

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

AMERANTH, INC.,

Plaintiff,

v.

MENUSOFT SYSTEMS CORPORATION
and CASH REGISTER SALES & SERVICE
OF HOUSTON, INC.
(dba CRS TEXAS),

Defendants.

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Civil Action No. 2:07-CV-271-TJW-CE

**DEFENDANTS' RESPONSE TO AMERANTH'S MOTION FOR JUDGMENT
AS A MATTER OF LAW OF NONOBVIOUSNESS (DKT. 281)**

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I. INTRODUCTION

Ameranth asks the Court to impermissibly reweigh and reduce the evidence of record to merely Dr. Acampora's testimony on the prior art and disregard (1) Dr. Shamos' testimony, (2) Dr. Acampora's invalidity report, (3) Ameranth's prior art admissions in its interrogatory answers, (4) Keith McNally's admissions regarding the prior art, (5) Ameranth's former director of marketing Kathie Sanders's admissions regarding the prior art, (6) the PTO's rejections of the claims in Ameranth's continuation application based on the same prior art considered by the jury, (7) the PTO's rejection of McNally's declaration on alleged secondary considerations in examining the continuation application, and (8) the PTO's rejection of Ameranth's teaching away arguments on Micros and Kanevsky in the continuation application.

Based on the evidence of record – and not merely what Ameranth asks the Court to consider – the jury had more than sufficient evidence to reach a supportable verdict of obviousness. Rather than stick to the trial record, Ameranth wants the Court (1) to rely on evidence outside the record, (2) to usurp the jury's role by arguing Dr. Acampora was not forthright about his familiarity with TransPad, the content of his expert report, his understanding of Micros 8700, and his consideration of Ameranth's asserted secondary considerations, and (3) find the asserted claims valid based on limitations not found in the asserted claims and based on arguments that even the PTO has rejected. The trial record supports the jury finding that the asserted claims are invalid based on multiple independent combinations, and Ameranth's motion should be denied.

II. FACTUAL BACKGROUND

The jury heard about prior art from start to finish, and Dr. Acampora's report, which contained detailed claim charts on the prior art, even went back to the jury room. Ex. 9, 9/13/10 PM Tr. 115:22-116:9; 9/14/10 AM Tr. 11:17-22; Ex. 10, 9/13/10 PM Tr. 16:4-15; 19:8-22:3.

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