

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETAPP, INC.
Petitioner,

v.

REALTIME DATA LLC,
Patent Owner.

Case IPR2017-01663 (Patent 7,378,992 B2)
Case IPR2017-01664 (Patent 8,643,513 B2)¹

Before JASON J. CHUNG, SCOTT C. MOORE, and
KEVIN C. TROCK, *Administrative Patent Judges*.

TROCK, *Administrative Patent Judge*.

DECISION
Termination of Proceedings
37 C.F.R. §§ 42.71

¹ This Order addresses an issue that is identical in both cases. We, therefore, exercise our discretion to issue one Order to be filed in each case. The parties are not authorized to use this style heading for any papers.

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IPR2017-01664 (Patent 8,643,513 B2)

Petitioner filed a petition requesting *inter partes* review on June 22, 2017 and June 23, 2017 (Papers 3, 3). These proceedings are still in the preliminary stage and no trial has yet been instituted. On December 18, 2017, Petitioner filed motions to terminate these proceedings (Papers 16, 18) because the challenged claims were found unpatentable in IPR2016-00978 and IPR2016-00980, decisions which were issued by the Board on October 30, 2017 and October 27, 2017, respectively. Petitioner advises the Board that the Patent Owner has stated that it does not oppose the motions to terminate. Paper 16, 1; Paper 18, 1. Patent Owner has not filed an opposition to the motions to terminate.

A motion to terminate should provide “(1) a brief explanation as to why termination is appropriate; (2) the identity of all parties in any related district court case involving the patents at issue in the proceedings sought to be terminated, (3) the identity of any related proceedings currently before the Office; and (4) the current status of each such related case or proceeding with respect to each party to the case or proceeding.” *RPC Formatec GMBH v. Trudell Medical Int’l*, Case No. IPR2014-01040, slip op. at 2-3 (Oct. 24, 2014) (Paper 10).

The Petition in IPR2017-01663 was filed on June 22, 2017, and was accorded a filing date on July 28, 2017. The Board has not yet issued a decision on this Petition. The statutory deadline for the Board to issue a decision is January 30, 2018.

Petitioner advises that Patent Owner has asserted the Patent 7,378,992 (“the ’992 Patent”) against Petitioner in the Eastern District of Texas (Case No. 6:16-cv-961). Paper 16, 2. According to Petitioner, that case was filed June 29, 2016, and it has been over one year since service of the complaint

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for purposes of the one-year deadline under 35 U.S.C. § 315(b). *Id.*

Petitioner advises that the case is scheduled to go to trial on January 16, 2018. *Id.* Petitioner advises the other defendant that was part of that case, Rackspace US, Inc., settled with Patent Owner and has been dismissed from the case. *Id.* Petitioner also advises that there are no other pending *inter partes* reviews of the '992 Patent before the Board, and that no other petitioners are a party to this *inter partes* review. *Id.* at 3.

The Petition in IPR2017-01664 was filed on June 23, 2017 and was accorded a filing date on July 31, 2017. The Board has not yet issued a decision on this Petition. The statutory deadline for the Board to issue a decision is January 31, 2018.

Petitioner advises that Patent Owner has asserted Patent 8,643,513 (“the '513 Patent”) against Petitioner in the Eastern District of Texas (Case No. 6:16-cv-961). Paper 18, 2. Petitioner advises that the case was filed June 29, 2016, and it has been over one year since service of the complaint for purposes of the one-year deadline under 35 U.S.C. § 315(b). *Id.* Petitioner advises that the case is scheduled to go to trial on January 16, 2018. *Id.* Petitioner advises that the other defendant that was part of that case, Rackspace US, Inc., settled with Patent Owner and has been dismissed from the case. *Id.* Petitioner also advises that there are no other pending *inter partes* reviews of the '513 Patent before the Board, and that no other petitioners are a party to this *inter partes* review. *Id.* at 3.

Petitioner submits that it is in the best interests of judicial efficiency to dismiss these proceedings. Paper 16, 3; Paper 18, 3. The Board also recognizes Petitioner’s interest in terminating these proceedings. Under these circumstances, we determine it is appropriate to terminate these

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proceedings without rendering any further decisions. Therefore, the Petitioner's motions to terminate are GRANTED.

Accordingly, it is

ORDERED that the motions to terminate these proceedings are GRANTED; and

FURTHER ORDERED that these proceedings are TERMINATED.

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