

## Versata Patent Targeted By Ford Ineligible For CBM Review

By **Matthew Bultman**

*Law360, New York (March 15, 2017, 8:42 PM EDT)* -- The Patent Trial and Appeal Board declined Wednesday to institute an America Invents Act covered business method review of a Versata Development Group Inc. software patent that was challenged by Ford Motor Co., finding the patent was not eligible for the review program.

The AIA states that the CBM program — which allows the PTAB to review patents on grounds not available in inter partes reviews, including that it is directed to an abstract idea — is designed for patents that are related to financial products or services.

The PTAB said Ford had not shown that Versata’s patent met that criteria.

Specifically, “petitioner has not established that the [patent] claims a method or apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service,” the board wrote.

The patent is part of a broader dispute in which Versata, a software company, has alleged that Ford stole its patented automotive configuration manager software and used the information to develop its own system.

Ford had argued that claims in this particular patent were invalid because they are directed to an abstract idea. It also said that some were invalid as indefinite.

The PTAB’s decision not to institute review of the patent is the latest to follow recent Federal Circuit rulings that have restricted the scope of the CBM program.

Previously, the board held that patents “incidental to” and “complementary to” financial services are subject to CBM reviews. But the Federal Circuit said in November that allowing review of patents merely incidental to financial services “renders superfluous” the limits that Congress set in the AIA.

The appeals court has also emphasized that the financial aspect of the patent must be found in the claims. That guidance came in a case that was decided last month and involved a Secure Axxess LLC patent on web page authentication technology.

The PTAB, which appears to have been taking the Federal Circuit's rulings to heart, cited both those decisions in denying Ford’s petition Wednesday.

“In evaluating petitioner’s arguments and evidence, we must focus on the claims, not on embodiments described in the specification, some of which are related to financial services and some of which are not,” the board wrote, noting the Secure Access case.

“In summary,” it concluded, “we have considered each of petitioner’s arguments, but do not find them persuasive given the generic, broad claims, and the corresponding broad disclosure in the specification of the [patent].”

Versata, previously known as the Trilogy Development Group, sued Ford in May 2015 in the Eastern District of Texas. The case was later dismissed in light of parallel litigation that is ongoing in Michigan federal court.

Ford has filed numerous other challenges to Versata patents at the PTAB, which, according to board records, have been denied in several cases. A number of others are still pending and no decision has been made by the board whether to institute review.

Attorneys for both sides could not immediately be reached for comment Wednesday.

The patent at issue is U.S. Patent No. 7,739,080.

Ford is represented by Thomas A. Lewry, Christopher C. Smith, John S. LeRoy, Jonathan D. Nikkila, John P. Rondini and Frank A. Angileri of Brooks Kushman PC.

Versata is represented by Robert Greene Sterne, Salvador M. Bezos, Michelle K. Holoubek, Joseph E. Mutschelknaus and Jonathan Tuminaro of Sterne Kessler Goldstein & Fox PC, Kent B. Chambers of Terrile Cannatti Chambers & Holland LLP, and Sharoon Saleem of Jones & Spross PLLC.

The case is Ford Motor Co. v. Versata Development Group Inc., case number CBM2016-00101, before the Patent Trial and Appeal Board.

--Additional reporting by Ryan Davis. Editing by Jack Karp.