

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL INC.; EMC CORPORATION; HEWLETT-PACKARD
ENTERPRISE CO.; HP ENTERPRISE SERVICES, LLC; TERADATA
OPERATIONS, INC.; and VERITAS TECHNOLOGIES, LLC,
Petitioners,

v.

REALTIME DATA LLC d/b/a IXO,
Patent Owner.

Case: IPR2017-00176¹

* * * * *

Case: IPR2017-00806

[Consolidated]

Patent No. 7,161,506

**PETITIONER'S BRIEF PURSUANT TO
THE BOARD'S FEBRUARY 23rd ORDER**

¹ Case IPR2017-01688 has been joined with this proceeding.

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37 C.F.R. §§ 42.25(b), 42.23(b).....2, 3

MPEP, § 2111.045

PTAB Standard Operating Procedure No. 2 Rev. 9 (Sept. 22, 2014)5

Petitioner submits this brief pursuant to the Board’s February 23, 2018 Order Authorizing Additional Briefing. *See* Paper 38. *Schulhauser* is applicable to claims 104 and 105, is sound under the law, and, as precedent, should be followed here. Finally, Petitioner’s reliance on *Schulhauser* in their reply was proper.

I. **SCHULHAUSER APPLIES TO CLAIMS 104 AND 105**

The Board’s Order in *Ex parte Schulhauser*, No. 2013-007847, at 8-10 (PTAB Apr. 28, 2016) (precedential) holds that when a patentee drafts method claims in a format where one step of the method is performed to the exclusion of another (e.g., “if X, then Y; if not X, then Z”), only one step needs to be disclosed or rendered obvious by the prior art. In other words, the claim covers two distinct methods: one in which the prerequisite condition is met, and another in which the prerequisite condition is unmet. *Schulhauser* at 8. A finding that ***either one of the two distinct methods*** would have been obvious is all that is required. *See id.* at 8-10.

As explained in the Reply, claims 104 and 105 are drafted in precisely the same manner as those at issue in *Schulhauser*. Reply at 20-23. Each is a method claim that requires performance of one of two compression steps—to the exclusion of the other—depending on whether a prerequisite condition is satisfied, e.g., “a data type of the data block is identified” (claim 104). Ex. 1001 at 2:41-43. Thus, under *Schulhauser*, the prior art asserted by Petitioner needs to satisfy ***only one*** of the two conditional steps to render the claim anticipated or obvious.

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