

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

STARBUCKS CORPORATION  
Petitioner

v.

Ameranth, Inc.  
Patent Owner

---

Case CBM2015-00091  
Patent No. 6,384,850 B1

---

**PETITIONER'S MOTION TO EXCLUDE**

**Paper No. 26**

## TABLE OF CONTENTS

	I.	INTRODUCTION .....	1
	II.	ARGUMENT .....	1
5	A.	Patent Owner’s Exhibits 2047-48, 2050, 2053, 2059, 2062 and 2077-78 Should be Excluded .....	1
		1. <i>Exhibits 2053 and Exhibit 2059</i> .....	2
		2. <i>Exhibits 2047, 2077 and 2078</i> .....	6
		3. <i>Exhibit 2048</i> .....	8
10		4. <i>Exhibit 2062</i> .....	10
		5. <i>Exhibit 2050</i> .....	11
	B.	Patent Owner’s Exhibits 2002, 2004, 2006-07, 2011-14, 2017, 2019-32, 2035-38, 2059, 2063-64, and 2067-81 Should be Excluded .....	13
15	C.	Dr. Weaver’s Testimony Concerning “Hospitality” Should be Excluded .....	13
	III.	Conclusion .....	14

**TABLE OF AUTHORITIES**  
**(Continued)**

**CASES**

*Air Land Forwarders, Inc. v. United States*,  
38 Fed. Cl. 547 (1997), aff'd .....4

5 *Belber v. Lipson*,  
905 F.2d 549 (1st Cir. 1990).....12

*Costantino v. Herzog*,  
203 F.3d 164 (2nd Cir. 2000) .....12

*Daubert v. Merrell Dow Pharm., Inc.*,  
509 U.S. 579 (1993).....9, 14, 15

10 *Kumho Tire Co. v. Carmichael*,  
526 U.S. 137, 119 S.Ct. 1167, 413 L.Ed. 2d 238 (1999) .....14

*Lodsys, LLC v. Brother Int’l Corp.*,  
2013 U.S. Dist. LEXIS 85614 (E.D. Tex. June 14, 2013) .....13

15 *Seiler v. Lucasfilm, Ltd.*,  
808 F.2d 1316 (9th Cir. 1986) .....6

*Triboro Quilt Mfg. Corp. v. Luve LLC*,  
2014 WL 1508606 (S.D.N.Y. Mar. 18, 2014).....5

*U.S. v. Davis*,  
571 F.2d 1354 (5th Cir. 1978) .....12

20 *U.S. v. Mejia*,  
545 F.3d 179 (2d Cir. 2008) .....5

**OTHER AUTHORITIES**

37 C.F.R. § 42.62 .....14

37 C.F.R. § 42.64(c).....1

25 Fed. R. Evid. 401 and 402.....13

Fed. R. Evid. 801-03, 805 .....1, 11

Fed. R. Evid. 801(c).....2

**TABLE OF AUTHORITIES**  
**(Continued)**

	Fed. R. Evid. 801(d)(2) .....	3
	Fed. R. Evid. 803(6).....	4
	Fed. R. Evid. 803(6)(B), (C) .....	4
	Fed. R. Evid. 803(6)(D), 902(11) .....	4
5	Fed. R. Evid. 803(18).....	12, 13
	Fed. R. Evid. 901, 902, 903 .....	passim
	Fed. R. Evid. 901(a).....	1
	Fed. R. Evid. 902(4).....	12
	Fed. R. Evid. 902(11).....	10
10	Fed. R. Evid. 1002 .....	6
	Fed. R. Evid. 1003 .....	6, 8
	Fed. R. Evid. 1004 .....	6, 9

...

## I. INTRODUCTION

Pursuant to 37 C.F.R. § 42.64(c) and the Federal Rules of Evidence, Petitioners Starbucks ("Starbucks" or "Petitioner") hereby submits its Motion to Exclude inadmissible evidence proffered by Patent Owner Ameranth (Paper Nos. 7, 17) based on Petitioner's timely filed objections. '91 Paper 15.

## II. ARGUMENT

### A. Patent Owner's Exhibits 2047-48, 2050, 2053, 2059, 2062 and 2077-78 Should be Excluded

The contents of Exhibit Nos. 2047-48, 2050, 2053, 2059, 2062 and 2077-78 are inadmissible hearsay. Fed. R. Evid. 802. The challenged exhibits meet Fed. R. Evid. 801's definition of hearsay as each is being offered by the Patent Owner for the truth of the matter asserted therein. Many of the challenged exhibits are not only hearsay, but hearsay within hearsay. Fed. R. Evid. 801, 805. Because Patent Owner cannot establish any exceptions to the hearsay rule for the challenged exhibits, they are inadmissible. Fed. R. Evid. 801-03, 805.

These exhibits are also inadmissible because they are not properly authenticated. Fed. R. Evid. 901, 902, 903. To satisfy the requirement of authenticating or identifying an item of evidence, *the proponent must produce evidence* to support a finding that *the item is what the proponent claims it is*. Fed. R. Evid. 901(a). None of these exhibits are self-authenticating, and they thus

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.