

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*.

MEDLEY, *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.

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Patents 7,904,326; 7,958,024; 7,908,304

On August 28, 2014, a conference call was held involving counsel for the parties and Judges Blankenship, Medley, and Turner. Patent Owner requested the conference call to discuss the late filing of Petitioner's reply and Exhibit 1026 in CBM2013-00053, and Petitioner's late service of certain papers that were filed in each of the three proceedings.

According to counsel for Petitioner, Petitioner ran short of time when it filed its papers in the three proceedings, resulting in the late filing of the reply, a corrected reply, and Exhibit 1026 in CBM2013-00053. Petitioner did not contact the Board to receive authorization to file the documents late, nor did Petitioner contact the Board to receive authorization to file a corrected reply. Patent Owner requests the Board to *sua sponte* expunge the reply, the corrected reply, and Exhibit 1026. Alternatively, Patent Owner seeks authorization to file a motion to expunge those late-filed documents.

A late action will be excused on a showing of good cause or upon a Board decision that consideration on the merits would be in the interests of justice. 37 C.F.R. § 42.5(c)(3). Petitioner should have alerted the Board to the late filing and should have sought prior authorization to file a corrected version of its reply. Nonetheless, upon weighing the prejudice to Patent Owner of the one day late filing versus the prejudice to Petitioner if we do not consider, on the merits, the corrected reply² and Exhibit 1026 filed in CBM2013-00053, we determine that it is in the interests of justice to consider the late-filed documents.

² The original reply (Paper 31) in CBM2013-00053 will be expunged from the

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According to counsel for Petitioner, the parties had agreed, some time ago, to serve electronically using electronic mail. Although Petitioner filed its papers and evidence in the three proceedings on August 22nd and 23rd, Petitioner served, through electronic mail, the replies and evidence on August 26, 2014. As discussed, the date from which any objection to evidence submitted in connection with the replies is five days from August 26, 2014. 37 C.F.R. § 42.64(b)(1).

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner's request to file a motion to expunge is *denied*;

FURTHER ORDERED that the date from which any objection to the evidence submitted in connection with the replies is five days from August 26, 2014; and

FURTHER ORDERED that Paper 31 (Petitioner's Reply to Patent Owner's Response) be expunged from the record of CBM2013-00053.

record.

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