

IP MVP: Ropes & Gray's J. Steven Baughman

By **Melissa Lipman**

Law360, New York (November 12, 2013, 5:46 PM ET) -- Ropes & Gray LLP's J. Steven Baughman helped SAP AG invalidate a key Versata Software Inc. patent in the first-ever decision of an America Invents Act challenge in 2013, earning himself a spot on Law360's list of Intellectual Property MVPs.

The ruling was a crucial victory for the German technology giant, knocking out a patent that had led to a \$391 million jury verdict against SAP in its six-year litigation battle with Versata. But perhaps more importantly, it was also the first decision from the newly created Patent Trial and Appeal Board, demonstrating the value of the new post-grant patent challenges created by the 2011 law.

Indeed, the case was the first covered business method proceeding filed with the board on the day the AIA reforms kicked in, Sept. 16, 2012.

"There was some misapprehension early on that to qualify [for CBM proceedings], you needed to have some very narrow circumstances, [but] this particular mechanism has some really special features," Baughman said. "We recognized the advantage of this process and sunk our teeth into understanding the scope of the covered business method proceedings and worked with clients to decide if that was the right strategy for them, rather than holding back and waiting, as many companies did, to see what the early returns would be."

In particular, the CBM review offered Baughman's Ropes & Gray team and co-counsel from Finnegan Henderson Farabow Garrett & Dunner LLP a broader range of invalidity defenses, more limited estoppel effects than in other post-grant challenges and, of course, higher page limits.

"It sounds a little bit silly, but as a practical matter, it can make a difference in terms of how you're able to present your arguments," Baughman said.

While some of the benefits of the new challenges were clear from the law, others were more nebulous, and Baughman and his team had to convince the board their approach was correct.

"We sought an expedited proceeding, and while the rules certainly permitted that, there wasn't a specific procedure laid out for how to go about requesting it," Baughman said. "The board did ... create an accelerated schedule ... and the entire proceeding, from filing to final written decision, was nine months, which is very short."

Of course, the SAP matter was just one of the seven CBM proceedings Baughman worked on over the

past year — out of eight cases the board heard from beginning to end during that time. He is counsel of record on 17 cases filed with the patent office for CBM review in that same period. That expertise has made Baughman, who coordinates the firm's post-grant patent challenge practice, a valuable resource, according to James R. Batchelder, the managing partner of the firm's Silicon Valley office, who worked with Baughman on the SAP case.

"Whenever I get into a case these days, the first thing I do is collaborate with Steve to come up with a strategy and to see whether some sort of post-grant challenge would make sense," Batchelder said.

In particular, Baughman's engineering expertise paired with his litigation skills set him apart from many of the other attorneys working on post-grant challenges, according to Batchelder.

"He's a litigator by training, and a lot of the folks who are doing re-examination work and post-grant challenge work are patent prosecutors by training, so they're comfortable writing papers and submitting them across the wire ... but they're not comfortable on their feet in a more litigation-style proceeding, which is really what these PTAB proceedings are," Batchelder said. "Steve's got that blend ... that really sets him apart."

With other CBM proceedings underway — including an invalidity challenge for Liberty Mutual Insurance Co. against five patents asserted in district court by Progressive Insurance Co. — Baughman said he was looking forward to see the development of the fledgling process.

"I'm still learning something everyday, and I hope that continues," Baughman said. "There's always a question, at the beginning of a new process, of will the potential users of a system buy into it? And I think the track record of the first year of the board has been one of people feeling confident bringing disputes to the board, and you see that reflected in the continuing growth of filings."

"It's really an exciting time," he said.

--Editing by Kat Laskowski.