

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 IPR2017-01354 (Patent 9,054,728 B2)¹
Case IPR2017-01660 (Patent 7,161,506 B2)
Case IPR2017-01663 (Patent 7,378,992 B2)
Case IPR2017-01664 (Patent 8,643,513 B2)

Before J. JOHN LEE, JASON J. CHUNG, SCOTT C. MOORE, and KEVIN C.
TROCK, *Administrative Patent Judges*.

CHUNG, *Administrative Patent Judge*.

DECISION

Joint Motion to Terminate with Respect to Rackspace US, Inc.
37 C.F.R. § 42.72

¹ This Decision applies to each of the listed cases. In our Decision, we refer to paper numbers, exhibit numbers, and dates from IPR2017-01354. However, the joint motions to terminate and the related documents discussed herein are substantially identical in the four proceedings listed above. 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.

Case IPR2017-01354 (Patent 9,054,728); Case IPR2017-01660 (Patent 7,161,506); Case IPR2017-01663 (Patent 7,378,992); Case IPR2017-01664 (Patent 8,643,513)

Petitioner filed its Petition on May 2, 2017. On August 15, 2017, Patent Owner Realtime Data LLC (“Realtime”) filed its Patent Owner Preliminary Response. On August 7, 2017, Realtime and Petitioner Rackspace US, Inc. (“Rackspace”) filed a joint motion to terminate the trial proceedings under 35 U.S.C. § 317 and 37 C.F.R. § 42.74 (Paper 9), a true copy of a written settlement agreement (Ex. 2002), and a joint request to maintain confidentiality and to keep separate (Paper 10). Moreover, Petitioner NetApp, Inc. consents to and does not oppose termination of Rackspace from these proceedings. Paper 9, 1.

The Board has not yet determined, under 35 U.S.C. § 314, whether or not to institute a review in the instant case. As no trial has been instituted based on the Petition, this matter is in the preliminary proceeding² stage.

Under 35 U.S.C. § 317(a), “[a]n *inter partes* review instituted under this chapter shall be terminated with respect to any petitioner upon the joint request of the petitioner and patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed.” The grant of the motion to terminate will not result in the termination of the instant proceeding, because NetApp, Inc. remains as Petitioner. The parties are reminded that the Board is not a party to settlements, and may identify independently any question of patentability. 37 C.F.R § 42.74(a).

Generally, however, the Board expects that a proceeding will terminate as to settling parties after the filing of a settlement agreement. *See, e.g.*, Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). The Board is

² A preliminary proceeding begins with the filing of a petition for instituting a trial and ends with a written decision as to whether trial will be instituted. 37 C.F.R. § 42.2.

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persuaded that, under these circumstances, it is appropriate to terminate this proceeding only as to Rackspace. *See* 37 C.F.R. § 42.72.

Accordingly, it is:

ORDERED that the joint motion to terminate this proceeding with respect to Rackspace is GRANTED, and these proceedings are hereby terminated only as to Rackspace in IPR2017-01354, IPR2017-01660, IPR2017-01663, IPR2017-01664; and

FURTHER ORDERED that the parties' joint request that the written settlement agreement (Ex. 2002) be: (i) treated as business confidential information; (ii) kept separate from the patent files; (iii) kept confidential from any third party (including from the previously settled Petitioners and the non-settling Petitioners); and (iv) made available only to Federal Government agencies on written request, or to any person on a showing of good cause, under the provisions of 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c), is GRANTED.

Case IPR2017-01354 (Patent 9,054,728); Case IPR2017-01660 (Patent 7,161,506);
Case IPR2017-01663 (Patent 7,378,992); Case IPR2017-01664 (Patent 8,643,513)

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