

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

STARBUCKS CORP.

Petitioner

v.

AMERANTH, INC.

Patent Owner

Case CBM2015-00099
U.S. Patent No. 6,871,325

MAIL STOP PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
Post Office Box 1450
Alexandria, Virginia 22313-1450

PATENT OWNER AMERANTH'S SUR-REPLY BRIEF

Petitioner Starbucks entirely ignored most of Ameranth's strong secondary considerations evidence. The arguments Petitioner did make should be given no weight by the Board, because they are factually and/or legally incorrect, and/or ignore the record evidence, and/or are based upon nothing but attorney argument.

As shown in PO's Response – and not disputed in Petitioner's Reply Brief – a strong nexus exists between the Challenged Claims and Ameranth's 21st Century Restaurant (21CR) system. Further, the systemic nexus of "synchronization, integration, and consistency" is neither "inaccurate" nor "improper", as Petitioner erroneously argues. In fact, these inventive merits were identified by the Board itself in CBM 2014-00015, Paper 20, (Inst. Dec.) and with the Board's construction of "synchronization" yielding "consistency", confirms the nexus to be both accurate and correct. (See POR at 56-57.) Dallas Improv owner Tom Castillo confirmed he was "won over" by Ameranth's May 1999 demonstration of 21CR at the NRA Show and that the "**total solution**" he saw i.e. the 'nexus' was one that no other company could match thus confirming the inventive nexus was unavailable from any other company. (Exh. 2062, pp. 117-119.)

The strong evidence of praise and awards for 21CR set forth in the POR accordingly has the requisite nexus to the Challenged Claims. That evidence includes the testimony of eyewitness John Harker who confirmed that Ameranth's 21CR was seen as the most innovative in **both** the US and the European

Hospitality Shows of 1999, a remarkable achievement for a small, new company and its only product, 21CR: "... Ameranth was arguably recognized as the overall **most innovative company/technology** at the May 1999 NRA Show in Chicago, with **hundreds** of customers coming to its booth... Keith McNally and I introduced the 21CR system at the October 1999 European Restaurant Show in London and ... 21CR was awarded the **'Innovation of the Year'** award for the **entire** European Hospitality Technology Market. Ameranth was selected **first ahead of hundreds** of different technology companies and this **special and prestigious award** further validated the **uniqueness** of Ameranth's technology and **its innovative vision.**" (Exh. 2062 at p. 172; emphasis added.) This extraordinary and undisputed market reaction upon the introduction of a new product would not have occurred for an "obvious" product, or for "existing technology".

Petitioner's arguments regarding PO's license evidence are also erroneous. Ameranth's 46 patent licenses are for the closely-related patents in the same family of which the '850 patent is the parent. The press releases of the patent licenses were jointly issued with the licensees and the Agilysis license (Exh 2048, p. 11-12) specifically included the `850 and `325 patents, specifically confirmed an \$80,000 annual payment (8th year in a row of payments) and the \$200/HH license fee is identical to the \$200/HH fee that Micros, party to related petitions, offered in seeking to secure exclusive IP rights for the 21CR technology in 2000, see Exh.

2062, p. 134); all ignored and un rebutted by Starbucks. Jersey Mike's 1500 + locations are also clearly paying license fees: "Jersey Mike's is pleased to have **secured favorable license rates** for Ameranth's novel mobile/web patents...." (Jersey Mike's CIO, Exh 2048, p. 3, emp. added). Further, the vast majority of Ameranth's 44 licenses occurred outside litigation. Since October 2013, when the first CBMs were filed against Ameranth's patents, no new suits have been filed or threatened, and yet **18** additional licensees have independently made their own decisions to license this Ameranth family of patents. This includes restaurant giant Taco Bell, as stated by Taco Bell's own CIO: "...**Our decision** to license their **data synchronization** patents affords Taco Bell..." (Exh 2048, p. 19, emp. added.)

Petitioner's Reply erroneously claims that the 2003 RAD Award is inapplicable because Ameranth's Hostalert did not include "web components". Petitioner's claim is untrue. Hostalert did include "web components" and "seamless integration", see Exh. 2022, pp. 65-66.

Also, contrary to Petitioner's erroneous Reply, there is ample evidence of successful commercialization, and Ameranth's products were not deployed "only" at the Dallas Improv. Ameranth's evidence of 70% market share of the top ten POS companies is un rebutted. Further, the Improv ticketing system rolled out nationwide, including, e.g., the Washington D.C. Improv, (see Exh. 2022 at p. 86, a "web page" screenshot showing the '850 and `325 patents **marked** with the

system, confirming nexus of this commercial success with the claims/patents). The evidence submitted by PO further confirms more than 100 deployed locations with Aloha POS (Exh. 2021, p. 14), plus mobile food ordering in many NBA arenas and all Medieval Times restaurants (Exh. 2021, pp. 23-25, 36).

As to praise being associated with the nexus, see e.g. the "Brainstorm" article, Advanced Hospitality's Passas described 21CR as the "**integrator** of the **various systems** needed to **make the technology work.**" (Exh. 2062 at p. 167, emp. added.) Further, the 1999 Microsoft Case Study on 21CR praised 21CR and confirms that 21CR includes the claimed "communications control module": "Ameranth's hand-held computers communicate with Ameranth's communication control module and other interface modules...", and the "other interface modules" also reflect the claimed "API". (Exh. 2062, p. 82, 3rd col., emphasis added.)

Petitioner's reply argument regarding its own copying is disingenuous. The Microsoft emails confirm that Starbucks VP Rob Reed asked for, received, liked, and distributed Ameranth's technical documents within Starbucks in 2006. (Exh. 2053.) If this wasn't true, Starbucks would have submitted a declaration from Rob Reed, denying it. That they didn't confirms that it is true. Starbucks brazenly claims it "doesn't have" order-ahead functions despite Starbucks' own management calling order-ahead mobile ordering its "holy grail". (Exh. 2008.) Dr. Weaver (Exh. 2041, ¶ 147) testified that he reviewed the evidence submitted with the POR,

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