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28 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

AMERANTH, INC.,

Plaintiff,

v.

USABLENET, INC.,

Defendant.

Case No. 12-CV-1650 JLS (NLS)

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Ameranth, Inc., for its First Amended Complaint against
3 defendant Usablenet, Inc. (herein “Usablenet”), avers as follows:

4 **PARTIES**

5 1. Plaintiff Ameranth, Inc. (“Ameranth”) is a Delaware corporation having
6 a principal place of business at 5820 Oberlin Drive, Suite 202, San Diego,
7 California 92121. Ameranth develops, manufactures and sells, *inter alia*,
8 hospitality industry, entertainment, restaurant and food service information
9 technology solutions under the trademarks 21st Century Communications™, and
10 21st Century Restaurant™, among others, comprising the synchronization and
11 integration of hospitality information and hospitality software applications
12 between fixed, wireless and/or internet applications, including but not limited to
13 computer servers, web servers, databases, affinity/social networking systems,
14 desktop computers, laptops, “smart” phones and other wireless handheld
15 computing devices.

16 2. Defendant Usablenet, Inc. (herein “Usablenet”) is, on information and
17 belief, a Delaware corporation having a principal place of business and
18 headquarters in New York, New York. On information and belief, Usablenet
19 makes, uses, sells and/or offers for sale, hotel and lodging, restaurant,
20 foodservice, point-of-sale and/or property management and other hospitality
21 information-technology products, software, components and/or systems within
22 this Judicial District, including the Usablenet Products as defined herein.

23 **JURISDICTION AND VENUE**

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

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

1 cruise ships and entertainment and sports venues. Ameranth's award winning
2 inventions enable, in relevant part, generation and synchronization of menus,
3 including but not limited to restaurant menus, event tickets, and other products
4 across fixed, wireless and/or internet platforms as well as synchronization of
5 hospitality information and hospitality software applications across fixed,
6 wireless and internet platforms, including but not limited to, computer servers,
7 web servers, databases, affinity/social networking systems, desktop computers,
8 laptops, "smart" phones and other wireless handheld computing devices.

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

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

25 11. The adoption of Ameranth's technology by industry leaders and the wide
26 acclaim received by Ameranth for its technological innovations are just some of
27 the many confirmations of the breakthrough aspects of Ameranth's inventions.
28 Ameranth has received twelve different technology awards (three with "end

1 customer” partners) and has been widely recognized as a hospitality
2 wireless/internet technology leader by almost all major national and hospitality
3 print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today
4 and many others. Ameranth was personally nominated by Bill Gates, the
5 Founder of Microsoft, for the prestigious Computerworld Honors Award that
6 Ameranth received in 2001 for its breakthrough synchronized
7 reservations/ticketing system with the Improv Comedy Theatres. In his
8 nomination, Mr. Gates described Ameranth as “one of the leading pioneers of
9 information technology for the betterment of mankind.” This prestigious award
10 was based on Ameranth’s innovative synchronization of wireless/web/fixed
11 hospitality software technology. Subsequently, the United States Patent and
12 Trademark Office granted Ameranth a number of currently-issued patents, two of
13 which are the basis for this lawsuit. Ameranth has issued press releases
14 announcing these patent grants on business wires, on its web sites and at
15 numerous trade shows since the first of the presently-asserted patents issued in
16 2002. A number of companies have licensed patents and technology from
17 Ameranth, recognizing and confirming the value of Ameranth’s innovations. At
18 all relevant times, Ameranth marked its own products with the numbers of the
19 Ameranth patents then issued, thereby providing companies, competitors and
20 participants in the hospitality industry with notice of Ameranth’s patents.
21 Furthermore, companies that license Ameranth’s products have marked their
22 products with Ameranth’s patent numbers, thereby also providing notice of
23 Ameranth’s patents.

24 **RELATED CASES PREVIOUSLY FILED**

25 12. The Ameranth patents asserted herein, U.S. Patent No. 6,384,850 (the
26 “850 patent”), U.S. Patent No. 6,871,325 (the “325 patent”), and U.S. Patent
27 No. 8,146,077 (the “077 patent”), are all patents in Ameranth’s “Information
28 Management and Synchronous Communications” patent family.

1 13. Ameranth is also currently asserting claims of these same patents in
2 separate lawsuits, against other defendants, that are already pending in this Court.
3 The first-filed lawsuit asserts claims of the '850 and '325 patents and is entitled
4 *Ameranth v. Pizza Hut, Inc. et al.*, Case No. 3:11-cv-01810-JLS-NLS. Lawsuits
5 subsequently filed by Ameranth in this Court, asserting claims of the '077 patent,
6 include Case Nos. 3:12-cv-00729-JLS-NLS; 3:12-cv-00731-JLS-NLS; 3:12-cv-
7 00732-JLS-NLS; 3:12-cv-00733-JLS-NLS; 3:12-cv-00737-JLS-NLS; 3:12-cv-
8 00738-JLS-NLS (settled); 3:12-cv-00739-JLS-NLS and 3:12-cv-00742-JLS-
9 NLS. Other lawsuits filed by Ameranth in this Court asserting claims of the
10 '850, '325, and '077 patents are Case No. 3:12-cv-00858-JLS-NLS; 3:12-cv-
11 1201-JLS-NLS (settled): 3:12-cv-01627-JLS-NLS; 3:12-cv-01629-JLS-NLS;
12 3:12-cv-01630-JLS-NLS; 3:12-cv-01631-JLS-NLS; 3:12-cv-01633-JLS-NLS;
13 3:12-cv-01634-JLS-NLS; 3:12-cv-01636-JLS-NLS; 3:12-cv-01640-JLS-NLS;
14 3:12-cv-01642-JLS-NLS; 3:12-cv-01643-JLS-NLS; 3:12-cv-01644-JLS-NLS;
15 3:12-cv-01646-JLS-NLS 3:12-cv-01647-JLS-NLS (settled); 3:12-cv-01648-JLS-
16 NLS; 3:12-cv-01649-JLS-NLS; 3:12-cv-01651-JLS-NLS; 3:12-cv-01652-JLS-
17 NLS; 3:12-cv-01653-JLS-NLS; 3:12-cv-01654-JLS-NLS; 3:12-cv-01655-JLS-
18 NLS; 3:12-cv-01656-JLS-NLS; 3:12-cv-01659-JLS-NLS; 3:13-cv-00350-JLS-
19 NLS; 3:13-cv-00352-JLS-NLS; 3:13-cv-00353-JLS-NLS; 3:13-cv-0836-JLS-
20 NLS and 3:13-cv-01072-MMA-BGS. All of the above still-pending cases have
21 been consolidated for pre-trial through claim construction except for 3:13-cv-
22 00350-JLS-NLS; 3:13-cv-00352-JLS-NLS; 3:13-cv-00353-JLS-NLS; 3:13-cv-
23 0836-JLS-NLS and 3:13-cv-01072-MMA-BGS. These related cases include
24 patent infringement actions against customers and business partners of Usablenet
25 to whom Usablenet has sold, licensed or otherwise provided the Usablenet
26 products accused of infringement herein and to whom, upon information and
27 belief, Usablenet continues to provide supporting services, upgrades,
28 maintenance, *etc.*, including, for example, Marriot, Hilton, Best Western, and

1 Starwood. On information and belief, Usablenet's contracts and agreements with
2 such Usablenet customers contain intellectual property infringement indemnity
3 provisions such that Usablenet has been made aware of the claims of patent
4 infringement asserted by Ameranth against such Usablenet customers and
5 business partners implicating the Usablenet products.

6 14. The original complaint in this matter was filed in this Court on June 29,
7 2012, and subsequently served upon Usablenet. At least since that time,
8 Usablenet has had direct and acknowledge knowledge of Ameranth's patents and
9 that Usablenet's products infringe those patents as alleged therein. Nonetheless,
10 Usablenet has continued, and is continuing, to make, use, offer for sale or license
11 and/or sell or license infringing systems, products, and/or services in the United
12 States without authority or license from Ameranth and to engage in acts of
13 infringement as set forth herein.

14 **COUNT I**

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

16 **(35 U.S.C. § 271)**

17 15. Plaintiff reiterates and incorporates the allegations set forth in paragraphs
18 1-14 above as if fully set forth herein.

19 16. On May 7, 2002, United States Patent No. 6,384,850 entitled
20 "Information Management and Synchronous Communications System with Menu
21 Generation" ("the '850 patent") (a true and copy of which is attached hereto as
22 **Exhibit A**) was duly and legally issued by the United States Patent & Trademark
23 Office.

24 17. Plaintiff Ameranth is the lawful owner by assignment of all right, title
25 and interest in and to the '850 patent.

26 18. On information and belief, defendant Usablenet has indirectly infringed
27 and continues to indirectly infringe one or more valid and enforceable claims of
28 the '850 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and

1 intentionally inducing direct infringement by other persons, in the United States
2 without authority or license from Ameranth, by providing customized software
3 and custom mobile web interfaces/sites linked to and synchronized with the
4 databases/servers used by the systems of the direct infringers, integration,
5 instruction, and technical support (collectively, the “Usablenet Products”), to
6 hotel companies, travel aggregators, and other direct infringers (including but not
7 limited to Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia) for use
8 in their online/mobile reservation systems and marketing and advertising
9 Usablenet’s software, mobile web interfaces/sites, apps, integration, technical
10 support, and related products and services to hotel companies, travel aggregators,
11 and other direct infringers. Additionally, Usablenet contributorily infringes by
12 selling and/or offering for sale the aforementioned customized software and
13 custom mobile web interfaces/sites to direct infringers including but not limited
14 to Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia. Ameranth has
15 previously served Usablenet with infringement contentions in this action further
16 describing the details of Usablenet’s infringement of Ameranth’s patents. Those
17 infringement contentions, redacted to protect confidential information, are
18 attached hereto as **Exhibit D** and incorporated herein by reference.

19 19. On information and belief, systems including one or more of the
20 Usablenet Products, as deployed and/or used at or from one or more locations by
21 Usablenet, its agents, distributors, partners, affiliates, licensees, and/or their
22 customers, infringe one or more valid and enforceable claims of the ‘850 patent,
23 by, *inter alia*, doing at least one of the following: (a) Generating and transmitting
24 menus in a system including a central processing unit, a data storage device, a
25 computer operating system containing a graphical user interface, one or more
26 displayable main menus, modifier menus, and sub-modifier menus, and
27 application software for generating a second menu and transmitting it to a
28 wireless handheld computing device or a Web page; and/or (b) Enabling

1 ordering, reservations, and other hospitality functions via iPhone, Android, and
2 other internet-enabled wireless handheld computing devices as well as via Web
3 pages, storing hospitality information and data on at least one central database, on
4 at least one wireless handheld computing device, and on at least one Web server
5 and Web page, and synchronizing applications and data, including but not limited
6 to applications and data relating to ordering, between at least one central
7 database, wireless handheld computing devices, and at least one Web server and
8 Web page; utilizing an interface that provides a single point of entry that allows
9 the synchronization of at least one wireless handheld computing device and at
10 least one Web page with at least one central database; allowing information to be
11 entered via Web pages, transmitted over the internet, and automatically
12 communicated to at least one central database and to wireless handheld
13 computing devices; allowing information to be entered via wireless handheld
14 computing devices, transmitted over the internet, and automatically
15 communicated to at least one central database and to Web pages.

16 20. On information and belief, customers of Usablenet, including consumers
17 and hotel and restaurant operators, use the Usablenet Products. These include
18 customers and business partners that Ameranth has sued for patent infringement
19 (such as Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia), which
20 lawsuits are known to Usablenet by virtue of Usablenet's business relationship
21 with such defendants and Usablenet's own participation in the consolidated
22 patent infringement actions pending in this Court. Usablenet provides instruction
23 and direction regarding the use of the Usablenet Products, and advertises,
24 promotes, and encourages the use of the Usablenet Products in a manner
25 understood and intended to infringe the claims of Ameranth's patents, as further
26 described herein.

27 21. For example, Usablenet provides direct infringers (including, *inter alia*,
28 Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia) of the asserted

1 Ameranth Patents with customized software and custom mobile web
2 interfaces/sites linked to and synchronized with the databases/servers used by the
3 systems of the direct infringers, and Usablenet further provides technical support
4 and services to those direct infringers. The Usablenet Products thus provided are
5 intended to cause, and do cause, the direct infringers and their accused systems to
6 infringe the claims of Ameranth's patents, for example by enabling operation on
7 handheld computing devices via mobile websites and interfaces, providing
8 integrations with third party applications, *etc.*

9 22. As a further example, when a consumer directs his or her mobile-phone
10 browser to, for example, Starwood Hotels' mobile website, the browser is
11 automatically redirected to a Usablenet-operated URL. For Marriott's mobile
12 website, according to a published article, "Marriott chose m-commerce
13 technology vendor Usablenet Inc. to build and maintain the site ... Consumers
14 don't need to know a special URL for the mobile site—entering
15 www.marriott.com into a mobile browser automatically redirects them to the
16 mobile-optimized site ... Part of the reason the hotel chain went with [Usablenet]
17 was because Marriott could optimize an m-commerce site for thousands of types
18 of handsets."

19 23. Hyatt's mobile website, "created by Usablenet, lets guests locate and
20 book a hotel, access reservations and check in or out through any Web-enabled
21 mobile device. The multi brand functionality is available to guests from around
22 the world who are traveling to any Hyatt location. ... 'Our new Hyatt Mobile
23 functionality provides access to all the tools and content our guests need to
24 interact with Hyatt when they do not have access to a computer,' said Lynda
25 Bott, director of Hyatt brand Web sites at Hyatt Hotels & Resorts," in another
26 published article.

27 24. As another example, an article on Usablenet's website advertises the
28 company's success in creating a mobile "app" for the Best Western hotel chain;

1 Usablenet’s chief marketing officer describes that Usablenet-created app (and
2 some of its infringing capabilities) as follows: “When the user opens the app
3 they are able to get to local content quickly via the ‘find hotels near me’ function,
4 as well as access the full range of app capabilities by viewing the main menu
5 which contains the navigation to key areas such as Best Western Rewards log-in,
6 ability to make reservations, view maps, access favorite location lists, do trip
7 planning and find nearby reservations, attractions and more . . . The app also
8 offers an array of customer service options such as click-to-call and connect with
9 Best Western via a number of social networks.”

10 25. Usablenet’s website further advertises the company’s ability to create
11 “custom mobile experiences” and Usablenet’s “industry-leading experience in
12 creating and delivering mobile sites and experiences that support all the major
13 smart phones and newest operating systems”.

14 26. Usablenet’s head of innovation and platform strategy stated in a recent
15 article that, “In the last couple of years we’ve been doing not just mobile, but
16 things like Facebook apps, kiosk apps, tablet apps; the explosion of the devices
17 that the consumer has in their hands beyond just a mobile smartphone is also
18 driving our growth . . . That’s really what our platform is about . . . Providing it to
19 our clients so we can power the different versions of their mobile sites or apps for
20 all the different devices that come out for market.” Another article notes
21 Usablenet’s “niche, providing mobile versions of websites to a variety of
22 industries” including hospitality companies.”

23 27. Usablenet’s website also advertises the functionality (including
24 infringing features) of the mobile website created by Usablenet for Expedia:
25 “Expedia.com is leveraging the Usablenet Mobile 2.0 platform to include
26 advanced new features using the smartphone’s internal GPS to offer hotel options
27 based on the user’s current location . . . [and] can expand the navigation on their
28 HTML5 mobile site via collapsible menus and pop-up windows that streamline

1 purchasing by maximizing the small screen design ... For example, Expedia can
2 display multiple images that let users scroll, swipe and zoom in on a product or
3 property image. The platform also uses advanced GPS functionality that
4 customizes a user's experience based on location. "By offering rich app-like
5 features to all Web-enabled mobile phones, the platform provides brands with a
6 cost-effective service that creates app-like mobile sites across all major mobile
7 operating systems, resulting in an enhanced consumer experience that increases
8 customer engagement and drives sales," [Usablenet president Nick] Taylor said.

9 28. Usablenet has also advertised its relevant products and services as
10 "Usablenet's unique mobile Web platform, Usablenet Mobile, is a fully managed
11 service that enables companies to translate all existing Web site functionality to a
12 full-featured mobile interface. Usablenet Mobile provides leading brands with a
13 new channel to extend marketing, commerce and client service efforts to their
14 customers' mobile phones. The solution requires no IT resources on the client
15 side, works on all Web-enabled mobile devices worldwide and can be
16 implemented in six weeks," and Usablenet works with leading brands to translate
17 their existing website content and functionality to mobile Web, mobile
18 application, kiosk, and assistive platforms. The solution requires no IT resources
19 on the client side and can be implemented in eight to ten weeks. The platform
20 extends marketing, commerce, and other client services to their customers'
21 chosen interface."

22 29. The Usablenet Products thus are intended to enable and assist, and in fact
23 enable and assist, the direct infringers and their systems to practice and infringe
24 upon the claims of Ameranth's patents, which patents are known to Usablenet as
25 alleged herein. Usablenet's websites, product literature, statements in industry
26 articles, customer materials, *etc.*, including those described herein and in the
27 infringement contentions previously served upon Usablenet by Ameranth in this
28

1 matter, encourage and promote use of the Usablenet Products to infringe the
2 claims of the Ameranth patents asserted in this lawsuit.

3 30. At least since the filing and service of the original complaint in this
4 action against Usablenet, Usablenet has had direct and actual knowledge of the
5 ‘850 patent, and knew or should have known that its continued offering and
6 deployment of the Usablenet Products, and its continued support of consumers,
7 restaurant operators, and other users of the Usablenet Products, would induce
8 direct infringement by those users. Additionally, Usablenet intended that its
9 actions would induce direct infringement by those users, as described herein.

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

13 32. By distributing, selling, offering, offering to sell or license and/or selling
14 or licensing the Usablenet Products, Usablenet provides non-staple articles of
15 commerce to others customized and specially adapted for use in infringing
16 systems, products, and/or services, including but not limited to customers/
17 business partners that Ameranth has sued for infringement, of which suits
18 Usablenet is aware. Such Usablenet products, as deployed, sold, licensed and
19 otherwise provided to direct infringers, are specialized and customized for use in
20 infringing systems, including integration with hospitality applications, databases
21 and data, such that they have no substantial non-infringing use. Additionally,
22 Usablenet provides instruction and direction regarding the use of the Usablenet
23 Products, and advertises, promotes, and encourages the use of the Usablenet
24 Products, as described herein. Users of systems including one or more of the
25 Usablenet Products directly infringe one or more valid and enforceable claims of
26 the ‘850 patent for the reasons set forth hereinabove.

27 33. On information and belief, at least since the filing of the original
28 complaint in this action against Usablenet, Usablenet has had direct and actual

1 knowledge of the ‘850 patent, including knowledge that the Usablenet Products,
2 which are non-staple articles of commerce, have been used as a material part of
3 the claimed invention of the ‘850 patent, and that there are no substantial non-
4 infringing uses for the Usablenet Products.

5 34. The aforesaid infringing activity of defendant Usablenet has directly and
6 proximately caused damage to plaintiff Ameranth, including loss of profits from
7 sales or licensing it would have made but for the infringements. Unless enjoined,
8 the aforesaid infringing activity will continue and cause irreparable injury to
9 Ameranth for which there is no adequate remedy at law.

10 **COUNT II**

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

12 **(35 U.S.C. § 271)**

13 35. Plaintiff reiterates and reincorporates the allegations set forth in
14 paragraphs 1-34 above as if fully set forth herein.

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

20 37. Plaintiff Ameranth is the lawful owner by assignment of all right, title
21 and interest in and to the ‘325 patent.

22 38. On information and belief, defendant Usablenet has indirectly infringed
23 and continues to indirectly infringe one or more valid and enforceable claims of
24 the ‘325 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
25 intentionally inducing direct infringement by other persons, in the United States
26 without authority or license from Ameranth, by providing customized software
27 and custom mobile web interfaces/sites linked to and synchronized with the
28 databases/servers used by the systems of the direct infringers, integration,

1 instruction, and technical support (collectively, the “Usablenet Products”), to
2 hotel companies, travel aggregators, and other direct infringers (including but not
3 limited to Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia) for use
4 in their online/mobile reservation systems and marketing and advertising
5 Usablenet’s software, mobile web interfaces/sites, apps, integration, technical
6 support, and related products and services to hotel companies, travel aggregators,
7 and other direct infringers. Additionally, Usablenet contributorily infringes by
8 selling and/or offering for sale the aforementioned customized software and
9 custom mobile web interfaces/sites to direct infringers including but not limited
10 to Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia. Ameranth has
11 previously served Usablenet with infringement contentions in this action further
12 describing the details of Usablenet’s infringement of Ameranth’s patents. Those
13 infringement contentions, redacted to protect confidential information, are
14 attached hereto as **Exhibit D** and incorporated herein by reference.

15 39. On information and belief, systems including one or more of the
16 Usablenet Products, as deployed and/or used at or from one or more locations by
17 Usablenet, its agents, distributors, partners, affiliates, licensees, and/or their
18 customers, infringe one or more valid and enforceable claims of the ‘325 patent,
19 by, *inter alia*, doing at least one of the following: (a) Generating and transmitting
20 menus in a system including a central processing unit, a data storage device, a
21 computer operating system containing a graphical user interface, one or more
22 displayable main menus, modifier menus, and sub-modifier menus, and
23 application software for generating a second menu and transmitting it to a
24 wireless handheld computing device or a Web page; and/or (b) Enabling
25 ordering, reservations, and other hospitality functions via iPhone, Android, and
26 other internet-enabled wireless handheld computing devices as well as via Web
27 pages, storing hospitality information and data on at least one central database, on
28 at least one wireless handheld computing device, and on at least one Web server

1 and Web page, and synchronizing applications and data, including but not limited
2 to applications and data relating to orders, between at least one central database,
3 wireless handheld computing devices, and at least one Web server and Web page;
4 and sending alerts, confirmations, and other information regarding orders to
5 various wireless mobile devices.

6 40. On information and belief, customers of Usablenet, including consumers
7 and hotel and restaurant operators, use the Usablenet Products in a manner that
8 infringes upon one or more valid and enforceable claims of the '325 patent.
9 These include customers and business partners that Ameranth has sued for patent
10 infringement and which lawsuits are known to Usablenet by virtue of Usablenet's
11 business relationship with such defendants and Usablenet's own participation in
12 the consolidated patent infringement actions pending in this Court. Usablenet
13 provides instruction and direction regarding the use of the Usablenet Products
14 and advertises, promotes, and encourages the use of the Usablenet Products in a
15 manner understood and intended to infringe the claims of Ameranth's patents.
16 Some examples are set forth in paragraphs 21-28 herein.

17 41. The Usablenet Products thus are intended to enable and assist, and in fact
18 enable and assist, the direct infringers and their systems to practice and infringe
19 upon the claims of Ameranth's patents, which patents are known to Usablenet as
20 alleged herein. Usablenet's websites, product literature, statements in industry
21 articles, customer materials, *etc.*, including those described herein and in the
22 infringement contentions previously served upon Usablenet by Ameranth in this
23 matter, encourage and promote use of the Usablenet Products to infringe the
24 claims of the Ameranth patents asserted in this lawsuit.

25 42. On information and belief, Defendant actively induces others to infringe
26 the '325 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging,
27 aiding and abetting customers of Usablenet, including consumers and hotel and
28 restaurant operators, to use the infringing Usablenet Products in the United States

1 in an manner known, understood, and intended to infringe Ameranth's patents
2 without authority or license from Ameranth.

3 43. On information and belief, Defendant contributorily infringes and
4 continues to contributorily infringe one or more valid and enforceable claims of
5 the '325 patent, in violation of 35 U.S.C. § 271(c) by offering to sell and/or
6 selling components of systems on which claims of the '325 patent read,
7 constituting a material part of the invention, knowing that the components were
8 especially adapted for use in systems which infringe claims of the '325 patent.

9 44. By distributing, selling, offering, offering to sell or license and/or selling
10 or licensing the Usablenet Products, Defendant provides non-staple articles of
11 commerce to others customized and specially adapted for use in infringing
12 systems, products, and/or services, including but not limited to customer/
13 business partners that Ameranth has previously sued for patent infringement and
14 of which suits Usablenet is aware. Such Usablenet Products, as deployed, sold,
15 licensed and otherwise provided to direct infringers, are specialized and
16 customized for use in infringing systems, including integration with hospitality
17 applications, databases and data, such that they have no substantial non-
18 infringing use. Additionally, Usablenet provides instruction and direction
19 regarding the use of the Usablenet Products and advertises, promotes, and
20 encourages the use of the Usablenet Products, as describe herein. Users of the
21 Usablenet Products directly infringe one or more valid and enforceable claims of
22 the '325 patent, for the reasons set forth hereinabove.

23 45. At least since the filing and service of the original complaint in this
24 action against Usablenet, Usablenet has had direct and actual knowledge of the
25 '325 patent, including knowledge that the Usablenet Products, which are non-
26 staple articles of commerce, have been used as a material part of the claimed
27 invention of the '325 patent, and that there are no substantial non-infringing uses
28

1 for the Usablenet Products. Usablenet has, nonetheless, continued to engage in
2 infringing acts despite such knowledge.

3 46. The aforesaid infringing activity of defendant Usablenet has directly and
4 proximately caused damage to plaintiff Ameranth, including loss of profits from
5 sales or licensing it would have made but for the infringements. Unless enjoined,
6 the aforesaid infringing activity will continue and cause irreparable injury to
7 Ameranth for which there is no adequate remedy at law.

8 **COUNT III**

9 **Patent Infringement (U.S. Pat. No. 8,146,077)**

10 **(35 U.S.C. § 271)**

11 47. Plaintiff reiterates and incorporates the allegations set forth in paragraphs
12 1-46 above as if fully set forth herein.

13 48. On March 27, 2012, United States Patent No. 8,146,077 entitled
14 “Information Management and Synchronous Communications System with Menu
15 Generation, and Handwriting and Voice Modification of Orders” (a true copy of
16 which is attached hereto as **Exhibit C** and incorporated herein by reference) was
17 duly and legally issued by the United States Patent & Trademark Office.

18 49. Plaintiff Ameranth is the lawful owner by assignment of all right, title
19 and interest in and to the ‘077 patent.

20 50. On information and belief, defendant Usablenet has indirectly infringed
21 and continues to indirectly infringe one or more valid and enforceable claims of
22 the ‘077 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
23 intentionally inducing direct infringement by other persons, in the United States
24 without authority or license from Ameranth, by providing customized software
25 and custom mobile web interfaces/sites linked to and synchronized with the
26 databases/servers used by the systems of the direct infringers, integration,
27 instruction, and technical support (collectively, the “Usablenet Products”), to
28 hotel companies, travel aggregators, and other direct infringers (including but not

1 limited to Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia) for use
2 in their online/mobile reservation systems and marketing and advertising
3 Usablenet's software, mobile web interfaces/sites, apps, integration, technical
4 support, and related products and services to hotel companies, travel aggregators,
5 and other direct infringers. Additionally, Usablenet contributorily infringes by
6 selling and/or offering for sale the aforementioned customized software and
7 custom mobile web interfaces/sites to direct infringers including but not limited
8 to Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia. Ameranth has
9 previously served Usablenet with infringement contentions in this action further
10 describing the details of Usablenet's infringement of Ameranth's patents. Those
11 infringement contentions, redacted to protect confidential information, are
12 attached hereto as **Exhibit D** and incorporated herein by reference.

13 51. On information and belief, systems including one or more of the
14 Usablenet Products, as deployed and/or used at or from one or more locations by
15 Usablenet, its agents, distributors, partners, affiliates, licensees, and/or their
16 customers, infringe one or more valid and enforceable claims of the '077 patent,
17 by, *inter alia*, doing at least one of the following: (a) Configuring and
18 transmitting menus in a system including a central processing unit, a data storage
19 device, a computer operating system containing a graphical user interface, one or
20 more displayable master menus, menu configuration software enabled to generate
21 a menu configuration for a wireless handheld computing device in conformity
22 with a customized display layout, and enabled for synchronous communications
23 and to format the menu configuration for a customized display layout of at least
24 two different wireless handheld computing device display sizes, and/or (b)
25 Enabling ordering, reservations, and other hospitality functions via iPhone,
26 Android, and other internet-enabled wireless handheld computing devices as well
27 as via Web pages, storing hospitality information and data on at least one
28 database, on at least one wireless handheld computing device, and on at least one

1 Web server and Web page, and synchronizing applications and data, including
2 but not limited to applications and data relating to orders, between at least one
3 database, wireless handheld computing devices, and at least one Web server and
4 Web page; utilizing communications control software enabled to link and
5 synchronize hospitality information between at least one database, wireless
6 handheld computing device, and web page, to display information on web pages
7 and on different wireless handheld computing device display sizes, and to allow
8 information to be entered via Web pages, transmitted over the internet, and
9 automatically communicated to at least one database and to wireless handheld
10 computing devices; allowing information to be entered via wireless handheld
11 computing devices, transmitted over the internet, and automatically
12 communicated to at least one database and to Web pages.

13 52. On information and belief, customers of Usablenet, including consumers
14 and hotel and restaurant operators, use the Usablenet Products in a manner that
15 infringes upon one or more valid and enforceable claims of the '077 patent.
16 These include customers and business partners that Ameranth has sued for patent
17 infringement, which lawsuits are known to Usablenet by virtue of Usablenet's
18 business relationship with such defendants and Usablenet's own participation in
19 the consolidated patent infringement actions pending in this Court. Usablenet
20 provides instruction and direction regarding the use of the Usablenet Products
21 and advertises, promotes, and encourages the use of the Usablenet Products in a
22 manner understood and intended to infringe the claims of Ameranth's patents.
23 Some examples are set forth in paragraphs 21-28, above.

24 53. The Usablenet Products thus are intended to enable and assist, and in
25 fact enable and assist, the direct infringers and their systems to practice and
26 infringe upon the claims of Ameranth's patents, which patents are known to
27 Usablenet as alleged herein. Usablenet's websites, product literature, statements
28 in industry articles, customer materials, *etc.*, including those described herein and

1 in the infringement contentions previously served upon Usablenet by Ameranth
2 in this matter, encourage and promote use of the Usablenet Products to infringe
3 the claims of the Ameranth patents asserted in this lawsuit.
4

5 54. On information and belief, Defendant actively induces others to infringe
6 the '077 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging,
7 aiding and abetting customers of Usablenet, including consumers and hotel
8 restaurant operators, including entities that Ameranth has sued for infringement
9 and which suits are known to Usablenet, to use the infringing Usablenet Products
10 in the United States without authority or license from Ameranth in a manner
11 known, understood, and intended to infringe Ameranth's patents.

12 55. On information and belief, Defendant contributorily infringes and
13 continues to contributorily infringe one or more valid and enforceable claims of
14 the '077 patent, in violation of 35 U.S.C. § 271(c) by offering to sell and/or
15 selling components of systems on which claims of the '077 patent read,
16 constituting a material part of the invention, knowing that the components were
17 especially adapted for use in systems which infringe claims of the '077 patent.

18 56. By distributing, selling, offering, offering to sell or license and/or selling
19 or licensing the Usablenet Products, Defendant provides non-staple articles of
20 commerce to others customized and specially adapted for use in infringing
21 systems, products, and/or services, including but not limited to customers/
22 business partners that Ameranth has sued for infringement, of which suits
23 Usablenet is aware. Such Usablenet Products, as deployed, sold, licensed and
24 otherwise provided to direct infringers, are specialized and customized for use in
25 infringing systems, including integration with hospitality applications, databases
26 and data, such that they have no substantial non-infringing use. Additionally,
27 Usablenet provides instruction and direction regarding the use of the Usablenet
28 Products and advertises, promotes, and encourages the use of the Usablenet

1 Products, as described herein. Users of the Usablenet Products directly infringe
2 one or more valid and enforceable claims of the '077 patent, for the reasons set
3 forth hereinabove.

4 57. On information and belief, at least since the filing of the original
5 complaint in this matter against Usablenet, Usablenet has had direct and actual
6 knowledge of the '077 patent, including knowledge that the Usablenet Products,
7 which are non-staple articles of commerce, have been used as a material part of
8 the claimed invention of the '077 patent, and that there are no substantial non-
9 infringing uses for the Usablenet Products. Nonetheless, Usablenet has continued
10 to engage in acts of infringement as described herein.

11 58. The aforesaid infringing activity of defendant Usablenet has directly and
12 proximately caused damage to plaintiff Ameranth, including loss of profits from
13 sales or licensing it would have made but for the infringements. Unless enjoined,
14 the aforesaid infringing activity will continue and cause irreparable injury to
15 Ameranth for which there is no adequate remedy at law.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, plaintiff Ameranth respectfully prays for judgment against
18 defendant Usablenet, as follows:

19 1. Adjudging that the manufacture, use, offer for sale or license and /or sale
20 or license of the Usablenet Products indirectly infringes valid and enforceable
21 claims of the '850 patent, and the '325 patent, and the '077 patent, as set forth
22 hereinabove;

23 2. Adjudging that Defendant has infringed, actively induced others to
24 infringe and/or contributorily infringed valid and enforceable claims of the '850
25 patent, and the '325 patent, and the '077 patent, as set forth hereinabove;

26 3. Enjoining Defendant, and its officers, directors, employees, attorneys,
27 agents, representatives, parents, subsidiaries, affiliates and all other persons
28 acting in concert, participation or privity with Defendant, and their successors

1 and assigns, from infringing, contributorily infringing and/or inducing others to
2 infringe the valid and enforceable claims of the '850 patent, and the '325 patent,
3 and the '077 patent;

4 4. Awarding Ameranth the damages it has sustained by reason of
5 Defendant's infringement, as alleged herein, together with interest and costs
6 pursuant to 35 U.S.C. § 284;

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

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

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

13
14 **DEMAND FOR JURY TRIAL**

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

17 Respectfully submitted,

18 Dated: July 15, 2013

CALDARELLI HEJMANOWSKI & PAGE LLP

19 By: /s/ William J. Caldarelli

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27 **Attorneys for Plaintiff AMERANTH, INC.**