UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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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*.

DECISION
Institution of Covered Business Method Review
37 C.F.R. § 42.208

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).

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[1] Pub. L. No. 112–29, 125 Stat. 284 (2011).

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, ¶ 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

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[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:
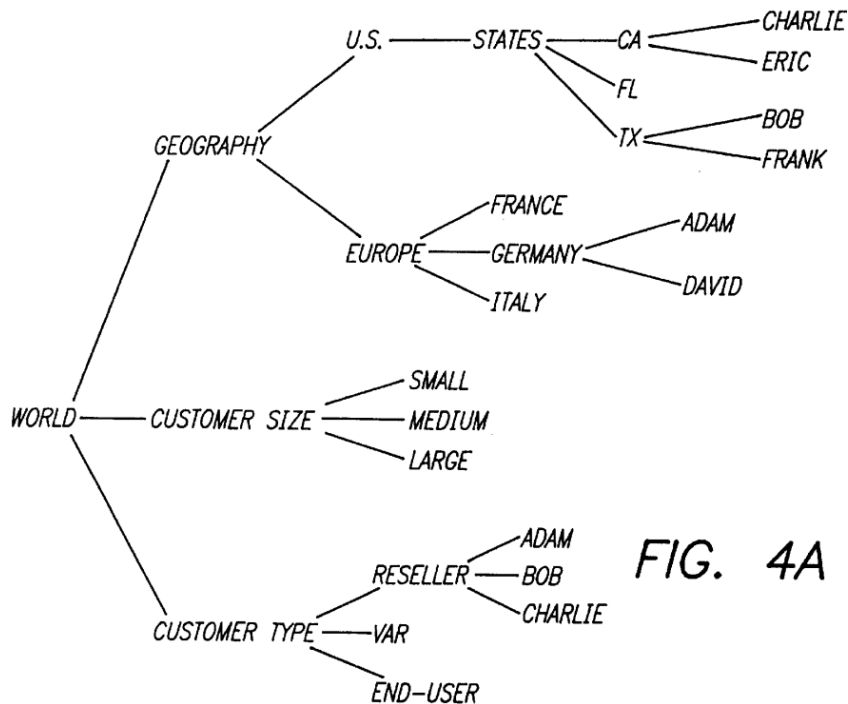

FIG. 4A

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

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