

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

REALTIME DATA LLC d/b/a IXO,

Plaintiff,

v.

RACKSPACE US, INC.; NETAPP, INC.;
AND SOLIDFIRE, LLC,

Defendants.

Case No. 6:16-cv-961-RWS-JDL

PROPOSED JOINT PRETRIAL ORDER

Pursuant to the Amended Docket Control Order (Dkt. No. 241) and Rule 16 of the Federal Rules of Civil Procedure, Plaintiff Realtime Data LLC d/b/a/ IXO (“Realtime”) and Defendants NetApp, Inc. and SolidFire, LLC (collectively “NetApp” or “Defendants”) submit this Proposed Joint Pretrial Order.

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II. STATEMENT OF JURISDICTION

1. This Court has subject-matter jurisdiction over the patent infringement claims asserted by Realtime pursuant to 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the patent laws of the United States, including 35 U.S.C. § 1 *et seq.* Subject matter jurisdiction, personal jurisdiction, and venue are not disputed in this case.

III. NATURE OF THE ACTION

A. Realtime's Statement Regarding Description of the Case

1. In this patent-infringement action, Realtime alleges that Defendants NetApp and Solidfire (collectively, "NetApp") have infringed and continue to infringe certain claims of U.S. Patent Nos. 7,161,506 ("506 patent"); 7,415,530 ("530 patent"), 7,378,992 ("992 patent"), 8,643,513 ("513 patent"), 9,054,728 ("728 patent"), and 9,116,908 ("908 Patent") (collectively, the "Patents-in-Suit" or "Asserted Patents"). Realtime has asserted the following claims of the Patents-in-Suit (collectively, the "Asserted Claims"):

'506 patent claim 105;

'530 patent claims 1, 2, 12, 20;

- '992 patent claim 48;
- '513 patent claims 1, 14, 15;
- '728 patent claims 1, 10, 17, 20, 24; and
- '908 patent claims 1, 3.

2. The accused products in this case are: (1) ONTAP products and services (“ONTAP”), including products and services that utilize ONTAP (e.g., versions 8.0.1 and forward, including, e.g., 8.1, 8.2, 8.3, 9.0, 9.1), including, e.g., NetApp’s AFF (All Flash FAS) storage arrays (e.g., AFF A-Series, AFF A2/3/7xx, AFF8000 Series, AFF8080 EX Series, AFF8060 Series, AFF8040 Series, etc.), FAS hybrid (SSD + HDD) storage arrays (e.g., FAS9000 Series, FAS8200 Series, FAS8000 Series, FAS8080 Series, FAS8060 Series, FAS8040 Series, FAS8020 Series, FAS8000 Series, FAS6290 Series, FAS6280 Series, FAS6250 Series, FAS6240 Series, FAS6220 Series, FAS6210 Series, FAS6200 Series, FAS6080 Series, FAS6040 Series, FAS6000 Series, FAS3270 Series, FAS3250 Series, FAS3240 Series, FAS3220 Series, FAS3210 Series, FAS3200 Series, FAS3170 Series, FAS3160 Series, FAS3140 Series, FAS3100 Series, FAS3040 Series, FAS3000 Series, FAS2650 Series, FAS2620 Series, FAS2600 Series, FAS2554 Series, FAS2552 Series, FAS2520 Series, FAS2500 Series, FAS2240 Series, FAS2220 Series, FAS2200 Series, FAS2050 Series, FAS2040 Series, FAS2020 Series, FAS2000 Series, V6200, V6210, V6220, V6240, V6250, V6280, V6290, V6000, V6040, V6080, V3210, V3220, V3240, V3250, V3270, V3170, V3160, V3140 etc.), N-Series (re-branded FAS systems sold through IBM, including, e.g., N3150, N3220, N3240, N3300, N3400, N3700, N3600, N6040, N6060, N6070, N6210, N6240, N6250, N6270, N7600, N7700, N7800, N7900, N7950T), FlexPod (e.g., FlexPod Datacenter, FlexPod Express, FlexPod Select, etc.), ONTAP Select, FlexArray, NetApp Private Storage (NPS), and ONTAP Cloud systems, products and services;

(2) AltaVault products and services (“AltaVault”), including products and services that utilize AltaVault (e.g., versions 4.0, 4.1, 4.2) / SteelStore (e.g., versions 3.2, 3.3), including, e.g., Cloud-integrated Solutions (e.g., AVA-c4, AVA-c8, AVA-c16), physical appliances (e.g., AVA400, AVA800, SS3030), and virtual appliances (e.g., AVA-v2, AVA-v8, AVA-v16, AVA-v32); and (3) SolidFire products and services (“SolidFire”), including products and services that utilize SolidFire / Element OS (all versions), including, e.g., SF2405, SF3010, SF4805, SF6010, SF9010, SF9605, SF19210, Element X, Element X Utility, and SolidFire All-Flash products and services. Realtime seeks a reasonable royalty for Defendants’ alleged infringement. Realtime seeks its costs, expenses, and attorneys’ fees under 35 U.S.C. § 285, and any other relief the Court deems appropriate.

B. NetApp’s Statement Regarding Description of the Case

1. NetApp seeks a judgment that the Asserted Claims of the Patents-in-Suit are invalid and not infringed. NetApp also seeks to recover its costs and reasonable attorneys’ fees from Realtime as provided in 35 U.S.C. § 285 or as otherwise allowed by law, together with any other relief the Court deems appropriate

2. NetApp denies that any accused product (ONTAP, AltaVault, or SolidFire) directly or indirectly infringes any claim of any of the Asserted Patents, either literally, or under the doctrine of equivalents.

3. NetApp also alleges that the asserted claims of the asserted patents do not recite a patentable invention, but merely obvious variations on what others had done before. NetApp also alleges that the asserted claims of the Asserted Patents are invalid as anticipated. NetApp also alleges that the asserted claims of the Asserted Patents are invalid for failing to satisfy the enablement and written description requirements.

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