

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

Ameranth, Inc.
Patent Owner

Case CBM2015-00099¹
Patent No. 6,871,325 B1

**PETITIONER'S OPPOSITION TO PATENT OWNER'S
MOTION TO EXCLUDE**

Paper No. 31

¹ Case CBM2016-00006 has been joined with this proceeding.

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Pursuant to the Scheduling Order of September 14, 2015 (Pap. 10),
Petitioner Starbucks timely opposes Patent Owner's Motion to Exclude Evidence
(Pap. 25) and respectfully requests that motion be denied for the reasons herein.

I. PETITIONER'S REBUTTAL EVIDENCE IS ADMISSIBLE

5 With its Patent Owner Response, Ameranth provided the 85 page expert
declaration of Alfred Weaver, which cited to 44 exhibits. Ex.2041; Pap. 17. In his
declaration, Dr. Weaver provided substantial (and entirely new) "expert" testimony
on the appropriate claim construction for "hospitality" and his opinions on the
secondary considerations of nonobviousness, nearing half the length of his
10 declaration. Ex.2041, ¶¶33-38, 112-59. To complete the record, Petitioner
provided a declaration of Dr. Mahmood Khan to rebut Dr. Weaver's new
"hospitality" arguments, and provided the declaration of Dr. Abdelsalam Helal to
rebut Dr. Weaver's new arguments on the secondary considerations of
nonobviousness. Ex.1064; Ex.1063, ¶¶159-269. Patent Owner's current motion to
15 exclude is a transparent and improper attempt to have *only* their expert's testimony
considered on issues central to this Petition. The Board is fully capable of
weighing all the evidence of all of the experts, making exclusion inappropriate.

Exclusion of evidence is an extreme, seldom granted measure. *See Shaw
Indus. Group, Inc. v. Automated Creel Sys., Inc.*, IPR2013-00132, Pap. 43 at 47;
20 *Biomarin Pharm. Inc., v. Genzyme Therapeutic Products*, IPR2013-00534, Pap. 81

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