

1 SCHIFF HARDIN LLP
2 GEORGE C. YU (CSB #193881)
3 gyu@schiffhardin.com
4 DUANE H. MATHIOWETZ (CSB #111831)
5 dmathiowetz@schiffhardin.com
6 One Market, Spear Street Tower
7 Thirty-Second Floor
8 San Francisco, CA 94105
9 Telephone: (415) 901-8700
10 Facsimile: (415) 901-8701
11
12 ASHE, P.C.
13 OLIVER R. ASHE, JR. (*Pro Hac Vice* pending)
14 11440 Isaac Newton Square North, Ste. 210
15 Reston, VA 20190
16 Telephone: (703) 467-9001
17 Facsimile: (703) 467-9002
18
19 Attorneys for Plaintiff
20 IPDEV Co.

21 UNITED STATES DISTRICT COURT
22 SOUTHERN DISTRICT OF CALIFORNIA

23 IPDEV CO.,
24
25 Plaintiff,
26
27 v.
28 AMERANTH, INC.,
29 Defendant.

CASE NO. '14CV1303 GPC JLB

**COMPLAINT FOR DETERMINATION
OF PRIORITY OF INVENTION
AMONG INTERFERING PATENTS
UNDER 35 U.S.C. § 291 (PRE-AIA)**

Complaint Filed: May 27, 2014



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.

7 **PARTIES**

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

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

14 **JURISDICTION AND VENUE**

15 3. This is an interfering patents action arising under 35 U.S.C. § 291 (pre-AIA). This
16 Court has subject matter jurisdiction over this action under 35 U.S.C. § 291 and 28 U.S.C.
17 §§ 1391(b) and (c).

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

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

25 **THE AMERANTH PATENT INFRINGEMENT LITIGATIONS**

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

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.

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.

15 **INTERFERENCE-IN-FACT**

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

20 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).

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

26 1. An information management and real time synchronous
27 communications system for configuring and transmitting hospitality menus
28 comprising:

- 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

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