

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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VOLUSION, INC.

Petitioner

v.

VERSATA SOFTWARE, INC. &  
VERSATA DEVELOPMENT GROUP, INC.

Patent Owner

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Case No. CBM2013-00017  
Patent No. 6,834,282

and

Case No. CBM2013-00018  
Patent No. 7,426,481

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Record of Oral Hearing  
Held: May 28, 2014

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Before SALLY C. MEDLEY, HOWARD B. BLANKENSHIP, and  
KEVIN F. TURNER, *Administrative Patent Judges*.

1 APPEARANCES:

2  
3 ON BEHALF OF THE PETITIONER:

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18 The above-entitled matter came on for hearing on Wednesday, May  
19 28, 2014, commencing at 1:00 p.m., at the U.S. Patent and Trademark  
20 Office, 600 Dulany Street, Alexandria, Virginia.

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24 P R O C E E D I N G S

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26 JUDGE MEDLEY: Good afternoon. This is the hearing for  
27 CBM2013-00017 and 00018 between Petitioner Volusion and Patent Owner  
28 Versata.

29 We understand that the parties have reached a settlement in the  
30 CBMs and the related District Court litigation. We received the E-mail late

1 yesterday. We further understand that the parties have filed a settlement  
2 agreement through PRPS and further understand the parties seek Board  
3 authorization to file a joint motion to terminate.

4 We authorize the parties to do so and an order will be forthcoming  
5 to that effect. So please wait to receive our order before filing the joint  
6 motion to terminate.

7 We further understand that Petitioner withdraws its request to  
8 participate today.

9 MR. BROYLES: That's correct, Your Honor.

10 JUDGE MEDLEY: But we understand that Patent Owner still  
11 would like to present arguments today.

12 At this time we'd like the parties to introduce themselves  
13 beginning with the Petitioner, and we understand you're not participating,  
14 but just to put a name with the face.

15 MR. BROYLES: Yes, Your Honor. My name is Keith Broyles  
16 from Alston & Bird in Atlanta and I represent the Petitioner Volusion. With  
17 me is my colleague, Mr. David Frist.

18 JUDGE MEDLEY: Okay. Nice to meet you finally.

19 And also for Patent Owner at this time?

20 MR. O'BRIEN: My name is David O'Brien with the law firm of  
21 Haynes and Boone in Austin, Texas representing Versata Development  
22 Group. I'm here with colleagues, Kent Chambers and Raghav Bajaj.

23 JUDGE MEDLEY: Okay. Thank you very much.

24 Okay. So per our order, which only pertains to Patent Owner at  
25 this point, Patent Owner, you're presenting -- you're the only presenter today

1 and you'll have 45 minutes total for each case, so we'll begin with CBM  
2 2013, the 17 case, if that's fine with you, and then we'll go on into the 18  
3 case. So obviously you have no rebuttal time, so it's just straight you. So  
4 please proceed.

5 MR. O'BRIEN: May we approach? We have hard copies of the  
6 slides in color and, Judge Turner, I believe you have it in the record, but --

7 JUDGE MEDLEY: Thank you.

8 MR. O'BRIEN: Well, thank you and good afternoon, Your  
9 Honors. This is the oral hearing for the '282 patent, CBM 2013, Number 17.  
10 I'd like to start with slide 2 in your deck. And, in particular, I'd like to  
11 discuss construction of the claim, the scope of the claim and the operative  
12 nature of the hierarchy.

13 So Petitioner here did not propose a claim construction of any  
14 term in the petition nor has it ever proposed a claim construction. As Dr.  
15 Nettles has testified and as established in the Patent Owner's response, that's  
16 paper 23 in your record, the term "hierarchy" should be construed as an  
17 operative data structure that, in correspondence with a browse-related  
18 activation of nodes thereof, specifies an organization imposed on items in  
19 the database.

20 You have that on your slide. It's in the upper right corner.

21 JUDGE BLANKENSHIP: Excuse me, I see the word "operative"  
22 a lot, but I don't see construction for it. How are we supposed to interpret  
23 operative?

24 MR. O'BRIEN: I believe the expert testimony in this case  
25 establishes the context for the hierarchy in its operative nature. We haven't

1 done a construction within a construction within a construction for each  
2 word. However, we would understand its usage to be describing the nature  
3 of it in structuring the operation of an application program. In this case it's  
4 in all our claims. It's an application server on the contents of the database,  
5 so it's that operative nature of the hierarchy and we can go into -- as we go  
6 through the actual elements here, the particular items and the particular  
7 nodes and hierarchy and how they play out.

8           So Dr. Nettles has testified, as I just described, that construction  
9 we believe is very well supported in the specification as read by a person of  
10 ordinary skill in the art, namely Dr. Nettles has testified as to that.

11           Moreover, although Petitioner has suggested that construction is a  
12 bit narrower than the Board's construction, Dr. Nettles' construction really is  
13 consistent with the entirety of the Microsoft computer dictionary definition  
14 that the Board brought to bear in its Institution Decision, so its construction  
15 for purposes of institution.

16           That aspect is detailed on your slide and I do want to highlight  
17 some aspects of the full text of that definition, although I know the Board  
18 has focused primarily on the first sentence.

19           So the full text of the Microsoft definition confirms the Patent  
20 Owner's point that in computing applications, such as here disclosed and as  
21 claimed in the '282 patent, hierarchies are actually and operatively used to  
22 do things. So that's going to your point, Judge Blankenship.

23           Examples from that very definition itself are that hierarchies are  
24 used to organize related records in a database. So if you read down in the

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