

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

AMERANTH, INC.,)	Civil Action
)	
Plaintiff,)	No. 2:23-cv-02165-WSH
)	
v.)	Judge W. Scott Hardy
)	
DOORDASH, INC., EAT’N PARK)	
RESTAURANTS, LLC and EAT’N PARK)	<u>Electronically Filed</u>
HOSPITALITY GROUP, INC.,)	
)	
Defendants.)	

**DEFENDANTS’ OPPOSED MOTION TO
EXTEND RESPONSIVE PLEADING DEADLINE**

Defendants, DoorDash, Inc., (“DoorDash”) and Eat’n Park Restaurants, LLC and Eat’n Park Hospitality Group, Inc., (“Eat’n Park”) (collectively “Defendants”), respectfully move to extend the time to answer or move to dismiss to the Complaint by sixty (60) days until and including July 16, 2024. Alternatively, Defendants request an extension of time to answer or otherwise respond to the Complaint until 21 days from the date this Court rules on DoorDash’s pending motion to dismiss in *Ameranth I* (see below). Previously, on March 5, 2024, the parties moved jointly for one extension of time for Defendants to respond to Ameranth’s Complaint until and including May 17, 2024 (Dkt. 10). As grounds for their Motion, and pursuant to Judge Hardy’s Practices and Procedures II(A)(3), Defendants state as follows:

1. Ameranth filed its Complaint against the Defendants on December 12, 2023, ostensibly as a follow-on action to the co-pending action captioned *Ameranth, Inc. v. DoorDash, Inc.*, Civil Action No. 2:22-cv-01776-WSH (“*Ameranth I*”).
2. In *Ameranth I*, Plaintiff sued DoorDash in this District for infringement of U.S. Patent No. 11,276,130 (the “130 patent”) on December 9, 2022. (*Ameranth I*, Dkt. 1.)

3. On June 29, 2023, DoorDash timely moved to dismiss in *Ameranth I* for improper venue, or alternatively, to transfer, and failure to state a claim as the '130 patent is invalid (*Ameranth I*, Dkt. 21). DoorDash's Motion to Dismiss in *Ameranth I* is currently pending before this Court.

4. Thereafter, Ameranth brought the current action against DoorDash and Eat'n Park alleging infringement of U.S. Patent Nos. 11,842,415 (the "'415 patent") and 11,847,587 (the "'587 patent'), both of which are in the same patent family and stem from the '130 patent asserted in *Ameranth I*.

5. On March 5, 2024, the parties moved jointly to extend the deadline for Defendants to respond to Plaintiff's Complaint by sixty (60) days until and including May 17, 2024.

6. DoorDash continues to believe that venue is improper in this District as to DoorDash for at least the same grounds raised in *Ameranth I*. Thus, guidance from the Court in its ruling on DoorDash's motion to dismiss in *Ameranth I* with regard to the venue question would inform the parties on how best to proceed in the instant action by streamlining the issues and avoiding unnecessary motion practice before the Court.

7. Moreover, Ameranth's addition of new defendant Eat'n Park has no bearing on venue against DoorDash. Eat'n Park is a merchant that uses the DoorDash platform (including by appearing on DoorDash MarketPlace so consumers can order from Eat'n Park) as an independent contractor. But independent businesses that contract with DoorDash are not "places of the defendant" as required to establish venue against DoorDash under the test set out by the Federal Circuit in *In re Cray*, 871 F.3d 1355, 1363 (Fed. Cir. 2017) ("Finally, the third requirement when determining venue is that 'the regular and established place of business' must be 'the place of the defendant.'"); *see also Talsk Rsch. Inc. v. Evernote Corp.*, No. 16-cv-2167, 2017 WL 4269004 at

*5 (N.D. Ill. Sept. 26, 2017) (finding no defendant presence through non-employee independent contractors, and noting that “relying on customer use of Defendant’s [product] within the district as a substitute for a fixed physical location would not be proper.”).

8. In addition, Defendants believe that just like the asserted claims of the ’130 patent in *Ameranth I*, the asserted claims of the ’415 and ’587 patents here are invalid under 35 U.S.C. § 101 for claiming patent ineligible subject matter. Indeed, the ’415 and ’587 patents issued from divisional and continuation applications claiming priority to and sharing the *same specification* as the ’130 patent asserted in *Ameranth I*. Therefore, a ruling by the Court on the patent ineligibility issue in *Ameranth I* would inform and simplify the issues with regard to patent eligibility in this case as well.

9. Further, the requested extension will not unduly delay the ultimate resolution of this matter or unduly prejudice Ameranth, which is a patent assertion entity seeking monetary damages. *See, e.g., Gesture Tech. Partners, LLC v. LG Elecs. Inc.*, No. CV2119234JMVMAH, 2022 WL 1002101, at *5 (D.N.J. Apr. 4, 2022) (concluding that the relationship of the parties favored a stay pending *inter partes* review because the plaintiff was “a non-practicing entity that does not directly compete with [defendant], and can be compensated by money damages.”). For at least these reasons, good cause exists to grant the extension of time sought by this Motion. Fed. R. Civ. P 6(b)(1). No other deadlines would be affected by this request.

10. Defendants consulted with Ameranth about the requested 60-day extension. Ameranth refused to agree to Defendants’ request. Ameranth’s position is that the parties are different in this case compared to *Ameranth I*, there are new and different venue factors, and the patents and patent claims are different as well. Ex. A.

11. However, as explained above, good cause exists to extend the deadline for Defendants to respond to Ameranth's Complaint in this action. DoorDash is a named defendant both here and in *Ameranth I* and the venue issues remain the same with respect to DoorDash. Further, the patents asserted here are in the same family and derive from the patent asserted in *Ameranth I*, suffering from the same patent ineligibility flaws.

WHEREFORE, Defendants respectfully request that the deadline for Defendants to file a responsive pleading be extended by 60 days from May 17, 2024 to July 16, 2024. Alternatively, Defendants request an extension of time to answer or otherwise respond to the Complaint until 21 days from the date this Court rules on DoorDash's pending Motion to Dismiss in *Ameranth I*.

Respectfully submitted,

THE WEBB LAW FIRM

Dated: May 8, 2024

s/ Kent E. Baldauf, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of May, 2024, I electronically filed the foregoing **DEFENDANTS' OPPOSED MOTION TO EXTEND RESPONSIVE PLEADING DEADLINE** with the Clerk of Court using the CM/ECF system which sent notification to all counsel of record.

THE WEBB LAW FIRM

s/ Kent E. Baldauf, Jr.

Kent E. Baldauf, Jr.