

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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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

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Case CBM2015-00082<sup>1</sup>  
Patent No. 6,871,325

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**RESPONSE TO PETITIONER'S EVIDENTIARY OBJECTIONS,**  
**AND SUPPLEMENTAL EVIDENCE**

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<sup>1</sup> CBM2015-00097 has been consolidated with this proceeding.

Patent Owner Ameranth, Inc. ("Patent Owner") serves the following Response to Petitioner's evidentiary objections (filed on January 13, 2016) and supplemental evidence, per 37 C.F.R. § 42.64.

### **GENERAL RESPONSES TO OBJECTIONS**

Each general response is incorporated into each specific response.

1. The Board has instructed that, in making objections, “parties should keep in mind that they are subject to the duty of candor and to sanctions for advancing a frivolous argument, misrepresenting a fact, engaging in dilatory tactics, and abuse of discovery.” For the other general and specific reasons set forth herein, the vast majority of Petitioner's objections are untimely, waived, and/or not in compliance with the requirements for setting forth objections that include stating objections with sufficient particularity.

2. 37 C.F.R. § 42.64(b)(1) requires that any evidence submitted in the record prior to the Board's institution of trial may only be objected to within ten business days of the date of institution of trial. All objections made by Petitioner in January 2016 to evidence that was in the record prior to institution of trial (and the vast majority of the evidence is in this category) are untimely and therefore waived.

3. Each objection "must identify the grounds for the objection with sufficient particularity to allow correction in the form of supplemental evidence."

37 C.F.R. § 42.64(b)(1). Accordingly, every objection that does not include sufficient particularity is untimely and defective and waived. Petitioner has not met its burden with respect to objections, both because of the failure to provide sufficient particularity with respect to each piece of evidence to which Petitioner objects, and because of the failure to identify which objections apply to which specific documents within exhibits containing more than one document. A party moving for the exclusion of evidence bears the burden of proving its entitlement to the relief requested; merely citing a rule without explaining the basis for the objection with particularity does not suffice. 37 C.F.R. § 42.20(c).

4. Petitioner's various objections to authentication are not well-taken because they lack sufficient particularity and because they fail to consider the applicable criteria for authentication and self-authentication in Federal Rule of Evidence 901 and 902.

### **SPECIFIC RESPONSES TO OBJECTIONS**

#### **Exhibit 2021**

See general responses. In addition to the general responses:

The document was previously provided in the 1.131 and 1.132 declarations in the patent file histories. The hearsay objection is incorrect, and lacks sufficient particularity, because there is no showing by Petitioner that the document is within the FRE 801 definition of hearsay and not within any of the exceptions thereto.

Exhibit 2022

See general responses. In addition to the general responses:

This 2010 deposition of Mr. Harker was conducted by counsel for the majority of the Petitioner parties in these CBM proceedings. Further, the portions of Mr. Harker's deposition testimony cited by Patent Owner are substantively the same as the statement and summary of his comments that appear in the '077 patent file history which are on record.

Regarding the "draft transcript": A copy of the complete original transcript and exhibits from this deposition is submitted herewith as Supplemental Evidence, Attachment A.

Exhibit 2023

See general responses. In addition to the general responses:

This press release was and is published on the Internet at the URL:

[http://www.ameranth.com/pdf/Press%20Release%20-%20Ameranth%20New%20Patent%20%20License%20-%20Skywire%20Media\\_May%202014%202012%20\(Approved%20for%20release\).pdf](http://www.ameranth.com/pdf/Press%20Release%20-%20Ameranth%20New%20Patent%20%20License%20-%20Skywire%20Media_May%202014%202012%20(Approved%20for%20release).pdf)

The hearsay objection is incorrect, and lacks sufficient particularity, because there is no showing by Petitioner that the document is within the FRE 801 definition of hearsay and not within any of the exceptions thereto.

Exhibit 2025

See general responses. In addition to the general responses:

Press releases in this exhibit that were and are published on the Internet:

Jersey Mikes Press Release:

<http://www.ameranth.com/pdf/Ameranth%20-%20Jersey%20Mike's%20Press%20Release%20-%20%20Approved%20For%20Release%20-%20November%204,%202015.pdf>

PAR Press Release:

[http://www.ameranth.com/pdf/Ameranth%20-%20Par-%20New%20Patent%20License%20Agreement%20Announced%20\(Approved%20for%20release\)%201-28-13.pdf](http://www.ameranth.com/pdf/Ameranth%20-%20Par-%20New%20Patent%20License%20Agreement%20Announced%20(Approved%20for%20release)%201-28-13.pdf)

EMN8 Press Release:

<http://www.ameranth.com/pdf/EMN8%20-%20Ameranth%20Press%20Release,%20July%2022,%202013%20.pdf>

BJ's Pizza Press Release:

<http://www.ameranth.com/pdf/Press%20Release%20%20-%20Ameranth%20BJ's%20-%20Release%20Version%20-%20August%2029%202014.pdf>

MonkeyMedia Press Release:

[http://www.ameranth.com/pdf/Press%20Release%20%20-%20Monkeymedia%20%20-%20Ameranth%20%20-%20%20\(June%205,%202013\)%20-%20\(%20Release%20Version%20-%20\).pdf](http://www.ameranth.com/pdf/Press%20Release%20%20-%20Monkeymedia%20%20-%20Ameranth%20%20-%20%20(June%205,%202013)%20-%20(%20Release%20Version%20-%20).pdf)

Taco Bell Press Release:

[http://www.ameranth.com/pdf/Press%20Release%20%20-%20Taco%20Bell%20Licenses%20Ameranth%20Patents%20-%20\(April%201,2014\)%20.pdf](http://www.ameranth.com/pdf/Press%20Release%20%20-%20Taco%20Bell%20Licenses%20Ameranth%20Patents%20-%20(April%201,2014)%20.pdf)

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