

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAP AMERICA INC. AND SAP AG,
Petitioners,

v.

VERSATA DEVELOPMENT GROUP INC.,
Patent Owner.

Case CBM2012-00001
Patent 6,553,350

Before the honorable MICHAEL P. TIERNEY, SALLY C. MEDLEY and RAMA
G. ELLURU.

PETITIONER'S MOTION TO EXPUNGE
UNDER 37 C.F.R. § 42.56

I. STATEMENT OF RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.56, SAP requests that the Board expunge from the record the confidential information identified below.

II. REASONS FOR THE RELIEF REQUESTED

A. EXHIBITS 2045, 2046, AND 2047

On November 30, 2012, Patent Owner filed a Motion to Seal its Preliminary Response and associated Exhibits 2045, 2046, and 2047. (Paper No. 28.) On December 14, 2012, the Board granted-in-part Patent Owner’s Motion to Seal, ordering that Exhibits 2045, 2046 and 2047 remain sealed in their entirety. (Paper No. 33.) These exhibits include excerpts of a brief (Exhibits 2045), expert report (Exhibits 2046), and expert deposition transcript (Exhibits 2047) from the district court action involving the patent at issue in this proceeding that are designated by Petitioner under the Protective Order in this case (Exhibit 2004) as “Confidential-Attorneys’ Eyes Only Material.”

The Board did not refer to Exhibit 2045 in any decision. In its Decision to Institute, the Board quoted a portion of Exhibit 2046 ¶ 246 and referenced a limited amount of deposition testimony from Exhibit 2047. (Paper No. 36, pp. 39, 40.) Petitioner submits that these exhibits continue to contain confidential information and that expunging the exhibits from the record will not hamper the public interest of maintaining a complete and understandable file history for public notice purposes. Petitioner therefore requests the documents be removed from the record.

B. EXHIBIT 2086

On March 21, 2013, Patent Owner filed a Motion to Seal Exhibit 2086 of the Patent Owner Response. (Paper No. 55.) Exhibit 2086 comprises an unredacted deposition transcript of Petitioner's expert, Dr. Siegel, that includes confidential information designated by Petitioner under the Protective Order. As explained in Patent Owner's Motion to Seal, Exhibit 2086 was mistakenly filed and a redacted version of the deposition transcript is found at Exhibit 2090. In its June 11, 2013 Final Decision, the Board ordered Exhibit 2086 remain sealed in its entirety. (Paper No. 70, p. 34.) Petitioner submits that this exhibit continues to contain confidential information and therefore requests the document be removed from the record.

III. CONCLUSION

For the reasons set forth above, Petitioner requests that the Board grant this motion and expunge Exhibits 2045, 2046, 2047, and 2086 from the record. In the event the Board is compelled to deny Petitioner's motion, Petitioner requests in the alternative an opportunity to file redacted versions of the appropriate Patent Owner exhibits. Should this motion remain pending as of July 25, 2013, forty-five days after final judgment, Petitioner respectfully requests the Board expedite consideration of this motion or notice the public that access to these sealed papers will be delayed pending a decision on this motion.

Respectfully submitted,

Dated: July 23, 2013

By: /Erika H. Arner/

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing PETITIONER'S MOTION TO EXPUNGE UNDER 37 C.F.R. § 42.56 was served on July 23, 2013, to Nancy J. Linck and Martin M. Zoltick, Lead and Back-up Counsel for Versata, respectively, at the service e-mail address of VERSATA-PGR@rfem.com provided in Versata's Mandatory Notices. The parties have agreed to electronic service.



Jacob T. Mersing
Legal Assistant
**FINNEGAN, HENDERSON,
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