UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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Agilysys, Inc. *et al.*

Petitioner

v.

Ameranth, Inc.

Patent Owner

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Petitions Numbered CBM2014-00015
Patent No. 6,384,850

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MOTION TO RECONSTITUTE PETITIONER TO EXCLUDE APPLE INC. UNDER 37 C.F.R. § 42.20

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I.   INTRODUCTION

In accordance with 37 C.F.R. § 42.20 and the Board's March 10, 2014 Orders on Conduct of Proceedings in CBM2014-00013 (Paper 18), CBM2014-00014 (Paper 14), CBM2014-00015 (Paper 15), and CBM2014-00016 (Paper 14) (collectively, the "Existing Proceedings"), Petitioner requests to be allowed to reconstitute itself to exclude Apple Inc. ("Apple"). The Board's Februray 11, 2014 Orders on Conduct of the Proceedings in CBM2014-00013 (Paper 14), CBM2014-00014 (Paper 11), CBM2014-00015 (Paper 12), and CBM2014-00016 (Paper 11) were contrary to Petitioner's understanding of the rules, and with a different understanding, Apple, as one party constituting Petitoner, would have proceeded in a different manner before the Board. Petitioner therefore requests that Petitioner be allowed to reconstitute itself to exclude Apple from the Existing Proceedings without the imposition of any estoppel against Apple, and permit Apple to file separate petitions, identical to those on file that will not raise any new issues or arguments together with requests for joinder with the Existing Petitions. Granting Petitioner's request will allow Apple to proceed with counsel of its own choosing. Petitioner believes that Patent Owner ("Ameranth") would not be prejudiced if the Board were to grant Petitioner's request. The Board may grant this relief under and consistent with 37 C.F.R. § 42.5(a) and (b), which "permit administrative patent judges wide latitude in administering the proceedings to balance the ideal of

precise rules against the need for flexibility to achieve reasonably fast, inexpensive, and fair proceedings." 77 FR 48611, 48616.

II.   BACKGROUND FACTS

On October 15, 2013, Petitioner, which included Apple along with a number of other parties, filed four petitions for Covered Business Method ("CBM") Review of patent numbers 6,982,733 (CBM2014-00013), 8,146,077 (CBM2014-00014), 6,384,850 (CBM2014-00015), and 6,871,325 (CBM2014-00016) (the "Petitions"). Each party listed on the Petitions as Petitioner originally individually designated its own counsel such that multiple lead counsel were designated. On February 7, 2014, the Board held a telephonic conference with Petitioner and Ameranth to discuss how to proceed with multiple parties listed as a single petitioner. On February 11, 2014, the Board ordered all parties to be listed as a single petitioner and represented by a single lead counsel. *See* Paper 14 (CBM2014-00013), Paper 11 (CBM2014-00014), Paper 12 (CBM2014-00015), and Paper 11 (CBM2014-00016) (collectively, the "Orders"). Because of the unanticipated requirement to be represented by a single lead counsel that Apple had not selected for itself, Apple sought to withdraw from the Petitions. Apple contacted Ameranth regarding the proposed withdrawal. However, the parties were unable to reach agreement and contacted the Board seeking guidance in resolving Apple's request for withdrawal. On March 7, 2014, the Board held a

conference call and ordered this briefing to address Apple's proposed withdrawal

and any prejudice that may affect the parties, including whether any prejudice may

result from allowing Apple to file its own CBM petitions that are duplicates of

those currently before the Board and seek joinder to the current proceedings. On

March 10, 2014, the Board issued an Order on Conduct of the Proceedings

directing Petitioner to file the instant Motion to Reconstitute Petitioner to Exclude

Apple Inc. *See* CBM2014-00013 (Paper 18), CBM2014-00014 (Paper 14),

CBM2014-00015 (Paper 15), and CBM2014-00016 (Paper 14).

III.   ARGUMENT

The Board's orders requiring all parties named on the Petitions to appoint a

single lead counsel were contrary to Petitioner's understanding of the rules

governing the Existing Proceedings, and Apple, individually, would have

proceeded in a different manner if it had the understanding it now does as a result

of the Board's orders. Given the relatively recent establishment of the CBM

review process and corresponding lack of authority on this issue, it appears this is a

matter of first impression and Petitioner's good-faith misunderstanding of the rules

was reasonable. Fortunately, however, a simple solution exists: Petitioner can be

reconstituted to exclude Apple such that Apple can withdraw from the Existing

Proceedings and file its own petitions duplicating those on file that do not raise

new issues or arguments together with a request for joinder with the Existing

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