

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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TERADATA OPERATIONS, INC.,  
Petitioner,

v.

REALTIME DATA LLC,  
Patent Owner.

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Case IPR2017-00557  
Patent 7,358,867 B2

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Before GREGG I. ANDERSON, CHARLES J. BOUDREAU, and  
JASON J. CHUNG, *Administrative Patent Judges*.

ANDERSON, *Administrative Patent Judge*.

ORDER

Conduct of the Proceeding  
*37 C.F.R. § 42.5*

## INTRODUCTION

On May 15, 2018, a telephone conference was held pursuant to our Order (Paper 29) modifying the Decision on Institution (Paper 14) to institute on all of the grounds presented in the Petition. Paper 29, 2–3.<sup>1</sup> Counsel for Teradata Operations, Inc. (Petitioner) and for Realtime Data LLC (Patent Owner), as well as Judges Anderson, Boudreau, and Chung, participated in the call. The purpose of the call was to establish a procedure for supplemental briefing on the additional grounds instituted pursuant to our Order.

## DISCUSSION

Prior to the call and pursuant to our Order, the parties met and submitted an email (email dated May 14, 2018, Ex. 3002) presenting their respective positions on the timing, order, and amount of supplemental briefing required to address the additional grounds. As a result of the conference call, and in consideration of the parties' email, additional briefing is authorized on the following basis:

1. By May 23, 2018, Patent Owner may file a Supplemental Brief, not exceeding five pages, limited to the additional grounds, specifically, the grounds where the primary reference is Franaszek (Ex. 1006). *See* Paper 29, 2–3 (modified grounds 1–5).
2. By May 30, 2018, Petitioner may file a Reply to Patent Owner's Supplemental Brief, not exceeding five pages, limited to the arguments

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<sup>1</sup> *SAS Inst., Inc. v. Iancu*, 2018 WL 1914661, at \*10 (U.S. Apr. 24, 2018); *see also Guidance on the Impact of SAS on AIA Trial Proceedings*, April 26, 2018.

raised in Patent Owner's Supplemental Brief. Petitioner's Reply may also include a response to the Decision on Institution (Paper 14).<sup>2</sup>

3. By June 1, 2018, Patent Owner may request authorization to file a sur-reply limited to addressing any new issues raised by Petitioner in responding to the Decision on Institution.

Both parties stated that they had not identified any present need for additional evidence. If either party subsequently determines that additional evidence is necessary, the party is directed to arrange a call with the panel to request authorization to add such evidence to the record.

The additional grounds are based on the arguments in the Petition (Paper 1) and supporting evidence from the current record regarding the Franaszek reference as a primary reference. Paper 29, 1–2. Accordingly, Patent Owner's Supplemental Brief is limited to responding to the arguments and evidence in the Petition on the additional grounds. Similarly, Petitioner's Reply is limited to the arguments raised in Patent Owner's Supplemental Brief. If there is a question about whether either party's brief is within the permitted scope, the parties will confer in an effort to resolve the issue and, if resolution is not possible, arrange a call with the panel as soon as practical.

Pursuant to our post-hearing order entered February 23, 2018 (Paper

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<sup>2</sup> We acknowledge that we stated on our May 15, 2018, call with the parties that a response to our Decision on Institution would not be permitted because, among other things, Petitioner had not requested a rehearing of the Decision on Institution and the time for doing so had passed. However, upon further consideration, we have determined that permitting such a response would be in the interest of justice in this case.

25), both parties filed briefs regarding *Ex Parte Schulhauser*, 2016 WL 6277792, No. 2013-007847 (PTAB 2016) (precedential) (hereinafter, “*Schulhauser*”). Papers 26, 27. On our May 15, 2018, call with the parties, we specifically advised that *Schulhauser* should be addressed in the context of the additional grounds based on *Franaszek*. See Decision on Institution (Paper 14), 22–25.

### ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner is authorized to file a Supplemental Brief, limited to five pages, responding to the additional grounds in the Petition on or before May 23, 2018;

FURTHER ORDERED that Petitioner is authorized to file a Reply to the Supplemental Brief, limited to five pages, responding to Patent Owner’s argument and the Decision on Institution on or before May 30, 2018;

FURTHER ORDERED by June 1, 2018, Patent Owner may request authorization to file a sur-reply to address any new issues raised by Petitioner in responding to the Decision on Institution;

FURTHER ORDERED that neither party is authorized to submit additional evidence without prior authorization of the Board; and

FURTHER ORDERED that if either party believes the other has exceeded the permitted scope set forth in this Order, the parties shall meet and confer in a good faith effort to resolve the issue and, if agreement cannot be reached, arrange a conference call with the Board.

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