

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SAP AMERICA INC. AND SAP AG

Petitioner,

v.

VERSATA DEVELOPMENT GROUP INC.

Patent Owner.

Case CBM2012-00001 (MPT)

Patent 6,553,350

Before Administrative Patent Judges: MICHAEL P. TIERNEY, SALLY C.
MEDLEY and RAMA G. ELLURU

Mail Stop
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITIONER SAP'S SUBMISSION OF EXHIBITS REGARDING
DISTRICT COURT PROTECTIVE ORDER**

In reply to the Board's November 1, 2012, Order [Paper No. 16], and Patent Owner's November 2, 2012, Filing of Exhibits in response to that order [Paper No. 17], Petitioners SAP America Inc. and SAP AG (collectively "SAP") hereby

submit copies of the following documents relating to the protective order entered in the underlying district court litigation:

1. Memorandum Opinion and Order (Dkt. No. 572), *Versata Software, Inc. et al. v. SAP America, Inc. et al.*, No. 2:07-cv-153 (E.D. TX) (*see* pp. 1, 13, discussing violations of the Court's Protective Order) [SAP Exhibit 1022];
2. Highlighted version of SAP Exhibit 1022, Memorandum Opinion and Order (Dkt. No. 572), *Versata Software, Inc. et al. v. SAP America, Inc. et al.*, No. 2:07-cv-153 (E.D. TX) (*see* pp. 1, 13, discussing violations of the Court's Protective Order) [SAP Exhibit 1023];
3. Redacted Transcript of May 14, 2009, Motions Hearing, *Versata Software, Inc. et al. v. SAP America, Inc. et al.*, No. 2:07-cv-153 (E.D. TX) (*see* pp. 39-81, addressing violations of the Court's Protective Order) [SAP Exhibit 1024];
4. Highlighted version of SAP Exhibit 1024, Redacted Transcript of May 14, 2009, Motions Hearing, *Versata Software, Inc. et al. v. SAP America, Inc. et al.*, No. 2:07-cv-153 (E.D. TX) (*see* highlighted portions on pp. 39-81, addressing violations of the Court's Protective Order) [SAP Exhibit 1025];
5. Order Granting Plaintiff's Unopposed Motion to Redact May 14, 2009 Hearing Transcript, *Versata Software, Inc. et al. v. SAP America, Inc. et al.*, No. 2:07-cv-153 (E.D. TX) [SAP Exhibit 1026];
6. Civil Docket Report for *Versata Software, Inc. et al. v. SAP America, Inc. et al.*, No. 2:07-cv-153 (E.D. TX) [SAP Exhibit 1027]; and
7. ORDER Setting Hearing on Motion for Protective Order (Dkt. No. 157), *Versata Software, Inc. et al. v. SAP America, Inc. et al.*, No. 2:07-cv-153 (E.D. TX) [SAP Exhibit 1028].

SAP also identifies the following sealed docket entries relating to protective order issues in the district court case:¹

1. 02/19/2009 Sealed SAP's Motion to Strike Versata's Equitable Claims as Sanction for Versata's Violation of the March 6, 2008 Protective Order and February 26, 2008 Order (Dkt. No. 144);
2. 03/03/2009 Sealed Response in Opposition to SAP'S Motion to Strike Versata's Equitable Claims, filed by Versata Software, Inc (Dkt. No. 159);
3. 03/10/2009 Sealed Reply in Support of SAP's Motion to Strike Versata's Equitable Claims, filed by SAP America, Inc., SAP AG (Dkt. No. 166);
4. 03/17/2009 Sealed Sur-Reply to SAP's Reply to Response to SAP'S Motion to Strike Versata's Equitable Claims, filed by Versata Software, Inc., (Dkt. No. 173)
5. 07/16/2009 Sealed Supplemental Sur-Reply to Reply to Response to SAP'S Motion to Strike Versata's Equitable Claims, filed by Versata Software, Inc. (Dkt. No. 235); and
6. 07/17/2009 Sur-Reply to Reply to Response to SAP'S Motion to Strike Versata's Equitable Claims, filed by SAP America, Inc., SAP AG. (Dkt. No. 244).

Regarding Section I.c of the Board's Order, Versata's offer not to amend its claims does not allay SAP's concerns regarding participation by Versata's lead trial counsel in this proceeding. It is well established that, with or without a formal amendment, statements and arguments made during post-grant proceeding can change the meaning of a claim term, and thus scope of that claim. *See Marine*

¹ Copies are not provided because of the sealed nature of the documents.

