

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

Paper No. 33

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

TABLE OF CONTENTS

	I.	EXHIBITS 2047-48, 2050, 2053, 2059, 2062 AND 2077-78 ARE INADMISSIBLE HEARSAY	1
5	A.	Patent Owner’s Exhibits are Cited for Their Truth.....	1
	1.	<i>Exhibits 2053 and 2059</i>	1
	2.	<i>The Other Exhibits</i>	2
	B.	No Hearsay Exceptions Apply to the Challenged Exhibits	3
	C.	Patent Owner’s Expert Cannot Save its Exhibits.....	4
10	II.	PATENT OWNER'S EXHIBITS ARE NOT AUTHENTICATED.....	4
	III.	UNCITED EXHIBITS SHOULD BE EXCLUDED	5
	IV.	WEAVER'S “HOSPITALITY” TESTIMONY IS INADMISSIBLE	5
	V.	CONCLUSION.....	5

TABLE OF AUTHORITIES

CASES

5	<i>Medtronic, Inc. v. Nuvasive, Inc.</i> , IPR2014-00073	1, 2
	<i>Teva Pharmaceuticals USA, Inc. v. Sandoz, Inc.</i> , 135 S.Ct. 831 (2015).....	5
10	<i>Thomas v. Quintana</i> 2014 WL5419418 (C.D.C.A. Oct. 22, 2014)	4, 5
	<i>Triboro Quilt Mfg. Corp. v. Luve LLC</i> , 2014 WL1508606 at *7 (S.D.N.Y. Mar. 18, 2014).....	4
	<i>U.S. v. Mejia</i> , 545 F.3d 179 (2nd Cir. 2008)	4
15	<i>United States v. El-Mezain</i> , 664 F.3d 467 (5th Cir. 2011)	3

OTHER AUTHORITIES

	Fed. R. Evid. 801(2)(D)	3
	Fed. R. Evid. 803	3
20	Fed. R. Evid. 807(a).....	3, 4

Pursuant to the Scheduling Order of September 14, 2015 (Paper 10), Starbucks timely submits its reply to Patent Owner's ("PO" or "Ameranth") Opposition ("Opposition") to its Motion to Exclude (Paper 30) ("Motion").

I. EXHIBITS 2047-48, 2050, 2053, 2059, 2062 AND 2077-78 ARE
INADMISSIBLE HEARSAY

A. Patent Owner's Exhibits are Cited for Their Truth

1. *Exhibits 2053 and 2059*

PO offered Ex. 2053 for the truth of the matter therein. Ex.2053 purports to contain a series of e-mail exchanges between PO and a Microsoft employee and is used to prove the following statement in the PO Response: _

A copy of the PowerPoint presentation made to Starbucks, along with screen shots of the demonstration, is Exh. 2053 hereto. Rob Reed, Starbucks' Director of Global Web Solutions, stated he "liked what he saw," and had "sent the details around" within Starbucks ...

Pap. 17 at 73-74. Similarly, Ameranth used Ex.2059 (the purported presentation shown to Starbucks) to try to establish that the actual materials in the presentation (their true contents) were copied by Starbucks. Ex.2041, ¶147. PO cites *Medtronic*, but that case is inapposite. In *Medtronic*, the evidence at issue involved, for example, two doctors' website testimony describing the patients' experience of receiving the patented procedure, which was cited to show the procedure was discussed, publicized, and recognized in the industry. *Medtronic*,

CBM2015-00099, Petitioner’s Reply to Patent Owner’s Opposition to Motion to Exclude IPR2014-00073, Pap. 48 at 33-34; *see also* Pap. 26 at 20, 24-25. Unlike *Medtronic*, PO here is trying to use the contents (and purported truth) of an email between PO and a third party, and a presentation purportedly provided to Petitioner to establish Starbucks allegedly received the presentation and that it was copied.

5 **2. *The Other Exhibits***

The other exhibits were all cited to prove the truth asserted therein and are also distinguishable from *Medtronic*. Specifically, Ex.2047 (the improperly annotated) 21CR brochure was cited to support PO’s statement: “[a]s shown in the annotated brochure, aspects of the 21CR system directly correspond to elements of
10 the challenged patent claims... .” Pap. 17 at 60; Ex.2041, ¶¶56, 119. Similarly, Exs.2077 and 2078 (purported case studies concerning the 21CR system) were cited to prove the 21CR system had certain patented features and “close alignment of the claims” (Ex.2041, ¶122). Likewise, the following exhibits were all cited for
15 the truth of their contents: Ex.2048 - press releases announcing Ameranth licenses and a license amendment (Pap.17 at 64-66; Ex.2041, ¶¶123-26); Ex.2062 - press releases concerning the technology awards and Microsoft investment (Pap. 17 at 68-70; Ex.2041, ¶¶130-33, 138); and Ex.2050 - an award document (Pap. 17 at 70; Ex.2041, ¶134).

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.