

CALDARELLI HEJMANOWSKI & PAGE LLP

William J. Caldarelli (SBN #149573)
Ben West (SBN #251018)
12340 El Camino Real, Suite 430
San Diego, CA 92130
Tel: (858) 720-8080
Fax: (858) 720-6680
wjc@chplawfirm.com
dbw@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 (Admitted *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.

FANDANGO, INC.,

Defendant.

Case No. 3:12-cv-1651-DMS-WVG

**SECOND AMENDED
COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

SECOND AMENDED COMPLAINT FOR PATENT INFRINGEMENT

1
2 Plaintiff Ameranth, Inc., for its Second Amended Complaint against
3 Defendant Fandango, Inc., avers as follows:

PARTIES

4
5 1. Plaintiff Ameranth, Inc. (“Ameranth”) is a Delaware corporation having a
6 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 Fandango, Inc. (“Fandango” or “Defendant”) is, on
17 information and belief, a Delaware corporation having a principal place of
18 business and headquarters in Los Angeles, California. On information and belief,
19 Fandango makes, uses, offers for sale or license and/or sells or licenses
20 entertainment box office management and ticketing/ticket sales/ticket purchases
21 information-technology products, software, components and/or systems within
22 this Judicial District, including the Fandango System as defined herein.

JURISDICTION AND VENUE

23
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 widely recognized as a technology leader in the provision of wireless and internet-
2 based systems and services to, *inter alia*, restaurants, hotels, casinos, cruise ships
3 and entertainment and sports venues. Ameranth's award winning inventions
4 enable, in relevant part, generation and synchronization of menus, including but
5 not limited to restaurant menus, event tickets, and other products across fixed,
6 wireless and/or internet platforms as well as synchronization of hospitality
7 information and hospitality software applications across fixed, wireless and
8 internet platforms, including but not limited to, computer servers, web servers,
9 databases, affinity/social networking systems, desktop computers, laptops,
10 "smart" phones and other wireless handheld computing devices.

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

23 10. Ameranth's pioneering inventions have been widely adopted and are thus
24 now essential to the modern wireless hospitality enterprise of the 21st Century.
25 Ameranth's solutions have been adopted, licensed and/or deployed by numerous
26 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 Founder
9 of Microsoft, for the prestigious Computerworld Honors Award that Ameranth
10 received in 2001 for its breakthrough synchronized reservations/ticketing system
11 with the Improv Comedy Theatres. In his nomination, Mr. Gates described
12 Ameranth as "one of the leading pioneers of information technology for the
13 betterment of mankind." This prestigious award was based on Ameranth's
14 innovative synchronization of wireless/web/fixed hospitality software technology.
15 Subsequently, the United States Patent and Trademark Office granted Ameranth a
16 number of currently-issued patents, two of which are the basis for this lawsuit.
17 Ameranth has issued press releases announcing these patent grants on business
18 wires, on its web sites and at numerous trade shows since the first of the presently-
19 asserted patents issued in 2002. A number of companies have licensed patents
20 and technology from Ameranth, recognizing and confirming the value of
21 Ameranth's innovations. At all relevant times, Ameranth marked its own
22 products with the numbers of the Ameranth patents then issued, thereby providing
23 companies, competitors and participants in the hospitality industry with notice of
24 Ameranth's patents. Furthermore, companies that license Ameranth's products
25 have marked their products with Ameranth's patent numbers, thereby also
26 providing notice of Ameranth's patents. As a result of Ameranth's technological
27 breakthroughs and successes, business activities, awards, press releases and
28

1 coverages, participation in industry conferences, licensing and enforcement
2 activities, Ameranth, and its technology and patents, are well-known throughout
3 the hospitality industry, including to Fandango and other Defendants sued in this
4 Court by Ameranth.

5 **RELATED CASES PREVIOUSLY FILED**

6 12. The Ameranth patents asserted herein, U.S. Patent No. 6,384,850 (the
7 “‘850 patent”), U.S. Patent No. 6,871,325 (the “‘325 patent”, a continuation of the
8 ‘850 patent), U.S. Patent No. 6,982,733 (the “‘733 patent”, a continuation-in-part
9 of the ‘850 patent) and U.S. Patent No. 8,146,077 (the “‘077 patent”, a
10 continuation of the ‘733 patent), are all patents in Ameranth’s “Information
11 Management and Synchronous Communications” patent family.

12 13. Ameranth is also asserting claims of these same patents in separate
13 lawsuits against other defendants that are already pending in this Court. These
14 lawsuits have now been consolidated for pre-trial purposes under Case No. 3:11-
15 cv-01810-DMS-WVG.

16 14. The original complaint in this matter was filed in this Court on June 29,
17 2012, and subsequently served upon Fandango (“Fandango I”) asserting claims
18 for infringement of Ameranth’s ‘850, ‘325 and ‘077 Patents. At least since that
19 time, Fandango has had direct knowledge of Ameranth’s patents and that
20 Fandango’s ticketing system infringes those patents as alleged therein.
21 Additionally, Fandango is a member of a joint defense group concerning
22 Ameranth’s patent-infringement actions and, on information and belief, as part of
23 that group, shares information with other defendants, including information and
24 content about the patents in this Ameranth patent family, including Ameranth’s
25 ‘733 patent. On information and belief, through its participation in Fandango I
26 and involvement in the joint defense group, Fandango acquired knowledge of
27 Ameranth’s ‘733 patent, including but not limited to information regarding
28

1 Ameranth's assertion of the '733 patent against Apple (including Fandango's
2 integration with Apple's iOS operating system and devices and other Apple
3 software including Siri) in a case that was filed in this Court in September 2012.
4 Fandango also had knowledge of the '733 patent as a result of discovery,
5 disclosure, briefing, and case management conferences in Fandango I, including,
6 *inter alia*, discussion of the assertion of the '733 patent against Fandango business
7 partner Apple at a case management conference, identification of the '733 patent
8 in Rule 26(a) initial disclosures, and production of the USPTO file wrapper for the
9 '733 patent in discovery. Further, on information and belief, Fandango was also
10 aware of the Ameranth patents due to the widespread recognition Ameranth has
11 received for its pioneering inventions as detailed above.

12 15. Thus, Fandango has long been aware of the '733 Patent and its
13 relationship to Apple and Fandango's integration, in addition to Fandango's long-
14 standing knowledge regarding the '850, '325, and '077 Patents. Nonetheless,
15 Fandango has continued, and is continuing, to make, use, offer for sale or license
16 and/or sell or license infringing systems, products, and/or services in the United
17 States without authority or license from Ameranth and to engage in acts of
18 infringement as set forth herein.

19 16. Fandango I, filed in June 2012, asserted claims of the '850, '325, and
20 '077 patents against Fandango. A separate complaint asserting claims of the '733
21 patent against Fandango was filed in June 2013 ("Fandango II"). Per Court order,
22 Ameranth is filing this amended complaint to consolidate its assertions against
23 Fandango with respect to all four of these patents in a single action. However, the
24 knowledge that Fandango acquired about the '733 patent through Fandango I still
25 qualifies as pre-suit knowledge for the purposes of the claims asserted here against
26 Fandango regarding the '733 patent.

COUNT I

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

(35 U.S.C. § 271)

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

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

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

20. On information and belief, Fandango directly infringes and continues to directly infringe one or more valid and enforceable claims of the ‘850 patent, in violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license and/or selling or licensing infringing systems, products, and/or services in the United States without authority or license from Ameranth, including but not limited to the current and all previous “versions” (from Jan. 1, 2007 to present, and regardless of whether alleged by Fandango to be revisions, different versions, or different systems) of the Fandango system/product/service, which includes, *inter alia*, software that enables wireless and internet ticketing integration, online and mobile ticketing/ticket sales/ticket purchases, integration with POS systems, integration with e-mail and affinity program and social media applications such as Facebook, Twitter, Groupon, and YouTube, and/or other third-party web-based applications, and other hospitality aspects (the “Fandango System”). Ameranth has previously served Fandango with infringement contentions in Fandango I further describing the details of Fandango’s infringement of this patent. Those

1 infringement contentions are attached hereto as **Exhibit E** and incorporated herein
2 by reference.

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

1 22. On information and belief, Fandango has indirectly infringed and
2 continues to indirectly infringe one or more valid and enforceable claims of the
3 ‘850 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
4 intentionally inducing direct infringement by other persons.

5 23. On information and belief, third parties and customers of Fandango,
6 including consumers, theatre operators, and others, use the Fandango System in a
7 manner that infringes upon one or more valid and enforceable claims of the ‘850
8 patent. Fandango provides encouragement, instruction and direction regarding the
9 use of the Fandango System, and advertises, promotes, and encourages the use of
10 the Fandango System in a manner understood and intended by Fandango to
11 infringe Ameranth’s patents. Fandango provides such instruction, direction and
12 encouragement regarding infringing use of the Fandango System on its webpages,
13 in user videos, in offering on the iTunes “app store,” in press releases and in
14 statements in industry news articles, as demonstrated in the infringement
15 contentions attached hereto as **Exhibit E** and in the references cited in the
16 appendix thereto.

17 24. On information and belief, Fandango actively induces others to infringe
18 the ‘850 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging,
19 aiding and abetting third parties and customers of Fandango, including consumers,
20 theatre owners/operators, and others, to use the infringing Fandango System in the
21 United States without authority or license from Ameranth in a manner understood
22 and intended by Fandango to infringe Ameranth’s patents.

23 25. On information and belief, Fandango contributorily infringes and
24 continues to contributorily infringe one or more valid and enforceable claims of
25 the ‘850 patent, in violation of 35 U.S.C. § 271(c), by offering to sell and/or
26 selling components of systems on which claims of the ‘850 patent read,
27 constituting a material part of the invention, knowing that the components were
28

1 especially adapted for use in systems which infringe claims of the '850 patent.
2 These "components" consist of the same elements of the Fandango System
3 described above, as accessed, used, or benefitted by third parties, such as movie
4 theatre operators and consumers, via computers and wireless handheld computing
5 devices in the possession of such third parties. Ameranth alleges, as set forth
6 above, that Fandango directly infringes this patent, and Ameranth alternatively
7 alleges that Fandango indirectly infringes to the extent that such third parties are
8 determined to be "users" of the Fandango System and direct infringers of this
9 patent.

10 26. By distributing, selling, offering, offering to sell or license and/or selling
11 or licensing the Fandango System, Fandango provides non-staple articles of
12 commerce to others for use in infringing systems, products, and/or services.
13 Because the Fandango System is a specialized software system custom developed
14 and designed to enable online and mobile movie ticketing transactions in a manner
15 that practices the claims of Ameranth's patents, it is not a staple article of
16 commerce and has no substantial non-infringing uses. Thus, the Fandango
17 System is used by third parties in connection with online and mobile ticketing and
18 other hospitality functions in a way that infringes Ameranth's patents-in-suit and
19 in no other substantial or meaningful way. Additionally, Fandango provides
20 instruction and direction regarding the use of the Fandango System and advertises,
21 promotes, and encourages the use of the Fandango System in manner understood
22 and intended by Fandango to infringe Ameranth's patents, as described above.
23 Users of the Fandango System, including but not limited to consumers and theatre
24 owners/operators, directly infringe one or more valid and enforceable claims of
25 the '850 patent, for the reasons set forth hereinabove.

26 27. As detailed above, Fandango has had knowledge of the '850 patent at
27 least since the filing and service of Fandango I in June 2012, including knowledge
28

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

4 28. The aforesaid infringing activity of defendant Fandango 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, Fandango 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 Fandango System. Ameranth has previously served Fandango with
27 infringement contentions in Fandango I further describing the details of
28

1 Fandango's infringement of this patent. Those infringement contentions are
2 attached hereto as **Exhibit E** and incorporated herein by reference.

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

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

25 35. On information and belief, third parties and customers of Fandango,
26 including consumers, theatre operators, and others, use the Fandango System in a
27 manner that infringes upon one or more valid and enforceable claims of the '325
28

1 patent. Fandango provides encouragement, instruction and direction regarding the
2 use of the Fandango System, and advertises, promotes, and encourages the use of
3 the Fandango System in a manner understood and intended by Fandango to
4 infringe Ameranth's patents. Fandango provides such instruction, direction and
5 encouragement regarding infringing use of the Fandango System on its webpages,
6 in user videos, in offering on the iTunes "app store," in press releases and in
7 statements in industry news articles, as demonstrated in the infringement
8 contentions attached hereto as **Exhibit E** and in the references cited in the
9 appendix thereto.

10 36. On information and belief, Fandango actively induces others to infringe
11 the '325 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging,
12 aiding and abetting customers of Fandango, including consumers, theatre
13 owners/operators, and others, to use the infringing Fandango System in the United
14 States without authority or license from Ameranth in a manner understood and
15 intended by Fandango to infringe Ameranth's patents.

16 37. On information and belief, Fandango contributorily infringes and
17 continues to contributorily infringe one or more valid and enforceable claims of
18 the '325 patent, in violation of 35 U.S.C. § 271(c), by offering to sell and/or
19 selling components of systems on which claims of the '325 patent read,
20 constituting a material part of the invention, knowing that the components were
21 especially adapted for use in systems which infringe claims of the '325 patent.
22 These "components" consist of the same elements of the Fandango System
23 described above, as accessed, used, or benefitted by third parties, such as movie
24 theatre operators and consumers, via computers and wireless handheld computing
25 devices in the possession of such third parties. Ameranth alleges, as set forth
26 above, that Fandango directly infringes this patent, and Ameranth alternatively
27 alleges that Fandango indirectly infringes to the extent that such third parties are
28

1 determined to be “users” of the Fandango System and direct infringers of this
2 patent.

3 38. By distributing, selling, offering, offering to sell or license and/or selling
4 or licensing the Fandango System, Fandango provides non-staple articles of
5 commerce to others for use in infringing systems, products, and/or services.
6 Because the Fandango System is a specialized software system custom developed
7 and designed to enable online and mobile movie ticketing transactions in a manner
8 that practices the claims of Ameranth’s patents, it is not a staple article of
9 commerce and has no substantial non-infringing uses. Thus, the Fandango
10 System is used by third parties in connection with online and mobile ticketing and
11 other hospitality functions in a way that infringes Ameranth’s patents-in-suit and
12 in no other substantial or meaningful way. Additionally, Fandango provides
13 instruction and direction regarding the use of the Fandango System and advertises,
14 promotes, and encourages the use of the Fandango System in manner understood
15 and intended by Fandango to infringe Ameranth’s patents, as described above.
16 Users of the Fandango System, including but not limited to consumers and theatre
17 owners/operators, directly infringe one or more valid and enforceable claims of
18 the ‘325 patent, for the reasons set forth hereinabove.

19 39. As detailed above, Fandango has had knowledge of the ‘325 patent at
20 least since the filing and service of Fandango I in June 2012, including knowledge
21 that the Fandango System, which is a non-staple article of commerce, has been
22 used as a material part of the claimed invention of the ‘325 patent, and that there
23 are no substantial non-infringing uses for the Fandango System.

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

3 **COUNT III**

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

5 **(35 U.S.C. § 271)**

6 41. Plaintiff reiterates and reincorporates the allegations set forth in
7 paragraphs 1-40 above as if fully set forth herein.

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

19 43. Plaintiff Ameranth is the lawful owner by assignment of all right, title
20 and interest in and to the ‘733 patent.

21 44. Siri is a speech-recognition and voice control/command application
22 available on certain models of the Apple iPhone, iPod Touch and iPad. With iOS
23 version 6.1, Siri is integrated with third-party systems/products/services including,
24 *inter alia*, the Fandango System. Siri sends commands through a remote server
25 using a wireless data connection.

26 45. On information and belief, Fandango directly infringes and continues to
27 directly infringe one or more valid and enforceable claims of the ‘733 patent, in
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1 violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
2 and/or selling or licensing infringing systems, products, and/or services in the
3 United States without authority or license from Ameranth, including but not
4 limited to the Fandango System, as configured for use with wireless mobile
5 handheld computing devices/smartphones/tablets and other devices running iOS
6 with Siri voice recognition capability which enables voice controlled or assisted
7 ordering of movie tickets on wireless devices/smartphones/tablets such as Apple
8 iPhone and iPod Touch devices.

9 46. On information and belief, Fandango has indirectly infringed and
10 continues to indirectly infringe one or more valid and enforceable claims of the
11 ‘733 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
12 intentionally inducing direct infringement by other persons, by making, using,
13 offering for sale or license and/or selling or licensing infringing systems, products,
14 and/or services in the United States without authority or license from Ameranth,
15 including but not limited to the Fandango System as configured for use with
16 wireless mobile handheld computing devices/smartphones/tablets and other
17 devices running iOS with Siri voice recognition capability. For example,
18 Fandango touted and promoted the Siri/Fandango integration after Apple
19 announced the launch of iOS 6.1. See, e.g.,
20 [http://articles.latimes.com/2013/jan/28/entertainment/la-et-ct-siri-fandango-](http://articles.latimes.com/2013/jan/28/entertainment/la-et-ct-siri-fandango-20130128)
21 [20130128](http://articles.latimes.com/2013/jan/28/entertainment/la-et-ct-siri-fandango-20130128) (Quoting a statement by Paul Yanover, president of Fandango, who
22 said in part, “With this new Siri feature, movie fans can quickly and easily
23 discover the nearest theaters, find the most convenient showtimes, and buy tickets
24 through Fandango to help make movie night perfect.”);
25 [http://www.fandango.com/movieblog/appleuserscannowasksiritofindmovietickets-](http://www.fandango.com/movieblog/appleuserscannowasksiritofindmovietickets-732865.html)
26 [732865.html](http://www.fandango.com/movieblog/appleuserscannowasksiritofindmovietickets-732865.html) (advertising Siri/Fandango integration on Fandango’s website,
27 including same quote from Fandango’s president);
28

1 [http://www.mobilemarketingwatch.com/fandango-touts-integration-with-apples-](http://www.mobilemarketingwatch.com/fandango-touts-integration-with-apples-siri-in-ios-6-1-28734/)
2 [siri-in-ios-6-1-28734/](http://www.mobilemarketingwatch.com/fandango-touts-integration-with-apples-siri-in-ios-6-1-28734/) (“Fandango touts integration with Apple’s Siri in iOS 6.1”);
3 <http://www.wired.com/gadgetlab/?p=133439> (Quoting Fandango executive Mark
4 Young: “When we saw Siri, we saw it as an evolution of an assistant and
5 personality. For us it was all about working with Apple to compress users’ intent
6 to action — getting them to buy a ticket in the area more quickly. Siri lets us
7 seamlessly link discovery to buying to redemption.”);

8 http://www.boyden.com/media/7415/28/a_discussion_with_fandan/index.html
9 (Interview with Fandango president Paul Yanover, quoting him in part as follows:
10 “Fandango has tremendous overall awareness and is truly well known for
11 innovation, movie tickets and information, and customer service. A good example
12 of some of this coming together is Fandango and Apple’s mobile app, Siri. We are
13 really early with Apple’s Siri and its integration with Fandango, but that’s a great
14 emblem of our approach. We are serving people with innovation and technology,
15 and our brand is showing up everywhere people think about movies. These three
16 areas have particularly fueled the growth we’ve seen in the last year.”)

17 47. On information and belief, Fandango infringes by its own actions and
18 through, or in concert with, agents of Fandango who are under the direction and
19 control of Fandango by virtue of contractual agreements between Fandango and
20 such parties including, for example, Fandango’s distribution partners or movie
21 theaters which benefit from ticket sales.

22 48. On information and belief, the Fandango System as configured for use
23 with wireless mobile handheld computing devices/smartphones running iOS with
24 Siri voice recognition capability, as deployed and/or used at or from one or more
25 locations by Fandango, its agents, distributors, partners, affiliates, licensees,
26 theaters, third-party businesses, and/or their customers, infringes one or more
27 valid and enforceable claims of the ‘733 patent, by doing, or providing the
28

1 capability for doing, at least one of the following: (a) Generating and transmitting
2 menus in a system including a central processing unit, a data storage device
3 connected to said central processing unit, an operating system including a
4 graphical user interface, a first menu stored on said data storage device,
5 application software for generating a second menu from said first menu and
6 transmitting said second menu to a wireless handheld computing device or Web
7 page, wherein the application software facilitates the generation of the second
8 menu by allowing selection of items from the first menu, addition of items to the
9 second menu and assignment of parameters to items in the second menu using the
10 graphical user interface of said operating system, and said second menu is
11 manually modified by voice recording or capture or recognition after generation;
12 (b) Generating menus in a system including a central processing unit, a data
13 storage device connected to said central processing unit, an operating system
14 including a graphical user interface, a first menu stored on said data storage
15 device, application software for generating a second menu from said first menu
16 wherein the application software facilitates the generation of the second menu by
17 allowing selection of items from the first menu, addition of items to the second
18 menu and assignment of parameters to items in the second menu using the
19 graphical user interface of said operating system and wherein data comprising the
20 second menu is synchronized between the data storage device connected to the
21 central processing unit and at least one other computing device, and said second
22 menu is manually modified by voice recording or capture or recognition after
23 generation and/or (c) Generating menus in a system including a microprocessor, a
24 display device, a data and instruction input device, a data storage device for
25 storing information and instructions entered through said data and instruction
26 input means or information generated by said microprocessor, an operating
27 system, a master menu stored on said data storage device for generating a
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1 modified menu, and application software, wherein said microprocessor, operating
2 system and application software are operative to display the master menu on the
3 display device in response to instructions programmed into said microprocessor,
4 operating system, application software and information and instructions entered
5 through said data input device, and said microprocessor, operating system and
6 application software are operative to create the modified menu from said master
7 menu in response to information and instructions entered through said data and
8 instruction input device and data comprising the modified menu is synchronized
9 between the data storage device and at least one other computing device, wherein
10 said modified menu is manually modified after generation.

11 49. On information and belief, third parties and customers of Fandango,
12 including consumers, theater operators, and others, use the Fandango System as
13 configured for use with wireless mobile handheld computing
14 devices/smartphones/tablets and other devices running iOS with Siri voice
15 recognition capability in a manner that infringes upon one or more valid and
16 enforceable claims of the '733 patent. For example, the Fandango System
17 provides generated menus for selection of theaters, films, show times, prices and
18 ordering and purchasing of tickets as encompassed by claims of the '733 patent.
19 Fandango provides instruction and direction regarding the use of the Fandango
20 System as configured for use with wireless mobile handheld computing
21 devices/smartphones/tablets and other devices running iOS with Siri voice
22 recognition capability and advertises, promotes, and encourages the use of same,
23 including the examples set forth above in paragraph 46.

24 50. On information and belief, Fandango actively induces others to infringe
25 the '733 patent in violation of 35 U.S.C. §271(b) by actively, knowingly and
26 intentionally encouraging, aiding and abetting theater operators, customers of
27 Fandango, and others, including consumers and those businesses and persons
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1 identified elsewhere in this complaint, to use the infringing Fandango System as
2 configured for use with wireless mobile handheld computing
3 devices/smartphones/tablets and other devices running iOS with Siri voice
4 recognition capability in the United States without authority or license from
5 Ameranth in a manner understood and intended by Fandango to practice the
6 claims of Ameranth's patents. For example, Fandango is integrated with
7 Apple/Siri for ticket ordering. *See, e.g.*,
8 [http://www.internetretailer.com/2013/01/29/apple-integrates-fandango-siri-voice-](http://www.internetretailer.com/2013/01/29/apple-integrates-fandango-siri-voice-commands)
9 [commands](http://www.internetretailer.com/2013/01/29/apple-integrates-fandango-siri-voice-commands). Further, Fandango has touted and promoted the Siri/Fandango
10 integration since Apple announced the launch of iOS 6.1, including the examples
11 set forth above in paragraph 46.

12 51. Fandango became aware of Ameranth's patent family which includes the
13 '733 patent well before Fandango II was filed. Three of the patents in this
14 Ameranth patent family have been asserted in a prior action against Fandango
15 filed June 29, 2012, as noted above. Additionally, Apple, Fandango's business
16 partner in connection with the Siri/Fandango integration, has been aware of the
17 patent family which includes the '733 patent since well before Fandango II was
18 filed and, on information and belief, Apple and Fandango are members of a joint
19 defense group concerning Ameranth's patent infringement lawsuits and share
20 information with each other in connection with their participation in such group.
21 Apple has been aware of Ameranth's U.S. Patent No. 6,384,850 ("the '850
22 patent") (the first patent to issue in this family) since at least March 31, 2010,
23 when the '850 patent was cited as a prior art reference in two Apple iPhone patent
24 applications which issued to Apple under named inventors Bas Ording and Steven
25 P. Jobs. Further, three of the patents in this Ameranth patent family have been
26 asserted in several patent enforcement actions against Apple business partners, as
27 noted above, including OpenTable (lawsuit filed in August 2011) (on information
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1 and belief, OpenTable, which is represented by the same counsel that represent
2 Fandango in the earlier patent infringement action Ameranth has filed against
3 Fandango, is also a member of the joint defense group in which Fandango and
4 Apple are members). Due to the degree of integration between Apple and
5 OpenTable including, *inter alia*, “direct Siri integration” into OpenTable and the
6 integration of OpenTable functionality into Apple’s iOS6, it is implausible that
7 Apple was not informed of the Ameranth suit against OpenTable as early as
8 August 2011. Thus, on information and belief, because of the degree of
9 cooperation between Apple and Fandango as regards the Siri/Fandango
10 integration, it is likewise implausible that Apple did not inform Fandango of the
11 Ameranth patents, including the ‘733 patent asserted herein, or that Fandango did
12 not independently learn of the Ameranth patents because of the large amount of
13 publicity generated by all of the activities involving Apple, Siri and partners of
14 Apple who integrated with Siri. Further, on information and belief, Fandango had
15 knowledge of Ameranth’s patent family, including the ‘733 patent, due to the
16 widespread recognition Ameranth has received for its pioneering inventions as
17 evidenced by the twelve different technology awards Ameranth has received,
18 media recognition in The Wall Street Journal, New York Times, and USA Today,
19 Bill Gates’ nomination of Ameranth for the Computerworld Honors Award, and
20 the numerous press releases Ameranth has issued over the years. Fandango has
21 thus obtained the level of knowledge required to support a claim for inducement
22 of infringement regarding Fandango’s actions involving the Fandango System as
23 detailed herein. Furthermore, as discussed above, through its participation in
24 Fandango I, including discovery, disclosure and case management conferences
25 and activities, and participation in the joint defense group with other defendants
26 that were aware of the ‘733 patent and some of which had been sued on the ‘733
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28

1 patent, Fandango acquired knowledge of the existence and scope of the ‘733
2 patent later asserted against it in Fandango II.

3 52. On information and belief, Fandango contributorily infringes and
4 continues to contributorily infringe one or more valid and enforceable claims of
5 the ‘733 patent, in violation of 35 U.S.C. § 271(c), by making, using, offering to
6 sell and/or selling components of systems on which claims of the ‘733 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 ‘733 patent and
9 therefore have no substantial non-infringing use. These “components” consist of
10 the same elements of the Fandango System, including, *inter alia*, the Fandango
11 iOS apps, as configured for use with wireless mobile handheld computing
12 devices/smartphones/tablets and other devices running iOS with Siri voice
13 recognition capability, described above, as accessed, used, or benefitted by third
14 parties, such as movie theatre operators and consumers, via computers and
15 wireless handheld computing devices in the possession of such third parties.
16 Ameranth alleges, as set forth above, that Fandango directly infringes this patent,
17 and Ameranth alternatively alleges that Fandango indirectly infringes to the extent
18 that such third parties are determined to be “users” of the Fandango System and
19 direct infringers of this patent.

20 53. By making, distributing, selling, offering, offering to sell or license
21 and/or selling or licensing the Fandango System as configured for use with
22 wireless mobile handheld computing devices/smartphones/tablets and other
23 devices running iOS with Siri voice recognition capability, Fandango provides
24 non-staple articles of commerce to others, including those businesses and persons
25 identified elsewhere in this complaint, for use in infringing systems, products,
26 and/or services. Because the Fandango System, including, *inter alia*, the
27 Fandango iOS apps, as configured for use with wireless mobile handheld
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1 computing devices/smartphones/tablets and other devices running iOS with Siri
2 voice recognition capability, is a specialized software system custom developed
3 and designed to, *inter alia*, enable voice control/command mobile movie ticketing
4 transactions in a manner that practices the claims of Ameranth's patents, it is not a
5 staple article of commerce and has no substantial non-infringing uses. Thus, the
6 Fandango System is used by third parties in connection with online and mobile
7 ticketing and other hospitality functions in a way that infringes Ameranth's
8 patents-in-suit and in no other substantial or meaningful way. Additionally,
9 Fandango provides instruction and direction regarding the use of the Fandango
10 System as configured for use with wireless mobile handheld computing
11 devices/smartphones running iOS with Siri voice recognition capability and
12 advertises, promotes, and encourages the use of same. For example, Fandango
13 touted and promoted the Siri/Fandango integration after Apple announced the
14 launch of iOS 6.1. Users of the Fandango System directly infringe one or more
15 valid and enforceable claims of the '733 patent, for the reasons set forth
16 hereinabove.

17 54. Fandango has had knowledge of the '733 patent, as set forth above, at
18 least as early as the filing of the complaint in Fandango I alleging infringement of
19 other patents in the same family containing the '733 patent, *i.e.*, June 29, 2012.
20 As discussed above, through its participation in Fandango I, including discovery,
21 disclosure and case management conferences and activities, and participation in
22 the joint defense group with other defendants that were aware of the '733 patent
23 and some of which had been sued earlier on the '733 patent, Fandango acquired
24 knowledge of the existence and scope of the '733 patent later asserted against it in
25 Fandango II. On information and belief, Fandango also had such knowledge as
26 early as March 2010 as a result of Fandango's business partner Apple's
27 knowledge of the Ameranth patent family, or August 2011 as a result of lawsuits
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1 asserting patents from the same family against business partners of Apple.
2 Further, on information and belief, Fandango was also aware of the Ameranth
3 patents due to the widespread recognition Ameranth has received for its
4 pioneering inventions as detailed above. Fandango has thus obtained the level of
5 knowledge required to support a claim for contributory infringement regarding
6 Fandango actions involving the Fandango System as configured for use with
7 wireless mobile handheld computing devices/smartphones/ tablets and other
8 devices running iOS with Siri voice recognition capability as detailed herein.

9 55. On information and belief, the aforesaid infringing activities of Fandango
10 have been done with knowledge and willful disregard of Ameranth's patent rights,
11 making this an exceptional case within the meaning of 35 U.S.C. § 285. As
12 detailed above, Fandango has had knowledge of the patent family which includes
13 the '733 patent at least since June 29, 2012, and well before the filing of Fandango
14 II alleging Fandango's infringement of the '733 patent. Further, on information
15 and belief, Fandango was also aware of the Ameranth patents due to the
16 widespread recognition Ameranth has received for its pioneering inventions as
17 detailed above. Fandango has thus obtained the level of knowledge required to
18 support a claim for willful infringement. Fandango's deliberate decision to
19 continue its infringing activities after obtaining said knowledge constitutes
20 objectively reckless behavior justifying a finding of willfulness.

21 56. If Fandango does not cease and desist the aforesaid infringing activities,
22 and instead continues to infringe valid and enforceable claims of the '733 patent,
23 then such infringing actions will have been done with knowledge and willful
24 disregard of Ameranth's patent rights, making this an exceptional case within the
25 meaning of 35 U.S.C. § 285.

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

4 **COUNT IV**

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

6 **(35 U.S.C. § 271)**

7 58. Plaintiff reiterates and incorporates the allegations set forth in paragraphs
8 1-57 above as if fully set forth herein.

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

14 60. Plaintiff Ameranth is the lawful owner by assignment of all right, title
15 and interest in and to the ‘077 patent.

16 61. On information and belief, Fandango directly infringes and continues to
17 directly infringe one or more valid and enforceable claims of the ‘077 patent, in
18 violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
19 and/or selling or licensing infringing systems, products, and/or services in the
20 United States without authority or license from Ameranth, including but not
21 limited to the Fandango System. Ameranth has previously served Fandango with
22 infringement contentions in Fandango I further describing the details of
23 Fandango’s infringement of this patent. Those infringement contentions are
24 attached hereto as **Exhibit E** and incorporated herein by reference.

25 62. On information and belief, the Fandango System, as deployed and/or used
26 at or from one or more locations by Fandango, its agents, distributors, partners,
27 affiliates, licensees, and/or their customers, infringes one or more valid and
28

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

26 63. On information and belief, Fandango has indirectly infringed and
27 continues to indirectly infringe one or more valid and enforceable claims of the
28

1 ‘077 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
2 intentionally inducing direct infringement by other persons.

3 64. On information and belief, third parties and customers of Fandango,
4 including consumers, theatre operators, and others, use the Fandango System in a
5 manner that infringes upon one or more valid and enforceable claims of the ‘077
6 patent. Fandango provides encouragement, instruction and direction regarding the
7 use of the Fandango System, and advertises, promotes, and encourages the use of
8 the Fandango System in a manner understood and intended by Fandango to
9 infringe Ameranth’s patents. Fandango provides such instruction, direction and
10 encouragement regarding infringing use of the Fandango System on its webpages,
11 in user videos, in offering on the iTunes “app store,” in press releases and in
12 statements in industry news articles, as demonstrated in the infringement
13 contentions attached hereto as **Exhibit E** and in the references cited in the
14 appendix thereto.

15 65. On information and belief, Fandango actively induces others to infringe
16 the ‘077 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging,
17 aiding and abetting third parties and customers of Fandango, including consumers,
18 theatre operators, and others, to use the infringing Fandango System in the United
19 States without authority or license from Ameranth in a manner understood and
20 intended by Fandango to infringe Ameranth’s patents.

21 66. On information and belief, Fandango contributorily infringes and
22 continues to contributorily infringe one or more valid and enforceable claims of
23 the ‘077 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 ‘077 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 ‘077 patent.
27 These “components” consist of the same elements of the Fandango System
28

1 described above, as accessed, used, or benefitted by third parties, such as movie
2 theatre operators and consumers, via devices in the possession of such third
3 parties. Ameranth alleges, as set forth above, that Fandango directly infringes this
4 patent, and Ameranth alternatively alleges that Fandango indirectly infringes to
5 the extent that such third parties are determined to be “users” of the Fandango
6 System and direct infringers of this patent.

7 67. By distributing, selling, offering, offering to sell or license and/or selling
8 or licensing the Fandango System, Fandango provides non-staple articles of
9 commerce to others for use in infringing systems, products, and/or services.
10 Because the Fandango System is a specialized software system custom developed
11 and designed to enable online and mobile movie ticketing transactions in a manner
12 that practices the claims of Ameranth’s patents, it is not a staple article of
13 commerce and has no substantial non-infringing uses. Thus, the Fandango
14 System is used by third parties in connection with online and mobile ticketing and
15 other hospitality functions in a way that infringes Ameranth’s patents-in-suit and
16 in no other substantial or meaningful way. Additionally, Fandango provides
17 instruction and direction regarding the use of the Fandango System and advertises,
18 promotes, and encourages the use of the Fandango System in manner understood
19 and intended by Fandango to infringe Ameranth’s patents, as described above.
20 Users of the Fandango System, including but not limited to consumers and theatre
21 owners/operators, directly infringe one or more valid and enforceable claims of
22 the ‘077 patent, for the reasons set forth hereinabove.

23 68. On information and belief, the Fandango System infringes one or more
24 valid and enforceable claims of the ‘077 patent, for the reasons set forth
25 hereinabove.

26 69. As detailed above, Fandango has had knowledge of the ‘077 patent at
27 least since the filing and service of Fandango I in June 2012, including knowledge
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1 that the Fandango System, which is a non-staple article of commerce, has been
2 used as a material part of the claimed invention of the '077 patent, and that there
3 are no substantial non-infringing uses for the Fandango System.

4 70. The aforesaid infringing activity of defendant Fandango 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 **PRAYER FOR RELIEF**

10 WHEREFORE, plaintiff Ameranth respectfully prays for judgment against
11 Fandango as follows:

12 1. Adjudging that the manufacture, use, offer for sale or license and /or
13 sale or license of the Fandango System infringes valid and enforceable claims of
14 the '850, '325, '733, and '077 patents, as set forth hereinabove;

15 2. Adjudging that Fandango has infringed, actively induced others to
16 infringe and/or contributorily infringed valid and enforceable claims of the '850,
17 '325, '733, and '077 patents, as set forth hereinabove;

18 3. Adjudging that Fandango's infringement of the valid and enforceable
19 claims of the '733 patent has been knowing and willful;

20 4. Enjoining Fandango, and its officers, directors, employees, attorneys,
21 agents, representatives, parents, subsidiaries, affiliates and all other persons acting
22 in concert, participation or privity with Fandango, and their successors and
23 assigns, from infringing, contributorily infringing and/or inducing others to
24 infringe the valid and enforceable claims of the '850, '325, '733, and '077 patents;

25 5. Awarding Ameranth the damages it has sustained by reason of
26 Fandango's infringement, together with interest and costs pursuant to 35 U.S.C. §
27 284;

1 6. Awarding Ameranth increased damages of three times the amount of
2 damages found or assessed against Fandango by reason of the knowing, willful
3 and deliberate nature of Fandango’s acts of infringement pursuant to 35 U.S.C. §
4 284;

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

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

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

11 **DEMAND FOR JURY TRIAL**

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

14 Respectfully submitted,

15 Dated: September 20, 2013

16 CALDARELLI HEJMANOWSKI & PAGE LLP

17 By: /s/ William J. Caldarelli
18 William J. Caldarelli
19 Ben West

20 FABIANO LAW FIRM, P.C.
21 Michael D. Fabiano

22 OSBORNE LAW LLC
23 John W. Osborne

24 WATTS LAW OFFICES
25 Ethan M. Watts

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