

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAP AMERICA, INC.
Petitioner,

v.

VERSATA DEVELOPMENT GROUP, INC.
Patent Owner.

Case CBM2012-00001 (MPT)
Patent 6,553,350

Before SALLY C. MEDLEY, MICHAEL P. TIERNEY, and RAMA G. ELLURU,
Administrative Patent Judges.

TIERNEY, *Administrative Patent Judge.*

DECISION
Institution of Covered Business Method Review
37 C.F.R. § 42.208

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| Callidus Ex. 1006 CBM2013-00052 (Callidus v. Versata) |
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I. Introduction

SAP has filed a petition seeking covered business method review of Versata's 6,553,350 ('350) patent pursuant to Section 18 of the Leahy-Smith America Invents Act (AIA)¹. The patent owner, Versata, has filed a patent owner preliminary response (POPR) opposing the institution of the review. Paper No. 29. We have jurisdiction under 35 U.S.C. § 324.

The standard for instituting a covered business method review is set forth in 35 U.S.C. § 324(a), which provides as follows:

THRESHOLD --The Director may not authorize a post-grant review to be instituted unless the Director determines that the information presented in the petition filed under section 321, if such information is not rebutted, would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.

SAP challenges claims 17 and 26-29 of the '350 patent as unpatentable for failure to comply with 35 U.S.C. §§ 101, 102, and 112, 1st and 2nd paragraphs.

We grant the petition as SAP has demonstrated that claims 17 and 26-29 are more likely than not unpatentable under 35 U.S.C. §§ 101 and 102. SAP however, has not demonstrated a likelihood that Versata's claims are unpatentable under 35 U.S.C. § 112, 1st and 2nd paragraphs therefor these grounds of unpatentability do not form a part of the review. 37 C.F.R. 42.408(a).

¹ Pub. L. No. 112-29, 125 Stat. 284 (2011).

II. Background

A. Versata's '350 Patent

Versata's '350 patent is directed to a method and apparatus for pricing products and services. SX 1001, '350 patent, 3:9-13.² The central concept of the '350 patent is hierarchies and the hierarchal arrangement of data. SX 1005, ¶ 20.³

The '350 patent states that its "invention operates under the paradigm of WHO (the purchasing organization) is buying WHAT (the product)." '350 patent, 3:24-25. An example of the WHO/WHAT paradigm is depicted in Figure 1 of the '350 patent below:

FIG. 1
PRIOR ART

| <i>WHAT</i> <i>WHO</i> | <i>486/33</i> <i>CPU</i> | <i>486/50</i> <i>CPU</i> | <i>486/66</i> <i>CPU</i> |
|---------------------------|-----------------------------|-----------------------------|-----------------------------|
| <i>ADAM</i> | <i>\$40</i> | <i>\$60</i> | <i>\$80</i> |
| <i>BOB</i> | <i>\$42</i> | <i>\$58</i> | <i>\$72</i> |
| <i>CHARLIE</i> | <i>\$44</i> | <i>\$68</i> | <i>\$92</i> |

² SAP's exhibits are referred to as SX and Versata's exhibits are referred to as VX.

³ Declaration of SAP expert, Michael Siegel, Ph.D.

According to the '350 patent, the WHO/WHAT paradigm was known in the art. *Id.*, Fig. 1, 4:16-18. The '350 patent however, states that prior art pricing tables for WHO/WHAT (customer/products) required large tables of data. *Id.*, 1:52-59.

The '350 patent invention is said to improve upon the prior art and reduce the need for large tables of data by arranging customers into a hierarchy of customer groups and products into a hierarchy of product groups. *Id.*, 3:24-27, 41-42. Specifically, in the '350 patent, WHO is said to be defined by creating an organizational hierarchy of organizational groups, where each group represents a characteristic of the organizational group. *Id.* An example of an arrangement of an organization customer group is depicted below in Fig. 4A of the '350 patent:

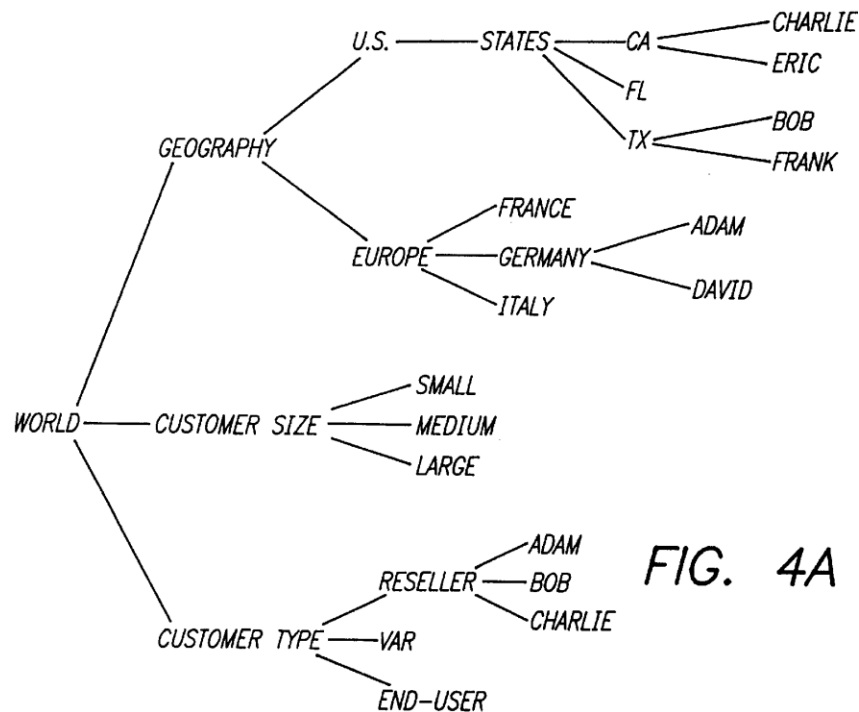


FIG. 4A

Similarly, a product group hierarchy for products (WHAT) is also defined. *Id.*, Fig. 4B, 4:26-28. Pricing information is then associated with the customer and product groups. *Id.*, 8:17-25. As such, special pricing adjustments may be defined as applying to all members of a specific customer group or a specific product group. *Id.*, 3:26-49.

B. Procedural History

In 2007, Versata sued SAP for infringement of, inter alia, the '350 patent. The case proceeded to trial and a jury found infringement and awarded damages. SX 2039, Jury Verdict (Aug. 26, 2009). The district court confirmed the infringement verdict for the '350 patent, but reversed other rulings unrelated to the '350 patent, resulting in a new trial on damages. POPR, 7. In the second trial, the jury found that an SAP post-patch software continued to infringe, and awarded lost-profits damages and reasonable royalty damages. The district court upheld those awards. *Id.*

SAP appealed the district court's Final Judgment to the U.S. Court of Appeals for the Federal Circuit on October 11, 2011. *Versata Software, Inc. v. SAP America, Inc.*, Nos. 2012-1029, -1049. The appeals have been fully briefed and are currently pending. Of note, SAP did not appeal the district court's claim

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