UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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VERITAS TECHNOLOGIES LLC,
Petitioner,

v.

REALTIME DATA LLC d/b/a IXO,
Patent Owner.

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Case IPR2017-01690
Patent 9,054,728 B2

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Before JASON J. CHUNG, SCOTT C. MOORE, and KAMRAN JIVANI,
Administrative Patent Judges.

MOORE, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

Grant of Motion for Joinder
37 C.F.R. § 42.122(b)

I.   INTRODUCTION

A. Background

On June 28, 2017, Veritas Technologies LLC ("Petitioner") filed a Petition (Paper 1, "Pet.") requesting *inter partes* review of claims 104 and 105 ("the challenged claims") of U.S. Patent No. 9,054,728 B2 (Ex. 1001, "the '728 patent"). Concurrently with the Petition, Petitioner filed a Motion for Joinder (Paper 3, "Mot."), requesting that this proceeding be joined with *Dell, Inc. v. Realtime Data LLC d/b/a IXO*, Case IPR2017-00179 ("179 IPR"). Mot. 1. Realtime Data LLC ("Patent Owner") did not file an Opposition to the Motion for Joinder and did not file a Preliminary Response.

We have jurisdiction under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted "unless . . . there is a reasonable likelihood that the Petitioners would prevail with respect to at least 1 of the claims challenged in the petition." For the reasons discussed below, we institute an *inter partes* review of all challenged claims and grant Petitioner's Motion for Joinder.

B. Related Proceedings and Asserted Grounds of Unpatentability

In the 179 IPR, we instituted *inter partes* review of the '728 patent on the following two grounds:

1. Claims 1–3, 9, 10, 15, 20, and 24 under 35 U.S.C. § 103(a) as unpatentable over Franaszek[1], Hsu[2], and Sebastian[3]; and

2. Claims 4–8 under 35 U.S.C. § 103(a) as unpatentable over Franaszek, Hsu, Aakre[4], and Sebastian.

179 IPR Paper 20, 33.

The Petition in this proceeding challenges the same claims on identical grounds of unpatentability, and relies on the same evidence and arguments as presented in the 179 IPR. Pet. 1; Mot. 1–2. Petitioner represents that "[i]ntentionally, the Petition is nearly word-for-word identical to the petition in the [179] IPR in an effort to avoid multiplication of issues before the Board" and relies upon similar evidence, including an "essentially identical" expert declaration. Mot. 1–2. Petitioner notes that its Petition is "supplemented with additional support." Pet. 1. Patent Owner did not file a Preliminary Response and has not presented any arguments regarding the merits of the Petition.

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[1] U.S. Patent No. 5,870,036, issued Feb. 9, 1999 (179 IPR Ex. 1004).

[2] W. H. Hsu and A. E. Zwarico, "Automatic Synthesis of Compression Techniques for Heterogeneous Files," *Software—Practice and Experience*, Vol. 25(10), 1097–1116 (1995) (179 IPR Ex. 1005).

[3] U.S. Patent No. 6,253,264 B1, issued June 26, 2001 (179 IPR Ex. 1030).

[4] U.S. Patent No. 4,956,808, issued Sept. 11, 1990 (179 IPR Ex. 1021).

For the above reasons, and in particular the fact that the present Petition is virtually identical to the petition in the 179 IPR, we determine Petitioner has demonstrated sufficiently under 35 U.S.C. § 314 that an *inter partes* review should be instituted in this proceeding on the same grounds of unpatentability as the grounds on which we instituted *inter partes* review in the 179 IPR.

C. The '728 Patent

The '728 patent, titled "Data Compression Systems and Methods," discloses systems and methods for analyzing data within a data block in order to select a method of compression to apply to the data Ex. 1001, Title, Abst. The disclosed systems and methods provide "fast and efficient data compression using a combination of content independent data compression and content dependent data compression." *Id*. at 3:59–62.

D. Challenged Claims

Challenged claims 1 and 24 are independent, and the remaining challenged claims all depend from claim 1. Claims 1 and 24 are reproduced below.

> 1. A system for compressing data comprising;
> a processor;
> one or more content dependent data compression encoders;
>   and
> a single data compression encoder;
> wherein the processor is configured:
> to analyze data within a data block to identify one or more
>   parameters or attributes of the data wherein the
>   analyzing of the data within the data block to identify
>   the one or more parameters or attributes of the data
>   excludes analyzing based solely on a descriptor that is
>   indicative of the one or more parameters or attributes of
>   the data within the data block;

to perform content dependent data compression with the
one or more content dependent data compression
encoders if the one or more parameters or attributes of
the data are identified; and

to perform data compression with the single data
compression encoder, if the one or more parameters or
attributes of the data are not identified.

. . . .

24. A system for compressing data comprising;
a processor;
one or more data compression encoders; and
a default data compression encoder;
wherein the processor is configured:

to analyze data within a data block to identify one or more
parameters or attributes of the data wherein the
analyzing of the data within the data block to identify
the one or more parameters or attributes of the data
excludes analyzing based solely on a descriptor that is
indicative of the one or more parameters or attributes of
the data within the data block; and

to compress the data block to provide a compressed data
block, wherein if one or more encoders are associated
with the one or more parameters or attributes of the
data, compressing the data block with at least one of the
one or more data compression encoders, [24f] otherwise
compressing the data block with the default data
compression encoder.

E. Motion for Joinder

An *inter partes* review may be joined with another *inter partes*

review, subject to certain statutory provisions:

(c) JOINDER.—If the Director institutes an inter partes review,
the Director, in his or her discretion, may join as a party to that
inter partes review any person who properly files a petition under
section 311 that the Director, after receiving a preliminary
response under section 313 or the expiration of the time for filing

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