

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

REALTIME DATA LLC d/b/a IXO,

Plaintiff,

v.

RACKSPACE US, INC.; NETAPP, INC.;
and SOLIDFIRE, LLC,

Defendants.

Case No. 6:16-cv-961

LEAD CASE

JURY

**DEFENDANTS NETAPP, INC. AND SOLIDFIRE, LLC MOTION TO STAY
LITIGATION PENDING *INTER PARTES* REVIEW OF PATENTS-IN-SUIT**

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77 Fed. Reg. 48,680 (Aug. 14, 2012) (to be codified at 37 C.F.R. § 42.100 *et seq.*)3

This is a patent infringement lawsuit involving seven complex, interrelated patents asserted by non-practicing entity Realtime Data LLC (“Realtime”). Realtime alleges that Defendants NetApp, Inc. (“NetApp”) and SolidFire, LLC (collectively “the NetApp Defendants”) infringe an as-yet undefined set of the 205 claims in six of the seven patents.¹ The NetApp Defendants move to stay all proceedings in this action pending the resolution of nine petitions for *inter partes* review (“IPR”) before the Patent Trial and Appeal Board (“PTAB”) challenging five of the six asserted patents. The other asserted patent is closely related to the five patents that are already the subject of instituted IPRs or pending IPR petitions. Indeed, all six patents share the same sole inventor, concern the same technology (data compression), and as Realtime concedes, share common issues of claim construction. Any narrowing of issues that occurs in the nine pending IPRs, therefore, will likely streamline questions of claim construction, validity, and infringement as to all six of the asserted patents.

The circumstances of this case strongly favor a stay under the three factors courts consider in deciding whether to stay an action pending IPR proceedings. First, this case is at its infancy: the pleadings are not settled² and the initial scheduling conference has not taken place. Discovery has not even begun and major litigation events, such as the *Markman* hearing, will not take place until the middle of next year. Second, at this early stage, Realtime would not suffer any undue prejudice from a stay, especially because monetary damages and prejudgment interest can fully compensate Realtime for any delay caused by the stay. Finally, given the large number of patents and potential claims at issue, permitting the IPRs to proceed before the litigation

¹ Realtime has asserted the seventh patent against only Rackspace in this litigation.

² Rackspace US, Inc., the other named defendant, has not yet answered the complaint; instead, Rackspace filed a motion to dismiss the amended complaint on September 6, 2016. [Dkt. No. 26](#).

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