

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CALLIDUS SOFTWARE INC.
Petitioner

v.

VERSATA DEVELOPMENT GROUP, INC.
Patent Owner

AND

VERSATA SOFTWARE, INC.
Real Party-In-Interest

Case CBM2013-00052
Patent 7,904,326

Filed: August 22, 2014

PETITIONER'S REPLY TO PATENT OWNER RESPONSE

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I. INTRODUCTION

The Board instituted this CBM Review because it found that “Petitioner has demonstrated that it is more likely than not that claims 1-22 are unpatentable under 35 U.S.C. § 101 as being directed to non-statutory subject matter.” Institution Decision, Paper No. 21 at 19 (P.T.A.B. Mar. 4, 2014) (“ID”). Nothing in the Patent Owner’s Response (“POR”) changes the reasoned and correct conclusions in the Institution Decision.

Having failed to move to amend claims, POR now attempts to effect, through claim construction, what it should have done through claim amendment. In so doing, Patent Owner (“PO”) tacitly concedes the abstractness of its claims. PO proposes claim constructions that do not even begin to conform to the broadest reasonable interpretation (“BRI”) standard, and improperly imports limitations from the specification. Having foregone a motion to amend, PO cannot now contort the claim construction process to achieve claim amendment.

Alice reaffirmed that claims directed to abstract ideas, without limitations sufficient to tie them down, are patent ineligible. Rather than address this standard, PO concocts its own misguided tests for patent-eligibility that have no basis in precedent and, in fact, run afoul of the holdings in *Alice*, *Bilski*, *Benson*, *Flook*, *Bancorp*, and *CyberSource*.

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