

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BMC SOFTWARE, INC.,

Plaintiff,

v.

SERVICENOW, INC.,

Defendant.

CIVIL ACTION NO. 2:14-CV-903-JRG
Jury Trial Demanded

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

In accordance with Patent Rule 4-3 and the Court’s Docket Control Order of February 10, 2015 (Dkt. 46), the parties hereby submit this Joint Claim Construction and Prehearing Statement. In accordance with Patent Rule 4-2(c), the parties met and conferred on several occasions for the purposes of narrowing the issues and finalizing preparation of this Joint Claim Construction and Prehearing Statement.

A. Agreed-Upon Constructions

The parties conducted meet-and-confers and have been able to reach agreement regarding the construction of the following claim terms/phrases in the asserted patents. The chart below provides the construction of those claim terms, phrases, or clauses on which the parties agree:

| U.S. Patent 7,062,683 | Agreed-Upon Construction |
|-----------------------|-----------------------------------------------------------------------------------------------|
| “mat” | “root” |
| “east” | “least” |
| “impact graph” | “topology or architecture of a specific fault model” |
| “impact policy” | “rule, or set of rules, for assessing the impact on a fault model node based on the status or |

BMC EXHIBIT 2005
ServiceNow, Inc. v. BMC Software, Inc.
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| | |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | condition of the node's immediately up-stream neighboring nodes" |
| "inference policy" | "rule, or set of rules, for inferring the status or condition of a fault model node based on the status or condition of the node's immediately down-stream neighboring nodes" |

B. Disputed Claim Constructions

Exhibits A and B, attached hereto, identify the disputed claim terms.

Exhibit A provides BMC's identification of intrinsic and extrinsic evidence supporting its proposed constructions, as required by Patent Rule 4-3(b).

Exhibit B provides ServiceNow's identification of intrinsic and extrinsic evidence supporting its proposed constructions, as required by Patent Rule 4-3(b).

C. Anticipated Length of Time for the Claim Construction Hearing

BMC anticipates that the Claim Construction Hearing will take no longer than two (2) hours. ServiceNow anticipates that the Claim Construction Hearing will take no longer than four (4) hours.

D. Identification of Witnesses

BMC may rely upon testimony (by declaration) from Dr. Hugh Smith and/or Dr. Ben Bederson and/or Dr. Mark Jones. Each may testify about their backgrounds, the background of the subject matter discussed in the patents-in-suit, and the skill level of one of ordinary skill in the art. Each may also testify in support of BMC's proposed claim constructions, including addressing the intrinsic evidence in the patents and the prosecution histories and extrinsic evidence. *See* Exhibit A. In addition to the above, each may offer testimony in response or in rebuttal to any arguments or expert testimony offered by ServiceNow, including any argument that any term is indefinite or that one of ordinary skill in the art would not be able to discern the

boundaries of any term. BMC may submit its declaration with its opening Markman brief, as the parties' have agreed.

ServiceNow may rely upon testimony (by declaration) from Dr. Arthur Brody, Dr. Tal Lavian, Dr. Saul Greenberg, and/or Dr. Brad A. Myers. Each may testify about their backgrounds, the background of the subject matter discussed in the patents-in-suit, and the skill level of one of ordinary skill in the art. Each may also testify in support of ServiceNow's proposed claim constructions and indefiniteness contentions, including addressing the intrinsic evidence in the patents and the prosecution histories and extrinsic evidence. *See* Exhibit B. In addition to the above, each may offer testimony in response or in rebuttal to any arguments or expert testimony offered by BMC, including any argument or opinion regarding claim construction and any argument or opinion that any term is not indefinite.

E. Other Issues

At present, the parties are unaware of any additional issues that would require the scheduling of a pre-hearing conference.

Dated: April 17, 2015

Respectfully submitted,

/s/ Sam Baxter

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