

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STARBUCKS CORP.

Petitioner

v.

AMERANTH, INC.

Patent Owner

Case CBM2015-00091
U.S. Patent No. 6,384,850

MAIL STOP PATENT BOARD
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

Petitioner Starbucks entirely ignored most of Ameranth's strong secondary considerations evidence. The arguments Petitioner did make should be given no weight by the Board, because they are factually and/or legally incorrect, and/or ignore the record evidence, and/or are based upon nothing but attorney argument.

As shown in PO's Response – and not disputed in Petitioner's Reply Brief – a strong nexus exists between the Challenged Claims and Ameranth's 21st Century Restaurant (21CR) system, and thus also between the evidence of commercial success, praise and awards for 21CR and the Challenged Claims. See, e.g., Exh. 2047 (brochures) and other 21CR evidence; POR (Paper 17) at 59-64. Further, the systemic nexus of "synchronization, integration, and consistency" is neither "inaccurate" nor "improper", as Petitioner erroneously argues. In fact, these inventive merits were identified by the Board itself in CBM 2014-00015, Paper 20, (Inst. Dec.) and with the Board's construction of "synchronization" yielding "consistency", confirms the nexus to be both accurate and correct. (See POR at 56.) Dallas Improv owner Tom Castillo confirmed he was "won over" by Ameranth's May 1999 demonstration of 21CR and that the "**total solution**" i.e. the 'nexus' was one that no other company could match thus confirming the inventive nexus was unavailable from any other company. (Exh. 2062, pp. 117-119.)

The strong evidence of praise and awards for 21CR set forth in the POR accordingly has the requisite nexus to the Challenged Claims. That evidence

includes the testimony of eyewitness John Harker as to the overwhelming hospitality industry reception at the May 1999 introduction of Ameranth's 21CR technology: "... the Ameranth booth **was packed ... for four straight days**, not only with restaurateurs, but with also the vendor community, the POS vendors, other hospitality technology providers. And, you know, I **knew they would be busy**. I was **shocked at how busy** they truly were." (Exh. 2045 at p. 107, ln. 16-25, emphasis added.) It also includes the four technology awards earned by 21CR. (Exh. 2062, pp. 94-96, 140-141, 156-160, and Exh. 2050.) This undisputed market reaction upon the introduction of a new product would not have occurred for an "obvious" product, or for "existing technology".

Petitioner's arguments re PO's license evidence are also erroneous; Petitioner essentially argues that a license can only be used as evidence of nexus if each claim is licensed separately. But, in addition to the indisputable fact that licensees nearly always license entire patents or patent families and not just one or two claims, there is no requirement that a license, to be evidence of a nexus, must be a license for only one patent claim or the small set of claims chosen for a CBM by a petitioner. 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 (which were jointly issued with the licensees), see Exh. 2048, 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, including all of the Challenged Claims. (Exh. 2048, pp. 11-12.)

Also, Petitioner falsely claimed in its Reply (at p. 21), citing footnote 15 in the POR in CBM2014-00015, that Patent Owner previously argued that these licenses were for only '850 claims 1-11 – but Ameranth did not say the licenses were for those specific claims. Claims 12-16 weren't discussed in that full POR because they weren't instituted in that CBM. Thus that argument is as baseless as Petitioner's theories arguing that the application of licenses to one patent in a family makes them inapplicable to the others in the same family. It doesn't.

Petitioner's Reply erroneously claims that the 2003 RAD Award is inapplicable because Ameranth's Hostalert did not include "web components". Petitioner's claim is untrue. Hostalert did include "web components" and "seamless integration": "The system efficiently accepts and seamlessly integrates reservations from all internet, call center, and in-house sources including your own website." (Exh. 2022, pp. 65-66, emphasis added.)

Also, contrary to Petitioner's erroneous Reply, there is ample evidence of successful commercialization, and Ameranth's products were not deployed "only" at the Dallas Improv. Ameranth's evidence of 70% market share of the top ten

POS companies is unrebutted. Further, the Improv ticketing system rolled out nationwide, including, e.g., the Washington D.C. Improv, (see Exh. 2022 at p. 86, a "web page" screenshot showing the '850 and '325 patents **marked** with the system, confirming nexus of this commercial success with the claims/patents). The evidence submitted by PO further confirms more than 100 deployed locations with Aloha POS (Exh. 2021, p. 14), plus mobile food ordering in many NBA arenas including Dallas, Chicago, Toronto, Los Angeles, and Miami, and all Medieval Times restaurants (Exh. 2021, pp. 23-25, 36). There are now more than 50,000 total locations that have licensed the '850 and '325 patents. (Exh. 1041.)

Petitioner's reply argument regarding its own copying is disingenuous. The Microsoft emails confirm that Starbucks VP Rob Reed asked for, received, liked, and distributed Ameranth's technical documents within Starbucks in 2006. (Exh. 2053.) If this wasn't true, Starbucks would have submitted a declaration from Rob Reed, denying it. That they didn't confirms that it is true. Starbucks brazenly claims it "doesn't have" order-ahead functions despite Starbucks' own_management calling **order-ahead** mobile ordering its "holy grail" (Exh. 2008). Dr. Weaver (Exh. 2041, ¶ 147) testified that he reviewed the evidence submitted with the POR, including the Power Point slides and screenshots from Ameranth's 2006 presentation to Starbucks, and Starbucks' own materials on its "Mobile Order & Pay" system, and concluded that Starbucks had indeed copied the relevant features

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