

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STARBUCKS CORPORATION, APPLE, INC., EVENTBRITE INC., and
STARWOOD HOTELS & RESORTS WORLDWIDE, INC.,
Petitioner

v.

Ameranth, Inc.
Patent Owner

Case CBM2015-00091¹
Patent No. 6,384,850 B1

**PETITIONER'S REPLY TO PATENT OWNER'S OPPOSITION TO
PETITIONER'S MOTION TO EXCLUDE**

Paper No. 33

¹ Case CBM2016-00007 has been joined with this proceeding.

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Pursuant to the Scheduling Order of September 14, 2015 (Paper 10), Starbucks timely submits its reply to Patent Owner's ("PO" or "Ameranth") Opposition ("Opposition") to its Motion to Exclude (Paper 30) ("Motion").

I. EXHIBITS 2047-48, 2050, 2053, 2059, 2062 AND 2077-78 ARE INADMISSIBLE HEARSAY

A. Patent Owner's Exhibits are Cited for Their Truth

1. *Exhibits 2053 and 2059*

PO offered Ex. 2053 for the truth of the matter therein. Ex. 2053 purports to contain a series of e-mail exchanges between PO and a Microsoft employee and is used to prove the following statement in the PO Response:

A copy of the PowerPoint presentation made to Starbucks, along with screen shots of the demonstration, is Exh. 2053 hereto. Rob Reed, Starbucks' Director of Global Web Solutions, stated he "liked what he saw," and had "sent the details around" within Starbucks ...

Pap. 17 at 74. Similarly, Ameranth used Ex. 2059 (the purported presentation shown to Starbucks) to try to establish that the actual materials in the presentation (their true contents) were copied by Starbucks. Ex.2041, ¶147. PO cites *Medtronic*, but that case is inapposite. In *Medtronic*, the evidence at issue involved, for example, two doctors' website testimony describing the patients' experience of receiving the patented procedure, which was cited to show the procedure was discussed, publicized, and recognized in the industry. *Medtronic*,

CBM2015-00091, Petitioner’s Reply to Patent Owner’s Opposition to Motion to Exclude IPR2014-00073, Pap. 48 at 33-34; *see also* Pap. 26 at 20, 24-25. Unlike *Medtronic*, PO here is trying to use the contents (and purported truth) of an email between PO and a third party, and a presentation purportedly provided to Petitioner to establish Starbucks allegedly received the presentation and that it was copied.

5 **2. *The Other Exhibits***

The other exhibits were all cited to prove the truth asserted therein and are also distinguishable from *Medtronic*. Specifically, Ex.2047 (the improperly annotated) 21CR brochure was cited to support PO’s statement: “[a]s shown in the annotated brochure, aspects of the 21CR system directly correspond to elements of
10 the challenged patent claims... .” Pap. 17 at 60; Ex.2041, ¶¶56, 119. Similarly, Exs.2077 and 2078 (purported case studies concerning the 21CR system) were cited to prove the 21CR system had certain patented features and “close alignment of the claims” (Ex.2041, ¶122). Likewise, the following exhibits were all cited for
15 the truth of their contents: Ex.2048 - press releases announcing Ameranth licenses and a license amendment (Pap.17 at 64-66; Ex.2041, ¶¶123-26); Ex.2062 - press releases concerning the technology awards and Microsoft investment (Pap. 17 at 69-71; Ex.2041, ¶¶130-33, 138); and Ex.2050 - an award document (Pap. 17 at 69-70; Ex.2041, ¶134).

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