

EXHIBIT 2018

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

AMERANTH, INC.,

Plaintiff,

vs.

PIZZA HUT, INC.; PIZZA HUT OF AMERICA, INC.; DOMINO'S PIZZA, LLC; DOMINO'S PIZZA, INC.; PAPA JOHN'S USA, INC.; OPENTABLE, INC.; GRUBHUB, INC.; EXIT 41, LLC; QUICKORDER, INC.; SEAMLESS NORTH AMERICA, LLC; O-WEB TECHNOLOGIES LTD,

Defendants.

AND RELATED CASES.

Case Nos. 11cv1810 JLS (NLS),
12cv1633 JLS (NLS),
12cv1634 JLS (NLS),
12cv1640 JLS (NLS),
12cv1644 JLS (NLS),
12cv1646 JLS (NLS),
12cv1648 JLS (NLS),
12cv1649 JLS (NLS),
12cv1651 JLS (NLS),
12cv1652 JLS (NLS),
12cv1653 JLS (NLS),
12cv1654 JLS (NLS),
and 12cv1655 JLS (NLS)

ORDER GRANTING IN PART AND DENYING IN PART MOTIONS TO DISMISS

Presently before the Court are twelve factually and legally similar motions to dismiss in twelve related patent infringement cases. Having considered the parties' arguments and the law, the Court **GRANTS IN PART AND DENIES IN PART** Defendants' motions to dismiss.

BACKGROUND

I. Procedural History

Defendants in twelve related patent infringement actions, all involving claims brought by Plaintiff Ameranth, Inc. (“Ameranth”), filed the instant motions to dismiss in their respective dockets on September 24, 2012.¹ The twelve related actions were subsequently consolidated with the lead case, *Ameranth v. Pizza Hut, Inc.*, Case No. 11-CV-1810 (“lead case” or “1810”), for pretrial purposes up to and including claim construction on October 4, 2012.² (1810, ECF No. 279.) In each action, Ameranth has brought claims against Defendants for directly and/or indirectly infringing three of its patents: (1) United States Patent Number 6,384,850 (“the ’850 patent”); (2) United States Patent Number 6,871,325 (“the ’325 patent”); and (3) United States Patent Number 8,146,077 (“the ’077 patent”) (collectively, the “Asserted Patents”).

Ameranth makes similar factual allegations in each case and asserts the same patents. The actions allegedly giving rise to the individual complaints are nearly identical, differing only as to the named defendant or defendants and the accused device. These allegations will be discussed in greater detail below, as appropriate.

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¹*Ameranth, Inc. v. Hotel Tonight, Inc.*, 12-CV-1633 JLS (NLS) (“1633”), ECF No. 17; *Ameranth, Inc. v. Hotels.com, LP*, 12-CV-1634 JLS (NLS) (“1634”), ECF No. 17; *Ameranth, Inc. v. Kayak Software Corp.*, 12-CV-1640 JLS (NLS) (“1640”), ECF No. 17; *Ameranth, Inc. v. Orbitz, LLC*, 12-CV-1644 JLS (NLS) (“1644”), ECF No. 17; *Ameranth, Inc. v. StubHub, Inc.*, 12-CV-1646 JLS (NLS) (“1646”), ECF No. 17; *Ameranth, Inc. v. Ticketmaster, LLC*, 12-CV-1648 JLS (NLS) (“1648”), ECF No. 18; *Ameranth, Inc. v. Travelocity.com, LP*, 12-CV-1649 JLS (NLS) (“1649”), ECF No. 17; *Ameranth, Inc. v. Fandango, Inc.*, 12-CV-1651 JLS (NLS) (“1651”), ECF No. 18; *Ameranth, Inc. v. Wanderspot LLC*, 12-CV-1652 JLS (NLS) (“1652”), ECF No. 17; *Ameranth, Inc. v. Hotwire, Inc.*, 12-CV-1653 JLS (NLS) (“1653”), ECF No. 17; *Ameranth, Inc. v. Expedia, Inc.*, 12-CV-1654 JLS (NLS) (“1654”), ECF No. 17; *Ameranth, Inc. v. Micros Sys., Inc.*, 12-CV-1655 JLS (NLS) (“1655”), ECF No. 17.

²A total of thirty-one related cases, all involving patent infringement claims brought by Ameranth against various Defendants, were consolidated for pretrial purposes.

1 **II. The Asserted Patents³**

2 As stated in the Complaint of each instant action, the Asserted Patents are
3 directed to:

4 [the] generation and synchronization of menus, including but not limited
5 to restaurant menus, event tickets, and other products across fixed,
6 wireless and/or internet platforms as well as synchronization of
7 hospitality information and hospitality software applications across
8 fixed, wireless and internet platforms, including but not limited to,
9 computer servers, web servers, databases, affinity/social networking
10 systems, desktop computers, laptops, “smart” phones and other wireless
11 handheld computing devices.⁴

12 **A. The ‘850 Patent — Information Management and Synchronous 13 Communications System with Menu Generation**

14 The ‘850 Patent covers an information management and synchronous
15 communications system and method for generating computerized menus for use on
16 specialized displays. The invention allows for the more efficient use of handheld
17 wireless devices in the restaurant and hospitality fields by creating an integrated
18 solution that formats data for smaller displays and allows for synchronization of data.

19 The asserted claims of the ‘850 Patent share the following elements: (1) a central
20 database containing hospitality applications and data; (2) at least one wireless handheld
21 computing device on which hospitality applications and data are stored; (3) at least one
22 web server on which hospitality applications and data are stored; (4) at least one web
23 page on which hospitality application and data are stored; (5) an application program
24 interface; and (6) a communications control module. Claim 12 claims a system with the
25 above elements wherein applications and data are synchronized between the central data
26 base, at least one wireless handheld computing device, at least one web server, and at
27 least one web page; and wherein the application program interface allows integration

28 ³This section is based on the published Patents. (*See generally* 1633, ECF No. 1-1; 1634, ECF
No. 1-1; 1640, ECF No. 1-1; 1644, ECF No. 1-1; 1646, ECF No. 1-1; 1648, ECF No. 1-1; 1649, ECF
No. 1-1; 1651, ECF No. 1-1; 1652, ECF No. 1-1; 1653, ECF No. 1-1; 1654, ECF No. 1-1; 1655, ECF
No. 1-1.)

⁴1633, ECF No. 1 at 3; 1634, ECF No. 1 at 3; 1640, ECF No. 1 at 3; 1644, ECF No. 1 at 3;
1646, ECF No. 1 at 3; 1648, ECF No. 1 at 3; 1649, ECF No. 1 at 3; 1651, ECF No. 1 at 3; 1652, ECF
No. 1 at 3; 1653, ECF No. 1 at 3; 1654, ECF No. 1 at 3; 1655, ECF No. 1 at 3.

1 of outside applications with the hospitality applications; and wherein the
2 communications control module interfaces between the hospitality applications and any
3 other communications protocols.

4 ***B. The '325 Patent — Information Management and Synchronous***
5 ***Communications System with Menu Generation***

6 The '325 Patent also covers an information management and synchronous
7 communications system and method for generating computerized menus for use on
8 specialized displays. The asserted claims of both the '325 and '850 Patents share the
9 following elements: (1) a central database containing hospitality applications and data;
10 (2) at least one wireless handheld computing device on which hospitality applications
11 and data are stored; (3) at least one Web server on which hospitality applications and
12 data are stored; (4) at least one Web page on which hospitality application and data are
13 stored; (5) an application program interface; and (6) a communications control module.

14 ***C. The '077 Patent — Information Management and Synchronous***
15 ***Communications System with Menu Generation, and Handwriting and Voice***
16 ***Modification of Orders***

17 The '077 Patent also covers an information management and synchronous
18 communications system and method for generating computerized menus for use on
19 specialized displays, but with the added ability to manually modify the entries with
20 handwriting or voice. Generally, the '077 Patent expands upon the prior two patents
21 and also covers the incorporation of a manual interface to allow consumers to manually
22 input a selection.

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