

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 CBM2015-00099  
Patent No. 6,871,325 B1

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**PETITIONER'S MOTION TO EXCLUDE**

**Paper No. 26**

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**I. INTRODUCTION**

Pursuant to 37 C.F.R. § 42.64(c) and the Federal Rules of Evidence, Petitioners Starbucks ("Starbucks" or "Petitioner") hereby submits its Motion to Exclude inadmissible evidence proffered by Patent Owner Ameranth (Paper Nos. 7, 17) based on Petitioner's timely filed objections . '99 Paper 15.

**II. ARGUMENT**

**A. Patent Owner's Exhibits 2047-48, 2050, 2053, 2059, 2062 and 2077-78 Should be Excluded**

The contents of Exhibit Nos. 2047-48, 2050, 2053, 2059, 2062 and 2077-78 are inadmissible hearsay. Fed. R. Evid. 802. The challenged exhibits meet Fed. R. Evid. 801's definition of hearsay as each is being offered by the Patent Owner for the truth of the matter asserted therein. Many of the challenged exhibits are not only hearsay, but hearsay within hearsay. Fed. R. Evid. 801, 805. Because Patent Owner cannot establish any exceptions to the hearsay rule for the challenged exhibits, they are inadmissible. Fed. R. Evid. 801-03, 805.

These exhibits are also inadmissible because they are not properly authenticated. Fed. R. Evid. 901, 902, 903. To satisfy the requirement of authenticating or identifying an item of evidence, *the proponent must produce evidence* to support a finding that *the item is what the proponent claims it is*. Fed. R. Evid. 901(a). None of these exhibits are self-authenticating, and they thus

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