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13 UNITED STATES DISTRICT COURT  
 14 SOUTHERN DISTRICT OF CALIFORNIA

16 IPDEV CO.,  
 17  
 Plaintiff, and Counterclaim-  
 18 Defendant  
 19 v.  
 20 AMERANTH, INC.,  
 21 Defendant, and  
 Counterclaimant.  
 22

CASE NO. 3:14-cv-01303-DMS-WVG  
**PLAINTIFF AND COUNTERCLAIM-  
 DEFENDANT IPDEV CO.'S ANSWER  
 TO AMERANTH, INC.'S  
 COUNTERCLAIMS**

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**ANSWER TO COUNTERCLAIMS**

Plaintiff and Counterclaim-Defendant IPDEV Co. (“IPDEV”), by its attorneys, hereby replies to and answers the Counterclaims of Defendant and Counterclaimant Ameranth, Inc., (“Ameranth”) as follows:

**THE PARTIES**

1. On information and belief, IPDEV admits the allegations of paragraph 1 of the Counterclaims.
2. IPDEV admits that IPDEV is an Illinois corporation headquartered in Chicago, Illinois, and IPDEV is an affiliate of QuikOrder, Inc. IPDEV also admits that QuikOrder provides an on-line ordering system and mobile-optimized version of the on-line ordering system used by Pizza Hut and is providing a defense and indemnity to Pizza Hut in the consolidated infringement actions before this Court. IPDEV further admits that IPDEV, QuikOrder and Pizza Hut share common legal counsel in the cases pending before this Court. IPDEV denies the remaining allegations of paragraph 2 of the Counterclaims.

**JURISDICTION AND VENUE**

3. IPDEV admits the allegations of paragraph 3 of the Counterclaims.
4. IPDEV admits the allegations of paragraph 4 of the Counterclaims.
5. IPDEV admits the allegations of paragraph 5 of the Counterclaims.
6. IPDEV admits the allegations of paragraph 6 of the Counterclaims.
7. IPDEV admits the allegations of paragraph 7 of the Counterclaims.

**COUNT 1: INVALIDITY OF THE '449 PATENT**

8. In response to paragraph 8 of the Counterclaims, IPDEV incorporates by references its responses to paragraphs 1-7 of the Counterclaims.
9. IPDEV admits the allegations of paragraph 9 of the Counterclaims.
10. IPDEV denies the allegations of paragraph 10 of the Counterclaims.
11. IPDEV admits that (Pre-AIA) 35 U.S.C. section 135(b)(1) is set forth in relevant part in paragraph 11 of the Counterclaims. IPDEV further admits that the claims of Ameranth’s ’850 and ’325 patents are “obvious variants of the claims of the Ameranth ’077 patent” and,

1 therefore, would be properly designated as corresponding to a count defined by one or more of  
2 the '449 and/or '077 patent claims. IPDEV also admits that the '850 patent issued on May 7,  
3 2002, the '325 patent issued on March 22, 2005, and that IPDEV applied for the '449 patent on  
4 August 22, 2012. IPDEV denies the remaining allegations of paragraph 11 of the Counterclaims.

5 12. IPDEV denies the allegations of paragraph 12 of the Counterclaims.

6 13. IPDEV denies the allegations of paragraph 13 of the Counterclaims.

7 14. IPDEV denies the allegations of paragraph 14 of the Counterclaims.

8 15. IPDEV denies the allegations of paragraph 15 of the Counterclaims.

9 16. Paragraph 16 of the Counterclaims states a legal conclusion to which no response  
10 is required.

11 17. IPDEV admits that Ameranth seeks relief as alleged but denies that Ameranth is  
12 entitled to such relief.

13 **COUNT 2: INEQUITABLE CONDUCT**

14 18. In response to paragraph 18 of the Counterclaims, IPDEV incorporates by  
15 references its response to paragraphs 1-17 of the Counterclaims.

16 19. IPDEV denies the allegations in paragraph 19 of the Counterclaims.

17 20. IPDEV denies the allegations in paragraph 20 of the Counterclaims.

18 21. IPDEV denies the allegations in paragraph 21 of the Counterclaims.

19 22. IPDEV denies the allegations in paragraph 22 of the Counterclaims.

20 23. IPDEV denies the allegations in paragraph 23 of the Counterclaims.

21 24. IPDEV admits that the claims of Ameranth's '850 and '325 patents are "obvious  
22 variants of the claims of the Ameranth '077 patent" and, therefore, would be properly designated  
23 as corresponding to a count defined by one or more of the '449 and/or '077 patent claims.

24 IPDEV also admits that (Pre-AIA) 35 U.S.C. section 135(b)(1) is set forth in relevant part in  
25 paragraph 24 of the Counterclaims. IPDEV also admits that the '449 patent application was  
26 submitted to the USPTO on August 22, 2012. IPDEV denies the remaining allegations in  
27 paragraph 24 of the Counterclaims.

28 25. IPDEV denies the allegations in paragraph 25 of the Counterclaims.

1           26.     IPDEV admits that in the consolidated District Court patent infringement litigation  
2 involving Ameranth's '077, '850 and '325 patents, QuikOrder, Pizza Hut and other members of  
3 the Joint Defense Group have asserted certain infringement action defenses. IPDEV denies the  
4 remaining allegations in paragraph 26 of the Counterclaims.

5           27.     On information and belief, IPDEV acknowledges that Pizza Hut and other  
6 members of the Joint Defense Group, of which IPDEV is not a member, have alleged in covered  
7 business method petitions that the claims of the '077, '325 and '850 patents fail to satisfy the  
8 written description and definiteness requirements of section 112, and fail to claim patentable  
9 subject matter under section 101. IPDEV also acknowledges that QuikOrder and Pizza Hut  
10 joined in motions to stay the consolidated cases before the District Court pending determination  
11 of those covered business method petitions. IPDEV denies the remaining allegations in  
12 paragraph 27 of the Counterclaims.

13           28.     Paragraph 28 of the Counterclaims states a legal conclusion to which no response  
14 is required. To the extent a response is required, IPDEV denies the factual allegations of  
15 paragraph 28 of the Counterclaims.

16           29.     IPDEV admits that the claims of the '449 patent are copied from the claims of  
17 Ameranth's '077 patent. IPDEV further admits that the claims of Ameranth's '850 and '325  
18 patents are "obvious variants of the claims of the Ameranth '077 patent" and, therefore, would be  
19 properly designated as corresponding to a count defined by one or more of the '449 and/or '077  
20 patent claims. IPDEV denies the remaining allegations in paragraph 29 of the Counterclaims.

21           30.     IPDEV admits that the claims of the '449 patent are copied from the claims of  
22 Ameranth's '077 patent. IPDEV further admits that the claims of Ameranth's '850 and '325  
23 patents are "obvious variants of the claims of the Ameranth '077 patent" and, therefore, would be  
24 properly designated as corresponding to a count defined by one or more of the '449 and/or '077  
25 patent claims. IPDEV denies the remaining allegations in paragraph 30 of the Counterclaims.

26           31.     IPDEV denies the allegations in paragraph 31 of the Counterclaims.

27           32.     IPDEV admits that in a CRN.com article on November 6, 2002, James Kargman is  
28 quoted as saying that QuikOrder's point of sale ("POS") system was: "the only solution on the

1 market I am aware of that has a direct tie into an online ordering facility.” IPDEV denies the  
2 remaining allegations in paragraph 32 of the Counterclaims.

3 33. IPDEV admits that IPDEV submitted the application for the ’449 patent to the  
4 Patent Office copying the claims of Ameranth’s ’077 patent. IPDEV denies the remaining  
5 allegations of paragraph 33 of the Counterclaims.

6 34. IPDEV admits that IPDEV and their counsel knew that Food.com was the prior  
7 owner of the Cupps ’739 patent, and that the patent was purchased by IPDEV. IPDEV denies the  
8 remaining allegations in paragraph 34 of the Counterclaims.

9 35. IPDEV denies the allegations of paragraph 35 of the Counterclaims.

10 36. IPDEV denies the allegations of paragraph 36 of the Counterclaims.

11 37. IPDEV denies the allegations of paragraph 37 of the Counterclaims.

12 **EXCEPTIONAL CASE DETERMINATION**

13 38. IPDEV admits that on June 24, 2014, counsel for Ameranth sent a letter to  
14 litigation counsel for IPDEV in this matter demanding that IPDEV dismiss the interference  
15 lawsuit with prejudice and renounce the obtained ’449 patent. IPDEV also admits that a copy of  
16 the letter is attached to the Counterclaims as Exhibit 1. IPDEV denies the remaining allegations  
17 of paragraph 38 of the Counterclaims.

18 **AFFIRMATIVE DEFENSE**

19 For its affirmative defenses, IPDEV alleges as follows:

20 39. Ameranth’s second counterclaim of inequitable conduct is barred because the  
21 counterclaim fails to state a claim against IPDEV upon which relief may be granted.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, IPDEV respectfully requests the following relief:

- 24 1. IPDEV denies that Ameranth is entitled to any relief;
- 25 2. An order finding each of Ameranth’s Counterclaims without merit and dismissing  
26 each of them with prejudice;
- 27 3. Costs and expenses in this action;

28 ///

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