

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,¹
Petitioners,

v.

REALTIME DATA LLC,
Patent Owner.

Case IPR2017-00176 (Patent 7,161,506 C2)²
Case IPR2017-00179 (Patent 9,054,728 B2)³

Before JASON J. CHUNG, SCOTT C. MOORE, SHEILA F. McSHANE,
and KAMRAN JIVANI, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

¹ The Petitioner(s) in the respective cases have been identified in this consolidated manner for the purpose of brevity. Please refer to the individual cases for the identification of the respective Petitioner(s)

² Case IPR2017-00806 has been consolidated with IPR2017-00176. Case IPR2017-01688 has been joined with IPR2017-00176. The panel for these three cases consists of Judges Chung, Moore, and McShane.

³ Case IPR2017-00808 has been consolidated with IPR2017-00179. Case IPR2017-01690 has been joined with IPR2017-00179. The panel for these three cases consists of Judges Chung, Moore, and Jivani.

Cases IPR2017-00176 (Patent 7,161,506 C2)

Cases IPR2017-00179 (Patent 9,054,728 B2)

On April 24, 2018, the Supreme Court held that a decision to institute under 35 U.S.C. § 314 may not institute on less than all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 2018 WL 1914661, at *10 (U.S. Apr. 24, 2018).

In these six joined/consolidated proceedings (IPR2017-00176, IPR2017-00179, IPR2017-00806, IPR2017-00808, IPR2017-01688, and IPR2017-01690), Petitioners asserted unpatentability under 35 U.S.C. § 103 based on the combinations of Franaszek and Hsu, or in the alternative, Franaszek, Hsu, and Sebastian. *See, e.g.*, IPR2017-00176, Paper 1, 7; IPR2017-00179, Paper 1, 7. In our Decisions on Institution, we instituted as to the combination of Franaszek, Hsu, and Sebastian, but did not institute as to the combination of Franaszek and Hsu. *See, e.g.*, IPR2017-00176, Paper 19, 19; IPR2017-00179, Paper 20, 33.

On May 2, 2018, after the *SAS* decision issued, counsel for the Petitioners in the lead cases (IPR2017-00176 and IPR2017-00179) emailed the Board *sua sponte* and indicated that Petitioners would consent to the Board considering the non-instituted unpatentability arguments based on Franaszek and Hsu without further briefing, and that they considered these issues fully briefed. *See Ex. 3001*. Patent Owner's counsel then emailed the Board consenting to this approach. *See id.*

On May 3, 2018, the Board contacted counsel via email requesting written confirmation that all parties in all six joined/consolidated proceedings “consent to the Board considering and ruling on all patentability arguments set forth in the Petitions (including

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the Petitioners' unpatentability arguments based on (1) Franaszek and Hsu, and (2) Franaszek, Hsu, and Sebastian) without further briefing, and without further oral argument." Ex. 3001. Counsel for all parties in the six joined/consolidated proceedings responded via email and indicated that the parties did not object to the Board following this approach in all six proceedings. *See* Exs. 3002-3006.

In view of the parties' consent to the foregoing approach, it is ORDERED that our Institution Decisions in IPR2017-00176, IPR2017-00179, IPR2017-00806, IPR2017-00808, IPR2017-01688, and IPR2017-01690, are modified so as to institute review of all challenged claims on all grounds presented in the six corresponding Petitions; and

FURTHER ORDERED that the Board will rule on all patentability arguments set forth in the six Petitions without further briefing, and without further oral argument.

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Cases IPR2017-00179 (Patent 9,054,728 B2)

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