant’s statement in Paragraph L of its First Set of Document Requests, is not the term defined in 15 U.S.C. § 1127. RxD further objects to Interrogatory No. 1 as unduly burdensome given the needs of the case in requesting a “detailed description” on a year-by-year basis of RxD’s undefined “use” of its IPAD Mark. Subject to and without waiver of these objections, RxD further responds to Interrogatory No. 1 as follows.

In the summer of 2007, RxD adopted the term IPAD for the offering of an online subscription system that allowed subscribers to store personal information that would then be available for retrieval on various mobile computer devices. RxD began using the IPAD Mark in connection with the offering of those services at least as early as September 1, 2007. RxD adopted the mark IPAD as the brand name for its services, and began offering its IPAD brand services through a web portal accessible at [www.ipad.mobi](http://www.ipad.mobi) (the “IPAD Web Portal”). The subscriber accessed the service by accessing the IPAD Web Portal using the subscriber’s browser program, and then entering the unique identifier information for the subscriber (user name and password). The subscriber could then add information, or access stored information for viewing, editing, or deleting. RxD’s IPAD services were offered on the .mobi platform because that platform was designed to facilitate access to web-based services via mobile devices, i.e., those computers that were portable and could access networks from a variety of locations. These operations are performed via a web-based software application for mobile-access database management. RxD’s services offered under the IPAD mark were and are offered throughout the United States, and are also available from the United States to international users.

Currently, services such as RxD’s IPAD services are part of the class of what are now often referred to as “cloud-based” services. RxD was an early entrant into the market for offering such “cloud” services. At the time RxD adopted the IPAD Mark and began using it in

connection with the offering of its services, however, the cloud service industry, i.e., entities offering the storing of information “in the cloud” for retrieval from a mobile computing device, was in its infancy. In addition, some devices, such as flip phones, from which the IPAD services were meant to be accessed provided limited screen space. The limited space created a challenge in conveying information about the IPAD services to those who might access the IPAD services via their phones.

RxD therefore initially used the tag line “Your mobile internet notepad” to signal the nature of the services, which was not otherwise readily ascertainable. The letter “I” in IPAD had been adopted to emphasize the personal nature of the information and services. (“I” was chosen when it was determined that “MyPad,” the original choice, would likely be considered too long by users attempting to enter the term on a flip phone keypad, and “MPAD,” short for “MyPad,” was not available. The term “your” was used in the tag line to emphasize and reinforce the connotation of the personal nature of the services. The remainder of the description was still somewhat incongruent because the internet had and has no association with a notepad, which is typically thought of as a physical collection of paper, and it was antithetical to think of the internet as a place where personalized notes and other information would be stored. For the average consumer, such information was more typically stored in the memory of a local computer, and not, as RxD does, on a server available via a web portal. The tag line was therefore designed to spur the imagination of potential subscribers to provoke interest in RxD’s services.

RxD has used the IPAD Mark both with and without a design element from its first adoption in 2007 continuing through to the present. The logo emphasizes the informational aspect of the services, but has no connection to or connotation of the internet or any electronic device.

The word IPAD without a logo appears throughout the IPAD website. In addition, RxD has predominantly advertised its IPAD services online through agencies that focus on placement of ads for identification via web-based searches. When RxD's IPAD services are identified via internet searches, they are identified using only the word IPAD rather than any design. In early 2011, the tag line mentioned above was dropped as RxD's IPAD services and brand became more established as a result of the continuous offering of those services under the IPAD brand. At about the same time, RxD adopted and continues to use the tag line "The first of its kind on the mobile web." RxD also has third-party advertising on the IPAD Web Portal for website and web-hosting related services.

RxD has continued to offer the services described above to its subscribers and continued to use the IPAD Mark as described above continually each year from 2007 through to the present.

December 4, 2015

RxD MEDIA, LLC  
BY COUNSEL

/s/ Cecil E. Key  
Cecil E. Key, Esq. (VSB #41018)  
Sara M. Sakagami (VSB #77278)  
**DIMUROGINSBERG, PC**  
1101 King Street, Suite 610  
Alexandria, Virginia 22314  
(703) 684-4333 (telephone)  
(703) 548-3181 (facsimile)  
e-mail: [ckey@dimuro.com](mailto:ckey@dimuro.com)  
e-mail: [ssakagami@dimuro.com](mailto:ssakagami@dimuro.com)

**VERIFICATION**

I, Brian Clements, being duly sworn, depose and say that I verified the foregoing Supplemental Answer to Applicant's Interrogatory No.1; that I am duly authorized to do; that the facts stated therein are true and correct to the best of my knowledge.

Date: December 4, 2015

  
\_\_\_\_\_  
Brian Clements

**CERTIFICATE OF SERVICE**

I hereby certify that on December 4, 2015, a true copy of the foregoing was electronically mailed to:

Allison W. Buchner  
Kirkland & Ellis LLP  
333 South Hope Street  
Los Angeles, CA 90071  
Tel: (213) 680-8133  
Fax: (213) 808-8184

Dale M. Cendali  
Claudia Ray  
Julie Wang  
Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Tel: (212) 446-4800  
Fax: (212) 446-4900

/s/ Sara M. Sakagami  
Sara M. Sakagami

## **EXHIBIT 3**



DELL XPS 13 with 6th Gen Intel® Core™ processors



Show Ad

TAG Apple , Steve Jobs

# Apple iPhone, iPad, iMac, iPod: Here's What The 'i' Means

## TECH TIMES

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There is no 'i' in team, and one day, 'i' may no longer be in the names of Apple products, either. For now, that 'i' in 'iPhone' and other Apple products is key in describing what Apple wants its devices to mean to consumers. (Photo : Justin Sullivan | Getty Images)

The question still remains about what the "s" and the "c" stand for in the iPhone, though there are theories and evidence to back up several meanings. For the "i" Apple uses in the branding of its products, the answers have been revealed.

The meaning of the "i" in devices such as the iPhone and iMac was actually revealed by Apple co-founder Steve Jobs a long time ago. Back in 1998, when Jobs introduced the iMac, he explained what the "i" stands for in Apple's product branding.

The "i" stands for "Internet," Jobs explained. The iMac's job was to make accessing the Internet simpler and more intuitive, though "intuitive" wasn't revealed to be one of the words represented by that "i."

"Even though this is a full-bodied Macintosh, we are targeting this for the number one use that consumers tell us they want a computer for, which is to get on the Internet - simply, and fast," Jobs said. "And that is what this product is targeted for."

But like "compact" and "cheap," some of the words thrown around for the "c" in devices like the iPhone 5c, the "i" has more than one meaning. It's just that "Internet" would be the first definition of the "i" if there was a dictionary on Apple terms.

Secondary meanings of the "i" include "individual," "inspire," "inform" and "instruct."

"i" also means some other things to us," Jobs said. "We are a personal computer company, and although this product is born to network, it also is a beautiful stand-alone product. We are targeting it also for education. They want to buy these. And it is perfect for most of the things they do in instruction."

The "i" is one of Jobs' many legacies and current Apple CEO Tim Cook has been building his own, one of which includes a step away from the popular branding scheme. Back in 2014, when Cook and company introduced the company's first piece of wearable tech, Apple began to diverge from the path of the "i."

During the event in September of 2014, the industry was pretty convinced that Apple would debut its first smartwatch and its mobile payments system. Analysts and journalists guessed the company would stick with the "i" branding in naming the products "iPay," "iWatch," "iWallet" and so on - they were, of course, right on the product announcements but wrong on the branding.

The introduction of the Apple Watch and Apple Pay have since been followed by Apple TV.

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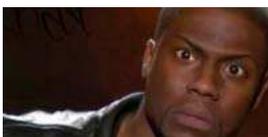
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Jason · a month ago
but early iPods weren't internet devices?? i have a hard time believing, "internet", was the Primary word.

YankeeWarrior → Jason · a month ago
It started out as i for internet, and Apple obviously ran with it.

IMIndian · a month ago
I own an Apple device. Which one? Pod. My pod or iPod.....

Ron U · a month ago
Other meanings for the i may include inadequate, inferior, inane, ineffective....
Okay, yeah, I'm an Android gal....

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## **EXHIBIT 4**



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## 8 Online revenue model options for Internet businesses

JANUARY 10, 2011 ONLINE BUSINESS AND REVENUE MODELS ([HTTP://WWW.SMARTINSIGHTS.COM/DIGITAL-MARKETING-STRATEGY/ONLINE-BUSINESS-REVENUE-MODELS/](http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/))

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By Dave Chaffey (<http://www.smartinsights.com/author/davechaffey/>)

### Selecting the best revenue options for Internet startups

I'm often contacted by site owners with an idea for a new site who are trying to work out how much revenue they'll be able to raise depending on the number of visitors to their site.

There's no simple answer to this, but to help, several years ago I created this spreadsheet model which also features in my books as an activity to help students working on this topic. It shows the main parameters you need to set - blue fields and it works how the revenue earning - orange fields.

#### The Site Ad revenue model

If you plug in some average figures for pay-for-performance-based advertising options like cost per click or cost per action approaches it as shown below it shows why fixed fee and CPM models tend to be preferred by publishers.

It also shows that you need substantial traffic to to make much money through advertising. At a CPM Of £10 with 2 ad units on the site, you would make just £4,000 per month even with a million page views per month for which you serve paid ads to 20% of the audience. Set this to 100% if you are selling all your ad inventory, as for example through Google AdSense.

Ad Unit or Container type	Measure	Site
Display advertising (CPM)	Pages served	1,000,000
	CPM (Cost Per Thousand)	£10
	% Inventory served	20%
	Avg. Clickthrough (CTR %)	0.10%
	Ad units served per page	2
	Clicks - CPM ads	400
	Revenue - display ads	£4,000
Fixed Run-of-site Sponsorship	Earnings per 100 clicks (EPC)	£1,000.0
	eCPM - display ads	£4.00
	% Inventory served	100%
	Avg. Clickthrough (CTR %)	0.30%
	Ad units served 1	1
Text ad advertising (CPC)	Clicks - fixed	3,000
	Revenue - fixed sponsorship*	£3,000
	Earnings per 100 clicks (EPC)	£100.0
	eCPM - fixed	£3.00
	% Inventory served	100%
	Avg. Clickthrough (CTR %)	1.00%
	Avg. Cost Per Click	£0.30
Ad units served per page	1	
Text ad advertising (CPC)	Clicks - CPC ads	10,000
	Revenue - CPC ads	£3,000
	Earnings per 100 clicks (EPC)	£30.0
	eCPM - CPC ads	£3

Affiliates Commission (and PPV)	% inventory served	100%
	Avg. Clickthrough (CTR %)	0.50%
	Ad units served per page	1
	Clicks - Affiliates	5,000
	Destination conversion rate (%)	3%
	Average order value	£100
	Commission %	10%
	<b>Revenue - affiliates</b>	<b>£1,500</b>
	Earnings per 100 clicks (EPC)	£30.0
	eCPM - affiliates	£1.50
Overall metrics for site	Clicks - total	18,400
	Revenue - total	£11,500
	Earnings per 100 clicks (EPC) - tot	£62.50
	eCPM - total	£11.50

Blue cells = input variables - vary these for 'what-if' analysis  
 Orange cells = output variables (calculated - do not overwrite)

(<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/attachment/ad-revenue-models/>)

To use this model different Internet site revenue models and income potential use our online revenue model spreadsheet - see Ad Revenue model worksheet (<http://www.smartinsights.com/guides/conversion-optimisation-calculator/>) (for Expert members). This includes a range of Internet planning models including a way of assessing Internet revenue sources - this is on worksheet 3.

## How to use the revenue model calculator

This spreadsheet can also be used by owners of existing sites like publishers to estimate ad or affiliate marketing revenue from a site or section of site.

It allows those parameters to be set:

- % inventory - proportion of ad space sold on sites
- Number of ad units
- CPM - Cost per thousand impressions for ad volume deals
- CPC - Cost Per Click for Pay Per Click Deals

Total revenue for each ad unit or container and corresponding Earnings per 100 clicks (EPC) or Earnings per thousand page views (eCPM) are calculated automatically.

The limitation of the model is that it assumes the same model across the whole site. It would be straightforward to modify it for different sections.

## The 8 Internet revenue model options

For a publisher or other media site owner, I would identify eight types of revenue model which are possible online. Let me know of any I'm missing 😊

Of course, transactional sites have the option of these also in addition to sales - online, everyone is a media owner.

### 1. Revenue from subscription access to content

A range of documents can be accessed for a period of a month or typically a year.

For example, I subscribed to FT.com (<http://www.ft.com/>) for access to the digital technology section for around .80 GBP per year a few years ago. Smart Insights Expert members have an annual subscription in this form.

### 2. Revenue from Pay Per View access to document

Here payment occurs for single access to a document, video or music clip which can be downloaded. It may or may not be protected with a password or Digital Rights Management.

For example, I've paid to access detailed best practice guides on Internet marketing from Marketing Sherpa (<http://www.marketingsherpa.com/>).

Digital rights management (DRM) The use of different technologies to protect the distribution of digital services or content such as software, music, movies, or other digital data.

### 3. Revenue from CPM display advertising on site

(e.g. banners ads and skyscrapers).

CPM stands for "cost per thousand" where M denotes "Mille". The site owner such as FT.com charges advertisers a rate card price (for example 50 GBP CPM) according to the number of its ads shown to site visitors. Ads may be served by the site owners own ad server or more commonly through a third-party ad network service such as Google AdSense as is the case with my site.

### 4. Revenue from CPC advertising on site (pay per click text ads)

CPC stands for "Cost Per Click". Advertisers are charged not simply for the number of times their ads are displayed, but according to the number of times they are clicked. These are typically text ads similar to sponsored links within a search engine but delivered over a network of third-party sites by a search engine such as the Google AdSense Network.

Typical costs per click can be surprisingly high, i.e. they are in the range GBP 0.10 to \*, GBP 4, but sometimes up to GBP 40 for some categories such as 'life insurance' that have a high value to the advertiser.

The revenue for search engines or publishers from these sources can also be a fair proportion of this.

Google Network Revenues through Ads generate around one third of Google's revenue. For me, the Google's content networks are one of the biggest secrets in online marketing with search engines such as Google generating over a third of their revenue from the network, but some advertisers not realising their ads are being displayed beyond search engines and so not served for this purpose.

Google is the innovator and offers options for different formats of ad units including text ads, display ads, streamed videos and now even cost per action as part of its pay per action scheme.

### 5. Revenue from Sponsorship of site sections or content types (typically fixed fee for a period)

A company can pay to advertise a site channel or section. For example, bank HSBC could sponsor the Money section on a media site. This type of deal is often struck for a fixed amount per year. It may also be part of a reciprocal arrangement, sometimes known as a 'contra-deal' where neither party pays.

A fixed-fee sponsorship approach was famously used by Alex Tew in 2005. A 21-year-old considering going to University in the UK who was concerned about paying off his university debts. This is no longer a concern since he earned \$1,000,000 in 4 months when he set up his Million Dollar Homepage (<http://www.milliondollarhomepage.com/>).

His page is divided into 100-pixel blocks (each measuring 10x10 pixels) of which there are 10,000 giving 1,000,000 pixels in total. Alex spent £50 on buying the domain name ([www.milliondollarhomepage.com](http://www.milliondollarhomepage.com/)) and a basic web-hosting package. He designed the site himself but it began as a blank page.

### 6. Affiliate revenue (CPA, but could be CPC)

Affiliate revenue is commission based, for example I display Amazon books on my personal blog site DaveChaffey.com (<http://blog.davechaffey.com/>) and receive around 5% of the cover price as a fee from Amazon. Such an arrangement is sometimes known as Cost Per Acquisition (CPA).

Increasingly this approach is replacing CPM or CPC approaches where the advertiser has more negotiating power. For example, in 2005 manufacturing company Unilever negotiated CPA deals with online publishers where it paid for every e-mail address captured by a campaign rather than a traditional CPM deal.

However, it depends on the power of the publisher who will often receive more revenue overall for CPM deals. After all, the publisher cannot influence the quality of the ad creative or the incentivisation to click which will affect the Clickthrough rate on the ad and so the CPM.

### 7. Subscriber data access for e-mail marketing

The data a site owner has about its customers is also potentially valuable since it can send different forms of e-mail to its customers if they have given their permission that they are happy to receive e-mail either from the publisher or third parties. The site owner can charge for adverts placed in its newsletter or can deliver a separate message on behalf of the advertiser (sometimes known as list rental). A related approach is to conduct market research with the site customers.

### 8. Access to customers for online research

An example of a company that uses this approach to attract revenue from surveys is the tool site Dubit (<http://www.dubitinformor.com/>).

Considering all of these approaches to revenue generation together, the site owner will seek to use the best combination of these techniques to maximize the revenue. To assess how effective different pages or sites in their portfolio are at generating revenue, they will use two approaches. The first is eCPM, or effective Cost Per Thousand.

This looks at the total they can charge (or cost to advertisers) for each page or site. Through increasing the number of ad units on each page this value will increase. This is why you will see some sites which are cluttered with ads. The other alternative to assess page or site revenue generating effectiveness is Revenue per click (RPC), which is also known as Earnings Per Click (EPC).

This is particularly important for affiliate marketers who make money through commission when their visitors click through to third party retail sites such as Amazon, and then purchase there.



## Recommended digital marketing strategy resources

Digital marketing / Steps to Success Guide (</guides/digital-marketing-strategy-guide-7-steps-to-success/>)

1 week digital strategy elearning course (<http://www.smartinsights.com/guides/digital-marketing-elearning/>)

Digital strategy template toolkit (</guides/digital-strategy-template-toolkit/>)

[\(http://www.smartinsights.com/digital-marketing-strategy/resources/\)](http://www.smartinsights.com/digital-marketing-strategy/resources/)

PREVIOUS

Why Quora won't be "bigger than Twitter"

(<http://www.smartinsights.com/customer-relationships-management/customer-service-and-support/why-quora-wont-be-bigger-than-twitter/>)

NEXT

10 options to reach potential customers beyond search engines

(<http://www.smartinsights.com/internet-advertising/internet-advertising-strategy/10-options-to-reach-new-customers-outside-of-search-engines/>)

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Casquette Bulls (<http://www.casquettemagasin.com/>) commented on March 18, 2016  
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Great article with wide knowledge of internet marketing.



Raj (<http://www.vrentin.com>) commented on October 1, 2015 (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-44843>)

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Thanks for such valuable models, <http://www.vrentin.com> (<http://www.vrentin.com>)



osita (<http://osadebe>) commented on September 24, 2015 (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-44518>)

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Do you know how CLICK OUT REVENUE MODEL would work and how it would back out for a publisher?



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This is very cool thank you guys my assignment now is complete



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ok, i am agree. After all, businesses including those online still need cash to survive and grow, so gone are the days of an online start-up taking its time to turn a dollar  
لوژیگ خودرو (<http://iranykhondro.ir/car-leasing.html>)



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Thank you so much I really liked Sayitun  
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Email marketing is also a good option to do digital marketing. Most important thing to do email marketing is buy email lists (<http://www.emaildatabase.me/>). Good email can give you good result.



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Lois Williams (<http://www.unlimitedcertificates.com/>) commented on [September 30, 2014](#) (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-21996>)

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The better from that the internet is a gift of technology to be used how it suits your needs and to help through your information you have proved that with internet you can get the better business revenue and its worth too, Thanks for your ideas about the business.



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Very nice and interesting articles. I think it might be helpful and useful for some others to share my experience in the affair. Adomatik has been my predetermined ad network for a long time, Never tried anything better, Higher fill rates and the best ecpm.



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Good, Thank u!  
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This is really a definitive guide for landing page optimization. I'm pretty sure that this article would help both newbies and pro in marketing. I've found the tips you've shared valuable and effective. The lessons, the images, and the videos are truly exceptional. I must agree with all your points listed above, especially the last words you've said: "Landing page optimization is just a way to make the story better every time it's told..." Your landing page has just a short time to grab your viewers' attention and interest, so you should make it concise and engaging enough to effectively convert buyers. Thanks for the post! seo services in Hyderabad (<http://www.allmoh.in/seo/>)



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thanks perfect plan for digital marketing.  
در باب الومارکتینگ  
(<http://sojbandorco.ir/index.php/galeri/item/lista?tag%D8%88%D8%B8%D8%AF%D8%A6%D9%88%20%D8%AF%D8%B1%D8%A8%20%D8%A7%D8%AA%D8%88%D8%B5%D8%A7%D8%AA%D8%B8%D8%A9>)  
— شادی سرامیک (<http://www.namamodern.ir/index.php/nemaye-soramik>)



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I operate and maintain a e-commerce site, it's an ok job, it gets tiring sitting at a computer all day so you really need to be mentally positive for the job because it can be very mentally exhausting and depressing. However the good side is you can learn all of what you need to know on your own, so you don't need a degree of any kind, so you won't have a huge amount of debt. It's good to just build a portfolio of all the websites you built, that's essentially your resume. seo services in Hyderabad (<http://www.allmoh.in/seo/>)



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Tapas commented on [June 21, 2014](#) (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-20843>)

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(<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/?replytocom=20843#respond>)

what is Clicks-CPM ads = 400 in display advertising



yesica commented on [May 24, 2014](#) (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-20510>)

[Reply](#)  
(<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/?replytocom=20510#respond>)

Learn how to generate thousands of dollars online without having technical knowledge in this course will teach you how to generate thousands of dollars on autopilot.....

Worth Find out more here: <http://howtomakemoneywithgooglesniper.blogspot.com/> (<http://howtomakemoneywithgooglesniper.blogspot.com/>)



ahj\_2000 commented on [November 11, 2013](#) (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-16886>)

[Reply](#)  
(<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/?replytocom=16886#respond>)

Great Site, One thing I had an issue was though is the CTR's of CRM is just .1%? I guess this is a purely fictional assumption? Does anyone have a rough guess of what this number would be for real? I am trying to start a business and I am having a hard time finding out things like this.



Dave Chaffey (<http://www.smartinsights.com/>) commented on [November 13, 2013](#) (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-16982>)

[Reply](#)  
(<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/?replytocom=16982#respond>)

Hi - thanks - this is an estimate based on compilations of clickthrough rates for CPM - display ads - <http://www.smartinsights.com/internet-advertising/internet-advertising-analytics/display-advertising-clickthrough-rates/> (<http://www.smartinsights.com/internet-advertising/internet-advertising-analytics/display-advertising-clickthrough-rates/>)



Navaniranjan Navarathinam (<http://howtotackleproblems.blogspot.in/>) commented on [February 5, 2014](#) (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-18876>)

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[revenue-models/online-revenue-model-options-internet-business/?replytocom=18876#respond](http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/?replytocom=18876#respond)

Is this is the same calculation for dollars also?



KidLewis commented on [October 18, 2013 \(http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-16394\)](http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-16394)

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Whilst I think this article is very good, I am at the next level, I understand exactly the revenue potential of a website but how do you use KPI to justify a revenue figure when going into one of these revenue streams?

take display as an example, how do you set a rate when you've not used that before?

you have the following key KPIs (I believe)

- Time per visit
- Pages per visit
- % Returning visits
- Number of ad positions per page
- position of page (i.e. an MPU within the website above the fold is a higher CPM than a leaderboard in the footer),
- Your user profile (ABC1, etc)

now once you get figures for that how do you formulae the CPM of your website as Run of site and also by content section?

there is no rule, no benchmark, nothing.



sara commented on [May 3, 2013 \(http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-11182\)](http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-11182)

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What is the revenue models of these sites? Window Azure, DropBox, HP Cloud Services



joey (<http://twitter.com/joey89924>) commented on [January 17, 2013 \(http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-8489\)](http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-8489)

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I understand the need for DRM..  
SSM?164 (<http://www.hqew.net/product-data/SSM?164>)



Shiv Jaiswal ([http://pulse.yahoo.com/\\_474B6WVY53JXPIIGYZRFLY7USDU](http://pulse.yahoo.com/_474B6WVY53JXPIIGYZRFLY7USDU)) commented on [August 9, 2012 \(http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-5197\)](http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-5197)

[Reply \(http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/?replytocom=5197#respond\)](http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/?replytocom=5197#respond)

thanks for online revenue generation techniques. Can you please tell how to use Email marketings perfectly for this purpose.



Anjana Silva (<http://www.facebook.com/anjanasilva>) commented on [May 26, 2012 \(http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-4225\)](http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-4225)

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Some more: [http://www.eepedia.com/read.php?e-business\\_revenue\\_models\\_e-commerce&b=10&c=30](http://www.eepedia.com/read.php?e-business_revenue_models_e-commerce&b=10&c=30) ([http://www.eepedia.com/read.php?e-business\\_revenue\\_models\\_e-commerce&b=10&c=30](http://www.eepedia.com/read.php?e-business_revenue_models_e-commerce&b=10&c=30))



Student commented on [April 6, 2012 \(http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-3775\)](http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-3775)

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Really Really Good – Smart and concise and to the point, very educational and very very useable, well done and thank you for sharing your insight and knowledge  
D Tighe – MBA Student.



lespaul commented on [February 3, 2012 \(http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-3075\)](http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-3075)

[Reply \(http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/?replytocom=3075#respond\)](http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/?replytocom=3075#respond)

Great post, thanks! But in reference to #1 and #2 – you can use them together. Meaning it would be unwise to charge your subscribers a "access fee" then recharge them again to open up a document (pdf, video, etc) – I understand the need for DRM, but it almost seems this should be part of the "access subscription fee".



Slamba11 commented on [January 23, 2012 \(http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-2889\)](http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-2889)

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A question about fixed run-of-site sponsorship –

What parameters ought to be taken into account when determining this figure? The calculations provide formulae to determine CTR, but the actual cost doesn't change. Any ideas on how to calculate a fair price for this sort of advertising?



Sebastian\_2008 commented on [December 31, 2011 \(http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-2371\)](http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-2371)

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more than 1000 words)



Sebastian\_2008 commented on December 31, 2011 (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-2370>)

Reply  
(<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/?replytocom=2370#respond>)

can u find me different types of revenue models that can be adopted by an e-commerce site.



Arihant Kothari (<http://www.ppsolutions.com>) commented on January 27, 2011 (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-953>)

Reply  
(<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/?replytocom=953#respond>)

Great ideas, Any idea on what could be the revenue model for the website given above given that the website wants to keep the membership free ?



Dave Chaffey (<http://www.smartinsights.com/about-dave-chaffey/>) commented on January 27, 2011 (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-954>)

Reply  
(<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/?replytocom=954#respond>)

Hi Arihant, thanks,

With free membership the best options are affiliate and advertising revenue. Many use Google AdSense for simplicity although the models above show that the revenue isn't great until you have high volume of visits. Arne's site –see comments above –shares more info on this.

Dave



KL commented on November 11, 2012 (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-6780>)

Reply  
(<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/?replytocom=6780#respond>)

Sure ads. A free membership site could solicit ads much the same as bloggers do.



Anne Holland (<http://subscriptionsiteinsider.com>) commented on January 10, 2011 (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-951>)

Reply  
(<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/?replytocom=951#respond>)

So happy to see you put subscription revenues at #1. Worth noting that our research shows more than 50% of subscription sites have a mixed revenue stream or hybrid model. So, they sell subscriptions plus either ads, and/or ebooks, and/or consulting, and/or trade show tickets, etc. In fact, multiple revenue streams are so important to the industry's profits, that the financial modeling spreadsheet we give SubscriptionSiteInsider.com members has alternate revenue models baked in.

The key we've discovered through many of our SubscriptionSiteInsider.com case studies is that you have to pick one single revenue stream to be the primary one. Everything else, then, is secondary. Otherwise you risk confusing your audience and fragmenting your internal staff and strategy. You can have loads of

secondary revenue sources — Angle's list, for example, has six or seven.



Dave Chaffey (<http://www.smartinsights.com/about-dave-chaffey/>) commented on January 11, 2011 (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-952>).

Reply (<http://www.smartinsights.com/digital-marketing-strategy/online-business-revenue-models/online-revenue-model-options-internet-business/#comment-952#respond>).

Thanks Anne, for sharing the popularity of hybrid revenue models for publisher sites and the importance to have a clear focus on your main revenue model. For subscription sites the spreadsheet can be used to estimate multiple revenue options with the affiliate calculation amended to calculate initial revenue from this source. Of course you need to take into account % who keep membership for which lifetime value modeling is required. This post gives details and a spreadsheet on this: <http://www.kaushik.net/avinash/2010/04/analytics-tip-calculate-ltv-customer-lifetime-value.html> (<http://www.kaushik.net/avinash/2010/04/analytics-tip-calculate-ltv-customer-lifetime-value.html>).

As a side point I've always found it peculiar that some Ecommerce and travel sites sell advertising as an additional revenue contributor, but I feel it would often make the experience worse and potentially reduce conversion due to user confusion. Amazon is the obvious example — but when I last looked in their SEC report it's a tiny, single figure percent of their revenue. With my spreadsheet you can readily forecast what the revenue contribution would be.

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## **EXHIBIT 5**



TECHNOLOGY

# The Real Reason Tech Giants Are Offering Everyone 'Free' Storage

BY CAMERON FULLER ON 06/26/14 AT 11:26 AM





Cloud-based storage companies attract customers with free storage space.

PHOTO: COURTESY REUTERS

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Microsoft upped its game this week -- upped it to 1TB to be exact. OneDrive, Microsoft's cloud-storage solution, bumped up its max storage for Office 365 customers, Monday, and gave non-customers up to 15GB for free.

Microsoft's offer of commitment-free cloud-based storage is just the most recent in a field of such offers, but as the adage goes, "nothing in life is free." Why would a company offer free cloud-based storage, asking nothing in return? One simple answer is, they want to make money on you.

"When I worked at Microsoft we discussed this a lot," Robert Scoble, a noted blogger and tech evangelist, told *International Business Times*. "Making money off of advertising is more profitable than trying to charge somebody \$10 per gigabyte."

Scoble, who currently works for Rackspace developing new break-out technologies, explained that cloud-based storage companies are using the free space as a marketing tool.

By offering free cloud data, companies like Microsoft are able to market new products to a clientele that is approaching them, instead of the other way around.

“You’re going to make more money on advertising,” Scoble said, “and acquire customers at a much lower cost than if you try to charge for it.”

The bottom line is that storage isn’t all that expensive anymore. Consider the price of a traditional hard drive from Seagate. One terabyte (1TB) is a little over 1,000 gigabytes, and only costs \$80 retail. With a free plan from OneDrive, that \$80 hard drive has enough space for 16 people on their free plan. That means that if Microsoft were to pay full retail for its hard drives – which they don't – the free storage solution would only cost the company \$5 per person, which its advertisements, according to Scoble, out pays in spades.

The second, and long-term, plan, is that companies like Dropbox and Box are looking to give away their products for free to consumers in hopes that those services will bleed into the consumer’s work life.

Cloud-computing companies are known to spend upwards of \$34 per employee during acquisitions.

“Rackspace has 7,000 employees,” Scoble told IBTimes. “If you can get 7,000 employees using something, and then we have to pay for it, yeah, that’s very lucrative.”

Scoble pointed out that SharePoint, Box.com’s main enterprise competitor, charges upwards of \$25 per employee annually.

“Once you get addicted to these things, it’s really hard to change,” Scoble noted. “It’s hard to change for me, [but] imagine having 7,000 people working at a place and they are all addicted.”

While free cloud storage may seem like the company is looking out for its consumers, the reality is that they are looking to make money off of people ready to be exploited for advertising.

Cloud companies may want to be seen as the future of storage, but one fear remains over this nascent market. Cloud storage companies are not immune to the issues of regular business, and can possibly close their doors. Companies large and small have already shuttered, giving customers a limited time to secure their data on either another cloud company or storing data locally.

While Apple and Microsoft are most likely not in danger, large companies are no different from small. Symantec announced in September 2012 that it was ending its cloud storage services at the beginning of 2014. A smaller company, Nirvanix, gave its 1,000 customers only two weeks to recover their files before they closed down.

It's doubtful that any data would be lost in a company's closure, but with the myriad of new cloud companies offering free data, a long-term plan might be the difference between going with less space and an established company, or chancing an unknown company offering unlimited free space.

### Sponsored Topics

1	Dental Implants for Seniors	>	5	Cash Back Credit Cards	>
2	Best IRA Investment Options	>	6	Warning Cancer Symptoms	>
3	Signs of Migraine	>	7	10 Vitamins for Arthritis Pain	>
4	Best Cars to Buy	>	8	Prostate Cancer Signs	>

### Promoted Links

ADS BY REVCONTENT



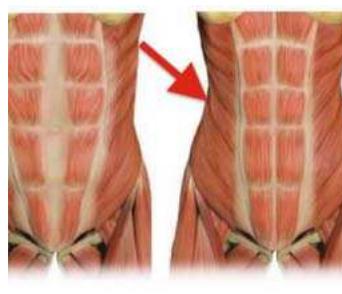
**1 Exercise That Destroys High Blood Sugar**

Smart Blood Sugar



**Remove Eye Bags in Minutes. Do This Daily**

FitMom



**5 Veggies That Kill Female Stomach Fat Fast**

vfxbody



**New Unauthorized Video Could Force Hillary to Give Up Her White House Dreams**





### New Rule In Alexandria VA

Better Finances



### Homeowners Who Have Not Missed A Payment in 3 Years Are In For A Big Surprise

Comparisons



### Women: Five Veggies That Kill Belly Fat Fast

vfxbody



### Top 15 Celebrities Who Have Converted to Islam

POP Hitz

## Popular Topics

SPONSORED BY REVCONTENT



Lindsay Lohan Announces She's Running



Anonymous Vows To 'Hunt Down ISIS' As



Bill Cosby Sexual Assault Update: Arrest



European Union Calls For Edward



ISIS Threatens Direct Attack Against



Are 'Dance Moms' Competitions



Elizabeth Warren Endorses



Bill Cosby Arrest Draws Celebrity



Paris Attacks: Fresh Gunfire In Saint-Denis

## Related Stories





# Report: No More 16GB iPhone 6; 32GB Is Apple's New Lower Tier

BY CAMERON FULLER

Apple will launch the iPhone 6 in September, according to a Chinese report, which also claims that Apple may kill the 16GB model.

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**Princess Eugenie Celebrates 26th Birthday With Rabbit**



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**After Brussels Attacks, Donald Trump Accuses UK**





**'Dance Moms'  
Season 6 Spoilers:  
Kendall Vertes**



**'Batman v  
Superman' v Ben  
Affleck: What A Flop**



**New 'Game of  
Thrones' Season 6  
Trailer Doesn't Show**



**David Beckham And  
His Brood Jet Off For  
Half-Term Holiday In**



**Election Polls 2016:  
Sanders, Not Clinton,  
Best Candidate To**



**Queen Elizabeth II  
90th Birthday: Marks  
& Spencer Unveils**

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**Donald Trump Wants Bill Gates To Turn Off The Internet To Stop**



**Anonymous Says ISIS Plans Attacks Against 'Paris And The World'**



**New ISIS Video Threatens Washington, DC:**



**US Fighter Jets Scramble After Russian Warplanes**



**How Anonymous Fights ISIS: It's More About Research Than**



**Oklahoma City Rape Trial: Black Women See Guilty Verdict As**



**Obama Immigration Executive Order Update 2015:**

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## BUSINESS



### Top 10 Banks Named In Offshoring Leak

HSBC, Credit Suisse and UBS all appear among the top 10 banks that set up shell companies through the law firm Mossack Fonseca.

## TECHNOLOGY



### The 'Brilliant' HIV App No One Knows About

Public health experts hope a new app will reinvigorate efforts to lower HIV infection rates in the U.S., which have stubbornly plateaued in the past decade.

## WORLD



### US Airstrike Killed Nusra Front's Abu Firas: Officials

A Pentagon spokesman said a U.S. airstrike Sunday hit a meeting of high-level al Qaeda officials in Syria at which Abu Firas was present.

NATIONAL



# Princeton To Keep President Wilson's Name Despite Racist Ties

The New Jersey school's board of trustees said Monday it would not remove his name and image from its public spaces and from its Woodrow Wilson School of Public and International Affairs.

## International Business Times



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# **EXHIBIT 6**

---

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[Account](#) [Account Summary](#)

## Account Summary

### Account Balance

Estimated Earnings	Ad Balance
\$19.18	\$0.00

[Add Funds to My Account »](#)  
[Refund Unspent Ad Balance »](#)

### My Transactions

Orders	Payments	Transfers		
Date	From Account	To Account	Amount	
2010-06-29 17:19:23	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.01	
2010-03-11 22:39:11	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.20	
2010-01-09 22:11:04	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.00	
2009-11-06 16:43:26	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$11.94	
2009-09-08 22:26:11	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$12.72	
2009-08-19 23:13:58	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$21.73	
2009-07-21 17:17:45	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.09	
2009-07-07 17:30:04	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.13	
2009-06-26 00:58:55	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$12.84	
2009-06-20 19:21:06	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.00	
2009-03-22 15:44:40	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.04	
2009-03-08 18:56:47	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$12.35	
2009-02-21 21:03:37	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.24	
2009-02-06 16:42:48	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.51	
2009-01-15 18:53:20	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.09	
2008-12-27 21:05:27	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$11.82	
2008-12-05 19:43:02	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.04	
2008-11-25 01:29:41	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.59	
2008-11-10 19:33:53	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.08	
2008-10-27 16:02:59	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.49	

[Export to CSV](#) / [Export to XML](#)

« Previous | 1 | 2 | Next »

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**RXD000464**

## **EXHIBIT 7**

---



[Campaigns](#)   [Sites & Apps](#)   [Reporting](#)   [Tools](#)   [Account](#)

Account   **Account Summary**

## Account Summary

### Account Balance

Estimated Earnings	Ad Balance
\$19.18	\$0.00

[Add Funds to My Account »](#)  
[Refund Unspent Ad Balance »](#)

### My Transactions

Orders	Payments	Transfers		
Date	From Account	To Account	Amount	
2008-10-10 18:14:31	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$18.05	
2008-08-10 22:06:55	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$12.31	
2008-08-01 23:50:59	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.07	
2008-07-18 02:42:31	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.59	
2008-06-16 19:43:23	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.34	
2008-05-19 18:44:29	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$11.50	
2008-04-29 00:01:06	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.13	
2008-04-05 19:20:56	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.41	
2008-03-23 17:59:47	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$12.67	
2008-03-12 18:32:43	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$11.72	
2008-03-09 06:09:33	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$12.22	
2008-03-06 16:29:16	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.62	
2008-02-19 20:23:07	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.33	
2008-02-18 19:45:20	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$10.00	
2008-02-08 19:54:52	info@rxdmedia.com pub earnings	info@rxdmedia.com ad spend	\$25.67	

[Export to CSV](#) / [Export to XML](#)

« Previous | 1 | 2 | Next »

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## **EXHIBIT 8**

Search

All online campaigns

- Campaign #1
- Campaign #2
- YouTube Promoted Videos Campaign

All online campaigns

Last 14 days  
Mar 15, 2011 - Mar 28, 2011

Messages Alerts (1)

Alerts  
Campaigns ending soon (1) View | Dismiss

Campaigns Ad groups Settings Ads Keywords Networks

All but deleted ads Segment Filter Columns Search

Filter Approval Status: Eligible, Under review, Disapproved

Approval Status  Approved  Approved (limited)  Eligible  Under review  Disapproved Remove

+ Add another  Save filter

Apply Close



+ New ad Change status... Alerts Automate More actions...

Control panel and library

Help

How do I create reports?  
Video: Writing better ad text  
How do I create a new ad?  
How do I edit my ad?  
Why is my ad marked as "Disapproved" or "Under review"?  
Keyboard shortcuts  
Help Center

Search help center Go

Ad	Campaign	Ad group	Status	% Served	Clicks	Impr.	CTR	Avg. CPC	Cost	Avg. Pos.
<input type="checkbox"/> IPAD™ Application Works on any Mobile Device: Access Your Personal Information ipad.mobi	Campaign #1	Ad Group #1	Under review	0.00%	0	0	0.00%	\$0.00	\$0.00	0
<input type="checkbox"/> iPad™ on Your Phone Works on any Mobile Web Device Create your Own Lists! ipad.mobi	Campaign #1	Ad Group #2	Under review	0.00%	0	0	0.00%	\$0.00	\$0.00	0
<input type="checkbox"/> YouTube created (1 size) (328 sec) display ad View full size display ad	YouTube Promoted Videos Campaign	IPAD™ Mobile Application	Disapprove					\$0.00	\$0.00	0
Total - all filtered ads					0	0	0.00%	\$0.00	\$0.00	0
Total - Search					0	0	0.00%	\$0.00	\$0.00	0

Disapproval reasons:

- Trademark terms

## **EXHIBIT 9**

Your ads aren't running because your account balance is exhausted. - Please make a payment. [Fix it](#)

Search

All campaigns

All time | Mar 2, 2011 - Feb 8, 2016

Campaign: YouTube Promoted Videos Campaign-Google

Enabled Type: Search Network with Display Select - All features Edit Budget: \$3.00/day Edit Targeting: All countries and territories Edit

Ad groups Settings Ads Keywords Audiences Ad extensions Dimensions Display Network

All but removed ads Segment Filter Columns Search View Change History

Clicks vs None Monthly



+ AD Edit Automate More actions... Labels

<input type="checkbox"/>	<input type="checkbox"/>	Ad	Ad group	Status	Labels	% Served	Campaign type	Campaign subtype	Clicks	Impr.	CTR	Avg. CPC	Cost	Avg. Pos.
<input type="checkbox"/>	<input type="checkbox"/>	<b>IPAD™ Mobile Application</b> Store & Access Your Personal Info Works On Any Mobile Web Device <a href="#">Preview ad</a>	IPAD™ Mobile Application	Ad group paused	-	0.00%	Search Network with Display Select	All features	0	0	0.00%	\$0.00	\$0.00	0.0
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>Mobile Personal Organizer</b> A Mobile Application Storing Your Lists & Appointments For Any Device <a href="#">Preview ad</a>	IPAD™ Mobile Application	Ad group paused	-	56.36%	Search Network with Display Select	All features	626	247,147	0.25%	\$0.20	\$124.20	1.2
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>Get Mobile With Your Info</b> This Mobile Application Works on Any Mobile Web Device <a href="#">Preview ad</a>	Get Mobile With Your Info	Ad group paused	-	2.64%	Search Network with Display Select	All features	16	11,583	0.14%	\$0.25	\$4.00	2.4
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>The Mobile Organizer</b> Works on Any Web Phone or Device Store and Access Your Info Today! <a href="#">Preview ad</a>	The Mobile Organizer	Ad group paused	-	1.31%	Search Network with Display Select	All features	7	5,756	0.12%	\$0.25	\$1.72	1.7
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>Mobileize Your Information</b> Personal Storage Application Register And Try It Today! <a href="#">Preview ad</a>	Mobileize Your Information	Ad group paused	-	22.56%	Search Network with Display Select	All features	45	98,929	0.05%	\$0.63	\$28.42	2.9
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<b>IPAD Gift List</b> Learn how to use the Gift List on the IPAD Mobile Application <a href="#">Preview ad</a>	IPAD Gift List	Ad group paused	-	0.00%	Search Network with Display Select	All features	0	0	0.00%	\$0.00	\$0.00	0.0

Shared library

Bulk operations

Reports

Labels

<input type="checkbox"/>	<span style="color: green;">●</span>	<a href="#">Create Holiday Gift Lists</a> Check out our Gift List Works on any Mobile Device <a href="#">Preview ad</a>	<a href="#">Create Holiday Gift Lists</a>	Ad group paused	–	17.13%	Search Network with Display Select	All features	141	75,106	0.19%	\$0.04	\$5.68	2.1
Total - all but removed ads <a href="#">?</a>									835	438,521	0.19%	\$0.20	\$164.02	1.8
Total - all campaign <a href="#">?</a>									835	438,521	0.19%	\$0.20	\$164.02	1.8

Show rows 500 ▾ 1 - 7 of 7

Reporting is not real-time. Clicks and Impressions received in the last three hours may not be included here. There is an 18+ hour delay for some metrics. Time zone for all dates and times (GMT-05:00) Eastern Time. [Learn more](#)  
 Some inventory may be provided through third party intermediaries.

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## **EXHIBIT 10**

Account RXD Media, LLC - B0189G1E

Download the Bing Ads app now   
 (https://itunes.apple.com/(https://play.google.c  
 id=com.microsoft.bing)

Customize modules

Entire time: 1/25/2014 - 1/25/2016

Clicks <b>1,509</b>	Impressions <b>891,710</b>	CTR <b>0.17%</b>	Conversions <b>0</b>	Avg. CPC <b>0.21</b>	Spend <b>313.00</b>
------------------------	-------------------------------	---------------------	-------------------------	-------------------------	------------------------

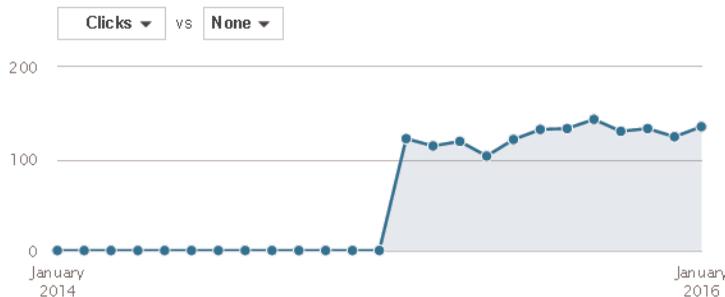
Top movers latest 7-day report

Recent period: 1/8/2016 - 1/14/2016 vs Previous period: 1/1/2016 - 1/7/2016

	Spend		Clicks	
Top increases	0.00	0.00%	0	0.00%
Top decreases	-26.03	-100.00%	-135	-100.00%
Other changes	0.00	0.00%	0	0.00%
Total changes	-26.03	-100.00%	-135	-100.00%
Recent period	0.00		0	
Previous period	26.03		135	

View full report » (https://bingads.microsoft.com/Campaign/Summary/BidDimensions?cid=19135057&aid=48040858&dimtype=top\_movers&src=home&endingDate=20160114)

Performance graph



Good quality but low traffic keywords (11)

Keyword	Delivery	Clicks	Impr.	CTR	Avg. CPC
Mobile Directory (https://bingads.microsoft.com/Campaign/Keyword?cid=19135057&aid=48040858&filter[0].SelectedColumn=KeywordName&filter[0].SelectedOperator=Equal&filter[0].Values=Mobile%20Director	Campaign out of budget		3	429	0.70%

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y)					
To Do List (https://bingads.microsoft.com/Campaign/Keyword?cid=19135057&aid=48040858&filter[0].SelectedColumn=KeywordName&filter[0].SelectedOperator=Equal&filter[0].Values=To%20Do%20List)	Campaign out of budget	1	716	0.14%	0.01
Data Storage (https://bingads.microsoft.com/Campaign/Keyword?cid=19135057&aid=48040858&filter[0].SelectedColumn=KeywordName&filter[0].SelectedOperator=Equal&filter[0].Values=Data%20Storage)	Campaign out of budget	1	252	0.40%	0.29
Mobile Notepad (https://bingads.microsoft.com/Campaign/Keyword?cid=19135057&aid=48040858&filter[0].SelectedColumn=KeywordName&filter[0].SelectedOperator=Equal&filter[0].Values=Mobile%20Notepad)	Campaign out of budget	0	13	0.00%	0.00
Business Organizer (https://bingads.microsoft.com/Campaign/Keyword?cid=19135057&aid=48040858&filter[0].SelectedColumn=KeywordName&filter[0].SelectedOperator=Equal&filter[0].Values=Business%20Organizer)	Campaign out of budget	0	13	0.00%	0.00
View filter » (https://bingads.microsoft.com/Campaign/Keyword?cid=19135057&aid=48040858&filter[0].SelectedColumn=QualityScore&filter[0].SelectedOperator=GreaterOrEqual&filter[0].Values=5&filter[1].SelectedColumn=Impressions&filter[1].SelectedOperator=LessOrEqual&filter[1].Value=1000)					1 - 5 of 11 <input type="checkbox"/> <input type="checkbox"/>

All enabled keywords (19)

Keyword	Delivery	Clicks	Impr.	CTR	Avg. CPC
Mobile (https://bingads.microsoft.com/Campaign/Keyword?cid=19135057&aid=48040858&filter[0].SelectedColumn=KeywordName&filter[0].SelectedOperator=Equal&filter[0].Values=Mobile)	Campaign out of budget	1,060	299,260	0.35%	0.21
IPAD (https://bingads.microsoft.com/Campaign/Keyword?cid=19135057&aid=48040858&filter[0].SelectedColumn=KeywordName&filter[0].SelectedOperator=Equal&filter[0].Values=IPAD)	Campaign out of budget	405	389,927	0.10%	0.21

.Values=IPAD)						
IPAD (https://bingads.microsoft.com/Campaign/Keyword?cid=19135057&aid=48040858&filter[0].SelectedColumn=KeywordName&filter[0].SelectedOperator=Equal&filter[0].Values=IPAD)	Campaign out of budget		39	196,867	0.02%	0.12
Mobile Directory (https://bingads.microsoft.com/Campaign/Keyword?cid=19135057&aid=48040858&filter[0].SelectedColumn=KeywordName&filter[0].SelectedOperator=Equal&filter[0].Values=Mobile%20Directory)	Campaign out of budget		3	429	0.70%	0.30
To Do List (https://bingads.microsoft.com/Campaign/Keyword?cid=19135057&aid=48040858&filter[0].SelectedColumn=KeywordName&filter[0].SelectedOperator=Equal&filter[0].Values=To%20Do%20List)	Campaign out of budget		1	716	0.14%	0.01

View filter » (https://bingads.microsoft.com/Campaign/Keyword?cid=19135057&aid=48040858&filter[0].SelectedColumn=DeliveryStatus&filter[0].SelectedOperator=EnumSelection&filter[0].Value=2147483647&filter[0].Values=130&filter[0].Values=200&filter[0].Values=300&filter[0].Value=400&filter[0].Values=500&filter[0].Value=40&filter[0].Value=50&filter[0].Value=60&filter[0].Value=70&filter[0].Value=49) 1 - 5 of 19

▣ All enabled ad groups (1)

Ad group	Delivery	Clicks	Impr.	CTR	Avg. CPC
Ad group #1 (https://bingads.microsoft.com/Campaign/AdGroup?cid=19135057&aid=48040858&filter[0].SelectedColumn=AdGroupName&filter[0].SelectedOperator=Equal&filter[0].Values=Ad%20group%20%231)	Campaign out of budget	1,509	891,710	0.17%	0.21

View filter » (https://bingads.microsoft.com/Campaign/AdGroup?cid=19135057&aid=48040858&filter[0].SelectedColumn=DeliveryStatus&filter[0].SelectedOperator=EnumSelection&filter[0].Value=2147483647&filter[0].Values=60&filter[0].Value=40&filter[0].Value=50&filter[0].Value=49) 1 - 1 of 1

▣ All enabled campaigns (1)

Campaign	Delivery	Clicks	Impr.	CTR	Avg. CPC
Campaign #1 (https://bingads.microsoft.com/Campaign/Campaigns?cid=19135057&aid=48040858&filter[0].SelectedColumn=CampaignName&filter[0].SelectedOperator=Equal&filter[0].Values=Campaign%20%231)	Campaign out of budget	1,509	891,710	0.17%	0.21

View filter > (https://bingads.microsoft.com/Campaign/Campaigns?cid=19135057&aid=48040858&filter[0].SelectedColumn=DeliveryStatus&filter[0].SelectedOperator=EnumSelection&filter[0].Value=2147483647&filter[0].Values=1001&filter[0].Values=40&filter[0].Values=50&filter[0].Values=49&filter[0].Values=1060)

1 - 1 of 1

**Budget constrained campaigns (1)**

Campaign	Delivery	Clicks	Impr.	CTR	Avg. CPC
Campaign #1 (https://bingads.microsoft.com/Campaign/Campaigns?cid=19135057&aid=48040858&filter[0].SelectedColumn=CampaignName&filter[0].SelectedOperator=Equal&filter[0].Values=Campaign%20%231)	Campaign out of budget	1,509	891,710	0.17%	0.21

View filter > (https://bingads.microsoft.com/Campaign/Campaigns?cid=19135057&aid=48040858&filter[0].SelectedColumn=DeliveryStatus&filter[0].SelectedOperator=EnumSelection&filter[0].Value=50&filter[0].Value=1001)

1 - 1 of 1

**Keywords below first-page bid (0)**

No matching keywords.

View filter > (https://bingads.microsoft.com/Campaign/Keyword?cid=19135057&aid=48040858&filter[0].SelectedColumn=DeliveryStatus&filter[0].SelectedOperator=EnumSelection&filter[0].Values=500)

**All non-active keywords (0)**

No matching keywords.

View filter > (https://bingads.microsoft.com/Campaign/Keyword?cid=19135057&aid=48040858&filter[0].SelectedColumn=DeliveryStatus&filter[0].SelectedOperator=EnumSelection&filter[0].Values=62&filter[0].Values=75&filter[0].Values=80&filter[0].Value=90&filter[0].Value=100)

**All non-active ad groups (0)**

No matching ad groups.

View filter > (https://bingads.microsoft.com/Campaign/AdGroup?cid=19135057&aid=48040858&filter[0].SelectedColumn=DeliveryStatus&filter[0].SelectedOperator=EnumSelection&filter[0].Values=62&filter[0].Values=90&filter[0].Value=100)

**All non-active campaigns (0)**

No matching campaigns.

View filter > (https://bingads.microsoft.com/Campaign/Campaigns?cid=19135057&aid=48040858&filter[0].SelectedColumn=DeliveryStatus&filter[0].SelectedOperator=EnumSelection&filter[0].Values=90)

Make this my starting page instead of the Campaigns tab.

Clicks and impressions received in the last three hours may not be included here.  
Only clicks are MRC accredited.  
Your account uses this time zone: (GMT-05:00) Eastern Time (U.S. & Canada)

# **EXHIBIT 11**

**⚠ Your ads aren't running** - To resume serving ads, please verify your form of payment. [Fix it](#)

1 of 3 < >

Search

All campaigns

All time: Feb 12, 2015 – Feb 8, 2016

All campaigns

Campaign #1

Campaigns Ad groups Settings Ads Keywords Audiences Ad extensions Dimensions Display Network

All but removed ads Segment Filter Columns Search [View Change History](#)

Clicks VS None Daily



+ AD Edit Automate More actions... Labels

<input type="checkbox"/>	<input type="checkbox"/>	Ad	Campaign	Ad group	Status ?	Labels ?	% Served ?	Campaign type ?	Campaign subtyp	Clicks ?	Impr. ?	CTR ?	Avg. CPC ?	Cost ?	Avg. Pos. ?
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<a href="#">ipad™</a> ipad™ organize your life today Register for ipad™ for free ipad.mobi	<a href="#">Campaign #1</a>	<a href="#">Ad Group #1</a>	Campaign paused	—	100,00%	Search Network with Display Select	All features	9	2,226	0,40%	\$3,61	\$32,49	2,5
Total - all but removed ads ?										9	2,226	0,40%	\$3,61	\$32,49	2,5
Total - Search ?										9	2,226	0,40%	\$3,61	\$32,49	2,5

Show rows 50 1 of 1

Reporting is not real-time. Clicks and impressions received in the last three hours may not be included here. There is an 18+ hour delay [for some metrics](#). Time zone for all dates and times: (GMT-05:00) Eastern Time. [Learn more](#). Some inventory may be provided through third party intermediaries.

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Shared library

Bulk operations

Reports

**CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER**

**RXD0002192**

## **EXHIBIT 12**

## Jennifer Goodrum

---

**From:** brian@rxdmedia.com  
**Sent:** Tuesday, April 12, 2011 7:36 PM  
**To:** benclem@comcast.net; kclements@stcllc.com; brian@rxdmedia.com; brianclm@comcast.net; maryannclm@comcast.net; info@ipad.mobi  
**Subject:** Fw: Adwords Account

----- Original Message -----

From: "Scott Nelson" <[scott.n@google.com](mailto:scott.n@google.com)>  
To: <[info@rxdmedia.com](mailto:info@rxdmedia.com)>  
Sent: Tuesday, April 12, 2011 7:07 PM  
Subject: Re: Adwords Account

> Hello Brian,  
>  
> I tried to create a mobile ad and the problem still exists with the TM.  
> ipad is in your domain. The ad goes under review.

>  
>  
> Sincerely,  
>  
> Scott Nelson  
> The Google AdWords Team  
>  
>  
> -----

> To access your AdWords account, please log in at:  
> <https://adwords.google.com>

>  
>  
>  
> Original Message Follows:

> -----  
> From: "Scott Nelson" <[scott.n@google.com](mailto:scott.n@google.com)>  
> Subject: Re: Adwords Account  
> Date: Tue, 12 Apr 2011 22:58:11 -0000

>  
>> Hello,  
>>  
>> Yes you can change the ad text. I would suggest trying the new ad by  
> creating a new ad first and seeing how it works before deleting the  
> current one.

>>  
>> Sincerely,  
>>  
>> Scott Nelson  
>> The Google AdWords Team

>>

>>

>> -----

>> To access your AdWords account, please log in at:

> <https://adwords.google.com>

>>

>>

>>

>>

>

## **EXHIBIT 13**

## Brian Clements

---

**From:** Vance Hedderel [vhedderel@mtld.mobi]  
**Sent:** Sunday, August 26, 2007 12:53 PM  
**To:** brianclm@comcast.net  
**Subject:** dotMobi Showcase

Brian –

Congratulations! Your site – [ipad.mobi](http://ipad.mobi) – has been added to the dotMobi Showcase at <http://mtld.mobi/showcase>.

To help you publicize your site, I've attached our Site toolbox, with “.mobi Compliant” logos + guidelines and a press release template with a list of select US press contacts who cover mobile. The logos are for use on your site (if you choose) and in your publicity about the site.

I am also glad to work with you on creating a case study to accompany your site on the showcase; if you are willing to complete the attached questionnaire, I can then turn that into a case study draft.

If I can further assist in helping to get the word out about your site, please let me know.

Thank you.

-- Vance

Vance P. Hedderel  
Director, PR and Communications  
dotMobi (mTLD Mobile Top Level Domain Ltd.)  
[vhedderel@mtld.mobi](mailto:vhedderel@mtld.mobi)  
+1.703.485.5563

---

To learn more about the .mobi domain,  
check out the dotMobi blog at <http://blog.mobi>

dotMobi (mTLD Top Level Domain Limited) is a private limited company incorporated and registered in the Republic of Ireland with registered number 398040 and registered office at Arthur Cox Building, Earlsfort Terrace, Dublin 2.

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8/26/2007

RXD000030



Internet Made Mobile

## "Solutions in Action" Case Study Questionnaire

### Contact

- Name and title
- Email and phone #
- Please mark other dotMobi PR activities that your company is willing to participate in:
  - Featured on Web site as case study example
  - News releases and marketing materials
  - Company spokesperson for interviews with developer, technical and consumer media
  - Media and analyst reference

### Technical

- What was the site design process?
- Was there any real handset testing done? What was the process?
- What tools were used to create the site?
- Publishing tools (Apache, app server, content management system, etc.)?
- Authoring tools (Dreamweaver, Frontpage etc)?
- Device recognition databases (WURFL )?
- Does the site use dynamic adaptation techniques to adapt the site to the requesting device? If so, how is this done? Is it fully dynamic or are there a number of static sites that match different phone capability levels?
- Were there any other tools or techniques used that may be of interest to other developers?
- How did you test for page compliance?
- If this is a new version of an existing site, in your testing of the new site on various handsets, what has been the improvement in speed of page loading and the overall quality of the user experience?
- What were the biggest problems experienced?
- Any tips for other Web developers?

### Design & Marketing

- What is the purpose of the site?
- Who is the target audience?
- Is the site a mobile version of an existing site or a brand new one?
- How are you marketing the new site to customers and other stakeholders? Mark all that apply:
  - Print ads
  - Radio ads
  - Web banners
  - Web site mentions
  - Direct mail
  - Email
  - Other \_\_\_\_\_
- How was the content for the mobile site picked -- was the existing site content pared down or did you start fresh?
- Since the launch of the new .mobi version of your site, have you noticed an increase in traffic and what kind of traffic is it getting?
- If this is an ecommerce site and it is a new version of an existing business, has revenue and commerce improved?
- Do you have a feedback mechanism for users and if so, what sort of feedback have you received?



Internet Made Mobile

## "Solutions in Action" Case Study Questionnaire

### Contact

- Brian Clements
- [brianclem@comcast.net](mailto:brianclem@comcast.net) 267-364-5022
- Please mark other dotMobi PR activities that your company is willing to participate in:
  - Featured on Web site as case study example**
  - News releases and marketing materials**
  - Company spokesperson for interviews with developer, technical and consumer media**
  - Media and analyst reference**

### Technical

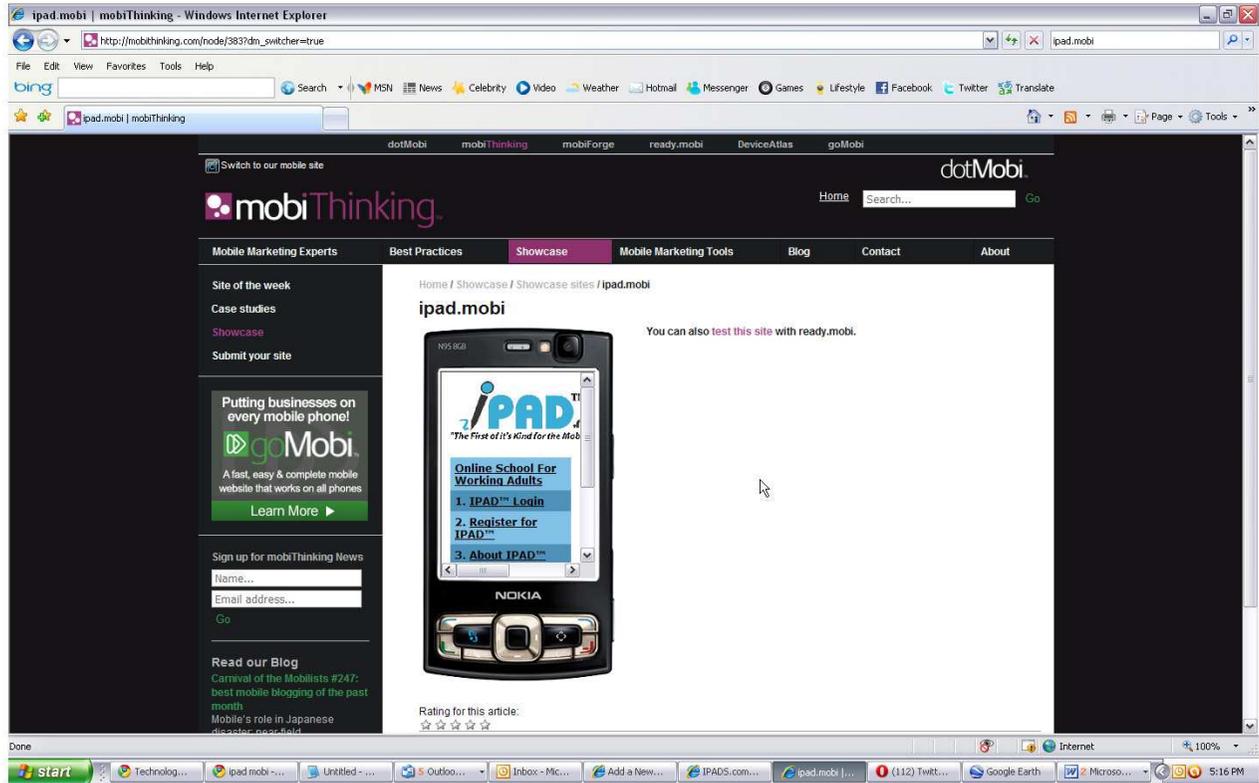
- What was the site design process? - The design process was simple. I was provided a logo, and I matched the color scheme from the logo, added the navigation, and everything fell into place from there.
- Was there any real handset testing done? What was the process? The site was tested on a few different handsets.
- What tools were used to create the site? ? - Didn't use any .mobi tools, the site was 100% hand coded in notepad, and then PHPMyAdmin was used to ease the database process.
- Publishing tools (Apache, app server, content management system, etc.)? Authoring tools (Dreamweaver, Frontpage etc)? - The users are in control of their content. So there is some aspect of content management in that sense. Like I said before, the site was coded 100% in notepad, so no Web Page Editors.
- Device recognition databases (WURFL) ? - No WURFL databases were needed because of the simplicity of the site.
- Does the site use dynamic adaptation techniques to adapt the site to the requesting device? If so, how is this done? Is it fully dynamic or are there a number of static sites that match different phone capability levels? - The site is so simple it displays well on all phones, so once again, we didn't have to adapt to any specific handsets.
- Were there any other tools or techniques used that may be of interest to other developers? ? - n/a
- How did you test for page compliance? - Ready.mobi, the site scored a 5/5 on the scale.
- If this is a new version of an existing site, in your testing of the new site on various handsets, what has been the improvement in speed of page loading and the overall quality of the user experience? n/a
- What were the biggest problems experienced? - Not being able to use a textarea field on mobile development was a big problem, but we got around it.
- Any tips for other Web developers? - Use multiple textboxes instead of making the mistake of trying to go right for a textarea.
- 

### Design & Marketing

- What is the purpose of the site? To make an easy accessible notepad on the go.
- Who is the target audience? Teenagers to Baby boomers all around the world.
- Is the site a mobile version of an existing site or a brand new one? Brand new one

- How are you marketing the new site to customers and other stakeholders? Mark all that apply:
  - Print ads**
  - Radio ads
  - Web banners**
  - Web site mentions
  - Direct mail
  - Email
  - Other \_\_\_\_\_
- How was the content for the mobile site picked -- was the existing site content pared down or did you start fresh? It was a Fresh start, I just think that everyone needs to write down there notes in one form or another. Today most cell phones have a notepad, so do computers, but this is unique because, there is no synchronization involed to transfer your notes, To-Do List or even a grocery list from your spouse. It simply just saves it with the proper user name and password. Our policy is Keep it Simple!
- Since the launch of the new .mobi version of your site, have you noticed an increase in traffic and what kind of traffic is it getting? Right now it is to new to notice, but I have seen increase revenue though my advertising program everyday.
- If this is an ecommerce site and it is a new version of an existing business, has revenue and commerce improved?
- Do you have a feedback mechanism for users and if so, what sort of feedback have you received? Right now the only way to get feed back is by email and so far I have not heard a thing.

## **EXHIBIT 14**



## **EXHIBIT 15**

mobienthusiast.mobi/category/press-room

SMSS CHICAGO APRIL 24-25, 2012 CHICAGO, IL

GO TO Website

Archive for the 'MobiEnthusiast Press Room' category

CONGRATULATIONS MOBI ENTHUSIAST | APRIL MOBILITY MOBI OF THE MONTH

Tweet Like

Thank you to our friends at the mobility.mobi dot mobi developer and domain name owner forum for naming mobi Enthusiast as April's Mobi of the Month. It is such an honor to be among such outstanding nominees as Jax.mobi, AutoDisk.mobi, iPad.mobi, USPresidents.mobi, SightsToSee.mobi, Exhibits.mobi, ITravel.mobi, Camera.mobi and Bunkers.mobi. Please check them out - these are all excellent mobile websites in

web.archive.org/web/20080510191957/http://zem.mobi/

INTERNET ARCHIVE Wayback Machine 30 captures 22 Feb 07 - 14 Sep 10

http://zem.mobi/

**zem.mobi - 800 free mobile games, forums and more!**

Zem.mobi

**Sponsored links:**

Device Detection:

Your device is: ,

To select another device enter [here](#)

**Menu:**

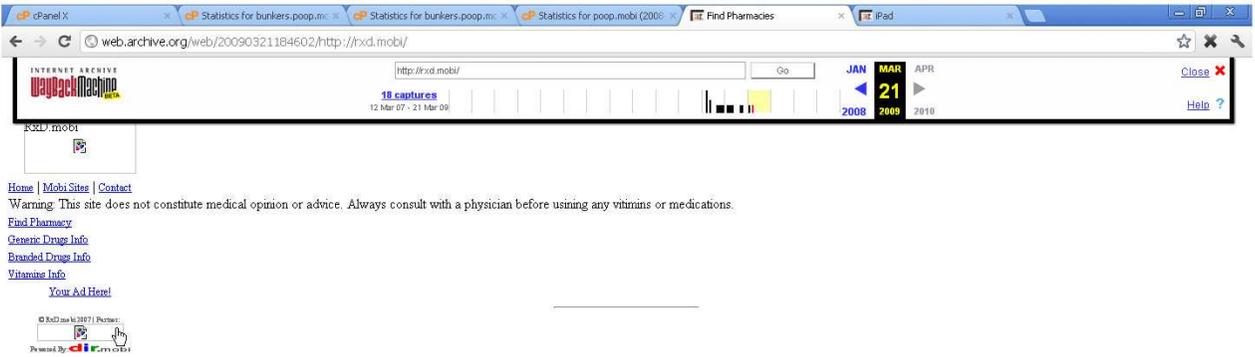
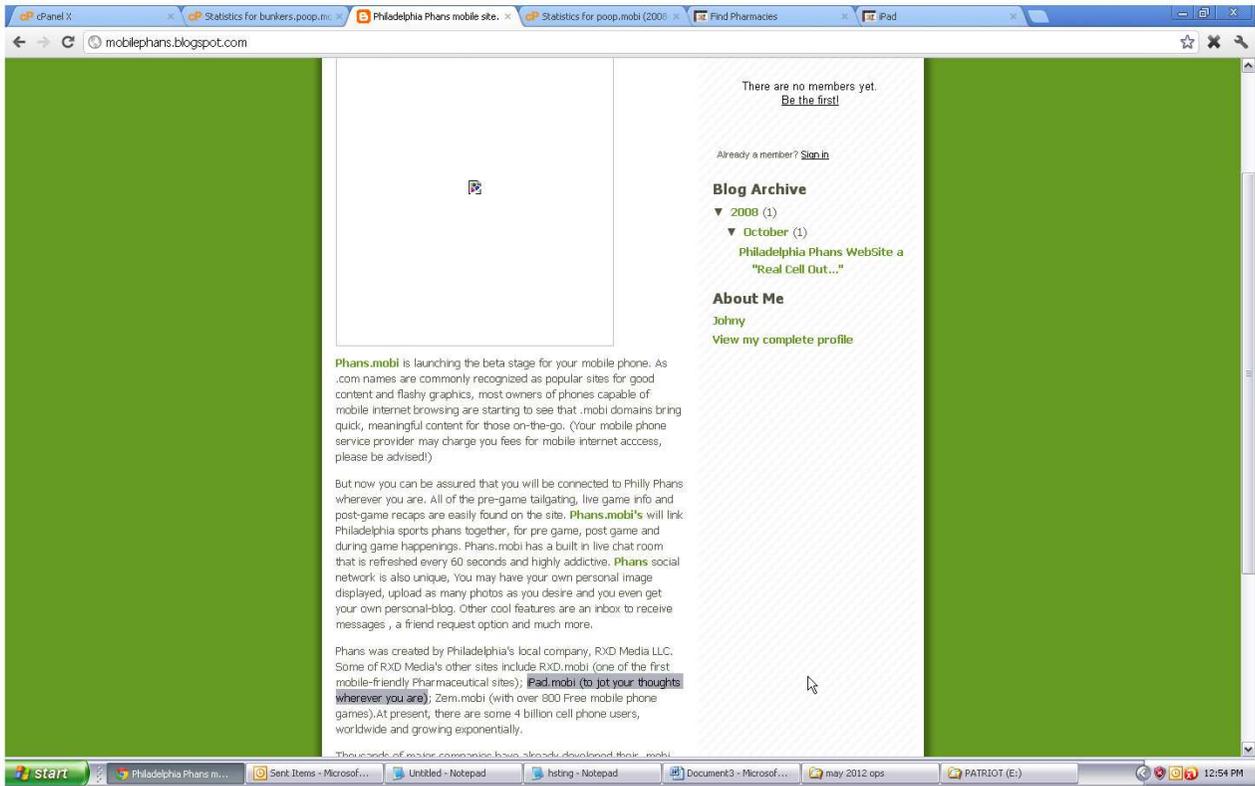
[Login](#)

[Register](#)

[View Forums](#)

**Search for games:**

## **EXHIBIT 16**



## **EXHIBIT 17**

www.moblopen.org/2007/08/

### Eva's mobile review – Drugs galore.....

By Eva, August 29th, 2007 :: [Apps & Sites](#)

Hiya everyone... I am back from holidays that was wonderful.. so anyway back to our subject.. The best and greatest mobile sites. Well while I was on the beach I found some really cool news sites for you all.



This one is all the pharmacies in the USA. It allows you to find a pharmacy by state, town or Zip. You get numbers and address and Medicare number. There is 35 000 pharmacies listed. Once again please, please do this for other countries. like Australia, South Africa where mobile usage is exploding and of course the UK and Ireland.



[Home](#) | [Mobi Sites](#) | [Contact](#)  
[Free Chat + Singles @ MocoSpace](#)  
[Find Pharmacy](#)  
[Generic Drugs Info](#)  
[Branded Drugs Info](#)  
[Vitamins Info](#)  
[Chats gratis en to 1.0](#)

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 Pressed by 

After that you just search via Town, or Zip.. and bingo :



[Home](#) | [Mobi Sites](#) | [Contact](#)  
[itsemv.com: find Flirts and Friends](#)



Make your killer app with AppMonkeyz. Innovate, create and launch.

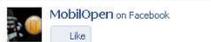


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igloo Directory - My igloo

igloo.mobi/router.php?mid=dir&pid=out\_preview&dnd=6263&uid=6263



Click here!

ipad.mobi

This is a great mobile too. It allows you to save notes without synchronizing PC to Phone. The concept is very simple and unique and the first of its kind and right now free. More features soon to come. This 100% mobile compliant site that works with all phones has been around since October 07 with new registers every day.

[Continue](#)

ipad.mobi

Added : 2008-09-29 03:27:06  
 Compatibility : All phone  
 Note : ★★★★★  
 Hits out : 111

Tags : [notepad](#) [mobile](#) [pad](#) [notes](#) [note](#) [list](#) [to](#) [do](#) [information](#)

[Home](#) | [Contact](#) | [Error?](#)  
 © TexoMobile 2007-2010

## **EXHIBIT 18**

Statistics for:  
ipad.poop.mobi

Last Update: 24 Oct 2015 - 07:07



Reported period:

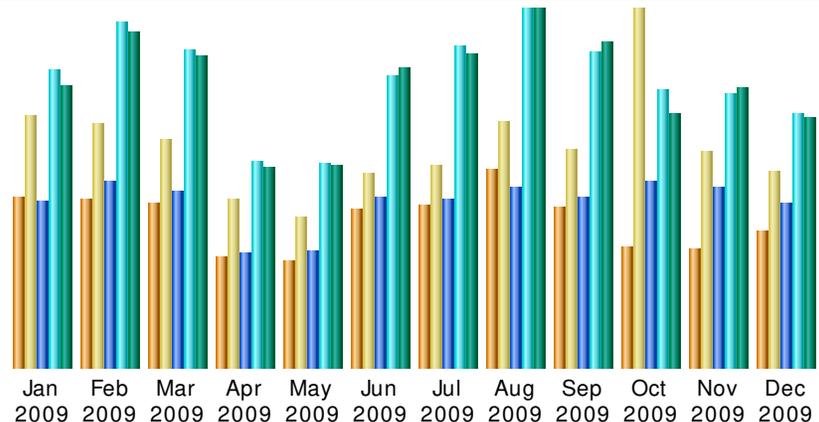
- Summary
- When:**
- Monthly history
- Days of month
- Days of week
- Hours
- Who:**
- Countries
  - Full list
- Hosts
  - Full list
  - Last visit
  - Unresolved IP Address
- Authenticated users
  - Full list
  - Last visit
- Robots/Spiders visitors
  - Full list
  - Last visit
- Navigation:**
- Visits duration
- File type
- Downloads
  - Full list
- Viewed
  - Full list
  - Entry
  - Exit
- Operating Systems
  - Versions
  - Unknown
- Browsers
  - Versions
  - Unknown
- Referrers:**
- Origin
  - Referring search engines
  - Referring sites
- Search
  - Search Keyphrases
  - Search Keywords
- Others:**
- Miscellaneous
  - HTTP Status codes
  - Pages not found

### Summary

<b>Reported period</b>	Year 2009				
<b>First visit</b>	01 Jan 2009 - 03:44				
<b>Last visit</b>	31 Dec 2009 - 23:57				
	Unique visitors	Number of visits	Pages	Hits	Bandwidth
Viewed traffic *	<= 3,344 Exact value not available in 'Year' view	5,042 (1.5 visits/visitor)	12,156 (2.41 Pages/Visit)	21,234 (4.21 Hits/Visit)	29.46 MB (5.98 KB/Visit)
Not viewed traffic *			12,608	14,124	24.63 MB

\* Not viewed traffic includes traffic generated by robots, worms, or replies with special HTTP status codes.

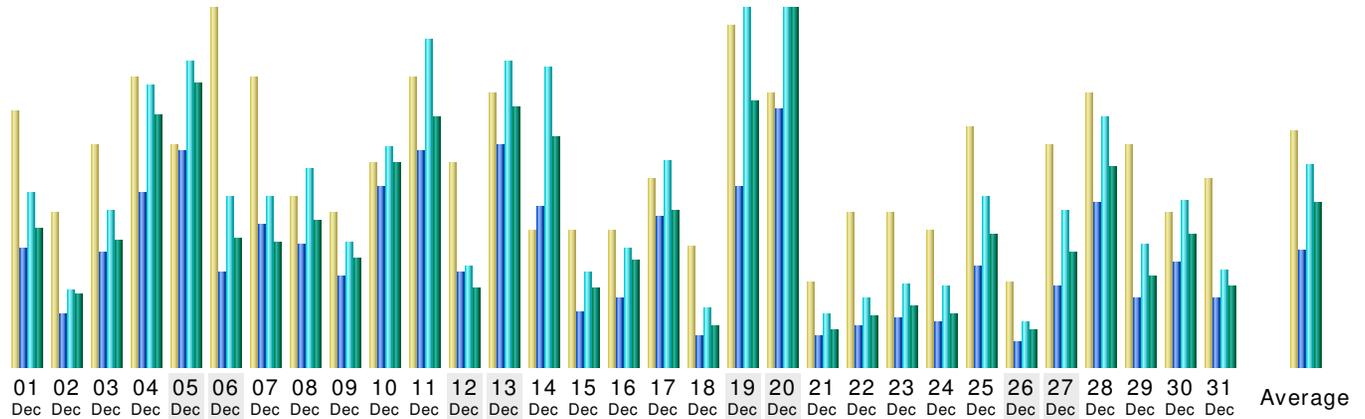
### Monthly history



Month	Unique visitors	Number of visits	Pages	Hits	Bandwidth
Jan 2009	322	476	1,019	1,823	2.43 MB
Feb 2009	319	459	1,142	2,123	2.91 MB
Mar 2009	308	430	1,078	1,945	2.69 MB
Apr 2009	208	317	704	1,263	1.73 MB
May 2009	202	283	714	1,250	1.74 MB
Jun 2009	298	366	1,049	1,791	2.58 MB
Jul 2009	305	382	1,036	1,968	2.71 MB
Aug 2009	372	462	1,107	2,197	3.10 MB
Sep 2009	302	413	1,048	1,939	2.81 MB
Oct 2009	226	676	1,140	1,703	2.19 MB
Nov 2009	225	407	1,107	1,680	2.42 MB

Dec 2009	257	371	1,012	1,552	2.16 MB
Total	3,344	5,042	12,156	21,234	29.46 MB

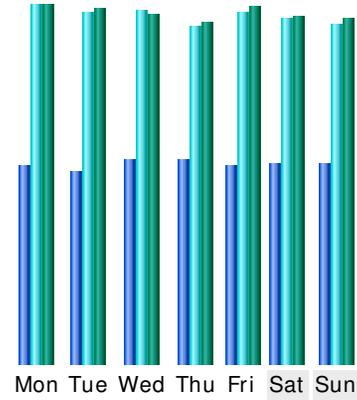
### Days of month



Day	Number of visits	Pages	Hits	Bandwidth
01 Dec 2009	15	34	50	69.81 KB
02 Dec 2009	9	15	22	36.05 KB
03 Dec 2009	13	33	45	63.91 KB
04 Dec 2009	17	50	81	126.37 KB
05 Dec 2009	13	62	88	142.85 KB
06 Dec 2009	21	27	49	64.59 KB
07 Dec 2009	17	41	49	62.41 KB
08 Dec 2009	10	35	57	73.15 KB
09 Dec 2009	9	26	36	54.48 KB
10 Dec 2009	12	52	63	101.95 KB
11 Dec 2009	17	62	94	125.74 KB
12 Dec 2009	12	27	29	39.88 KB
13 Dec 2009	16	64	88	130.82 KB
14 Dec 2009	8	46	86	115.78 KB
15 Dec 2009	8	16	27	39.20 KB
16 Dec 2009	8	20	34	53.32 KB
17 Dec 2009	11	43	59	78.39 KB
18 Dec 2009	7	9	17	20.62 KB
19 Dec 2009	20	52	103	133.42 KB
20 Dec 2009	16	74	103	179.90 KB
21 Dec 2009	5	9	15	18.38 KB
22 Dec 2009	9	12	20	25.66 KB
23 Dec 2009	9	14	24	30.10 KB
24 Dec 2009	8	13	23	26.78 KB
25 Dec 2009	14	29	49	66.47 KB

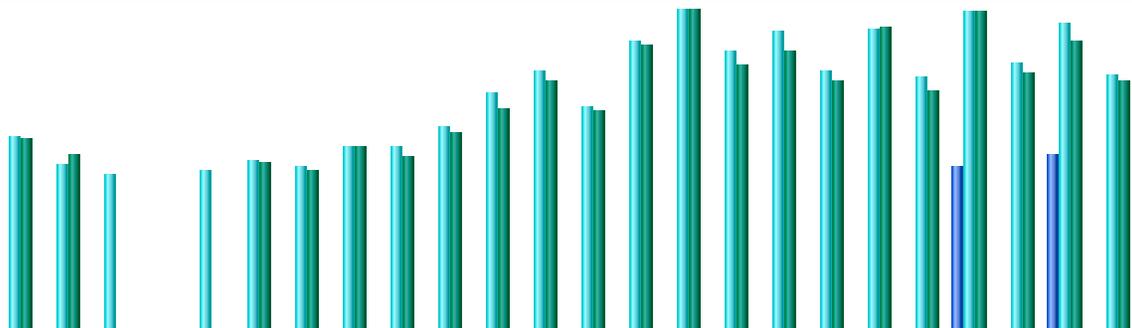
26 Dec 2009	5	7	13	18.59 KB
27 Dec 2009	13	23	45	57.19 KB
28 Dec 2009	16	47	72	100.06 KB
29 Dec 2009	13	20	35	45.83 KB
30 Dec 2009	9	30	48	66.48 KB
31 Dec 2009	11	20	28	40.82 KB
Average	13	33	58	82.64 KB
Total	371	1,012	1,552	2.16 MB

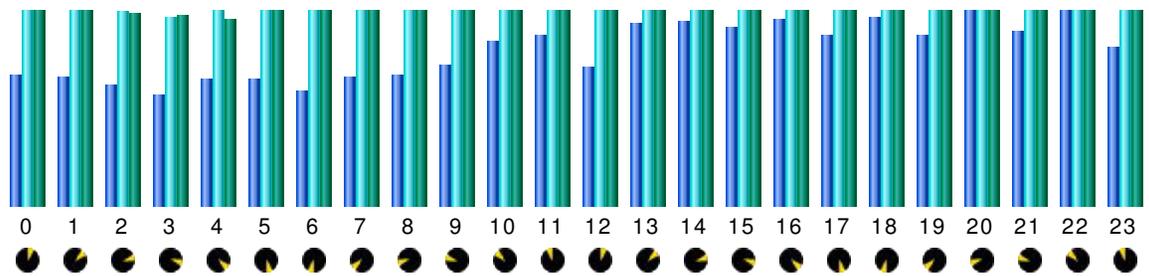
### Days of week



Day	Pages	Hits	Bandwidth
Mon	33	59	84.50 KB
Tue	31	58	83.76 KB
Wed	34	59	82.19 KB
Thu	33	56	80.33 KB
Fri	32	58	84.07 KB
Sat	33	57	82.00 KB
Sun	33	56	81.64 KB

### Hours





Hours	Pages	Hits	Bandwidth	Hours	Pages	Hits	Bandwidth
00	427	753	1.07 MB	12	450	854	1.19 MB
01	416	667	1014.24 KB	13	594	1,065	1.49 MB
02	394	633	912.28 KB	14	598	1,167	1.66 MB
03	359	612	902.80 KB	15	578	1,034	1.40 MB
04	412	643	879.14 KB	16	604	1,099	1.47 MB
05	413	676	973.86 KB	17	552	972	1.33 MB
06	374	657	935.00 KB	18	614	1,106	1.58 MB
07	416	720	1.03 MB	19	554	953	1.29 MB
08	422	724	1003.86 KB	20	655	1,164	1.65 MB
09	456	790	1.09 MB	21	565	994	1.37 MB
10	536	899	1.21 MB	22	700	1,124	1.52 MB
11	554	969	1.33 MB	23	513	959	1.33 MB

### Countries (Top 25) - Full list

Countries	Pages	Hits	Bandwidth
United States us 7,171 13,090 18.21 MB	Italy it 542 586 671.22 KB	Canada ca 490 817 1.18 MB	India in 438 825 1.23 MB
European country eu 354 420 652.61 KB	Great Britain gb 324 658 900.63 KB	Russian Federation ru 311 323 402.23 KB	Germany de 306 443 667.02 KB
Unknown ip 274 415 520.97 KB	Philippines ph 120 236 347.63 KB	France fr 116 214 307.69 KB	Japan jp 100 139 184.17 KB
Brazil br 97 240 309.57 KB	Australia au 93 189 255.72 KB	China cn 89 95 125.30 KB	Mexico mx 88 171 263.04 KB
South Africa za 85 143 200.99 KB			

	Norway	no	79	140	208.24 KB
	Netherlands	nl	79	148	232.15 KB
	Spain	es	65	109	159.92 KB
	Latvia	lv	62	66	74.28 KB
	Kenya	ke	53	80	133.48 KB
	Saudi Arabia	sa	44	84	118.18 KB
	Turkey	tr	35	50	73.47 KB
	Austria	at	35	72	111.54 KB
	Others		706	1481	2.08 MB

### Hosts (Top 25) - [Full list](#) - [Last visit](#) - [Unresolved IP Address](#)

Hosts : 3407	Pages	Hits	Bandwidth	Last visit
94.198.98.17	493	493	502.91 KB	22 Nov 2009 - 04:09
69.147.79.115	348	348	369.12 KB	28 Dec 2009 - 08:19
139.18.2.209	288	288	441.36 KB	31 Dec 2009 - 11:34
216.198.139.38	201	238	377.20 KB	20 May 2009 - 07:29
65.91.116.33	164	272	394.52 KB	01 Dec 2009 - 01:03
67.165.21.207	104	309	258.66 KB	03 Nov 2009 - 13:36
208.111.154.16	101	101	117.58 KB	04 Jun 2009 - 04:50
74.125.74.195	96	105	171.42 KB	24 Oct 2009 - 22:37
173.25.121.58	92	98	128.89 KB	31 Oct 2009 - 20:42
95.108.150.235	84	84	85.56 KB	31 Dec 2009 - 14:52
71.141.103.124	81	99	144.81 KB	13 Nov 2009 - 22:34
69.112.11.63	70	184	261.72 KB	16 Sep 2009 - 16:09
76.109.208.120	66	86	174.26 KB	30 Nov 2009 - 15:31
77.88.27.25	58	58	59.08 KB	29 Nov 2009 - 03:59
84.51.242.28	56	189	220.61 KB	09 Mar 2009 - 10:38
74.52.45.250	54	54	91.75 KB	21 Aug 2009 - 21:00
91.205.124.15	50	50	82.00 KB	21 May 2009 - 03:59
93.158.149.32	49	49	49.91 KB	20 May 2009 - 16:28
208.111.154.15	46	46	73.93 KB	21 May 2009 - 02:32
95.108.142.150	44	44	44.82 KB	19 Nov 2009 - 23:35
125.20.13.85	41	89	167.10 KB	18 Oct 2009 - 08:55
69.84.207.147	40	40	67.54 KB	17 Dec 2009 - 19:34
132.180.136.10	36	36	55.05 KB	07 Mar 2009 - 23:56
75.72.187.23	35	47	58.85 KB	13 Jun 2009 - 23:33
64.233.172.2	35	40	64.32 KB	06 Jun 2009 - 09:36
Others	9,424	17,787	25.10 MB	

### Authenticated users (Top 10) - [Full list](#) - [Last visit](#)

Authenticated users : 0	Pages	Hits	Bandwidth	Last visit
Other logins (and/or anonymous users)	12,156	21,234	29.46 MB	

### Robots/ Spiders visitors (Top 25) - [Full list](#) - [Last visit](#)

12 different robots*	Hits	Bandwidth	Last visit
<a href="#">Yahoo Slurp</a>	2,689	2.64 MB	31 Dec 2009 - 20:17
<a href="#">Googlebot</a>	2,575	3.59 MB	31 Dec 2009 - 22:12
Unknown robot (identified by 'crawl')	1,082	1.60 MB	28 Dec 2009 - 01:28
bot[+:\.\;\ \/-]	785	965.54 KB	26 Dec 2009 - 13:04
Unknown robot (identified by 'spider')	721	753.40 KB	31 Dec 2009 - 07:09
<a href="#">MSNBot</a>	587	996.14 KB	31 Dec 2009 - 01:24
Unknown robot (identified by empty user agent string)	423	447.00 KB	28 Dec 2009 - 08:19
Unknown robot (identified by 'robot')	292	375.46 KB	28 Dec 2009 - 04:56
<a href="#">Ask</a>	22	28.12 KB	23 Dec 2009 - 07:33
\wbot[\/\ -]	15	21.09 KB	06 Jan 2009 - 14:02
<a href="#">Netcraft</a>	7	6.73 KB	19 Nov 2009 - 13:18
<a href="#">Alexa (IA Archiver)</a>	6	9.22 KB	12 Apr 2009 - 03:27

\* Robots shown here gave hits or traffic "not viewed" by visitors, so they are not included in other charts.

### Visits duration

Number of visits: 5,042 - Average: 127 s	Number of visits	Percent
0s-30s	4,014	79.6 %
30s-2mn	426	8.4 %
2mn-5mn	237	4.7 %
5mn-15mn	182	3.6 %
15mn-30mn	77	1.5 %
30mn-1h	86	1.7 %
1h+	15	0.2 %
Unknown	5	0 %

### File type

File type	Hits	Percent	Bandwidth	Percent
 php Dynamic PHP Script file	6,145	28.9 %	11.20 MB	38 %
 html HTML or XML static page	6,006	28.2 %	6.42 MB	21.7 %
 gif Image	4,918	23.1 %	8.96 MB	30.4 %
 css Cascading Style Sheet file	4,160	19.5 %	2.87 MB	9.7 %
 Unknown	5	0 %	5.09 KB	0 %

### Downloads (Top 10) - [Full list](#)

Downloads: 0	Hits	206 Hits	Bandwidth	Average size
--------------	------	----------	-----------	--------------

**Pages-URL (Top 25)** - [Full list](#) - [Entry](#) - [Exit](#)

19 different pages-url	Viewed	Average size	Entry	Exit	
/	6,003	1.09 KB	4,264	3,463	
/index.php	1,457	1.31 KB	218	336	
/links.php	1,181	3.61 KB	154	499	
/register.php	1,090	1.46 KB	144	197	
/login.php	770	1.24 KB	101	165	
/about.php	740	1.34 KB	124	217	
/pad.php	362	1.10 KB	7	56	
/edit.php	325	3.40 KB	8	60	
/update.php	150	1.16 KB	7	17	
/logout.php	55	1.13 KB	3	22	
//	3	1.15 KB	2		
//login.php	2	1.27 KB			
//index.php	2	1.50 KB		1	
http://ipad.mobi/login.php	2	1.41 KB	2		
http://ipad.mobi/register.php	2	1.54 KB	2		
//register.php	2	1.48 KB			
http://ipad.mobi/index.php	2	1.15 KB		2	
//links.php	2	3.68 KB	1	2	
//pad.php	1	1.10 KB			
Others	5				

**Operating Systems (Top 10)** - [Full list/Versions](#) - [Unknown](#)

Operating Systems		Hits	Percent
	<b>Windows</b>	7,011	33 %
	Unknown	6,582	30.9 %
	<b>Sony PlayStation</b>	5,661	26.6 %
	<b>Symbian OS</b>	857	4 %
	<b>Macintosh</b>	832	3.9 %
	<b>Linux</b>	241	1.1 %
	Unknown Unix system	39	0.1 %
	<b>OS/2</b>	9	0 %
	<b>BSD</b>	1	0 %
	<b>Sun Solaris</b>	1	0 %

**Browsers (Top 10)** - [Full list/Versions](#) - [Unknown](#)

Browsers		Grabber	Hits	Percent
	<b>Netscape</b>	No	5,747	27 %
	<b>MS Internet Explorer</b>	No	4,364	20.5 %
	<b>Firefox</b>	No	1,984	9.3 %

?	Unknown	?	1,768	8.3 %
	Nokia Browser (PDA/Phone browser)	No	1,561	7.3 %
	<b>Safari</b>	No	1,175	5.5 %
	<b>Opera</b>	No	1,114	5.2 %
	UP.Browser (PDA/Phone browser)	No	762	3.5 %
	Sony/Ericsson Browser (PDA/Phone browser)	No	597	2.8 %
	Motorola Browser (PDA/Phone browser)	No	487	2.2 %
	Others		1675	7.8 %

Connect to site from				
Origin	Pages	Percent	Hits	Percent
<b>Direct address / Bookmark / Link in email...</b>	4,560	58.9 %	5,894	58.8 %
<b>Links from an Internet Search Engine - Full list</b>	678	8.7 %	681	6.8 %
- Google	373 / 376			
- Yahoo!	266 / 266			
- Unknown search engines	21 / 21			
- Avantfind	2 / 2			
- AT&T search (powered by Google)	2 / 2			
- Atlas.cz	2 / 2			
- AOL	2 / 2			
- GoodSearch	2 / 2			
- Yandex	2 / 2			
- Dogpile	1 / 1			
- Comet toolbar search	1 / 1			
- AllTheWeb	1 / 1			
- Ask	1 / 1			
- AltaVista	1 / 1			
- ix quick	1 / 1			
<b>Links from an external page (other web sites except search engines) - Full list</b>	2,178	28.1 %	2,996	29.9 %
- <a href="http://www.pshotlinks.com/_linkgo1.asp">http://www.pshotlinks.com/_linkgo1.asp</a>	1,112	1,112		
- <a href="http://mobithinking.com/showcase/showcase-library">http://mobithinking.com/showcase/showcase-library</a>	128	128		
- <a href="http://www.pspicy.com/index.asp">http://www.pspicy.com/index.asp</a>	84	84		
- <a href="http://greatsites.mobi/index.cgi">http://greatsites.mobi/index.cgi</a>	73	73		
- <a href="http://mobithinking.com/showcase">http://mobithinking.com/showcase</a>	52	52		
- <a href="http://boyc.wap9.mobi">http://boyc.wap9.mobi</a>	46	46		
- <a href="http://mobithinking.com/category-site/services">http://mobithinking.com/category-site/services</a>	45	45		
-				
- <a href="http://wazobi.mobi/mobile/Mobile_Searching/more2.html">http://wazobi.mobi/mobile/Mobile_Searching/more2.html</a>	42	42		
- <a href="http://zigs.mobi/index.php">http://zigs.mobi/index.php</a>	39	39		
- <a href="http://igloo.mobi/router.php">http://igloo.mobi/router.php</a>	37	37		
- <a href="http://guide.opendns.com/controller.php">http://guide.opendns.com/controller.php</a>	36	36		
- <a href="http://finch.ploogy.net">http://finch.ploogy.net</a>	25	25		
- <a href="http://psphotlinks.com/_linkgo1.asp">http://psphotlinks.com/_linkgo1.asp</a>	25	25		
- <a href="http://www.keywordspy.com/keyword-research/ipad.mobi">http://www.keywordspy.com/keyword-research/ipad.mobi</a>	24	24		

- <a href="http://mobility.mobi/showthread.php">http://mobility.mobi/showthread.php</a>	21	488			
- <a href="http://inyour.mobi/search.php">http://inyour.mobi/search.php</a>	21	21			
- <a href="http://dir.mobi/node/564378">http://dir.mobi/node/564378</a>	19	19			
- <a href="http://rxd.mobi">http://rxd.mobi</a>	15	15			
- <a href="http://mobi.sdboyd56.com">http://mobi.sdboyd56.com</a>	13	13			
- <a href="http://6it.mobi/index.php">http://6it.mobi/index.php</a>	13	13			
- <a href="http://dir.mobi/content/mobile-intenet-notepad">http://dir.mobi/content/mobile-intenet-notepad</a>	11	11			
- <a href="http://www.mobithinking.com/showcase">http://www.mobithinking.com/showcase</a>	11	11			
- <a href="http://developmy.mobi/clients.php">http://developmy.mobi/clients.php</a>	10	10			
- <a href="http://www.mixology.mobi/links.php">http://www.mixology.mobi/links.php</a>	10	10			
- <a href="http://mobithinking.com/showcase/showcase-sites">http://mobithinking.com/showcase/showcase-sites</a>	10	10			
- Others	256	607			
<b>Unknown Origin</b>			315	4 %	436 4.3 %

<b>Search Keyphrases (Top 10)</b>		
Full list		
57 different keyphrases	Search	Percent
ipad	399	61.1 %
mobile notepad	68	10.4 %
i-pad	45	6.8 %
ipad mobile	38	5.8 %
ipad.mobi	12	1.8 %
i pad mobile	10	1.5 %
ip ad	6	0.9 %
ipad mobiles	4	0.6 %
i pad mobiles	3	0.4 %
mobile note pad	3	0.4 %
Other phrases	65	9.9 %

<b>Search Keywords (Top 25)</b>		
Full list		
48 different keywords	Search	Percent
ipad	458	52.4 %
mobile	135	15.4 %
notepad	83	9.4 %
i-pad	49	5.6 %
pad	28	3.2 %
i	17	1.9 %
ipad.mobi	12	1.3 %
mobi	10	1.1 %
mobiles	9	1 %
note	8	0.9 %
ip	6	0.6 %
ad	6	0.6 %
notepads	4	0.4 %
ipads	4	0.4 %
for	3	0.3 %
www.ipad	3	0.3 %
search	2	0.2 %
//ipad.com/	2	0.2 %
http	2	0.2 %
ipadmobile	2	0.2 %
mobil	2	0.2 %
nhc	2	0.2 %
risk	2	0.2 %
test	1	0.1 %
obile	1	0.1 %
Other words	23	2.6 %

### Miscellaneous

Miscellaneous		
Successful hits on favicon.ico	337 / 3,344 Visitors	10 %
Javascript disabled	-	
Browsers with Java support	-	
Browsers with Macromedia Director Support	-	
Browsers with Flash Support	-	
Browsers with Real audio playing support	-	
Browsers with Quicktime audio playing support	-	
Browsers with Windows Media audio playing support	-	
Browsers with PDF support	-	

### HTTP Status codes

HTTP Status codes*		Hits	Percent	Bandwidth
404	Document Not Found (hits on favicon excluded)	4,825	98 %	13.26 MB
302	Moved temporarily (redirect)	94	1.9 %	19.02 KB
206	Partial Content	1	0 %	1.09 KB

\* Codes shown here gave hits or traffic "not viewed" by visitors, so they are not included in other charts.

## **EXHIBIT 19**

Statistics for:  
 ipad.poop.mobi

Last Update: 24 Oct 2015 - 07:07



Reported period:

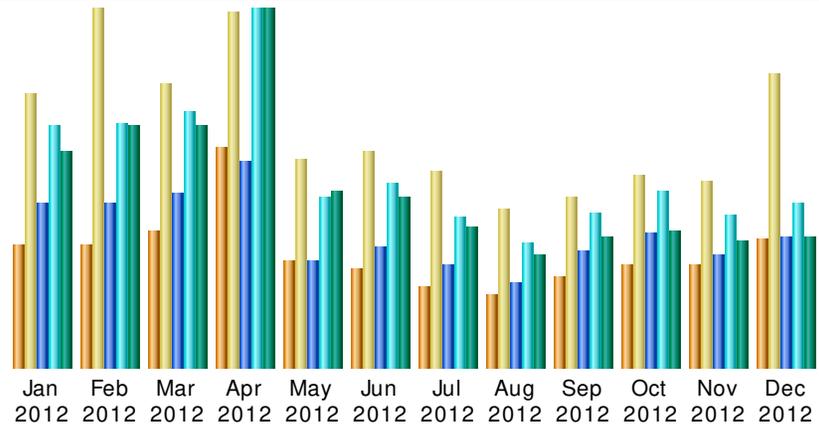
- Summary
- When:**
- Monthly history
- Days of month
- Days of week
- Hours
- Who:**
- Countries
  - Full list
- Hosts
  - Full list
  - Last visit
  - Unresolved IP Address
- Authenticated users
  - Full list
  - Last visit
- Robots/Spiders visitors
  - Full list
  - Last visit
- Navigation:**
- Visits duration
- File type
- Downloads
  - Full list
- Viewed
  - Full list
  - Entry
  - Exit
- Operating Systems
  - Versions
  - Unknown
- Browsers
  - Versions
  - Unknown
- Referrers:**
- Origin
  - Referring search engines
  - Referring sites
- Search
  - Search Keyphrases
  - Search Keywords
- Others:**
- Miscellaneous
- HTTP Status codes
  - Pages not found

**Summary**

<b>Reported period</b>	Year 2012				
<b>First visit</b>	01 Jan 2012 - 01:06				
<b>Last visit</b>	31 Dec 2012 - 23:02				
	Unique visitors	Number of visits	Pages	Hits	Bandwidth
Viewed traffic *	<= <b>3,059</b> Exact value not available in 'Year' view	<b>6,406</b> (2.09 visits/visitor)	<b>15,953</b> (2.49 Pages/Visit)	<b>23,396</b> (3.65 Hits/Visit)	<b>56.15 MB</b> (8.97 KB/Visit)
Not viewed traffic *			<b>22,539</b>	<b>29,116</b>	<b>23.89 MB</b>

\* Not viewed traffic includes traffic generated by robots, worms, or replies with special HTTP status codes.

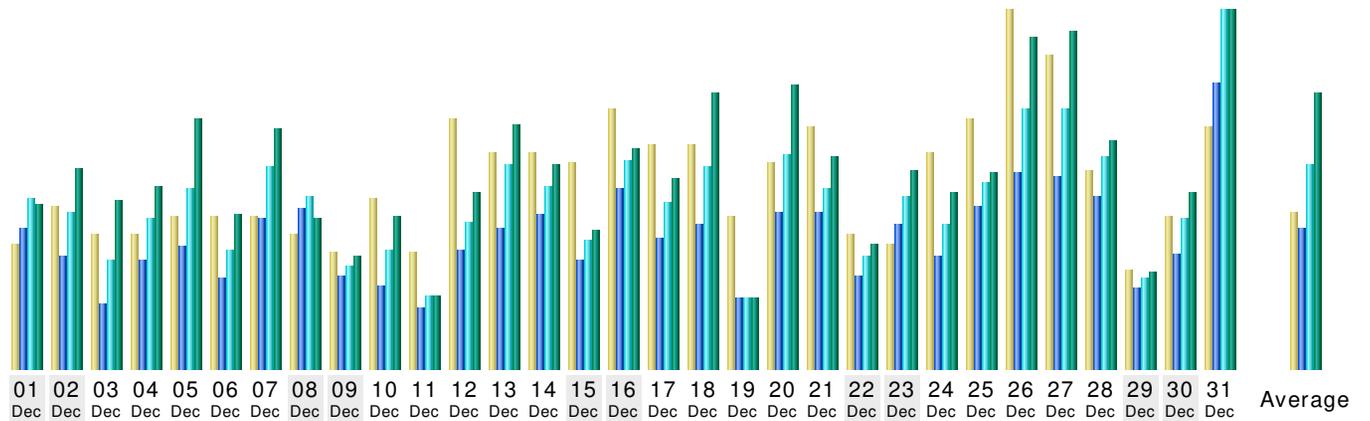
**Monthly history**



Month	Unique visitors	Number of visits	Pages	Hits	Bandwidth
Jan 2012	269	606	1,618	2,379	5.59 MB
Feb 2012	271	793	1,626	2,395	6.23 MB
Mar 2012	300	627	1,716	2,528	6.21 MB
Apr 2012	487	788	2,035	3,528	9.23 MB
May 2012	237	462	1,047	1,682	4.52 MB
Jun 2012	218	478	1,188	1,805	4.38 MB
Jul 2012	179	435	1,018	1,481	3.62 MB
Aug 2012	163	351	837	1,224	2.92 MB
Sep 2012	199	378	1,146	1,524	3.33 MB
Oct 2012	225	423	1,331	1,727	3.51 MB
Nov 2012	225	414	1,111	1,499	3.26 MB

Dec 2012	286	651	1,280	1,624	3.37 MB
<b>Total</b>	<b>3,059</b>	<b>6,406</b>	<b>15,953</b>	<b>23,396</b>	<b>56.15 MB</b>

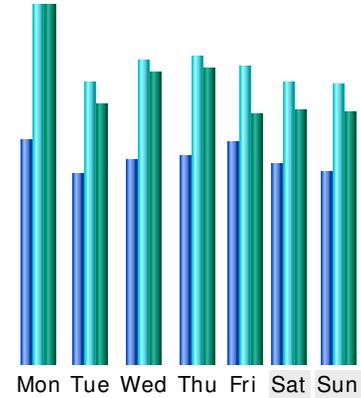
### Days of month



Day	Number of visits	Pages	Hits	Bandwidth
01 Dec 2012	14	44	53	92.84 KB
02 Dec 2012	18	35	49	113.35 KB
03 Dec 2012	15	20	34	95.53 KB
04 Dec 2012	15	34	47	103.94 KB
05 Dec 2012	17	38	56	141.52 KB
06 Dec 2012	17	28	37	88.01 KB
07 Dec 2012	17	47	63	136.12 KB
08 Dec 2012	15	50	54	85.16 KB
09 Dec 2012	13	29	32	63.80 KB
10 Dec 2012	19	26	37	85.96 KB
11 Dec 2012	13	19	23	41.50 KB
12 Dec 2012	28	37	46	100.54 KB
13 Dec 2012	24	44	64	138.95 KB
14 Dec 2012	24	48	57	115.60 KB
15 Dec 2012	23	34	40	78.27 KB
16 Dec 2012	29	56	65	125.17 KB
17 Dec 2012	25	41	52	108.13 KB
18 Dec 2012	25	45	63	156.62 KB
19 Dec 2012	17	22	22	40.56 KB
20 Dec 2012	23	49	67	161.45 KB
21 Dec 2012	27	49	56	120.53 KB
22 Dec 2012	15	29	35	70.81 KB
23 Dec 2012	14	45	54	112.70 KB
24 Dec 2012	24	35	45	100.00 KB
25 Dec 2012	28	51	58	110.88 KB

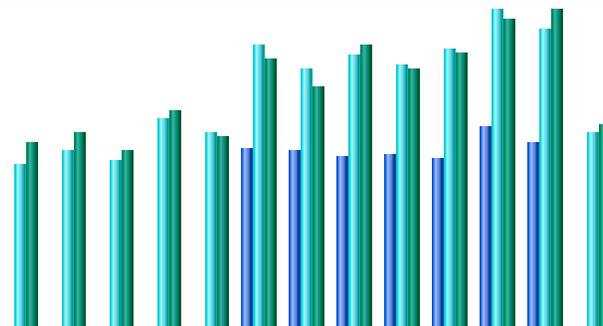
26 Dec 2012	40	61	81	187.98 KB
27 Dec 2012	35	60	81	191.24 KB
28 Dec 2012	22	54	66	129.15 KB
29 Dec 2012	11	25	28	54.74 KB
30 Dec 2012	17	36	47	100.42 KB
31 Dec 2012	27	89	112	203.49 KB
Average	17	43	63	157.10 KB
Total	651	1,280	1,624	3.37 MB

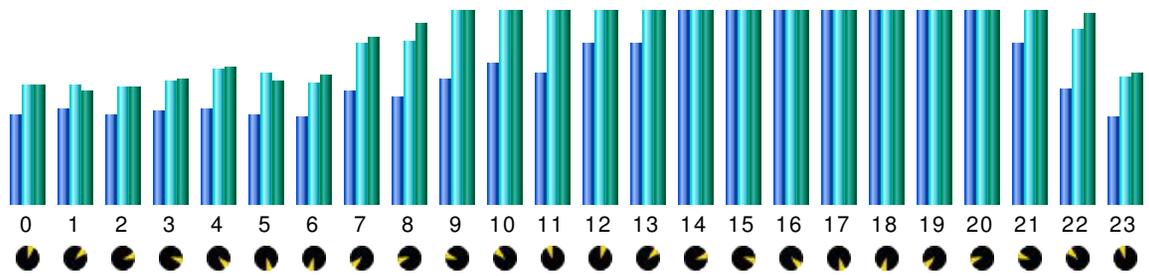
### Days of week



Day	Pages	Hits	Bandwidth
Mon	47	75	201.04 KB
Tue	40	59	145.42 KB
Wed	43	64	163.96 KB
Thu	43	65	165.76 KB
Fri	47	63	139.64 KB
Sat	42	59	141.96 KB
Sun	40	59	141.39 KB

### Hours





Hours	Pages	Hits	Bandwidth	Hours	Pages	Hits	Bandwidth
00	403	543	1.28 MB	12	737	1,147	2.79 MB
01	435	544	1.23 MB	13	735	1,083	2.53 MB
02	405	531	1.27 MB	14	1,013	1,485	3.35 MB
03	429	565	1.35 MB	15	999	1,377	3.05 MB
04	438	614	1.47 MB	16	972	1,441	3.50 MB
05	405	597	1.33 MB	17	981	1,396	3.24 MB
06	401	555	1.39 MB	18	969	1,466	3.41 MB
07	520	732	1.81 MB	19	1,112	1,647	3.79 MB
08	493	747	1.94 MB	20	1,034	1,564	3.89 MB
09	576	941	2.45 MB	21	734	1,086	2.65 MB
10	641	999	2.57 MB	22	523	800	2.06 MB
11	597	957	2.37 MB	23	401	579	1.41 MB

### Countries (Top 25) - Full list

	Countries		Pages	Hits	Bandwidth	
	United States	us	8,970	14,567	36.59 MB	
	China	cn	2,310	2,551	4.37 MB	
	Ukraine	ua	1,298	1,300	2.46 MB	
	Russian Federation	ru	520	566	1.13 MB	
	Germany	de	508	604	1.35 MB	
	South Korea	kr	379	493	1.15 MB	
	Great Britain	gb	263	448	1.26 MB	
	France	fr	200	269	528.77 KB	
	Canada	ca	161	373	1.16 MB	
	Italy	it	127	204	506.14 KB	
	Japan	jp	109	122	276.96 KB	
	Moldova	md	103	106	211.53 KB	
	Netherlands	nl	90	116	278.30 KB	
	European country	eu	88	142	378.84 KB	
	Norway	no	79	92	204.48 KB	
	Sweden	se	67	99	275.43 KB	
	Spain	es	55	67	162.87 KB	

	India	in	54	138	461.22 KB
	Israel	il	45	77	202.69 KB
	Finland	fi	42	42	80.60 KB
	Czech Republic	cz	41	44	90.60 KB
	Brazil	br	32	78	259.00 KB
	Australia	au	29	81	286.84 KB
	South Africa	za	28	65	208.03 KB
	Poland	pl	28	55	170.33 KB
	Others		327	697	2.21 MB

**Hosts (Top 25)** - [Full list](#) - [Last visit](#) - [Unresolved IP Address](#)

Hosts : 2511	Pages	Hits	Bandwidth	Last visit
67.165.24.17	2,789	4,045	7.89 MB	21 Jun 2012 - 19:30
67.165.5.246	2,218	2,794	4.80 MB	31 Dec 2012 - 23:02
176.31.18.156	252	252	485.34 KB	12 Nov 2012 - 03:20
124.115.5.11	217	217	421.03 KB	10 Aug 2012 - 22:16
1.202.218.8	215	215	432.31 KB	01 Mar 2012 - 08:11
114.80.93.73	213	213	413.23 KB	10 Aug 2012 - 20:24
95.168.172.156	204	204	386.68 KB	07 Dec 2012 - 06:54
71.224.42.240	172	229	430.90 KB	04 Dec 2012 - 17:14
114.80.93.54	168	168	153.52 KB	04 Aug 2012 - 21:09
109.120.157.179	165	165	318.03 KB	30 Dec 2012 - 21:04
213.110.133.221	113	113	217.94 KB	30 Dec 2012 - 23:04
178.137.129.128	98	98	185.76 KB	01 Oct 2012 - 01:19
176.123.0.57	89	89	168.70 KB	16 Dec 2012 - 18:00
92.249.127.111	80	80	162.17 KB	13 Mar 2012 - 01:19
68.147.130.187	73	133	358.02 KB	01 Mar 2012 - 18:33
112.101.64.208	70	70	128.78 KB	01 Nov 2012 - 11:08
195.242.218.133	67	67	127.00 KB	28 Dec 2012 - 21:58
31.192.105.2	62	62	119.46 KB	22 Mar 2012 - 14:23
114.80.93.52	50	50	44.32 KB	07 Aug 2012 - 04:34
178.137.129.75	49	49	98.53 KB	12 Mar 2012 - 18:07
123.164.66.60	46	46	91.11 KB	12 Dec 2012 - 16:33
204.155.226.3	45	102	229.60 KB	04 Oct 2012 - 15:00
116.30.112.239	45	45	85.47 KB	29 Mar 2012 - 07:59
207.54.157.106	45	75	209.05 KB	18 Oct 2012 - 12:39
50.57.148.24	44	154	478.51 KB	31 Dec 2012 - 08:50
Others	8,364	13,661	37.86 MB	

**Authenticated users (Top 10)** - [Full list](#) - [Last visit](#)

Authenticated users : 0	Pages	Hits	Bandwidth	Last visit
Other logins (and/or anonymous users)	15,953	23,396	56.15 MB	

### Robots/ Spiders visitors (Top 25) - [Full list](#) - [Last visit](#)

14 different robots*	Hits	Bandwidth	Last visit
Unknown robot (identified by 'spider')	9,474	15.51 MB	31 Dec 2012 - 23:42
Unknown robot (identified by 'bot*')	2,791	3.43 MB	31 Dec 2012 - 11:37
<a href="#">Googlebot</a>	1,097	1.52 MB	30 Dec 2012 - 17:43
Unknown robot (identified by '*bot')	581	1.18 MB	31 Dec 2012 - 22:16
Unknown robot (identified by 'robot')	458	495.48 KB	31 Dec 2012 - 23:23
Unknown robot (identified by 'crawl')	281	491.61 KB	27 Dec 2012 - 11:36
<a href="#">Yahoo Slurp</a>	155	543.79 KB	30 Dec 2012 - 07:30
Unknown robot (identified by empty user agent string)	134	235.59 KB	29 Dec 2012 - 14:24
Unknown robot (identified by 'discovery')	27	24.23 KB	01 Nov 2012 - 20:03
<a href="#">Netcraft</a>	23	21.12 KB	05 Dec 2012 - 19:38
<a href="#">Alexa (IA Archiver)</a>	9	16.80 KB	06 Aug 2012 - 16:13
<a href="#">MSNBot</a>	5	4.41 KB	25 Apr 2012 - 18:45
Voyager	1	0	31 May 2012 - 14:49
<a href="#">MSNBot-media</a>	1	9.73 KB	08 Jul 2012 - 17:03

\* Robots shown here gave hits or traffic "not viewed" by visitors, so they are not included in other charts.

### Visits duration

Number of visits: 6,406 - Average: 168 s		Number of visits	Percent
0s-30s		5,403	84.3 %
30s-2mn		332	5.1 %
2mn-5mn		170	2.6 %
5mn-15mn		160	2.4 %
15mn-30mn		116	1.8 %
30mn-1h		141	2.2 %
1h+		84	1.3 %

### File type

File type			Hits	Percent	Bandwidth	Percent
	php	Dynamic PHP Script file	8,193	35 %	10.47 MB	18.6 %
	html	HTML or XML static page	7,760	33.1 %	10.84 MB	19.3 %
	gif	Image	2,750	11.7 %	24.66 MB	43.9 %
	css	Cascading Style Sheet file	2,551	10.9 %	3.88 MB	6.9 %
	png	Image	2,142	9.1 %	6.30 MB	11.2 %

### Downloads (Top 10) - [Full list](#)

Downloads: 0	Hits	206 Hits	Bandwidth	Average size
--------------	------	----------	-----------	--------------

**Pages-URL (Top 25)** - [Full list](#) - [Entry](#) - [Exit](#)

24 different pages-url	Viewed	Average size	Entry	Exit	
/	7,757	1.43 KB	5,350	4,574	
/index.php	2,675	1.36 KB	702	781	
/login.php	2,309	1.05 KB	28	109	
/sites.php	1,051	1.77 KB	32	451	
/register.php	1,019	1.57 KB	123	181	
/about.php	410	1.08 KB	90	201	
/directory.php	196	933 Bytes	2	13	
/personal.php	88	864 Bytes	2	3	
/calendar.php	77	1.30 KB	2	5	
/gift.php	73	768 Bytes		9	
/grocery.php	69	829 Bytes		5	
/links.php	68	2.32 KB	64	51	
/logout.php	59	715 Bytes	1	9	
/vacation.php	42	816 Bytes		1	
/edit.php	28	1.16 KB	1	1	
http://ipad.mobi/index.php	7	2.14 KB	4	4	
http://ipad.mobi/login.php	6	1.70 KB			
http://ipad.mobi/register.php	6	1.81 KB			
/mobile_checkout/mobile-checkout.php	3	78 Bytes		3	
//	3	926 Bytes	3	3	
/pad.php	3	816 Bytes			
/update.php	2	688 Bytes			
/login.php/contact.php	1	1.68 KB	1	1	
/about.php/wp-content/themes/ecobiz/timthumb.php	1	1.70 KB	1	1	

**Operating Systems (Top 10)** - [Full list/Versions](#) - [Unknown](#)

Operating Systems		Hits	Percent
	<b>Windows</b>	16,485	70.4 %
	Unknown	3,338	14.2 %
	<b>Macintosh</b>	1,251	5.3 %
	<b>Linux</b>	960	4.1 %
	Sony PlayStation	643	2.7 %
	Java Mobile	478	2 %
	BlackBerry	110	0.4 %
	Java	84	0.3 %
	Symbian OS	34	0.1 %
	Unknown Unix system	8	0 %
	Others	5	0 %

**Browsers (Top 10) - Full list/Versions - Unknown**

Browsers		Grabber	Hits	Percent
 <b>MS Internet Explorer</b>		No	6,795	29 %
 <b>Google Chrome</b>		No	4,696	20 %
 <b>Opera</b>		No	4,630	19.7 %
 <b>Netscape</b>		No	1,600	6.8 %
 <b>Firefox</b>		No	1,362	5.8 %
 <b>Safari</b>		No	1,208	5.1 %
 Unknown		?	1,081	4.6 %
 Mozilla		No	690	2.9 %
 Android browser (PDA/Phone browser)		No	294	1.2 %
 Motorola Browser (PDA/Phone browser)		No	242	1 %
Others			798	3.4 %

**Connect to site from**

Origin	Pages	Percent	Hits	Percent
<b>Direct address / Bookmark / Link in email...</b>	5,105	57.9 %	5,684	59.1 %
<b>Links from an Internet Search Engine - Full list</b>	661	7.5 %	684	7.1 %
- Google 247 / 250				
- Yahoo! 163 / 183				
- Microsoft Bing 161 / 161				
- Yandex 71 / 71				
- Baidu 7 / 7				
- Eniro Sverige 6 / 6				
- Unknown search engines 5 / 5				
- Ask 1 / 1				
<b>Links from an external page (other web sites except search engines) - Full list</b>	2,956	33.5 %	3,097	32.2 %
- <a href="http://bo.jumtap.com/bo/wap/r">http://bo.jumtap.com/bo/wap/r</a> 242 242				
- <a href="http://www.psphotlinks.com/_linkgo1.asp">http://www.psphotlinks.com/_linkgo1.asp</a> 207 207				
- <a href="http://mobithinking.com/showcase">http://mobithinking.com/showcase</a> 203 203				
- <a href="http://journal.amanita.net">http://journal.amanita.net</a> 36 36				
- <a href="http://www.ooo-tehnoprom.ru">http://www.ooo-tehnoprom.ru</a> 20 20				
- <a href="http://stroystandart.info">http://stroystandart.info</a> 20 20				
- <a href="http://greatsites.mobi/index.cgi">http://greatsites.mobi/index.cgi</a> 20 20				
- <a href="http://mobithinking.com/category-site/services">http://mobithinking.com/category-site/services</a> 19 19				
- <a href="http://pandavip.www.net.cn/cgi-bin/Check.cgi">http://pandavip.www.net.cn/cgi-bin/Check.cgi</a> 19 19				
- <a href="http://mos-holidays.ru">http://mos-holidays.ru</a> 18 18				
- <a href="http://uistone.ru">http://uistone.ru</a> 16 16				
- <a href="http://www.mobithinking.com/showcase">http://www.mobithinking.com/showcase</a> 16 16				
- <a href="http://rosinvest.com">http://rosinvest.com</a> 16 16				
- <a href="http://0027.ru">http://0027.ru</a> 14 14				
- <a href="http://mobi.sdboyd56.com">http://mobi.sdboyd56.com</a> 14 14				

- <a href="http://vefire.tomsk.ru">http://vefire.tomsk.ru</a>	14	14			
- <a href="http://hdonly.ru">http://hdonly.ru</a>	14	14			
- <a href="http://kituramicenter.ru">http://kituramicenter.ru</a>	13	13			
- <a href="http://dtown.mobi">http://dtown.mobi</a>	13	13			
- <a href="http://zel-klimat.ru">http://zel-klimat.ru</a>	13	13			
- <a href="http://planet-best.ru">http://planet-best.ru</a>	13	13			
- <a href="http://mobithinking.com/showcase/showcase-library">http://mobithinking.com/showcase/showcase-library</a>	13	13			
- <a href="http://haliava.net">http://haliava.net</a>	12	12			
- <a href="http://photo-lol.com">http://photo-lol.com</a>	12	12			
- <a href="http://mostfind.com">http://mostfind.com</a>	12	12			
- Others	1,947	2,088			
<b>Unknown Origin</b>			85	0.9 %	145 1.5 %

Search Keyphrases (Top 10)		
Full list		
102 different keyphrases	Search	Percent
<a href="http://ipad3ishere.mobi">http //ipad3ishere.mobi</a>	93	16.5 %
<a href="http://ipad3ishere.mobi">ipad3ishere.mobi</a>	57	10.1 %
<a href="http://ipad.mobi">ipad .mobi</a>	56	9.9 %
<a href="http://ipad.mobi">ipad mobi</a>	55	9.7 %
<a href="http://ipad.mobi">ipad.mobi</a>	55	9.7 %
<a href="http://mobi for ipad">mobi for ipad</a>	12	2.1 %
<a href="http://ipad is here mobi">ipad is here mobi</a>	11	1.9 %
<a href="http://ipad is here.mobi">ipad is here. mobi</a>	9	1.5 %
<a href="http://the ipad mobi">the ipad mobi</a>	9	1.5 %
<a href="http://ipad">ipad</a>	8	1.4 %
Other phrases	198	35.1 %

Search Keywords (Top 25)		
Full list		
113 different keywords	Search	Percent
<a href="http://ipad">ipad</a>	238	21.3 %
<a href="http://http">http</a>	129	11.5 %
<a href="http://mobi">mobi</a>	117	10.4 %
<a href="http://ipad3ishere.mobi">//ipad3ishere.mobi</a>	93	8.3 %
<a href="http://ipad3ishere.mobi">ipad3ishere.mobi</a>	64	5.7 %
<a href="http://.mobi">.mobi</a>	62	5.5 %
<a href="http://ipad.mobi">ipad.mobi</a>	56	5 %
<a href="http://ipad">ipad</a>	26	2.3 %
<a href="http://is">is</a>	22	1.9 %
<a href="http://ipad">ipad</a>	14	1.2 %
<a href="http://ipad">ipad</a>	14	1.2 %
<a href="http://for">for</a>	14	1.2 %
<a href="http://here">here</a>	11	0.9 %
<a href="http://the">the</a>	11	0.9 %
<a href="http://here">here.</a>	10	0.8 %
<a href="http://ipad">ipad</a>	8	0.7 %
<a href="http://http://ipad3ishere.mobi">http://ipad3ishere.mobi</a>	8	0.7 %
<a href="http://ipad">ipad</a>	8	0.7 %
<a href="http://ipad">ipad</a>	6	0.5 %
<a href="http://ipad">ipad</a>	6	0.5 %
<a href="http://ipad3ishere.mobi">//ipad3ishere.mobi</a>	6	0.5 %
<a href="http://www.ipad3ishere.mobi">www.ipad3ishere.mobi</a>	6	0.5 %
<a href="http://login">login</a>	6	0.5 %
<a href="http://ipad3ishere.mobi.com">//ipad3ishere.mobi.com</a>	6	0.5 %
<a href="http://ipad.mobi/">ipad.mobi/</a>	5	0.4 %
Other words	169	15.1 %

### Miscellaneous

Miscellaneous		
Successful hits on favicon.ico	0 / 3,059 Visitors	0 %
Javascript disabled	-	
Browsers with Java support	-	
Browsers with Macromedia Director Support	-	
Browsers with Flash Support	-	
Browsers with Real audio playing support	-	
Browsers with Quicktime audio playing support	-	
Browsers with Windows Media audio playing support	-	
Browsers with PDF support	-	

### HTTP Status codes

HTTP Status codes*		Hits	Percent	Bandwidth
404	Document Not Found (hits on favicon excluded)	8,593	94.2 %	0
302	Moved temporarily (redirect)	506	5.5 %	363.00 KB
403	Forbidden	13	0.1 %	0
206	Partial Content	10	0.1 %	94.84 KB

\* Codes shown here gave hits or traffic "not viewed" by visitors, so they are not included in other charts.

## **EXHIBIT 20**

Statistics for:  
ipad.poop.mobi

Last Update: 24 Oct 2015 - 07:07



Reported period:

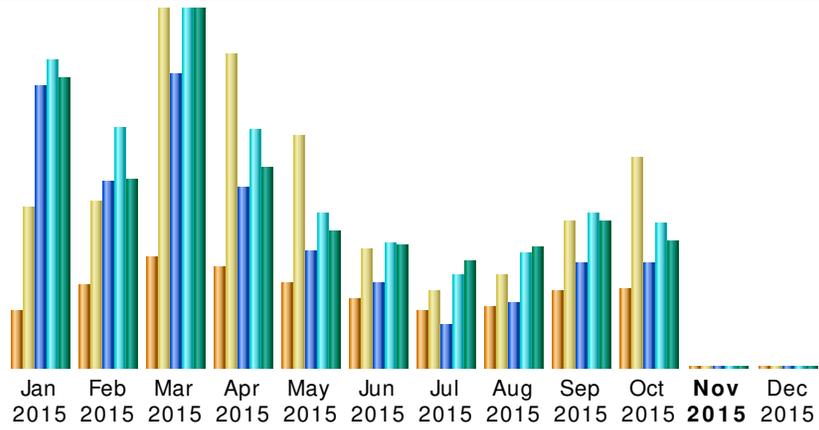
- Summary
- When:**
- Monthly history
- Days of month
- Days of week
- Hours
- Who:**
- Countries
  - Full list
- Hosts
  - Full list
  - Last visit
  - Unresolved IP Address
- Authenticated users
  - Full list
  - Last visit
- Robots/Spiders visitors
  - Full list
  - Last visit
- Navigation:**
- Visits duration
- File type
- Downloads
  - Full list
- Viewed
  - Full list
  - Entry
  - Exit
- Operating Systems
  - Versions
  - Unknown
- Browsers
  - Versions
  - Unknown
- Referrers:**
- Origin
  - Referring search engines
  - Referring sites
- Search
  - Search Keyphrases
  - Search Keywords
- Others:**
- Miscellaneous
- HTTP Status codes
  - Pages not found

**Summary**

<b>Reported period</b>	Year 2015				
<b>First visit</b>	01 Jan 2015 - 00:54				
<b>Last visit</b>	24 Oct 2015 - 06:57				
	Unique visitors	Number of visits	Pages	Hits	Bandwidth
Viewed traffic *	<= 5,243 Exact value not available in 'Year' view	<b>12,638</b> (2.41 visits/visitor)	<b>26,491</b> (2.09 Pages/Visit)	<b>34,929</b> (2.76 Hits/Visit)	<b>142.64 MB</b> (11.55 KB/Visit)
Not viewed traffic *			<b>11,106</b>	<b>16,839</b>	<b>20.21 MB</b>

\* Not viewed traffic includes traffic generated by robots, worms, or replies with special HTTP status codes.

**Monthly history**



Month	Unique visitors	Number of visits	Pages	Hits	Bandwidth
Jan 2015	383	1,079	5,110	5,557	23.05 MB
Feb 2015	561	1,123	3,387	4,349	14.97 MB
Mar 2015	744	2,418	5,304	6,494	28.47 MB
Apr 2015	678	2,118	3,259	4,294	15.93 MB
May 2015	577	1,568	2,101	2,804	10.76 MB
Jun 2015	464	793	1,541	2,256	9.77 MB
Jul 2015	386	514	793	1,689	8.42 MB
Aug 2015	406	623	1,188	2,058	9.64 MB
Sep 2015	511	986	1,909	2,807	11.56 MB
Oct 2015	533	1,416	1,899	2,621	10.06 MB
<b>Nov 2015</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

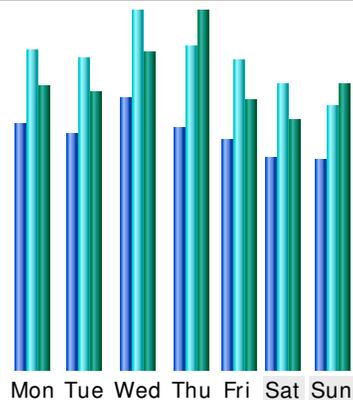
Dec 2015	0	0	0	0	0
Total	5,243	12,638	26,491	34,929	142.64 MB

### Days of month

01 02 **03** 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 Average  
 Nov Nov **Nov** Nov Nov

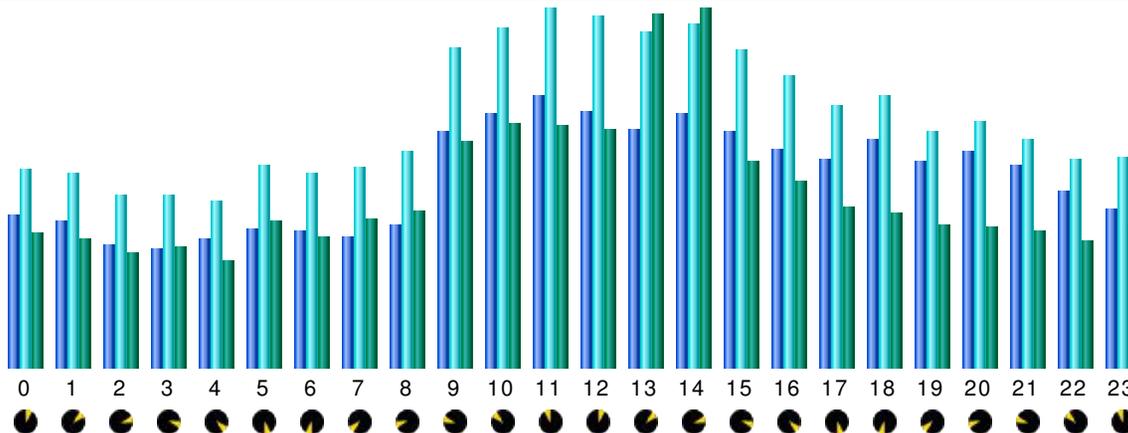
Day	Number of visits	Pages	Hits	Bandwidth
01 Nov 2015	0	0	0	0
02 Nov 2015	0	0	0	0
<b>03 Nov 2015</b>	0	0	0	0
04 Nov 2015	0	0	0	0
05 Nov 2015	0	0	0	0
06 Nov 2015	0	0	0	0
07 Nov 2015	0	0	0	0
08 Nov 2015	0	0	0	0
09 Nov 2015	0	0	0	0
10 Nov 2015	0	0	0	0
11 Nov 2015	0	0	0	0
12 Nov 2015	0	0	0	0
13 Nov 2015	0	0	0	0
14 Nov 2015	0	0	0	0
15 Nov 2015	0	0	0	0
16 Nov 2015	0	0	0	0
17 Nov 2015	0	0	0	0
18 Nov 2015	0	0	0	0
19 Nov 2015	0	0	0	0
20 Nov 2015	0	0	0	0
21 Nov 2015	0	0	0	0
22 Nov 2015	0	0	0	0
23 Nov 2015	0	0	0	0
24 Nov 2015	0	0	0	0
25 Nov 2015	0	0	0	0
26 Nov 2015	0	0	0	0
27 Nov 2015	0	0	0	0
28 Nov 2015	0	0	0	0
29 Nov 2015	0	0	0	0
30 Nov 2015	0	0	0	0
Average	41	86	113	475.78 KB
Total	0	0	0	0

### Days of week



Day	Pages	Hits	Bandwidth
Mon	90	117	461.26 KB
Tue	86	114	453.03 KB
Wed	99	131	518.81 KB
Thu	88	118	584.28 KB
Fri	84	113	439.42 KB
Sat	77	104	407.68 KB
Sun	77	96	466.97 KB

### Hours



Hours	Pages	Hits	Bandwidth	Hours	Pages	Hits	Bandwidth
00	877	1,144	4.49 MB	12	1,477	2,030	8.01 MB
01	843	1,125	4.29 MB	13	1,382	1,942	11.91 MB
02	712	993	3.86 MB	14	1,476	1,986	12.05 MB
03	686	994	4.07 MB	15	1,361	1,836	6.91 MB
04	744	958	3.59 MB	16	1,264	1,690	6.28 MB

05	799	1,176	4.89 MB	17	1,207	1,511	5.40 MB
06	795	1,127	4.40 MB	18	1,323	1,579	5.16 MB
07	751	1,160	5.01 MB	19	1,199	1,372	4.76 MB
08	828	1,250	5.26 MB	20	1,249	1,419	4.75 MB
09	1,370	1,847	7.60 MB	21	1,169	1,321	4.57 MB
10	1,465	1,971	8.17 MB	22	1,017	1,202	4.28 MB
11	1,575	2,076	8.13 MB	23	922	1,220	4.80 MB

**Countries (Top 25) - Full list**

	Countries		Pages	Hits	Bandwidth	
	China	cn	13,683	13,798	42.66 MB	
	Ukraine	ua	5,056	5,109	18.32 MB	
	United States	us	4,011	6,892	35.99 MB	
	Russian Federation	ru	561	681	2.59 MB	
	Brazil	br	272	1,151	6.28 MB	
	Lithuania	lt	244	248	909.67 KB	
	Germany	de	221	269	703.15 KB	
	India	in	210	661	3.61 MB	
	France	fr	159	202	779.85 KB	
	Pakistan	pk	134	342	1.78 MB	
	Canada	ca	125	186	804.87 KB	
	Great Britain	gb	114	330	1.77 MB	
	Netherlands	nl	75	133	585.33 KB	
	Italy	it	74	263	1.42 MB	
	Algeria	dz	60	218	1.22 MB	
	Japan	jp	57	119	456.45 KB	
	Philippines	ph	48	143	769.83 KB	
	Bangladesh	bd	44	160	943.94 KB	
	Morocco	ma	43	156	832.49 KB	
	Iran	ir	43	67	240.36 KB	
	Kazakhstan	kz	42	51	190.80 KB	
	United Arab Emirates	ae	42	111	578.31 KB	
	Saudi Arabia	sa	36	109	603.98 KB	
	Norway	no	33	148	917.38 KB	
	Thailand	th	31	73	363.21 KB	
	Others		1073	3309	17.54 MB	

**Hosts (Top 25) - Full list - Last visit - Unresolved IP Address**

Hosts : 3950		Pages	Hits	Bandwidth	Last visit
73.13.82.31		1,892	2,588	16.33 MB	23 Oct 2015 - 19:37

110.82.156.94	402	402	1.47 MB	26 Jan 2015 - 19:06
37.57.231.162	330	330	1.15 MB	18 Jun 2015 - 02:22
91.207.7.169	299	299	1.09 MB	08 Apr 2015 - 13:32
222.77.194.208	278	278	972.44 KB	25 Mar 2015 - 00:22
27.153.228.102	256	256	925.48 KB	26 Jan 2015 - 17:45
120.43.22.222	250	250	940.96 KB	26 Jan 2015 - 13:10
91.200.12.147	245	245	892.35 KB	25 Sep 2015 - 07:47
94.153.10.249	237	237	865.98 KB	21 Jun 2015 - 20:03
27.153.166.68	234	234	800.48 KB	22 Mar 2015 - 15:45
27.159.199.87	209	209	780.00 KB	11 Jan 2015 - 12:50
94.153.9.220	206	206	752.71 KB	20 Jun 2015 - 22:23
91.200.12.127	202	202	700.20 KB	26 Sep 2015 - 06:49
222.77.200.214	195	195	706.45 KB	12 Jan 2015 - 18:13
27.150.208.91	184	184	692.91 KB	09 Feb 2015 - 15:06
31.193.196.98	178	178	647.35 KB	09 Jul 2015 - 15:46
59.58.109.144	159	159	542.61 KB	01 Apr 2015 - 00:18
46.119.124.167	159	159	601.28 KB	09 Mar 2015 - 07:45
140.237.39.223	154	154	537.01 KB	25 Mar 2015 - 03:30
178.137.84.254	153	153	559.05 KB	21 Jun 2015 - 15:46
176.8.89.30	147	147	537.12 KB	30 Mar 2015 - 05:59
178.137.92.19	147	147	554.60 KB	09 Mar 2015 - 04:50
59.58.113.243	145	145	546.55 KB	11 Jan 2015 - 18:10
46.119.118.191	144	144	526.17 KB	30 Mar 2015 - 05:40
46.119.115.79	143	143	539.63 KB	09 Mar 2015 - 01:26
Others	19,543	27,285	108.33 MB	

**Authenticated users (Top 10)** - [Full list](#) - [Last visit](#)

Authenticated users : 0	Pages	Hits	Bandwidth	Last visit
Other logins (and/or anonymous users)	26,491	34,929	142.64 MB	

**Robots/ Spiders visitors (Top 25)** - [Full list](#) - [Last visit](#)

13 different robots*	Hits	Bandwidth	Last visit
Unknown robot (identified by 'bot*')	5,098+ 1803	9.03 MB	24 Oct 2015 - 05:54
Unknown robot (identified by 'spider')	2,359+ 49	7.27 MB	24 Oct 2015 - 06:21
<a href="#">Googlebot</a>	1,196+ 342	1.85 MB	24 Oct 2015 - 04:58
Unknown robot (identified by hit on 'robots.txt')	0+ 380	56.63 KB	23 Oct 2015 - 17:57
Unknown robot (identified by 'robot')	204+ 125	340.25 KB	21 Oct 2015 - 07:58
Unknown robot (identified by 'crawl')	247+ 42	560.68 KB	22 Oct 2015 - 17:52
Unknown robot (identified by empty user agent string)	180+ 44	637.51 KB	22 Oct 2015 - 02:42
<a href="#">Yahoo Slurp</a>	69+ 55	92.45 KB	22 Oct 2015 - 07:11
Unknown robot (identified by '**bot')	38+ 51	144.74 KB	12 Oct 2015 - 12:39
<a href="#">Netcraft</a>	22	40.46 KB	09 Oct 2015 - 23:22

MSNBot	19	25.19 KB	13 Oct 2015 - 16:32
Alexa (IA Archiver)	6+ 4	20.90 KB	08 Apr 2015 - 11:06
MSNBot-media	7	85.49 KB	10 May 2015 - 23:21

\* Robots shown here gave hits or traffic "not viewed" by visitors, so they are not included in other charts. Numbers after + are successful hits on "robots.txt" files.

### Visits duration

Number of visits: 12,638 - Average: 134 s		Number of visits	Percent
0s-30s		11,597	91.7 %
30s-2mn		272	2.1 %
2mn-5mn		94	0.7 %
5mn-15mn		133	1 %
15mn-30mn		106	0.8 %
30mn-1h		314	2.4 %
1h+		116	0.9 %
Unknown		6	0 %

### File type

File type			Hits	Percent	Bandwidth	Percent
	html	HTML or XML static page	16,607	47.5 %	45.25 MB	31.7 %
	php	Dynamic PHP Script file	9,882	28.2 %	29.07 MB	20.3 %
	gif	Image	8,291	23.7 %	56.69 MB	39.7 %
	js	JavaScript file	67	0.1 %	1.82 MB	1.2 %
	jpg	Image	66	0.1 %	9.74 MB	6.8 %
	css	Cascading Style Sheet file	14	0 %	84.74 KB	0 %
	cgi	Dynamic Html page or Script file	1	0 %	30 Bytes	0 %
	Unknown		1	0 %	3.65 KB	0 %

### Downloads (Top 10) - [Full list](#)

Downloads: 1		Hits	206 Hits	Bandwidth	Average size
	/robots.txt	2,864	0	427.77 KB	152 Bytes

### Pages-URL (Top 25) - [Full list](#) - [Entry](#) - [Exit](#)

23 different pages-url	Viewed	Average size	Entry	Exit	
/	16,598	2.79 KB	11,370	10,508	
/login.php	4,350	2.49 KB	76	217	
/index.php	4,162	3.81 KB	1,085	1,534	
/register.php	615	2.49 KB	75	90	
/sites.php	248	3.09 KB	1	148	

<a href="#">/about.php</a>	177	1.87 KB	15	33	
<a href="#">/forgot_password.php</a>	160	1.58 KB	7	83	
<a href="#">/gift.php</a>	34	1.16 KB		4	
<a href="#">/logout.php</a>	25	1.33 KB	1	1	
<a href="#">/personal.php</a>	25	1.18 KB			
<a href="#">/calendar.php</a>	22	1.76 KB	1		
<a href="#">/files.php</a>	19	2.00 KB		1	
<a href="#">/vacation.php</a>	16	1.15 KB		1	
<a href="#">/directory.php</a>	14	1.18 KB			
<a href="#">/grocery.php</a>	7	1.16 KB		2	
<a href="#">/edit.php</a>	5	1.24 KB	1	3	
<a href="#">/pad.php</a>	3	1.06 KB			
<a href="http://ipad.mobi/">http://ipad.mobi/</a>	2	3.64 KB	1	1	
<a href="#">/index.php/admin/</a>	2	3.65 KB	2	2	
<a href="#">/upload/server/php/</a>	2	302 Bytes			
<a href="#">/index.php/trackback/</a>	2	1.29 KB		2	
<a href="#">/</a>	1	1.29 KB	1	1	
<a href="#">/cgi-sys/entropysearch.cgi</a>	1	30 Bytes	1	1	
Others	1				

### Operating Systems (Top 10) - [Full list/Versions](#) - [Unknown](#)

Operating Systems		Hits	Percent
<b>Windows</b>		26,959	77.1 %
<b>Linux</b>		3,732	10.6 %
<b>Macintosh</b>		2,276	6.5 %
Unknown		1,651	4.7 %
<b>Java Mobile</b>		147	0.4 %
<b>Java</b>		55	0.1 %
Unknown Unix system		44	0.1 %
BlackBerry		37	0.1 %
<b>Symbian OS</b>		23	0 %
<b>Sony PlayStation</b>		4	0 %
Others		1	0 %

### Browsers (Top 10) - [Full list/Versions](#) - [Unknown](#)

Browsers		Grabber	Hits	Percent
<b>Google Chrome</b>		No	14,984	42.8 %
<b>Firefox</b>		No	8,680	24.8 %
<b>MS Internet Explorer</b>		No	3,721	10.6 %
<b>Safari</b>		No	2,021	5.7 %
<b>Opera</b>		No	1,867	5.3 %

 Mozilla	No	1,395	3.9 %
 Android browser (PDA/Phone browser)	No	1,109	3.1 %
 Unknown	?	549	1.5 %
 <b>Netscape</b>	No	206	0.5 %
 Nokia Browser (PDA/Phone browser)	No	88	0.2 %
Others		309	0.8 %

Connect to site from				
Origin	Pages	Percent	Hits	Percent
<b>Direct address / Bookmark / Link in email...</b>	8,381	53.6 %	8,494	53.6 %
<b>Links from an Internet Search Engine - Full list</b>	1,097	7 %	1,151	7.2 %
- WebCrawler 417 / 432				
- Google 220 / 224				
- Yahoo! 181 / 181				
- Unknown search engines 129 / 133				
- Baidu 93 / 93				
- Yandex 33 / 33				
- Dogpile 12 / 12				
- InfoSpace 5 / 9				
- Microsoft Bing 3 / 3				
- search.ch 2 / 2				
- Looksmart 1 / 1				
- AOL 1 / 1				
- Microsoft MSN Search 0 / 27				
<b>Links from an external page (other web sites except search engines) - Full list</b>	6,090	38.9 %	6,123	38.6 %
- <a href="http://semalt.semalt.com/crawler.php">http://semalt.semalt.com/crawler.php</a> 128 128				
- <a href="http://buttons-for-website.com">http://buttons-for-website.com</a> 122 122				
- <a href="http://success-seo.com/try.php">http://success-seo.com/try.php</a> 117 117				
- <a href="http://www.tidycal.com">http://www.tidycal.com</a> 69 69				
- <a href="http://www.artparquet.ru">http://www.artparquet.ru</a> 57 57				
- <a href="http://pornogig.com">http://pornogig.com</a> 46 46				
- <a href="http://www.rapidrelevant.com">http://www.rapidrelevant.com</a> 45 45				
- <a href="http://cl.netseer.com/dsatserving2/servlet/search">http://cl.netseer.com/dsatserving2/servlet/search</a> 44 60				
- <a href="http://www.goedkopenikeairmax1.nl">http://www.goedkopenikeairmax1.nl</a> 44 44				
- <a href="http://best-seo-offer.com/try.php">http://best-seo-offer.com/try.php</a> 44 44				
- <a href="http://buttons-for-your-website.com">http://buttons-for-your-website.com</a> 43 43				
- <a href="http://doska-vsem.ru">http://doska-vsem.ru</a> 38 38				
- <a href="https://iqoption.com/promo/simple-demo/">https://iqoption.com/promo/simple-demo/</a> 37 37				
- <a href="http://chimiver.info">http://chimiver.info</a> 33 33				
- <a href="http://jointpoint.org">http://jointpoint.org</a> 33 33				
- <a href="http://imperiafilm.ru">http://imperiafilm.ru</a> 25 25				
- <a href="http://gormonrosta.biz">http://gormonrosta.biz</a> 25 25				
- <a href="http://www.groothandeltrainers.nl">http://www.groothandeltrainers.nl</a> 24 24				
- <a href="http://taihouse.ru">http://taihouse.ru</a> 24 24				

- <a href="http://www.ywec.ru">http://www.ywec.ru</a>	24	24			
- <a href="http://cpa-partnerki.ru">http://cpa-partnerki.ru</a>	24	24			
- <a href="http://100dollars-seo.com/try.php">http://100dollars-seo.com/try.php</a>	22	22			
- <a href="http://sexhd.tv">http://sexhd.tv</a>	21	21			
- <a href="http://msk.onlinebay.ru">http://msk.onlinebay.ru</a>	21	21			
- <a href="http://viktoria-center.ru">http://viktoria-center.ru</a>	21	21			
- Others	4,959	4,976			
<b>Unknown Origin</b>			66	0.4 %	66 0.4 %

Search Keyphrases (Top 10)		
Full list		
191 different keyphrases	Search	Percent
ipad 文件夹 图标	89	21.9 %
prno mobile	41	10 %
mobile	22	5.4 %
ipad.mobi	12	2.9 %
mobile in	9	2.2 %
find my i pad	7	1.7 %
get jar mobile applications	7	1.7 %
ipad	5	1.2 %
find my ipad	5	1.2 %
ipad 文件夹 图标	4	0.9 %
Other phrases	205	50.4 %

Search Keywords (Top 25)		
Full list		
274 different keywords	Search	Percent
mobile	170	19.8 %
ipad 文件夹 图标	89	10.3 %
ipad	80	9.3 %
prno	41	4.7 %
for	16	1.8 %
my	13	1.5 %
find	12	1.4 %
ipad.mobi	12	1.4 %
in	11	1.2 %
http	9	1 %
applications	9	1 %
price	8	0.9 %
pad	7	0.8 %
get	7	0.8 %
i	7	0.8 %
jar	7	0.8 %
download	7	0.8 %
phone	6	0.7 %
文件夹	4	0.4 %
a	4	0.4 %
of	4	0.4 %
android	4	0.4 %
mobiles	4	0.4 %
facebook	4	0.4 %
mobil	4	0.4 %
Other words	318	37.1 %

Miscellaneous		
Miscellaneous		
Successful hits on favicon.ico	0 / 5,243 Visitors	0 %
Javascript disabled	-	

Browsers with Java support	-	
Browsers with Macromedia Director Support	-	
Browsers with Flash Support	-	
Browsers with Real audio playing support	-	
Browsers with Quicktime audio playing support	-	
Browsers with Windows Media audio playing support	-	
Browsers with PDF support	-	

### HTTP Status codes

HTTP Status codes*		Hits	Percent	Bandwidth
404	Document Not Found (hits on favicon excluded)	2,408	94.9 %	0
302	Moved temporarily (redirect)	97	3.8 %	75.39 KB
301	Moved permanently (redirect)	14	0.5 %	70 Bytes
206	Partial Content	11	0.4 %	33.50 KB
400	Bad Request	3	0.1 %	0
403	Forbidden	2	0 %	0
500	Internal server Error	1	0 %	0

\* Codes shown here gave hits or traffic "not viewed" by visitors, so they are not included in other charts.

**EXHIBIT 21**

**REDACTED IN FULL**

**EXHIBIT 22**

**REDACTED IN FULL**

# **EXHIBIT A**

**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.: 77/927446

**Opposition No.:** 91207598

App. Serial No.: 77/913563

**OPPOSER RXD MEDIA, LLC'S FIRST SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT**

Pursuant to Rules 26, 33 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer RxD Media, LLC ("RxD" or "Opposer"), by and through its attorneys, serves this First Set of Interrogatories and Requests for Production to Applicant IP Application Development LLC ("Applicant"), to be answered fully in writing and under oath. These Interrogatories and Requests for Production are governed by the following definitions and instructions and are deemed continuing in nature and thus require supplemental answers as provided by Rule 26(e) of the Federal Rules of Civil Procedure.

**GENERAL DEFINITIONS AND INSTRUCTIONS**

All interrogatories are to be answered on the basis of Applicant's knowledge or information and belief, including that of any of its officers, directors, agents, or employees having such knowledge. If any answer is given based upon information and belief, such fact should be stated in the answer. If any information called for in any interrogatory is being withheld on the grounds that it is subject to attorney-client privilege or any other privilege, such fact should be stated in the answer and the alleged ground of privilege should be identified.

The following definitions are applicable herein:

1. The terms “you”, “yours”, “IP Application Development”, “Apple Inc.”, and “Applicant” mean and refer to both Applicant, IP Application Development LLC and Apple Inc., and any of its licensees, employees, agents, parents, affiliates, subsidiaries, divisions, members, affiliate business entities, advisors, attorneys, representatives, heirs, assigns, family members, or any person acting or purporting to act on her behalf, and any predecessors in business, officers, directors, agents, employees, representatives, and attorneys for Applicant all to the fullest extent the context permits.

2. The term “RxD” or “Opposer” means Opposer, RxD Media, LLC and any of its parents, subsidiaries, affiliates, divisions, agents, officers, directors, employees, shareholders, attorneys, assigns, representatives, predecessors, and successors, past, present, or future, in their individual or representative capacities.

3. The term “person” means natural persons as well as corporate or other business entities (including, partnerships, groups, associations, governmental entities, and organizations.)

4. The term “document” or “documents” as used herein shall be defined to the broadest extent permitted by Fed. R. Civ. P. 34 and includes, whenever applicable and without limitation, the originals (absent any original, a copy) of any recordation of any intelligence or information, whether handwritten, typed, printed or otherwise visually or aurally reproduced, letters, compilations, data, notebooks, laboratory notebooks, work papers, graphs, charts, blueprints, books, pamphlets, brochures, circulars, manuals, instructions, ledgers, drawings (including engineering, assembly, and detail drawings), sketches, photographs, diaries, sales literature, advertising literature, agreements, minutes of meetings, punch cards, magnetic tape or wire, other machine producible records including films, computer disks and files, videotapes and

sound reproductions, printout sheets, summaries or records of telephone conversations, personal conversations or interviews, electronic mail, and any and all other writings, typings, printings, drafts, copies and/or mechanical or photographic reproductions or recordations thereof in the possession, custody or control of Applicant and/or any of its representatives, or known to any of its representatives, or known to any of the foregoing, whether or not prepared by them. “Document” or “documents” also includes all copies which are not identical to the originals, such as those bearing marginal comments, alterations, notes or other notations not present on the original document as originally written, typed or otherwise prepared.

5. When any original, draft, copy or reproduction of any document responsive to any discovery request contains or has been revised to include any postscript, notation, change, amendment or addendum not appearing on the document itself as originally written, typed or otherwise prepared, identify each such revised original, draft, copy or reproduction.

6. The term “identify” as used herein means:

- (a) In the case of a natural person, to state for each person his or her:
  - (i) full name;
  - (ii) present residence address and telephone number;
  - (iii) present business address and telephone number;
  - (iv) present position, business affiliation, and job description; and
  - (v) if any of the information set forth in (i)-(v) is unknown, so state and set forth the corresponding last known such information.
- (b) In the case of a corporation or other business entity, to state for each corporation or business entity:
  - (i) its full name;

- (ii) its legal form (i.e. corporation, partnership, etc.) and the state of incorporation or legal formation;
  - (iii) its address and principal place of business;
  - (iv) the identity of officers or other persons having knowledge of the matter with respect to which the corporation or other business entity is named; and
  - (v) the basis for its inclusion in Applicant's response.
- (c) In the case of a document, to state for each document:
- (i) the identity of the person(s) originating and preparing it and the sender(s);
  - (ii) the general type of document (e.g., letter, memo, report, invoice, etc.), any identifying number(s), and the general nature of the subject matter;
  - (iii) the identity of the addressees and distributees;
  - (iv) any date(s) reflected on the document;
  - (v) its date and manner of transmission, distribution, and publication;
  - (vi) the location of each copy (including title, index number, and location of the file in which it is kept or from which it was removed) and the identity of the present custodian(s) or person(s) responsible for its filing or other disposition; and
  - (vii) the identity of person(s) who can authenticate or identify it.

7. As used herein, “and” as well as “or” shall be construed either disjunctively or conjunctively as necessary in order to bring within the scope of the request all documents and things which might otherwise be construed to be outside its scope.

8. As used herein, the singular shall always include the plural, and the present tense shall always include the past tense.

9. The term “thing” as used herein refers to any tangible object other than a document, and includes objects of every kind and nature, such as, but not limited to, prototypes, models, specimens, computer disks and tapes, computer hard drive files, videotapes, and audiotapes.

10. The term “Opposition” or “Oppositions” refers to 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 “Answer” refers to the Answers filed by Applicant in relation to the Oppositions.

12. The term “Applicant’s mark” or “Applicant’s marks” refers to Serial Nos. 77/927446 and 77/913563.

13. The term “Opposer’s mark” refers to Serial No. 7795800 for the mark IPAD.

14. The term “communication” includes any contact or act by which any information or knowledge is transmitted or conveyed between two or more persons, by whatever means accomplished, and includes written contact such as correspondence, letters, notes, advertisements, proposals, solicitations, memoranda, telegrams, facsimiles, emails, or electronic file transfers, and oral transmission and conveyance of information, including face-to-face meetings, telephone conversations, and video conferences.

15. The term “relating to” means concerning, constituting, describing, evidencing, consisting of, referring to, pertaining to, reflecting, or in any way logically or factually connected with the matter discussed, in whole or part, directly or indirectly.

16. To the extent you refuse to respond to any request, in whole or in part, on grounds of privilege, identify the withheld document or communication on a privilege log stating: (i) the identity of the person(s) who prepared or authored the document or took part in the communication; (ii) the person(s) to whom the document was shown or otherwise disclosed; (iii) the date(s) on which the document was prepared and disseminated, or on which the communication transpired or was disclosed; (iv) the general subject matter of the document or communication; (v) the nature of the document or communication (*e.g.*, telephone conference, office conference); and (vi) the basis for the claim of privilege or withholding. Any redactions to documents shall be prominently identified with a mark indicating the location and size of the redacted area.

## **INTERROGATORY REQUESTS**

### **INTERROGATORY NO. 1**

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

**Response:**

### **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:**

**INTERROGATORY NO. 3**

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

**Response:**

**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:**

**INTERROGATORY NO. 5**

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

**Response:**

**INTERROGATORY NO. 6**

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

**Response:**

**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:**

**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:**

**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:**

**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:**

**INTERROGATORY NO. 11**

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

**Response:**

**INTERROGATORY NO. 12**

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

**Response:**

**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:**

**INTERROGATORY NO. 14**

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

**Response:**

**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:**

**INTERROGATORY NO. 16**

Identify any expert witness that Applicant intends to obtain testimony from in this proceeding, and state the substance of the expected testimony from the identified expert.

**Response:**

**INTERROGATORY NO. 17**

Identify each fact witness that Applicant plans to call as a witness in this proceeding and state the substance of the testimony expected from each such witness.

**Response:**

**INTERROGATORY NO. 18**

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

**Response:**

**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:**

**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:**

**REQUEST FOR PRODUCTION NO. 3**

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

**Response:**

**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:**

**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:**

**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:**

**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:**

**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:**

**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:**

**REQUEST FOR PRODUCTION NO. 10**

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

**Response:**

**REQUEST FOR PRODUCTION NO. 11**

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

**Response:**

**REQUEST FOR PRODUCTION NO. 12**

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

**Response:**

**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:**

**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:**

**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:**

**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:**

**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:**

**REQUEST FOR PRODUCTION NO. 18**

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

**Response:**

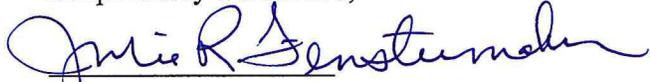
**REQUEST FOR PRODUCTION NO. 19**

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:**

Dated: February 14, 2013

Respectfully Submitted,



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Attorneys for Opposer RxD Media, LLC.

**CERTIFICATE OF SERVICE**

The undersigned certifies that on February 14, 2013, a true and correct copy of the foregoing OPPOSER RXD MEDIA, LLC'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT was served via first class U.S. mail and via e-mail on the following:

Glenn A. Gundersen  
Dechert LLP  
CIRA Centre  
2929 Arch Street  
Philadelphia, PA 19104-2808



Attorney for Opposer  
RXD MEDIA, LLC

**EXHIBIT B**

**REDACTED IN FULL**

**EXHIBIT C**

**REDACTED IN FULL**

## **EXHIBIT D**

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

<b>RXD MEDIA, LLC</b>	:	
	:	
<b>Opposer</b>	:	
	:	
<b>v.</b>	:	<b>Opposition No. 91207333</b>
	:	<b>91207598</b>
<b>IP APPLICATION DEVELOPMENT LLC,</b>	:	
	:	
<b>Applicant.</b>	:	
<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](mailto:ckey@dimuro.com)  
e-mail: [ssakagami@dimuro.com](mailto: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](mailto:glenn.gundersen@dechert.com)

*Attorneys for IP Application Development LLC*

*/s/ Cecil E. Key* \_\_\_\_\_  
Cecil E. Key

**EXHIBIT E**

**REDACTED IN FULL**

# **EXHIBIT F**

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

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

**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](mailto:ckey@dimuro.com)

e-mail: [ssakagami@dimuro.com](mailto: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](mailto:glenn.gundersen@dechert.com)

*Attorneys for IP Application Development LLC*

*/s/ Cecil E. Key* \_\_\_\_\_  
Cecil E. Key

**EXHIBIT G**

**REDACTED IN FULL**

**EXHIBIT H**

**REDACTED IN FULL**

# **EXHIBIT I**

UNITED STATES DISTRICT COURT

for the

Northern District of California

RxD Media, LLC

Plaintiff

v.

IP Application Development LLC

Defendant

Civil Action No. TTAB No. 9120733/91207598

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Apple, Inc.
c/o CT Corporation System, Registered Agent, 818 7th Street, Suite 930, Los Angeles, CA 90017
(Name of person to whom this subpoena is directed)

Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment: See attachment A

Table with 2 columns: Place (388 Market Street, Suite 1300 San Francisco, CA 94111) and Date and Time (11/06/2015 3:00 pm)

The deposition will be recorded by this method: Stenographic Means

Production: You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 10/19/2015

CLERK OF COURT

OR

/s/ Andrew S. Dallmann

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) RxD Media, LLC, who issues or requests this subpoena, are: Andrew Dallmann, 2603 Main Street, Suite 200, Irvine, CA 92618, asd@burchdallmann.com, (949) 271-9042

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. TTAB No. 9120733/91207598

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* \_\_\_\_\_  
on *(date)* \_\_\_\_\_.

I served the subpoena by delivering a copy to the named individual as follows: \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the subpoena unexecuted because: \_\_\_\_\_  
\_\_\_\_\_.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also  
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of  
\$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_  
\_\_\_\_\_  
*Server's signature*  
\_\_\_\_\_  
*Printed name and title*  
\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc.:

**Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**

**(c) Place of Compliance.**

**(1) For a Trial, Hearing, or Deposition.** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
  - (i) is a party or a party's officer; or
  - (ii) is commanded to attend a trial and would not incur substantial expense.

**(2) For Other Discovery.** A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

**(d) Protecting a Person Subject to a Subpoena; Enforcement.**

**(1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

**(A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

**(B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(e) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(g) Contempt.**

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

## 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. The facts and circumstances surrounding the consideration, selection, adoption and/or development of the IPAD Mark, including the facts and circumstances surrounding any investigation or searches conducted by Apple to identify whether or not the IPAD Mark had been or was being used by others on or before January 16, 2010.

2. Any plans or efforts by Apple 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.

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

4. Any instances of confusion, mistake or deception between the source of Apple's goods or services under the IPAD Mark and others, and any responses or procedures by Apple regarding the same.

5. 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.

6. Authentication of documents produced in response to Opposer's subpoena *duces tecum* on Apple.

**EXHIBIT J**

**REDACTED IN FULL**

# **EXHIBIT K**

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

In re the matter of Application Serial No. 77/927,446

Mark: IPAD

Published in the *Official Gazette* on April 10, 2012

RXD MEDIA, LLC	:	
	:	
Opposer	:	
	:	
v.	:	Opposition No. 91207333
	:	
IP APPLICATION DEVELOPMENT LLC	:	
	:	
Applicant.	:	

**APPLICANT’S FIRST SET OF REQUESTS FOR PRODUCTION**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant IP Application Development LLC, by its counsel, hereby requests that Opposer RXD Media, LLC respond to the following Requests separately and fully in writing within 30 days. Applicant further requests that Opposer produce and permit the inspection and copying of the documents described in the following Requests at the offices of Dechert LLP, at Cira Centre, 2929 Arch Street, Philadelphia, Pennsylvania, or at such other time and place as is mutually agreeable to counsel for the parties.

**DEFINITIONS**

The following definitions are applicable to terms employed in these Requests, in the Instructions accompanying these Requests and in these Definitions.

A. The term “person” refers to natural persons, organizations, associations, partnerships, joint ventures, corporations and other legal entities, and the actions taken by a

person include the actions of his or her or its partners, employees, agents, representatives, consultants, independent contractors, attorneys, or accountants acting on the person's behalf.

B. The words "and" and "or" shall be construed in both the conjunctive and disjunctive.

C. Any word that is used in the singular shall be construed to include the plural and vice versa.

D. The word "all" means "any and all," the word "any" means "any and all."

E. The terms "refer" and "relate" and "reference" mean directly or indirectly mentioning, discussing, describing, pertaining to or connected with, a stated subject matter.

F. The term "document" is used in its customary broad sense and encompasses, without limitation, all handwritten, typed, printed or otherwise visually or aurally reproduced materials, whether copies, drafts or originals, and irrespective of whether they are privileged against discovery on any ground, or within the possession, custody or control of Applicant, or its employees, agents, representatives, consultants, independent contractors, attorneys, or accountants, including but not limited to: letters, correspondence, cables, wires, facsimiles, telegrams, notes, memoranda, diaries, e-mails and other electronic messages, notes or records of telephone conversations, notes or records of personal conversations or interviews, interoffice and intraoffice communications of all types, drawings, plans, sketches, charts, notebooks, data, photographs, movies and recordings, books, catalogs, labels, packaging, containers, tags, advertisements, promotional materials, storyboards, press releases, reports, studies, questionnaires, assignments, agreements and other official papers and legal instruments, management reports, project reports, and minutes and reports of meetings, lists of persons

attending meetings, bills, invoices, orders, books, records, files, published material of any kind, and microfilms of documents that may have been destroyed.

Any copy of a document containing or having attached to it any alterations, notes, comments or other material not included in the original document shall be deemed a separate document.

G. “Opposer” refers to RXD Media, LLC, its predecessors, and the directors, officers, employees, agents, attorneys, consultants, independent contractors and representatives of RXD Media, LLC or its predecessors. It also refers to all Affiliated Companies as well as the directors, officers, employees, agents, attorneys, consultants and representatives of such Affiliated Companies. Where use of a mark is concerned, “Opposer” also means all of Opposer’s past and present licensees and all others who use, have used, or intend to use such mark with Opposer’s consent or under Opposer’s control or authority

H. The term “Affiliated Companies” means all companies, organizations, partnerships, and other legal entities that are wholly or partly owned or controlled by RXD Media, LLC, either directly or indirectly.

I. The term “Mark” means all forms of trademarks and trade names, including without limitation service marks, fictitious names, corporate and business names, logos, designs, trade dress and devices.

J. The term “Opposer’s IPAD Mark” refers to the mark that is set forth in U.S. Application Serial No. 77/958,000 and any other mark Opposer has used in the United States that contains the term “IPAD.”

K. The term “Applicant’s IPAD Mark” refers to any mark that Applicant and/or its licensees has used in the United States that contains the term “IPAD.”

L. The term “use” means the definition for “use in commerce” given in Section 45 of the Trademark Act of 1946 (15 U.S.C. § 1127).

### INSTRUCTIONS

These Requests are intended to cover all documents in the possession, custody, or control of Opposer, wherever such documents are located, including, but not limited to, Opposer’s principal place of business, any other place of business maintained or used by Opposer or its Affiliated Companies or their respective officers, directors, employees, agents, representatives, consultants, independent contractors, attorneys, or accountants, or any other locations where documents are kept.

These Requests are continuing. If Opposer discovers or locates any documents that were not or could not be produced for the reasons discussed above, or for any other reason, or, if Opposer discovers any additional documents that are covered by any of these Requests, Opposer should immediately notify Applicant’s counsel and make such documents available for inspection and copying.

### DOCUMENT REQUESTS

**Request No. 1.** Documents sufficient to show the use of Opposer’s IPAD Mark in the United States in each calendar year from 2007 through present in connection with the services described in U.S. Application Serial No. 77/958,000.

**Request No. 2.** Documents sufficient to show the use of Opposer’s IPAD Mark in the United States in each calendar year from 2007 through present in connection with goods and services other than the services described in U.S. Application Serial No. 77/958,000.

**Request No. 3.** Copies of any licenses or other agreements whereby Opposer has licensed another person to use Opposer’s IPAD Mark on or in connection with that person’s goods or services, and documents sufficient to show the use of Opposer’s IPAD Mark in the United States by each such licensee in each calendar year from 2007 through present.

**Request No. 4.** Documents sufficient to show the amount of gross revenue that Opposer earned in each calendar year from 2007 through present from the provision of goods or services in the United States under Opposer’s IPAD Mark.

**Request No. 5.** Documents sufficient to show the number of customers or users of goods or services in the United States under Opposer's IPAD Mark in each calendar year from 2007 through present from the provision.

**Request No. 6.** Documents sufficient to show the total amount that Opposer spent in each calendar year from 2007 through present on advertising, marketing, and promoting goods or services in the United States under Opposer's IPAD Mark.

**Request No. 7.** For each year from 2007 through present, a representative printout of each website directed to United States residents where Opposer offered goods or services in connection with Opposer's IPAD Mark.

**Request No. 8.** For each year from 2007 through present, a representative printout of each website directed to United States residents where Opposer's goods or services were advertised or promoted in connection with Opposer's IPAD Mark.

**Request No. 9.** For each year from 2007 through present, a representative sampling of advertisements and other advertising, marketing, and promotional materials for Opposer's goods or services provided in the United States under Opposer's IPAD Mark.

**Request No. 10.** All documents created by or for Opposer containing the term "internet notepad" in reference to goods or services provided by Opposer in the United States under Opposer's IPAD Mark.

**Request No. 11.** All newspaper, magazine, periodical, and blog articles, television or radio reports, or other media coverage published in the United States mentioning Opposer's IPAD Mark.

**Request No. 12.** All business plans prepared by Opposer or on Opposer's behalf related to the provision of goods or services in the United States under Opposer's IPAD Mark.

**Request No. 13.** All documents referring to market research related to Opposer's IPAD Mark or the provision of goods or services in the United States under Opposer's IPAD Mark.

**Request No. 14.** All documents relating to instances in which any third parties have made any inquiry or statement to Opposer regarding Applicant's IPAD Mark, and/or Opposer's relationship or affiliation with Applicant or Apple Inc.

**Request No. 15.** All documents relating to Opposer's first awareness of Applicant's IPAD Mark.

**Request No. 16.** All documents relating to Opposer's first awareness of any goods or services that Applicant and/or Apple Inc. intended to provide in the United States under Applicant's IPAD Mark.

**Request No. 17.** All documents relating to Opposer's first awareness of any of Applicant's applications for U.S. trademark registration of Applicant's IPAD Mark.

**Request No. 18.** All documents that Opposer identified in its responses to Applicant's First Set of Interrogatories.

Date: December 17, 2012

Attorneys for Applicant  
IP Application Development LLC

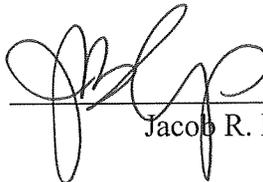


---

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 Applicant's First Set of Requests for Production 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

# **EXHIBIT L**

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

<b>RXD MEDIA, LLC,</b>	:	
	:	
<b>Opposer,</b>	:	
	:	
v.	:	<b>Opposition Nos. 91207333</b>
	:	<b>91207598</b>
<b>IP APPLICATION DEVELOPMENT LLC,</b>	:	
	:	
<b>Applicant.</b>	:	
	:	
	:	
	:	

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**APPLICANT IP APPLICATION DEVELOPMENT LLC’S SECOND SET OF  
REQUESTS TO OPPOSER RXD MEDIA, LLC FOR THE PRODUCTION AND  
INSPECTION OF DOCUMENTS AND THINGS**

PLEASE TAKE NOTICE that pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Applicant IP Application Development LLC (hereinafter referred to as “IPAD LLC”), by its counsel, hereby requests that Opposer RXD Media, LLC produce for examination, inspection, and copying by IPAD LLC, its attorneys or others acting on its behalf, the documents and things set forth below at the offices of IPAD LLC’s attorneys, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, no later than thirty (30) days after service of these requests.

**DEFINITIONS**

Unless otherwise defined, all words and phrases used herein shall be accorded their usual meaning and shall be interpreted in their common, ordinary sense. As used in these requests, the words set forth below shall be defined as follows:

1. The term “ADVERTISEMENT” means and refers to a commercial message or advertisement in any medium, including but not limited to television, radio, movies, magazines,

newspapers, brochures, the Internet, point-of-purchase displays, signages, billboard, <http://ipad.mobi>, any of the websites owned by OPPOSER, and any other website.

2. The term “AFFILIATED COMPANIES” means and refers to all companies, organizations, partnerships, and other legal entities that are wholly or partly owned or controlled by RXD Media, LLC, either directly or indirectly.

3. The term “APPLE” means and refers to the non-party Apple Inc.

4. The term “APPLICANT” refers to IP Application Development LLC.

5. The term “APPLICANT’S APPLICATIONS” means and refers to APPLICANT’S U.S. Application Serial Nos. 77/927446 and 77/913563.

6. The term “APPLICANT’S MARK” means and refers to any mark that APPLICANT, including its licensees, has used in the United States that contains the term “IPAD.”

7. The terms “CONCERNING” and “REFERRING AND RELATING TO” should be construed in the broadest possible sense to mean referring, regarding, containing, identifying, monitoring, constituting, reflecting, embodying, comprising, stating, dealing with, commenting on, responding to, analyzing, describing, consisting of, discussing, evidencing, mentioning, pertaining to, citing, summarizing, or bearing any logical or factual connection with the matter discussed, as these terms are understood in the broadest sense.

8. The term “COMMUNICATION(S)” refers to all forms of contact, oral, electronic, or written, formal or informal, direct or indirect, at any time or place, and under any circumstances whatsoever, whereby information of any nature was transmitted, transferred, or recorded.

9. The term “DOCUMENT(S)” means and refers to any written, printed, typed, recorded or graphic matter, however produced, reproduced or stored, including the originals and all non-identical copies, whether different from the originals by reason of any notations made on such copies or otherwise, in the actual or constructive possession, custody or control of OPPOSER including, but not limited to, COMMUNICATIONS, contracts, letter agreements, e-mails, electronically stored information, records, correspondence, memoranda, handwritten notes, records or summaries of negotiations, records or summaries of interviews or conversations, audio or video recordings, all web-based media, photographs, corporate minutes, diaries, telephone logs, schedules, drawings, statistical statements, work papers, disks, data cards, films, data processing files, charts, graphs, microfiche, microfilm, contracts, notices, reports, recitals, statements, worksheets, abstracts, resumés, summaries, jottings, market data, books, journals, ledgers, audits, maps, diagrams, research documents, newspapers, appointment books, desk calendars, expense reports, computer printouts and other computer readable records, and all drafts or modifications thereof, and all non-identical copies of any such items. Any such DOCUMENT bearing on any sheet or part thereof any marks such as initials, stamped indices, comments or notations or any character or characters which are not part of the signed text or photographic reproduction thereof is to be considered as a separate DOCUMENT. Where there is any question about whether a tangible item otherwise described in these requests falls within the definition of “DOCUMENT(S),” such tangible item shall be produced. Any copy of a DOCUMENT containing or having attached to it any alterations, notes, comments or other material not included in the original document shall be deemed a separate DOCUMENT

10. The term “IPAD MARK” means and refers to any mark that any party has used in the United States that contains the term “IPAD.”

11. The term “NOTICES OF OPPOSITION” means and refers to the two Notices of Opposition filed by OPPOSER against APPLICANT’S APPLICATIONS on October 5, 2012 and October 23, 2012, respectively.

12. The term “OPPOSER” refers to RxD Media, LLC, its predecessors, and the directors, officers, employees, agents, attorneys, consultants, independent contractors, and representatives of RxD Media, LLC or its predecessors. It also refers to all AFFILIATED COMPANIES as well as the directors, officers, employees, agents, attorneys, consultants and representatives of such AFFILIATED COMPANIES. Where use of a mark is concerned, “OPPOSER” also means all of OPPOSER’s past and present licensees and all others who use, have used, or intend to use such mark with OPPOSER’s consent or under OPPOSER’s control or authority

13. The term “OPPOSER’S APPLICATION” means and refers to OPPOSER’s U.S. Application Serial No. 77/958,000.

14. The term “OPPOSER’S INITIAL DISCLOSURES” means and refers to OPPOSER’s Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1), including any amendments thereto.

15. The term “PERSON” means and refers to natural persons, organizations, associations, partnerships, joint ventures, corporations and other legal entities, and the actions taken by a person include the actions of his, her or its partners, employees, agents, representatives, consultants, independent contractors, attorneys, or accountants acting on the person’s behalf.

16. The term “PURPORTED MARK” means and refers to the IPAD MARK allegedly used by OPPOSER that is set forth in U.S. Application Serial No. 77/958,000 and any other mark Opposer has used in the United States that contains the term “IPAD.”

17. The term “THESE PROCEEDINGS” means and refers to the proceedings in Opposition Nos. 91207333 and 91207598.

18. The term “USE” means and refers to the definition of “use in commerce” given in Section 45 of the Trademark Act of 1946 (15 U.S.C. § 1127).

19. The words “and” and “or” shall be construed both conjunctively and disjunctively, and each shall include the other wherever such dual construction will serve to bring within the scope of a request any DOCUMENTS which otherwise would not be brought within its scope.

20. “Any” and “all” are mutually interchangeable and are meant to encompass each other.

21. The singular includes the plural and vice versa.

22. The past tense shall be construed to include the present tense and vice versa.

23. The terms “refer,” “relate,” and “reference” mean directly or indirectly mentioning, discussing, describing, pertaining to or connected with, a stated subject matter.

### **INSTRUCTIONS**

1. These requests are intended to cover all DOCUMENTS in OPPOSER’S possession, custody or control, whether located at any of OPPOSER’S offices, or at the offices of OPPOSER’S successors or assigns, accountants, agents, employees, directors, officers, representatives, attorneys, assistants, bankers, brokers, or others, or at any other place. If any

DOCUMENT was, but is no longer, in OPPOSER'S possession or subject to OPPOSER'S control, or in existence, state whether it (i) is missing or lost; (ii) has been destroyed; (iii) has been transferred, voluntarily or involuntarily, to others (and if so, to whom); or (iv) has been disposed of in some other manner. If OPPOSER has reason to believe a responsive DOCUMENT is in the possession of a third party, state (i) the basis for this belief; (ii) the party believed to be in possession of the responsive DOCUMENT(S); (iii) where OPPOSER believes the responsive DOCUMENT(S) may be located; and (iv) other information as is sufficient to identify the DOCUMENT(S) for a subpoena *duces tecum*.

2. The production should include every DOCUMENT above defined known to OPPOSER and every such DOCUMENT which can be located or discovered by reasonably diligent efforts by OPPOSER.

3. If any of the requested DOCUMENTS cannot be disclosed or produced in full, produce the DOCUMENTS to the extent possible, and specify OPPOSER's reasons for its inability to produce the remainder, stating whatever information, knowledge or belief OPPOSER has CONCERNING the unproduced portions.

4. If any of the DOCUMENTS requested below are claimed to be privileged or are otherwise withheld, OPPOSER is requested to provide a privilege log which identifies: (i) the basis for asserting the claim of privilege, and the precise ground on which the DOCUMENT is withheld; (ii) the type of DOCUMENT; (iii) the identity of the DOCUMENT'S author(s) and its addressee(s), and every PERSON who prepared or received the DOCUMENT or any portion thereof; (iv) the relationship of its author(s) and its addressee(s); (v) the title and other identifying data of the DOCUMENT; (vi) the date of the DOCUMENT; (vii) the subject matter

of the DOCUMENT and/or any attachment(s) to the DOCUMENT; (viii) the number of pages comprising the DOCUMENT; and (ix) whether the DOCUMENT is typewritten or handwritten.

5. If a DOCUMENT responsive to a request has been lost or destroyed, it should be identified as follows: (i) preparer, addressor (if different); (ii) addressee; (iii) each recipient and each PERSON to whom distributed or shown; (iv) date prepared; (v) date transmitted (if different); (vi) date received; (vii) description of contents and subject matter; (viii) date of destruction; (ix) manner of destruction; (x) name, title and address of the PERSON who directed that the DOCUMENT be destroyed and (if different) the PERSON who destroyed the DOCUMENT; (xi) the reason for the destruction of the DOCUMENT; (xii) the names of PERSONS having knowledge of the destruction; and (xiii) a full description of the efforts made to locate the DOCUMENT.

6. The DOCUMENTS or other things responsive to the requests shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond to the request to which they are responsive.

7. All electronically stored information responsive to a request shall be produced in TIFF format with all corresponding metadata and any extracted character or character recognition information. In addition, APPLICANT reserves the right to request particular electronically stored information in another format, including native file format.

8. Any DOCUMENT responsive to a request should be produced in and with a file folder and other DOCUMENT (*e.g.*, envelope, file cabinet marker) in or with which the DOCUMENT was located when this request was served.

9. All pages of any DOCUMENT(s) now stapled or fastened together should be produced stapled or fastened together.

10. If it is otherwise not possible to produce any DOCUMENT called for by any request, or if any part of any request is objected to, the reasons for the objection should be stated with specificity as to all grounds and, for the convenience of the Court and the parties, each request should be quoted in full immediately preceding the objection.

11. These requests for DOCUMENTS and things shall be deemed continuing and require further and supplemental production by OPPOSER as and whenever OPPOSER acquires, makes, or locates additional DOCUMENTS or things between the time of the initial production and the time of final judgment in this action.

#### **DOCUMENTS TO BE PRODUCED**

19. All COMMUNICATIONS between, among, or by Ben Clements and/or Keith Clements and/or Brian Clements CONCERNING or REFERRING AND RELATING TO the PURPORTED MARK, APPLICANT'S MARK, APPLICANT, APPLE, or THESE PROCEEDINGS.

20. All DOCUMENTS CONCERNING or REFERRING AND RELATING TO OPPOSER'S actual or contemplated USE of an "ipad.mobi" logo that depicts a writing pen in the place of the first "i" in "ipad.mobi."

21. DOCUMENTS sufficient to show all advertising, marketing, or promotions depicting the IPAD MARK, including but not limited to (a) copies of all ADVERTISEMENTS, (b) DOCUMENTS sufficient to show the dates all ADVERTISEMENTS appeared, (c) in what outlet the ADVERTISEMENTS appeared, (d) the circulation of each ADVERTISEMENT, and (e) the cost of each ADVERTISEMENT.

22. All DOCUMENTS CONCERNING or REFERRING AND RELATING TO APPLICANT, APPLE, APPLICANT'S MARK, or THESE PROCEEDINGS.

23. ALL DOCUMENTS CONCERNING or REFERRING AND RELATING TO actual or potential confusion as to the origin, sponsorship, affiliation, connection, and/or association of any products or services bearing the PURPORTED MARK, on the one hand, and products and services bearing APPLICANT'S MARK, on the other hand.

24. All DOCUMENTS CONCERNING or REFERRING AND RELATING TO OPPOSER's claim in paragraphs 1-2 and 6 of its NOTICES OF OPPOSITION that it has used the PURPORTED MARK "[s]ince at least as early as September 1, 2007."

25. All DOCUMENTS CONCERNING or REFERRING AND RELATING TO OPPOSER's claims as alleged in paragraph 6 of its NOTICES OF OPPOSITION that it "has priority with respect to the" IPAD MARK.

26. All DOCUMENTS CONCERNING or REFERRING AND RELATING TO OPPOSER's claims as alleged in paragraph 7 of its NOTICES OF OPPOSITION, including but not limited to OPPOSER's claim that the services identified in APPLICANT'S APPLICATION "will be or are currently offered through channels of distribution that are common to those of Opposer."

27. All DOCUMENTS CONCERNING or REFERRING AND RELATING TO OPPOSER's claims as alleged in paragraph 8 of its NOTICES OF OPPOSITION that APPLICANT'S MARK is "likely to cause confusion" and "mistake or to deceive within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d)," and that it is likely "to deceive the trade and purchasing public into believing that Applicant's services and Opposer's services originate with or otherwise are authorized, licensed, or sponsored by the same source."

28. All DOCUMENTS CONCERNING or REFERRING AND RELATING TO OPPOSER's claims as alleged in paragraph 8 of its NOTICES OF OPPOSITION that any alleged confusion between APPLICANT'S MARK and the PURPORTED MARK "may result in loss of customers and sales by Opposer."

29. All DOCUMENTS CONCERNING or REFERRING AND RELATING TO the alleged strength of the PURPORTED MARK in each year from 2007 to the present.

30. All DOCUMENTS CONCERNING or REFERRING AND RELATING TO any expert witness in THESE PROCEEDINGS, including but not limited to COMMUNICATIONS that (i) relate to compensation of any such witness's study or testimony; (ii) identify facts or data that OPPOSER's attorney provided and that such expert considered in forming the opinion to be expressed; and (iii) identify assumptions that OPPOSER's attorney provided and that such expert relied on in forming the opinions to be expressed, as provided by Federal Rule of Civil Procedure 26(b)(4)(C).

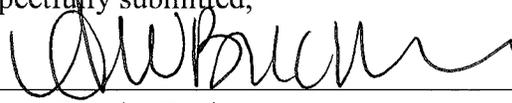
31. All DOCUMENTS that OPPOSER intends to rely on to support its claims in THESE PROCEEDINGS.

32. All DOCUMENTS relied upon or otherwise consulted in preparing OPPOSER'S INITIAL DISCLOSURES.

33. All COMMUNICATIONS with any website developer, including but not limited to David Wiles, regarding the website located at <http://ipad.mobi> or the PURPORTED MARK.

DATED: January 6, 2016

Respectfully submitted,



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Allison Worthy Buchner  
KIRKLAND & ELLIS LLP  
333 South Hope Street  
Los Angeles, California 90071  
Telephone: (213) 680-8400  
Facsimile: (213) 680-8500  
allison.buchner@kirkland.com

Dale Cendali  
Claudia Ray  
KIRKLAND & ELLIS LLP  
601 Lexington Avenue  
New York, New York 10022  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900  
dale.cendali@kirkland.com  
claudia.ray@kirkland.com

Attorneys for Applicant IP Application  
Development LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on January 6, 2016, I caused a true and correct copy of the foregoing APPLICANT IP APPLICATION DEVELOPMENT LLC'S SECOND SET OF REQUESTS TO OPPOSER RXD MEDIA, LLC FOR THE PRODUCTION AND INSPECTION OF DOCUMENTS AND THINGS to be served via email and Federal Express upon the following individuals:

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



---

Allison Buchner

# **EXHIBIT M**



These Interrogatories are continuing. If Opposer discovers or locates any information that was not or could not be produced for the reasons discussed above, or for any other reason, or, if Opposer discovers any additional information that is covered by any of these Interrogatories, Opposer should immediately notify Applicant's counsel and supplement its responses to these Interrogatories.

### INTERROGATORIES

**Interrogatory No. 1.** For each calendar year from 2007 through the present, provide a detailed description of the use (as defined in paragraph L of Applicant's First Set of Document Requests) that Opposer made of Opposer's IPAD Mark during that year.

**Interrogatory No. 2.** Identify the amount of gross revenue that Opposer earned in each calendar year from 2007 through present from the provision of goods or services that were offered or provided in the United States under Opposer's IPAD Mark.

**Interrogatory No. 3.** For each calendar year from 2007 through present, identify the total amount that Opposer spent in advertising for goods or services that were offered or provided by Opposer in the United States under Opposer's IPAD Mark.

**Interrogatory No. 4.** Identify the date that Opposer first became aware of Applicant's IPAD Mark, identify the date that Opposer first became aware of any goods or services that Applicant and/or Apple Inc. intended to provide in the United States under Applicant's IPAD Mark, and in each case identify the individual employees of Opposer who first became aware.

**Interrogatory No. 5.** Identify all third party individuals or entities to which Opposer provided goods or services in the United States under Opposer's IPAD Mark from 2007 through present.

Date: December 17, 2012

Attorneys for Applicant  
IP Application Development LLC

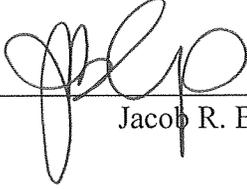


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Glenn A. Gundersen  
Christine M. Hernandez  
Jacob R. Bishop  
Dechert LLP  
Cira Centre, 2929 Arch Street  
Philadelphia, PA 19104-2808  
Telephone: 215-994-2183

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Applicant's First Set of Interrogatories 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

**EXHIBIT N**

**REDACTED**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE	
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD	
RXD MEDIA, LLC,	)
	)
Opposer,	)
	)
vs.	) Opposition No. 91207333
	) 91207598
IP APPLICATION DEVELOPMENT	)
LLC,	)
	)
Applicant.	)
_____	)

TRADE SECRET AND COMMERCIALY SENSITIVE

UNDER PROTECTIVE ORDERS

VIDEOTAPED 30 (b) (6) DEPOSITION OF APPLE INC.

DESIGNEE: THOMAS R. LaPERLE

Palo Alto, California

Thursday, December 10, 2015

Reported By:

Jenny L. Griffin, CSR 3969

Job No.: 10020805

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD  
  
RXD MEDIA, LLC, )  
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Opposer, )  
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vs. ) Opposition No. 91207333  
 ) 91207598  
IP APPLICATION DEVELOPMENT )  
LLC, )  
 )  
Applicant. )  
\_\_\_\_\_ )

Videotaped deposition of THOMAS R. LaPERLE, taken on  
behalf of Opposer, at Kirkland & Ellis, 3330  
Hillview Avenue, Palo Alto, California, commencing  
at 9:00 a.m., Thursday, December 10, 2015, before  
Jenny L. Griffin, RMR, CRR, CSR 3969.



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A. Yes.

[REDACTED]

MS. CENDALI: Counsel, we had taken a break -- I don't want to interrupt you, but we had taken a break because you were trying to see if you could get an answer to a question, something to the

1 Q. Has IP Application Development ever filed  
2 any trademark applications for any marks other  
3 than iPad?

4 A. I'm going to have to check.

5 Q. But you don't recall?

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

11 MS. CENDALI: And, Counsel, just to be  
12 clear, this would be outside the scope, as we had  
13 objected on anything other than the applications at  
14 issue. I think it's all a matter of public record.

15 MR. KEY: Okay.

16 MS. CENDALI: But that's fine.

17 BY MR. KEY:

18 Q. So let's go back to the question as to --  
19 that counsel mentioned.

20 So Slate Computing filed an application in  
21 Trinidad and Tobago to register the mark IPAD;  
22 correct?

23 A. Correct.

24 [REDACTED]  
25 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]

6 A. At that point we -- well, may I back up  
7 and give a little bit of context to the --

8 Q. Please. Please.

9 MS. CENDALI: Again, Counsel, I assume we  
10 have an agreement that he can talk about the  
11 business issues without this constituting any  
12 waiver of the privilege.

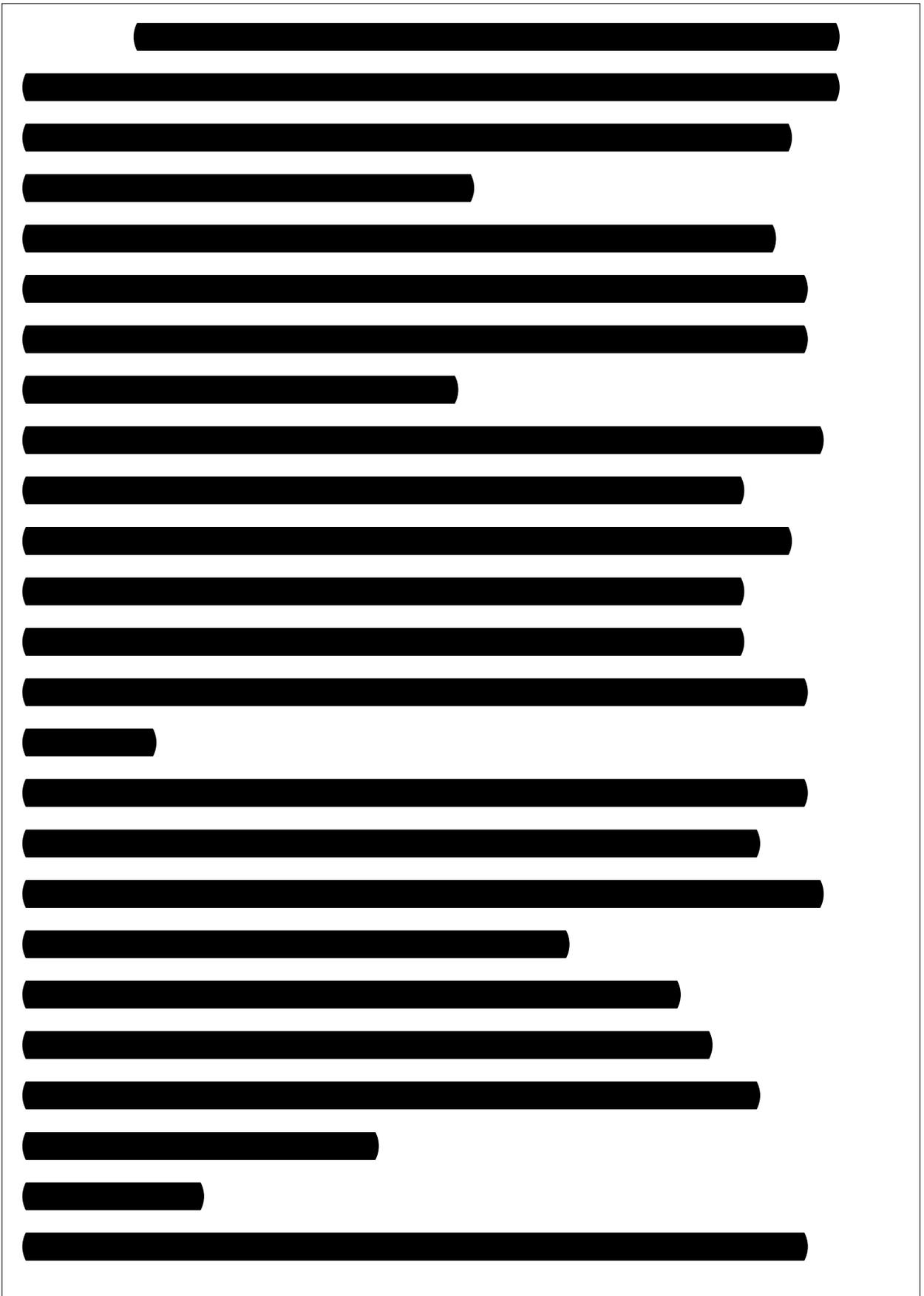
13 MR. KEY: Yeah. I've limited my question  
14 to be business.

15 MS. CENDALI: I know you have, and I  
16 appreciate that. For obvious reasons, I just want  
17 to be careful.

18 Go ahead.

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
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10 [REDACTED]

11 MS. CENDALI: And, again, those -- Slate  
12 is obviously outside the scope. But, obviously,  
13 you're allowed to ask him in his individual  
14 capacity.

15 MR. KEY: Correct.

16 BY MR. KEY:

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
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[REDACTED]

[REDACTED]

[REDACTED]

MS. CENDALI: Outside the scope.

You may answer.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

BY MR. KEY:

Q. Okay. Let me sort of back up a second here.

The -- you mentioned that there was a business reason for -- you identified a business reason, pardon me, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]  
[REDACTED]  
Q. Okay. I think you mentioned that IP  
Application Development -- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

MS. CENDALI: Objection. Calls for a  
legal conclusion. Outside the scope.

You may answer.

[REDACTED]  
[REDACTED]  
[REDACTED]

BY MR. KEY:

Q. Okay.  
[REDACTED]  
[REDACTED]

Q. Gotcha. Okay.  
[REDACTED]  
[REDACTED]  
[REDACTED]

MS. CENDALI: Outside the scope.  
You may answer.

THE WITNESS: To the extent that there

1 [REDACTED]

2 [REDACTED]

3 A. I was aware some time ago that a subpoena  
4 had issued.

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 A. The name is familiar, but I don't -- I  
11 can't say -- at this point, I don't know. No.

12 Q. Stepping back a second, when IP  
13 Application Development LLC filed the two

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 Q. Fair enough. Maybe I'll ask it another  
23 way.

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

MR. KEY: I need to dig out a document.  
Can we take five minutes?

MS. CENDALI: Of course.

THE VIDEOGRAPHER: The time is 11:04, and  
we are now going off the record.

(Recess taken.)

THE VIDEOGRAPHER: The time is 11:25, and  
we are now ending Tape 1. At 11:25, we're going  
off the record.

(Discussion held off the record.)

THE VIDEOGRAPHER: This now marks the  
beginning of Tape 2 of the videotaped deposition of  
Thomas LaPerle. We are now going back on the  
record. The time is 11:29 a.m.

MR. KEY: All right. I'm going to mark as  
Exhibit 15 a document bearing Production Nos.  
IPADLLC\_000149 through -152.

(Exhibit 15 is marked.)

BY MR. KEY:

**Q. Mr. LaPerle, when you've had a chance to**

1 search for it.

2 MR. KEY: Thanks.

3 BY MR. KEY:

4 Q. All right. So I'm going to go back to  
5 Exhibit 22 and make sure I understand this. So  
6 looking at -- starting on page 1102, which is quite  
7 a ways in --

8 A. 1102?

9 Q. Correct.

10 A. Okay.

11 Q. So starting at 1102, we have the results  
12 from the United States; correct?

13 A. Correct.

14 Q. But on that same page there's also a  
15 result, No. 433, from Germany; correct?

16 A. The applicant is from Germany, but the --

17 Q. Okay. I see.

18 So the -- all right. So the jurisdiction  
19 would be in the third column over?

20 A. Yes. Because if you look on top, it says  
21 "Database."

22 Q. Excellent. Okay. Thank you.

23 And so moving forward, this is solely  
24 applications or registration in the United States?

25 A. It's -- so the WISS is kind of -- we don't

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[REDACTED]

[REDACTED]

published. And we don't know if they've registered or, you know, after they got published they didn't register. It's just an indication that a mark has been published in this jurisdiction.

**Q. I see. So it's possible that there's one or more marks identified here that was published for opposition in the United States, but you don't know whether it really registered?**

A. Correct.

**Q. Okay. Is it fair to say if something registered, that mark should show up here because it would have published beforehand?**

A. If it was on a supplemental register, it would not have been published.

**Q. Okay. Fair enough.**

**But if it was a mark that was registered on the principal register, it should show up here?**

A. Yes. Correct.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[Redacted]

Q. I see. Okay.

[Redacted]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 Q. Gotcha.

9 [REDACTED]  
10 [REDACTED]

11 A. Can you refresh my memory? This is a  
12 2009?

13 Q. '9.

14 A. Yes.

15 Q. Okay.

16 MR. KEY: Let's do Exhibit 23, which has  
17 Production Nos. IPADLLC\_000140 to -148.

18 (Exhibit 23 is marked.)

19 THE WITNESS: Yes.

20 BY MR. KEY:

21 Q. Prior to today, have you ever seen what's  
22 been marked as Exhibit 23?

23 A. I had seen this during the discovery  
24 process for this case for the first time earlier  
25 this year.

1 Q. What do you understand Exhibit 23 to be?

2 [REDACTED]

3 [REDACTED]

4 Q. And down below at the bottom, I'm looking  
5 at the first page of Exhibit 23, there is the  
6 address -- the IP address or, excuse me, the domain  
7 address typed in here. It ends with 7/9/2009.

8 Do you see that? It's the very bottom of  
9 the first page.

10 A. Yes.

11 Q. Does that represent the date that this  
12 Google search was run?

13 A. I don't know if someone typed this in  
14 or -- I assume so, but I don't know.

15 Q. I see.

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

1           A.    That's correct. Well, that's my -- I  
2 definitely hadn't seen this. I don't recall seeing  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 way.

9                   [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15           Q.    Okay. Without revealing any privileged  
16 information, did the written opinion you have  
17 synopsise the underlying data?

18                   MS. CENDALI: Objection to form. Vague.  
19 Overbroad.

20                   [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
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[REDACTED]

[REDACTED]

BY MR. KEY:

Q. That's a fair point.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Do you recall specifically providing

[REDACTED]?

A. I don't specifically recall that. At that

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

offhand.

Q. Okay.

A. And, again, this is -- I don't know the

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1 application; correct?

2 A. Correct.

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]

6 MS. CENDALI: Objection. May call for  
7 legal conclusion. Outside the scope. Overbroad.

8 You may answer.

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 BY MR. KEY:

13 [REDACTED]  
14 [REDACTED]  
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25 [REDACTED]

1 [REDACTED]

2 [REDACTED]

3 Q. All right.

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 Q. All right. I appreciate that. So I just

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 If you could just briefly describe how  
15 those services are rendered.

16 A. So there's part of Apple's website that  
17 says, "iPad in business," and underneath that it  
18 discusses all of the ways that iPad can be used  
19 to -- with the programs that Cisco and IBM have for  
20 various business management systems. There's both  
21 services from Apple's service teams, IBM's teams,  
22 and all these things are wrapped up.

23 But there's a use of the iPad in  
24 business on our website. So that's a brand usage  
25 of that term, I believe.

1 **directly offering services under the IPAD mark;**  
2 **correct?**

3 MS. CENDALI: Objection. Mischaracterizes  
4 testimony.

5 You may answer.

6 BY MR. KEY:

7 **Q. By the way, I'm not trying to do that. I**  
8 **want to clarify. So if I am mischaracterizing, you**  
9 **let me know.**

10

11

12 **Q. Okay. Good.**

13 **So in the response, there's an objection**  
14 **that -- to it that it does not seek relevant**  
15 **information because these are intent-to-use**  
16 **applications; correct?**

17 A. Correct.

18 **Q. But there's no response, substantive**  
19 **response other than the objection; correct?**

20 MS. CENDALI: Objection. The document  
21 speaks for itself. Outside the scope.

22 THE WITNESS: Well, there's overly broad  
23 and unduly burdensome objections, and --

24 BY MR. KEY:

25 **Q. I understand the objections, but there's**

**EXHIBIT O**

**REDACTED**

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

3  
4           RXMEDIA, LLC,

5                           Opposer,

6                           vs.

  Opposition Nos.  
  91207333  
  91207598

7           IP APPLICATION DEVELOPMENT  
8           LLC,

9                           Applicant.  

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                          TRADE SECRET/COMMERCIALY SENSITIVE

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                          PURSUANT TO PROTECTIVE ORDERS

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15

                          DEPOSITION OF DOUGLAS G. VETTER

16

                          Palo Alto, California

17

                          Wednesday, February 10, 2016

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Reported by:  
Cynthia Manning  
CSR No. 7645, CLR, CCRR

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Job No. 10021923

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

RXMEDIA, LLC,

Opposer,

vs.

IP APPLICATION DEVELOPMENT  
LLC,

Applicant.

---

Opposition Nos.  
91207333  
91207598

Deposition of DOUGLAS G. VETTER, taken on  
behalf of Opposer, at Kirkland & Ellis LLP, 3330  
Hillview Avenue, Palo Alto, California, beginning  
at 12:56 p.m., February 10, 2016, before Cynthia  
Manning, Certified Shorthand Reporter No. 7645,  
Certified LiveNote Reporter, California Certified  
Realtime Reporter.

1 [REDACTED]  
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15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 Q. If you would take a look at your  
20 declaration, Vetter 2.

21 A. Okay.

22 Q. A couple of things here. I'm going to  
23 point your attention to paragraph 8.

24 A. Okay.

25 Q. And for the record, paragraph 8 reads:

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"I have no unique personal or firsthand

[REDACTED]

I take it that was true as of November  
19th, 2015 when you signed this declaration?

A. It is.

Q. Is it still true today?

A. It is.

Q. To the best of your recollection, did you

[REDACTED]

Q. To the best of your recollection, did you

[REDACTED]

MS. CENDALI: Objection; vague.

You can answer.

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 BY MR. KEY:

10 Q. I did.

11 A. But that's just my personal awareness.

12 Q. I'll go back to the App Store that you  
13 mentioned. Just make sure I understand this  
14 correctly, and please tell me if I don't.

15 The App Store is an online retail store for  
16 apps that can be formatted for the iPad; is that  
17 correct?

18 A. Correct. And to be clear, it's the iPad  
19 App Store.

20 Q. The iPad App Store.

21 Is there an iPad iTunes Store?

22 A. I mean, there is an iTunes icon and store  
23 accessible on your iPad. Do I --

24 Q. I see.

25 A. Okay.

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]

5 A. I don't recall.

6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 A. So just to be clear, it's almost an

11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 Q. That's fair enough. That was not my  
23 impression.

24 What I'm trying to get at, as you sit here  
25 [REDACTED]

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[REDACTED]

A. In that role, no, I don't recall that.

MS. CENDALI: Let me know when you want to take another short break.

MR. KEY: Oh, sure. Now is a good time.

MS. CENDALI: Okay.

(Recess taken)

BY MR. KEY:

Q. Mr. Vetter, before the break we were talking a little bit about when you had the position of chief sales counsel with Apple, and I'm going to ask generally, during that time frame -- we can

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MS. CENDALI: Objection to form, vague.

[REDACTED]

[REDACTED]

BY MR. KEY:

[REDACTED]

way. Sorry to do this.

A. I can make it easy, it's going to be no, no

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[REDACTED]

Does that make sense?

BY MR. KEY:

Q. It does. It does. And I'm just trying try  
to clarify.

[REDACTED]  
going quite that far.

[REDACTED]

MS. CENDALI: Asked and answered.

THE WITNESS: I do not.

BY MR. KEY:

Q. Okay. That's what I want to know.

[REDACTED]

# **EXHIBIT P**

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

-----  
RXD MEDIA, LLC,

Opposer,

Opposition No.

vs.

#91207333

IP APPLICATION

#91207598

DEVELOPMENT LLC ,

Applicant.  
-----

VOLUME I

CONFIDENTIAL - UNDER PROTECTIVE ORDER

DEPOSITION OF KEITH CLEMENTS

PHILADELPHIA, PENNSYLVANIA

December 17, 2015 - 10:00 A.M.

REPORTED BY: S. ARIELLE SANTOS, RPR, CSR, CLR

JOB NO. 15525

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VIDEOTAPED DEPOSITION of KEITH CLEMENTS,  
before S. Arielle Santos, Registered Professional  
Reporter, Certified Shorthand Reporter, Certified  
LiveNote Reporter and Notary Public.

1 work, does that relate to coding for  
2 RxD Media by a software developer?

3 A Part of it does, yeah.

4 Q What else does it relate to?

5 A There's been some limited  
6 advertising we have been doing.

7 Q And how much of the 200,000  
8 that you have contributed, roughly  
9 200,000 that you contributed to RxD  
10 Media has been spent on advertising?

11 A It's really difficult to  
12 advertise to be honest with you. I  
13 will say it's been -- it's been  
14 very -- very illuminating, on top of  
15 that, very, very frustrating.

16 Q Why?

17 A Well, when you call people,  
18 most -- even generalize, we've had  
19 people tell us we can't let you  
20 advertise because of trademark  
21 issues.

22 Q Was that the case in 2007?

1 part of the goal is to put this thing  
2 in a native format.

3 Q Has netStride actually  
4 completed a redesign?

5 A No, I halted that.

6 Q When did you halt it?

7 A I am trying to remember. I  
8 want to say it was probably back -- I  
9 am trying to think. It was -- I want  
10 to say April-ish or May of this year.

11 Q Why did you halt it?

12 A The original reason for the  
13 halt was Brian and -- our youngest  
14 brother got severely ill, so we  
15 needed kind of a break in the action.  
16 He was hospitalized for eight weeks,  
17 and at that point as things were  
18 moving on and so forth and we were  
19 trying to just test out the waters  
20 with advertising and so forth, we  
21 were trying to figure out where is  
22 the best place at this point to spend

1 our money.

2 And truth be told, we think  
3 the best place to spend our money is  
4 clearing -- clearing out our space to  
5 move forward with the IPAD and just  
6 clearing out, making sure everybody  
7 understands this is where RxD is  
8 and -- so we can go ahead and do what  
9 we need to do for our business.

10 Q When you say "clearing out  
11 our space," what do you mean by that?

12 A Apple is in our way.

13 Q So just to be clear, the  
14 updated look and feel --

15 A Excuse me. I'm sorry. Go  
16 ahead.

17 Q The updated look and feel  
18 that's referred to on page 1632 of  
19 Exhibit 102 under the heading  
20 "Redesign" has not been completed,  
21 correct?

22 A It has not gone live, no.

1 Q So this -- this document  
2 describes a mobile web application  
3 located at ipad.mobi --

4 A Hm-hm.

5 Q -- that allows people to  
6 create multiple lists, correct?

7 A Correct.

8 Q And today is the service  
9 located ipad.mobi still something  
10 that allows people to create multiple  
11 lists?

12 A Yes.

13 Q Other than allowing users to  
14 create multiple lists, have any other  
15 functions ever been added to the  
16 ipad.mobi service?

17 A Added since day one?

18 Q Since day one.

19 A I mean, we've always -- I  
20 got to think back to exactly on both  
21 sides of this, but we have added  
22 different types of -- the idea behind

1 it was to add different types of  
2 creativity.

3 There were some things that  
4 you kind of just create for yourself  
5 to put in there within the  
6 application itself with -- whether  
7 you can make a grocery list. It's --  
8 you can also go set up reminder lists  
9 for calendar types of things. You  
10 can go ahead and set up a database to  
11 store videos, pictures.

12 It's really -- it's -- kind  
13 of the whole concept behind it is to  
14 use your mind and just create it for  
15 what you want it to be used for for  
16 yourself.

17 Everybody is different, and  
18 it is just a personal application.

19 Q Does the ipad.mobi service  
20 as it exists today allow users to  
21 store video?

22 A Yes.

1 block here of 2007 to 2010. This was  
2 all stuff that Brian put in his  
3 deposition and produced documents on.

4 Q So for the 2007 to 2010 time  
5 period, you are not able to identify  
6 any particular third-party websites  
7 that RxD Media advertised ipad.mobi  
8 on?

9 MR. KEY: Objection. I  
10 think it mischaracterizes his  
11 prior testimony, but go ahead.

12 THE WITNESS: At this  
13 time -- I am trying to think. I  
14 am honestly drawing a blank at  
15 this time, but I know that they  
16 existed.

17 BY MS. RAY:

18 Q And it's your testimony that  
19 if they existed, documents about them  
20 would have been already produced?

21 A Absolutely.

22 Q In the time period since

1 2010 -- from 2010 to now --

2 A Hm-hm.

3 Q -- has RxD Media done  
4 anything to market ipad.mobi on any  
5 third-party websites?

6 A On third-party websites,  
7 yes.

8 Q Meaning ones not controlled  
9 by Brian Clements.

10 A Yeah. You know, I  
11 understand. Yeah, we have -- well,  
12 it was a struggle because we weren't  
13 able to use AdMob any longer and  
14 AdSense, as Google acquired them, we  
15 weren't able to advertise on those  
16 two due to trademark issues. And  
17 luckily recently we have been able to  
18 advertise moderately on Bing.

19 Q When did RxD Media start  
20 advertising ipad.mobi on Bing?

21 A On Bing, rough -- advertised  
22 on other sites -- within the last --

# **EXHIBIT Q**

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

- - -

RxD Media, LLC, : Opposition No. 91207333  
Opposer, :  
:  
vs. :  
:

IP Application :  
Development LLC, :  
Applicant. :

- - -

Tuesday, March 12, 2013

- - -

Oral deposition of BRIAN B. CLEMENTS,  
taken at the law offices of Dechert LLP, Cira  
Centre, 21st Floor, 2929 Arch Street,  
Philadelphia, Pennsylvania, commencing at 10:02  
a.m., before Jennifer S. Walker, a Federally  
Approved Registered Professional Reporter and  
Notary Public.

VERITEXT NATIONAL COURT REPORTING COMPANY  
MID-ATLANTIC REGION  
1801 Market Street - Suite 1800  
Philadelphia, Pennsylvania 19103

1 BRIAN B. CLEMENTS

2 after the launch?

3 A. Yes.

4 Q. When did you do that?

5 A. That was in the fall of 2011.

6 Q. And what -- and the launch of the  
7 revised IPAD.mobi site happened in the fall of  
8 2011?

9 A. (Nodding.)

10 Q. And what functionality did the new  
11 version have?

12 A. Just extended pads. I used to call  
13 them pads because they were like little homes  
14 for information-based stuff.

15 Q. So you added more pads?

16 A. Correct.

17 Q. How many more pads?

18 A. Approximately five. Could be five  
19 to seven. And that was actually the original  
20 drawing plans of IPAD.mobi.

21 Q. Can you explain that? "That was  
22 actually the original drawing plans of  
23 IPAD.mobi." What do you mean by that?

24 A. IPAD.mobi was always supposed to be  
25 a grocery list -- it was everything: to-do

# **EXHIBIT R**



# Legal

## Apple Trademark List

A trademark can be a word, phrase, symbol, or design that distinguishes the source of the goods or services. Also, as trade dress, it can be the appearance of a product or its packaging, including size, shape, color, texture, graphics, and appearance (e.g, retail store or website).

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Apple's Trademarks	Generic Terms
AirDrop®	software feature
AirMac®	wireless hardware/software solution
AirPlay®	software feature
AirPlay Logo™	
AirPort®	wireless hardware/software solution
AirPort Express®	wireless hardware/software solution
AirPort Extreme®	wireless hardware/software solution
AirPort Time Capsule®	wireless hard drive/Wi-Fi base station
AirPrint®	software feature
AirPrint Logo®	
AiTunes®	application program
Aperture®	application program

Apple®	computers, computer software, computer peripherals, etc.
Apple logo®	
Apple CarPlay™	software feature
Apple Cinema Display®	computer monitor
AppleLink™	communication network/computer software
Apple Music™	streaming service and application
Apple Pay™	mobile payments solution
Apple Pencil™	computer input device
Apple Remote Desktop™	remote desktop software
AppleScript®	application program
AppleScript Studio™	development software
AppleShare®	server software
Apple Studio Display™	computer monitor
AppleTalk®	network system
Apple TV®	digital media extender
AppleVision™	computer display
Apple Watch®	wrist wearable device
Apple Watch Edition™	wrist wearable device
Apple Watch Sport™	wrist wearable device
AppleWorks®	application program
App Nap®	software feature
Aqua®	user interface
Audio Units logo™	
Back to My Mac®	software feature
Bonjour®	networking technology
Bonjour logo®	
Boot Camp®	application program
Carbon®	software technology
CarPlay®	software feature
Charcoal®	computer font
Chicago®	computer font
Cinema Tools™	application program
Claris®	software

Cocoa <sup>®</sup>	software technology
Cocoa Touch <sup>®</sup>	software technology
ColorSync <sup>®</sup>	application program
ColorSync logo <sup>®</sup>	
Cover Flow <sup>®</sup>	application program
Dashcode <sup>®</sup>	developer software
DVD@CCESS <sup>™</sup>	software feature
DVD Studio Pro <sup>®</sup>	application program
EarPods <sup>®</sup>	headphones
Educator Advantage <sup>™</sup>	marketing program
eMac <sup>™</sup>	computer
EtherTalk <sup>™</sup>	interface card/network
Exposé <sup>®</sup>	computer software
FaceTime <sup>®</sup>	video calling
FairPlay <sup>™</sup>	software technology
FileVault <sup>®</sup>	application program
Final Cut <sup>®</sup>	application program
Final Cut Pro <sup>®</sup>	application program
Final Cut Studio <sup>®</sup>	application program
Finder <sup>®</sup>	operating system software
FireWire <sup>®</sup>	serial bus
FireWire compliance logo <sup>™</sup>	
FireWire logo <sup>™</sup>	
FireWire symbol <sup>®</sup>	
Flyover <sup>®</sup>	software feature
GarageBand <sup>®</sup>	application program
Geneva <sup>®</sup>	computer font
Guided Access <sup>®</sup>	operating system feature
Handoff <sup>®</sup>	software feature
HomeKit <sup>™</sup>	hardware and software technology
HyperCard <sup>®</sup>	application program
HyperTalk <sup>™</sup>	application program
iAd WorkBench <sup>®</sup>	software

iBeacon™	location and proximity detection technology
iBeacon Logo™	
iBook®	computer
iBooks®	application program
iCal®	application program
iChat®	application program
iDVD™	application program
iFrame Logo®	video format
iLife®	suite of application programs
iMac®	computer
ImageWriter™	printer
iMessage®	software feature
iMovie®	application program
Inkwell®	application program
Instruments®	developer software
iPad®	mobile digital device
iPad Air®	mobile digital device
iPad mini™	mobile digital device
iPad Pro™	mobile digital device
iPhone®	mobile digital device
iPhoto®	application program
iPod®	mobile digital device
iPod classic®	mobile digital device
iPod Hi-Fi™	speakers
iPod nano®	mobile digital device
iPod shuffle®	mobile digital device
iPod Socks®	holder for computer hardware and consumer electronics
iPod touch®	mobile digital device
iSight®	camera
iTunes®	application program
iTunes Logo®	application program
iTunes Pass®	online store

iTunes U®	feature of online store
iWeb™	application program
iWork®	suite of application programs
Jam Pack®	computer software
Keychain®	operating system feature
Keynote®	application program
LaserWriter™	printer
Launchpad®	operating system features
Lightning®	connectors
Live Listen™	operating system feature
LiveType®	application program
LocalTalk™	computer cable system/network
Logic®	application program
Logic Studio®	application program
Mac®	computer
Mac logo*	
MacApp®	application program
MacBook®	computer
MacBook Air®	computer
MacBook Pro®	computer
MacDNS®	application program
Macintosh®	computer
Mac OS®	operating system software
Mac Pro®	computer
MacTCP®	application program
Made for iPad logo™	
Made for iPhone logo®	
Made for iPod logo®	
Magic Mouse®	computer peripheral device
Magic Trackpad®	computer peripheral device
MagSafe®	power adapters
Metal™	software technology
Metal Logo™	

MainStage®	application program
Mission Control*	operating system feature
Monaco®	computer font
Multi-Touch™	touchscreen interface
NetInfo™	computer software
Newton™	operating system software
New York*	computer font
Numbers®	application program
Objective-C*	computer software
OfflineRT™	software feature
Open Directory logo™	
OpenCL®	software technology
OpenPlay®	application program
OS X®	operating system software
Pages®	application program
Passbook®	application program
Photo Booth®	application program
Photocasting™	digital content delivery service
Pixlet®	compression application program
Podcast Logo®	application feature
PowerBook®	computer
Power Mac®	computer
ProDOS™	operating system software
Quartz*	graphics and display technology
QuickDraw®	application program
QuickTime®	application program
QuickTime Broadcaster™	application program
QuickTime logo®	
QuickType®	software feature
Retina®	display
Rosetta*	application program
Safari*	application program
Sand®	computer font

Shake <sup>®</sup>	application program
Sherlock <sup>®</sup>	application program
Siri <sup>®</sup>	voice recognition software
Siri Remote <sup>™</sup>	control device with touch and voice input
Skia <sup>™</sup>	computer font
Smart Cover <sup>®</sup>	protective cover and stand
Smart Instruments <sup>®</sup>	application feature
Smart Strings <sup>®</sup>	application feature
SnapBack <sup>™</sup>	application feature
Soundtrack <sup>®</sup>	application program
Spaces <sup>®</sup>	operating system feature
Spotlight <sup>®</sup>	software utility
StyleWriter <sup>™</sup>	printer
SuperDrive <sup>®</sup>	computer media device
Swift <sup>™</sup>	software technology
Swift Logo <sup>™</sup>	
TestFlight <sup>®</sup>	software
Textile <sup>®</sup>	computer font
There's an app for that <sup>®</sup>	slogan
Think different <sup>®</sup>	slogan
Time Capsule <sup>®</sup>	wireless hard drive/Wi-Fi base station
Time Machine <sup>®</sup>	application program
Touch ID <sup>®</sup>	fingerprint identity sensor
Touch Instruments <sup>®</sup>	application feature
True Tone <sup>®</sup>	camera flash
TrueType <sup>®</sup>	font technology
tvOS <sup>™</sup>	software platform for television
Ultrabeat <sup>®</sup>	software feature
Velocity Engine <sup>™</sup>	vector processing unit
WatchKit <sup>®</sup>	developer software
WatchOS <sup>®</sup>	software platform for wrist wearable devices
WaveBurner <sup>®</sup>	application program
WebObjects <sup>®</sup>	software

WebScript™	computer software
Works with iMovie logo™	
Works with iPhone logo®	
Works with iPhoto logo™	
Xcode®	developer software
Xgrid®	application program
Xsan*	application program
Xserve®	server

Apple's Service Marks	Generic Terms
ACOT™ (Apple Classrooms of Tomorrow)	education services
ACOT2™	education services
ACTC Boot Camp™	training course
App Store®	online store
Apple®	various services
AppleCare®	service and support programs
Apple Certified Trainer™	certification services
Apple Consultants Network™	consultant services
Apple iServices™	Internet Services
Apple Store®	retail store services
Briefing Room™	feature of retail store
Complete My Album®	feature of online store
Final Cut Pro X: Professional Post-Production™	training course
Genius*	customized recommendations
Genius Bar®	service and support program
Genius Bar logo®	service and support program
iAd*	mobile advertising platform
iAd Logo®	
iBooks Store™	online store
iCloud®	online service
iCloud Drive®	online service
iCloud Keychain*	online service
iDisk™	online services

iMix™	feature of online store
Indie Spotlight®	feature of online store
The iTunes Download®	radio show, podcast
iTunes Extras*	online store
iTunes Live®	online store, entertainment services
iTunes LP®	online store
iTunes Match*	online service
iTunes Music Store™	online music store
iTunes Plus™	feature of online store
iTunes Radio®	streaming music service
iTunes Store®	online store
Joint Venture*	retail service
Logic Pro X™	training course
.Mac™	online services
Mac.com*	Email service
Mac Integration Basics™	training course
Mac Management Basics™	training course
Mac OS X Server Essentials™	training course
Mac OS X Support Essentials™	training course
MobileMe®	online services
oneoone®	service and support program
Pages, Numbers and Keynote™	training course
ProCare <sup>®</sup>	service and support program
Shop different™	slogan
Vingle®	feature of online store

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#### QUESTIONS

If you have any questions or comments regarding the list, please contact the Trademark team.

This list includes updates as of March 28, 2016.

**EXHIBIT S**

**REDACTED IN FULL**

**EXHIBIT T**

**REDACTED IN FULL**

# **EXHIBIT U**

# KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

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December 9, 2015

## By eFile

Deputy Commissioner for Trademark  
Examination Policy  
Trademark Administration Center  
James Madison Building, East Wing  
Concourse Level  
600 Dulany Street  
Alexandria, VA 22314-5793  
Facsimile: (571) 273-5793

Re: Serial No: 77/958,000  
Mark: IPAD  
Applicant: RxD Media LLC  
Examining Attorney: Law Office 111

Dear Sir or Madam:

Apple Inc. ("Apple"), by its counsel Dale M. Cendali of Kirkland & Ellis LLP, submits this Letter of Protest regarding application Serial No. 77/958,000 for the mark IPAD filed by applicant RxD Media LLC ("RxD"). RxD's application has not been published for opposition, and this Letter of Protest is timely pursuant to TMEP Section 1715.03(b).

As grounds for this Letter of Protest, Apple respectfully submits that RxD's purported mark is merely descriptive of the services described in the application.

RxD seeks to register IPAD as a mark for "providing temporary use of a web-based software application for mobile-access database management whereby users can store and access their personal information" in International Class 42. The application was filed under Section 1(a) with a specimen of use described as "a screenshot of applicant's home page through which applicant delivers the claimed services." The Examining Attorney was therefore in a position to evaluate descriptiveness with respect to RxD's claimed use of IPAD.

In lieu of an initial office action on the application, the Examining Attorney issued a Notice of Suspension, suspending action pending the disposition of prior application SN 77/913,563. The Notice of Suspension raised no other grounds for refusal. TMEP § 716 mandates that the

## KIRKLAND & ELLIS LLP

Deputy Commissioner for Trademark  
Examination Policy  
December 8, 2015  
Page 2

examining attorney “suspend an application *only when the application is in condition for approval or final action*, except for the matter on which suspension is based.” (Emphasis added). However, contrary to TMEP § 716, the Notice of Suspension did not raise all potential grounds for refusal. Had all potential grounds been included, registration of IPAD should have been refused on descriptiveness grounds under Section 2(e)(1) of the Trademark Act.

The descriptive significance of IPAD for a “web-based software application... where users can store and access their personal information” is evident from RxD’s specimen. It describes the software as “Your Mobile Internet Notepad”. The mark appears in a stylized logo in which the “i” takes the form of a pen. (See Exhibit A.)



© iPad.mobi 2007

RxD’s IPAD is therefore intended to be understood as signifying “Internet pad”, and is descriptive of a “web-based software application... where users can store and access their personal information.”

The Trademark Manual of Examining Procedure specifically addresses the potential descriptive nature of marks that begin with the letter “I”, citing cases in which “with appropriate evidence, the prefix ‘I’ or ‘I’ was held to be understood by purchasers to signify Internet, when used in relation to Internet-related products or services.” TMEP § 1209.03(d). Given that RxD was seeking registration for an “I”-prefix mark for exactly such “Internet-related... services” -- a Class 42 “web-based software application” – and registration should have been refused on that basis.

TMEP § 1209.03(d) specifically cites *In re Zanova, Inc.*, 59 USPQ2d 1300, 1304 (TTAB 2001), in which the Trademark Trial and Appeal Board as early as 2001 held that prospective purchasers “will readily accept ‘I’ as meaning ‘Internet’” in the context of applicant’s goods and holding ITOOL merely descriptive of the identified computer software and services. Since then, the Board has continued to recognize the descriptive nature of such marks. For example, it affirmed refusal of ITICKETS because the public would readily understand the mark to refer to ticket services offered on the Internet. *In re Christian Happenings Acquisition Corp., Ltd.*, Serial

KIRKLAND & ELLIS LLP

Deputy Commissioner for Trademark  
Examination Policy  
December 8, 2015  
Page 3

No. 77926930 (Jan. 25, 2013)). Similarly, in *In re Tofasco of America, Inc.*, Serial No. 85069228 (June 24, 2013), the Board said “[W]e hereby take judicial notice of a definition at acronymfinder.com that ‘I’ may be defined, inter alia, as a shorthand for ‘Internet.’”. (See Exhibits B and C for third party use of “I” to denote “Internet.”)

The other element of RxD’s purported mark, PAD, is also descriptive with respect to RxD’s services. (See Exhibit D for definitions of “pad”.) Many third parties use the word “pad” not as a source identifier but to describe tablet computers and digital notepads, and the Office has recognized the descriptiveness of PAD when it appears as part of a mark for such products. (See Exhibits E and F for third party use of “pad”.) More important, the Office has also treated the word PAD as descriptive when it appears in marks for computer software similar to that of RxD. Thus, PAD is disclaimed in EASYPAD for software for “personal content management” and “downloadable mobile applications for creating readily accessible notes and reminders” (RN 4,592,660) and MI PAD for, *inter alia*, software for transmitting, receiving, and displaying various types of electronic content (SN 86/245,842), and the marks WIKIPAD (RN 3,932,996) for “computer software for recording contextual notes”, and NETPAD (RN 4,181,043) for, *inter alia*, ASP software for posting and displaying user generated content, and for collecting, transmitting, storing, and sharing data and information are registered on the Supplemental Register. (See Exhibit E.)

The failure to refuse registration on descriptiveness grounds constitutes clear error, and we respectfully request that this omission be brought to the Examining Attorney’s attention.

Respectfully submitted,

  
Dale Cendali, P.C.

Enclosures

**EXHIBIT V**

**REDACTED IN FULL**

**EXHIBIT W**

**REDACTED IN FULL**

**EXHIBIT X**

**REDACTED IN FULL**

# **EXHIBIT Y**



## Discover business transformation in action.

iPad and iOS are enabling every industry, every line of business, and every employee to work in astounding new ways.

[See companies using iOS to move business forward](#) □

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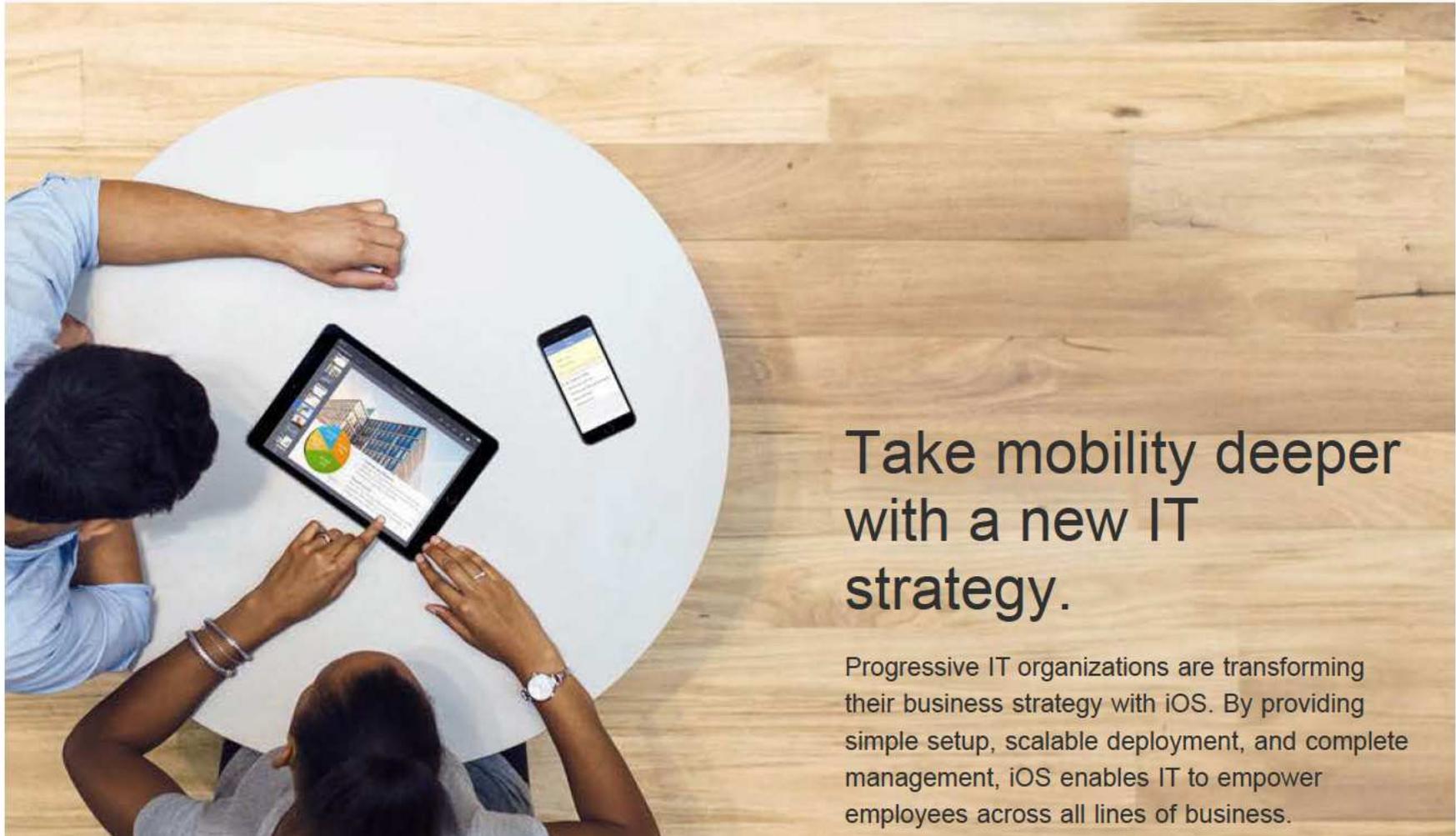
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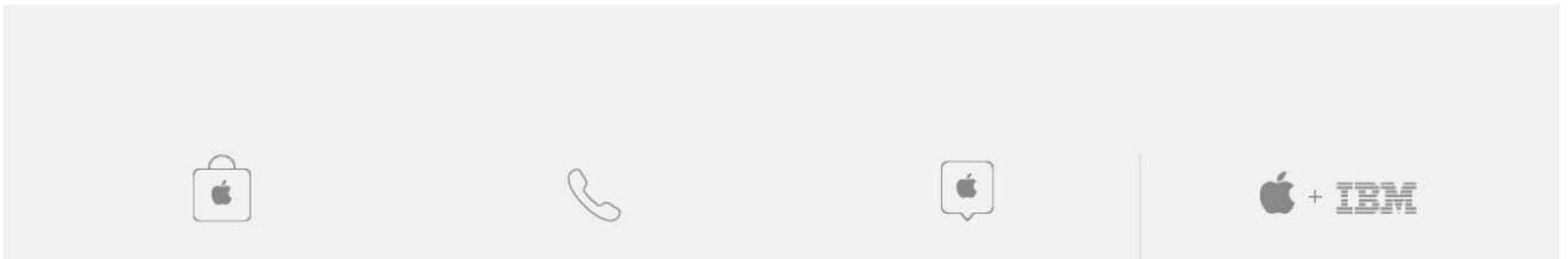


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CNET > Tech Culture > How to succeed at marketing the iPad

# How to succeed at marketing the iPad

Marketing experts weigh in on how to explain the sometimes puzzling proposition of Apple's latest device.

by Erica Ogg @ericainsf / February 16, 2010 4:00 AM PST

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The iPad hasn't been received as warmly as past Apple products. Selling it will mean playing up the benefits of the big screen and access to digital media.

James Martin/CNET

Steve Jobs insists on calling the iPad "magical" and "revolutionary," but it's a device whose purpose has mystified many so far.

So how will Apple explain the touch-screen e-reader/Web tablet that's being described, and in some cases derided, as "an iPod Touch on steroids," albeit one that will cost between \$499 and \$829? Experts who've made their careers teaching and working in high-tech marketing say it will come down to the very basics of

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marketing: Focus on how a product will make the proud new owner of this device happier, better-looking, and more satisfied with life, not a boring laundry list of technical specifications.

The trouble some (ok, a lot of) people are having with deciding whether they want or need an **iPad** stems from something that's bigger than Apple itself.

"This is one of these products that bumps up against the most important issue in new technology: compatibility," according to Rashi Glazer, tech marketing expert at UC Berkeley's Haas School of Business. "Is it compatible with what people currently do...will people be willing to change their behavior?"

Apple iPhone Macbook

How will Apple convince people they need a device that falls between a smartphone and a laptop?

Tom Krazit/CNET

For Apple to convince people to buy this, they'll have to hope consumers will embrace things that might be outside their comfort zone. Will they be willing to type on a full-size virtual keyboard? And will they be satisfied buying their books (and magazines and newspapers) in electronic form? Or, more importantly, spend money on something that essentially combines the capability of devices they probably already possess?

There will be some who will hand over their credit card automatically, because they love all things Apple, and because, well, they can probably afford it. But fan boys and girls aren't enough. The tough part will be getting more than the early adopters, says Glazer. That audience "fuels certain levels of initial sales. But then you have to say, 'What is the real benefit of this product'" for everyone else?

### Push the big screen

That will depend on who they want to sell to. It seemed clear from the get-go that the iPad is technology intended for people who aren't afraid of, but aren't all that comfortable with technology (**hello, baby boomers**). It doesn't have the makings of a status symbol on campus or in metropolitan cafes--it's sleek and certainly well-designed, but not small enough. So embrace the idea of big. Selling the iPad as a mobile Internet device with a significantly bigger screen than an iPhone or iPod Touch, or any other smartphone for that matter, would pull in a whole crop of new customers--who, as a bonus, can probably afford it.

It's a large enough screen for reading for people whose eyesight may be fading, for those whose fingers are just too big to pick out those tiny virtual keys on a smartphone. In other words, why not embrace the scaled up iPod Touch? "To some extent, all the good things about the iPod will transfer over to this device," said David Schweidel, marketing professor at the University of Wisconsin Madison School of Business. "Also, the iPod Touch is a gaming device now, instead of playing on a small screen, they could say, 'Here's a much larger screen with a more powerful processor.'"

### Content will be king

Just as with the iPhone, what you can get on the iPad is going to be a deciding factor for buyers. While the extent to which magazines and newspapers are going to be a major focus of the iPad, we do know Apple is pushing books (via its **shiny new iBooks app**), video games, and at least one major newspaper. "All of it will hinge on content," Schweidel predicts. "Like the iPhone, one of the big differentiators is...all the applications that are available. The App Store is what set

the iPhone apart from other devices. The iPad is going to hinge on what other content (books, magazines, newspapers, etc.) get created" for it.

In that way, Apple has done itself and its developers a good service by making it seem that scaling up one's iPhone apps into iPad apps will be relatively easy. We won't know exactly how easy it is or isn't until more people take the iPad SDK for a spin.

But the more book publishers, more magazine publishers, more newspapers, the more video game creators, and textbook companies Apple can pull on board, the more attractive the iPad will become as a one-stop shop for media.

### **Sell it as a Kindle on steroids**

Ira Kalb, former CEO of a microcomputer company and longtime high-tech marketer, says Apple's best prospects are to compare the iPad to the something people are already familiar with, but promise to improve on that experience. "I think Apple will basically say, 'You can buy a Kindle, and you're getting a black-and-white book reader, but we're giving you a lot more.'"

It comes back to avoiding major change. It's easier to compare a device to something we already know, especially if it's a new category. Otherwise people tend to shy away from a product that we have to adapt to. So describing a device as "revolutionary" isn't necessarily the best way to win new converts, according to Glazer.

"(F)or something that is really revolutionary that cuts both ways," he said. "That means it changes the way I live my life. Most people don't want to change the way they live their life overnight."

So play up the familiar: It's about the size of an e-book reader, something that most people, even if they don't own one already, have seen and heard a lot about in the last two years. But Apple should push the idea that it will do much more than that. It has a color screen, access to iTunes and the App Store, access to the Web, and 3G Internet connection if you want. All of those are major bonuses for someone in the market for a nice e-reader.

And if that tactic sounds familiar, it's because that's what Apple did with the iPhone, back when pundits were convinced nobody would pay \$499 for a cell phone.

"People would not have paid that much for a phone if it were just a phone," said Kalb. "It's not just a phone: it's a camera, it's a music player," it's a Web browser. But besides that, Apple also sold the idea of how much more convenient it was to buy one iPhone rather than carry a cell phone, an iPod, and a laptop around at all times to achieve the same combination of functions.

So which audience will Apple go for first? According to Kalb, they'll preach to the choir first. "Apple marketing tends to focus on the low-hanging fruit, people who already believe in the Apple religion. They get those people to buy products first, then market by word of mouth."

But more valuable in the long run will be those who are don't have an iPod or an iPhone or a Kindle already, to whom watching videos or reading an e-book on a device that's not a laptop would be novel and useful. That's especially important when it comes to establishing a new product category. And since Apple is arguably first to this new touch-screen Web tablet market, they have to create loyalty to their version of this new device type before the others, **inevitably, come along**, says Glazer. "How much of a window of opportunity will Apple have before competitors

come out with a product?"

**Tags:** Apple, Tech Culture, Tech Industry, E-books, Steve Jobs

**ABOUT THE AUTHOR**



**Erica Ogg** /

Erica Ogg is a CNET News reporter who covers Apple, HP, Dell, and other PC makers, as well as the consumer electronics industry. She's also one of the hosts of CNET News' Daily Podcast. In her non-work life, she's a history geek, a loyal Dodgers fan, and a mac-and-cheese connoisseur. [See full bio](#)

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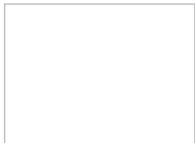
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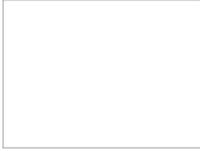
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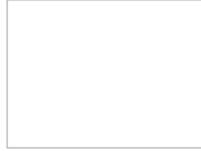
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## Sara Sakagami

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**From:** Buchner, Allison Worthy <abuchner@kirkland.com>  
**Sent:** Wednesday, February 03, 2016 6:58 PM  
**To:** Cecil Key  
**Cc:** Sara Sakagami; Hill, Phil; Ray, Claudia; Cendali, Dale; Dillon, Erika; Sadtler, Shanti E.  
**Subject:** Re: RxD v. IPAD LLC - Discovery

Dear Cecil,

Consistent with our conversation during our meet and confer on December 21, 2015, and subject to Apple's written responses and objections, we have confirmed that [REDACTED] to your request for documents relating to the use of the IPAD mark in connection with the services described in the Applications at issue in the TTAB proceeding. As you may recall, we had agreed to revisit two specific categories of documents that you raised during that call (clearance-related documents/searches and the documents you refer to below as relating to Apple's plans for introducing services under the IPAD mark), and since that call Apple has produced nearly 3,000 pages of documents and two additional privilege logs. I trust that this resolves any issues.

Best,

**Allison W. Buchner**

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[allison.buchner@kirkland.com](mailto:allison.buchner@kirkland.com)

On Jan 28, 2016, at 9:26 AM, Cecil Key <[CKey@dimuro.com](mailto:CKey@dimuro.com)> wrote:

Allison:

Despite the extension, Applicant/Apple has produced only two additional documents, an almost entirely redacted 20-page email chain and a Saegis search report, since January 6. Please confirm (a) that Apple does not intend to produce any additional documents and (b) that you searched for the specific documents we discussed during our December 21, 2015 phone call (e.g., any product roadmaps or similar documents showing Apple's plans for introduction and offering of services under the IPAD mark).

Thanks.

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