

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SALESFORCE.COM, INC.

Petitioner

v.

VIRTUALAGILITY, INC.

Patent Owner

Case CBM2013-00024
Patent No. 8,095,413

Record of Oral Hearing
Held: July 14, 2014

Before JAMESON LEE, CHRISTOPHER KAISER,
and GEORGIANNA W. BRADEN, *Administrative Patent Judges*.

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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ON BEHALF OF THE PATENT OWNER:
CECIL KEY, ESQUIRE
JAY KESAN, ESQUIRE
GREGORY GONSALVES, ESQUIRE
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The above-entitled matter came on for hearing on Monday, July 14, 2014, commencing at 1:00 p.m., at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P R O C E E D I N G S
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JUDGE LEE: Welcome to the Board.
Judge Braden, can you hear us?
JUDGE BRADEN: Yes, I can. Can you hear me?
JUDGE LEE: Yes.

Welcome to the Board. This is the final hearing for CBM2013-00024, captioned Salesforce.Com, Inc. versus VirtualAgility, Inc. Each side has a total of one hour for argument and the sequence will be Petitioner, then Patent Owner and back to Petitioner again. So the Petitioner would have to split its one - hour time between the main session and the rebuttal, whereas the Patent Owner gets to use all or any part of it in one shot with no reservations for a second time up.

Anytime the Petitioner's counsel is ready, you may begin.

1 MR. ROSATO: Thank you, Your Honor. It's an honor to be here
2 and, Judge Braden, can you hear me okay, am I speaking loud enough?

3 JUDGE BRADEN: Yes, I can. Thank you.

4 MR. ROSATO: Thank you. So, Your Honors, do we want
5 introductions to the parties?

6 JUDGE LEE: Yes, please.

7 MR. ROSATO: Okay. So my name is Michael Rosato. I'm
8 appearing on behalf of the Petitioner. I have co-counsel, Jose Villarreal,
9 present and I also have counsel at or for who is much more technically
10 inclined in helping me with the computer here at the table. His name is Joel
11 Boehm, Your Honor.

12 JUDGE LEE: Thank you. And counsel for Patent Owner, would
13 you like to introduce yourself and your colleagues?

14 MR. KEY: Yes, Your Honor. My name is Cecil Key as counsel
15 for Patent Owner VirtualAgility, and with me are Jay Kesan and Gregory
16 Gonsalves.

17 JUDGE LEE: Thank you.

18 MR. KEY: Your Honor, before we start, just a point of
19 clarification. We do have the motion -- contingent motion to amend. Will I
20 be permitted to reserve time for reply on that or do you want me to cover
21 that as well during the time?

22 JUDGE LEE: Yes, you're right. I'm glad you brought that up.
23 I'm not sure we addressed that in the trial hearing order. Did we omit that in
24 the trial hearing order?

1 MR. KEY: I don't believe so, Your Honor. My understanding
2 was that it would be a reply, a short reply, if I reserve time --

3 JUDGE LEE: Yes, you are entitled to have the last word strictly
4 on the motion to amend. So let me change what I said previously.

5 MR. KEY: Thank you, Your Honor.

6 JUDGE LEE: You can split your time two ways, but your second
7 time up would only be with respect to the motion to amend.

8 MR. KEY: That's my understanding, Your Honor, yes.

9 MR. ROSATO: Okay. Thank you, Your Honor. And as the
10 preliminary question, we have the overhead projector here. As backups,
11 we've brought hard copies, if you prefer hard copies.

12 JUDGE LEE: Yes, I do like that very much.

13 MR. ROSATO: May I?

14 JUDGE LEE: Please.

15 MR. ROSATO: I think we have to mail yours, Judge Braden.

16 JUDGE BRADEN: That's perfectly okay. I have a copy of the
17 slides. If you would just make sure that when you refer to a slide, that you
18 refer to the slide number so I know where you are and I can follow along.

19 MR. ROSATO: Absolutely.

20 Okay. Well, starting with slide 2, then, just very brief comments
21 on what has happened thus far. Now, the original petition was filed with a
22 number of grounds, including 101, unpatentability to all claims of the patent,
23 anticipation in view of Ito for all claims, and then, further, prior art grounds
24 in view of Lowery and then the combination. And as the Board knows,

1 institution included unpatentability on all claims under 101 and anticipation
2 in view of Ito.

3 The other prior art grounds were not instituted, including Lowery,
4 and as the reasoning set forth was identified that Petitioner did not explain
5 one of the hierarchies that was being cited to, and we certainly respect that
6 finding and I pointed it out just because it becomes relevant with regard to
7 the motion to amend.

8 And turning to slide 3, Your Honors, and just looking at the key
9 disputes here, I'll try to focus on what I can see from the briefing seems to be
10 the points of dispute. Obviously if there are any questions, we're happy to
11 address any parts of that.

12 Well, looking at the key disputes, the first issue is the 101 ground
13 and we believe that the patent claims are, in fact, directed to ineligible
14 subject matter, because they're directed to an abstract idea and there just are
15 not enough meaningful limitations to the claims to salvage those claims to
16 eligibility.

17 With regard to the prior art, you know, the anticipation over Ito
18 remains. There's basically two points of dispute on -- I'm sorry, point --
19 limitations in Ito that the Patent Owner disputes as being present. One is the
20 model itself, which we believe the papers show is present, and the user
21 aspect of viewing the model entities as ordered by a value of information as
22 recited in those claims, and we'll talk about both of those points and address
23 why we believe that those points are clearly met by the prior art.

24 In turning to slide 4, Your Honor, I want to briefly comment on
25 CBM standing, and I only comment on this because there's a fair amount of

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