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16  Attorneys for Defendant and
Counterclaimant Ameranth, Inc.
17

18  **UNITED STATES DISTRICT COURT**

19  **SOUTHERN DISTRICT OF CALIFORNIA**

| | |
|---|---|
| IPDEV CO., | Case No. 14-cv-1303 DMS (WVG) |
| Plaintiff, | **ANSWER OF AMERANTH, INC. TO COMPLAINT FOR DETERMINATION OF PRIORITY; COUNTERCLAIMS** |
| v. | |
| AMERANTH, INC., | |
| Defendant. | |

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1   AMERANTH, INC.,

2                          Counterclaimant,

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4                   v.

5   IPDEV CO.,

6                          Counterdefendant.

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**<u>ANSWER TO COMPLAINT</u>**

2        Defendant and Counterclaimant Ameranth, Inc. ("Ameranth") responds to

3    the Complaint of Plaintiff IPDEV Co. ("IPDEV") as follows:

4        1.      Ameranth admits that IPDEV is an Illinois corporation located at the

5    address stated at the complaint, and is an affiliate of QuikOrder, Inc.

6    ("QuikOrder") (<u>fka</u> as National Systems Corporation), which in turn indemnifies

7    and is co-represented with Pizza Hut, Inc. and Pizza Hut of America, Inc. ("Pizza

8    Hut") in the consolidated patent infringement lawsuits brought by Ameranth and

9    pending before this Court.  Ameranth admits that IPDEV is the current owner of

10   record of the '449 and '739 patents (but not the original owner of the '739 patent

11   or even the employer of the inventors named thereon), but denies and disputes the

12   validity of the '449 patent as further described herein.

13       2.      Admitted.

14       3.      Admitted.

15       4.      Admitted.

16       5.      Admitted.

17       6.      Admitted.

18       7.      Admitted.

19       8.      Admitted.  However, Ameranth contends that IPDEV works in

20   concert with QuikOrder and this action is being used by QuikOrder, Pizza Hut,

21   their joint litigation counsel, and other members of the Joint Defense Group in the

22   consolidated patent infringement cases as part of their joint defense strategy.

23       9.      Ameranth admits that Cupps and Glass filed the '793 Application on

24   November 24, 1997, and that the '793 application issued on November 23, 1999

25   as the '739 patent.  Ameranth lacks information and belief to admit or deny the

26   remaining allegations of this paragraph, and on that basis denies them.

27       10.     Admitted.

28                                          1

1        11.     Admitted; however, Ameranth denies and disputes the validity of the

2    '449 patent as further described herein and denies that the claimed subject matter

3    was disclosed, described in or encompassed by the '739 patent or the '645

4    application.

5        12.     Admitted.

6        13.     Admitted.

7        14.     Ameranth admits that the applicants of the '729 application

8    disclaimed, for certain claims contained in that application only, the part of the

9    term that would extend beyond the expiration of the term of the '850 patent.

10   Except as admitted, denied.

11       15.     Admitted.

12       16.     Ameranth admits that the applicants of the '990 application

13   disclaimed, for certain claims contained in that application only, the part of the

14   term that would extend beyond the expiration of the term of the '850 patent.

15   Except as admitted, denied.

16       17.     Ameranth admits that the IPDEV's '199 application substantially

17   copied claims 1-18 of the '077 patent and added claims 19-21.  Ameranth further

18   admits that IPDEV's Preliminary Statement to the Patent Office states: "Applicant

19   notes that filed claims 1-18 are copied from claims 1-18 of issued U.S. Patent No.

20   8,146,077, issued March 27, 2012 from U.S. Application No. 11/112,990 filed

21   April 22, 2005 (the '077 Patent)."  Ameranth denies that IPDEV brought to the

22   attention of the patent examiner of the '449 patent that the copied claims were

23   patented by a different inventor than the inventor of the '739 patent of which the

24   '199 application purported to be a continuation, or that IPDEV's statements to the

25   examiner of the '449 patent constituted a request for an interference.  Except as

26   expressly admitted, denied.

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18.     Ameranth admits that the Patent Office issued a Notice of Rejection of claims 1-21 of the '199 application on or about June 6, 2013 for the reasons stated therein.  Ameranth further admits that, subsequently, on or about December 4, 2013, IPDEV submitted an amendment of the '199 application claims to the Patent Office.  Except as expressly admitted, denied.

19.     Admitted.

20.     Ameranth admits that claims 1-18 of the IPDEV '449 patent (although not the specification) substantially copy the claims and encompass substantially the same subject matter as claims 1-18 of Ameranth's '077 patent. Ameranth denies and disputes the validity of the '449 patent as further described herein.  Except as expressly admitted, denied.

21.     Denied.  Ameranth further denies and disputes the validity of the '449 patent as further described herein.

22.     Ameranth admits that the '077 patent is a continuation in part of the '850 patent.  Except as expressly admitted, denied.

23.     Denied.  Ameranth further denies and disputes the validity of the '449 patent as further described herein.

24.     Ameranth admits that the '350 patent is a continuation of the '850 patent, and that the '077 patent is a continuation in part of the '850 patent.  Except as expressly admitted, denied.

25.     Denied.  Ameranth further denies and disputes the validity of the '449 patent as further described herein.

26.     Ameranth admits that IPDEV asserts a priority date of November 24, 1997 for the '449 patent by virtue of characterizing it as a continuation of the application which issued as the '739 patent, but denies that the '449 patent claims are actually entitled to such priority date.  Ameranth admits that all claims of Ameranth's '325, '850 and '770 patents have an effective priority date of at least

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