IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SUN MICROSYSTEMS, INC., Plaintiff, v. VERSATA ENTERPRISES, INC., VERSATA SOFTWARE, INC., VERSATA DEVELOPMENT GROUP, INC., VERSATA COMPUTER INDUSTRY SOLUTIONS, INC., VERSATA, INC., TRIOLOGY, INC., and NEXTANCE, INC., Defendants.	)	C.A. No. 07-782 (JJF)

DEFENDANTS' MOTION FOR EXTENSION OF TIME TO ANSWER, MOVE OR OTHERWISE RESPOND TO THE COMPLAINT

Defendants Versata Enterprises, Inc., Versata Software, Inc., Versata Development Group, Inc., Versata Computer Industry Solutions, Inc., Versata, Inc., Trilogy, Inc. and Nextance, Inc. (collectively, "Defendants") hereby move for a 30-day extension of time, until January 25, 2008, to respond to the Complaint in this action. The grounds for this motion are as follows:

1. Plaintiff Sun Microsystems, Inc. ("Sun") filed its Complaint on November 30, 2007 (D.I. 1) and served it on Defendants on December 3, 2007 (D.I. 5-11), making Defendants' responses due on December 26, 2007, the day after Christmas.

2. Sun does not identify any accused products in the Complaint. Instead it alleges only that "Defendants have made, used, offered for sale and/or sold in the United States ***a system*** that infringes one or more claims" of the four, unrelated patents-in-suit. (D.I. 1 ¶¶ 6, 11, 16). Defendants have advised Sun that, in order to respond to the allegations of the Complaint, they need to know what "system" (or "systems" if they are different) is (or are) accused of

infringement. (Ex. A). Defendants have requested that Sun file an Amended Complaint that identifies for each asserted patent: (1) the particular system that allegedly infringes that patent and (2) the defendant that allegedly makes, uses, offers for sale, or sells that system. (*Id.*) To date, Sun has not responded to that request.

3. Defendants have also requested that Sun agree to a customary 30-day extension of time for them to answer, move or otherwise respond to the Complaint, particularly in light of the intervening holidays and the lack of information on which Defendants can base an investigation into the allegations of the Complaint. (Ex. B).

4. Sun has refused to agree that Defendants' may have a 30-day extension. Instead, it has only offered to grant Defendants a two-week extension, subject to a number of conditions, including that Defendants answer the Complaint and agree not to delay the "current case schedule," which Defendants understand to refer to the January 11, 2008 Scheduling Conference set by the Court. (*Id.*). Sun did so even though Trilogy extended the similar courtesy to Sun in a pending earlier-filed action against Sun in Texas.

5. As Defendants advised Sun, Defendants have no intention to delay the case and intend to participate in the January 11, 2008 conference. They have further offered to meet and confer about a case schedule once Sun identifies the "system" accused of infringement and provides its proposed case schedule. (*Id.*). Defendants are not in a position, however, to respond to the Complaint or to discuss a schedule without knowing what is accused of infringement.

6. Defendants certify pursuant to D. Del. LR 7.1.1 that they have made reasonable efforts to reach agreement with Sun on the matters set forth in this motion, but have not been able to reach agreement thereon.

WHEREFORE, Defendants respectfully request that the Court enter an Order granting Defendants a 30-day extension, until January 25, 2008, to answer, move or otherwise respond to the Complaint.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Karen Jacobs Louden

Jack B. Blumenfeld (#1014)
Karen Jacobs Louden (#2881)
1201 N. Market Street
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(302) 658-9200
Attorneys for defendants

OF COUNSEL:
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Austin, TX 78701
(512) 692-8700

December 19, 2007
1343368

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SUN MICROSYSTEMS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 07-782 (JJF)
	)	
VERSATA ENTERPRISES, INC., VERSATA SOFTWARE, INC., VERSATA DEVELOPMENT GROUP, INC., VERSATA COMPUTER INDUSTRY SOLUTIONS, INC., VERSATA, INC., TRIOLOGY, INC., and NEXTANCE, INC.,	)	
	)	
Defendants.	)	

ORDER

The Court having considered Defendants' Motion For Extension Of Time To Answer, Move, Or Otherwise Respond To The Complaint, IT IS HEREBY ORDERED this ____ day of _____, 2007 that:

1. Defendants' motion is GRANTED.

2. Defendants' time to answer, move or otherwise respond to the Complaint is hereby extended through and including January 25, 2008.

_____
Farnan, J.

1343368

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on December 19, 2007, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing(s) to the following:

Paul J. Lockwood
Michael A. Barlow

I also certify that copies were caused to be served on December 19, 2007 upon the following in the manner indicated:

BY E-MAIL AND HAND

Paul J. Lockwood
Michael A. Barlow
Skadden, Arps, Slate, Meagher & Flom LLP
One Rodney Square
P.O. Box 636
Wilmington, DE 19899

BY E-MAIL

Jeffrey G. Randall
David W. Hansen
Skadden, Arps, Slate, Meagher & Flom LLP
525 Universtiy Ave., Ste. 1100
Palo Alto, CA 94301

/s/ Karen Jacobs Louden

Karen Jacobs Louden
klouden@mnat.com

EXHIBIT A

McKool Smith
A PROFESSIONAL CORPORATION • ATTORNEYS
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December 17, 2007

Via FedEx and E-mail
Paul J. Lockwood
Skadden, Arps, Slate, Meagher & Flom LLP
Onde Rodney Square
P.O. Box 636
Wilmington, Delaware 19899

RE: *Sun Microsystems, Inc. v. Versata Enterprises, Inc., et al., D. Del. Civil Action No.* 07-782-JJF

Dear Paul:

We represent the Defendants in the above-captioned action. I am writing to request additional information about Sun's Complaint so that the Defendants can respond appropriately.

Sun alleges that "Defendants have made, used, offered for sale and/or sold in the United States a system that infringes one or more claims" of each of the patents in suit. Sun, however, fails to identify that "system" or even specify which of the seven defendants makes or sells that "system." Such bald allegations fail even to meet Rule 8's relatively low pleading threshold requirement. *See Bell Atl. Corp. v. Twombly*, 127 S. Ct. 1955. 1966 (2006).

Without more information, Defendants cannot respond to Sun's allegations. In addition, Defendants cannot discharge their duties to preserve potentially relevant documents because they do not know what is relevant. They also cannot determine whether certain of the Defendants are proper parties to this suit. Finally, Defendants cannot determine whether these allegations trigger any indemnity obligations on the part of Defendants' suppliers or vendors or, alternatively, are covered by a license.

Accordingly, Defendants hereby request that Sun file an Amended Complaint that identifies, for each asserted patent: (1) the particular system that allegedly infringes that patent (by trade name) and (2) the defendant that allegedly makes, uses, offers for sale, or sells that system.

Very truly yours,

Peter J. Ayers

PJA/ji
c: Jeffrey G. Randall
Jack Blumenfeld
Karen Jacobs Louden

EXHIBIT B

Louden, Karen Jacobs

From: Louden, Karen Jacobs
Sent: Tuesday, December 18, 2007 5:52 PM
To: 'Buchanan, Matthew D'
Cc: Randall, Jeff G (PAL); Hansen, David W (PAL); Barlow, Michael A (WIL)
Subject: RE: Sun Microsystems v. Versata

Dear Matt:

Defendants have no intention to delay the schedule in the case and intend to participate in the January 11, 2008 conference. As discussed in our call on Friday and in Peter Ayers' letter of yesterday, however, plaintiff has not even identified the "system" it accuses of infringement. We cannot have a meaningful meet and confer about discovery or a schedule until we know what the case is about and its scope. Please provide this information, as well as plaintiff's proposed schedule. We will be happy to set a time to meet and confer once we receive this information from you.

In light of plaintiff's refusal to agree to a customary 30-day extension, even during the holidays, we will plan on filing a motion with the Court.

Karen

From: Buchanan, Matthew D [mailto:Matthew.Buchanan@skadden.com]
Sent: Monday, December 17, 2007 10:30 PM
To: Louden, Karen Jacobs
Cc: Randall, Jeff G (PAL); Hansen, David W (PAL); Barlow, Michael A (WIL)
Subject: RE: Sun Microsystems v. Versata

Dear Karen:

As we discussed last week, if the only purpose of your request for an extension is to delay the schedule in this case, then we are not willing to agree to extend the time for Defendants' response to the Complaint. Your only explanation for the requested extension during our discussion was that this was a "standard extension." However, the "standard" time for responding to a Complaint is governed by the Federal Rules of Civil Procedure.

As I also mentioned during our call, we are willing to grant Defendants a 2 week courtesy extension provided that Defendants answer the Complaint, and agree not to attempt to delay the current case schedule. Again, if the only purpose of your request for a "standard extension" is to delay, then we do not agree.

Finally, we reiterate our request made on December 14, that you provide us with a time this week to conduct a meet & confer per the Court's Order in this case. We are required by the Order to complete the meet & confer by this Friday, December 21.

Matt

Matthew D. Buchanan
SKADDEN ARPS SLATE MEAGHER & FLOM LLP
525 University Ave. | Suite 1100 | Palo Alto, CA | 94301
Direct: (650) 470-4596 | Fax: (888) 329-2069
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From: Louden, Karen Jacobs
Sent: Monday, December 17, 2007 5:34 PM
To: 'buchanan@skadden.com'
Cc: 'barlow@skadden.com'
Subject: Sun Microsystems v. Versata

Matt, following up on our conversation on Friday, please let us know today if plaintiff will agree to a 30 day extension for defendants to answer, move or otherwise respond to the complaint. If plaintiff does not agree, we will file a motion requesting the extension.

Thanks,

Karen

Karen Jacobs Louden 302.351.9227 klouden@mnat.com
Morris, Nichols, Arsht & Tunnell LLP | 1201 North Market Street | Wilmington, DE 19801

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This e-mail and any attachments thereto, is intended only for use by the addressee(s) named herein and may conta

Further information about the firm, a list of the Partners and their professional qualifications will be provide
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