UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE, INC., EVENTBRITE INC., and STARWOOD HOTELS &
RESORTS WORLDWIDE, INC.,
Petitioner,

v.

AMERANTH, INC.,
Patent Owner.

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Case CBM2016-00006
Patent 6,871,325 B1

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

WHITE, *Administrative Patent Judge*.

DECISION

Institution of Covered Business Method Patent Review
and Grant of Motion for Joinder
37 C.F.R. § 42.208
37 C.F.R. § 42.222(b)

I.   INTRODUCTION

Apple Inc., EventBrite, Inc. and Starwood Hotels & Resorts Worldwide, Inc. (collectively, "Petitioner") filed a Petition (Paper 1, "Pet.") requesting covered business method patent review of claims 11–13 and 15 ("challenged claims") of U.S. Patent No. 6,871,325 B1 (Ex. 1002, "the '325 patent") pursuant to § 18 of the Leahy-Smith America Invents Act ("AIA"), and concurrently filed a Motion for Joinder (Paper 2, "Mot."). The Motion for Joinder seeks to join this proceeding with *Starbucks Corp. v. Ameranth, Inc.*, CBM2015-00099 (the "Starbucks CBM"). Mot. 1. Patent Owner filed a Preliminary Response (Paper 9, "Prelim. Resp."). Patent Owner did not file an opposition to the Motion for Joinder. For the reasons described below, we institute a covered business method patent review of all the challenged claims and grant Petitioner's Motion for Joinder.

II.   INSTITUTION OF COVERED BUSINESS METHOD REVIEW

The Petition asserts the same grounds as those on which we instituted review in the Starbucks CBM. On September 14, 2015, we instituted a trial in the CBM2015-00099 on the following grounds:

References	Basis	Claim(s) Challenged
Brandt,[1] NetHopper,[2] and Carter[3]	§ 103	11–13

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[1] Japanese Unexamined App. No. H10-247183 (published Sept. 14, 1998) (Ex. 1004) (certified translation, Ex. 1005, "Brandt").

[2] NetHopper Version 3.2 User's Manual, 1–24 (1997) (Ex. 1006, "NetHopper").

[3] European Unexamined App. No. EP 0845748A2, published June 3, 1998 (Ex. 1052, "Carter").

References	Basis	Claim(s) Challenged
Brandt, NetHopper, Carter, and Rossmann[4]	§ 103	15
Brandt, Demers,[5] Alonso[6], and Carter	§ 103	11–13
Brandt, Demers, Alonso, Carter, and Rossmann	§ 103	15

Starbucks Corp. v. Ameranth, Inc., Case CBM2015-00099, slip. op. at 46 (PTAB Sept. 14, 2015) (Paper 9).

Patent Owner's Preliminary Response puts forth certain arguments and evidence that were not considered as part of the institution decision in the Starbucks CBM. We note, however, an identity between the arguments and evidence put forth in the Preliminary Response and those put forth in the Patent Owner Response in the Starbucks CBM. *Compare* Prelim. Resp., *with* Starbucks CBM, Paper 17 ("Starbuck PO Resp.") (same claim construction and substantive arguments); *compare* Ex. 2001–2081, *with* Starbucks CBM Ex. 2001–2081 (same exhibits). Thus, the issues raised by Patent Owner in response to the Petition are the same as those currently under consideration in the Starbucks CBM.

In view of the identity of the challenges in the instant Petition and in the petition in the CBM2015-00099, we institute a covered business method patent review in this proceeding on the same grounds as those on which we

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[4] U.S. Patent No. 5,809,415, issued Sept. 5, 1998 (Ex. 1053, "Rossmann").

[5] Alan Demers, et al., *The Bayou Architecture: Support for Data Sharing Among Mobile Users*, Mobile Computing Systems & Applications, 1995. Proceedings, Workshop on. IEEE, 1995. (Ex. 1009, "Demers").

[6] Gustavo Alonso et al., *Exotica/FMDC: A Workflow Management System for Mobile and Disconnected Clients*, Databases & Mobile Computing, 28–45, 1996 (Ex. 1012, "Alonso").

instituted a covered business method patent review in CBM2015-00099. We do not institute trial on any other grounds.

III.   GRANT OF MOTION FOR JOINDER

A covered business method patent review may be joined with another covered business method patent review, subject to the provisions of 35 U.S.C. § 325(c), which per § 18(a) (1) of the AIA governs joinder of covered business method patent review proceedings:

> (c) JOINDER. — If more than 1 petition for a post-grant review under this chapter is properly filed against the same patent and the Director determines that more than 1 of these petitions warrants the institution of a post-grant review under section 324, the Director may consolidate such reviews into a single post-grant review.

As the moving party, Petitioner bears the burden of proving that it is entitled to the requested relief. 37 C.F.R. § 42.20(c). A motion for joinder should: (1) set forth the reasons joinder is appropriate; (2) identify any new grounds of unpatentability asserted in the petition; and (3) explain what impact (if any) joinder would have on the trial schedule for the existing review. *See* Frequently Asked Question H5, *available at* http://www.uspto.gov/patentsapplication-process/appealing-patentdecisions/trials/patent-reviewprocessing-system-prps-0.

The Petition in this proceeding has been accorded a filing date of October 14, 2015 (Paper 6), which is within one month of the date of institution in CBM2015-00099, which was instituted on September 14, 2015. The Motion for Joinder was filed on the same day as the Petition in this proceeding. The Motion for Joinder, therefore, was filed timely. 37 C.F.R. § 42.222(b).

In its Motion for Joinder, Petitioner contends that the grounds asserted in the instant Petition and the Starbucks CBM petition

> rely on the same the same expert declarant, the same prior art and the same invalidity analysis. Indeed, in order to minimize any additional burden that would result from the joinder requested in this Motion, the substantive portions of the Apple Petition are intentionally identical to the petition submitted by Starbucks in CBM2015-00099 ("Starbucks Petition"), except that the Apple Petition excludes grounds that were not instituted by the Board.

Mot. 1. Petitioner asserts that it and Starbucks have agreed to cooperate in the handling of the joined proceeding. *Id.* at 11. Petitioner does not seek an alteration to the existing schedule. *Id.* at 10, 11. In addition, the identity of its grounds with those in the Starbucks CBM means that Patent Owner will not be prejudiced because the joinder of Petitioner to the Starbucks CBM will not require Patent Owner to perform any additional analysis because it does not raise any issues that are not already before the Board. *Id.* at 10. Further, no additional depositions will be necessary because Petitioner and Starbucks rely upon the same declarant. *Id.* at 10–11. Petitioner "agree[s] to consolidated filings for all substantive papers in the proceeding." *Id.* at 9. In addition, "Petitioner agrees to allow Starbucks to lead the joined CBM proceeding on behalf of all named petitioners so long as Starbucks remains a party to the joined CBM proceeding." *Id.* On this record, we find that joinder is appropriate and we grant Petitioner's Motion for Joinder.

IV.   ORDER

In view of the foregoing, it is

ORDERED that Petitioner's Motion for Joinder is granted;

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