

IN THE UNITED STATES DISTRICT COURT
FOR DISTRICT OF DELAWARE

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

DECLARATION OF KEITH R. McNALLY

I, Keith R. McNally, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over 21 years of age and competent to testify. I have personal knowledge of all of the facts below related to the history of Ameranth, Inc. ("Ameranth") and my inventing the invention claimed in the '651 patent and Ameranth's enforcement action against OLO.. If called upon to testify, I would and could do so competently as set forth herein.

2. I was the original Founder and President of Ameranth in June 1996. I have been responsible for the conceptualization of most of Ameranth's inventions and patents, including the '651 patent and I am still the President of Ameranth.

3. I provide this declaration to confirm that Ameranth never was, is not now – and will never be – the kind of unscrupulous company, that without evidence, OLO falsely alleged that Ameranth is in its exceptional case motion; arguing that Ameranth needed to be "deterred" from pursuing improper conduct with respect to its patents; conduct that never occurred. In fact, it is just the opposite, as is confirmed/explained below. There is no fact from OLO that Ameranth has actually pursued such nefarious activity and it is simply indisputable that Ameranth neither threatened OLO nor offered or demanded a settlement of any kind. While it is true that Ameranth filed suit against approximately 30 infringing defendants (nearly a decade ago), having a patent

that is widely infringed is not representative of bad conduct or bad motives. Rather, as is confirmed below, including the fact that 48 different companies have licensed Ameranth's patents, the breadth of Ameranth's patents merely confirms that Ameranth's inventions were breakthrough innovations in a very large market. Further, all of those earlier complaints, were filed prior to the 2014 change in U.S. Patent Law as to § 101 eligibility, via the US Supreme Court *Alice* ruling. Since the 2014 *Alice* ruling, and despite the vast Hospitality Market, Ameranth has and only after very careful confirmation of infringement, filed only one new infringement suit, this one against OLO as to the '651 patent, which issued after the *Alice* opinion. Further, I, as the lead inventor, firmly and sincerely believed that the claims of the '651 patent were eligible and valid and directed to a different invention based on the new material I included in my new continuation-in-part patent application in July 2005. Thus there was and is no pattern of bad conduct needing to be deterred.

4. While Ameranth is a small company, it is just the kind of company that the U.S. patent system was designed to protect, i.e., a recognized innovator and one that develops and patents its innovations to protect its own actual products/systems - designed for, brought into a market (the Hospitality Market) and then widely and successfully deployed in thousands of locations, i.e., in restaurants, hotels, and venues within that market, yet later unfairly copied by unscrupulous competitors. Thus, Ameranth did not buy its patents for some kind of vexatious litigation program rather; it patented its own technology in connection with and in support of the development of its innovative and award-winning products.

5. Ameranth is *not* a patent enforcement entity that threatens small entities and seeks nuisance value settlements below the cost of litigation, akin to the plaintiffs that OLO unfairly and inaptly compares Ameranth.

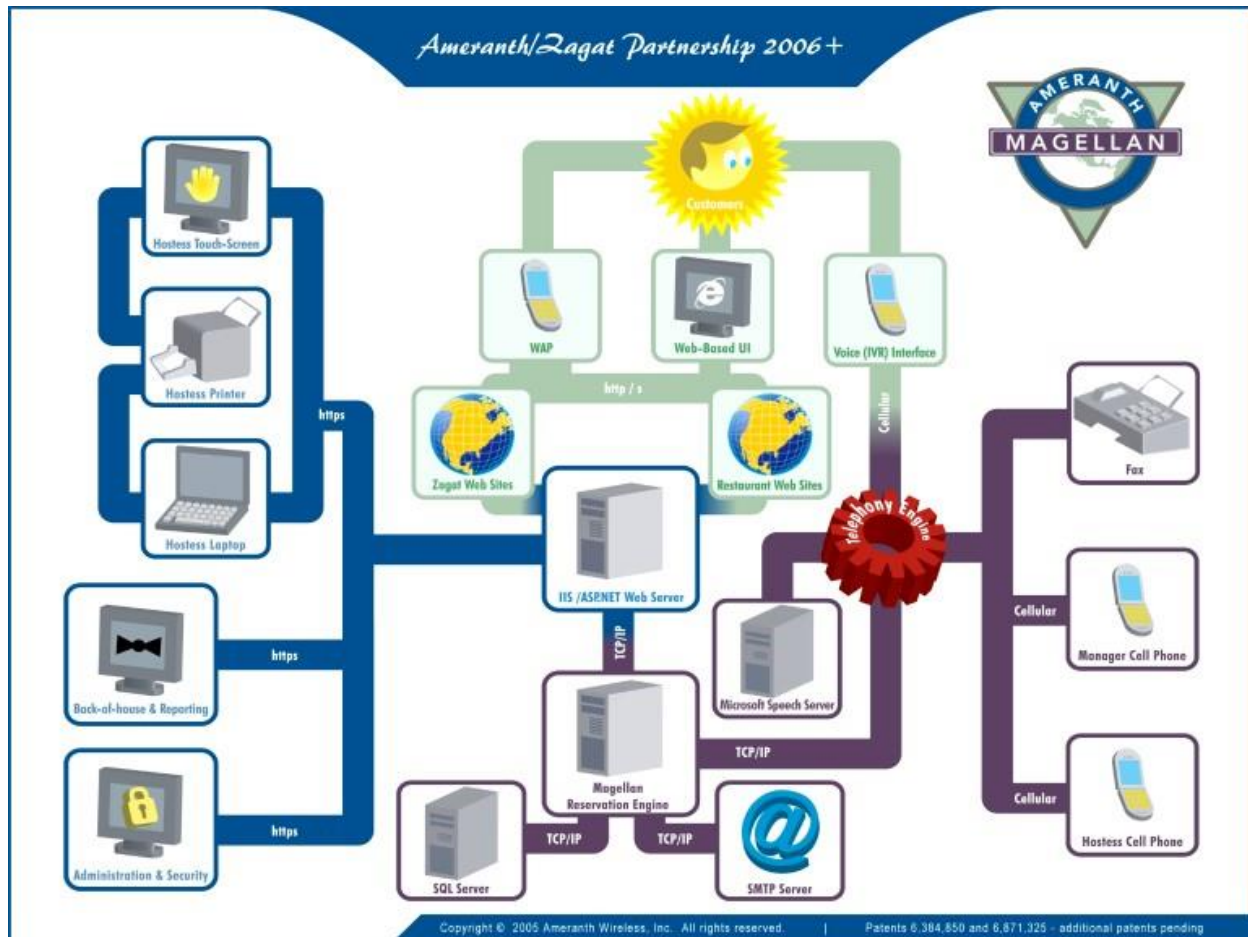
6. When first introduced, Ameranth's inventions for mobile-wireless ordering and payment processing in restaurants were hailed as almost like science fiction and "poised to become the industry standard." Rita Gunther McGrath and Ian C. MacMillan, *Market Busters: 40 Strategic Moves that Drive Exceptional Business Growth*, Harvard Bus. School Press 34-35 (2004). *See Wireless Finds a Welcome in Hospitality*, Bloomberg Businessweek (Feb. 8, 2004), <https://www.bloomberg.com/news/articles/2004-02-08/wireless-finds-a-welcome-in-hospitality> ("not quite Star Trek"). Key luminaries in the field recognized Ameranth's scientific achievements. In nominating Ameranth for one on the many honors it was awarded, Bill Gates put it succinctly: "Ameranth is one of the leading pioneers of the information technology age for the betterment of mankind." CISION PR Newswire.

7. Most of Ameranth's products were linked to Ameranth's patents and many won multiple technology awards thus further confirming that they were innovative and breakthroughs and that Ameranth is not the type of unscrupulous mere patent assertion entity OLO sought to unfairly associate Ameranth with. For example, Ameranth's 21st Century Restaurant™ won the most innovative product of the year at the European Hospitality Convention in October 1999. Ameranth also won the Moby Award for its Improv Comedy Theatres Ticketing And Food Ordering system in November 2000, and it was nominated by Bill Gates, Microsoft's co-founder, for an award from ComputerWorld in 2001, which it won, and Ameranth also won the prestigious Microsoft Retail Application Developer (RAD) Awarding 2003 for its Hostalert restaurant seating and table management system that was deployed with Red Lobster. Further confirming the breakthrough nature of Ameranth's technology, Microsoft, which it very rarely does, then partnered with and made a \$2.5 million strategic investment into Ameranth, clearly indicative of

Ameranth's innovations, and inapposite from the kinds of companies OLO alleged Ameranth is like.

8. Ameranth's patents have been very widely licensed throughout the entire hospitality marketplace and the vast majority of these licenses occurred from fair minded, ethical companies approaching Ameranth for a license (i.e., not through litigation), having recognized its innovations and the value of its patents. Further, these dozens of licensees were not only small companies but many of the world's largest restaurant companies including, e.g. Taco Bell, Dunkin Donuts, Burger King and others, as well as the leading technology companies supplying/supporting them. Cardfree, XPIENT and PAR provide technology support for more than 100,000 restaurants, and they are licensees of Ameranth's patented technology.

9. Finally, the particular innovations of the '651 patent/claims, which I invented and disclosed in the '651 patent's continuation-in-part application in July 2005 were introduced into the Hospitality Market in November 2005 in support of Ameranth's Magellan Restaurant Reservation System and licensed by and deployed in thousands of Zagat Restaurants, confirming their novelty and widespread success and acceptance, and as was confirmed by the COO of Zagat and as stated in Ameranth's Amended Complaint (D.I. 23-1) at ¶ 24 and Ameranth's original complaint (D.I. 1) at ¶ 23. Many of the numerous beneficial improvements and benefits of the Magellan System are shown in the Magellan Partnership Vision System Diagram below, and this diagram was attached to the complaints at Exhibit E:



10. In conclusion, as my declaration and the facts/evidence above confirm, Ameranth filed its '651 patent infringement suit against OLO in good faith and merely as part of its right to protect its intellectual property as is allowed by the U.S. Patent System. Ameranth is not the kind of entity that seeks to unfairly exploit its patents against small companies, nor will it ever do so. Further the exceptional case ruling as in the separate *Domino's* cases in San Diego, was/is based on an entirely untrue and improper basis, and Ameranth strongly objects and is planning to appeal that unjust ruling.

11. Ameranth requests the Court deny OLO's motion for a declaration of exceptional case, which this was not, deny any award of fees against it for merely exercising its right to protect its intellectual property of one patent against one infringing company. If the Court needed any

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