

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA,
ALEXANDRIA DIVISION**

VERSATA DEVELOPMENT GROUP, INC.,)
)
Plaintiff,)
)
v.)
)
TERESA STANEK REA)
Acting Director of the)
United States Patent and Trademark Office,)
)
Defendant,)
)
SAP AMERICA, INC. & SAP AG,)
)
Defendant-Intervenors.)

Case No. 1:13-cv-00328 (GBL/IDD)

ORDER

This matter is before the Court on Plaintiff’s Rule 59(e) Motion to Alter or Amend this Court’s August 7, 2013 Order (Doc. 48). In the August 7, 2013 Order (Doc. 46), the Court dismissed Plaintiff’s Complaint without prejudice on the grounds of lack of subject matter jurisdiction and failure to state a claim. In the Rule 59(e) Motion presently before the Court, Plaintiff argues that the Court should amend the August 7, 2013 Order to correct clear errors of law and to prevent manifest injustice. For the reasons that follow, Plaintiff’s Motion to Alter or Amend must be denied.

Relief under Rule 59(e) is available only:
(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.

Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir. 1993). “Reconsideration of a judgment after its entry is an extraordinary remedy which should be used sparingly.” *Pac. Ins. Co. v. Am. Nat’l*

Fire Ins. Co., 148 F.3d 396, 403 (4th Cir. 1998). Rule 59(e) may not be used to relitigate old matters that the court has already ruled upon. *Id.*; *see also Snyder v. Greenberg Traurig, LLP*, 2010 WL 9009363, at *1 (E.D. Va. Jan. 11, 2010), *aff'd*, 385 Fed. App'x 297 (4th Cir. 2010) (“A rule 59(e) motion is not a vehicle for a party to raise arguments or legal theories that the party could have, or actually did, assert previously.”).

As stated above, Plaintiff invokes section (3) of Rule 59(e) and argues that the failure to correct alleged errors of law would result in a manifest injustice for two reasons. First, Plaintiff argues that the Court used the incorrect standard to determine congressional intent under the Administrative Procedure Act. Second, Plaintiff contends that the Court was incorrect in finding that there is no exception to the final agency action rule when a pure question of law raises an attack on an agency's jurisdiction. None of Plaintiff's arguments are sufficient to disturb the Court's Judgment.

The arguments that Plaintiff puts forth in its Motion to Alter or Amend the Judgment were the basis of Plaintiff's opposition brief (Doc. 33) to the Defendants' Motion to Dismiss, and were discussed in detail during oral arguments on Defendants' Motion, upon which the Court previously ruled in the August 7, 2013 Order. In reaching its decision in that Order, the Court considered these same arguments and rejected them, finding that the America Invents Act's express language and detailed scheme for administrative and judicial review evince Congress's clear intent to preclude subject matter jurisdiction in federal district court. Plaintiff fails to present any new arguments but instead attempt to reargue its position because it disagrees with the Court's ultimate holding.

Second, the Court found that as an alternative ground, Plaintiff failed to state a claim because the institution of post-grant review is not a final agency action for which Plaintiff lacks an adequate remedy in court. In its Opposition to the Motion to Dismiss (Doc. 33), Plaintiff brought forth a number of arguments including that because Defendant's statutory construction is a pure question of law, that it should be a reviewable final agency action. The Court rejected that argument and found that Plaintiff could not circumvent the final agency action rule by claiming that an issue was a pure question of law. In the current Motion, Plaintiff fails to present any new arguments but instead attempts to reargue its position because it disagrees with the Court's ultimate holding regarding final agency action. For the same reasons previously articulated by this Court, Plaintiff's present Rule 59(e) Motion to Alter or Amend the August 7, 2013 Order must be denied. Plaintiff is advised that the Court will not consider any further motions regarding these same claims unless and until directed to do so by the Federal Circuit Court of Appeals.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion to Alter or Amend Judgment pursuant to Federal Rule of Civil Procedure 59(e) (Doc. 48) is **DENIED**.

IT IS FURTHER ORDERED that the hearing on Plaintiff's Motion currently scheduled for Friday, October 11, 2013 is **CANCELED**.

IT IS SO ORDERED.

ENTERED this 5th day of October 2013.

Alexandria, Virginia
10 / 5 / 2013