

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.*

ORDER
Trial Hearing
37 C.F.R. § 42.70

On February 21, 2013, the Board issued a decision granting SAP's request to expedite the proceeding, and entered SAP's requested expedited schedule. ("Decision," Paper 45). The Board's decision set a trial hearing date of April 17, 2013 at 2:00 p.m.

SAP and Versata have submitted requests for a trial hearing pursuant to 37 C.F.R. § 42.70 (Paper 60, "SAP's Request" and Paper 61, "Versata's Request").¹ The Requests state that the issues to be presented at the hearing include the instituted ground of unpatentability under 35 U.S.C. § 101, and associated issues. *Id.* The Requests for a trial hearing are hereby granted.

Each party will be provided sixty (60) minutes total to present its case.² SAP, as petitioner, bears the ultimate burden of proof that Versata's claims are unpatentable. Accordingly, SAP will present its contentions first, followed by Versata. Both parties may reserve time for rebuttal arguments.

A conference call was held on March 14, 2013 (Transcript, VX 2098). During the call, the Board stated that a request had been made to have the hearing made publically available to those who were unable to attend the hearing in person. The Board requested that the parties identify any objections or concerns with publicly broadcasting the hearing via telephone or webcast. VX 2098, 20:12-

¹ Section 18 of the Leahy-Smith America Invents Act provides for a transitional program for covered business method patents that, with certain exceptions not relevant to this Order, employs the standards and procedures of a post-grant review under chapter 32 of title 35. Pub. L. 112-29, 125 Stat. 284, 329 (2011). The post-grant review statutes required the Director to prescribe regulations, including regulations that provide either party with the right to an oral hearing as part of the proceeding. 35 U.S.C. § 326(a)(10). Accordingly, the Office promulgated 37 C.F.R. § 42.70, which requires a party seeking a hearing to file a request that identifies the issues to be argued.

² The time was set after consultation with the parties.

25:17. Neither party objects to publicly broadcasting the hearing. SAP and Versata's Requests.

There is a strong public policy interest in making all information presented in a covered business method patent review public as the review determines the patentability of claims in an issued patent and therefor affects the rights of the public. This public policy is expressed in 35 U.S.C. § 326(a)(1), which provides that the file of any post-grant review proceeding shall be made available to the public except those petitions or documents for which a motion to seal has been filed.

Based upon the facts presented, the Board exercises its discretion to make the April 17 hearing available to the public via in-person attendance as well as telephonically. Specifically, the hearing will be open to the public for in-person attendance on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. Space is limited as both parties have requested additional reserved seating and in-person attendance will be accommodated on a first come first serve basis. The following telephone number, meeting ID number and password are provided for those members of the public who wish to listen telephonically to the hearing:

(571) 270-3000

meeting ID number 28001#

password 7448#

The Board will provide a stenographer for the hearing and the reporter's transcript will constitute the official record of the hearing.

Under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least five business days before the hearing and filed no later than the time of the hearing.

Case CBM2012-00001
Patent 6,553,350

In light of the expedited schedule, the parties may stipulate a different date for serving the demonstrative exhibits, but no later than the time of the trial hearing.

PETITIONER:

Erika Arner
Finnegan, Henderson
Farabow, Garrett & Dunner, LLP
SAP-PGR@finnegan.com

and

J. Steven Baughman
Ropes & Gray, LLP
Steven.baughman@ropesgray.com

PATENT OWNER:

Nancy Linck
Martin Zoltick
Rothwell, Figg, Ernst & Manbeck, PC
nlinck@rfem.com
mzoltick@rfem.com