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.

DOCKET

DECISION Institution of Covered Business Method Review 37 C.F.R. § 42.208 Case CBM2012-00001 Patent 6,553,350

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).

Case CBM2012-00001 Patent 6,553,350

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, $\P 20.^3$

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

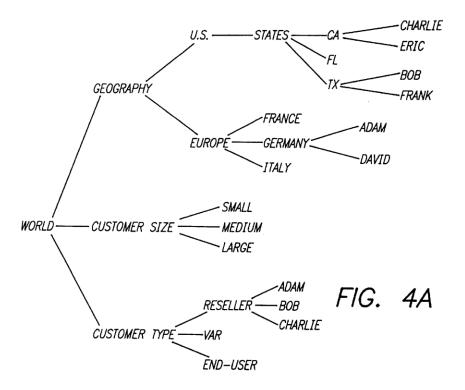
WHAT WHO	486/33 CPU	486/50 CPU	486/66 CPU	
ADAM	\$ 40	\$ 60	\$ 80	
BOB	\$42	\$ 58	\$ 72	
CHARLIE	\$ 44	\$ 68	\$92	

 $^{2}_{2}$ 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:



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

DOCKET A L A R M



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.