

No. 18-1075

**In the
Supreme Court of the United States**

RPX CORPORATION,

Petitioner,

v.

APPLICATIONS IN INTERNET TIME, LLC,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONER

STEVE CHIANG
RPX CORPORATION
One Market Plaza
Suite 1100
San Francisco, CA 94105
(415) 852-3188

GREGORY G. GARRE
Counsel of Record
GABRIEL K. BELL
ELANA NIGHTINGALE DAWSON
MARGARET A. UPSHAW
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2207
gregory.garre@lw.com

Counsel for Petitioner

SUPPLEMENTAL BRIEF

Petitioner RPX Corporation (RPX) submits this supplemental brief pursuant to this Court’s Rule 15.8 to advise the Court of pertinent developments since the filing of its petition for a writ of certiorari.

RPX Corporation filed a petition for a writ of certiorari on January 22, 2019. On February 20, 2019, Respondent Applications in Internet Time, LLC waived its right to respond, and the petition was distributed on February 27, 2019, for consideration at the Court’s March 15, 2019 Conference.

On January 28, 2019—a week after RPX filed its petition—a petition for a writ of certiorari was filed in *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, No. 18-999, raising the same question presented by this petition: Whether 35 U.S.C. § 314(d) bars judicial review of the Patent Trial and Appeal Board’s decision to institute an inter partes review where a patent holder’s challenge to that institution decision is grounded on a timeliness objection under § 315(b). And, on February 4, 2019, a petition for a writ of certiorari was filed in *Superior Communications, Inc. v. VoltStar Technologies, Inc.*, No. 18-1027, raising the same question presented as well.

In addition, on February 14, 2019, Superior Communications, Inc. filed an amicus brief in support of the petition for a writ of certiorari in *Dex Media, Inc. v. Click-To-Call Technologies, LP*, No. 18-916 (Jan. 11, 2019). The petition in *Dex Media* also raises the same question presented by this case—and *Atlanta Gas Light* and *Superior Communications*.

The Superior Communications amicus brief underscores the importance of the question presented in these cases. As the amicus brief explains,

permitting appeal of the Patent Trial and Appeal Board's decision to institute inter partes review over a timeliness objection not only is at odds with the plain terms of § 314(d) and this Court's decision in *Cuozzo Speed Technologies, LLC v. Lee*, 136 S. Ct. 2131 (2016), but will result in wasteful litigation that is contrary to the statutory scheme. *Dex Media* Brief of Superior Communications, Inc. as *Amicus Curiae* in Support of Petitioner 4, 14, 17.

On March 4, 2019, Intel Corporation filed an amicus brief in support of the petition in *Atlanta Gas Light Company*. That brief likewise explains (at 2-3, 10-13) how the Federal Circuit erred in “carv[ing] out an exception to *Cuozzo*, holding that it may review the Board's institution decisions to the extent they are based on a determination that the petition was timely filed,” as well as how this exception will undermine the effectiveness of inter partes review.

The growing number of petitions raising the same question presented in this case, as well as the amicus briefs filed in support of those petitions, bolsters the argument for certiorari in this case.

The Court should grant the petition in this case. But, at a minimum, the Court should call for a response to the petition and relist the case for consideration along with the other petitions presenting the same question to ensure that the Court is in a position to choose the best vehicle to address this important and recurring issue. Respondent should not be rewarded for its strategic waiver of a brief in opposition on an issue that, at the very least, warrants serious consideration for certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

STEVE CHIANG
RPX CORPORATION
One Market Plaza
Suite 1100
San Francisco, CA 94105
(415) 852-3188

GREGORY G. GARRE
Counsel of Record
GABRIEL K. BELL
ELANA NIGHTINGALE DAWSON
MARGARET A. UPSHAW
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2207
gregory.garre@lw.com

Counsel for Petitioner

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