

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC.,
Petitioner

v.

REALTIME DATA, LLC D/B/A/ IXO
Patent Owner

Case IPR2016-01738
Patent 8,880,862

**PATENT OWNER REALTIME DATA, LLC D/B/A IXO'S
PRELIMINARY RESPONSE**

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TABLE OF AUTHORITIES

Cases

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