

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL, INC.; EMC CORPORATION; HEWLETT-PACKARD ENTERPRISE
CO.; HP RACKSPACE US, INC., and TERADATA OPERATIONS, INC.,
Petitioners,

v.

REALTIME DATA LLC,
Patent Owner.

Case IPR2017-00176 (Patent 7,161,506 C2)¹
Case IPR2017-00179 (Patent 9,054,728 B2)
Case IPR2017-00806 (Patent 7,161,506 C2)
Case IPR2017-00808 (Patent 9,054,728 B2)

Before JASON J. CHUNG and SCOTT C. MOORE, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

ORDER

Consolidation and Coordination; Conduct of Proceedings
37 C.F.R. §§ 42.5, 42.122

¹ This Order applies to each of the listed cases. We exercise our discretion to issue one Decision to be docketed in each case. The Parties, however, are not authorized to use this caption for any subsequent papers.

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Case IPR2017-00179 (Patent 9,054,728 B2)
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Petitioners Dell Inc., EMC Corporation, Hewlett-Packard Enterprise Co., and HP Enterprise Services, LLC (collectively, the “Dell Petitioners”) filed the petitions in cases IPR2017-00176 and IPR2017-00179 on November 13 and 14, 2016, respectively. Petitioner Teradata Operations, Inc. (“Teradata”) filed the petitions in cases IPR2017-00806 and IPR2017-00808 on January 30, 2017. IPR2017-00176 and IPR2017-00806 involve the same patent (U.S. Patent 7,161,506 C2) and similar issues. Cases IPR2017-00179 and IPR2017-00808 also involve the same patent (U.S. Patent 9,054,728 B2) and similar issues. The Patent Owner in all four of these cases is Realtime Data, LLC (“Realtime”).

On August 18, 2017, the Panel convened a teleconference to discuss consolidating and/or coordinating the above-captioned actions. The teleconference was attended by Judges Lee, Chung, and Moore, as well as counsel for the Dell Petitioners, Teradata, and Realtime. The Dell Petitioners, Teradata, and Realtime subsequently submitted a Joint Notice regarding Consolidation and Request for Guidance from the Board (“Joint Notice”) outlining their respective positions on consolidation/coordination. IPR2017-00176 Paper 26.² In the Joint Notice, the Parties reached agreements on many issues, and also agreed to a schedule that would apply in all four cases. *Id.* at 1–2, Ex. A. The Parties, however, did not reach agreements regarding the depositions of experts whose testimony is relied upon in the Patent Owner Responses and Replies, or the conduct of the oral hearing (if requested).

² The Parties filed substantively identical petitions in the other three above-captioned actions. For the sake of simplicity, this Order cites to the version of the Joint Notice that was filed in IPR2017-00176.

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Regarding depositions, the Dell Petitioners propose that each expert witness whose testimony is relied on in the Patent Owner Responses or Replies be deposed only once across the four proceedings. IPR2017-00176 Paper 26, 4. Patent Owner agrees that each expert should only be deposed once across the four proceedings. *Id.* Teradata states that it will “endeavor to schedule and administrate the deposition of any expert Patent Owner relies on such that only a single deposition is necessary” across the four actions, but also indicates that it is “premature to require Teradata to be limited to a single deposition” because Patent Owner has not yet filed its Patent Owner Response. *Id.* at 3–4. Thus, Teradata requests the option to conduct “one deposition of Patent Owner’s expert for each coordinated pair of proceedings . . . to the extent necessary.” *Id.* at 4.

Regarding the oral hearing, Teradata agrees that IPR2017-00806 and IPR2017-00808 should be considered in a single hearing, but submits that it is premature to schedule all four cases for a single, consolidated hearing. IPR2017-00176 Paper 26, 4–5. The Dell Petitioners express no opinion regarding the appropriate number of oral hearings, but request that they have a total of at least 45 minutes of argument time. *Id.* at 5. Patent Owner proposes a single oral hearing across all four proceedings. *Id.*

Having considered the positions of all Parties, the Panel agrees that the Parties’ agreements regarding consolidation (*see* IPR2017-00176 Paper 26, 1–2) and the case schedule are appropriate. Accordingly, the Parties are ordered to proceed as follows:

1. The Parties shall proceed according to the schedule entered in the two earlier-filed *inter partes* reviews, except that Due Date 1 shall be September 20, 2017, in all four proceedings. The Board will issue

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scheduling orders in IPR2017-00806 and IPR2017-00808 in accordance with the Parties' stipulated schedule.

2. Beginning with the Patent Owner Response, the Parties will file joint papers in the pairs of proceedings for each respective challenged patent—i.e., Patent Owner will file one common Patent Owner Response related to U.S. Patent 7,161,506 C2 in IPR2017-00176 and IPR2017-00806 (and Petitioners will file one common Reply), and Patent Owner will file one common Patent Owner Response related to U.S. Patent 9,054,728 B2 in IPR2017-00179 and IPR2017-00808 (and Petitioners will file one common Reply). The Parties shall identify on the caption page of each common filing the proceedings to which that common filing relates, and shall file separate copies of each common filing in each of the relevant proceedings (i.e., copies of the common Patent Owner Response regarding U.S. Patent 7,161,506 C2 will be filed in both IPR2017-00176 and IPR2017-00806). The parties also shall file copies of all exhibits in each relevant proceeding, and shall ensure that exhibit numbers are consistent (e.g., exhibits to the common Patent Owner Response in IPR2017-00176 and IPR2017-00806 shall be filed in both proceedings, and each exhibit shall have the same exhibit number in both proceedings).
3. The deposition of Dr. Creusere taken by Patent Owner on August 4, 2017, will be treated as having been taken in all four proceedings, and Patent Owner will not seek an additional deposition of Dr. Creusere as to the opinions expressed in his initial declaration in IPR2017-00806 and IPR2017-00808.

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4. The Parties do not currently seek extra words of briefing, additional time at oral argument, or additional time for questioning at any future deposition as a result of this consolidation, but reserve the right to do so if such need becomes apparent.

Regarding the disputed issues, the Panel appreciates the parties' willingness to attempt to schedule a single deposition of each expert across all four proceedings, but also recognizes the uncertainty that Teradata cites. Accordingly, after the Patent Owner Responses are filed, the parties are ordered to meet and confer in a good faith attempt to schedule one deposition of each relevant expert across all four proceedings. The Parties are ordered to meet and confer again for the same purpose after the Replies are filed. If, after meeting and conferring, any Party believes it would be unduly prejudiced by conducting depositions in this manner, that Party shall promptly request a conference call with the Panel.

The Parties' disputes regarding the oral hearing are premature. The Parties shall set forth their positions regarding the conduct of the oral hearing at the time they file formal requests for oral argument.

Accordingly, it is:

ORDERED that that IPR2017-00176, IPR2017-00179, IPR2017-00806 and IPR2017-00808 shall proceed in the manner set forth above.

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