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Paper No. 25
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC., EVENTBRITE INC., STARWOOD HOTELS & RESORTS WORLDWIDE, INC., EXPEDIA, INC., FANDANGO, LLC, HOTELS.COM, L.P., HOTEL TONIGHT, INC., HOTWIRE, INC., KAYAK SOFTWARE CORP., OPENTABLE, INC., ORBITZ, LLC, PAPA JOHN'S USA, INC., STUBHUB, INC., TICKETMASTER, LLC, LIVE NATION ENTERTAINMENT, INC., TRAVELOCITY.COM LP, WANDERSPOT LLC, AGILYSYS, INC., DOMINO'S PIZZA, INC., DOMINO'S PIZZA, LLC, HILTON RESORTS CORPORATION, HILTON WORLDWIDE, INC., HILTON INTERNATIONAL CO., MOBO SYSTEMS, INC., PIZZA HUT OF AMERICA, INC., PIZZA HUT, INC., and USABLENET, INC.,
Petitioner,

v.

AMERANTH, INC.,
Patent Owner.

Case CBM2015-00082[1]
Patent 6,871,325 B1

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

PETRAVICK, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING
37 C.F.R. § 42.71(d)

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[1] CBM2015-00097 has been consolidated with this proceeding.

I. INTRODUCTION

Apple Inc. et al. ("Petitioner") filed a Petition requesting covered business method patent review of claims 11–13 and 15 of U.S. Patent No. 6,871,325 B1 (Ex. 1003, "the '325 patent"). Paper 1 ("Pet."). On September 1, 2015, we entered a Decision instituting covered business method patent review of U.S. Patent No. 6,871,325 B1 (Ex. 1003, "the '325 patent") based upon the sole ground of claims 11–13 and 15 being unpatentable over DeLorme.[2] Paper 13, 30 ("Dec. to Inst."); *see also* Paper 15, 4.

On September 15, 2015, Patent Owner filed a Request for Rehearing asking the Board to reconsider its Decision. Paper 16 ("Req."). Patent Owner requests that we reconsider our decision to institute covered business method patent review on the ground of claims 11, 12, and 15 being unpatentable over DeLorme.

For the reasons discussed below, we deny Patent Owner's request as to claims 11 and 15 and grant Patent Owner's request as to claim 12.

II. DISCUSSION

A. Standard of Review

When rehearing a decision on petition, the Board will review the decision for an abuse of discretion. *See* 37 C.F.R. § 42.71(c). An abuse of discretion may be determined if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial

[2] DeLorme et al., U.S. Patent No. 5,948,040 (issued Sept. 7, 1999) (Ex. 1024).

evidence, or if the decision represents an unreasonable judgment in weighing relevant factors. *See Arnold P'ship v. Dudas*, 362 F.3d 1338, 1340 (Fed. Cir. 2004).

The party challenging the decision has the burden of showing a decision should be modified. 37 C.F.R. § 42.71(d). In its Request for Rehearing, the dissatisfied party must (1) specifically identify all matters the party believes the Board misapprehended or overlooked and (2) identify the place where each matter was previously addressed. *Id*.

B. Analysis

i. Claims 12 and 15

Patent Owner contends that we erroneously instituted trial on independent claim 12 because the Petition only challenges claims 11, 13, and 15, not claim 12, based upon obviousness over DeLorme. Req. 4–5.

Patent Owner is correct that claim 12 was not challenged in the Petition and should not have been included in the instituted ground. *See* Pet. 52–62; Paper 8, 2 ("Petitioner clarified that claim 12 is not included in the ground based upon obviousness over DeLorme and that the reference to claim 12 on pages 62 and 63 [of the Petition] was a typographical or clerical error.").

In our Decision, we analyzed independent claims 11–13, with respect to the ground based upon DeLorme, as a group due to the similarity of these claims.[3] *See* Dec. to Inst. 20–22. We modify our Decision to exclude claim 12 from this analysis and the instituted ground based upon DeLorme.

[3] Independent claims 11–13 recite identical limitations except for requiring the synchronized data to relate to orders, relate to waitlists, or relate to reservations, respectively. *See* Ex. 1003, col. 17, l. 4–col. 18, l. 32.

Patent Owner also contends that we erroneously instituted trial on dependent claim 15 because our Decision was based upon arguments and evidence related to claim 12. Req. 6–7.

Patent Owner's contention is misplaced. As discussed above, we analyzed independent claims 11–13 as a group. Claim 15 is a multiple dependent claim as it depends from "claim 11, 12, or 13" and our analysis was not based upon arguments and evidences related only to claim 12. *See* Dec. to Inst. 27. Our analysis of claim 15 with respect to DeLorme addresses the additional element recited by claim 15 and does not rely only upon its dependency from claim 12. *See id*.

We are not persuaded by Patent Owner that we abused our discretion in determining that there is a reasonable likelihood that claim 15 is unpatentable over DeLorme. We decline to modify our Decision with respect to claim 15 as it depends from claims 11 and 13.

ii. Claim 11

Claim 11 recites "wherein the synchronized data relates to orders." Patent Owner contends that we erroneously instituted trial on the ground of claim 11 being obvious over DeLorme. Req. 7–12. According to Patent Owner, we construed the claimed order to be an order for a restaurant meal and DeLorme does not disclose an order for a restaurant meal. Req. 7 (citing Dec. to Inst. 13).

Patent Owner contention is misplaced. On page 13 of our Decision, we determined that claim 1 of the '325 patent satisfied the financial product or service requirement for being a covered business method patent. Dec. to Inst. 12–13. In that regard, we stated "[w]e are persuaded by Petitioner that ordering relates to ordering a restaurant meal, which is at least incidental or

complementary to the sale of the meal." *Id.* at 13; *see* Pet. 6–7. Contrary to Patent Owner's contention, this is not a construction of the term "order" as recited by claim 1 or claim 11.

We did not construe claim 11 to require the claimed order to be an order for a restaurant meal or preclude the claimed order from being other types of orders. Although claim 11 encompasses an order for a restaurant meal, as described in the '325 patent, claim 11 does not require the "order" to be an order for a restaurant meal.

We, thus, are not persuaded by Patent Owner that we abused our discretion in determining that there is a reasonable likelihood that claim 11 is unpatentable over DeLorme.

III. CONCLUSION

Patent Owner's Request for Rehearing as to claims 11 and 15 is denied. Patent Owner's Request as to claim 12 is granted. Accordingly, we modify our Decision to institute covered business method patent review as to claims 11, 13, and 15, and not as to claim 12, of the '325 patent on the ground of obviousness over DeLorme.

IV. ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner's Request for Rehearing as to claim 12 is *granted* and as to claims 11 and 15 is *denied*.

PETITIONER:

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