

CALDARELLI HEJMANOWSKI & PAGE LLP

William J. Caldarelli (SBN #149573)

12340 El Camino Real, Suite 430

San Diego, CA 92130

Telephone: (858) 720-8080

Facsimile: (858) 720-6680

wjc@chplawfirm.com

FABIANO LAW FIRM, P.C.

Michael D. Fabiano (SBN #167058)

12526 High Bluff Drive, Suite 300

San Diego, CA 92130

Telephone: (619) 742-9631

mdfabiano@fabianolawfirm.com

OSBORNE LAW LLC

John W. Osborne (*Pro Hac Vice* App. Pending)

33 Habitat Lane

Cortlandt Manor, NY 10567

Telephone: (914) 714-5936

josborne@osborneipl.com

WATTS LAW OFFICES

Ethan M. Watts (SBN #234441)

12340 El Camino Real, Suite 430

San Diego, CA 92130

Telephone: (858) 509-0808

Facsimile: (619) 878-5784

emw@ewattslaw.com

Attorneys for Plaintiff Ameranth, Inc.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

AMERANTH, INC.

Plaintiff,

v.

FANDANGO, INC.,

Defendant.

Case No. 3:12-cv-01651 JLS-NLS
[Consolidated with 11-cv-01810-JLS-NLS]

**PLAINTIFF AMERANTH, INC.'S
OPPOSITION TO DEFENDANT
FANDANGO, INC.'S MOTION TO
DISMISS**

Complaint Filed: June 29, 2012

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

I. INTRODUCTION1

II. BACKGROUND1

III. ARGUMENT2

 A. Ameranth Has Pled Sufficient Facts to Support its Direct Infringement
 Claim Under the Specificity Requirements of Form 182

 B. Fandango Fabricates a Divided Infringement Issue by Misstating the Law and by
 Improperly and Narrowly Construing the Allegations in the Complaint3

 1. Centillion Does Not Apply Because Fandango Did Not and
 Cannot Show That Every Claim of the Patents-in-Suit Can
 Only be Infringed by Divided Infringement3

 2. Fandango Misstates the Holding From Centillion by Conflating
 “Use” With Physical or Direct Control.....4

 3. Ameranth Alleges That Fandango Itself Uses the Claimed
 Invention7

 C. Ameranth Does Not Allege Vicarious Liability11

 D. Ameranth Sufficiently Pleads Facts to Support its Indirect
 Infringement Claims11

 1. Ameranth Pleads Sufficient Facts Plausibly Inferring the
 Predicate Acts of Direct Infringement11

 2. Ameranth Pleads Sufficient Facts to Plausibly Infer that
 Fandango Knew of the Patents-in-Suit by Pleading Facts
 Regarding the Wide-Spread Acclaim of its Technology14

 3. Knowledge of Infringement and Intent to Induce Infringement
 May be Plausibly Inferred from Ameranth’s Facts.....16

 4. Ameranth Alleges No Substantial Non-Infringing Use
 to Sufficiently Support its Contributory Infringement Claim.....16

 E. Ameranth’s Patents Do Not Impermissibly Combine System
 Claims with Method Claims18

 F. Ameranth Pleads Sufficient Facts to Plausibly Infer that
 Fandango Willfully Infringed the Patents-in-Suit.....23

IV. CONCLUSION.....24

TABLE OF AUTHORITIES**Cases****Page**

1		
2		
3		
4	<u>AntiCancer, Inc. v. Fujifilm Med. Sys. U.S.A., Inc.</u>	
5	745 F. Supp. 2d 1165 (S.D. Cal. 2010).....	16
6	<u>Apple, Inc. v. Samsung Elecs. Co., Ltd.</u>	
7	--- F. Supp. 2d ----, 2012 WL 2572037, at *43 (N.D. Cal. July 1, 2012);	
8	<u>rev'd on other grounds</u> , --- F.3d ----, 2012 WL 4820601	
9	(Fed. Cir. Oct. 11, 2012).....	13, 20, 21
10	<u>Aro Mfg. Co. v. Convertible Top Replacement Co.</u>	
11	377 U.S. 476 (1964).....	11
12	<u>Ashcroft v. Iqbal</u>	
13	556 U.S. 662 (2009).....	1, 2, 18
14	<u>Bell Atlantic Corp. v. Twombly</u>	
15	550 U.S. 544 (2007).....	1, 2, 18, 25
16	<u>Brain Life, LLC v. Elekta, Inc.</u>	
17	No. 10-cv-1539-LAB (BGS)	12
18	<u>Centillion Data Sys., LLC v. Qwest Commc'ns Int'l, Inc.</u>	
19	631 F.3d 1279 (Fed. Cir. 2011).....	1, 3, 4, 5, 6, 8, 9
20	<u>Collaboration Props., Inc. v. Tandberg ASA</u>	
21	No. 05-01940, 2006 WL 1752140, at *6-7 (N.D. Cal. June 23, 2006)	21
22	<u>Collegenet, Inc. v. XAP Corp.</u>	
23	442 F. Supp. 2d 1036 (D.Or. 2006)	21
24	<u>Deston Therapeutics LLC v. Trigen Labs. Inc.</u>	
25	723 F. Supp. 2d 665 (D. Del. 2010).....	10
26	<u>epicRealm, Licensing, LLC v. Autoflex Leasing, Inc.</u>	
27	492 F. Supp. 2d 608 (E.D. Tex. 2007).....	7
28	<u>Global-Tech Appliances, Inc. v. SEB S.A.</u>	
	131 S.Ct. 2060 (2011).....	11, 14
	<u>Groupon, Inc. v. MobGob LLC</u>	
	No. 10c7456, 2011 WL 2111986, at *3 (N.D. Ill. May 25, 2011)	15
	<u>In re Bill of Lading Trans. and Proc. Sys. Patent Litig.</u>	
	681 F.3d 1323 (Fed. Cir. 2012).....	2, 3, 7, 11, 12, 13, 16, 17

1 In re Katz Interactive Call Processing Patent Litig.
 2 639 F.3d 1303 (Fed. Cir. 2011)..... 18, 19

3 In re Seagate Tech., LLC
 4 497 F.3d 1360 (Fed. Cir. 2007)..... 23, 24

5 Intellect Wireless Inc. v. Sharp Corp.
 6 No. 10c6763, 2012 WL 787051, at *11 (N.D. Ill March 9, 2012)15

7 IPXL Holdings, LLC v. Amazon.com, Inc.
 8 430 F.3d 1377 (Fed. Cir. 2005)..... 18, 19, 20, 21, 22

9 Kara Technology Inc. v. Stamps.com Inc.
 10 No. cv-05-1890, 2008 WL 8089236 *21 (C.D. Cal. April 3, 2008).....21

11 Lone Star Document Mgmt., LLC v. Atalasoft, Inc.
 12 No. 11-cv-00319, 2012 WL 4033322 (E.D. Tex. Sept. 12, 2012).....13

13 McZeal v. Sprint Nextel Corp.
 14 501 F.3d 1354 (Fed. Cir. 2007)..... 2, 7

15 Microprocessor Enhancement Corp. v. Texas Instruments Inc.
 16 520 F.3d 1367 (Fed. Cir. 2008)..... 18, 20

17 Milwaukee Elec. Tool Corp. v. Hitachi Koki Co., Ltd.
 18 No.09c948, 2011 WL 665439, at *3 (E.D. Wis. Feb. 14, 2011)24

19 Prism Techs., LLC v. Adobe Sys., Inc.
 20 No. 8:10CV220, 2012 WL 3060185, at *8-9 (D. Neb. July 26, 2012).....9

21 Proxycorr Inc. v. Microsoft Corp.
 22 No. SACV 11-1681, 2012 WL 1835680, at *6 (C.D. Cal. May 16, 2012)16

23 Rembrandt Data Techs., LP v. AOL, LLC
 24 641 F.3d 1331 (Fed. Cir. 2011)..... 19, 20

25 Ricoh Co., Ltd. v. Katun Corp.
 26 486 F. Supp. 2d 395 (D.N.J. 2007)21

27 Sienna, LLC v. CVS Corp.
 28 No. 06-3364, 2007 WL 13102, at *7-8 (S.D.N.Y. Jan. 3, 2007).....21

SiRF Tech., Inc. v. Int’l Trade Com’n
 601 F.3d 1319 (Fed. Cir. 2010).....7

Sony Corp. v. LG Elecs. U.S.A., Inc.
 768 F. Supp. 2d 1058 (N.D. Cal. 2011) 23, 24

Tech. Patents LLC v. Deutsche Telekom AG
 774 F. Supp. 2d 732 (D. Md. 2010)21

1 Technology Patents LLC v. T-Mobile (UK) Ltd.
 2 No. 2011-1581, 2012 WL 4903197 (Fed. Cir. Oct. 17, 2012).....6

3 Toshiba Corp. v. Juniper Networks, Inc.
 4 No. 03-1035, 2006 WL 1788479, at *2-5 (D. Del. June 28, 2006).....21

5 Trading Techs. Int’l. Inc. v. BCG Partners, Inc.
 6 No. 10c715, 2011 WL 3946581 (N.D. Ill. Sept. 2, 2011)..... 14, 16

7 Uniloc USA, Inc. v. Microsoft Corp.
 8 632 F.3d 1292 (Fed. Cir. 2011).....9

9 VoiceFill, LLC v. West Interactive Corp.
 10 No. 8:11-cv-421, 2012 WL 1949378 (D. Neb. May 29, 2012)8

11 WesternGeco L.L.C. v. ION Geophysical Corp.
 12 --- F.Supp. 2d ---, 2012 WL 2450801 *11 (S.D. Tex. June 26, 2012)21

13 Wing Shing Prods. (BVI), Ltd. v. Simatelex Manufactory Co.
 14 479 F. Supp. 2d 388 (S.D.N.Y. 2007).....16

15 Yodlee v. CashEdge
 16 No. C 05-01550 SI, 2006 WL 3456610, at *4 (N.D. Cal. Nov. 29, 2006) 20, 21

17 Young v. Lumenis, Inc.
 18 492 F.3d 1336 (Fed.Cir.2007).....18

19 **Miscellaneous**

20 35 U.S.C. §112.....18

21 35 U.S.C. §271 1, 3, 4, 5, 10, 11, 13, 17

22 35 U.S.C. §282.....18

23 Fed.R.Civ.P. 8(a)24

24 Fed.R.Civ.P. 9(b)14

25 Fed.R.Civ.P. 84.....2

26

27

28

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.