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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

AMERANTH, INC. Plaintiff, v. DOMINO'S PIZZA, LLC, and DOMINO'S PIZZA, INC., Defendants.	Case No. '13CV1520 AJB WVG **COMPLAINT FOR PATENT INFRINGEMENT** **DEMAND FOR JURY TRIAL**

COMPLAINT FOR PATENT INFRINGEMENT

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Ameranth, Inc., for its Complaint against Defendants Domino's Pizza LLC and Domino's Pizza, Inc., avers as follows:

PARTIES

1. Plaintiff Ameranth, Inc. ("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 Domino's Pizza, LLC is, on information and belief, a Michigan limited liability company having a principal place of business in Ann Arbor, Michigan. Defendant Domino's Pizza, Inc. is, on information and belief, a Delaware corporation having a principal place of business in Ann Arbor, Michigan. On information and belief, Domino's Pizza, LLC and Domino's Pizza, Inc. are agents and affiliates of one another and knowingly and intentionally acted in concert and under common and coordinated plan, design and control in committing the acts alleged herein, such that each entity is jointly and severally liable for the acts of each other. Domino's Pizza, LLC and Domino's Pizza, Inc. shall be referred to herein collectively as "Domino's." On information and belief, Domino's makes, uses, offers for sale or license and/or sells or licenses restaurant and foodservice information technology products,

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software, components and/or systems within this Judicial District, including the Domino's Ordering System as 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.

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

5. On information and belief, Defendants, and each of them, engage in (a) the offer for sale or license and sale or license of hospitality, restaurant, food service, ordering, products and/or components in the United States, including this Judicial District, including services, products, software, and components, comprising wireless and internet POS and/or hospitality aspects; (b) the installation and maintenance of said services, products, software, components and/or systems in hospitality industry, restaurant, food service, and/or entertainment information technology systems in the United States, including this Judicial District; and/or (c) the use of hospitality industry, restaurant, food service, and/or entertainment information technology systems comprising said services, products, software, components and/or systems in the United States, including this Judicial District.

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

7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) as regards all Defendants, both separately and together.

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BACKGROUND

8. Ameranth was established in 1996 to develop and provide its 21st Century Communications™ innovative information technology solutions for the hospitality industry (inclusive of, e.g., restaurants, hotels, casinos, nightclubs, cruise ships and other entertainment and sports venues). Ameranth has been widely recognized as a technology leader in the provision of wireless and internet-based systems and services to, *inter alia*, restaurants, hotels, casinos, cruise ships and entertainment and sports venues. Ameranth's award winning inventions enable, in relevant part, generation and synchronization of menus, including but not limited to restaurant menus, event tickets, reservations, and other products across fixed, wireless and/or internet platforms as well as synchronization of hospitality information and hospitality software applications across fixed, wireless and internet platforms, 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.

9. Ameranth began development of the inventions leading to the patent-in-suit and the other patents in this patent family in the late Summer of 1998, at a time when the then-available wireless and internet hospitality offerings were extremely limited in functionality, were not synchronized and did not provide an integrated system-wide solution to the pervasive ordering, reservations, affinity program and information management needs of the hospitality industry. Ameranth uniquely recognized the actual problems that needed to be resolved in order to meet those needs, and thereafter conceived and developed its breakthrough inventions and products to provide systemic and comprehensive solutions directed to optimally meeting these industry needs. Ameranth has

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expended considerable effort and resources in inventing, developing and marketing its inventions and protecting its rights therein.

10. Ameranth's pioneering inventions have been widely adopted and are now essential to the modern wireless hospitality enterprise of the 21st Century. Ameranth's solutions have been adopted, licensed and/or deployed by numerous entities across various sectors of the hospitality industry.

11. The adoption of Ameranth's technology by industry leaders and the wide acclaim received by Ameranth for its technological innovations are just some of the many confirmations of the breakthrough aspects of Ameranth's inventions. Ameranth has received twelve different technology awards (three with "end customer" partners) and has been widely recognized as a hospitality wireless/internet technology leader by almost all major national and hospitality print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today and many others. Ameranth was personally nominated by Bill Gates, the Founder of Microsoft, for the prestigious Computerworld Honors Award that Ameranth received in 2001 for its breakthrough synchronized reservations/ticketing system with the Improv Comedy Theatres. In his nomination, Mr. Gates described Ameranth as "one of the leading pioneers of information technology for the betterment of mankind." This prestigious award was based on Ameranth's innovative synchronization of wireless/web/fixed hospitality software technology. Subsequently, the United States Patent and Trademark Office granted Ameranth a number of currently-issued patents, one of which is the patent-in-suit in this lawsuit, and three of which are the basis for the related patent infringement lawsuit pending in this Court against the same Domino's Defendants. Ameranth has issued press releases announcing these patent grants on business wires, on its web sites and at numerous trade shows, including some attended by Domino's, since the first of the presently-asserted

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patents in this Ameranth patent family issued in 2002. A number of companies have licensed patents and technology from Ameranth and mark their websites and/or products with Ameranth's patent numbers, attesting to the value of Ameranth's innovations. Documents reflecting such information have been provided by Ameranth to Domino's in other patent infringement actions that Ameranth has asserted against Domino's.

RELATED CASE PREVIOUSLY FILED

12. The Ameranth patent asserted herein, U.S. Patent No. 6,982,733 (the "'733 patent"), is the third patent to issue in Ameranth's "Information Management and Synchronous Communications" patent family.

13. Ameranth is also currently asserting three other patents in Ameranth's Information Management and Synchronous Communications patent family against the present Defendants in separate litigations pending in this Court (*Ameranth v. Pizza Hut, Inc. et al.*, Case No. 3:11-cv-01810-JLS-NLS; *Ameranth v. Domino's et al.*, Case No. 3:12-cv-00733-JLS-NLS). In addition, other lawsuits filed by Ameranth in this Court asserting claims of the Ameranth Information Management and Synchronous Communications patent family include Case Nos. 3:12-cv-00729-JLS-NLS;   3:12-cv-00731-JLS-NLS;   3:12-cv-00732-JLS-NLS; 3:12-cv-00737-JLS-NLS; 3:12-cv-00738-JLS-NLS (settled); 3:12-cv-00739-JLS-NLS and 3:12-cv-00742-JLS-NLS; 3:12-cv-00858-JLS-NLS; 3:12-cv-1201-JLS-NLS (settled): 3:12-cv-01627-JLS-NLS;   3:12-cv-01629-JLS-NLS;   3:12-cv-01630-JLS-NLS;   3:12-cv-01631-JLS-NLS;   3:12-cv-01633-JLS-NLS;   3:12-cv-01634-JLS-NLS;   3:12-cv-01636-JLS-NLS;   3:12-cv-01640-JLS-NLS;   3:12-cv-01642-JLS-NLS;   3:12-cv-01643-JLS-NLS;   3:12-cv-01644-JLS-NLS;   3:12-cv-01646-JLS-NLS 3:12-cv-01647-JLS-NLS (settled);   3:12-cv-01648-JLS-NLS; 3:12-cv-01649-JLS-NLS;   3:12-cv-01650-JLS-NLS;   3:12-cv-01651-JLS-NLS; 3:12-cv-01652-JLS-NLS;   3:12-cv-01653-JLS-NLS;   3:12-cv-01654-JLS-NLS;

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3:12-cv-01655-JLS-NLS; 3:12-cv-01656-JLS-NLS; 3:12-cv-01659-JLS-NLS; 3:12-cv-02350-IEG-BGS; 3:13-cv-00350-JLS-NLS; 3:13-cv-00352-JLS-NLS; 3:13-cv-00353-JLS-NLS; 3:13-cv-0836-JLS-NLS (settled) and 3:13-cv-01072-IEG-BGS. All of the above still-pending cases have been consolidated for pre-trial through claim construction except for 3:12-cv-02350-IEG-BGS; 3:13-cv-00350-JLS-NLS; 3:13-cv-00352-JLS-NLS; 3:13-cv-00353-JLS-NLS and 3:13-cv-01072-IEG-BGS.

COUNT I

Patent Infringement (U.S. Pat. No. 6,982,733)

(35 U.S.C. § 271)

14. Plaintiff reiterates and reincorporates the allegations set forth in paragraphs 1-13 above as if fully set forth herein.

15. On January 3, 2006, United States Patent No. 6,982,733 entitled "Information Management and Synchronous Communications System with Menu Generation, and Handwriting and Voice Modification of Orders" ("the '733 patent") (a true and correct copy of which is attached hereto as **Exhibit A**) was duly and legally issued by the United States Patent & Trademark Office ("PTO"). The '733 patent meets all patentability requirements of 35 U.S.C. §§101, 102, 103 and 112, including patent eligible subject matter, enablement, definiteness, novelty and nonobviousness, as evidenced by the PTO's thorough review of the disclosure and claims of the '733 patent and allowance of the claims based on said review in light of all applicable law and PTO rules and guidelines respecting patentability under Title 35.

16. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in and to the '733 patent.

17. On information and belief, the Domino's Defendants directly infringe and continue to directly infringe one or more valid and enforceable claims of the '733

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patent, in violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license and/or selling or licensing infringing systems, products, and/or services in the United States without authority or license from Ameranth, including but not limited to the Domino's ordering system/product/service, which includes, *inter alia*, wireless and internet POS integration, online and mobile ordering, integration with e-mail and affinity program and social media applications such as Facebook, Twitter, Groupon, and YouTube, and/or other third-party web-based applications, and other hospitality aspects ("Domino's Ordering System"), as configured for use with wireless mobile handheld computing devices/smartphones running at least Windows Phone 8 OS with voice recognition capability which enables voice controlled or assisted ordering of food items from wireless devices/smartphones running said OS.

18. On information and belief, Domino's has indirectly infringed and continues to indirectly infringe one or more valid and enforceable claims of the '733 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct infringement by other persons, by making, using, offering for sale or license and/or selling or licensing infringing systems, products, and/or services in the United States without authority or license from Ameranth, including but not limited to the Domino's Ordering System as configured for use with wireless mobile handheld computing devices/smartphones running at least Windows Phone 8 OS with voice recognition capability. For example, Domino's touted and promoted the Windows Phone 8/Domino's integration as detailed herein.

19. On information and belief, Domino's infringes by its own actions and through, or in concert with, agents of Domino's who are under the direction and control of Domino's by virtue of contractual agreements between Domino's and

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such parties including, for example, Domino's franchisees and restaurant operators.

20. On information and belief, systems including the Domino's Ordering System as configured for use with wireless mobile handheld computing devices/smartphones running at least Windows Phone 8 OS with voice recognition capability, as deployed and/or used at or from one or more locations by Domino's, its agents, distributors, partners, affiliates, licensees, franchisees, operators, third-party businesses, and/or their customers, infringes one or more valid and enforceable claims of the '733 patent, by doing, or providing the capability for doing, at least one of the following: (a) Generating and transmitting menus in a system including a central processing unit, a data storage device connected to said central processing unit, an operating system including a graphical user interface, a first menu stored on said data storage device, application software for generating a second menu from said first menu and transmitting said second menu to a wireless handheld computing device or Web page, wherein the application software facilitates the generation of the second menu by allowing selection of items from the first menu, addition of items to the second menu and assignment of parameters to items in the second menu using the graphical user interface of said operating system, and said second menu is manually modified by voice recording or capture or recognition after generation; (b) Generating menus in a system including a central processing unit, a data storage device connected to said central processing unit, an operating system including a graphical user interface, a first menu stored on said data storage device, application software for generating a second menu from said first menu wherein the application software facilitates the generation of the second menu by allowing selection of items from the first menu, addition of items to the second menu and assignment of parameters to items in the second menu using the graphical user interface of said operating system and wherein data

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comprising the second menu is synchronized between the data storage device connected to the central processing unit and at least one other computing device, and said second menu is manually modified by voice recording or capture or recognition after generation; and/or (c) Generating menus in a system including a microprocessor, a display device, a data and instruction input device, a data storage device for storing information and instructions entered through said data and instruction input means or information generated by said microprocessor, an operating system, a master menu stored on said data storage device for generating a modified menu, and application software, wherein said microprocessor, operating system and application software are operative to display the master menu on the display device in response to instructions programmed into said microprocessor, operating system, application software and information and instructions entered through said data input device, and said microprocessor, operating system and application software are operative to create the modified menu from said master menu in response to information and instructions entered through said data and instruction input device and data comprising the modified menu is synchronized between the data storage device and at least one other computing device, wherein said modified menu is manually modified after generation.

21. On information and belief, customers of Domino's, including consumers, franchisee and restaurant operators, use the Domino's Ordering System as configured for use with wireless mobile handheld computing devices/smartphones running at least Windows Phone 8 OS with voice recognition capability in a manner that infringes upon one or more valid and enforceable claims of the '733 patent. For example, the Domino's Ordering System provides generated menus for selection of menu categories, items, modifiers and sub-modifiers and ordering and purchasing food as encompassed by claims of the '733 patent. Domino's

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provides instruction and direction regarding the use of the Domino's Ordering System as configured for use with wireless mobile handheld computing devices/smartphones running at least Windows Phone 8 OS with voice recognition capability and advertises, promotes, and encourages the use of same. For example, Domino's touted and promoted the Windows Phone 8/Domino's integration as detailed herein.

22. On information and belief, Domino's actively induces others to infringe the '733 patent in violation of 35 U.S.C. §271(b) by actively, knowingly and intentionally encouraging, aiding and abetting franchisees, operators and customers of Domino's, including consumers and those businesses and persons identified elsewhere in this complaint, to use the infringing Domino's Ordering System as configured for use with wireless mobile handheld computing devices/smartphones running at least Windows Phone 8 OS with voice recognition capability in the United States without authority or license from Ameranth. For example, Domino's CEO Patrick Doyle has given interviews explaining the capability of the Domino's Ordering System to use voice ordering capability directly from a menu displayed on a smartphone running Windows Phone 8 OS. *See, e.g.*, http://www.bloomberg.com/video/35-40-of-domino-s-sales-are-from-digital-doyle-_7IwmiYqTNGzkcIw2l67IA.html; *see also* http://www.prnewswire.com/news-releases/dominos-launches-new-ordering-app-for-windows-phone-8-210284991.html ("In a first for a Domino's mobile app, the Windows Phone release adds voice capabilities. From the 'Menu' section of the app, users can choose to order by voice, telling the app the item they'd like to order, for example, 'medium, pepperoni Handmade Pan Pizza.'"). Domino's thus promotes the ordering of food items via the Domino's Ordering System on wireless devices via voice control by consumers and the sale of such items and processing of such orders by Domino's restaurant operators and franchisees.

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23.   Domino's became aware of Ameranth's patent family which includes the '733 patent well before the complaint in this actions was filed. Domino's learned of this patent family at least as early as 2006 during business partnering discussions concerning Ameranth and Intercontinental Hotels Group's "eHost" product/project - in which hotel guest pizza ordering to guest hotel rooms was planned to occur through online ordering and Ameranth's "eHost" e-concierge project. Additionally, three of the patents in this Ameranth patent family have been asserted in separate actions filed in August 15, 2011 and March 27, 2012, as noted above. Domino's has thus obtained the level of knowledge required to support a claim for inducement of infringement regarding Domino's actions involving the Domino's Ordering System as detailed herein in numerous different and independent ways.

24. On information and belief, Domino's contributorily infringes and continues to contributorily infringe one or more valid and enforceable claims of the '733 patent, in violation of 35 U.S.C. § 271(c), by making, using, offering to sell and/or selling components of systems on which claims of the '733 patent read, constituting a material part of the invention, knowing that the components were especially adapted for use in systems which infringe claims of the '733 patent.

25. By making, distributing, selling, offering, offering to sell or license and/or selling or licensing the Domino's Ordering System as configured for use with wireless mobile handheld computing devices/smartphones running at least Windows Phone 8 OS with voice recognition capability, Domino's provides non-staple articles of commerce to others, including those businesses and persons identified elsewhere in this complaint, for use in infringing systems, products, and/or services.   Additionally, Domino's provides instruction and direction regarding the use of the Dominos Ordering System as configured for use with wireless mobile handheld computing devices/smartphones running at least

COMPLAINT FOR PATENT INFRINGEMENT

Windows Phone 8 OS with voice recognition capability and advertises, promotes, and encourages the use of same. For example, Domino's touted and promoted the Windows Phone 8/Domino's integration as detailed herein. Users of the Domino's Ordering System directly infringe one or more valid and enforceable claims of the '733 patent, for the reasons set forth hereinabove.

26. Domino's has had knowledge of the '733 patent, as set forth above, at least as early as the filing of prior complaints alleging infringement of other patents in the same family containing the '733 patent, *i.e.*, August 15, 2011 and March 27, 2012. In addition, Domino's has had knowledge of the patent family which includes the '733 patent since 2006, as discussed above. Dominos has thus obtained the level of knowledge required to support a claim for contributory infringement regarding Domino's actions involving the Domino's Ordering System as configured for use with wireless mobile handheld computing devices/smartphones running at least Windows Phone 8 OS with voice recognition capability in numerous different and independent ways.

27. On information and belief, the aforesaid infringing activities of Defendants have been done with knowledge and willful disregard of Ameranth's patent rights, making this an exceptional case within the meaning of 35 U.S.C. § 285. As detailed above, Domino's has had knowledge of the patent family which includes the '733 patent since at least August 15, 2011, well before the filing of the complaint in this action. In addition, Domino's has had knowledge of the patent family which includes the '733 patent since 2006, as discussed above. Domino's has thus obtained the level of knowledge required to support a claim for willful infringement in numerous different and independent ways. Domino's deliberate decision to continue its infringing activities after obtaining said knowledge constitutes objectively reckless behavior justifying a finding of willfulness.

COMPLAINT FOR PATENT INFRINGEMENT

28.   If Defendants do not cease and desist the aforesaid infringing activities, and instead continue to infringe valid and enforceable claims of the '733 patent after the date of filing and/or service of this complaint, then such continuing infringing actions also will have been done with knowledge and willful disregard of Ameranth's patent rights, further making this an exceptional case within the meaning of 35 U.S.C. § 285.

29.   The aforesaid infringing activity of the Domino's Defendants has directly and proximately caused damage to Ameranth, including loss of profits from sales or licensing revenues it would have made but for the infringements.   Unless enjoined, the aforesaid infringing activity will continue and cause irreparable injury to Ameranth for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Ameranth respectfully prays for judgment against Defendants, and each of them, as follows:

1.   Adjudging that the manufacture, use, offer for sale or license and /or sale or license of the Domino's Ordering System infringes valid and enforceable claims of the '733 patent, as set forth hereinabove;

2.   Adjudging that each of the Defendants has infringed, actively induced others to infringe and/or contributorily infringed valid and enforceable claims of the '733 patent, as set forth hereinabove;

3.   If Defendants do not cease and desist the aforesaid infringing activities and instead continue to infringe valid and enforceable claims of the '733 patent after the date of filing and/or service of this Complaint, adjudging that Defendants' infringement of the valid and enforceable claims of the '733 patent has been knowing and willful;

4.   Enjoining each of the Defendants, and their respective officers, directors, employees, attorneys, agents, representatives, parents, subsidiaries,

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affiliates and all other persons acting in concert, participation or privity with them, and their successors and assigns, from infringing, contributorily infringing and/or inducing others to infringe the valid and enforceable claims of the '733 patent;

5. Awarding Ameranth the damages it has sustained by reason of Defendants' infringement, together with interest and costs pursuant to 35 U.S.C. § 284;

6. If Defendants do not cease and desist the aforesaid infringing activities and instead continue to infringe valid and enforceable claims of the '733 patent after the date of filing and/or service of this Complaint, awarding Ameranth increased damages of three times the amount found or assessed against Defendants by reason of the knowing, willful and deliberate nature of Defendants' acts of infringement pursuant to 35 U.S.C. § 284;

7. Adjudging this to be an exceptional case and awarding Ameranth its attorney's fees pursuant to 35 U.S.C. §285;

8. Awarding to Ameranth its costs of suit, and interest as provided by law; and

9. Awarding to Ameranth such other and further relief that this Court may deem just and proper.

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DEMAND FOR JURY TRIAL

Ameranth demands trial by jury of its claims set forth herein to the maximum extent permitted by law.

Respectfully submitted,

Dated: July 1, 2013   CALDARELLI HEJMANOWSKI & PAGE LLP

By:*/s/ William J. Caldarelli*
      William J. Caldarelli

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