

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

RIVERBED TECHNOLOGY, INC.; DELL, INC.; SAP AMERICA, INC.;
SYBASE, INC.; HEWLETT-PACKARD ENTERPRISE CO.; HP ENTERPRISE
SERVICES, LLC; TERADATA OPERATIONS, INC.; ECHOSTAR
CORPORATION; AND HUGHES NETWORK SYSTEMS, LLC,
Petitioner,

v.

REALTIME DATA, LLC,
Patent Owner.

Case IPR2016-00980
Patent 7,378,992 B2

Before GEORGIANNA W. BRADEN, J. JOHN LEE, and JASON J. CHUNG,
Administrative Patent Judges.

CHUNG, *Administrative Patent Judge.*

TERMINATION ORDER
35 U.S.C. § 317(a) and 37 C.F.R. §§ 42.72 and 42.10(e)

SAP America, Inc. and Sybase, Inc. (“SAP and Sybase”), with other parties, filed a Petition for an *inter partes* review of U.S. Patent No. 7,378,992 (the ’992 patent) on April 29, 2016, and Realtime filed a Preliminary Response on August 3, 2016. Paper 11; Paper 23. On October 19, 2016, Patent Owner Realtime Data, LLC (“Realtime”), SAP, and Sybase filed a Joint Motion to Terminate Proceedings under 35 U.S.C. § 317(a) (Paper 25), a true copy of the written settlement agreement (Ex. 2004), and a joint request to file the settlement agreement as business confidential information and to keep separate the agreement pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74 (Paper 26). The Board has not yet issued a decision, under 35 U.S.C. § 314, whether to institute a review in the instant case. As no trial has been instituted based on SAP and Sybase’s Petition, this matter is in the preliminary proceeding¹ 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.” Generally, the Board expects that a proceeding in the preliminary stage 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 satisfied that, under these circumstances, it is appropriate to terminate this proceeding only as it relates to SAP and Sybase. 35 U.S.C. § 317(a); 37 C.F.R. § 42.72.

¹ 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.

In addition, SAP and Sybase, with other parties, filed a motion on October 21, 2016, requesting that two of its backup counsel, John Vandenberg and Garth Winn representing SAP and Sybase, be permitted to withdraw as counsel of record for Petitioner in this proceeding. Paper 27, 1–2. The Motion indicates that the currently named lead counsel and several other backup counsel will remain in this proceeding. *Id.* Petitioner represents that Realtime does not oppose this Motion to Withdraw Counsel. *Id.* After due consideration, Petitioner’s Motion to Withdraw Counsel is *granted*.

Accordingly, it is:

ORDERED that the joint motion to terminate this proceeding only as it relates to SAP and Sybase is GRANTED under the provisions of 35 U.S.C. § 317(a);

FURTHER ORDERED that any subsequent papers filed in this *inter partes* review should not include SAP and Sybase in the caption;

FURTHER ORDERED that the parties’ joint request that the written settlement agreement (Ex. 2004) be: (i) treated as business confidential information; (ii) kept separate from the file of the ’992 patent; (iii) kept confidential from any third party; 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;

FURTHER ORDERED that Petitioner’s Motion to Withdraw Counsel is GRANTED;

FURTHER ORDERED that John Vandenberg and Garth Winn are withdrawn as counsel of record for Petitioner; and

FURTHER ORDERED that Petitioner shall file updated mandatory disclosures under 37 C.F.R. § 42.8(b) providing updated counsel and service information.

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