

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

VERSATA SOFTWARE, INC., ) (  
ET AL. ) ( CIVIL DOCKET NO.  
 ) ( 2:07-CV-153-CE  
VS. ) ( MARSHALL, TEXAS  
 ) (  
 ) ( MAY 14, 2009  
SAP AMERICA INC., ET AL. ) ( 1:30 P.M.

MOTIONS HEARING  
BEFORE THE HONORABLE JUDGE CHAD EVERINGHAM  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: (See Attorney Sign-In Sheet)

FOR THE DEFENDANTS: (See Attorney Sign-In Sheet)

COURT REPORTER: MS. SHELLY HOLMES, CSR  
Deputy Official Court Reporter  
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Diana, Texas 75640  
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(Proceedings recorded by mechanical stenography,  
transcript produced on a CAT system.)

SAP EXHIBIT 1024

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1 COURT SECURITY OFFICER: All rise.

2 THE COURT: Please be seated.

3 We've got a motions hearing set today in  
4 2:07-CV-153, Versata against SAP and others.

5 What says the plaintiff?

6 MR. COLE: Your Honor, Scott Cole, Laurie  
7 Gallun, and Kevin Knuepper for the plaintiff. We're  
8 ready to proceed.

9 THE COURT: Okay. The defendant?

10 MR. BATCHELDER: Good afternoon, Your Honor,  
11 James Batchelder from Day, Casebeer, Madrid &  
12 Batchelder. With me is my partner, Will Nelson. Also  
13 I've got Kurt Truelove from the Patton, Tidwell &  
14 Schroeder firm, and in-house counsel, Kevin Hamel.

15 THE COURT: All right.

16 MR. BATCHELDER: Defendant is ready.

17 THE COURT: And Mr. Kitchen?

18 MR. COLE: Oh, sorry.

19 THE COURT: Are you looking for work, or you  
20 just --

21 MR. KITCHEN: I was wondering if there was  
22 anything available. And I did want to send Mr. Baxter's  
23 regards to the Court.

24 THE COURT: Well, we've got a list of things  
25 here to do today. I will advise you, and maybe this

1 will help, maybe it won't help. Your Markman ruling is  
2 imminent, and by imminent, I mean, Monday or Tuesdayish  
3 of next week. I would be very confident with Monday,  
4 but for the fact that Judge Amos Mazzant is being sworn  
5 in tomorrow as the newest magistrate judge in this  
6 district, and I will be there instead of here finishing  
7 your Markman opinion.

8 But I can -- if I were you-all, I would look  
9 for it sometime before close of business Tuesday, but  
10 that's not a warranty, but I know that there's a motion  
11 to limit your claims, and so I don't know if that helps  
12 you resolve that or not, but my thought was in view of  
13 that, to give you-all some period of time from Tuesday  
14 of next week for you to consider the Markman rulings on  
15 both sides and to let me know within 7 to 10 calendar  
16 days thereafter what are we going forward with. So does  
17 that work for the plaintiff?

18 MR. COLE: Yes, Your Honor. I think the  
19 only remaining dispute really is whether the reduction  
20 of claims would also entail a reduction of prior art  
21 references concomitant with that.

22 As far as reducing claims, we -- we agreed  
23 to reduce it to five claims per patent. I can't  
24 remember the exact number of days after the Markman  
25 ruling. So that -- that part of it is easy. It's just

1 we don't want to do that if they're going to go with 102  
2 prior art references and refuse to reduce those. So  
3 that's, I think, the only remaining dispute on that  
4 front.

5 THE COURT: Okay. Well, what's -- what's  
6 the answer to that? You need all 102 or will 90 do or  
7 what's the --

8 MR. BATCHELDER: Well, our only problem is  
9 for 103, we do feel like our experts need to be able to  
10 tell the story about how these patents arose in a  
11 crowded field.

12 I haven't ever seen a case where defendants  
13 were required to diminish the number of asserted prior  
14 art references in that context, and I haven't seen that  
15 cause any problems at trial. So we do think a  
16 limitation of the number of asserted claims is  
17 appropriate, but if Your Honor feels strongly about  
18 reducing the number of asserted prior art references, we  
19 would consider it for 102, but we think it would be  
20 problematic for 103.

21 THE COURT: Well, what my problem is more  
22 than anything is that you've got 103 references or 102,  
23 however many it's going to be, at this time, and then  
24 the expert gets up there to discuss the -- the crowded  
25 state of the art, talks about four of them, and then the

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