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

AMERANTH, INC.,

Plaintiff,

v.

PIZZA HUT, INC., ET AL.,

Defendants.

Civil Action No.: 3:11-cv-01810-DMS-WVG

Consolidated with:
12cv729 DMS-WVG 12cv1640 DMS-WVG
12cv731 DMS-WVG 12cv1642 DMS-WVG
12cv732 DMS-WVG 12cv1643 DMS-WVG
12cv733 DMS-WVG 12cv1644 DMS-WVG
12cv737 DMS-WVG 12cv1646 DMS-WVG
12cv739 DMS-WVG 12cv1648 DMS-WVG
12cv742 DMS-WVG 12cv1649 DMS-WVG
12cv858 DMS-WVG 12cv1650 DMS-WVG
12cv1627 DMS-WVG 12cv1651 DMS-WVG
12cv1629 DMS-WVG 12cv1652 DMS-WVG
12cv1630 DMS-WVG 12cv1653 DMS-WVG
12cv1631 DMS-WVG 12cv1654 DMS-WVG
12cv1633 DMS-WVG 12cv1655 DMS-WVG
12cv1634 DMS-WVG 12cv1656 DMS-WVG
12cv1636 DMS-WVG

**FIRST AMENDED COMPLAINT FOR
PATENT INFRINGEMENT AGAINST
MICROS SYSTEMS, INC.

DEMAND FOR JURY TRIAL**

Complaint Filed: August 15, 2011

AND RELATED CASES.

1 previously served on Micros in this action, a copy of which is filed under seal
2 herewith as **Exhibit D** (collectively, the “Micros Systems”).

3 **JURISDICTION AND VENUE**

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

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

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

20 6. This Court has personal jurisdiction over Defendant because Defendant
21 commits acts of patent infringement in this Judicial District including, *inter alia*,
22 making, using, offering for sale or license, and/or selling or licensing infringing
23 services, products, software, components and/or systems in this Judicial District.
24 Additionally, Micros has already appeared in this action and submitted to the
25 jurisdiction of the Court. Micros has continued to engage in and perform such
26 acts of infringement since the filing of the original complaint in this matter
27 accusing Micros of infringement of the Ameranth patents at issue herein.

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

3 **BACKGROUND**

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

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

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

8 11. The adoption of Ameranth's technology by industry leaders and the wide
9 acclaim received by Ameranth for its technological innovations are just some of
10 the many confirmations of the breakthrough aspects of Ameranth's inventions.
11 Ameranth has received twelve different technology awards (three with "end
12 customer" partners) and has been widely recognized as a hospitality
13 wireless/internet technology leader by almost all major national and hospitality
14 print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today
15 and many others. Ameranth was personally nominated by Bill Gates, the
16 Founder of Microsoft, for the prestigious Computerworld Honors Award that
17 Ameranth received in 2001 for its breakthrough synchronized
18 reservations/ticketing system with the Improv Comedy Theatres. In his
19 nomination, Mr. Gates described Ameranth as "one of the leading pioneers of
20 information technology for the betterment of mankind." This prestigious award
21 was based on Ameranth's innovative synchronization of wireless/web/fixed
22 hospitality software technology. Subsequently, the United States Patent and
23 Trademark Office granted Ameranth a number of currently-issued patents, some
24 of which are the basis for this lawsuit. Ameranth has issued press releases
25 announcing these patent grants on business wires, on its web sites and at
26 numerous trade shows since the first of the presently-asserted patents issued in
27 2002. A number of companies have licensed patents and technology from
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1 Ameranth, recognizing and confirming the value of Ameranth's innovations. At
2 all relevant times, Ameranth marked its own products with the numbers of the
3 Ameranth patents then issued, thereby providing companies, competitors and
4 participants in the hospitality industry with notice of Ameranth's patents.
5 Furthermore, companies that license Ameranth's products have marked their
6 products with Ameranth's patent numbers, thereby also providing notice of
7 Ameranth's patents. Ameranth has also filed a number of patent infringement
8 actions against companies that use or practice Ameranth's patented inventions
9 without license, including companies with which Micros does business and to
10 whom Micros supplies, licenses and/or sells the products accused of infringement
11 herein.

12 **RELATED CASES PREVIOUSLY FILED**

13 12. The Ameranth patents asserted herein, U.S. Patent No. 6,384,850 (the
14 "850 patent"), U.S. Patent No. 6,871,325 (the "325 patent"), and U.S. Patent
15 No. 8,146,077 (the "077 patent"), are all patents in Ameranth's "Information
16 Management and Synchronous Communications" patent family.

17 13. Ameranth is also currently asserting claims of these same patents in
18 separate lawsuits, against other defendants, that are already pending in this Court.
19 The first-filed lawsuit asserts claims of the '850 and '325 patents and is entitled
20 Ameranth v. Pizza Hut, Inc. et al., Case No. 3:11-cv-01810- DMS-WVG.
21 Lawsuits subsequently filed by Ameranth in this Court, asserting claims of the
22 '077 patent, include Case Nos. 3:12-cv-00729-DMS-WVG; 3:12-cv-00731-
23 DMS-WVG; 3:12-cv-00732-DMS-WVG; 3:12-cv-00733-DMS-WVG; 3:12-cv-
24 00737-DMS-WVG; 3:12-cv-00738-JLS-NLS (settled); 3:12-cv-00739-DMS-
25 WVG and 3:12-cv-00742-DMS-WVG. Other lawsuits filed by Ameranth in this
26 Court asserting claims of the '850, '325, and '077 patents are Case No. 3:12-cv-
27 00858-DMS-WVG; 3:12-cv-1201-JLS-NLS (settled); 3:12-cv-01651-DMS-

1 WVG; 3:12-cv-01629-DMS-WVG; 3:12-cv-01630-DMS-WVG; 3:12-cv-01631-
2 WQH-WVG; 3:12-cv-01634-DMS-WVG; 3:12-cv-01654-DMS-WVG; 3:12-cv-
3 01636-DMS-WVG; 3:12-cv-01653-DMS-WVG; 3:12-cv-01642-DMS-WVG;
4 3:12-cv-01643-DMS-WVG; 3:12-cv-01646-DMS-WVG 3:12-cv-01647-JLS-
5 NLS (settled); 3:12-cv-01648-DMS-WVG; 3:12-cv-01640-DMS-WVG; 3:12-cv-
6 01650-DMS-WVG; 3:12-cv-01652-DMS-WVG; 3:12-cv-01633-DMS-WVG;
7 3:12-cv-01627-DMS-WVG; 3:12-cv-01649-DMS-WVG; 3:12-cv-01656-DMS-
8 WVG; 3:12-cv-01659-DMS-WVG (settled); 3:13-cv-00350-DMS-WVG; 3:13-
9 cv-00352-DMS-WVG; 3:13-cv-00353-DMS-WVG; 3:13-cv-0836-DMS-WVG
10 (settled) and 3:13-cv-01072-DMS-WVG. All of the above still-pending cases
11 have been consolidated for pre-trial through claim construction except for 3:13-
12 cv-00350-DMS-WVG; 3:13-cv-00352-DMS-WVG; 3:13-cv-00353-DMS-WVG;
13 and 3:13-cv-01072-DMS-WVG. These include lawsuits against business
14 partners of Defendant, such as hotel companies with whom Defendant does
15 business.

16 14. These related cases include patent infringement actions against
17 customers and business partners of Micros to whom Micros has sold, licensed or
18 otherwise provided the Micros Systems accused of infringement herein and to
19 whom, upon information and belief, Micros continues to provide supporting
20 services, upgrades, maintenance, *etc.*, including, for example, ATX Innovations,
21 Pizza Hut, Starbucks, Hyatt, Marriott, Starwood and Hilton. On information and
22 belief, Micros' contracts and agreements with such Micros customers contain
23 intellectual property infringement indemnity provisions such that Micros has
24 been made aware of the claims of patent infringement asserted by Ameranth
25 against such Micros customers and business partners implicating the Micros
26 Systems.

1 15. Micros became aware of Ameranth and its patents at least as early as
2 October 2007, when it was served with a subpoena by Radiant Systems, Inc. in
3 *Radiant Systems, Inc. v. Ameranth, Inc.*, No. 1:07-cv-01641-TCB (N.D. Ga.
4 2007), a litigation involving Ameranth's patents. Thomas Patz, then Micros'
5 Executive Vice President and General Counsel, directly contacted Ameranth in
6 response to such subpoena. Furthermore, during discussions with representatives
7 of Ameranth following receipt of the Radiant subpoena, Mr. Patz asked
8 Ameranth to grant a patent license or covenant not to sue to Micros.
9 Additionally, in February of 2010, Michael Tow, then senior in-house counsel to
10 Micros, was subpoenaed and deposed in a patent infringement lawsuit that
11 Ameranth brought against Menusoft Corporation, a competitor of Micros.
12 Ameranth is further informed and believes that Micros became aware of
13 Ameranth's patents prior to the filing of the original complaint in this action
14 against Micros due to the widespread knowledge of Ameranth's patents in the
15 online/mobile ordering and reservations industry/marketplace and as a result of
16 Ameranth's business interactions with numerous Micros customers and/or other
17 defendants sued by Ameranth for infringement. At a bare minimum, Micros had
18 actual knowledge of Ameranth and the Ameranth patents as a result of the filing
19 and service of the original complaint in this matter against Micros in July of
20 2012. Despite such knowledge, Micros has continued, and is continuing, to
21 make, use, offer for sale or license and/or sell or license infringing systems,
22 products, and/or services in the United States without authority or license from
23 Ameranth and to engage in acts of infringement as set forth herein.

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COUNT I

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

(35 U.S.C. § 271)

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4 16. Plaintiff reiterates and incorporates the allegations set forth in paragraphs
5 1-15 above as if fully set forth herein.

6 17. On May 7, 2002, the ‘850 patent entitled “Information Management and
7 Synchronous Communications System with Menu Generation” (a true and copy
8 of which is attached hereto as **Exhibit A**) was duly and legally issued by the
9 United States Patent & Trademark Office.

10 18. Plaintiff Ameranth is the lawful owner by assignment of all right, title
11 and interest in and to the ‘850 patent.

12 19. On information and belief, Defendant directly infringes and continues to
13 directly infringe one or more valid and enforceable claims of the ‘850 patent, in
14 violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
15 and/or selling or licensing infringing systems, products, and/or services in the
16 United States without authority or license from Ameranth, including but not
17 limited to the Micros Systems.

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

1 hospitality functions via iPhone, Android, and other internet-enabled wireless
2 handheld computing devices as well as via Web pages, storing hospitality
3 information and data on at least one central database, on at least one wireless
4 handheld computing device, and on at least one Web server and Web page, and
5 synchronizing applications and data, including but not limited to applications and
6 data relating to ordering, between at least one central database, wireless handheld
7 computing devices, and at least one Web server and Web page; utilizing an
8 interface that provides a single point of entry that allows the synchronization of at
9 least one wireless handheld computing device and at least one Web page with at
10 least one central database; allowing information to be entered via Web pages,
11 transmitted over the internet, and automatically communicated to at least one
12 central database and to wireless handheld computing devices; allowing
13 information to be entered via wireless handheld computing devices, transmitted
14 over the internet, and automatically communicated to at least one central database
15 and to Web pages. Ameranth has previously served Micros with infringement
16 contentions in this action further describing the details of Micros' infringement of
17 Ameranth's patents. Those infringement contentions, filed under seal to protect
18 confidential information, are attached hereto as **Exhibit D** and incorporated
19 herein by reference.

20 21. On information and belief, defendant Micros has indirectly infringed and
21 continues to indirectly infringe one or more valid and enforceable claims of the
22 '850 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
23 intentionally inducing direct infringement by other persons.

24 22. On information and belief, consumers and customers of Micros,
25 including hotel, restaurant, and travel aggregator operators use and/or integrate
26 with the Micros Systems, in a manner that infringes the Ameranth patents. These
27 include businesses identified in the infringement contentions previously served
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1 on Micros, such as: PayPal, Hooters, Ruby Tuesday's, Ruth's Chris, Five Guys,
2 Panera, Starbucks, Subway, Pizza Hut, KFC, Taco Bell, TGI Friday's, Fairmont,
3 Four Seasons, Hyatt, Marriott, Hilton, Mandarin Oriental, Radisson, Wyndham
4 and Starwood, some of which are defendants in this consolidated action. Micros
5 provides instruction and direction regarding the use of the Micros Systems, and
6 advertises, promotes, and encourages the use of the Micros Systems in a manner
7 understood and intended by Micros to infringe Ameranth's patents. Micros
8 provides such instruction, direction, and encouragement regarding infringing uses
9 of the Micros Systems in its product literature, on its website, in statements in
10 industry articles and in its press releases, as demonstrated in the infringement
11 contentions attached hereto as **Exhibit D**, in a manner intended and understood
12 by Micros to infringe the claims of Ameranth's patents.

13 23. On information and belief, each of the Micros Systems infringes one or
14 more valid and enforceable claims of the '850 patent for the reasons set forth
15 hereinabove.

16 24. Micros has long had knowledge of the '850 patent as alleged above, and
17 knew or should have known that its continued offering and deployment of the
18 Micros Systems, and its continued support of consumers, hotel and restaurant
19 operators, and other users of this system/product/service, would induce direct
20 infringement by those users. Additionally, Micros intended that its actions would
21 induce direct infringement by those users, as describe herein and in the
22 infringement contentions attached hereto as **Exhibit D**.

23 25. On information and belief, Defendant has indirectly infringed and
24 continues to indirectly infringe one or more valid and enforceable claims of the
25 '850 patent, in violation of 35 U.S.C. § 271(c).

26 26. By distributing, selling, offering, offering to sell or license and/or selling
27 or licensing the Micros Systems, which are specialized software systems
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1 designed for specific uses that infringe Ameranth's patents, Micros provides non-
2 staple articles of commerce to others customized and specially adapted for use in
3 infringing systems, products, and/or services, including but not limited to Micros
4 customers/ business partners that Ameranth has sued for infringement, of which
5 suits Micros is aware.. Such Micros products, as deployed, sold, licensed and
6 otherwise provided to direct infringers, are specialized and customized for use in
7 infringing systems, including integration with hospitality applications, databases
8 and data, such that they have no substantial non-infringing use. Additionally,
9 Micros provides instruction and direction regarding the use of the Micros
10 Systems, and advertises, promotes, and encourages the use of the Micros
11 Systems, in a manner understood and intended to infringe the claims of
12 Ameranth's patents. Users of one or more of the Micros Systems, consumers and
13 customers of Micros, including restaurant and hotel operators, directly infringe
14 one or more valid and enforceable claims of the '850 patent for the reasons set
15 forth hereinabove.

16 27. On information and belief, each of the Micros Systems infringes one or
17 more valid and enforceable claims of the '850 patent, for the reasons set forth
18 hereinabove.

19 28. Micros has long had knowledge of the '850 patent, as alleged above,
20 including knowledge that each of the Micros Systems, which are specialized
21 hospitality software systems and non-staple articles of commerce, were used as a
22 material part of the claimed invention of the '850 patent, and that there were no
23 substantial non-infringing uses for the Micros Systems.

24 29. On information and belief, for the reasons described above, the aforesaid
25 infringing activities of defendant Micros have been done with knowledge and
26 willful disregard of Ameranth's patent rights, making this an exceptional case
27 within the meaning of 35 U.S.C. § 285.

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

6 **COUNT II**

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

8 **(35 U.S.C. § 271)**

9 31. Plaintiff reiterates and reincorporates the allegations set forth in
10 paragraphs 1-30 above as if fully set forth herein.

11 32. On March 22, 2005, the '325 patent entitled "Information Management
12 and Synchronous Communications System with Menu Generation" (a true and
13 correct copy of which is attached hereto as **Exhibit B**) was duly and legally
14 issued by the United States Patent & Trademark Office.

15 33. Plaintiff Ameranth is the lawful owner by assignment of all right, title
16 and interest in and to the '325 patent.

17 34. On information and belief, Defendant directly infringes and continues to
18 directly infringe one or more valid and enforceable claims of the '325 patent, in
19 violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
20 and/or selling or licensing infringing systems, products, and/or services in the
21 United States without authority or license from Ameranth, including but not
22 limited to the Micros Systems.

23 35. On information and belief, each of the Micros Systems, as
24 deployed and/or used at or from one or more locations by Micros, its
25 agents, distributors, partners, affiliates, licensees, and/or their customers,
26 infringes one or more valid and enforceable claims of the '325 patent, by, *inter*
27 *alia*, doing at least one of the following: (a) Generating and transmitting menus in
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1 a system including a central processing unit, a data storage device, a computer
2 operating system containing a graphical user interface, one or more displayable
3 main menus, modifier menus, and sub-modifier menus, and application software
4 for generating a second menu and transmitting it to a wireless handheld
5 computing device or a Web page; and/or (b) Enabling ordering and other
6 hospitality functions via iPhone, Android, and other internet-enabled wireless
7 handheld computing devices as well as via Web pages, storing hospitality
8 information and data on at least one central database, on at least one wireless
9 handheld computing device, and on at least one Web server and Web page, and
10 synchronizing applications and data, including but not limited to applications and
11 data relating to orders, between at least one central database, wireless handheld
12 computing devices, and at least one Web server and Web page; and sending
13 alerts, confirmations, and other information regarding orders to various wireless
14 mobile devices. Ameranth has previously served Micros with infringement
15 contentions in this action further describing the details of Micros' infringement of
16 Ameranth's patents. Those infringement contentions, filed under seal to protect
17 confidential information, are attached hereto as **Exhibit D** and incorporated
18 herein by reference.

19 36. On information and belief, Defendant has indirectly infringed and
20 continues to indirectly infringe one or more valid and enforceable claims of the
21 '325 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
22 intentionally inducing direct infringement by other persons.

23 37. On information and belief, consumers and customers of Micros,
24 including hotel, restaurant, and travel aggregator operators, use and/or integrate
25 with the Micros Systems in a manner that infringes upon one or more valid and
26 enforceable claims of the '325 patent. These include businesses identified in the
27 infringement contentions previously served on Micros, such as: PayPal, Hooters,
28

1 Ruby Tuesday's, Ruth's Chris, Five Guys, Panera, Starbucks, Subway, Pizza
2 Hut, KFC, Taco Bell, TGI Friday's, Fairmont, Four Seasons, Hyatt, Marriott,
3 Hilton, Mandarin Oriental, Radisson, Wyndham and Starwood, some of which
4 are defendants in this consolidated action. Micros provides instruction and
5 direction regarding the use of the Micros Systems and advertises, promotes, and
6 encourages the use of the Micros Systems in a manner and intended by Micros to
7 infringe Ameranth's patents. Micros provides such instruction, direction, and
8 encouragement regarding infringing use of the Micros Systems in its product
9 literature, on its website, in statements in industry articles and in its press
10 releases, as demonstrated in the infringement contentions attached hereto as
11 **Exhibit D**, in a manner intended and understood by Micros to infringe the claims
12 of Ameranth's patents.

13 38. 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 Micros, including consumers and hotel and
16 restaurant operators, to use the infringing Micros Systems in the United States
17 without authority or license from Ameranth, with the knowledge that said
18 customers of Micros were directly infringing the '325 patent in a manner
19 understood and intended by Micros to infringe Ameranth's patents, as described
20 above.

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

1 40. By distributing, selling, offering, offering to sell or license and/or selling
2 or licensing the Micros Systems, which are specialized software systems
3 designed for particular uses that infringe Ameranth's patents, Defendant provides
4 non-staple articles of commerce to others customized and specially adapted for
5 use in infringing systems, products, and/or services, including but not limited to
6 Micros customers/ business partners that Ameranth has sued for infringement, of
7 which suits Micros is aware. Such Micros products, as deployed, sold, licensed
8 and otherwise provided to direct infringers, are specialized and customized for
9 use in infringing systems, including integration with hospitality applications,
10 databases and data, such that they have no substantial non-infringing use. .
11 Additionally, as alleged herein and described in the infringement contentions
12 attached hereto as **Exhibit D**, Micros provides instruction and direction regarding
13 the use of the Micros Systems and advertises, promotes, and encourages the use
14 of the Micros Systems in a manner understood and intended to infringe the claims
15 of Ameranth's patents. Users of the Micros Systems, consumers and customers
16 of Micros, including restaurant and hotel operators, directly infringe one or more
17 valid and enforceable claims of the '325 patent, for the reasons set forth
18 hereinabove.

19 41. On information and belief, for the reasons described above, each of the
20 Micros Systems infringes one or more valid and enforceable claims of the '325
21 patent, for the reasons set forth hereinabove.

22 42. Micros has long had knowledge of the '325 patent, as alleged above,
23 including knowledge that each of the Micros Systems, which are specialized
24 software systems and are non-staple articles of commerce, were used as a
25 material part of the claimed invention of the '325 patent, and that there were no
26 substantial non-infringing uses for the Micros Systems.

1 43. On information and belief, for the reasons described herein, the aforesaid
2 infringing activities of defendant Micros have been done with knowledge and
3 willful disregard of Ameranth's patent rights, making this an exceptional case
4 within the meaning of 35 U.S.C. § 285.

5 44. The aforesaid infringing activity of defendant Micros 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 III**

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

12 **(35 U.S.C. § 271)**

13 45. Plaintiff reiterates and incorporates the allegations set forth in paragraphs
14 1-44 above as if fully set forth herein.

15 46. On March 27, 2012, the '077 patent entitled "Information Management
16 and Synchronous Communications System with Menu Generation, and
17 Handwriting and Voice Modification of Orders" (a true copy of which is attached
18 hereto as **Exhibit C** and incorporated herein by reference) was duly and legally
19 issued by the United States Patent & Trademark Office.

20 47. Plaintiff Ameranth is the lawful owner by assignment of all right, title
21 and interest in and to the '077 patent.

22 48. On information and belief, Defendant directly infringes and continues to
23 directly infringe one or more valid and enforceable claims of the '077 patent, in
24 violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
25 and/or selling or licensing infringing systems, products, and/or services in the
26 United States without authority or license from Ameranth, including but not
27 limited to the Micros Systems.

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

1 Web pages. Ameranth has previously served Micros with infringement
2 contentions in this action further describing the details of Micros' infringement of
3 Ameranth's patents. Those infringement contentions, filed under seal to protect
4 confidential information, are attached hereto as **Exhibit D** and incorporated
5 herein by reference.

6 50. On information and belief, Defendant has indirectly infringed and
7 continues to indirectly infringe one or more valid and enforceable claims of the
8 '077 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
9 intentionally inducing direct infringement by other persons in a manner
10 understood and intended by Micros to infringe Ameranth's patents.

11 51. On information and belief, consumers and customers of Micros,
12 including hotel, restaurant, and travel aggregator operators, use and/or integrate
13 with the Micros Systems in a manner that infringes upon one or more valid and
14 enforceable claims of the '077 patent. These include businesses identified in the
15 infringement contentions previously served on Micros, such as: PayPal, Hooters,
16 Ruby Tuesday's, Ruth's Chris, Five Guys, Panera, Starbucks, Subway, Pizza
17 Hut, KFC, Taco Bell, TGI Friday's, Fairmont, Four Seasons, Hyatt, Marriott,
18 Hilton, Mandarin Oriental, Radisson, Wyndham and Starwood, some of which
19 are defendants in this consolidated action. Micros provides instruction and
20 direction regarding the use of the Micros Systems and advertises, promotes, and
21 encourages the use of the Micros Systems in its product literature, on its website,
22 in statements in industry articles and in its press releases, as demonstrated in the
23 infringement contentions attached hereto as **Exhibit D**, in a manner intended and
24 understood by Micros to infringe the claims of Ameranth's patents.

25 52. On information and belief, Defendant actively induces others to infringe
26 the '077 patent in violation of 35 U.S.C. §271(b), by knowingly encouraging,
27 aiding and abetting customers of Micros, including consumers and restaurant
28

1 operators, to use the infringing Micros Systems in the United States without
2 authority or license from Ameranth, with the knowledge that said customers of
3 Micros were directly infringing the '077 patent in a manner understood and
4 intended by Micros to infringe Ameranth's patents, as described above.

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

11 54. By distributing, selling, offering, offering to sell or license and/or selling
12 or licensing the Micros Systems, which are specialized software systems
13 designed for uses that infringe Ameranth's patents, Defendant provides non-
14 staple articles of commerce to others customized and specially adapted for use in
15 infringing systems, products, and/or services, including but not limited to Micros
16 customers/ business partners that Ameranth has sued for infringement, of which
17 suits Micros is aware. Additionally, as alleged herein and described in the
18 infringement contentions attached hereto as **Exhibit D**, Micros provides
19 instruction and direction regarding the use of the Micros Systems and advertises,
20 promotes, and encourages the use of the Micros Systems in a manner understood
21 and intended to infringe the claims of Ameranth's patents. Users of the Micros
22 Systems, consumers and customers of Micros, including restaurant and hotel
23 operators, directly infringe one or more valid and enforceable claims of the '077
24 patent, for the reasons set forth hereinabove.

25 55. On information and belief, each of the Micros Systems infringes one or
26 more valid and enforceable claims of the '077 patent, for the reasons set forth
27 hereinabove.

1 56. Micros has had knowledge of the '077 patent at least as of the filing
2 and/or service of the original complaint in this matter upon Micros, including
3 knowledge that each of the Micros Systems, which are specialized software
4 systems and are non-staple articles of commerce, were used as a material part of
5 the claimed invention of the '077 patent, and that there were no substantial non-
6 infringing uses for the Micros Systems.

7 57. The aforesaid infringing activity of defendant Micros 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 prays for judgment against Defendants,
14 and each of them, as follows:

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

22 3. Adjudging that Defendant's infringement of the valid and
23 enforceable claims of the '850 patent and the '325 patent has been knowing and
24 willful;

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

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

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

7 6. Awarding Ameranth increased damages of three times the amount of
8 damages found or assessed against Defendant by reason of the knowing, willful
9 and deliberate nature of Defendant's acts of infringement pursuant to 35 U.S.C. §
10 284;

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

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

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

17 **DEMAND FOR JURY TRIAL**

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

20 Respectfully submitted,

21 Dated: September 4, 2013 CALDARELLI HEJMANOWSKI & PAGE LLP

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