

Filed on behalf of Patent Owner Ameranth, Inc.

By: John W. Osborne
Osborne Law LLC
33 Habitat Lane
Cortlandt Manor, NY 10567
josborne@osborneipl.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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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

Cases CBM2015-00080, CBM2015-00082¹
Patent Nos. 6,384,850, 6,871,325

Declaration of Alfred C. Weaver, Ph.D.

¹CBM2015-00096 and CBM2015-00097 were consolidated with CBM2015-00080 and
CBM2015-00082, respectively.

I. Introduction

1. Apple, Inc. and the co-petitioners and joined petitioners in the above identified proceedings (collectively referred to herein as “Apple” or “Petitioner”) seek to invalidate the claims of U.S. Patent Numbers 6,384,850 (the “850 Patent”) and 6,871,325 (the “325 Patent”) (collectively, the “Patents Under Review”). Apple filed a Petition for Covered Business Method (“CBM”) Patent Review, and an accompanying declaration from Dr. Don Turnbull in support, for each of these patents. This declaration represents my opinions with respect to the substance of the CBM filings and Dr. Turnbull’s declarations.

II. Qualifications

2. My educational background, professional achievements, and qualifications as a Computer Scientist and as an expert in Electronic Commerce are detailed in my curriculum vitae, which is attached hereto as Appendix A.

3. I earned a Ph.D. in Computer Science at the University of Illinois at Urbana-Champaign in 1976. I also earned a Master of Science degree from that same institution in 1973. I earned a Bachelor of Science in Engineering Science from the University of Tennessee in 1971.

4. I am currently a Professor of Computer Science and Associate Chair of the Department of Computer Science at the University of Virginia (“UVa”). I have been employed at UVa continuously since 1977.

5. Over the period of my employment at UVa I have taught more than 25 different courses, including electronic commerce, operating systems, computer networks, and various programming courses.

6. In addition to my teaching duties, I am also the Founding Director of UVa's Applied Research Institute, a group of faculty engaged in research areas related to national security and funded by both government and industry. To date, I have published 16 books and book chapters, 30 refereed journal articles, 139 refereed conference publications, and over 80 technical reports. I currently serve on the Advisory Council of the Editorial Board of IEEE *Computer* magazine.

7. As a researcher, I have served as Principal Investigator or co-Principal Investigator of 130+ research projects funded by the federal government and private industry. Recent research projects include 3D printing, automated analysis of published scientific literature, secure mobile computing, crowd sourcing, data integrity, and trustworthy computing.

8. I have been the graduate advisor for 69 Ph.D. and master's students, all in Computer Science.

9. I have founded five companies. One of these, Network Xpress, Inc., was a spin-off from research work in computer networks funded by the U. S. Navy at UVa. At its peak, another company (Reliacast, Inc.) employed 90 people and developed software for secure streaming of multimedia. Reliacast was ultimately sold to Comcast.

10. I have served as an expert witness in 20+ patent infringement cases since 1988. Six of those cases have gone to trial. In the past four years I have testified in court in two cases:

VT Technologies v. Twitter, U.S. District Court, Eastern Virginia (Norfolk). I testified on behalf of defendant Twitter.

ePlus, Inc. v. Lawson Software, U.S. District Court, Eastern Virginia (Richmond). I testified on behalf of plaintiff ePlus.

III. Report Preparation

11. In developing the opinions discussed in this report, I studied the '850 Patent and the '325 Patent, the prosecution file histories for each of these patents, the references cited by Starbucks in the CBM reviews, Apple's Petitions, Dr. Turnbull's declaration, and the Board's Decisions Instituting CBM review.

12. A list of the materials on which I have relied while producing this Declaration is attached in Appendix B.

13. My opinions are based on the materials I have reviewed. If Petitioner introduces new evidence or supporting material, I reserve the right to supplement this report if necessary based on the new information.

IV. Applicable Legal Principles

14. I am not an attorney. For the purposes of this report, I have been informed about certain aspects of the law that are relevant to my analysis and opinion. In formulating my opinions, I have taken into account the following principles of law regarding patent invalidity, which I understand to be accurate statements of the law.

15. I understand that if the claimed invention is not anticipated by the prior art, the claim could still be invalid under 35 U.S.C. § 103(a) because the difference between the claimed subject matter and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to one of ordinary skill in the relevant art. I understand that one of ordinary skill is presumed to have familiarity with analogous prior art in the relevant field of invention.

16. Regarding my obviousness analysis, my instructions were to consider the following: (a) the scope and content of the prior art; (b) the differences between the

prior art and the subject matter of the claimed invention; and (c) the level of ordinary skill in the art at the time of the claimed invention. I understand that the objective indicia of non-obviousness (or secondary considerations of non-obviousness) should also be considered before any determination of obviousness is made.

17. I have also been informed that a claimed invention composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. I understand that when determining invalidity for obviousness there must be some rational underpinning to support the legal conclusion of obviousness, including an explicit reason or motivation to combine references to arrive at the claimed invention. I also understand that a finding of obviousness can be grounded in common sense, but that even then, the finding must contain explicit and clear reasoning providing some rational underpinning of why common sense compels a finding of obviousness. I understand that I should consider whether there is an “apparent reason” to combine the prior art references or elements in the way the patent claims. To determine whether the existence of such an “apparent reason” exists to combine the prior art references or elements in the way a patent claims, it will often be necessary to look to the interrelated teaching of multiple patents, to the effects of demands known to the design community or present in the marketplace, and to the background knowledge possessed by a person having ordinary skill in the art.

18. I understand that evidence of secondary considerations supporting non-obviousness can be used to rebut a finding of obviousness. I also understand that a combination of references that does not result in each and every limitation of the

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