

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.

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Case CBM2012-00001 (MPT)  
Patent 6,553,350

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

TIERNEY, *Administrative Patent Judge.*

**SCHEDULING ORDER**

## A. DUE DATES

This order sets due dates for the parties to take action after institution of the proceeding. The parties may stipulate different dates for DUE DATES 1 through 3 (earlier or later, but no later than DUE DATE 4). A notice of the stipulation, specifically identifying the changed due dates, must be promptly filed. The parties may not stipulate an extension of DUE DATES 4-7.

In stipulating different times, the parties should consider the effect of the stipulation on times to object to evidence (37 C.F.R. § 42.64(b)(1)), to supplement evidence (37 C.F.R. § 42.64(b)(2)), to conduct cross examination (37 C.F.R. 42.53(d)(2)), and to draft papers depending on the evidence and cross examination testimony (see section B, below).

The parties are reminded that the Testimony Guidelines appended to the Trial Practice Guide, 77 Fed. Reg. 48756, 48772 (Aug. 14, 2012) (Appendix D), apply to this proceeding. The Board may impose an appropriate sanction for failure to adhere to the Testimony Guidelines. 37 C.F.R. § 42.12. For example, reasonable expenses and attorneys' fees incurred by any party may be levied on a person who impedes, delays, or frustrates the fair examination of a witness.

1. DUE DATE 1

The patent owner may file—

- a. A response to the petition (37 C.F.R. § 42.120), and
- b. A motion to amend the patent (37 C.F.R. § 42.121).

The patent owner must file any such response or motion to amend by DUE DATE 1. If the patent owner elects not to file anything, the patent owner must arrange a conference call with the parties and the Board.

2. DUE DATE 2

The petitioner must file any reply to the patent owner's response and opposition to the motion to amend by DUE DATE 2.

3. DUE DATE 3

The patent owner must file any reply to the petitioner's opposition to patent owner's motion to amend by DUE DATE 3.

4. DUE DATE 4

- a. The petitioner must file any motion for an observation on the cross examination testimony of a reply witness (see section C, below) by DUE DATE 4.
- b. Each party must file any motion to exclude evidence (37 C.F.R. § 42.64(c)) and any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 4.

5. DUE DATE 5

- a. The patent owner must file any reply to a petitioner observation on cross examination testimony by DUE DATE 5.
- b. Each party must file any opposition to a motion to exclude by DUE DATE 5.

6. DUE DATE 6

Each party must file any reply for a motion to exclude by DUE DATE 6.

7. DUE DATE 7

The oral argument (if requested by either party) is set for DUE DATE 7.

**B. CROSS EXAMINATION**

Except as the parties might otherwise agree, for each due date—

1. Cross examination begins after any supplemental evidence is due (37 C.F.R. § 42.53(d)(2)).
2. Cross examination ends no later than a week before the filing date for any paper in which the cross-examination testimony is expected to be used. *Id.*

### C. MOTION FOR OBSERVATION ON CROSS EXAMINATION

A motion for observation on cross examination provides the petitioner with a mechanism to draw the Board's attention to relevant cross examination testimony of a reply witness, since no further substantive paper is permitted after the reply. See Office Trial Practice Guide, 77 Fed. Reg. 48756, 48768 (Aug. 14, 2012). The observation must be a concise statement of the relevance of the precisely identified testimony to a precisely identified argument or portion of an exhibit. Each observation should not exceed a single, short paragraph. The patent owner may respond to the observation. Any response must be equally concise and specific.

DUE DATE APPENDIX

DUE DATE 1 Patent owner post-institution response to the petition Patent owner post-institution motion to amend patent	<b>April 4, 2013</b>
DUE DATE 2 Petitioner reply to patent owner response Petitioner opposition to patent owner amendment	<b>July 5, 2013</b>
DUE DATE 3 Patent owner reply to petitioner opposition	<b>August 5, 2013</b>
DUE DATE 4 Petitioner motion for observation regarding cross examination of reply witness Motion to exclude Request for oral argument	<b>August 26, 2013</b>
DUE DATE 5 Patent owner response to observation Opposition to motion to exclude	<b>September 16, 2013</b>
DUE DATE 6 Reply to opposition to motion to exclude	<b>September 16, 2013</b>
DUE DATE 7 Oral argument	<b>October 1, 2013</b>

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