

Subject to the statements and reservations set forth herein, Plaintiffs Versata Software, Inc., f/k/a Trilogy Software, Inc., Versata Development Group, f/k/a Trilogy Development Group, Inc., and Versata Computer Industry Solutions, Inc. (collectively “Plaintiffs” or “Versata”) and Defendants SAP America, Inc. and SAP AG (“SAP” or “Defendants”) move the Court to adopt the proposed Interim Protective Order filed herewith as Attachment A.

I. THE PARTIES’ AGREEMENT

The parties have worked diligently to reach agreement on virtually all terms of a Stipulated Protective Order. However, as described in more detail below, there are two areas of dispute as to which the parties have been unable to agree, namely, (1) whether an in-house non-attorney may be permitted access to the other side’s confidential information, and (2) whether and under what circumstances counsel should be permitted to outsource document review and other litigation support functions to vendors located outside the United States.

In view of the imminent disclosures and accompanying document production by SAP pursuant to PR 3-3 and 3-4, as well as ongoing discovery, the parties have agreed that it would be desirable, on an interim basis, to apply those portions of the draft Protective Order that are not in dispute, rather than to rely on the more restrictive interim provisions of PR 2-2. Proposed language that is in dispute is included in the Draft Final Protective Order attached hereto as Attachment B, and is denoted with square brackets and bold text (*e.g.*, [**disputed language**]). Such disputed terms are identified in Attachment B for the purpose of defining the disputed issues.

The parties hereby stipulate that the Interim Protective Order attached hereto as Attachment A shall govern the handling of confidential information until the resolution of the disputed issues identified herein.

Additionally, the parties stipulate that the following two provisions apply as part of the Interim Protective Order:

(1) No in-house non-attorneys will be permitted access to the other side's confidential information; and

(2) Unless otherwise specifically agreed to in writing by the producing party, no confidential information or confidential material may be sent, transmitted or otherwise transferred or made available outside the United States.

II. ISSUES IN DISPUTE

Notwithstanding the parties' efforts to reach a complete agreement on a proposed Protective Order, two issues remain unresolved and will require the Court's assistance to resolve them. The parties intend to submit motions and briefing pertaining to these issues, and ask that the Court refrain from resolving either issue until both sides have had an opportunity to submit briefing on these issues.

A. IN-HOUSE NON-ATTORNEY ACCESS TO CONFIDENTIAL INFORMATION

Plaintiff Versata has indicated that it wishes to provide SAP confidential information to James Kennedy, an in-house non-attorney assigned to the legal department for the purpose of providing litigation assistance. Versata has only one in-house attorney who is an employee—Lance Jones, its general counsel. SAP has included language in the protective order restricting access to confidential information by in-house counsel if they are involved in patent prosecution or competitive decision-making. Given Mr. Jones' more wide-ranging responsibilities, it is

unclear if he would qualify, thereby leaving Versata at a distinct disadvantage to SAP, which is a large company with a number of in-house attorneys who have more specific areas of responsibility, and thus, presumably, would more easily qualify under the protective order.

Defendant SAP opposes Versata's proposal on the basis that such a role is properly played by retained experts, and that permitting non-lawyer access to SAP's confidential business information would raise unacceptable risks of competitive harm.

B. OUTSOURCING OF DOCUMENT REVIEW AND LITIGATION SUPPORT TO NON-U.S. VENDORS

Plaintiff Versata proposes to outsource some litigation support services, including document review, to contract attorneys and engineers located in India. Versata is willing to agree to reasonable conditions in connection with such offshore assistance, but feels that the restrictions proposed by SAP are undue and that its objection to some of Versata's proposed vendors is inappropriate.

Defendant SAP opposes the unregulated transfer of its confidential information to third party vendors outside the jurisdiction of the United States. SAP recognizes that there has been considerable growth in the outsourcing of litigation support services in recent years, and has proposed additional language in the Protective Order to facilitate the balancing of this business trend against SAP's interest in protecting the confidentiality of its information and documents.

Dated: December 18, 2007

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed.R.Civ.P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of this document via email, facsimile and/or U. S. First Class Mail.

Dated: December 18, 2007

/s/ Christian Mammen

Christian Mammen