

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*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5

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.

On January 28, 2016, a conference call was conducted between respective counsel for the parties and Judges White, Petravick, and Rice. Petitioner, Starbucks Corp., was represented by counsel, Patrick N. McKeever and Bing Ai. Patent Owner, Ameranth, Inc., was represented by counsel, John Osborne and Michael Fabiano.² A court reporter was present and counsel indicated a copy of the transcript would be placed in the file. The purpose of the call was to discuss Petitioner's assertion that the Patent Owner Response was formatted improperly in violation of 37 C.F.R. § 42.6.

Petitioner alleges that the format of the Patent Owner Response is not in compliance with 37 C.F.R. § 42.6. Petitioner alleges that the main text and the footnotes are not double spaced. Patent Owner indicates that the Patent Owner Response was prepared using spacing of at least 28 point (double the 14-point font of the text) for the main text, but maintains that such spacing is in compliance with 37 C.F.R. § 42.6. Patent Owner acknowledges that the footnotes were not double spaced, but maintains that its spacing is standard practice.

A document prepared utilizing Patent Owner's method generally produces up to 23 lines of text per page, while a document prepared utilizing double spacing generally has up to 20 lines of text per page. The rule states that "[d]ouble spacing must be used," and lists some exceptions. *See* 37 C.F.R. § 42.6(a)(2)(iii). The listed exceptions do not include footnotes, and the rule does not state that lines may be spaced using double the font size. *See id.* Patent Owner and Petitioner both stated that they used Microsoft Word to prepare filings in this case. All parties in

² James Heintz and Robert Williams, counsel for petitioner in CBM2015-00080 and CBM2015-00082, also participated in the call.

CBM2015-00091 Patent 6,384,850 B1
CBM2015-00099 Patent 6,781,325 B1

this case shall prepare their filings using double spacing as provided by Microsoft Office.

Patent Owner is to file Corrected Patent Owner Responses in these matters by February 1, 2016. These new filings shall comply with all rules specified in 37 C.F.R. § 42.6 and shall not include any new evidence or arguments. Patent Owner shall provide Petitioner with documents showing redlines indicating the changes made between the previously filed Patent Owner Responses and the Corrected Patent Owner Responses. These redline documents shall not be filed.

ORDER

For the reasons given, it is

ORDERED that Patent Owner will file Corrected Patent Owner Responses in CBM2015-00091 and CBM2015-00099 by February 1, 2016. These Corrected Patent Owner shall comply will all applicable rules including 37 C.F.R. § 42.6. No new arguments or evidence will be permitted in these Corrected Patent Owner Responses.

CBM2015-00091 Patent 6,384,850 B1
CBM2015-00099 Patent 6,781,325 B1

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