

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE, INC., EVENTBRITE INC., STARWOOD HOTELS & RESORTS
WORLDWIDE, INC., EXPEDIA, INC., FANDANGO, LLC,
HOTELS.COM, L.P., HOTEL TONIGHT, INC., HOTWIRE, INC.,
KAYAK SOFTWARE CORP., OPENTABLE, INC., ORBITZ, LLC, PAPA
JOHN'S USA, INC., STUBHUB, INC., TICKETMASTER, LLC, LIVE
NATION ENTERTAINMENT, INC., TRAVELOCITY.COM LP,
WANDERSPOT LLC, AGILYSYS, INC., DOMINO'S PIZZA, INC.,
DOMINO'S PIZZA, LLC, HILTON RESORTS CORPORATION,
HILTON WORLDWIDE, INC., HILTON INTERNATIONAL CO., MOBO
SYSTEMS, INC., PIZZA HUT OF AMERICA, INC., PIZZA HUT, INC.,
and USABLENET, INC.,
Petitioner

v.

AMERANTH, INC.
Patent Owner

Case CBM2015-00080
U.S. Patent No. 6,384,850

MAIL STOP PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
Post Office Box 1450
Alexandria, Virginia 22313-1450

PATENT OWNER AMERANTH'S SUR-REPLY BRIEF

Petitioner ignored most of Ameranth's strong secondary considerations evidence and the arguments they did make should be given no weight by the Board, because they are factually incorrect, and merely attorney argument. Rather than seek to rebut the actual evidentiary arguments of John Harker¹ and Ameranth's expert Dr. Weaver, Petitioner resorted to ad hominem attacks on their credibility and objectivity, all of which are baseless and wrong, as shown herein.

Ameranth's very strong secondary factors evidence has a nexus with the "synchronization, integration, and consistency" which reflect the inventive merits which were identified by the Board itself in CBM 2014-00015, Paper 20 (Inst. Dec.), and with the Board's construction of "synchronization" yielding "consistency", which confirms the nexus to be both accurate and correct. (See POR at 55-56.) Dallas Improv owner Tom Castillo, a May 1999 eyewitness, confirmed he was "won over" by Ameranth's demonstration of its 21CR System and that that the "**total solution**" of 21CR was one that no other company could match, i.e., the inventive technology was not available elsewhere. (Exh. 1012, pp. 694-695.) The

¹ At the time of Mr. Harker's testimony, in April 2010, Symbol no longer even **existed**; it had been acquired by Motorola in early 2007. Further, as Mr. Harker testified and an even cursory review of his testimony would have shown, Mr. Harker had left Symbol **eight years earlier** in 2002. (Harker Depo at p. 13, lines 11-15.) Thus, he was/is an entirely objective eyewitness.

testimony of John Harker, a second eyewitness from that May 1999 NRA Show, confirmed the overwhelming hospitality industry reception from the introduction of Ameranth's 21CR technology: "... the Ameranth booth **was packed ... for four straight days**, not only with restaurateurs, but with also the vendor community, the POS vendors, other hospitality technology providers. And, you know, I **knew they would be busy**. I was **shocked at how busy** they truly were." (Exh. 2022 at p. 107, lines 16-25, emphasis added.) This undisputed market reaction upon the introduction of a new product would not have occurred for an "obvious" product, or for "existing technology".

Dr. Weaver's report shows that these eyewitness reports strengthened his opinion and he relied on them as evidence of what was novel and inventive in May 1999 (thus correctly relying upon contemporaneous assessment of the novelty of the invention, and not on an assessment made by hindsight in 2016). "The **extraordinary market reaction** which occurred **contemporaneously with the 21CR product introductions in May 1999** and the objective observations of the **independent eyewitness John Harker**, reinforce and confirm my opinion, beyond the written evidentiary record, which itself is vast and multi-faceted." (Exh. 2019, ¶ 143, emp. added.) Thus Apple is off-base in claiming Dr. Weaver should have "conducted an independent investigation" of the code from May 1999, while Apple ignored the actual eyewitness reports of Messrs. Harker and Castillo. Petitioner's

criticisms of Dr. Weaver having reviewed "annotated" versions of the May 1999 Brochure and 2000 Improv Articles are equally frivolous. Of course they were annotated as to the '850 claim limitations **after** May 1999, because the '850 patent didn't issue until three years later in May 2002. While criticizing Ameranth for "mapping" claim limitations against its diagram and figures, Petitioner failed to mention that they annotated or mapped evidentiary documents, in red ink, in their own petition. See Petition, p. 34.

Dr. Weaver reviewed all of Ameranth's "annotations" and confirmed them to be accurate and correct, again a normal review activity of an expert. Further, he didn't rely on the May 1999 brochure alone, but on it and the other three 21CR documents together: "The three documents, **must be considered together** with the original 21CR Product Brochure, from May 1999." (Exh. 2019, ¶ 96.) Also, it is not disputed that the Challenged Claims' "communications control module" and "API" are present in 21CR, as confirmed by the evidence presented, including the Fall 1999 case study on 21CR. "Ameranth's hand-held computers communicate with Ameranth's **communication control module** and **other interface modules...**" and the "other interface modules" also reflect the claimed API. (Exh. 1012, p. 622, 3rd col., emp. added.)

Petitioner falsely argues that PO has referred to its "menu wizard" as its **only** "breakthrough technology". But in truth, as PO explained in its Response, and as

shown in Exh. 1012, p. 541, 21CR also includes PO's inventive "synchronous 21st Century Communications technology innovations", i.e. the "synchronization, integration and consistency", inclusive of the claimed communications control module and API, that indisputably has nexus to the Challenged Claims.

Petitioners try to diminish the importance of the two Improv Ticketing system awards, frivolously arguing that 'event ticketing' is an 'unclaimed feature' thus isn't even a 'hospitality' application. Not only is event ticketing a 'hospitality application' (1) ticketing is specifically detailed in the specification, (2) the Improv Ticketing system **was/is** the "21CR system", see (Exh. 1012, pp. 694-695) and (3) the Improv/21CR Ticketing system also included "food ordering". Petitioner also argues (Reply at 24), that other features, such as "reservations" ,"frequent dining" and "waitlists/table management" are also not "hospitality applications." This is erroneous – they are indeed hospitality applications, and are disclosed as such in the specification and prosecution history.

Ameranth's 46 patent licenses are for the closely-related patents in the same family of which the '850 patent is the parent. The press releases of the patent licenses (which were jointly issued with the licensees), see Exh. 2025, specifically reference the '850 and '325 patents and mobile/web food ordering/reservations for restaurants, referring to these patents as "essential to achieving a totally **synchronized system.**" Further, the included Agilysys license, for example,

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