

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETAPP INC.,
Petitioner,

v.

REALTIME DATA LLC,
Patent Owner.

Case IPR2017-01195
Patent 7,415,530 B2

Before GREGG I. ANDERSON, SCOTT C. MOORE, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

MOORE, *Administrative Patent Judge*.

DECISION
Joint Motion to Terminate
37 C.F.R. §§ 42.5(a), 42.71(a)

On February 6, 2018, NetApp Inc. (“Petitioner”) and Realtime Data LLC (“Patent Owner”) filed a Joint Motion to Terminate Proceedings Pursuant to 35 U.S.C. § 317(a) (“Motion,” “Mot.,” Paper 16) in this proceeding based on a settlement that resolves the parties’ disputes related to U.S. Patent No. 7,415,530 B2 (the “’530 patent”). Mot. 1. The parties concurrently filed a true copy of a Settlement and License Agreement (“Settlement Agreement,” Exhibit 1013), which resolves the parties’ disputes with respect to the following *inter partes* reviews: IPR2017-01195, IPR2017-001196, IPR2017-01354, and IPR2017-01660 (“IPR Proceedings”). Ex. 1013, 1 (Recitals). In the Settlement Agreement, the parties also resolved their lawsuit pending in the U.S. District Court for the Eastern District of Texas, *Realtime Data LLC d/b/a IXO v. Rackspace US Inc. et al.*, Civil Action No. 6-16-cv-961. *Id.* The Settlement Agreement provides, among other things, that the parties will file motions to dismiss that lawsuit and to terminate this *inter partes* review proceeding. Ex. 1013 ¶ 6.1; *see also* Mot. 1–2 (requesting termination). The Parties also certify that there are no collateral agreements or understandings made in connection with, or in contemplation of, the termination the IPR Proceedings. Mot. 1–2.

In the Motion, the parties request that the Settlement Agreement be treated as business confidential information and be kept separate from the underlying files, as provided in 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c) (“A party to a settlement may request that the settlement be treated as business confidential information and be kept separate from the files of an involved patent or application.”). Mot. 2. Concurrently with the Motion, the parties also filed a Joint Request that the Settlement Agreement Filed Separately as Exhibit 1013 be Treated as Business Confidential Information and be Kept Separate from the Files pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c). (“Request,” Paper 17).

In this proceeding, on October 12, 2017, we declined to institute *inter partes* review (Paper 9). On November 13, 2017, Petitioner filed a Request for Rehearing (Paper 10). Pursuant to our Order setting forth a briefing schedule on the Request for Rehearing (Paper 11), Patent Owner filed a Response to the Request for Rehearing on November 29, 2017 (Paper 12) and Petitioner filed a Reply in support of the Request for Rehearing on December 6, 2017 (Paper 13). Under the circumstances present here, we determine that a decision on the Request for Rehearing is unnecessary and that it is appropriate to terminate this proceeding at this time. See 37 C.F.R. §§ 42.5(a), 42.71(a). This paper does not constitute a final written decision pursuant to 35 U.S.C. § 318(a).

ORDER

Accordingly, it is

ORDERED that the Joint Motion to Terminate Proceedings Pursuant to 35 U.S.C. § 317(a) (Paper 16) is *granted*; and

FURTHER ORDERED that the Joint Request that the Settlement Agreement Filed Separately as Exhibit 1013 be Treated as Business Confidential Information and be Kept Separate from the Files (Paper 17) is *granted* and the Settlement Agreement shall be treated as business confidential information, be designated “Parties and Board Only,” and be kept separate from the files of the involved U.S. Patent No. 7,415,530 B2.

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