

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE EASTERN DISTRICT OF TEXAS  
3 MARSHALL DIVISION

4 AMERANTH, INC. \* Civil Docket No.  
5 VS. \* 2:07-CV-271  
6 \* Marshall, Texas  
7 \*  
8 \* September 14, 2010  
9 MENUSSOFT SYSTEMS CORPORATION \* 8:30 A.M.

10 TRANSCRIPT OF TRIAL  
11 BEFORE THE HONORABLE JUDGE CHAD EVERINGHAM  
12 UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 FOR THE PLAINTIFFS: MR. JOHN W. OSBORNE  
15 MR. JAMES W. GOULD  
16 MR. PETER N. FILL  
17 MR. STEVEN M. PURDY  
18 MR. PETER H. NOH  
19 Locke Lord Bissell & Liddell  
20 3 World Financial Center  
21 New York, New York 10281  
22 MR. MICHAEL C. SMITH  
23 Siebman Burg Phillips & Smith  
24 113 East Austin Street  
25 Marshall, TX 75670

APPEARANCES CONTINUED ON NEXT PAGE:

26 COURT REPORTERS: MS. SUSAN SIMMONS, CSR  
27 MS. JUDITH WERLINGER, CSR  
28 Official Court Reporters  
29 100 East Houston, Suite 125  
30 Marshall, TX 75670  
31 903/935-3868

32 (Proceedings recorded by mechanical stenography,

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

APPEARANCES CONTINUED:

FOR THE DEFENDANTS: MR. MARC L. DELFLACHE  
MR. DUSTIN MAUCK  
Fulbright & Jaworski  
2200 Ross Avenue, Suite 2800  
Dallas, TX 75201

MR. RICHARD S. ZEMBEK  
Fulbright & Jaworski  
1301 McKinney, Suite 5100  
Houston, TX 77010

MR. OTIS CARROLL  
Ireland Carroll & Kelley  
6101 South Broadway, Suite 500  
Tyler, TX 75703

\* \* \* \* \*

P R O C E E D I N G S

LAW CLERK: All rise.  
(Jury in.)  
THE COURT: All right. Thank you.  
Please be seated.  
All right. Have a witness in the  
courtroom?  
Good morning.  
THE WITNESS: Good morning, Your Honor.  
THE COURT: Mr. Carroll?  
MR. CARROLL: If the Court please, Your  
Honor.

1 A. Yes, I do.

2 Q. Okay. Now, this piece of -- this document --  
3 can you see it on your screen, by the way?

4 A. Yes, I can.

5 Q. Okay. This is called Hospitality Technology.  
6 And in the very middle, it says: Our Premier Issue.  
7 And then on the corner --

8 MR. CARROLL: Can you flip that thing  
9 over on the side, Jim?

10 There we go. And lift that out.

11 Q. (By Mr. Carroll) And this says Keith McNally,  
12 President, Ameranth Technology, 27201 Tourney Road,  
13 Valencia, California, and then it gives a ZIP Code.  
14 Is that your proper address, or was it at the time?

15 A. It was the address of an old Ameranth office  
16 at the time, yes.

17 Q. Okay. But, again, you gave this to us out of  
18 your files.

19 You don't dispute that, correct?

20 A. No, we produced it.

21 Q. Okay. So -- and can you find with me up in  
22 the upper right-hand corner, the date on this document?  
23 January of 1997, correct?

24 A. Yes; that's correct.

25 Q. And that's before the date that you filed your

1 disclosure of your patent to the Patent Office by two  
2 years, is it not?

3 A. Yes, it is.

4 Q. Now, let's look at this document that came  
5 from your files and the -- by the way, the title of the  
6 issue says: Bringing Technology to the Table.

7 You see that, correct?

8 A. Yes.

9 Q. Okay. Now, let's flip over to 37731, if we  
10 can, where it says Wireless Technology. Here we go.

11 Okay. And this is a page out of this  
12 magazine, correct? This is an article?

13 A. Yes, it is.

14 Q. And this starts out: For a small but growing  
15 number of restaurant operators, order entry systems that  
16 can communicate directly from a dining area to the  
17 kitchen without being tied to a landline connection or  
18 slashing customer wait times and beefing up employee  
19 productivity in operations as diverse as hotels and  
20 quick-serve restaurants.

21 You see that, correct?

22 A. Yes.

23 Q. And then you see a piece -- a picture.  
24 That's -- that is the MICROS -- it says: Photo, MICROS  
25 Systems, Inc., down in the right-hand corner of the

1 picture.

2 That's a MICROS product, is it not?

3 A. Yes.

4 Q. Okay. Now let's -- let's flip over to the  
5 next page, 37732, and up at the top, it starts talking  
6 about the Hilton Hotel chain or the Hilton Hotel at the  
7 Walt Disney World Village.

8 See where I am?

9 A. Yes.

10 Q. And it starts out saying: The 814-room Hilton  
11 at Walt Disney World Village has been using a handheld  
12 touchscreen system from MICROS Systems, Inc., in its  
13 pool area for about 18 months to deliver beverage  
14 service in roughly the time it takes for guests to towel  
15 themselves off.

16 Do you see that, right?

17 A. Yes.

18 Q. And then it goes on to describe the Hilton  
19 uses four HHT units.

20 What does that mean? Handheld transmitters?

21 A. That seems to be the case, yes.

22 Q. Have you ever heard that term before, HHT?

23 THE COURT: The document refers to it as  
24 touchscreen as opposed to a transmitter.

25 Q. (By Mr. Carroll) Okay. Do you know what

# 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.