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18 **UNITED STATES DISTRICT COURT**

19 **SOUTHERN DISTRICT OF CALIFORNIA**

20 AMERANTH, INC.

21 Plaintiff,

22 v.

23 STARBUCKS CORPORATION,

24 Defendant.

Case No. '13CV1072 MMABGS

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

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COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Ameranth, Inc. (“Ameranth”), for its Complaint against defendant Starbucks Corporation (herein “Starbucks” or “Defendant”), avers as follows:

PARTIES

1. Ameranth is a Delaware corporation having a principal place of business at 5820 Oberlin Drive, Suite 202, San Diego, California 92121. Ameranth develops, manufactures and sells, *inter alia*, hospitality industry, entertainment, restaurant and food service information technology solutions under the trademarks 21st Century Communications™, and 21st Century Restaurant™, among others, comprising the synchronization and integration of hospitality information and hospitality software applications between fixed, wireless and/or internet applications, including but not limited to computer servers, web servers, databases, affinity/social networking systems, desktop computers, laptops, “smart” phones and other wireless handheld computing devices.

2. Defendant Starbucks is, on information and belief, a Washington corporation having a principal place of business and headquarters at 2401 Utah Avenue South, Seattle, Washington 98134. On information and belief, Starbucks makes, uses, sells and/or offers for sale, restaurant, foodservice, point-of-sale and other hospitality information technology products, software, components and/or systems within this Judicial District, including the Starbucks Mobile and Online Ordering, Starbucks gift cards, My Starbucks Rewards Loyalty Program and/or Payment Processing Software, Product, Service and/or System as identified, as further described and defined herein.

JURISDICTION AND VENUE

3. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 271, 281-285.

1 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§
2 1331 and 1338(a).

3 5. On information and belief, Defendant engages in (a) the offer for
4 sale or license and sale or license of hospitality, restaurant, food service,
5 ordering, products and/or components in the United States, including this Judicial
6 District, including services, products, software, and components, comprising
7 wireless and internet POS and/or hospitality aspects; (b) the installation and
8 maintenance of said services, products, software, components and/or systems in
9 hospitality industry, restaurant, food service, catering and/or entertainment
10 information technology systems in the United States, including this Judicial
11 District; and/or (c) the use of hospitality industry, restaurant, food service and/or
12 entertainment information technology systems comprising said services,
13 products, software, components and/or systems in the United States, including
14 this Judicial District.

15 6. This Court has personal jurisdiction over Defendant because
16 Defendant commits acts of patent infringement in this Judicial District including,
17 *inter alia*, making, using, offering for sale or license, and/or selling or licensing
18 infringing services, products, software, components and/or systems in this
19 Judicial District.

20 7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§
21 1391(b) and (c) and 1400(b).

22 **BACKGROUND**

23 8. Ameranth was established in 1996 to develop and provide its 21st
24 Century Communications™ innovative information technology solutions for the
25 hospitality industry (inclusive of, *e.g.*, restaurants, hotels, casinos, nightclubs,
26 cruise ships and other entertainment and sports venues). Ameranth has been
27 widely recognized as a technology leader in the provision of wireless and
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1 internet-based systems and services to, *inter alia*, restaurants, hotels, casinos,
2 cruise ships and entertainment and sports venues. Ameranth's award winning
3 inventions enable, in relevant part, generation and synchronization of menus,
4 including but not limited to restaurant menus, event tickets, and other products
5 across fixed, wireless and/or internet platforms as well as synchronization of
6 hospitality information and hospitality software applications across fixed,
7 wireless and internet platforms, including but not limited to, computer servers,
8 web servers, databases, affinity/social networking systems, desktop computers,
9 laptops, "smart" phones and other wireless handheld computing devices.

10 9. Ameranth began development of the inventions leading to the
11 patent-in-suit and the other patents in this patent family in the late Summer of
12 1998, at a time when the then-available wireless and internet hospitality offerings
13 were extremely limited in functionality, were not synchronized and did not
14 provide an integrated system-wide solution to the pervasive ordering,
15 reservations, affinity program and information management needs of the
16 hospitality industry. Ameranth uniquely recognized the actual problems that
17 needed to be resolved in order to meet those needs, and thereafter conceived and
18 developed its breakthrough inventions and products to provide systemic and
19 comprehensive solutions directed to optimally meeting these industry needs.
20 Ameranth has expended considerable effort and resources in inventing,
21 developing and marketing its inventions and protecting its rights therein.

22 10. Ameranth's pioneering inventions have been widely adopted and are
23 thus now essential to the modern wireless hospitality enterprise of the 21st
24 Century. Ameranth's solutions have been adopted, licensed and/or deployed by
25 numerous entities across the hospitality industry and are well-known therein.

26 11. The adoption of Ameranth's technology by industry leaders and the
27 wide acclaim received by Ameranth for its technological innovations are just
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1 some of the many confirmations of the breakthrough aspects of Ameranth's
2 inventions. Ameranth has received twelve different technology awards (three
3 with "end customer" partners) and has been widely recognized as a hospitality
4 wireless/internet technology leader by almost all major national and hospitality
5 print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today
6 and many others. Ameranth was personally nominated by Bill Gates, the
7 Founder of Microsoft, for the prestigious Computerworld Honors Award that
8 Ameranth received in 2001 for its breakthrough synchronized
9 reservations/ticketing system with the Improv Comedy Theatres. In his
10 nomination, Mr. Gates described Ameranth as "one of the leading pioneers of
11 information technology for the betterment of mankind." This prestigious award
12 was based on Ameranth's innovative synchronization of wireless/web/fixed
13 hospitality software technology. Subsequently, the United States Patent and
14 Trademark Office granted Ameranth a number of currently-issued patents, two of
15 which are the basis for this lawsuit. Ameranth has issued press releases
16 announcing these patent grants on business wires, on its web sites and at
17 numerous trade shows since the first of the two presently-asserted patents issued
18 in 2002. A number of companies have licensed patents and technology from
19 Ameranth, recognizing and confirming the value of Ameranth's innovations.
20 Currently, seventeen companies have licensed patents in the Ameranth patent
21 family which includes the patents asserted herein.

22 12. Starbucks is well aware of this Ameranth patent family and has
23 duplicated and widely deployed Ameranth's technology covered by these patents.
24 Ameranth provided its technology vision for Starbucks to a Starbucks
25 Information Technology Senior IT Executive in December 2006, detailing
26 Ameranth's vision of wireless/mobile orders, wireless payments and a Starbucks'
27 customer frequency program, based on Ameranth's proprietary technology
28

1 including the technology encompassed by the claims of the presently asserted
2 patents. Ameranth specifically identified U.S. Patent Nos. 6,384,850; 6,871,325
3 and 7,892,733 to Starbucks in the December 2006 technology vision presentation.
4 However, due to management turmoil occurring within Starbucks in 2007, such
5 projects were delayed and would not be pursued until the later return of Howard
6 Schultz, Starbucks' founder, as CEO. Schultz reassumed the CEO position in or
7 around January of 2008, after an eight year hiatus, and on March 19, 2008, at the
8 Starbucks annual shareholder meeting, Schultz announced the "My Starbucks
9 Ideas" program, under which persons and entities could submit idea proposal to
10 Starbucks for consideration by the company. Integral to this program was
11 Starbucks' commitment to respect the patented technology of those submitting
12 their ideas, as long as Starbucks was advised of the existence of any patents
13 related to the submitted ideas. Starbucks was, on information and belief, seeking
14 the vision and assistance of outside innovators to restore its momentum and
15 improve its financial performance.

16 13. Ameranth submitted its Starbucks Technology Vision to Starbucks
17 through the "My Starbucks Ideas" program on March 24, 2008, titled
18 "Eliminating Lines-Greatly Reducing Waits," and explicitly advised Starbucks
19 that the technology was patented by Ameranth. Despite representing (via the My
20 Starbucks Ideas, term and conditions) to Ameranth that Starbucks would respect
21 Ameranth's patent rights in the information communicated by Ameranth,
22 Starbucks proceeded to duplicate Ameranth's technology and is now infringing
23 the patents in disregard of Ameranth's intellectual property rights. Starbucks'
24 infringement based on its unlicensed use and duplication of information and ideas
25 conceived by and provided to it by Ameranth, through the "My Starbucks Ideas"
26 program, began, on information and belief, as early as late 2009. Ameranth
27 believes that Starbucks' unlicensed use of Ameranth's patented technology has
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1 contributed substantially to Starbucks' financial performance since 2009. Just
2 recently (in an April 24, 2013 interview with USA Today), Howard Schultz
3 stated: "The bulk of Starbucks Innovation over the next several years will be
4 technology-focused. Already, Starbucks is producing more than three million
5 mobile payments per week." "That," says Schultz, "exceeds the combined
6 mobile payments of the next ten companies closest to Starbucks." Such wireless
7 payment transactions infringe on Ameranth's patents and reflect the novel ideas
8 originally submitted to Starbucks, by Ameranth, via the My Starbucks Ideas
9 program.

10 14. The three patents which are asserted in this lawsuit against
11 Starbucks have been previously asserted in several patent enforcement actions
12 against business partners of Starbucks, as noted below, including, *inter alia*,
13 Micros, Apple and OLO Online Ordering. Despite longstanding knowledge that
14 its activities infringe Ameranth's valid and enforceable patents, Starbucks has
15 nonetheless continued its infringing activities for at least 3 years, since as early as
16 late 2009.

17 **RELATED CASES PREVIOUSLY FILED**

18 15. The Ameranth patents asserted herein, U.S. Patent No. 6,384,850
19 (the "850 patent"), U.S. Patent No. 6,871,325 (the "325 patent"), and U.S.
20 Patent No. 8,146,077 (the "077 patent"), are all patents in Ameranth's
21 "Information Management and Synchronous Communications" patent family.

22 16. Ameranth is also currently asserting claims of these same patents in
23 separate lawsuits, against other defendants, that are already pending in this Court.
24 The first-filed lawsuit asserts claims of the '850 and '325 patents and is entitled
25 *Ameranth v. Pizza Hut, Inc. et al.*, Case No. 3:11-cv-01810-JLS-NLS. Lawsuits
26 subsequently filed by Ameranth in this Court, asserting claims of the '077 patent,
27 include Case Nos. 3:12-cv-00729-JLS-NLS; 3:12-cv-00731-JLS-NLS; 3:12-cv-

1 00732-JLS-NLS; 3:12-cv-00733-JLS-NLS; 3:12-cv-00737-JLS-NLS; 3:12-cv-
2 00738-JLS-NLS (settled); 3:12-cv-00739-JLS-NLS and 3:12-cv-00742-JLS-
3 NLS. Other lawsuits filed by Ameranth in this Court asserting claims of the
4 ‘850, ‘325, and ‘077 patents are Case No. 3:12-cv-00858-JLS-NLS; 3:12-cv-
5 1201-JLS-NLS (settled): 3:12-cv-01627-JLS-NLS; 3:12-cv-01629-JLS-NLS;
6 3:12-cv-01630-JLS-NLS; 3:12-cv-01631-JLS-NLS; 3:12-cv-01633-JLS-NLS;
7 3:12-cv-01634-JLS-NLS; 3:12-cv-01636-JLS-NLS; 3:12-cv-01640-JLS-NLS;
8 3:12-cv-01642-JLS-NLS; 3:12-cv-01643-JLS-NLS; 3:12-cv-01644-JLS-NLS;
9 3:12-cv-01646-JLS-NLS 3:12-cv-01647-JLS-NLS (settled); 3:12-cv-01648-JLS-
10 NLS; 3:12-cv-01649-JLS-NLS; 3:12-cv-01650-JLS-NLS; 3:12-cv-01651-JLS-
11 NLS; 3:12-cv-01652-JLS-NLS; 3:12-cv-01653-JLS-NLS; 3:12-cv-01654-JLS-
12 NLS; 3:12-cv-01655-JLS-NLS; 3:12-cv-01656-JLS-NLS; 3:12-cv-01659-JLS-
13 NLS; 3:12-cv-2350-IEG–BGS; 3:13-cv-00350-JLS-NLS; 3:13-cv-00352-JLS-
14 NLS; 3:13-cv-00353-JLS-NLS and 3:13-cv-0836-JLS-NLS. All of the above
15 still-pending cases have been consolidated for pre-trial through claim
16 construction except for 3:12-cv-2350-IEG–BGS; 3:13-cv-00350-JLS-NLS; 3:13-
17 cv-00352-JLS-NLS; 3:13-cv-00353-JLS-NLS and 3:13-cv-0836-JLS-NLS.

18 **COUNT I**

19 **Patent Infringement (U.S. Pat. No. 6,384,850)**

20 **(35 U.S.C. § 271)**

21 17. Plaintiff reiterates and incorporates the allegations set forth in
22 paragraphs 1-16 above as if fully set forth herein.

23 18. On May 7, 2002, United States Patent No. 6,384,850 entitled
24 “Information Management and Synchronous Communications System with Menu
25 Generation” (“the ‘850 patent”) (a true and copy of which is attached hereto as
26 **Exhibit A**) was duly and legally issued by the United States Patent & Trademark
27 Office.
28

1 19. Plaintiff Ameranth is the lawful owner by assignment of all right,
2 title and interest in and to the ‘850 patent.

3 20. On information and belief, Starbuck’s directly infringes and
4 continues to directly infringe one or more valid and enforceable claims of the
5 ‘850 patent, in violation of 35 U.S.C. § 271(a) by making, using, offering for sale
6 or license and/or selling or licensing infringing software, systems, products,
7 and/or services in the United States without authority or license from Ameranth,
8 including but not limited to the Starbucks software and/or
9 system/product/service, which includes, *inter alia*, wireless and internet point-of-
10 sale (“POS”) integration (via, *inter alia*, Starbucks’ own software as well as
11 software/products/systems/services of third party providers such as Micros
12 Symphony), online and mobile ordering (via, *inter alia*, Starbucks’ own software
13 as well as software/products/systems/services of third party providers such as
14 OLO Online Ordering), integration with mobile pass providers/applications
15 (including, *inter alia*, ticketing, coupons, loyalty and payment via, for example,
16 Apple Passbook), integration with payment processors to provide mobile
17 payment processing (via, *inter alia*, Starbucks’ own software (for, *e.g.*, Starbucks
18 Card and Starbucks Reward programs) as well as
19 software/products/systems/services of third party providers such as Square Wallet
20 and Apple Passbook), integration with third party gift/loyalty
21 programs/providers, integration with e-mail and affinity program and social
22 media applications such as Yelp, Facebook, Twitter, Instagram, Groupon, and/or
23 YouTube, and/or other third-party web-based applications, and other hospitality
24 aspects (all of which are referred to individually and collectively herein as
25 “Starbucks Software/System/Product/Service” and include, *inter alia*, Starbucks’
26 software products, system and/or services and all software modules, products or
27 services integrated therewith or available for integration therewith). Starbucks
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1 publicizes its infringing activities as an important aspect of its business. For
2 example, Starbucks recently publicized the success of its mobile applications,
3 including mobile customer loyalty program and payment processing applications:
4 “Every week, Starbucks is seeing close to four million mobile payment
5 transactions, up from two million near the end of last year and three million a
6 month ago. Additionally, mobile now accounts for approximately 10 percent of
7 Starbuck’s total U.S. tender. . . . Starbucks also reported that its mobile apps now
8 have than ten million active customers and that it is adding approximately 80,000
9 new My Starbucks Rewards customers each week. . . . Starbucks card tender now
10 exceeds \$3 billion annually.” “Starbucks Generates 10% of US Revenue from
11 Mobile,” [http://www.mobilecommercedaily.com/starbucks-generates-10pc-of-u-](http://www.mobilecommercedaily.com/starbucks-generates-10pc-of-u-s-revenue-from-mobile)
12 [s-revenue-from-mobile](http://www.mobilecommercedaily.com/starbucks-generates-10pc-of-u-s-revenue-from-mobile), April 29, 2013.

13 21. On information and belief, the Starbucks
14 Software/System/Product/Service, as deployed and/or used at or from one or
15 more locations by Starbucks, its agents, distributors, partners, affiliates, licensees,
16 franchisees and/or their customers, including within this Judicial District, infringes
17 one or more valid and enforceable claims of the ‘850 patent, by, *inter alia*, doing,
18 or providing the capability for doing, at least one of the following: (a) Generating
19 and transmitting menus in a system including a central processing unit, a data
20 storage device, a computer operating system containing a graphical user
21 interface, one or more displayable main menus, modifier menus, and sub-
22 modifier menus, and application software for generating a second menu and
23 transmitting it to a wireless handheld computing device or a Web page; and/or (b)
24 Enabling ordering and other hospitality functions via iPhone, iPod, Android and
25 other internet-enabled wireless handheld computing devices as well as via Web
26 pages, storing hospitality information and data on at least one central database, on
27 at least one wireless handheld computing device, and on at least one Web server
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1 and Web page, and synchronizing applications and data, including but not limited
2 to applications and data relating to ordering, between at least one central
3 database, wireless handheld computing devices, and at least one Web server and
4 Web page; utilizing an interface that provides a single point of entry that allows
5 the synchronization of at least one wireless handheld computing device and at
6 least one Web page with at least one central database; allowing information to be
7 entered via Web pages, transmitted over the internet, and automatically
8 communicated to at least one central database and to wireless handheld
9 computing devices; allowing information to be entered via wireless handheld
10 computing devices, transmitted over the internet, and automatically
11 communicated to at least one central database and to Web pages.

12 22. On information and belief, Starbucks has indirectly infringed and
13 continues to indirectly infringe one or more valid and enforceable claims of the
14 ‘850 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
15 intentionally inducing direct infringement by other persons.

16 23. On information and belief, customers of Starbucks (including
17 consumers), store or restaurant operators, franchisees and other users, use the
18 Starbucks Software/System/Product/Service for, *inter alia*, POS integration,
19 online and mobile ordering, payment processing, frequency, loyalty, gift
20 programs/cards, payment cards, ticketing, coupons and integration with email,
21 affinity and social media programs/applications as detailed above in a manner
22 that infringes upon one or more valid and enforceable claims of the ‘850 patent.
23 Starbucks provides instruction and direction regarding the use of the Starbucks
24 Software/System/Product/Service, and advertises, promotes, and encourages the
25 use of the Starbucks Software/System/Product/Service in a manner that infringes
26 the ‘850 patent.

1 24. On information and belief, the Starbucks
2 Software/System/Product/Service infringes one or more valid and enforceable
3 claims of the ‘850 patent for the reasons set forth hereinabove.

4 25. Starbucks has long had knowledge of the ‘850 patent, including
5 through presentation of information from Ameranth to Starbucks as early as
6 2007, and knew or should have known that its continued offering and deployment
7 of the Starbucks Software/System/Product/Service, and its continued support of
8 consumers, franchisees, store or restaurant operators, and other users of this
9 software/system/product/service, would induce direct infringement by those
10 users. Additionally, on information and belief, Starbucks intended that its actions
11 would induce direct infringement by those users.

12 26. On information and belief, Defendant has indirectly infringed and
13 continues to indirectly infringe one or more valid and enforceable claims of the
14 ‘850 patent, in violation of 35 U.S.C. § 271(c).

15 27. By making, using, distributing, selling, offering, offering to sell or
16 license and/or selling or licensing the Starbucks
17 Software/System/Product/Service, Starbucks provides non-staple articles of
18 commerce to others for use in infringing systems, products, and/or services for,
19 *inter alia*, POS integration, online and mobile ordering, payment processing,
20 frequency, loyalty, gift programs/cards, payment cards, ticketing, coupons and
21 integration with email, affinity and social media programs/applications as
22 detailed above. Additionally, Starbucks provides instruction and direction
23 regarding the use of the Starbucks Software/System/Product/Service, and
24 advertises, promotes, and encourages the use of the Starbucks
25 Software/System/Product/Service. Users of one or more of the Starbucks
26 Software/System/Product/Service, including, *e.g.*, customers, store operators
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1 and/or franchisees, directly infringe one or more valid and enforceable claims of
2 the ‘850 patent for the reasons set forth hereinabove.

3 28. On information and belief, the Starbucks
4 Software/System/Product/Service infringes one or more valid and enforceable
5 claims of the ‘850 patent, for the reasons set forth hereinabove.

6 29. On information and belief, Starbucks has had knowledge of the ‘850
7 patent since as early as 2007, including knowledge that the Starbucks
8 Software/System/Product/Service, which is a non-staple article of commerce, has
9 been used as a material part of the claimed invention of the ‘850 patent, and that
10 there are no substantial non-infringing uses for the Starbucks
11 Software/System/Product/Service.

12 30. On information and belief, the aforesaid infringing activities of
13 Starbucks have been done with knowledge and willful disregard of Ameranth’s
14 patent rights, making this an exceptional case within the meaning of 35 U.S.C. §
15 285. On information and belief, Starbucks duplicated the novel aspects of
16 Ameranth’s patent claims to create its infringing
17 Software/System/Product/Service based on presentations provided to Starbucks
18 by Ameranth as early as 2007. Ameranth specifically identified the ‘850 Patent
19 to Starbucks in March 2008 in a Proposal/Vision for Starbucks (through the “My
20 Starbucks’ Ideas” program). On information and belief, Starbucks’ infringement
21 of Ameranth’s patent rights began as early as late 2009.

22 31. The aforesaid infringing activity of Starbucks has directly and
23 proximately caused damage to plaintiff Ameranth, including loss of profits from
24 sales or licensing revenues it would have made but for the infringements. Unless
25 enjoined, the aforesaid infringing activity will continue and cause irreparable
26 injury to Ameranth for which there is no adequate remedy at law.

1 COUNT II

2 **Patent Infringement (U.S. Pat. No. 6,871,325)**

3 **(35 U.S.C. § 271)**

4 32. Plaintiff reiterates and reincorporates the allegations set forth in
5 paragraphs 1-31 above as if fully set forth herein.

6 33. On March 22, 2005, United States Patent No. 6,871,325 entitled
7 “Information Management and Synchronous Communications System with Menu
8 Generation” (“the ‘325 patent”) (a true and correct copy of which is attached
9 hereto as **Exhibit B**) was duly and legally issued by the United States Patent &
10 Trademark Office.

11 34. Plaintiff Ameranth is the lawful owner by assignment of all right,
12 title and interest in and to the ‘325 patent.

13 35. On information and belief, Starbucks directly infringes and
14 continues to directly infringe one or more valid and enforceable claims of the
15 ‘325 patent, in violation of 35 U.S.C. § 271(a) by making, using, offering for sale
16 or license and/or selling or licensing infringing software, systems, products,
17 and/or services in the United States without authority or license from Ameranth,
18 including but not limited to the Starbucks Software/System/Product/Service,
19 which includes, *inter alia*, wireless and internet point-of-sale (“POS”) integration
20 (via, *inter alia*, Starbucks’ own software as well as
21 software/products/systems/services of third party providers such as Micros
22 Symphony), online and mobile ordering (via, *inter alia*, Starbucks’ own software
23 as well as software/products/systems/services of third party providers such as
24 OLO Online Ordering), integration with mobile pass providers/applications
25 (including, *inter alia*, ticketing, coupons, loyalty and payment via, for example,
26 Apple Passbook), integration with payment processors to provide mobile
27 payment processing (via, *inter alia*, Starbucks’ own software (for, *e.g.*, Starbucks
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1 Card and Starbucks Reward programs) as well as
2 software/products/systems/services of third party providers such as Square Wallet
3 and Apple Passbook), integration with third party gift/loyalty
4 programs/providers, integration with e-mail and affinity program and social
5 media applications such as Yelp, Facebook, Twitter, Instagram, Groupon, and/or
6 YouTube, and/or other third-party web-based applications, and other hospitality
7 aspects. Starbucks publicizes its infringing activities as key to its business, for
8 example, Starbucks recently publicized the success of its mobile applications,
9 including mobile customer loyalty program and payment processing applications:
10 “Every week, Starbucks is seeing close to four million mobile payment
11 transactions, up from two million near the end of last year and three million a
12 month ago. Additionally, mobile now accounts for approximately 10 percent of
13 Starbuck’s total U.S. tender. . . . Starbucks also reported that its mobile apps now
14 have than ten million active customers and that it is adding approximately 80,000
15 new My Starbucks Rewards customers each week. . . . Starbucks card tender now
16 exceeds \$3 billion annually.” “Starbucks Generates 10% of US Revenue from
17 Mobile,” [http://www.mobilecommercedaily.com/starbucks-generates-10pc-of-u-
s-revenue-from-mobile](http://www.mobilecommercedaily.com/starbucks-generates-10pc-of-u-
18 s-revenue-from-mobile), April 29, 2013.

19 36. On information and belief, the Starbucks
20 Software/System/Product/Service, as deployed and/or used at or from one or
21 more locations by Starbucks, its agents, distributors, partners, affiliates, licensees,
22 franchisees and/or their customers, including within this Judicial District,
23 infringes one or more valid and enforceable claims of the ‘325 patent, by, *inter*
24 *alia*, doing, or providing the capability for doing, at least one of the following: (a)
25 Generating and transmitting menus in a system including a central processing
26 unit, a data storage device, a computer operating system containing a graphical
27 user interface, one or more displayable main menus, modifier menus, and sub-
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1 modifier menus, and application software for generating a second menu and
2 transmitting it to a wireless handheld computing device or a Web page; and/or (b)
3 Enabling ordering and other hospitality functions via iPhone, iPod Android and
4 other internet-enabled wireless handheld computing devices as well as via Web
5 pages, storing hospitality information and data on at least one central database, on
6 at least one wireless handheld computing device, and on at least one Web server
7 and Web page, and synchronizing applications and data, including but not limited
8 to applications and data relating to orders, between at least one central database,
9 wireless handheld computing devices, and at least one Web server and Web page;
10 and sending alerts, confirmations, and other information regarding orders to
11 various wireless mobile devices.

12 37. On information and belief, Starbucks has indirectly infringed and
13 continues to indirectly infringe one or more valid and enforceable claims of the
14 ‘325 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
15 intentionally inducing direct infringement by other persons.

16 38. On information and belief, customers of Starbucks (including
17 consumers), store or restaurant operators, franchisees and other users, use the
18 Starbucks Software/System/Product/Service for, *inter alia*, POS integration,
19 online and mobile ordering, payment processing, frequency, loyalty, gift
20 programs/cards, payment cards, ticketing, coupons and integration with email,
21 affinity and social media programs/applications as detailed above in a manner
22 that infringes upon one or more valid and enforceable claims of the ‘325 patent.
23 Starbucks provides instruction and direction regarding the use of the Starbucks
24 Software/System/Product/Service and advertises, promotes, and encourages the
25 use of the Starbucks Software/System/Product/Service.
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1 39. On information and belief, the Starbucks
2 Software/System/Product/Service infringes one or more valid and enforceable
3 claims of the ‘325 patent for the reasons set forth hereinabove.

4 40. On information and belief, Defendant has actively induced others to
5 infringe the ‘325 patent, and continues to do so, in violation of 35 U.S.C.
6 §271(b), by knowingly encouraging, aiding and abetting customers of Starbucks,
7 including consumers, store and restaurant operators and franchisees to use the
8 infringing Starbucks Software/System/Product/Service in the United States
9 without authority or license from Ameranth.

10 41. Starbucks has long had knowledge of the ‘325 patent, including
11 through presentation of information from Ameranth to Starbucks as early as
12 2007, and knew or should have known that its continued offering and deployment
13 of the Starbucks Software/System/Product/Service, and its continued support of
14 consumers, franchisees, store or restaurant operators, and other users of this
15 software/system/product/service, would induce direct infringement by those
16 users. Additionally, on information and belief, Starbucks intended that its actions
17 would induce direct infringement by those users.

18 42. On information and belief, Defendant has contributorily infringed
19 and continues to contributorily infringe one or more valid and enforceable claims
20 of the ‘325 patent, in violation of 35 U.S.C. § 271(c), by offering to sell and/or
21 selling components of systems on which claims of the ‘325 patent read,
22 constituting a material part of the invention, knowing that the components were
23 especially adapted for use in systems which infringe claims of the ‘325 patent.

24 43. By making, using, distributing, selling, offering, offering to sell or
25 license and/or selling or licensing the Starbucks
26 Software/System/Product/Service, Defendant provides non-staple articles of
27 commerce to others for use in infringing systems, products, and/or services for,
28

1 *inter alia*, POS integration, online and mobile ordering, payment processing,
2 frequency, loyalty, gift programs/cards, payment cards, ticketing, coupons and
3 integration with email, affinity and social media programs/applications as
4 detailed above. Additionally, Starbucks provides instruction and direction
5 regarding the use of the Starbucks Software/System/Product/Service and
6 advertises, promotes, and encourages the use of the Starbucks
7 Software/System/Product/Service. Users of the Starbucks
8 Software/System/Product/Service directly infringe one or more valid and
9 enforceable claims of the ‘325 patent, for the reasons set forth hereinabove.

10 44. On information and belief, the Starbucks
11 Software/System/Product/Service infringes one or more valid and enforceable
12 claims of the ‘325 patent, for the reasons set forth hereinabove.

13 45. Starbucks has had knowledge of the ‘325 patent, including
14 knowledge that the Starbucks Software/System/Product/Service, which is a non-
15 staple articles of commerce, has been used as a material part of the claimed
16 invention of the ‘325 patent, and that there are no substantial non-infringing uses
17 for the Starbucks Software/System/Product/Service.

18 46. On information and belief, the aforesaid infringing activities of
19 Defendant Starbucks have been done with knowledge and willful disregard of
20 Ameranth’s patent rights, making this an exceptional case within the meaning of
21 35 U.S.C. § 285. On information and belief, Starbucks duplicated the novel
22 aspects of Ameranth’s patent claims to create its infringing
23 Software/System/Product/Service based on presentations provided to Starbucks
24 by Ameranth as early as 2007. Ameranth specifically identified the ‘325 Patent
25 to Starbucks in March 2008 in a Proposal/Vision for Starbucks (through the “My
26 Starbucks Ideas” program). On information and belief, Starbucks’ infringement
27 based on information provided to it by Ameranth began as early as late 2009.

1 as well as software/products/systems/services of third party providers such as
2 OLO Online Ordering), integration with mobile pass providers/applications
3 (including, *inter alia*, ticketing, coupons, loyalty and payment via, for example,
4 Apple Passbook), integration with payment processors to provide mobile
5 payment processing (via, *inter alia*, Starbucks' own software (for, *e.g.*, Starbucks
6 Card and Starbucks Reward programs) as well as
7 software/products/systems/services of third party providers such as Square Wallet
8 and Apple Passbook), integration with third party gift/loyalty
9 programs/providers, integration with e-mail and affinity program and social
10 media applications such as Yelp, Facebook, Twitter, Instagram, Groupon, and/or
11 YouTube, and/or other third-party web-based applications, and other hospitality
12 aspects. Starbucks publicizes its infringing activities as key to its business, for
13 example, Starbucks recently publicized the success of its mobile applications,
14 including mobile customer loyalty program and payment processing applications:
15 "Every week, Starbucks is seeing close to four million mobile payment
16 transactions, up from two million near the end of last year and three million a
17 month ago. Additionally, mobile now accounts for approximately 10 percent of
18 Starbuck's total U.S. tender. . . . Starbucks also reported that its mobile apps now
19 have than ten million active customers and that it is adding approximately 80,000
20 new My Starbucks Rewards customers each week. . . . Starbucks card tender now
21 exceeds \$3 billion annually." "Starbucks Generates 10% of US Revenue from
22 Mobile," [http://www.mobilecommercedaily.com/starbucks-generates-10pc-of-u-](http://www.mobilecommercedaily.com/starbucks-generates-10pc-of-u-s-revenue-from-mobile)
23 [s-revenue-from-mobile](http://www.mobilecommercedaily.com/starbucks-generates-10pc-of-u-s-revenue-from-mobile), April 29, 2013.

24 52. On information and belief, the Starbucks
25 Software/System/Product/Service, as deployed and/or used at or from one or
26 more locations by Starbucks, its agents, distributors, partners, affiliates, licensees,
27 franchisees and/or their customers, including within this Judicial District,
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1 infringes one or more valid and enforceable claims of the '077 patent, by, *inter*
2 *alia*, doing, or providing the capability for doing, at least one of the following: (a)
3 Configuring and transmitting menus in a system including a central processing
4 unit, a data storage device, a computer operating system containing a graphical
5 user interface, one or more displayable master menus, menu configuration
6 software enabled to generate a menu configuration for a wireless handheld
7 computing device in conformity with a customized display layout, and enabled
8 for synchronous communications and to format the menu configuration for a
9 customized display layout of at least two different wireless handheld computing
10 device display sizes, and/or (b) Enabling ordering and other hospitality functions
11 via iPhone, iPod, Android and other internet-enabled wireless handheld
12 computing devices as well as via Web pages, storing hospitality information and
13 data on at least one database, on at least one wireless handheld computing device,
14 and on at least one Web server and Web page, and synchronizing applications
15 and data, including but not limited to applications and data relating to orders,
16 between at least one database, wireless handheld computing devices, and at least
17 one Web server and Web page; utilizing communications control software
18 enabled to link and synchronize hospitality information between at least one
19 database, wireless handheld computing device, and web page, to display
20 information on web pages and on different wireless handheld computing device
21 display sizes, and to allow information to be entered via Web pages, transmitted
22 over the internet, and automatically communicated to at least one database and to
23 wireless handheld computing devices; allowing information to be entered via
24 wireless handheld computing devices, transmitted over the internet, and
25 automatically communicated to at least one database and to Web pages.

26 53. On information and belief, Starbucks has indirectly infringed and
27 continues to indirectly infringe one or more valid and enforceable claims of the
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1 ‘077 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
2 intentionally inducing direct infringement by other persons.

3 54. On information and belief, customers of Starbucks (including
4 consumers), store or restaurant operators, franchisees and other users, use the
5 Starbucks Software/System/Product/Service for, *inter alia*, POS integration,
6 online and mobile ordering, payment processing, frequency, loyalty, gift
7 programs/cards, payment cards, ticketing, coupons and integration with email,
8 affinity and social media programs/applications, as detailed above, in a manner
9 that infringes upon one or more valid and enforceable claims of the ‘077 patent.
10 Starbucks provides instruction and direction regarding the use of the Starbucks
11 Software/System/Product/Service and advertises, promotes, and encourages the
12 use of the Starbucks Software/System/Product/Service.

13 55. Starbucks has long had knowledge of the Ameranth patent family
14 which includes the ‘077 patent and from which the ‘077 patent claims priority.
15 As described above, Ameranth presented information to Starbucks as early as
16 2007 about Ameranth’s patented technology, and has specifically identified to
17 Starbucks three Ameranth patents in the same patent family as the ‘077 patent.
18 Consequently, Starbucks knew or should have known that its continued offering
19 and deployment of the Starbucks Software/System/Product/Service, and its
20 continued support of consumers, franchisees, store or restaurant operators, and
21 other users of this software/system/product/service, would induce direct
22 infringement by those users. Additionally, on information and belief, Starbucks
23 intended that its actions would induce direct infringement by those users.
24 Additionally, on information and belief, Starbucks also had knowledge of the
25 ‘077 patent prior to the filing date of this complaint based on, *inter alia*, wide
26 public dissemination of information concerning litigation involving this patent
27 against many of Starbucks’ business partners industry participants.

1 56. On information and belief, Starbucks actively induces others to
2 infringe the ‘077 patent, in violation of 35 U.S.C. §271(b), by knowingly
3 encouraging, aiding and abetting customers of Starbucks, including consumers,
4 store or restaurant operators and franchisees to use the infringing Starbucks
5 Software/System/Product/Service in the United States, and within this Judicial
6 District, without authority or license from Ameranth.

7 57. On information and belief, Starbucks has indirectly infringed and
8 continues to indirectly infringe one or more valid and enforceable claims of the
9 ‘077 patent, in violation of 35 U.S.C. § 271(c), by offering to sell and/or selling
10 components of systems on which claims of the ‘077 patent read, constituting a
11 material part of the invention, knowing that the components were especially
12 adapted for use in systems which infringe claims of the ‘077 patent.

13 58. By making, using, distributing, selling, offering, offering to sell or
14 license and/or selling or licensing the Starbucks
15 Software/System/Product/Service, Starbucks provides non-staple articles of
16 commerce to others for use in infringing systems, products, and/or services for,
17 *inter alia*, POS integration, online and mobile ordering, payment processing,
18 frequency, loyalty, gift programs/cards, payment cards, ticketing, coupons and
19 integration with email, affinity and social media programs/applications as
20 detailed above. Additionally, Starbucks provides instruction and direction
21 regarding the use of the Starbucks Software/System/Product/Service and
22 advertises, promotes, and encourages the use of the Starbucks
23 Software/System/Product/Service. Users of the Starbucks
24 Software/System/Product/Service, *e.g.*, customers, store operators and/or
25 franchisees, directly infringe one or more valid and enforceable claims of the
26 ‘077 patent, for the reasons set forth hereinabove.

1 59. On information and belief, the Starbucks
2 Software/System/Product/Service infringes one or more valid and enforceable
3 claims of the '077 patent, for the reasons set forth hereinabove.

4 60. On information and belief, Starbucks has had knowledge of the '077
5 patent prior to the issue date of the patent as discussed hereinabove, including
6 knowledge that the Starbucks Software/System/Product/Service, which is a non-
7 staple article of commerce, has been used as a material part of the claimed
8 invention of the '077 patent, and that there are no substantial non-infringing uses
9 for the Starbucks Software/System/Product/Service.

10 61. On information and belief, the aforesaid infringing activities of
11 Defendant Starbucks have been done with knowledge and willful disregard of
12 Ameranth's patent rights, making this an exceptional case within the meaning of
13 35 U.S.C. § 285. As discussed above, on information and belief, Starbucks
14 duplicated the novel aspects of Ameranth's patent claims in other patents in the
15 same patent family as the '077 patent as early as 2009, based on information
16 provided to Starbucks by Ameranth as early as 2007. Further, on information and
17 belief, Starbucks had knowledge of the '077 patent prior to the filing date of this
18 complaint based on, *inter alia*, wide public dissemination of information
19 concerning litigation involving this patent against many Starbucks' business
20 partners and industry participants, and Starbucks' direct involvement and
21 interactions with numerous other defendants who are infringing Ameranth's
22 patents.

23 62. The aforesaid infringing activity of Starbucks has directly and
24 proximately caused damage to plaintiff Ameranth, including loss of profits from
25 sales or licensing revenue it would have made but for the infringements. Unless
26 enjoined, the aforesaid infringing activity will continue and cause irreparable
27 injury to Ameranth for which there is no adequate remedy at law.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiff Ameranth respectfully prays for judgment against
3 defendant, Starbucks as follows:

4 1. Adjudging that the manufacture, use, offer for sale or license and /or
5 sale or license of the Starbucks Software/System/Product/Service infringes valid
6 and enforceable claims of the ‘850 patent, and the ‘325 patent, and the ‘077
7 patent, as set forth hereinabove;

8 2. Adjudging that Defendant has infringed, actively induced others to
9 infringe and/or contributorily infringed valid and enforceable claims of the ‘850
10 patent, and the ‘325 patent, and the ‘077 patent, as set forth hereinabove;

11 3. Adjudging that Defendant’s infringement of the valid and
12 enforceable claims of the ‘850 patent, and the ‘325 patent, and the ‘077 patent,
13 has been knowing and willful;

14 4. Enjoining Defendant, and its officers, directors, employees,
15 attorneys, agents, representatives, parents, subsidiaries, affiliates and all other
16 persons acting in concert, participation or privity with Defendant, and their
17 successors and assigns, from infringing, contributorily infringing and/or inducing
18 others to infringe the valid and enforceable claims of the ‘850 patent, and the
19 ‘325 patent, and the ‘077 patent;

20 5. Awarding Ameranth the damages it has sustained by reason of
21 Defendant’s infringement, together with interest and costs pursuant to 35 U.S.C.
22 § 284;

23 6. Awarding Ameranth increased damages of three times the amount of
24 damages found or assessed against Defendant by reason of the knowing, willful
25 and deliberate nature of Defendant’s acts of infringement pursuant to 35 U.S.C. §
26 284;

