

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.,
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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 CBM2015-00082¹
Patent No. 6,871,325

PATENT OWNER'S OBJECTIONS TO EVIDENCE SUBMITTED
WITH PETITIONER'S REPLY BRIEF

¹ CBM2015-00097 has been consolidated with this proceeding.

Per 37 C.F.R. § 42.64, Patent Owner Ameranth, Inc. ("Patent Owner")

hereby objects to the exhibits and other evidence submitted by Petitioner with its

Reply Brief as indicated below. The grounds for objection are as follows:

Petitioner's Evidence	Grounds for Objection
Exhibit 1069	Outside the Scope Permitted with a Reply. The exhibit is not permitted to be submitted with a reply, because it could have been presented in a prior filing. 37 C.F.R. § 42.23(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48756-48773, at 48767.
Exhibit 1070	<p>Outside the Scope Permitted with a Reply. The declaration included many new arguments and theories that are not permitted to be submitted with a reply, because they could have been presented in a prior filing. 37 C.F.R. § 42.23(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48756-48773, at 48767; <i>see also Intri-Plex Technologies, Inc., et al. v. Saint-Gobain Performance Plastics Rencol Limited</i>, IPR2014-00309, Paper 83, pgs 12 – 14.</p> <p>Relevance. Because the declaration is not discussed in Petitioner's Reply Brief and is merely incorporated by reference in violation of 37 C.F.R. § 42.6(a)(3), it is not relevant to any issue in this proceeding and any probative value of the declaration is substantially outweighed by unfair prejudice and waste of time. Fed. R. Evid. 401-403; <i>see also Conopco, Inc. dba Unilever v. The Procter & Gamble Company</i>, IPR2013-00510, Paper 9, pgs 8 - 9; <i>Juniper Networks, Inc. v. Brixham Solutions, Ltd.</i>, IPR2014-00425, Paper 16, at Footnote 1; <i>Cisco Systems, Inc. v. C-Cation Technologies, LLC</i>, IPR2014-00454, Paper 12, pgs 7 – 10.</p>
Exhibit 1071	Outside the Scope Permitted with a Reply. The

	<p>exhibit is not permitted to be submitted with a reply, because it could have been presented in a prior filing. 37 C.F.R. § 42.23(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48756-48773, at 48767.</p> <p>Hearsay. The statements in the exhibit used by Petitioner to prove the truth of matters described therein are hearsay. Fed. R. Evid. 801(c).</p> <p>Authentication. Petitioner has not provided sufficient evidence to establish that the exhibit is a true and correct copy of what Petitioner claims it to be. Fed. R. Evid. 901(a).</p>
Exhibit 1072	<p>Outside the Scope Permitted with a Reply. The exhibit is not permitted to be submitted with a reply, because it could have been presented in a prior filing. 37 C.F.R. § 42.23(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48756-48773, at 48767.</p> <p>Hearsay. The statements in the exhibit used by Petitioner to prove the truth of matters described therein are hearsay. Fed. R. Evid. 801(c).</p> <p>Authentication. Petitioner has not provided sufficient evidence to establish that the exhibit is a true and correct copy of what Petitioner claims it to be. Fed. R. Evid. 901(a).</p>
Exhibit 1073	<p>Outside the Scope Permitted with a Reply. The exhibit is not permitted to be submitted with a reply, because it could have been presented in a prior filing. 37 C.F.R. § 42.23(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48756-48773, at 48767.</p> <p>Hearsay. The statements in the exhibit used by Petitioner to prove the truth of matters described therein are hearsay. Fed. R. Evid. 801(c).</p> <p>Authentication. Petitioner has not provided sufficient</p>

	evidence to establish that the exhibit is a true and correct copy of what Petitioner claims it to be. Fed. R. Evid. 901(a).
Exhibit 1074	Outside the Scope Permitted with a Reply. The exhibit is not permitted to be submitted with a reply, because it could have been presented in a prior filing. 37 C.F.R. § 42.23(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48756-48773, at 48767.
Exhibit 1075	Outside the Scope Permitted with a Reply. The exhibit is not permitted to be submitted with a reply, because it could have been presented in a prior filing. 37 C.F.R. § 42.23(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48756-48773, at 48767.
Exhibit 1077	Outside the Scope Permitted with a Reply. The exhibit is not permitted to be submitted with a reply, because it could have been presented in a prior filing. 37 C.F.R. § 42.23(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48756-48773, at 48767.
Exhibit 1078	<p>Outside the Scope Permitted with a Reply. The exhibit is not permitted to be submitted with a reply, because it could have been presented in a prior filing. 37 C.F.R. § 42.23(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48756-48773, at 48767.</p> <p>Relevance. Because the exhibit is not discussed or even cited in the Petitioner's Reply Brief, it is not relevant to any issue in this proceeding and any probative value of the exhibit is substantially outweighed by unfair prejudice and waste of time. Fed. R. Evid. 401-403.</p> <p>Further, the inclusion of these institution decisions from the parallel, but not joined, Starbucks petition against the same patent is an unauthorized attempt to effectively achieve 'joinder' with these petitions, when such joinder has not been requested in</p>

	<p>accordance with the AIA rules. Petitioners have already sought ‘joinder’ with these Starbucks petitions in the proceedings of yet another petition of their own, and those proceedings are independent as well and, therefore, the inclusion of these institution decisions as an exhibit with the reply is improper for this additional reason.</p>
Exhibit 1079	<p>Outside the Scope Permitted with a Reply. The exhibit is not permitted to be submitted with a reply, because it could have been presented in a prior filing. 37 C.F.R. § 42.23(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48756-48773, at 48767.</p> <p>Relevance. Because the exhibit is not discussed or even cited in the Petitioner’s Reply Brief, it is not relevant to any issue in this proceeding and any probative value of the exhibit is substantially outweighed by unfair prejudice and waste of time. Fed. R. Evid. 401-403.</p> <p>Further, the inclusion of these institution decisions from the parallel, but not joined, Starbucks petition against the same patent is an unauthorized attempt to effectively achieve ‘joinder’ with these petitions, when such joinder has not been requested in accordance with the AIA rules. Petitioners have already sought ‘joinder’ with these Starbucks petitions in the proceedings of yet another petition of their own, and those proceedings are independent as well and, therefore, the inclusion of these institution decisions as an exhibit with the reply is improper for this additional reason.</p>
Exhibit 1080	<p>Outside the Scope Permitted with a Reply. The exhibit is not permitted to be submitted with a reply, because it could have been presented in a prior filing. 37 C.F.R. § 42.23(b); Office Patent Trial Practice Guide, 77 Fed. Reg. 48756-48773, at 48767.</p>

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