

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CALLIDUS SOFTWARE INC.
Petitioner

v.

VERSATA DEVELOPMENT GROUP, INC.
Patent Owner

Cases CBM2014-00117 (Patent 7,908,304 B2)
CBM2014-00118 (Patent 7,958,024 B2)¹

Before HOWARD B. BLANKENSHIP and SALLY C. MEDLEY,
Administrative Patent Judges.

BLANKENSHIP, *Administrative Patent Judge.*

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

¹ This order addresses a similar issue in the two cases. Therefore, we exercise discretion to issue one order to be filed in each case. The parties, however, are not authorized to use this style of heading in subsequent papers.

On May 7, 2014, a conference call was held including counsel for the respective parties and Judges Medley and Blankenship. The purpose of the call was for Petitioner to seek authorization to file a motion to modify the three-month due date, set under 37 C.F.R. § 42.207(b), for Patent Owner to file its preliminary responses. Times set by rule are default and may be modified by order. 37 C.F.R. § 42.5(c).

Petitioner pointed out that the patents challenged in these proceedings are the same as those challenged in cases CBM2013-00053 (Patent 7,958,024 B2) and CBM2013-00054 (Patent 7,908,304 B2). Petitioner argued that requiring Patent Owner to file its preliminary responses in these proceedings earlier than the present default date of July 24, 2014 would increase the efficiency of the four proceedings because common or related issues in the cases could be considered at the same time. Petitioner further argued that, in the related proceedings, Patent Owner's preliminary responses were limited to the argument that 35 U.S.C. § 325(a)(1) barred institution of covered business method patent review of the challenged patents. Lastly, Petitioner argued that expediting the preliminary response in these two cases could lead to a quicker resolution in the related District Court litigation.

Patent Owner opposed granting authorization to file the motion. Patent Owner pointed out that the rules did not require that it file a preliminary response and, in any event, Petitioner cannot control what its response to the Petitions might be. Patent Owner also argued that the Petitions in the instant proceedings were filed several months after the Petitions were filed in the related cases (April 17, 2014 and August 29, 2013, respectively).

In the conference call, we noted that even if Patent Owner were to file preliminary responses within two weeks or less, the trials in the related cases are well underway and it would be impractical to set due dates near to those in the related cases, assuming that trials are instituted in these proceedings. Specifically, decisions to institute trials in the related cases were entered March 4, 2014. DUE DATE 1, when Patent Owner may file responses to the respective Petitions and motions to amend the patents, is currently set, by stipulation of the parties, at June 10, 2014 – about one month from now. *See* CBM2013-00053, Paper 25; CBM2013-00054, Paper 28. Depositions by Patent Owner are scheduled about two weeks from now. *See* CBM2013-00053, Papers 23, 24; CBM2013-00054, Papers 26, 27.

We determined that Petitioner had not shown good cause to modify the default due date for Patent Owner’s preliminary responses under 37 C.F.R. § 42.207(b). Accordingly, we indicated that Petitioner was not authorized to file a motion to modify the default due date. Patent Owner may file or waive preliminary responses in these proceedings in accordance with the due date set forth by 37 C.F.R. § 42.207(b).

Accordingly, it is

ORDERED that Petitioner’s request to file a motion to modify the default due date for Patent Owner’s preliminary responses is *denied*.

Cases CBM2014-00117 & CBM2014-00118

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