

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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STARBUCKS CORPORATION,  
*Petitioner,*

v.

AMERANTH, INC.  
*Patent Owner.*

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

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*Submitted Electronically via the Patent Review Processing System*

**PATENT OWNER'S REQUEST FOR REHEARING**  
**OF INSTITUTION DECISION**

**I. INTRODUCTION.**

Patent Owner Ameranth, Inc., pursuant to 37 CFR §42.71, respectfully requests rehearing of the Board's Institution Decision in CBM2015-00091 (Paper 9), in which the Board instituted a covered business method (CBM) review as to claims 12-16 of U.S. Patent No. 6,384,850 (the '850 Patent), on the grounds of 35 U.S.C. §103 over the combination of the Brandt<sup>1</sup> and NetHopper<sup>2</sup> references; and over the combination of the Brandt, Demers<sup>3</sup>, and Alonso<sup>4</sup> references.

**II. STATEMENT OF PRECISE RELIEF REQUESTED.**

Patent Owner respectfully requests that the Board rehear and reconsider its Institution Decision in CBM 2015-00091 and modify the Institution Decision to hold that trial shall not be instituted herein on claims 12-16 of the '850 Patent.

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<sup>1</sup> Japanese Unexamined App. No. H10-247183 (published Sept. 14, 1998) (Ex. 1004) (certified translation) (Ex. 1005, hereinafter, "Brandt").

<sup>2</sup> NetHopper Version 3.2 User's Manual, 1–24 (1997) (Ex. 1006, "NetHopper").

<sup>3</sup> Alan Demers, et al., The Bayou Architecture: Support for Data Sharing Among Mobile Users, Mobile Computing Systems & Applications, 1995. Proceedings, Workshop on. IEEE, 1–7, 1995. (Ex. 1009, hereinafter "Demers").

<sup>4</sup> Gustavo Alonso et al., Exotica/FMDC: A Workflow Management System for Mobile and Disconnected Clients, Databases & Mobile Computing, 28–45, 1996 (Ex. 1012, hereinafter, "Alonso").

### **III. THE RELIEF REQUESTED SHOULD BE GRANTED.**

The Board's Institution Decision on CBM2015-00091 should be modified because the Board relied on the incomplete Petitioner exhibit (Exhibit 1035, comprising portions of the "Dittmer" reference), the incompleteness of which contributed to the Board misapprehending and overlooking key, and contradictory, evidence that is found in the complete Dittmer book.

As set forth and discussed below, the proper conclusion is that no trial should be instituted as to claims 12-16 of the '850 Patent, because in fact Dittmer clearly confirms that "hospitality applications" do not include "car rentals" or other travel/transportation functions.

The complete Dittmer reference,<sup>5</sup> recently obtained by Patent Owner<sup>6</sup> on September 19, 2015<sup>7</sup> subsequent to the Institution Decision,<sup>8</sup> clearly contradicts

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<sup>5</sup> Clearly, the **complete book** (including the actual "**Glossary**" of terms), was long in the possession of Petitioner and available to its expert, because otherwise Petitioner could not have selectively produced only the subset of pages that it did. Yet, Petitioner excluded this **Glossary** from its incomplete production, along with the TOC, which showed the Glossary's existence.

<sup>6</sup> See Exhibit 2040, yet this is not **new** evidence, rather merely the complete version of Petitioner Exhibit 1035.

<sup>7</sup> Patent Owner was only able to first see the complete Dittmer book when it located and ordered a copy (which is long out of print) and received it on September 19, 2015, via Express Mail.

Petitioner's purported Dittmer based definitions of the critical terms as adopted by the Board, and confirms that the portions of Dittmer omitted by Petitioner are material to the outcome of the Institution Decision. If Petitioner had simply produced the full Dittmer book as an exhibit, including the Glossary of terms, which actually define all the disputed terms, it would have been clear to the Board that no institution of trial is warranted herein, because the Dittmer authors precisely defined all the disputed terms to be consistent with Patent Owner's definition of "hospitality" and in direct contradiction to Petitioner's asserted definition. Petitioner relied only on portions of the Dittmer reference which Petitioner alleged supported its view, while excluding the directly contradictory portions of Dittmer, i.e., the actual Dittmer-defined definitions.

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<sup>8</sup> Relying on the prohibitions against "incorporation by reference" and that all relied upon evidence must be cited to in the Petition itself, Patent Owner understandably anticipated that the Board would rely on the Petitioner cited pages, pp. 11-14, 404 in Dittmer (Pet. at 48-49), which are for the broader and unclaimed term "**travel and tourism**" and not "**hospitality**". Once apprised, in the Institution Decision, of the Board's expansive consideration of the excerpts of Dittmer as it related to the broader "**travel and tourism**" industry, Ameranth was then compelled to seek to obtain the complete book. Further, Petitioner included 52 references in its Petition, including many other "excerpts", and Patent Owner could not have known which of these the Board would expansively rely on until it saw the Institution Decision.

**A. Relevant applicable statutes and regulations.**

A request for rehearing must identify specifically all matters the party believes were misapprehended or overlooked, and the place where each matter was addressed previously in a motion, an opposition, or a reply. 37 C.F.R. §42.71(d).

**B. Trial should not be instituted on claims 12-16 of the '850 Patent on the instituted grounds – all relying on "Brandt" to teach the requisite "hospitality application" limitations of all claims, because the Board inadvertently overlooked and misapprehended critical evidence from the partial/excerpted "Dittmer" reference.**

The Board's findings as to the construction of "hospitality" were founded on an inadvertent misapprehension of the evidence, exacerbated by Petitioner's incomplete, selective production of the Dittmer reference. Because this erroneous finding is dispositive to both instituted grounds, no trial should be instituted.

The Board held, "[o]n this record, we are persuaded that the ordinary and customary meaning of hospitality is broad enough **to encompass car rental activities,**" and "[o]ur construction of hospitality includes businesses **such as car rental agencies** that provides services to travelers." (Inst. Dec. at 12; emphasis added.). This erroneous construction of "hospitality" is contrary to the plain meaning of the claims, disclosure and prosecution history, and depends on the Board relying on a materially incomplete exhibit, i.e., less than 25% of the complete Dittmer reference. The actual Dittmer definition (in the non-produced pages, in the **Glossary**) is in direct conflict with the Board's adopted definition.

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