

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELL INC.; EMC CORPORATION; HEWLETT-PACKARD
ENTERPRISE CO.; HP ENTERPRISE SERVICES, LLC; TERADATA
OPERATIONS, INC.; and VERITAS TECHNOLOGIES, LLC,
Petitioner,

v.

REALTIME DATA LLC,
Patent Owner.

Case IPR2017-00176¹
Patent 7,161,506 C2

Before JASON J. CHUNG, SCOTT C. MOORE, and
SHEILA F. McSHANE, *Administrative Patent Judges*.
CHUNG, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
Inter Partes Review
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

¹ Case IPR2017-00806 has been consolidated with IPR2017-00176. Case IPR2017-01688 has been joined with IPR2017-00176.

I. INTRODUCTION

Dell Inc., EMC Corporation, Hewlett-Packard Enterprise Co., and HP Enterprise Services, LLC (collectively “Petitioner”)² filed a Petition to institute an *inter partes* review of claims 104 and 105 of U.S. Patent No. 7,161,506 C2 (“the ’506 patent”). Paper 1 (“Pet.”). Realtime Data LLC (“Patent Owner”) filed a Preliminary Response pursuant to 35 U.S.C. § 313. Paper 15 (“Prelim. Resp.”).

Upon consideration of the Petition and the Preliminary Response, on November 4, 2016, we instituted *inter partes* review of claims 104 and 105 (“instituted claims”), pursuant to 35 U.S.C. § 314. Paper 19 (“Dec.”).

On January 30, 2017, Teradata Operations, Inc. (“Teradata”) filed a second Petition. *See* IPR2017-00806, Paper 1, 1. The IPR2017-00806 Petition was substantially similar to the Petition in IPR2017-00176. On September 8, 2017, we entered an order consolidating and coordinating Teradata’s IPR2017-00806 proceeding with IPR2017-00176. IPR2017-00176, Paper 28 (“Consolidation Order”). The Consolidation Order provided that IPR2017-00176 and IPR2017-00806 would proceed on the same schedule, that Patent Owner would file one common Patent Owner Response in both proceedings, that the petitioners would file one common Reply for both proceedings, that the parties would file copies of all exhibits in both proceedings, and that the August 4, 2017 Deposition of Charles D.

² The other named petitioners were named in the consolidated and joined cases. *See supra* n.1. Although consolidated IPR2017-00806 remains a separate proceeding from the other joined proceedings, the portions of each Petition that we relied on are substantively identical. For purposes of this Decision, we refer to the Paper numbers in IPR2017-00176. The parties are not permitted to use this caption.

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Creusere, Ph.D (Ex. 2003) and any future depositions would be treated as having been taken in both proceedings. Consolidation Order 4–5.

On June 28, 2017, Veritas Technologies LLC (“Veritas”) filed a third Petition. *See* IPR2017-01688, Paper 1, 1. The IPR2017-01688 Petition was substantively identical to the Petition in IPR2017-00176 Petition, and was accompanied by a motion asking that Veritas be joined as a party to the parties in IPR2017-00176. IPR2017-01688, Paper 3. Patent Owner Realtime Data LLC did not file a Preliminary Response.

On November 21, 2017, we granted Veritas’ Motion for Joinder, ordering that Veritas be joined as a petitioner in IPR2017-00176, that the grounds of unpatentability asserted in IPR2017-00176 remain unchanged, that all future filings be made in IPR2017-00176, and that IPR2017-01688 be terminated as a separate proceeding. IPR2017-01688, Paper 11, 8. Therefore, the filings and evidence in IPR2017-00176 govern the claims raised by Veritas in IPR2017-01688, and this Decision does not cite separately to filings or evidence in the IPR2017-01688.

On September 22, 2017, Patent Owner filed a Patent Owner Response (Paper 30 (“PO Resp.”)), which was accompanied by a supporting declaration from Kenneth A. Zeger, Ph.D (Ex. 2004). Petitioner filed a Reply to Patent Owner’s Response on December 6, 2017. Paper 34 (“Reply”).

An oral hearing was held on February 20, 2018, and a transcript of the oral hearing is available in the record. Paper 41 (“Tr.”). Because Petitioner raised a claim construction issue in its Reply (*see* Reply 20–23) about whether claims 104 and 105 include conditional limitations that should not be given patentable weight pursuant to *Ex Parte Schulhauser*, 2016 WL

6277792, No. 2013-007847 (PTAB 2016) (precedential) (hereinafter, “*Schulhauser*”), we authorized five pages of concurrent additional briefing for each party on this issue. Paper 38 (hereinafter, “Additional Briefing”). In response, Patent Owner filed additional briefing (Paper 39, “PO Br.”) and Petitioner filed additional briefing (Paper 40, “Pet. Br.”).

On May 15, 2018, the Board issued an order pursuant to the parties’ written consent modifying the Institution Decisions in the IPR2017-00176, IPR2017-00806, and IPR2017-01688 IPR, so that those decisions institute review of all challenged claims on all grounds presented in the corresponding petitions. Paper 42 (citing Exs. 3001–3006). By consent of the parties, this Decision addresses all claims and all grounds raised in the petitions. *See id.*

We issue this Final Written Decision pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons discussed herein, Petitioner has shown by a preponderance of the evidence that claims 104 and 105 of the ’506 patent are unpatentable. *See* 35 U.S.C. § 316(e).

A. Related Matters

Petitioner and Patent Owner inform us that the ’506 patent is involved in multiple suits in the U.S. District Court and the U.S. Court of Appeals for the Federal Circuit. Pet. 4; Paper 6, 4–8; Paper 12, 4–8; Paper 14, 2–3; Paper 18, 3–5; Paper 24, 5–8. The parties also inform us that the ’506 patent is involved in several *Inter Partes* Review proceedings. Pet. 4; Paper 6, 2–4; Paper 8, 2–4; Paper 12, 2–4; Paper 18, 1–3; Paper 24, 1–5.

B. The Instituted Grounds

References ³	Basis	Instituted Claims
Franaszek ⁴ and Hsu ^{5,6}	§ 103(a) ⁷	104 and 105
Franaszek, Hsu and Sebastian ⁸	§ 103(a)	104 and 105

C. The '506 Patent

The '506 patent describes systems and methods “for providing fast and efficient data compression using a combination of content independent data compression and content dependent data compression.” Ex. 1001, Abst. The '506 patent further describes the input data type includes a plurality of disparate data types. *Id.*

D. The Instituted Claims

We instituted *inter partes* review of claims 104 and 105. Claims 104 and 105 recite essentially similar limitations. Claims 104 and 105 are illustrative and reproduced below:

³ Petitioner also relies upon the Declaration of Dr. Charles D. Creusere. Ex. 1002. The portions of Dr. Creusere’s declaration that we relied on are substantively identical in all three IPRs listed in footnote 1.

⁴ U.S. Patent No. 5,870,036 (filed Feb. 24, 1995) (issued Feb. 9, 1999) (Ex. 1004, “Franaszek”).

⁵ 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) (Ex. 1005, “Hsu”).

⁶ Petitioner contends that Hsu was prior art as of 1995. Pet. 13 (citing Ex. 1026 ¶ 35). Patent Owner does not dispute the public availability date. We accept Petitioner’s contention. *See* Paper 20, § B.1.b

⁷ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), revised 35 U.S.C. § 103, effective March 16, 2013. The '908 patent was issued prior to the effective date of the AIA. Thus, we apply the pre-AIA version of § 103.

⁸ U.S. Patent No. 6,253,264 B1 (filed Mar. 6, 1998) (issued June 26, 2001) (Ex. 1030, “Sebastian”).

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