

CALDARELLI HEJMANOWSKI & PAGE LLP

William J. Caldarelli (SBN #149573)
12340 El Camino Real, Suite 430
San Diego, CA 92130
Tel: (858) 720-8080
Fax: (858) 720-6680
wjc@chplawfirm.com

FABIANO LAW FIRM, P.C.

Michael D. Fabiano (SBN #167058)
12526 High Bluff Drive, Suite 300
San Diego, CA 92130
Telephone: (619) 742-9631
mdfabiano@fabianolawfirm.com

OSBORNE LAW LLC

John W. Osborne (*Pro Hac Vice*)
33 Habitat Lane
Cortlandt Manor, NY 10567
Telephone: (914) 714-5936
josborne@osborneipl.com

WATTS LAW OFFICES

Ethan M. Watts (SBN #234441)
12340 El Camino Real, Suite 430
San Diego, CA 92130
Telephone: (858) 509-0808
Facsimile: (619) 878-5784
emw@ewattslaw.com

Attorneys for Plaintiff Ameranth, Inc.

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

AMERANTH, INC.,

Plaintiff,

v.

HOTWIRE, INC.,

Defendant.

Case No. 12-CV-1653-JLS (NLS)

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

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

4 **PARTIES**

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

16 2. Defendant Hotwire is, on information and belief, a Delaware corporation
17 having a principal place of business and headquarters in San Francisco,
18 California. On information and belief, Hotwire makes, uses, offers for sale or
19 license and/or sells or licenses hotel and lodging, property management system
20 (PMS) and other hospitality information-technology products, software,
21 components and/or systems within this Judicial District, including the Hotwire
22 Reservation System 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 5. On information and belief, Defendant engages in (a) the offer for sale or
2 license and sale or license of hospitality, reservations, restaurant, food service,
3 ordering, products and/or components in the United States, including this Judicial
4 District, including services, products, software, and components, comprising
5 wireless and internet POS and/or hospitality aspects; (b) the installation and
6 maintenance of said services, products, software, components and/or systems in
7 hospitality industry, hotel and lodging, restaurant, food service, and/or
8 entertainment information technology systems in the United States, including this
9 Judicial District; and/or (c) the use of hospitality industry, hotel and lodging,
10 restaurant, food service, and/or entertainment information technology systems
11 comprising said services, products, software, components and/or systems in the
12 United States, including this Judicial District.

13 6. This Court has personal jurisdiction over Defendant because Defendant
14 commits acts of patent infringement in this Judicial District including, *inter alia*,
15 making, using, offering for sale or license, and/or selling or licensing infringing
16 services, products, software, components and/or systems in this Judicial District.
17 Additionally, Defendant has already appeared in this action and submitted to the
18 jurisdiction of the Court. Hotwire has continued to engage in and perform such
19 acts of infringement since the filing and service of the original complaint in this
20 matter accusing Hotwire of infringement of the Ameranth patents at issue herein.

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

BACKGROUND

24 8. Ameranth was established in 1996 to develop and provide its 21st
25 Century Communications™ innovative information technology solutions for the
26 hospitality industry (inclusive of, e.g., restaurants, hotels, casinos, nightclubs,
27 cruise ships and other entertainment and sports venues). Ameranth has been
28

1 widely recognized as a technology leader in the provision of wireless and
2 internet-based systems and services to, *inter alia*, restaurants, hotels, casinos,
3 cruise ships and entertainment and sports venues. Ameranth's award winning
4 inventions enable, in relevant part, generation and synchronization of menus,
5 including but not limited to restaurant menus, event tickets, reservations and
6 other products across fixed, wireless and/or internet platforms as well as
7 synchronization of hospitality information and hospitality software applications
8 across fixed, wireless and internet platforms, including but not limited to,
9 computer servers, web servers, databases, affinity/social networking systems,
10 desktop computers, laptops, "smart" phones and other wireless handheld
11 computing devices.

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

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

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

1 **RELATED CASES PREVIOUSLY FILED**

2 12. The Ameranth patents asserted herein, U.S. Patent No. 6,384,850 (the
3 “‘850 patent”), U.S. Patent No. 6,871,325 (the “‘325 patent”), and U.S. Patent
4 No. 8,146,077 (the “‘077 patent”), are all patents in Ameranth’s “Information
5 Management and Synchronous Communications” patent family.

6 13. Ameranth is also currently asserting claims of these same patents in
7 separate lawsuits, against other defendants, that are already pending in this Court.
8 The first-filed lawsuit asserts claims of the ‘850 and ‘325 patents and is entitled
9 *Ameranth v. Pizza Hut, Inc. et al.*, Case No. 3:11-cv-01810-JLS-NLS. Lawsuits
10 subsequently filed by Ameranth in this Court, asserting claims of the ‘077 patent,
11 include Case Nos. 3:12-cv-00729-JLS-NLS; 3:12-cv-00731-JLS-NLS; 3:12-cv-
12 00732-JLS-NLS; 3:12-cv-00733-JLS-NLS; 3:12-cv-00737-JLS-NLS; 3:12-cv-
13 00738-JLS-NLS (settled); 3:12-cv-00739-JLS-NLS and 3:12-cv-00742-JLS-
14 NLS. Other lawsuits filed by Ameranth in this Court asserting claims of the
15 ‘850, ‘325, and ‘077 patents are Case No. 3:12-cv-00858-JLS-NLS; 3:12-cv-
16 1201-JLS-NLS (settled): 3:12-cv-01651-JLS-NLS; 3:12-cv-01629-JLS-NLS;
17 3:12-cv-01630-JLS-NLS; 3:12-cv-01631-JLS-NLS; 3:12-cv-01634-JLS-NLS;
18 3:12-cv-01654-JLS-NLS; 3:12-cv-01636-JLS-NLS; 3:12-cv-01640-JLS-NLS;
19 3:12-cv-01642-JLS-NLS; 3:12-cv-01643-JLS-NLS; 3:12-cv-01644-JLS-NLS;
20 3:12-cv-01646-JLS-NLS 3:12-cv-01647-JLS-NLS (settled); 3:12-cv-01648-JLS-
21 NLS; 3:12-cv-01649-JLS-NLS; 3:12-cv-01650-JLS-NLS; 3:12-cv-01652-JLS-
22 NLS; 3:12-cv-01633-JLS-NLS; 3:12-cv-01627-JLS-NLS; 3:12-cv-01655-JLS-
23 NLS; 3:12-cv-01656-JLS-NLS; 3:12-cv-01659-JLS-NLS (settled); 3:13-cv-
24 00350-JLS-NLS; 3:13-cv-00352-JLS-NLS; 3:13-cv-00353-JLS-NLS; 3:13-cv-
25 0836-JLS-NLS and 3:13-cv-01072-MMA-BGS. All of the above still-pending
26 cases have been consolidated for pre-trial through claim construction except for
27 3:13-cv-00350-JLS-NLS; 3:13-cv-00352-JLS-NLS; 3:13-cv-00353-JLS-NLS;

1 3:13-cv-0836-JLS-NLS and 3:13-cv-01072-MMA-BGS. These include lawsuits
2 against business partners of Defendant, such as hotel companies with whom
3 Defendant does business.

4 14. The original complaint in this matter was filed in this Court on July 2,
5 2012, and subsequently served upon Hotwire. At least since that time, Hotwire
6 has had direct and knowledge of Ameranth's patents and that Hotwire's online
7 and mobile reservations system infringes those patents as alleged therein.
8 Nonetheless, Defendant has continued, and is continuing, to make, use, offer for
9 sale or license and/or sell or license infringing systems, products, and/or services
10 in the United States without authority or license from Ameranth and to engage in
11 acts of infringement as set forth herein.

12 **COUNT I**

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

14 **(35 U.S.C. § 271)**

15 15. Plaintiff reiterates and incorporates the allegations set forth in paragraphs
16 1-14 above as if fully set forth herein.

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

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

24 18. On information and belief, Defendant directly infringes and continues to
25 directly infringe one or more valid and enforceable claims of the '850 patent, in
26 violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
27 and/or selling or licensing infringing systems, products, and/or services in the

1 United States without authority or license from Ameranth, including but not
2 limited to the Hotwire Reservation system/product/service, which includes, *inter*
3 *alia*, hotel/lodging-reservation and property management system (PMS)
4 integration, online and mobile hotel/lodging reservations, integration with e-mail
5 and affinity program and social media applications such as Facebook, Twitter,
6 Groupon, and YouTube, and/or other third-party web-based applications, and
7 other hospitality aspects (the “Hotwire Reservation System”). Ameranth has
8 previously served Defendants with infringement contentions in this action further
9 describing the details of Hotwire’s infringement of Ameranth’s patents. Those
10 infringement contentions are attached hereto as **Exhibit D** and incorporated
11 herein by reference.

12 19. On information and belief, the Hotwire Reservation System, as
13 deployed and/or used at or from one or more locations by Hotwire, its
14 agents, distributors, partners, affiliates, licensees, and/or their customers,
15 infringes one or more valid and enforceable claims of the ‘850 patent, by, *inter*
16 *alia*, doing at least one of the following: (a) Generating and transmitting menus in
17 a system including a central processing unit, a data storage device, a computer
18 operating system containing a graphical user interface, one or more displayable
19 main menus, modifier menus, and sub-modifier menus, and application software
20 for generating a second menu and transmitting it to a wireless handheld
21 computing device or a Web page; and/or (b) Enabling reservations and other
22 hospitality functions via iPhone, Android, and other internet-enabled wireless
23 handheld computing devices as well as via Web pages, storing hospitality
24 information and data on at least one central database, on at least one wireless
25 handheld computing device, and on at least one Web server and Web page, and
26 synchronizing applications and data, including but not limited to applications and
27 data relating to reservations, between at least one central database, wireless

1 handheld computing devices, and at least one Web server and Web page; utilizing
2 an interface that provides a single point of entry that allows the synchronization
3 of at least one wireless handheld computing device and at least one Web page
4 with at least one central database; allowing information to be entered via Web
5 pages, transmitted over the internet, and automatically communicated to at least
6 one central database and to wireless handheld computing devices; allowing
7 information to be entered via wireless handheld computing devices, transmitted
8 over the internet, and automatically communicated to at least one central database
9 and to Web pages.

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

14 21. On information and belief, customers of Hotwire, including consumers
15 and hotel/restaurant operators, use the Hotwire Reservation System in a manner
16 that infringes the Ameranth patents. Hotwire provides instruction and direction
17 regarding the use of the Hotwire Reservation System, and advertises, promotes,
18 and encourages the use of the Hotwire Reservation System in a manner
19 understood and intended by Hotwire to infringe Ameranth's patents. Defendant
20 provides such instruction, direction and encouragement regarding infringing use
21 of the Hotwire Reservations System on its webpages, in advertising, in user
22 videos, in offerings on mobile "app stores," in press releases and in statements in
23 industry news articles, as demonstrated in the infringement contentions attached
24 hereto as **Exhibit D** and in the references cited in the appendix thereto.

25 22. On information and belief, the Hotwire Reservation System infringes
26 one or more valid and enforceable claims of the '850 patent for the reasons set
27 forth hereinabove.

1 23. At least since the filing and service of the original complaint against
2 Hotwire in this matter, Hotwire has had knowledge of the '850 patent, and knew
3 or should have known that its continued offering and deployment of the Hotwire
4 Reservation System, and its continued support of consumers, hotel/restaurant
5 operators, and other users of this system/product/service, would induce direct
6 infringement by those users. Additionally, Hotwire intended that its actions
7 would induce direct infringement of Ameranth's patents by those users.

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

11 25. By distributing, selling, offering, offering to sell or license and/or selling
12 or licensing the Hotwire Reservation System, Hotwire provides non-staple
13 articles of commerce to others, including consumers and hotel/restaurant
14 operator, for use in infringing systems, products, and/or services. Additionally,
15 Hotwire provides instruction and direction regarding the use of the Hotwire
16 Reservation System, and advertises, promotes, and encourages the use of the
17 Hotwire Reservation System in a manner understood and intended by Hotwire to
18 infringe Ameranth's patents, as described above. Users of the Hotwire
19 Reservation System, including consumers and hotel/restaurant operators, directly
20 infringe one or more valid and enforceable claims of the '850 patent for the
21 reasons set forth hereinabove.

22 26. On information and belief, the Hotwire Reservation System infringes
23 one or more valid and enforceable claims of the '850 patent, for the reasons set
24 forth hereinabove.

25 27. On information and belief, Hotwire has had knowledge of the '850
26 patent at least since the filing and service of the original complaint in this action
27 against Hotwire, including knowledge that the Hotwire Reservation System,
28

1 which is a non-staple article of commerce, has been used as a material part of the
2 claimed invention of the '850 patent, and that there are no substantial non-
3 infringing uses for the Hotwire Reservation System.

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

9 **COUNT II**

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

11 **(35 U.S.C. § 271)**

12 29. Plaintiff reiterates and reincorporates the allegations set forth in
13 paragraphs 1-28 above as if fully set forth herein.

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

19 31. Plaintiff Ameranth is the lawful owner by assignment of all right, title
20 and interest in and to the '325 patent.

21 32. On information and belief, Defendant directly infringes and continues to
22 directly infringe one or more valid and enforceable claims of the '325 patent, in
23 violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
24 and/or selling or licensing infringing systems, products, and/or services in the
25 United States without authority or license from Ameranth, including but not
26 limited to the Hotwire Reservation System. Ameranth has previously served
27 Defendant with infringement contentions in this action further describing the

1 details of Hotwire's infringement of Ameranth's patents. Those infringement
2 contentions are attached hereto as **Exhibit D** and incorporated herein by
3 reference.

4 33. On information and belief, the Hotwire Reservation System, as
5 deployed and/or used at or from one or more locations by Hotwire, its
6 agents, distributors, partners, affiliates, licensees, and/or their customers,
7 infringes one or more valid and enforceable claims of the '325 patent, by, *inter*
8 *alia*, doing at least one of the following: (a) Generating and transmitting menus in
9 a system including a central processing unit, a data storage device, a computer
10 operating system containing a graphical user interface, one or more displayable
11 main menus, modifier menus, and sub-modifier menus, and application software
12 for generating a second menu and transmitting it to a wireless handheld
13 computing device or a Web page; and/or (b) Enabling reservations and other
14 hospitality functions via iPhone, Android, and other internet-enabled wireless
15 handheld computing devices as well as via Web pages, storing hospitality
16 information and data on at least one central database, on at least one wireless
17 handheld computing device, and on at least one Web server and Web page, and
18 synchronizing applications and data, including but not limited to applications and
19 data relating to orders, between at least one central database, wireless handheld
20 computing devices, and at least one Web server and Web page; and sending
21 alerts, confirmations, and other information regarding orders to various wireless
22 mobile devices.

23 34. On information and belief, Defendant has indirectly infringed and
24 continues to indirectly infringe one or more valid and enforceable claims of the
25 '325 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
26 intentionally inducing direct infringement by other persons.

1 35. On information and belief, customers of Hotwire, including consumers
2 and hotel/restaurant operators, use the Hotwire Reservation System in a manner
3 that infringes upon one or more valid and enforceable claims of the ‘325 patent.
4 Hotwire provides instruction and direction regarding the use of the Hotwire
5 Reservation System and advertises, promotes, and encourages the use of the
6 Hotwire Reservation System in a manner understood and intended by Defendant
7 to infringe Ameranth’s patents. Defendant provides such instruction, direction
8 and encouragement regarding infringing use of the Hotwire Reservations System
9 on its webpages, in advertising, in user videos, in offerings on mobile “app
10 stores,” in press releases and in statements in industry news articles, as
11 demonstrated in the infringement contentions attached hereto as **Exhibit D** and in
12 the references cited in the appendix thereto.

13 36. On information and belief, Defendant actively induces others to infringe
14 the ‘325 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging,
15 aiding and abetting customers of Hotwire, including consumers and
16 hotel/restaurant operators, to use the infringing Hotwire Reservation System in
17 the United States without authority or license from Ameranth in a manner
18 understood and intended by Defendant to infringe Ameranth’s patents.

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

25 38. By distributing, selling, offering, offering to sell or license and/or selling
26 or licensing the Hotwire Reservation System, Defendant provides non-staple
27 articles of commerce to others for use in infringing systems, products, and/or

1 services. Additionally, Hotwire provides instruction and direction regarding the
2 use of the Hotwire Reservation System and advertises, promotes, and encourages
3 the use of the Hotwire Reservation System in manner understood and intended by
4 Defendant to infringe Ameranth's patents, as described above. Users of the
5 Hotwire Reservation System directly infringe one or more valid and enforceable
6 claims of the '325 patent, for the reasons set forth hereinabove.

7 39. On information and belief, the Hotwire Reservation System infringes
8 one or more valid and enforceable claims of the '325 patent, for the reasons set
9 forth hereinabove.

10 40. On information and belief, Hotwire has had knowledge of the '325
11 patent at least since the filing and service of the original complaint in this matter
12 upon Hotwire, including knowledge that the Hotwire Reservation System, which
13 is a non-staple articles of commerce, has been used as a material part of the
14 claimed invention of the '325 patent, and that there are no substantial non-
15 infringing uses for the Hotwire Reservation System.

16 41. The aforesaid infringing activity of defendant Hotwire has directly and
17 proximately caused damage to plaintiff Ameranth, including loss of profits from
18 sales or licensing it would have made but for the infringements. Unless enjoined,
19 the aforesaid infringing activity will continue and cause irreparable injury to
20 Ameranth for which there is no adequate remedy at law.

21 **COUNT III**

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

23 **(35 U.S.C. § 271)**

24 42. Plaintiff reiterates and incorporates the allegations set forth in paragraphs
25 1-41 above as if fully set forth herein.

26 43. On March 27, 2012, United States Patent No. 8,146,077 entitled
27 "Information Management and Synchronous Communications System with Menu

1 Generation, and Handwriting and Voice Modification of Orders” (a true copy of
2 which is attached hereto as **Exhibit C** and incorporated herein by reference) was
3 duly and legally issued by the United States Patent & Trademark Office.

4 44. Plaintiff Ameranth is the lawful owner by assignment of all right, title
5 and interest in and to the ‘077 patent.

6 45. On information and belief, Defendant directly infringes and continues to
7 directly infringe one or more valid and enforceable claims of the ‘077 patent, in
8 violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
9 and/or selling or licensing infringing systems, products, and/or services in the
10 United States without authority or license from Ameranth, including but not
11 limited to the Hotwire Reservation System.

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

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

13 47. On information and belief, Defendant has indirectly infringed and
14 continues to indirectly infringe one or more valid and enforceable claims of the
15 ‘077 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
16 intentionally inducing direct infringement by other persons.

17 48. On information and belief, customers of Hotwire, including consumers
18 and hotel/restaurant operators, use the Hotwire Reservation System in a manner
19 that infringes upon one or more valid and enforceable claims of the ‘077 patent.
20 Hotwire provides instruction and direction regarding the use of the Hotwire
21 Reservation System and advertises, promotes, and encourages the use of the
22 Hotwire Reservation System in a manner understood and intended by Defendant
23 to infringe Ameranth’s patents. Defendant provides such instruction, direction
24 and encouragement regarding infringing use of the Hotwire Reservations System
25 on its webpages, in advertising, in user videos, in offerings on mobile “app
26 stores,” in press releases and in statements in industry news articles, as
27

1 demonstrated in the infringement contentions attached hereto as **Exhibit D** and in
2 the references cited in the appendix thereto.

3 49. On information and belief, Defendant actively induces others to infringe
4 the '077 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging,
5 aiding and abetting customers of Hotwire, including consumers and
6 hotel/restaurant operators, to use the infringing Hotwire Reservation System in
7 the United States without authority or license from Ameranth in a manner
8 understood and intended by Defendant to infringe Ameranth's patents.

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

15 51. By distributing, selling, offering, offering to sell or license and/or selling
16 or licensing the Hotwire Reservation System, Defendant provides non-staple
17 articles of commerce to others for use in infringing systems, products, and/or
18 services. Additionally, Hotwire provides instruction and direction regarding the
19 use of the Hotwire Reservation System and advertises, promotes, and encourages
20 the use of the Hotwire Reservation System in manner understood and intended by
21 Defendant to infringe Ameranth's patents, as described above. Users of the
22 Hotwire Reservation System, including but not limited to consumers and
23 hotel/restaurant operators, directly infringe one or more valid and enforceable
24 claims of the '077 patent, for the reasons set forth hereinabove.

25 52. On information and belief, the Hotwire Reservation System infringes
26 one or more valid and enforceable claims of the '077 patent, for the reasons set
27 forth hereinabove.

1 53. On information and belief, Hotwire has had knowledge of the '077
2 patent at least since the filing and service of the original complaint in this matter
3 upon Defendant, including knowledge that the Hotwire Reservation System,
4 which is a non-staple article of commerce, has been used as a material part of the
5 claimed invention of the '077 patent, and that there are no substantial non-
6 infringing uses for the Hotwire Reservation System.

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

12 **PRAYER FOR RELIEF**

13 WHEREFORE, plaintiff Ameranth respectfully prays for judgment against
14 Defendant, as follows:

15 1. Adjudging that the manufacture, use, offer for sale or license and /or
16 sale or license of the Hotwire Reservation System infringes valid and enforceable
17 claims of the '850 patent, and the '325 patent, and the '077 patent, as set forth
18 hereinabove;

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

22 3. Enjoining Defendant, and its officers, directors, employees,
23 attorneys, agents, representatives, parents, subsidiaries, affiliates and all other
24 persons acting in concert, participation or privity with Defendant, and their
25 successors and assigns, from infringing, contributorily infringing and/or inducing
26 others to infringe the valid and enforceable claims of the '850 patent, and the
27 '325 patent, and the '077 patent;

1 4. Awarding Ameranth the damages it has sustained by reason of
2 Defendant's infringement, together with interest and costs pursuant to 35 U.S.C.
3 § 284;

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

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

8 **DEMAND FOR JURY TRIAL**

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

11
12 Respectfully submitted,

13 Dated: July 26, 2013

CALDARELLI HEJMANOWSKI & PAGE LLP

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

16 FABIANO LAW FIRM, P.C.
Michael D. Fabiano

17 OSBORNE LAW LLC
John W. Osborne

18 WATTS LAW OFFICES
19 Ethan M. Watts

20 **Attorneys for Plaintiff AMERANTH, INC.**
21
22
23
24
25
26
27
28