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Attorneys for Plaintiff Ameranth, Inc.

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

AMERANTH, INC.,

Plaintiff,

v.

HOTEL TONIGHT, INC.,

Defendant.

Case No. 12-cv-1633 JLS (NLS)

**FIRST AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1                   **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

2                   Plaintiff Ameranth, Inc. (“Ameranth”), for its Complaint against defendant  
3 Hotel Tonight, Inc. (“Hotel Tonight”), avers as follows:

4   **PARTIES**

5                   1. Plaintiff Ameranth is a Delaware corporation having a principal place of  
6 business at 5820 Oberlin Drive, Suite 202, San Diego, California 92121.  
7 Ameranth develops, manufactures and sells, *inter alia*, hospitality industry,  
8 entertainment, restaurant and food service information technology solutions  
9 under the trademarks 21<sup>st</sup> Century Communications™, and 21st Century  
10 Restaurant™, among others, comprising the synchronization and integration of  
11 hospitality information and hospitality software applications between fixed,  
12 wireless and/or internet applications, including but not limited to computer  
13 servers, web servers, databases, affinity/social networking systems, desktop  
14 computers, laptops, “smart” phones and other wireless handheld computing  
15 devices.

16                   2. Defendant Hotel Tonight is, on information and belief, a Delaware  
17 corporation having a principal place of business and headquarters in San  
18 Francisco, California. On information and belief, Hotel Tonight makes, uses,  
19 offers for sale or license and/or sells or licenses hotel and lodging, property  
20 management system (PMS) and other hospitality information-technology  
21 products, software, components and/or systems within this Judicial District,  
22 including the Hotel Tonight Reservation System as defined herein.

23   **JURISDICTION AND VENUE**

24                   3. This is an action for patent infringement arising under the Patent Laws of  
25 the United States, 35 U.S.C. §§ 271, 281-285.

26                   4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331  
27 and 1338(a).

1 5. On information and belief, Defendant engages in (a) the offer for sale or  
2 license and sale or license of hospitality, reservations, restaurant, food service,  
3 ordering, products and/or components in the United States, including this Judicial  
4 District, including services, products, software, and components, comprising  
5 wireless and internet POS and/or hospitality aspects; (b) the installation and  
6 maintenance of said services, products, software, components and/or systems in  
7 hospitality industry, hotel and lodging, restaurant, food service, and/or  
8 entertainment information technology systems in the United States, including this  
9 Judicial District; and/or (c) the use of hospitality industry, hotel and lodging,  
10 restaurant, food service, and/or entertainment information technology systems  
11 comprising said services, products, software, components and/or systems in the  
12 United States, including this Judicial District.

13 6. This Court has personal jurisdiction over Defendant because Defendant  
14 commits acts of patent infringement in this Judicial District including, *inter alia*,  
15 making, using, offering for sale or license, and/or selling or licensing infringing  
16 services, products, software, components and/or systems in this Judicial District.  
17 Additionally, Defendant has already appeared in this action and submitted to the  
18 jurisdiction of the Court. Hotel Tonight has continued to engage in and perform  
19 such acts of infringement since the filing and service of the original complaint in  
20 this matter accusing Hotel Tonight of infringement of the Ameranth patents at  
21 issue herein.

22 7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b)  
23 and (c) and 1400(b).

### 24 **BACKGROUND**

25 8. Ameranth was established in 1996 to develop and provide its 21<sup>st</sup>  
26 Century Communications™ innovative information technology solutions for the  
27 hospitality industry (inclusive of, *e.g.*, restaurants, hotels, casinos, nightclubs,  
28

1 cruise ships and other entertainment and sports venues). Ameranth has been  
2 widely recognized as a technology leader in the provision of wireless and  
3 internet-based systems and services to, *inter alia*, restaurants, hotels, casinos,  
4 cruise ships and entertainment and sports venues. Ameranth's award winning  
5 inventions enable, in relevant part, generation and synchronization of menus,  
6 including but not limited to restaurant menus, event tickets, reservations and  
7 other products across fixed, wireless and/or internet platforms as well as  
8 synchronization of hospitality information and hospitality software applications  
9 across fixed, wireless and internet platforms, including but not limited to,  
10 computer servers, web servers, databases, affinity/social networking systems,  
11 desktop computers, laptops, "smart" phones and other wireless handheld  
12 computing devices.

13 9. Ameranth began development of the inventions leading to the patents in  
14 this patent family in the late Summer of 1998, at a time when the then-available  
15 wireless and internet hospitality offerings were extremely limited in functionality,  
16 were not synchronized and did not provide an integrated system-wide solution to  
17 the pervasive ordering, reservations, affinity program and information  
18 management needs of the hospitality industry. Ameranth uniquely recognized the  
19 actual problems that needed to be resolved in order to meet those needs, and  
20 thereafter conceived and developed its breakthrough inventions and products to  
21 provide systemic and comprehensive solutions directed to optimally meeting  
22 these industry needs. Ameranth has expended considerable effort and resources  
23 in inventing, developing and marketing its inventions and protecting its rights  
24 therein.

25 10. Ameranth's pioneering inventions have been widely adopted and are  
26 thus now essential to the modern wireless hospitality enterprise of the 21st  
27

1 Century. Ameranth's solutions have been adopted, licensed and/or deployed by  
2 numerous entities across the hospitality industry.

3 11. The adoption of Ameranth's technology by industry leaders and the wide  
4 acclaim received by Ameranth for its technological innovations are just some of  
5 the many confirmations of the breakthrough aspects of Ameranth's inventions.  
6 Ameranth has received twelve different technology awards (three with "end  
7 customer" partners) and has been widely recognized as a hospitality  
8 wireless/internet technology leader by almost all major national and hospitality  
9 print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today  
10 and many others. Ameranth was personally nominated by Bill Gates, the  
11 Founder of Microsoft, for the prestigious Computerworld Honors Award that  
12 Ameranth received in 2001 for its breakthrough synchronized  
13 reservations/ticketing system with the Improv Comedy Theatres. In his  
14 nomination, Mr. Gates described Ameranth as "one of the leading pioneers of  
15 information technology for the betterment of mankind." This prestigious award  
16 was based on Ameranth's innovative synchronization of wireless/web/fixed  
17 hospitality software technology. Subsequently, the United States Patent and  
18 Trademark Office granted Ameranth a number of currently-issued patents, some  
19 which are the basis for this lawsuit. Ameranth has issued press releases  
20 announcing these patent grants on business wires, on its web sites and at  
21 numerous trade shows since the first of the presently-asserted patents issued in  
22 2002. A number of companies have licensed patents and technology from  
23 Ameranth, recognizing and confirming the value of Ameranth's innovations. At  
24 all relevant times, Ameranth marked its own products with the numbers of the  
25 Ameranth patents then issued, thereby providing companies, competitors and  
26 participants in the hospitality industry with notice of Ameranth's patents.  
27 Furthermore, companies that license Ameranth's products have marked their

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