IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF DELAWARE

AMERANTH, INC.	)
	)
Plaintiff,	)
	) Civil Action No. 1:20-cv-518-LPS
v.	)
	)
OLO INC.	)
	)
Defendant.	)
	)

PLAINTIFF AMERANTH, INC'S SUPPLEMENTAL LETTER BRIEF

Stamatios Stamoulis #4606
Richard C. Weinblatt #5080
Stamoulis & Weinblatt LLC
800 N. West Street, Third Floor
Wilmington, DE 19801
(302) 999-1540
stamoulis@swdelaw.com
weinblatt@swdelaw.com

Attorneys for Plaintiff
Ameranth, Inc.

Plaintiff Ameranth, Inc. ("Ameranth") submits this letter brief in accordance with the parties' September 25, 2020 Stipulation for Leave to Amend Complaint. (D.I. 23.). This letter addresses only the new matter added to the Amended Complaint.

Ameranth's Amended Complaint adds two patent-eligible claims from the '651 patent – claims 9 and 10. The Amended Complaint also includes critical evidentiary admissions from the Defendant. (Amended Compl. at ¶¶ 25-30; Amended Compl., Ex. B at ¶ 26.) These admissions were recently discovered by Ameranth and directly contradict Defendant's uncorroborated attorney arguments against the patentability of the asserted claims of the '651 patent.

Claims 9 and 10 depend from asserted independent claim 1 and add inventive concepts that further confirm the non-conventionality of the asserted claims. Claim 9 adds "wherein a mobile application operating on a wireless handheld computing device is used to interface with the back office hospitality software application." Claim 10 adds "wherein a frequent customer mobile application operating on a wireless handheld computing device is used to interface with the back office hospitality software application."

As confirmed by Dr. Valerdi in his updated declaration, Ameranth's introduction of mobile applications for wireless handheld devices as part of its intelligent automated assistants ("IAA") system in the hospitality industry, as called out in multiple asserted claims as of July 2005, was not routine or conventional:

- "One of the earliest digital food orders was a pizza from Pizza Hut in 1994, followed shortly by waiter.com in 1995 yet these primitive ordering systems did not include any wireless handheld computers. Ameranth introduced remote wireless handheld ordering in September 1999. This was followed by Grubhub's look-up website for restaurants in 2004. The Pizza Hut and Grubhub solutions were simple, fixed format, menu-based food ordering systems with very limited capabilities and lacked the ability to process, understand, and execute unstructured data. Pizza Hut did not launch its frequent customer program 'Hut Rewards' until 2017 and Grubhub's frequent customer program 'Perks' launched in 2019. (Amended Compl., Ex. B at ¶ 19.)
- "Adoption of mobile food ordering in the hospitality industry has traditionally lagged other industries. Noah Glass, Founder and CEO of Olo, who was named the 'Most Influential Person in Food Service' by Nation's Restaurant News, supports this view as evidenced by his statement on January 24, 2020 on the Extra Serving podcast:

> 'As the consumer has adopted the smartphone really and it's sort of a, maybe now an obvious thing, but at the time that we started, it wasn't obvious. In fact, it was under 5% of consumers that had smartphones and we were maniacally focused on what the world of restaurants would look like when consumers adopted these things.' (Note: Olo was founded in 2005 which placed Mr. Glass' comments around the time of the '651 patent)
>
> 'I think that from the lens of ecommerce, which is the piece of the technology pie that that Olo plays in, the restaurant industry was late to ecommerce, simply because you can't ship a cheeseburger from a warehouse with two day shipping.' This admission by Olo's CEO reconfirms and bolsters my expert opinion that Ameranth's '651 inventions were non-conventional at of the time of the inventions in July 2005." (*Id.* at ¶ 26.)

- "Some of the largest restaurant chains in the United States have caught on the mobile application trend slowly, compared to companies outside of the hospitality industry. Examples include Domino's in 2011, Applebee's in 2013, and Subway in 2014." (*Id.* at ¶ 27.)
- "Loyalty programs in the restaurant and hospitality business are desirable among consumers, however very few 'get it right' and struggle with instability and lack of speed, struggle with ongoing concerns about securing customer data, and struggle with mobile payment integration. Despite the increasing importance and usage of catering apps, very few of these apps (e.g., Starbucks and Domino's pizza tracker) are successful in meeting the expectations of consumers, according to the Application Resource Center (ARC), which considers data from nearly one million app store reviews across the Apple App Store and Google Play." (*Id.* at ¶ 28.)

Dr. Valerdi confirmed that claims 9 and 10 as part of the IAA-based claimed systems describe inventive concepts and improve the use of computers:

> 13. The technologies described and claimed in the '651 patent contain at least the following inventive concepts that enhance computer technology: (1) being able to understand and convert both fixed format and free format messaging - unstructured data such as in an e-mail/text message or via voice to text conversion (Claim 1: a; Claim 2: a; Claim 3: a), (2) being able to concurrently handle both free and fixed format messaging through a variety of communication conversions (Claim 1: f and g; Claim 2: f and g; Claim 3: f, g, and h), (3) being able to make and execute intelligent decisions by accessing and applying intelligent automated assistant technology (Claim 1: a and f; Claim 2: a and f; Claim 3: a and f), and (4) while being able to do the foregoing, also being able to (a) use a mobile application wirelessly to interface with a back office hospitality software application (Claim 9), or (b) interface a frequent customer program to a back office hospitality software application (Claim 10).

(Amended Compl., Ex. B at ¶ 13.)

Dr. Valerdi also confirmed that:

> [t]he claims as understood by a POSITA, after reading the specification and reviewing the figures, provide a roadmap for how to develop a computer system optimized for hospitality applications (e.g., online reservations using a handheld device that utilizes both fixed and free format messaging and intelligent automated assistant technologies. Additionally, the specification and figures as understood by a POSITA describe how to use a mobile application wirelessly to interface with a back office hospitality software application (Claim 9), and also being able to interface a frequent customer program to a back office hospitality software application (Claim 10). The claims themselves also guide a POSITA and provide a roadmap of how to build and integrate the disclosed computer system. Namely, the '651 patent includes: an architecture, measures of effectiveness and performance, and technical guidance and requirements.

(*Id.* at ¶ 41.)

Further, Dr. Valerdi identified from the specification and asserted claims the technical requirements of how to select the type of hardware and software for the claimed computer systems. (*Id.* at ¶ 47.)

These new inventive concepts were not "'well-understood, routine, and conventional activit[ies]' previously known to the industry." *Alice Corp. v. CLS Bank Int'l*, 573 U.S. 208, 225 (2014) (quoting *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 132 S. Ct. 1289, 1294 (2012)).

As further evidence of the non-conventionality of claim 10 in 2005 (many years ahead of industry giants, (*see, e.g.,* Amended Compl., Ex. B at ¶ 19)), Ameranth first deployed a mobile frequency/loyalty solution with Zagat and its loyal customer base as part of its Magellan System in November 2005 (built from the '651 specification). (Amended Compl. at ¶ 24)

> Zagat Partnership: Zagat Survey, the world's leading provider of consumer survey–based dining, travel and leisure information, has a loyal customer base that regularly uses zagat.com and ubiquitous Zagat printed guides to select their dining experience. . . . . Ameranth's partnership with Zagat Survey now provides direct reservations capabilities from zagat.com to all Zagat rated restaurants utilizing the Magellan reservations service.

(Amended Compl., Ex. F (emphasis added); *see also* Amended Compl. at ¶ 24.)

The admissions from Defendant go much farther than just confirming the eligibility of these two new dependent claims. (Amended Compl. at ¶¶ 25-30.) For example, the admissions undermine and contradict Defendant's attorney arguments alleging that Ameranth's July 2005 inventions were simple, conventional and merely "that the '651 patent describes its purported invention as automating existing "pen and paper" tasks (e.g., food orders and reservations)." (D.I. 14 at 1.) For example, Defendant admitted , "As the consumer has adopted the smartphone really and it's sort of a, maybe now an obvious thing, but at the time that we started [in 2005], it wasn't obvious." (Amended Compl. at ¶¶ 26, 29; *see also* Amended Compl, Ex. B at ¶ 26.)

Ameranth's factual allegations must be viewed in the light most favorable to Ameranth, and they suffice to overcome a Rule 12 motion. *See Cellspin Soft, Inc. v. Fitbit, Inc.*, 927 F.3d 1306, 1316-19 (Fed. Cir. 2019); *see also MyMail, Ltd. v. ooVoo, LLC*, 934 F.3d 1373, 1379 (Fed. Cir. 2019) ("Patent eligibility may be determined on a Rule 12(c) motion, but only when there are no factual allegations that, if taken as true, prevent resolving the eligibility question as a matter of law."); *Aatrix Software, Inc. v. Green Shades Software, Inc.*, 882 F.3d 1121, 1127-28 (Fed. Cir. 2018) ("Viewed in favor of Aatrix, as the district court must at the Rule 12(b)(6) stage, the complaint alleges that the claimed combination improves the functioning and operation of the computer itself."). A patent is presumed valid and patent-eligible, *Cellspin*, 927 F.3d at 1319, and Defendant must rebut that presumption with clear and convincing evidence. *Berkheimer v. HP Inc.*, 881 F.3d 1360, 1368 (2018). The asserted claims of the '651 patent are valid and eligible. No record evidence rebuts the presumption or satisfies this burden of proof, and Defendant's motion should be denied.

Dated: September 28, 2020

/s/ Richard C. Weinblatt

Stamatios Stamoulis #4606
Richard C. Weinblatt #5080
Stamoulis & Weinblatt LLC
800 N. West Street, Third Floor
Wilmington, DE 19801
(302) 999-1540
stamoulis@swdelaw.com
weinblatt@swdelaw.com

Attorneys for Plaintiff
Ameranth, Inc.

DOCKET ALARM

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.