

Find authenticated court documents without watermarks at docketalarm.com.

DOCKE

Δ

	Case 3:14-cv-01303-GPC-JLB Document 1 Filed 05/27/14 Page 2 of 8
1	Plaintiff IPDEV Co. ("IPDEV") files this Complaint against Defendant Ameranth, Inc.
2	("Ameranth") to seek an adjudication of priority of invention under 35 U.S.C. § 291 (pre-America

3 Invents Act ("AIA")) of U.S. Patent Nos. 8,738,449 (the "IPDEV '449 patent") and 5,991,739

4 (the "739 patent"), assigned to IPDEV, over U.S. Patent Nos. 6,384,850 (the "Ameranth '850

5 patent"), 6,871,325 (the "Ameranth '325 patent"), and 8,146,077 (the "Ameranth '077 patent";

6 collectively, the "Ameranth patents"), which on information and belief, are assigned to Ameranth.

PARTIES

Plaintiff IPDEV is an Illinois corporation located at 414 North Orleans Street
 Suite 501, Chicago, IL 60654-4498. IPDEV owns certain intellectual property assets, including
 the IPDEV patents. IPDEV is an affiliated company of QuikOrder, Inc. ("QuikOrder").

On information and belief, Defendant Ameranth is a Delaware corporation with a
 principal place of business at 5820 Oberlin Drive, Suite 202, San Diego, CA 92121-3744.
 Ameranth is listed as the assignee of the Ameranth patents.

JURISDICTION AND VENUE

This is an interfering patents action arising under 35 U.S.C. § 291 (pre-AIA). This
Court has subject matter jurisdiction over this action under 35 U.S.C. § 291 and 28 U.S.C.
§§ 1391(b) and (c).

This Court has personal jurisdiction over Ameranth. Ameranth has its principal
 place of business within this judicial district and has engaged in substantial business activities
 within this judicial district. Ameranth is also the plaintiff in a number of patent infringement
 actions in this district in which Ameranth has alleged infringement of the Ameranth patents, for
 example the consolidated action styled *Ameranth, Inc. v. Pizza Hut, Inc., et al.*, case number 3:11 cv-01810-DMS-WVG ("the Ameranth patent infringement litigations").

5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c).

THE AMERANTH PATENT INFRINGEMENT LITIGATIONS

- 2 -

COMPLAINT UNDER 35 U.S.C. § 291 (PRE-AIA)

6. On August 15, 2011, Ameranth filed a complaint alleging infringement of the
 Ameranth '850 and '325 patents in this Judicial District, case number 3:11-cv-1810, against a
 number of defendants, including QuikOrder.

SCHIFF HARDIN LLP Attorneys At Law San Francisco

7

14

24

25

Find authenticated court documents without watermarks at docketalarm.com.

Case 3:14-cv-01303-GPC-JLB Document 1 Filed 05/27/14 Page 3 of 8

1	7. On March 27, 2012, Ameranth filed a complaint in this Judicial District alleging
2	infringement of the Ameranth '077 patent against Pizza Hut of America, Inc., Pizza Hut, Inc., and
3	QuikOrder, case number 3:12-cv-00742-DMS-WVG. This action, along with other patent
4	infringement actions, was consolidated in the 3:11-cv-1810 action for pre-trial purposes.
5	8. IPDEV, while an affiliate of QuikOrder, is not a party to the Ameranth patent
6	infringement litigations.
7	THE INTERFERING PATENTS
8	The IPDEV Patents
9	9. On November 24, 1997, Bryan Cupps and Tim Glass filed U.S. Patent Application
10	serial number 08/976,793 (the "'793 application"). The '793 application issued on November 23,
11	1999 as the '739 patent. Thus, Cupps and Glass conceived and reduced to practice the invention
12	claimed in the '739 patent, which is entitled "Internet Online Order Apparatus and Method," by
13	no later than November 24, 1997.
14	10. On March 31, 1999, U.S. Patent Application serial number 09/282,645 (the "645
15	application") was filed as a continuation of the '793 application.
16	11. On August 22, 2012, U.S. Patent Application serial number 13/592,199 (the "199
17	application") was filed as a continuation of the '645 application. Thus, the '199 application also
18	claims an effective filing date of November 24, 1997. The '199 application issued on May 27,
19	2014 as the IPDEV '449 patent, which is also entitled "Internet Online Order Method and
20	Apparatus." The IPDEV '449 patent is attached as Exhibit A to this Complaint.
21	The Ameranth Patents
22	12. On information and belief, the Ameranth '850 patent, which is attached as Exhibit
23	B to this Complaint, issued from U.S. Patent Application serial number 09/400,413 (the "413
24	application"), which was filed on September 21, 1999.
25	13. On information and belief, the Ameranth '325 patent, which is attached as Exhibit
26	C to this Complaint, issued from U.S. Patent Application serial number 10/015,729 (the "729
27	application") and is a continuation of the '413 application. Thus, the Ameranth '325 patent is
28	entitled to an effective filing date no earlier than September 21, 1999.
SCHIFF HARDIN LLP Attorneys At Law	- 3 -
San Francisco	COMPLAINT UNDER 35 U.S.C. § 291 (PRE-AIA)

Find authenticated court documents without watermarks at <u>docketalarm.com</u>.

DOCKET

Δ

Case 3:14-cv-01303-GPC-JLB Document 1 Filed 05/27/14 Page 4 of 8

1	14. On information and belief, on or about November 16, 2004, in response to a
2	rejection of the then-pending claims of the '729 application for obviousness-type double
3	patenting, the applicants of the '729 application disclaimed the part of the patent term for any
4	patent that would issue from the '729 application that would extend beyond the expiration date of
5	the term for the Ameranth '850 patent.

6 15. On information and belief, the Ameranth '077 patent, which is attached as Exhibit
7 D to this Complaint, issued from U.S. Patent Application serial number 11/112, 990 (the "'990
8 application") and claims priority to a series of continuations to the '413 application. Thus, the
9 Ameranth '077 patent is entitled to an effective filing date no earlier than September 21, 1999.

10 16. On information and belief, on or about August 29, 2008, in response to a rejection 11 of the then-pending claims of the '990 application for obviousness-type double patenting, the 12 applicants of the '990 application disclaimed the part of the patent term for any patent that would 13 issue from the '990 application that would extend beyond the expiration date of the term for the 14 Ameranth '850 patent.

INTERFERENCE-IN-FACT

6	17. During the prosecution of IPDEV's '199 applications, the applicants amended the	
7	claims by copying claims 1-18 of the Ameranth '077 patent and added claims 19-21. The	
8	applicants specifically indicated in a preliminary statement during the prosecution that they had	
9	copied the claims from the Ameranth '077 patent pursuant to 35 U.S.C. § 135(b).	
0	18. During prosecution of the '199 application, applicants made minor amendments to	

21 claims 1-21 in response to an indefiniteness rejection under 35 U.S.C. § 112(b).

19. The following is a comparison of claim 1 of the Ameranth '077 patent with claim 1 of the IPDEV '449 patent. Deletions from the text of claim 1 of the Ameranth '077 patent in the IPDEV '449 patent are indicated by a strikethrough, and additions are indicated by underlining:

1. An information management and real time synchronous

communications system for configuring and transmitting hospitality menus

comprising:

SCHIFF HARDIN LLP Attorneys At Law San Francisco

15

1

1

2

22

23

24

25

26

27

28

- 4 -COMPLAINT UNDER 35 U.S.C. § 291 (PRE-AIA)

Find authenticated court documents without watermarks at docketalarm.com.

Case 3:14-cv-01303-GPC-JLB Document 1 Filed 05/27/14 Page 5 of 8

1	a. a central processing unit,
2	b. a data storage device connected to said central processing unit,
3	c. an operating system including a first graphical user interface,
4	d. a master menu including at least menu categories, menu items and
5	modifiers, wherein said master menu is capable of being stored on said data
6	storage device pursuant to a master menu file structure and said master menu is
7	capable of being configured for display to facilitate user operations in at least one
8	window of said first graphical user interface as cascaded sets of linked graphical
9	user interface screens, and
10	e. menu configuration software enabled to generate a programmed
11	handheld menu configuration from said master menu for wireless transmission to
12	and programmed for display on a wireless handheld computing device, said
13	programmed handheld menu configuration comprising at least menu categories,
14	menu items and modifiers and wherein the menu configuration software is
15	enabled to generate said programmed handheld menu configuration by utilizing
16	parameters from the master menu file structure defining at least the menu
17	categories, menu items and modifiers of the master menu such that at least the
18	menu categories, menu items and modifiers comprising the programmed handheld
19	menu configuration are synchronized in real time with analogous information
20	comprising the master menu,
21	wherein the menu configuration software is further enabled to generate the
22	programmed handheld menu configuration in conformity with a customized
23	display layout unique to the wireless handheld computing device to facilitate user
24	operations with and display of the programmed handheld menu configuration on
25	the display screen of a handheld graphical user interface integral with the wireless
26	handheld computing device, wherein said customized display layout is compatible
27	with the displayable size of the handheld graphical user interface wherein the
28	programmed handheld menu configuration is configured by the menu
SCHIFF HARDIN LLP Attorneys At Law	- 5 -
SAN FRANCISCO	COMPLAINT UNDER 35 U.S.C. § 291 (PRE-AIA)

Find authenticated court documents without watermarks at <u>docketalarm.com</u>.

DOCKET

LARM

Δ

DOCKET A L A R M



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.