

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EXPEDIA, INC., FANDANGO, LLC, HOTELS.COM, L.P., HOTEL TONIGHT, INC., HOTWIRE, INC., KAYAK SOFTWARE CORP., OPENTABLE, INC., ORBITZ, LLC, PAPA JOHN'S USA, INC., STUBHUB, INC., TICKETMASTER, LLC, LIVE NATION ENTERTAINMENT, INC., TRAVELCITY.COM LP, WANDERSPOT LLC, AGILYSYS, INC., DOMINO'S PIZZA, INC., DOMINO'S PIZZA, LLC, HILTON RESORTS CORPORATION, HILTON WORLDWIDE, INC., HILTON INTERNATIONAL CO., MOBO SYSTEMS, INC., PIZZA HUT OF AMERICA, INC., PIZZA HUT, INC., and USABLENET, INC.,
Petitioner

v.

AMERANTH, INC.,
Patent Owner

Case No.: CBM2015-00097
Patent No. 6,871,325

**PETITIONER'S MOTION FOR JOINDER
UNDER 35 U.S.C. § 325(c) and 37 C.F.R. § 42.222(b)**

I. INTRODUCTION

Petitioner moves the Patent Trial and Appeal Board (“Board”) for joinder of this case (Case No. CBM2015-00097, “Expedia CBM”) and an earlier case filed by Apple, Inc. et al. (Case No. CBM2015-00082, “Apple CBM”). The Expedia CBM is intentionally identical to the Apple CBM in all substantive aspects. Both seek covered business method (“CBM”) review of claims 11-13 and 15 (the “Challenged Claims”) of Ameranth, Inc.’s (“PO”) U.S. Patent 6,871,325 (the “’325 patent”). Further, the Apple CBM and Expedia CBM rely upon the same analytical framework (*e.g.*, same expert declarant, prior art, claim charts, and claim constructions) in addressing the Challenged Claims. Accordingly, resolving the Apple CBM and Expedia CBM will necessarily involve considering the same issues by all parties and the Board. The Petitioner group for the Apple CBM (collectively, “Apple”) does not oppose this motion.

Further, joinder at an early stage—at the time of institution of the Apple and Expedia CBMs and before a schedule has been entered for either case—means that no trial schedule will be adversely affected. Joinder of these proceedings also presents the best opportunity to secure the just, speedy, and inexpensive resolution of the related proceedings without any prejudice to the PO. This includes consolidated filings and discovery and eliminating the duplicate hearings and briefing that would surely accompany separate proceedings, which Apple does not

oppose. Joinder should also provide for case management efficiencies for the Board.

In light of the similarities of the proceedings and the efficiencies that can be realized via joinder, Petitioner respectfully requests that the Board join the Apple CBM and Expedia CBM, if and when both CBM reviews have been instituted.

II. BACKGROUND

Apple filed a petition requesting CBM review of the '325 Patent under the transitional program for CBM patents on February 19, 2015. Apple CBM, Paper 1. A decision regarding institution of that petition is still pending.

The Apple CBM and Expedia CBM involve different petitioner groups and real parties-in-interest. *Compare* Apple CBM, Paper 1 at 1-2 (identifying real parties-in-interest) *with* Expedia CBM, Paper 2 at 1-2 (identifying real parties-in-interest). However, all such parties are defendants in numerous different infringement lawsuits asserting the '325 Patent and three other patents filed by the PO (collectively, the "PO Patents") in the U.S. District Court for the Southern District of California. *See* Apple CBM, Paper 1 at 2-4 (listing related matters); Expedia CBM, Paper 2 at 2-4 (listing related matters). The other three PO Patents are U.S. Patent No. 6,982,733 ("733 patent"), U.S. Patent No. 6,384,850 ("850 patent"), and U.S. Patent No. 8,146,077 ("077 patent"), for which there are multiple other pending CBM proceedings. A summary of the CBM proceedings

related to the PO Patents is provided below in **Tables 1** and **2**. We further note that the aforementioned litigation has been stayed pending resolution of certain of the earlier filed CBM petitions (CBM2014-00013 for the '733 Patent, CBM2014-00014 for the '077 Patent, CBM2014-00015 for the '850 Patent, and CBM2014-00016 for the '325 Patent). Stay Order, **Ex. 1**; Order Continuing Stay, **Ex. 2**.

Table 1: Related Proceedings

Case	Petition Filed	Petitioner	Patent	Challenged Claims
CBM2014-00013	Oct. 15, 2013	Apple et al.	'733 patent	1-16
CBM2014-00014	Oct. 15, 2013	Agilysys et al.	'077 patent	1-18
CBM2014-00015	Oct. 15, 2013	Agilysys et al.	'850 patent	1-16
CBM2014-00016	Oct. 15, 2013	Agilysys et al.	'325 patent	1-15
CBM2015-00080	Feb. 19, 2015	Apple et al.	'850 patent	12-16
CBM2015-00081	Feb. 19, 2015	Apple et al.	'077 patent	1-18
CBM2015-00082	Feb. 19, 2015	Apple et al.	'325 patent	11-13, 15
CBM2015-00091	Mar. 2, 2015	Starbucks	'850 patent	12-16
CBM2015-00095	Mar. 3, 2015	Expedia et al.	'077 patent	1-18
CBM2015-00096	Mar. 3, 2015	Expedia et al.	'850 patent	12-16
CBM2015-00097	Mar. 4, 2015	Expedia et al.	'325 patent	11-13, 15
CBM2015-00099	Mar. 6, 2015	Starbucks	'325 patent	11-13, 15

Table 2: Status of Related Proceedings

Case	Status
CBM2014-00013	Instituted for claims 1-16 on ground of 35 U.S.C. § 101; denied as to all other grounds; Final Written Decision issued Mar. 20, 2015
CBM2014-00014	Institution denied
CBM2014-00015	Instituted for claims 1-11 on ground of 35 U.S.C. § 101; denied as to all other grounds; Final Written Decision issued Mar. 20, 2015
CBM2014-00016	Instituted for claims 1-10 on ground of 35 U.S.C. § 101; denied as to all other grounds; Final Written Decision issued

Case	Status
	Mar. 20, 2015
CBM2015-00080	Petition pending
CBM2015-00081	Petition pending
CBM2015-00082	Petition pending
CBM2015-00091	Petition pending
CBM2015-00095	Petition pending
CBM2015-00096	Petition pending
CBM2015-00097	Petition pending
CBM2015-00099	Petition pending

In addition to the present motion, Petitioner will be concurrently filing petitions to join other CBM cases pertaining to the PO patents. Specifically, by separate motions, Petitioner is seeking to join CBM2015-00096 with CBM2015-00080 ('850 patent), and to join CBM2015-00095 with CBM2015-00081 ('077 patent) on bases parallel to the ones set forth below.

III. LEGAL STANDARD

When more than one petition for CBM review of the same patent is properly filed and those petitions warrant institution, the Board has the authority and discretion to join the proceedings. *See* 35 U.S.C. § 325(c) (permitting joinder of post-grant review proceedings); 37 C.F.R. § 42.222(b) (same); Leahy-Smith America Invents Act, Pub. L. No. 112-29 § 18(a)(1), 125 Stat. 284, 329 (2011) (making certain post-grant review standards and procedures applicable to CBM review); *see also* Transitional Program for Covered Business Method Patents, 77 Fed. Reg. 48687 (Aug. 14, 2012). Joinder of one CBM review with another CBM

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