

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 6,384,850 B1¹
Case CBM2015-00099 Patent 6,781,325 B1

Before MEREDITH C. PETRAVICK, RICHARD E. RICE, and
STACEY G. WHITE, *Administrative Patent Judges*.

WHITE, *Administrative Patent Judge*.

DECISION
Request for Rehearing
37 C.F.R. § 42.71(d)

¹ This order addresses a similar issue in the both cases. Therefore, we exercise discretion to issue one order to be filed in each case. The parties, however, are not authorized to use this style of heading in subsequent papers.

SUMMARY

Patent Owner, Ameranth, Inc., requests rehearing of the Board's decisions (Paper 9², "Decision to Institute or Dec.", CBM2015-00099 Paper 11), entered September 14, 2015, instituting covered business method patent review of claims 12–16 of U.S. Patent No. 6,384,850 B1 on two grounds of obviousness and instituting a covered business method patent review of claims 11–13 and 15 of U.S. Patent No. 6,781,325 B1 on four grounds of obviousness. Paper 11 ("Req. Reh'g"); CBM2015-00099 Paper 9. For the reasons that follow, Patent Owner's requests for rehearing are *denied*.

DISCUSSION

The applicable standard for granting a request for rehearing of a petition decision is abuse of discretion. 37 C.F.R. § 42.71(c). The requirements for a rehearing are set forth in 37 C.F.R. § 42.71(d), which provides in relevant part:

A party dissatisfied with a decision may file a request for rehearing, without prior authorization from the Board. The burden of showing a decision should be modified lies with the party challenging the decision. The request must specifically identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply.

Patent Owner argues that the Decisions to Institute "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's misapprehending and overlooking key, and

² For the purposes of this Decision, the Institution Decisions, Requests for Rehearing, Petitions, Preliminary Responses, and supporting documents do not differ in a material way. Unless otherwise indicated, for ease of reference, we will refer to the filings in CBM2015-00091.

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contradictory, evidence that is found in the complete Dittmer book.” Req. Reh’g 2. Patent Owner argues that no trial should have been instituted because the complete version of Dittmer “clearly confirms that ‘hospitality applications’ do not include ‘car rentals’ or other travel/transportation functions.” *Id.*

We are not persuaded that Patent Owner has identified any matters that we misapprehended or overlooked. Instead, Patent Owner’s requests present evidence that was not of record during the institution phase of these proceedings. *See id* 2 n. 6 (arguing that Exhibit 2040 is not new evidence but rather a complete version of Exhibit 1035). According to Patent Owner, this evidence was not obtained by Patent Owner until five days after our September 14, 2015 Decision to Institute. *Id.* at 2 n.7 (stating that Patent Owner obtained Exhibit 2040 on September 19, 2015). A request for rehearing cannot be based on evidence that was not of record during the institution phase. For institution purposes, we assessed the persuasiveness of Petitioner’s evidence while “recognizing that [we are] doing so without all evidence that may come out at trial.” *New England Braiding Co. v. A.W. Chesterton Co.*, 970 F.2d 878, 883 (Fed. Cir. 1992) (reviewing a decision on a preliminary injunction where patentee has the burden of demonstrating “that it will likely succeed on all disputed liability issues at trial”). Here, we have not made a final determination as to claim construction, and Patent Owner is free to contest this issue during the trial, if desired. We are not persuaded of error in our Decisions on Institution.

CONCLUSION

Patent Owner has not persuaded us that the determination to institute covered business method reviews was an abuse of our discretion, or that we misapprehended or overlooked any matter. Accordingly, we deny the requests for rehearing.

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ORDER

For the reasons given, it is
ORDERED that the requests for rehearing are *denied*.

PETITIONER:

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