

Filed on behalf of Petitioners Apple, Inc., et al.

By: Richard S. Zembek

Gilbert A. Greene

FULBRIGHT & JAWORSKI L.L.P.

1301 McKinney, Suite 5100

Houston, Texas 77010

Tel: 713-651-5151

Fax: 713-651-5246

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC. ET AL.

Petitioners

V.

AMERANTH, INC.

Patent Owner

Case CBM2014-00013

Patent 6,982,733

PETITIONERS' NOTICE IN RESPONSE TO
IDENTIFICATION OF DEFECT

Further to the Board's Notice of Filing Date Accorded to Petition and Time for Filing Patent Owner Preliminary Response (Paper No. 5), which identified a defect in the petition filed on October 15, 2013 (Paper No. 2), Petitioners hereby submit this Notice in response, which is intended to correct the identified defect.

The Board's Notice stated that the petition failed to provide a statement under 37 C.F.R. § 42.104(b)(3) identifying how the challenged claims are to be construed. It is assumed that the Board intended to reference 37 C.F.R. § 42.304(b)(3), which relates to petitions for Covered Business Method Review, rather than 37 C.F.R. § 42.104(b)(3), which relates to petitions for *Inter Partes* Review.

In response, Petitioners note that pages 28-30 of the petition contain a section entitled "Claim Construction (37 C.F.R. § 42.304(b)(3))," which was intended to provide the statement required by 37 C.F.R. § 42.304(b)(3). In that section, as allowed by the Office Patent Trial Practice Guide, petitioners provided a "simple statement" that the claim terms of U.S. Patent No. 6,982,733 ("733 Patent") should be given their broadest reasonable interpretation (BRI) for the

purposes of this proceeding (but for the purposes of this proceeding only¹). *See Exhibit 1030*, p. 48764. Petitioners further stated that for each claim term in the '733 Patent, the BRI is the ordinary and customary meaning of the term.

To the extent the Board would like additional clarification regarding the ordinary and customary meaning of certain key terms in the challenged claims, Petitioners provide that information in the below table for insertion into section "Claim Construction (37 C.F.R. § 42.304(b)(3))" of the original petition, at page 30, line 6:

¹ As noted in the petition, Petitioners advocate the broadest reasonable interpretation (BRI) for the claim terms of the '733 Patent for the purposes of this CBM review only. Claim construction is analyzed under a different legal standard for the purposes of litigation. *See, e.g., In re Trans Texas Holdings Corp.*, 498 F.3d 1290, 1298-99 (Fed. Cir. 2007). As such, Petitioners reserve the right to advance different claim constructions in connection with litigation in federal court, including in connection with the currently pending litigation identified in the petition.

Claim Term	Relevant Claims	Ordinary and Customary Meaning	Source
Web page	Claim 1	a document on the World Wide Web	Microsoft Computer Dictionary at 479 (4th ed. 1999); Exhibit 1042 at ¶ 13.
wherein data comprising the [second / modified] menu is synchronized between the data storage device [...] and at least one other computing device	Claims 4 & 5	This is a method step having its plain and ordinary meaning under the BRI.	
wherein said [second / modified] menu is manually modified [...] after generation	Claims 1, 4, 5, 12	This is a method step having its plain and ordinary meaning under the BRI.	
central processing unit (CPU)	Claims 1 & 4	The computational and control unit of a computer.	Microsoft Computer Dictionary at 115 (4th ed. 1999)
operating system	Claims 1, 4, 5, 12	The software that controls the allocation and usage of hardware resources such as memory, CPU time, disk space, and peripheral devices.	Microsoft Computer Dictionary at 321 (4th ed. 1999)

Case CBM2014-00013
Patent 6,982,733

Dated: October 30, 2013

Respectfully submitted,

/s/ Richard S. Zembek

Richard S. Zembek
Reg. No. 43,306
Fulbright & Jaworski L.L.P.
1301 McKinney, Suite 5100
Houston, Texas 77010
Tel: 713-651-5151
Fax: 713-651-5246
richard.zembek@nortonrosefulbright.com

Gilbert A. Greene
Reg. No. 48,366
FULBRIGHT & JAWORSKI LLP
98 San Jacinto Boulevard, Suite 1100
Austin, TX 78701
Tel: 512.474.5201
Fax: 512.536.4598
bert.greene@nortonrosefulbright.com

Attorneys for Petitioners Fandango, LLC and
OpenTable, Inc.

/s/ James M. Heintz

James M. Heintz (Reg. No. 41,828)
Ryan W. Cobb (Reg. No. 64,598)
DLA Piper LLP (US)
One Fountain Square
11911 Freedom Drive
Suite 300
Reston, VA 20190-5602
Tel: 703-773-4148
Fax: 703-773-5008

Attorneys for Petitioner Apple Inc.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.