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Salesforce.com, Inc. v. VirtualAgility, Inc.: Denying Authorization for Motion to Vacate Final Written Decision CBM2013-00024

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Takeaway: If a final written decision has already been rendered finding all challenged claims unpatentable, it is unlikely that the Board will vacate the decision on the basis of a subsequent settlement by the parties.

In its Order, the Board denied Patent Owner's request for authorization to file a Motion to Vacate the Final Written Decision and to Terminate the Proceeding After the Final Written Decision Has Been Vacated. The Board rendered a Final Written Decision finding unpatentable all challenged claims of the '413 Patent. Subsequently, the parties filed a Joint Motion to File Settlement Agreement as Confidential Business Information, and Patent Owner requested authorization to file the Motion to Vacate. Patent Owner based its request on the fact that Petitioner has abandoned the proceeding by agreeing not to participate in any subsequent appeal.

The Board found that where Petitioner has already proven that the challenged claims are unpatentable and a Final Written Decision has already been rendered, Petitioner's lack of further participation in the appeal is inconsequential to the merits of the Final Written Decision. Further, the Board disagreed with Patent Owner's characterization that the trial before the Board is not yet complete, stating that appellate review is not part of the trial before the Board. The Board also disagreed with Patent Owner's argument that there is no public interest in allowing the Final Written Decision to stand, finding that the public interest lies in not having claims that have been proven unpatentable remain in an issued patent.

***Salesforce.com, Inc. v. VirtualAgility, Inc.*, CBM2013-00024**
Paper 52: Order Denying Authorization for Motion to Vacate Final Written Decision
Dated: November 24, 2014
Patent 8,095,413 B1
Before: Jameson Lee, Georgianna W. Braden, and Christopher M. Kaiser
Written by: Lee

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