

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CALLIDUS SOFTWARE INC.
Petitioner

v.

VERSATA SOFTWARE, INC. and
VERSATA DEVELOPMENT GROUP, INC.
Patent Owner

Cases CBM2013-00052 (Patent 7,904,326 B2)
CBM2013-00053 (Patent 7,958,024 B2)
CBM2013-00054 (Patent 7,908,304 B2)¹

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

TURNER, *Administrative Patent Judge*.

ORDER
Conduct of the Proceedings
37 C.F.R. § 42.5

¹ This order addresses an issue that is identical in all three cases. Therefore, we exercise discretion to issue one order to be filed in each of the three cases. The parties, however, are not authorized to use this style heading in subsequent papers since doing so may cause confusion.

CASES CBM2013-00052, 00053, 00054
Patents 7,904,326; 7,958,024; 7,908,304

On May 30, 2014, a conference call was held involving counsel for the respective parties and Judges Blankenship, Medley, and Turner. Patent Owner requested the conference call to discuss a requested adjustment to Due Dates 1 and 2 of the Scheduling Order (Paper 22²), upon which the parties were unable to come to agreement. During the conference call we noted that Due Date 1 had previously been extended through mutual stipulation of the parties (Paper 30) to June 10, 2014.

Patent Owner indicated that it was willing to stipulate that no motions to amend would be introduced or filed in the instant proceedings, such that Due Date 3 would no longer be necessary. Based on that, Patent Owner indicated that it proposes to extend Due Date 1 by one month to July 10, 2014, and Due Date 2 by one month to August 22, 2014. Patent Owner argued that this would allow for consideration by both parties of a ruling by the U.S. Supreme Court in *Alice Corp. v. CLS Bank Int'l, et al.*, Docket No. 13-298 (2014) (“*CLS Bank*”), involving issues of 35 U.S.C. § 101, which is expected this term. Patent Owner indicated that because it was not clear when the Supreme Court would hand down its ruling, it had not earlier requested the additional extension. Patent Owner argued that the extension would allow for consideration of the ruling issuing on or before the end of the present term. Patent Owner also indicated that ongoing settlement discussions, in early June, may also moot the need for the instant proceedings, and would provide an additional rationale for extending the Due Dates.

² Paper number references are to CBM2013-00052, with equivalents in the other

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Petitioner countered that any extension of the Due Dates would be based on speculation. Petitioner argued that we cannot know how the Supreme Court's ruling would affect the grounds in the instant proceedings, or whether a ruling will necessarily be issued, and waiting for such a decision would be premature.

Petitioner indicated that consideration of any Supreme Court ruling should be made through additional briefing, where Petitioner would not be limited to 15 pages of reply. Petitioner also argued that any delay would not be in the interests of justice and could affect its additional requests for stays in related district court proceedings. Petitioner also argued that Patent Owner earlier should have appreciated that a ruling in *CLS Bank* could affect these proceedings and made or requested changes to the Due Dates prior to this late date.

Based on the specific facts of these proceedings, we find good cause to extend the specific Due Dates in the instant proceedings. We make this decision contingent on no motion to amend being proposed or filed by Patent Owner. These proceedings are still in the early stages, and we are persuaded that waiting until after the Supreme Court's ruling in *CLS Bank* may provide additional guidance and would relieve the parties the burden of additional briefing based on the Court's decision. We also find pertinent that the issues of 35 U.S.C. § 101 are the only grounds in the instant proceedings. Also, we are not persuaded that extensions to the Due Dates would prejudice Petitioner in these proceedings. In addition, if either party believes that additional briefing is warranted, beyond the proscribed

cases.

CASES CBM2013-00052, 00053, 00054
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filings, in response to *CLS Bank*, the panel remains available for a conference call to discuss and consider a request for additional briefing.

In consideration of the foregoing, it is hereby:

ORDERED that Due Date 1 is extended to July 10, 2014, Due Date 2 to August 22, 2014, and Due Date 3 is deleted from the Scheduling Order.

CASES CBM2013-00052, 00053, 00054
Patents 7,904,326; 7,958,024; 7,908,304

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