

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FANDANGO, LLC, OPENTABLE, INC.,  
APPLE INC., DOMINO'S PIZZA, INC.,  
AND DOMINO'S PIZZA, LLC,  
Petitioner

v.

AMERANTH, INC.,  
Patent Owner.

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Case CBM2014-00013  
Patent 6,982,733 B1

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and

AGILYSYS, INC., ET AL.,  
Petitioner,

v.

AMERANTH, INC.,  
Patent Owner.

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Case CBM2014-00015  
Patent 6,384,850 B1  
Case CBM2014-00016  
Patent 6,871,325 B1

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Held: October 24, 2014

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Before JAMESON LEE, MEREDITH C. PETRAVICK, and NEIL T.  
POWELL, *Administrative Patent Judges*.

1 APPEARANCES:

2

3 ON BEHALF OF THE PETITIONER:

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10 ON BEHALF OF THE PATENT OWNER:

11 JOHN W. OSBORNE, ESQUIRE  
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16 and

17  
18 MICHAEL D. FABIANO, ESQUIRE  
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22

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24 The above-entitled matter came on for hearing on Friday, October 24,  
25 2014, commencing at 1:35 p.m., at the U.S. Patent and Trademark Office,  
26 600 Dulany Street, Alexandria, Virginia.  
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P R O C E E D I N G S

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1 JUDGE LEE: Please have a seat. Good afternoon. Welcome to  
2 the Board. Today we have a consolidated oral argument for three  
3 proceedings: CBM2014-00013, CBM2014-00015, and CBM2014-00016.

4 We sent out a trial hearing order. Are there any questions as to  
5 which party goes first and how much time each party has? If you have any  
6 questions, please ask now.

7 MR. ZEMBEK: No questions for Petitioner, Your Honor.

8 JUDGE LEE: Thank you.

9 MR. OSBORNE: No questions, Your Honor.

10 JUDGE LEE: Thank you. Because this is a consolidated hearing,  
11 to the extent anything you say is applicable in any of the three underlying  
12 cases, they will be usable by the Board in whichever case the issue appears.  
13 I just wanted the parties to understand that as well.

14 With that, any time you're ready. Can I have lead counsel  
15 introduce your party or your colleague, please, for both sides?

16 MR. ZEMBEK: Yes, Your Honor. My name is Richard Zembek  
17 with Fulbright and Jaworski, and my partner, Bert Greene is here with me.  
18 He's the designated back up counsel, and I'm the designated lead counsel for  
19 Petitioner.

20 JUDGE LEE: Thank you. For Patent Owner?

21 MR. OSBORNE: John Osborne with Michael Fabiano. I'm lead  
22 counsel. He is back up. We also have Keith McMally, who is a lead  
23 inventor and president of my client, Ameranth.

24 JUDGE LEE: All right. Thank you very much.

25 MR. FABIANO: Good afternoon, Your Honor.

1 JUDGE LEE: Any time you're ready, Mr. Zembek, proceed.

2 MR. ZEMBEK: May I approach, Your Honor?

3 JUDGE LEE: Yes.

4 MR. ZEMBEK: Your Honor, Mr. Greene and I will be dividing  
5 the argument. He will be beginning, and we would like to reserve 30  
6 minutes for rebuttal.

7 JUDGE LEE: All right. That's fine.

8 MR. ZEMBEK: Thank you.

9 MR. GREENE: I would like to thank the Board for your time and  
10 consideration today and throughout the pendency of these cases. I want to  
11 begin today with a brief recap of how we got to this point and what brings us  
12 here today, and that's what we see on slide 2 here. Last year, Petitioner filed  
13 four CBM petitions for the '733 patent. That would be the '013 case. The  
14 petition challenged Claims 1 through 16 under 35 USC Sections 101 and  
15 112. As we see here, trial was instituted on Claims 1 through 16 under the  
16 Section 101 grounds.

17 For the '854 patent, that would be the '015 case, the petition  
18 challenged Claims 1 through 16 again under Sections 101 and 112. Trial  
19 was instituted on Claims 1 through 11, which the Board described as the  
20 claims directed to generating menus, and that was under Section 101.

21 Trial was not instituted on Claims 12 through 16, which the  
22 institution decision described as the claims directed to application and data  
23 synchronization.

24 For the '325 patent, that is the '016 case, the petition challenged  
25 Claims 1 through 15 under 35 USC, again Sections 101 and 112. Trial was

1 instituted on Claims 1 through 10, again directed to generating menus under  
2 Section 101. Trial was not instituted on Claims 11 through 15 directed to  
3 application and data synchronization.

4           There was a fourth petition filed against a fourth patent in this  
5 family, the '077 patent, and trial was not instituted as to any claims in that  
6 patent on any grounds, and the challenged grounds were again Sections 101  
7 and 112.

8           As the Board knows, these patents are generally directed to the  
9 concept of generating menus. There are many different features and  
10 embodiments and elements disclosed in the specifications of these patents,  
11 which are effectively common specifications. They're almost identical,  
12 although the '733 specification adds some additional material, but of course  
13 not every feature described in the specification shows up in the claims of the  
14 patents, which of course is not uncommon in the patent world, especially  
15 when we have, as we do here, multiple patents that are -- come from the  
16 same specification, and even within those patents, we have multiple different  
17 groupings of claims.

18           Now, to save the instituted claims. Under Section 101, what the  
19 Patent Owner invites the Board to do in its response is to read certain  
20 features disclosed in the specification into the claims of course ignoring long  
21 standing case law saying that is impermissible, so what we would like to do  
22 at the outset here is focus the Board's attention on the actual claim language  
23 of the instituted claims which will hopefully keep top of mind what actually  
24 is in these claims when we are inevitably shown passages from the

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