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16 Attorneys for Defendant and
Counterclaimant Ameranth, Inc.

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

19 IPDEV CO.,

20
21 Plaintiff,

22 v.

23 AMERANTH, INC.,

24 Defendant.
25
26
27
28

Case No. 14-cv-1303 DMS (WVG)

**ANSWER OF AMERANTH, INC.
TO COMPLAINT FOR
DETERMINATION OF PRIORITY;
COUNTERCLAIMS**

1 AMERANTH, INC.,

2 Counterclaimant,

3
4 v.

5 IPDEV CO.,

6 Counterdefendant.
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ANSWER TO COMPLAINT

Defendant and Counterclaimant Ameranth, Inc. (“Ameranth”) responds to the Complaint of Plaintiff IPDEV Co. (“IPDEV”) as follows:

1. Ameranth admits that IPDEV is an Illinois corporation located at the address stated at the complaint, and is an affiliate of QuikOrder, Inc. (“QuikOrder”) (fka as National Systems Corporation), which in turn indemnifies and is co-represented with Pizza Hut, Inc. and Pizza Hut of America, Inc. (“Pizza Hut”) in the consolidated patent infringement lawsuits brought by Ameranth and pending before this Court. Ameranth admits that IPDEV is the current owner of record of the ‘449 and ‘739 patents (but not the original owner of the ‘739 patent or even the employer of the inventors named thereon), but denies and disputes the validity of the ‘449 patent as further described herein.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted. However, Ameranth contends that IPDEV works in concert with QuikOrder and this action is being used by QuikOrder, Pizza Hut, their joint litigation counsel, and other members of the Joint Defense Group in the consolidated patent infringement cases as part of their joint defense strategy.

9. Ameranth admits that Cupps and Glass filed the ‘793 Application on November 24, 1997, and that the ‘793 application issued on November 23, 1999 as the ‘739 patent. Ameranth lacks information and belief to admit or deny the remaining allegations of this paragraph, and on that basis denies them.

10. Admitted.

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.

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

6 19. Admitted.

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

12 21. Denied. Ameranth further denies and disputes the validity of the
13 '449 patent as further described herein.

14 22. Ameranth admits that the '077 patent is a continuation in part of the
15 '850 patent. Except as expressly admitted, denied.

16 23. Denied. Ameranth further denies and disputes the validity of the
17 '449 patent as further described herein.

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

21 25. Denied. Ameranth further denies and disputes the validity of the
22 '449 patent as further described herein.

23 26. Ameranth admits that IPDEV asserts a priority date of November 24,
24 1997 for the '449 patent by virtue of characterizing it as a continuation of the
25 application which issued as the '739 patent, but denies that the '449 patent claims
26 are actually entitled to such priority date. Ameranth admits that all claims of
27 Ameranth's '325, '850 and '770 patents have an effective priority date of at least
28

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