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 CBM2015-00082
U.S. Patent No. 6,871,325

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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

Most of Ameranth's strong secondary considerations evidence was ignored in Petitioner's Reply. The arguments they did make should be given no weight because they are factually incorrect and merely attorney argument. Rather than seek to rebut the actual evidentiary arguments of John Harker[1] 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: "… Ameranth was arguably recognized as the overall **most innovative company/technology** at the May 1999 NRA Show in Chicago, with **hundreds** of customers coming to its booth….Keith McNally and I introduced the 21CR system at the October 1999 European Restaurant Show in London and ... 21CR was awarded the **"Innovation of the Year"** award for the **entire** European Hospitality Technology Market. Ameranth was selected **first ahead of hundreds** of different technology companies and this **special and prestigious award** further validated the **uniqueness** of Ameranth's technology and **its innovative vision."** (Exh. 2022 at p. 172, emp. 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 also frivolous. Dr. Weaver didn't rely on the May 1999 brochure alone, he relied upon that plus the other three 21CR documents. (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 had 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. Also, Ameranth disclosed hospitality wait-listing in the

specification, and any POSA would know that such functionality often includes restaurant table management functions too.

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 were jointly issued with the licensees, see Exh. 2025, and 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 specifically includes a license to all claims of the '850 and '325 patents. (Exh. 2025, pp. 11-12.) and confirms an $80,000 annual payment (8th year of payments), and the $200/HH fee is identical to the $200/HH fee that Micros, party to related petitions, offered in seeking to secure exclusive IP rights for the 21CR technology in 2000, see Exh. 1012, p. 665-674. And, the vast majority of Ameranth's 44 licenses occurred outside litigation. Since October 2013, when the first CBMs were filed against Ameranth's patents, no new suits have been filed or threatened, and yet **18** additional licensees have independently made their own decisions to license this Ameranth family of patents.

Petitioners don't even try to rebut the many instances of copying set forth in the POR. Further, Dr. Weaver (Exh. 2019, ¶ 131) testified that he reviewed the evidence submitted with the POR, including the emails, Power Point slides and

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