

RUSS, AUGUST & KABAT

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 REALTIME DATA LLC d/b/a IXO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RIVERBED TECHNOLOGY, INC.,
 Plaintiff,
 vs.
 REALTIME DATA LLC d/b/a IXO,
 Defendant.

Case No. 3:17-cv-3182 EMC

**JOINT STIPULATION TO STAY
 ACTION AND ~~[PROPOSED]~~ ORDER**

1 Plaintiff Riverbed Technology, Inc. (“Riverbed”) and Defendant Realtime Data, LLC
 2 d/b/a IXO (“Realtime”), by and through their attorneys, hereby stipulate to stay this action. This
 3 stipulation is based on the following facts:

4 1. On April 3, 2017, Realtime filed a Complaint in the Eastern District of Texas,
 5 Tyler Division, Case No. 6:17-cv-198, (“the Texas Action”) alleging infringement of U.S. Patent
 6 Nos. 8,719,438 (the “’438 Patent”) and 8,717,204 (the “’204 Patent”).

7 2. On June 2, 2017, Riverbed filed its Complaint in this action seeking declaratory
 8 relief of non-infringement of the ’438 and ’204 Patents (“the California Action”).

9 3. On July 14, 2017, Riverbed filed a motion to dismiss Realtime’s Complaint in the
 10 Eastern District of Texas action for improper venue or in the alternative, to transfer. In the
 11 motion, Riverbed asserts that venue in the Eastern District of Texas is improper under 28 U.S.C.
 12 § 1400(b) pursuant to the Supreme Court’s decision in *TC Heartland*, among other things.
 13 Briefing on this motion is due to be complete on August 24, 2017.

14 4. On August 4, 2017, Realtime filed a motion to dismiss Riverbed’s complaint in
 15 this action under the first-to-file rule in light of Realtime’s earlier complaint in the Eastern
 16 District of Texas. Realtime also seeks to dismiss the Riverbed’s complaint for lack of personal
 17 jurisdiction.

18 5. The parties agree that a stay of this action pending resolution of Riverbed’s
 19 motion to dismiss or transfer in the Texas Action is acceptable and would conserve judicial
 20 resources.

21 Accordingly, the parties hereby STIPULATE AND JOINTLY REQUEST THAT THE
 22 COURT ORDER as follows:

23 1. This action is stayed pending resolution of Riverbed’s motion to dismiss
 24 Realtime’s Complaint filed in the Eastern District of Texas, Case No. 6:17-cv-198, Docket 27.

25 2. This stipulation does not prejudice either party’s future right to seek any
 26 appropriate relief either in the California Action or the Texas Action.

27 3. Realtime can renew its motion to dismiss Riverbed’s complaint in this action
 28 within 14 days of a final ruling on Riverbed’s motion to dismiss.

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3. The parties will provide the Court with a status report every 90 days until a final ruling on Riverbed’s motion is issued. Upon a final ruling on Riverbed’s motion in the Texas Action, the parties will provide the Court a status report within 10 days.

Dated: August 22, 2017

Respectfully submitted,

RUSS, AUGUST & KABAT

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RIVERBED TECHNOLOGY, INC.

IT IS SO ORDERED. The CMC is reset from 9/7/17 to 11/30/17
at 9:30 a.m. A joint CMC statement shall be
filed by 11/22/17.

Dated: 8/22/17

Honorable Edward M. Chen
United States District Judge

