

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.,
TRAVELCITY.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,

STARBUCKS CORPORATION,
Petitioner

v.

AMERANTH, INC.,
Patent Owner.

CBM2015-00080 (Patent 6,384,850 B1)¹ CBM2015-00082 (Patent 6,871,325 B1)²
CBM2015-00091 (Patent 6,384,850 B1) CBM2015-00099 (Patent 6,871,325 B1)

Before MEREDITH C. PETRAVICK, RICHARD E. RICE, and
STACEY G. WHITE, *Administrative Patent Judges*.

¹ CBM2015-00096 has been consolidated with this proceeding.

² CBM2015-00097 has been consolidated with this proceeding.

CBM2015-00080 (Patent 6,384,850 B1) CBM2015-00082 (Patent 6,871,325 B1)
CBM2015-00091 (Patent 6,384,850 B1) CBM2015-00099 (Patent 6,871,325 B1)

PETRAVICK, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

On March 31, 2016, a conference call was held between counsel for Petitioner in CBM2015-00080 and CBM2015-00082 (“Apple”),³ counsel for Petitioner in CBM2015-00091 and CBM2015-00099 (“Starbucks”), counsel for Patent Owner, and Judges Petravick, Rice, and White. Patent Owner requested the call to seek authorization to file a motion to strike and a sur-reply in each of the proceedings. Patent Owner provided a court reporter to transcribe the conference call and indicated it would file the transcript when it became available.

Patent Owner requested authorization to file motions to strike portions of Petitioners’ replies and many of the accompanying exhibits in each of these proceedings. According to Patent Owner, arguments in the Petitioners’ replies and exhibits are outside the proper scope of a reply. *See* 37 C.F.R. § 42.23(b) (“A reply may only respond to arguments raised in the corresponding . . . patent owner response.”). Petitioners denied that their replies and exhibits were of improper scope. After considering the parties’ arguments presented during the call, the Board denied Patent Owner’s request for authorization to file motions to strike. The Board will determine for itself whether arguments in the replies and the

³ Counsel for the petitioner in CBM2015-00096 and CBM2015-00097 also was present on the conference call.

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exhibits are outside the appropriate scope and, if so, not consider those arguments and exhibits.

Additionally, Patent Owner requested authorization to file a sur-reply in each proceeding to address arguments and evidence pertaining to claim construction and arguments and evidence pertaining to secondary considerations. Upon considering the information presented during the call, the Board authorized Patent Owner to file a five page sur-reply, no later than April 7, 2016, in each proceeding. The sur-reply is limited to the secondary considerations issue and may not be accompanied by any new evidence.

ORDER

It is:

ORDERED that Patent Owner's request for authorization to file motions to strike in each of these proceedings is denied; and

FURTHER ORDERED that Patent Owner may file a sur-reply, no later than April 7, 2016, the sur-reply is limited to five pages addressing the secondary considerations issue only.

CBM2015-00080 (Patent 6,384,850 B1) CBM2015-00082 (Patent 6,871,325 B1)
CBM2015-00091 (Patent 6,384,850 B1) CBM2015-00099 (Patent 6,871,325 B1)

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