

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETAPP, INC. and RACKSPACE US, INC.,
Petitioner,

v.

REALTIME DATA LLC,
Patent Owner.

Case IPR2017-01660
Patent No. 7,161,506

**JOINT MOTION TO TERMINATE PROCEEDING
PURSUANT TO 35 U.S.C. § 317 AND 37 C.F.R. § 42.74**

Pursuant to 35 U.S.C. § 317 and 37 C.F.R. § 42.74, Petitioner Rackspace US, Inc. and Patent Owner Realtime Data LLC (“the Parties”) jointly request that this proceeding be terminated with respect to Rackspace. Petitioner NetApp Inc. consents to and does not oppose termination of Rackspace from this proceeding. This motion was authorized by e-mail from the Board on July 31, 2017.

I. Termination is Appropriate

Patent Owner and Rackspace have reached a settlement of their disputes concerning the subject patent. Accordingly, the Parties jointly request termination of these proceedings with respect to Rackspace. Because there is a remaining Petitioner party, this proceeding will continue without Rackspace. As a result, terminating the proceeding as to Rackspace will not change the Board’s ability to review the subject patent.

Pursuant to 37 C.F.R. § 42.74, a copy of the settlement agreement (Ex. 2002) between Realtime and Rackspace, and a request that the settlement agreement be treated as business confidential information, are filed concurrently with this motion.¹

¹ The settlement agreement has been filed electronically via E2E for “Board Only” to preserve confidentiality from the other parties.

In addition, the status of the related district court litigations and IPRs for the patents at issue in the litigations are summarized below.

II. The Parties Have Resolved All Related Cases Involving Rackspace

The Parties have resolved the disputes related to the 7 *inter partes* review proceedings in which they are currently involved:

Case Number	Petitioners	Patent Owner	U.S. Patent Number
IPR2017-01354	NetApp and Rackspace	Realtime	9,054,728
IPR2017-01627	Rackspace	Realtime	7,415,530
IPR2017-01629	Rackspace	Realtime	9,116,908
IPR2017-01660	NetApp and Rackspace	Realtime	7,161,506
IPR2017-01663	NetApp and Rackspace	Realtime	7,378,992
IPR2017-01664	NetApp and Rackspace	Realtime	8,643,513
IPR2017-01691	Rackspace	Realtime	7,358,867

The Parties will file motions to end proceedings before institution decision or terminate Rackspace as a party to the petition as appropriate in each of those proceedings.

The Parties have also resolved the issues in the pending district court suit between Realtime and Rackspace, *Realtime Data LLC v. Rackspace Us, Inc. et al*, E.D. Tex., 6:16-CV-961 (concerning U.S. Patent Nos. 7,161,506; 7,358,867;

7,378,992; 7,415,530; 8,643,513; 9,054,728; and 9,116,908). The Parties have filed, and the District Court has granted, dismissal of Rackspace. *See id.* at Dkt. No. 215 (Aug. 1, 2017) (granting partial dismissal of Rackspace).²

III. Other Related Proceedings

The Parties provide the following list of other related AIA trial and litigation proceedings not involving Rackspace, including an identification of the parties involved and the current status of those proceedings.

A. *Inter Partes* Review

The '506 patent is also undergoing *inter partes* review in:

- **IPR2017-00176.** The petitioners in this proceeding are Dell Inc.; EMC Corp.; Hewlett-Packard Enterprise Co.; HP Enterprise Services, LLC. The Board instituted review on May 30, 2017.
- **IPR2017-00806.** The petitioner in this proceeding is Teradata Operations, Inc. Patent Owner filed its preliminary response on May 22, 2017.

² This case includes other defendants, and it will proceed as to those defendants.

- **IPR2017-01688.** The petitioner in this proceeding is Veritas Technologies, Inc. The Board has not yet issued an institution decision.

B. District Court Litigation

The Parties provide the following status and party information regarding the district court cases where Patent Owner is currently asserting the '506 Patent:

- ***Realtime Data LLC v. Hewlett Packard Enter. Co. et al*, E.D. Tex., Case No. 6:16-CV-00086.** The remaining parties in this case are Hewlett Packard Enterprise, Co. and HP Enterprise Services, LLC. The Court has stayed proceedings pending resolution of *inter partes* review. *See* Dkt. No. 89.
- ***Realtime Data LLC v. Savvis Commc'ns Corp. et al*, E.D. Tex., Case No. 6:16-CV-00087.** The remaining parties in this case are Savvis Communications Corp. and Veritas Technologies LLC. The Court has stayed proceedings pending resolution of *inter partes* review. *See* Dkt. No. 106.
- ***Realtime Data LLC v. Dell Inc. et al*, E.D. Tex., Case No. 6:16-CV-00089.** The remaining parties in this case are Dell, Inc. and EMC Corp. The Court has stayed proceedings pending resolution of *inter*

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