

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETAPP, INC.,
Petitioner,

v.

REALTIME DATA LLC,
Patent Owner.

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

PATENT OWNER'S PRELIMINARY RESPONSE

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	A. The Petition's only allegations regarding a motivation to combine are conclusory, rely on motivations to combine other art, and improperly incorporate by reference from the declaration.	30

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B. The only competent evidence of record, provided by *two* experts, establishes that Sebastian does not teach or suggest what Petitioner ascribes to it.34

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EXHIBIT LIST

Exhibit No.	Description
2001	Declaration of Kayvan B. Noroozi in Support of Motion for Admission <i>Pro Hac Vice</i>
2002	Business Confidential Settlement Agreement between Realtime Data and Rackspace US (filed Board Only)
2003	NOT USED
2004	NOT USED
2005	Transcript of Oral Deposition of Charles D. Creusere, August 4, 2017, taken in IPR2017-00176 and IPR2017-00179
2006	NetApp's Invalidation Contentions, served in Case No. 6:16-CV-961 (E.D. Tex.) on January 24, 2017
2007	NetApp's Motion to Stay, filed in Case No. 6:16-CV-961 (E.D. Tex.) on November 11, 2016
2008	NetApp's Reply in Support of its Motion to Stay, filed in Case No. 6:16-CV-961 (E.D. Tex.) on December 8, 2016
2009	Declaration of Kenneth A. Zeger, as submitted in <i>Dell Inc. et al v. Realtime Data LLC</i> , IPR2017-00176, Ex. 2004
2010	Declaration of Kenneth A. Zeger, as submitted in <i>Oracle America, Inc. v. Realtime Data LLC</i> , IPR2016-00373, Ex. 2022
2011	Declaration of Kenneth A. Zeger, as submitted in <i>Teradata v. Realtime Data LLC</i> , IPR2017-00557, Ex. 2003

I. Introduction

NetApp asks the Board to institute *inter partes* review of the same claims already under review in two pending petitions, and based on the same or substantially the same prior art and arguments. Section IV, *infra*. The Board has recently rejected NetApp's attempts to burden the Board and Realtime with duplicative and tardy petitions that provide no potential benefit, and should do so again here. *Id.* There is no practical reason to institute a third, redundant petition.

NetApp's Petition is also internally redundant. The Petition presents four grounds, but does not distinguish between them or ascertain their strengths and weaknesses, as the Board has required. Section V, *infra*. Consistent with its precedents, the Board should deny institution in full on that basis as well. *Id.*

Moreover, all four grounds fail to make a *prima facie* showing of obviousness with respect to the same limitation of claim 105: limitation E.

Ground 1 relies on the combination of Hsu with Franaszek. Petitioner admits that Hsu does not teach limitation E. Pet. 21. And the testimony of *two* expert witnesses, one of which was adverse to Realtime, establishes that Franaszek also does not teach the limitation—refuting the Petition's allegations. Section VI.B, *infra*. Based on that record, the Petition does not establish a likelihood of prevailing as to Ground 1, and should not be instituted. Section VI.C, *infra*.

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