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

AMERANTH, INC.,

Plaintiff,

v.

DOMINO'S PIZZA, LLC, and
DOMINO'S PIZZA, INC.

Defendants.

Civil Action No.: 3:12-cv-00733-DMS-WVG
**THIRD AMENDED COMPLAINT FOR
PATENT INFRINGEMENT**
DEMAND FOR JURY TRIAL

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1 Plaintiff Ameranth, Inc. (“Ameranth”), for its Third Amended Complaint
2 against Defendants Domino’s Pizza LLC and Domino’s Pizza, Inc. (collectively
3 “Domino’s”), avers as follows:

4 **PARTIES**

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

15 2. Domino’s Pizza, LLC is, on information and belief, a Michigan limited
16 liability company having a principal place of business in Ann Arbor, Michigan.
17 Domino’s Pizza, Inc. is, on information and belief, a Delaware corporation
18 having a principal place of business in Ann Arbor, Michigan. On information
19 and belief, Domino’s Pizza, LLC and Domino’s Pizza, Inc. are agents and
20 affiliates of one another and knowingly and intentionally acted in concert and
21 under common and coordinated plan, design and control in committing the acts
22 alleged herein, such that each entity is jointly and severally liable for the acts of
23 each other. On information and belief, Domino’s makes, uses, offers for sale or
24 license and/or sells or licenses restaurant and foodservice information
25 technology products, software, components and/or systems within this Judicial
26 District, including the Domino’s Ordering System as defined herein.

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JURISDICTION AND VENUE

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

4 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§
5 1331 and 1338(a).

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

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

1 7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§
2 1391(b) 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
6 the hospitality industry (inclusive of, e.g., restaurants, hotels, casinos,
7 nightclubs, cruise ships and other entertainment and sports venues). Ameranth
8 has been widely recognized as a technology leader in the provision of wireless
9 and internet-based systems and services to, *inter alia*, restaurants, hotels,
10 casinos, cruise ships, and entertainment and sports venues. Ameranth's award-
11 winning inventions enable, in relevant part, generation and synchronization of
12 menus, including but not limited to restaurant menus, event tickets,
13 reservations, and other products across fixed, wireless, and/or internet platforms
14 as well as synchronization of hospitality information and hospitality software
15 applications across fixed, wireless, and internet platforms, including but not
16 limited to, computer servers, web servers, databases, affinity/social networking
17 systems, desktop computers, laptops, "smart" phones, and other wireless
18 handheld computing devices.

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

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

8 11. The adoption of Ameranth's technology by industry leaders and the
9 wide acclaim received by Ameranth for its technological innovations are just
10 some of the many confirmations of the breakthrough aspects of Ameranth's
11 inventions. Ameranth has received twelve different technology awards (three
12 with "end 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,
24 which are the patents-in-suit in 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, including some attended by Domino's, since the first of
27 the presently-asserted patents in this Ameranth patent family issued in 2002. A
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1 number of companies have licensed patents and technology from Ameranth
2 recognizing and confirming the value of Ameranth's innovations. At all
3 relevant times, Ameranth marked its own products with the numbers of the
4 Ameranth patents then issued, thereby providing companies, competitors and
5 participants in the hospitality industry with notice of Ameranth's patents.
6 Furthermore, companies that license Ameranth's products have marked their
7 products with Ameranth's patent numbers, thereby also providing notice of
8 Ameranth's patents.

9 **RELATED CASE PREVIOUSLY FILED**

10 12. The Ameranth patents asserted herein, U.S. Patent No. 6,384,850 (the
11 "850 patent"), U.S. Patent No. 6,871,325 (the "325 patent") (a continuation of
12 the '850 patent), U.S. Patent No. 6,982,733 (the "733 patent") (a continuation-
13 in-part of the '850 patent), and U.S. Patent No. 8,146,077 (the "077 patent") (a
14 continuation of the '733 patent), are all patents in Ameranth's "Information
15 Management and Synchronous Communications" patent family.

16 13. Ameranth filed its initial Complaint against Domino's on August 15,
17 2011 asserting infringement of the '850 and '325 patents, case no. 3:11-cv-
18 01810-DMS-WVG ("Domino's I.") Ameranth filed a second action against
19 Domino's on March 27, 2012 asserting infringement of the '077 patent, case no.
20 3:12-cv-00733-DMS-WVG ("Domino's II.") Ameranth filed a third action
21 against Domino's on July 1, 2013 asserting infringement of the '733 patent, case
22 no. 3:13-cv-01520-DMS-WVG ("Domino's III"). In an Order dated September
23 13, 2013, the Court ordered Ameranth to "file an amended complaint against
24 Domino's Pizza, LLC in [Domino's II] that includes its claims from [Dominos
25 I] and [Dominos III]." (Doc. 491, Case No. 3:11-cv-01810-DMS-WVG.) This
26 Third Amended Complaint is in compliance with the Court's Order.

1 14. Ameranth is also currently asserting claims of these patents-in-suit in
2 over 30 related cases consolidated under 3:11-cv-01810-DMS-WVG.
3 Domino's has acquired knowledge of all the patent-in-suit through discovery
4 disclosures and case management activities in Domino's I and Domino's II,
5 through Domino's own investigation, and, on information and belief, through
6 information shared with Domino's under a joint defense group agreement by
7 other defendants sued by Ameranth for patent infringement.

8 **COUNT I**

9 **Patent Infringement ('850 Patent)**

10 **(35 U.S.C. § 271)**

11 15. Plaintiff reiterates and incorporates the allegations set forth in the
12 preceding paragraphs above as if fully set forth herein.

13 16. On May 7, 2002, the '850 patent entitled "Information Management
14 and Synchronous Communications System with Menu Generation" (a true and
15 copy of which is attached hereto as **Exhibit A** and incorporated herein by
16 reference) was duly and legally issued by the United States Patent & Trademark
17 Office.

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

20 18. On information and belief, Domino's directly infringes and continues
21 to directly infringe one or more valid and enforceable claims of the '850 patent,
22 in violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
23 and/or selling or licensing infringing systems, products, and/or services in the
24 United States without authority or license from Ameranth, including but not
25 limited to the Domino's ordering system/product/service, which includes, *inter*
26 *alia*, wireless and internet POS integration, online and mobile ordering,
27 integration with e-mail and affinity program and social media applications such
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1 as Facebook, Twitter, Groupon, and YouTube, and/or other third-party web-
2 based applications, and other hospitality aspects (“Domino’s Ordering
3 System”). Ameranth previously served Domino’s with infringement
4 contentions further describing the details of Domino’s infringement of
5 Ameranth’s patents. Those infringement contentions are attached hereto as
6 **Exhibit D** and incorporated herein by reference.

7 19. On information and belief, the Domino’s Ordering System, as
8 deployed and/or used at or from one or more locations by Domino’s, its agents,
9 distributors, partners, affiliates, licensees, franchisees, and/or their customers,
10 infringes the ‘850 patent, by, *inter alia*, enabling product ordering and other
11 hospitality functions via iPhone, Android, and other internet-enabled wireless
12 handheld computing devices as well as via Web pages, storing hospitality
13 information and data on at least one central database, on at least one wireless
14 handheld computing device, and on at least one Web server and Web page, and
15 synchronizing applications and data, including but not limited to applications
16 and data relating to orders, between at least one central database, wireless
17 handheld computing devices, and at least one Web server and Web page;
18 utilizing an interface that provides a single point of entry that allows the
19 synchronization of at least one wireless handheld computing device and at least
20 one Web page with at least one central database; allowing information to be
21 entered via Web pages, transmitted over the internet, and automatically
22 communicated to at least one central database and to wireless handheld
23 computing devices; allowing information to be entered via wireless handheld
24 computing devices, transmitted over the internet, and automatically
25 communicated to at least one central database and to Web pages.

26 20. On information and belief, Domino’s actively induces others to
27 infringe the ‘850 patent in violation of 35 U.S.C. §271(b) by knowingly
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1 encouraging, aiding and abetting third parties, including consumers,
2 franchisees, and restaurant operators, to use the infringing Domino's Ordering
3 System in the United States without authority or license from Ameranth in a
4 manner understood and intended by Domino's to infringe Ameranth's patents,
5 as described above.

6 21. On information and belief, third parties, including consumers,
7 franchisees, and restaurant operators use the Domino's Ordering System in a
8 manner that infringes upon valid and enforceable claims of the '850 patent.
9 Domino's provides instruction and direction regarding the use of the Domino's
10 Ordering System and advertises, promotes, and encourages the use of the
11 Domino's Ordering System, in a manner understood and intended by Domino's
12 to infringe Ameranth's patents. Domino's provides such instruction, direction
13 and encouragement regarding infringing use of the Domino's Ordering System
14 on its webpages, in user videos, in offerings in "app stores," in press releases
15 and in statements in industry news articles, as demonstrated in the infringement
16 contentions attached hereto as **Exhibit D** and in the references cited in the
17 appendix thereto. Further, on information and belief, Domino's instructs on
18 and requires the use of the Domino's Ordering System by its franchisees and
19 restaurant operators.

20 22. Domino's became aware of Ameranth's patent family which includes
21 the '850 patent well before the initial Complaint in Domino's I was filed.
22 Domino's learned of Ameranth's patent family at least as early as 2006 during
23 business partnering discussions concerning Ameranth and Intercontinental
24 Hotels Group's "eHost" product/project - in which hotel guest pizza ordering to
25 guest hotel rooms was planned to occur through online ordering and
26 Ameranth's "eHost" e-concierge project. Domino's knew of the '850 patent at
27 least since the filing and service of the Domino's I complaint. After the date it
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1 first acquired knowledge of the ‘850 patent, Domino’s knew or should have
2 known that its continued offering and deployment of the Domino’s Ordering
3 System, and its continued support of consumers, franchisees, and restaurant
4 operators would induce direct infringement by those users. Despite its
5 knowledge, Domino’s continued its infringing conduct described herein.
6 Additionally, Domino’s intended that its actions would induce direct
7 infringement by those users.

8 23. On information and belief, Domino’s contributorily infringes and
9 continues to contributorily infringe one or more valid and enforceable claims of
10 the ‘850 patent, in violation of 35 U.S.C. § 271(c), by making, using, offering
11 to sell and/or selling components of systems on which claims of the ‘850 patent
12 read, constituting a material part of the invention, knowing that the components
13 were especially adapted for use in systems which infringe claims of the ‘850
14 patent.

15 24. By distributing, selling, offering, offering to sell or license and/or
16 selling or licensing the Domino’s Ordering System, Domino’s provides non-
17 staple articles of commerce to others for use, including consumers, franchisees,
18 and restaurant operators, in infringing systems, products, and/or services.
19 Additionally, Domino’s provides instruction and direction regarding the use of
20 the Domino’s Ordering System and advertises, promotes, and encourages the
21 use of the Domino’s Ordering System, in a manner understood and intended by
22 Domino’s to infringe Ameranth’s patents, as described above. On information
23 and belief, Domino’s instructs on and requires use of the Domino’s Ordering
24 System by its franchisees and restaurant operators in connection with online
25 and mobile product ordering. Users of the Domino’s Ordering System,
26 including, but not limited to, consumers, franchisees, and restaurant operators,
27 directly infringe one or more valid and enforceable claims of the ‘850 patent for
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1 the reasons set forth hereinabove. Those components consist of the same
2 elements and features of the Domino's Ordering System described above, as
3 accessed, used, or benefited from by third parties, including consumers,
4 franchisees, and restaurant operators through computers, and wireless handheld
5 computing devices in the possession of such third parties. Although Ameranth
6 alleges, as set forth above, that Domino's directly infringes the patents-in-suit,
7 Ameranth alternatively alleges that Domino's indirectly infringes to the extent
8 that such third parties are determined to be the "users" of the Domino's
9 Ordering System and direct infringers of the patents-in-suit.

10 25. After the date it first acquired knowledge of the '850 patent, as
11 described above, Domino's had knowledge that the Domino's Ordering System,
12 which is a specialized software system and a non-staple article of commerce,
13 has been used as a material part of the claimed invention of the '850 patent, and
14 that there are no substantial non-infringing uses for the Domino's Ordering
15 System because of the highly specialized and customized nature of the
16 Domino's Ordering System's software, components, and integrations. As
17 described herein, the Domino's Ordering System, which is designed and
18 developed to permit online and mobile food ordering in a manner that infringes
19 Ameranth's patents, does not have substantial non-infringing uses and is not a
20 staple article of commerce. Thus, the Domino's Ordering System is used by
21 third parties in connection with online and mobile food ordering and other
22 hospitality functions in a way that infringes the patents-in-suit and in no other
23 substantial or meaningful way.

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

1 27. The aforesaid infringing activity of Domino's has directly and
2 proximately caused damage to Ameranth, including loss of profits from sales or
3 licensing it would have made but for the infringements. Unless enjoined, the
4 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 ('325 Patent)**

8 **(35 U.S.C. § 271)**

9 28. Plaintiff reiterates and reincorporates the allegations set forth in the
10 preceding paragraphs above as if fully set forth herein.

11 29. 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** and incorporated by
14 reference herein) was duly and legally issued by the United States Patent &
15 Trademark Office.

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

18 31. On information and belief, Domino's directly infringes and continues
19 to directly infringe one or more valid and enforceable claims of the '325 patent
20 in violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
21 and/or selling or licensing infringing systems, products, and/or services in the
22 United States without authority or license from Ameranth, said systems
23 including but not limited to the Domino's Ordering System. Ameranth
24 previously served Domino's with infringement contentions further describing
25 the details of Domino's infringement of Ameranth's patents. Those
26 infringement contentions are attached hereto as **Exhibit D** and incorporated
27 herein by reference.

1 32. On information and belief, the Domino's Ordering System, as
2 deployed and/or used at or from one or more locations by Domino's, its agents,
3 distributors, partners, affiliates, licensees, franchisees, and/or their customers,
4 infringes the '325 patent, by, *inter alia*, enabling product ordering and other
5 hospitality functions via iPhone, Android, and other internet-enabled wireless
6 handheld computing devices as well as via Web pages, storing hospitality
7 information and data on at least one central database, on at least one wireless
8 handheld computing device, and on at least one Web server and Web page, and
9 synchronizing applications and data, including but not limited to applications
10 and data relating to orders, between at least one central database, wireless
11 handheld computing devices, and at least one Web server and Web page;
12 utilizing an interface that provides a single point of entry that allows the
13 synchronization of at least one wireless handheld computing device and at least
14 one Web page with at least one central database; allowing information to be
15 entered via Web pages, transmitted over the internet, and automatically
16 communicated to at least one central database and to wireless handheld
17 computing devices; allowing information to be entered via wireless handheld
18 computing devices, transmitted over the internet, and automatically
19 communicated to at least one central database and to Web pages.

20 33. On information and belief, Domino's actively induces others to
21 infringe the '325 patent in violation of 35 U.S.C. §271(b) by knowingly
22 encouraging, aiding and abetting third parties, including consumers,
23 franchisees, and restaurant operators, to use the infringing Domino's Ordering
24 System in the United States without authority or license from Ameranth in a
25 manner understood and intended by Domino's to infringe Ameranth's patents,
26 as described above.

1 34. On information and belief, third parties, including consumers,
2 franchise operators, and restaurant operators, use the Domino's Ordering
3 System in a manner that infringes upon valid and enforceable claims of the '325
4 patent. Domino's provides instruction and direction regarding the use of the
5 Domino's Ordering System and advertises, promotes, and encourages the use of
6 the Domino's Ordering System, in a manner understood and intended by
7 Domino's to infringe Ameranth's patents. Domino's provides such instruction,
8 direction and encouragement regarding infringing use of the Domino's
9 Ordering System on its webpages, in user videos, in offerings in "app stores,"
10 in press releases and in statements in industry news articles, as demonstrated in
11 the infringement contentions attached hereto as **Exhibit D** and in the references
12 cited in the appendix thereto. Further, on information and belief, Domino's
13 instructs on and requires the use of the Domino's Ordering System by its
14 franchisees and restaurant operators.

15 35. Domino's became aware of Ameranth's patent family which includes
16 the '325 patent well before the initial Complaint in Domino's I was filed.
17 Domino's learned of Ameranth's patent family at least as early as 2006 during
18 business partnering discussions concerning Ameranth and Intercontinental
19 Hotels Group's "eHost" product/project - in which hotel guest pizza ordering to
20 guest hotel rooms was planned to occur through online ordering and
21 Ameranth's "eHost" e-concierge project. Domino's knew of the '325 patent at
22 least since the filing and service of the Domino's I complaint. After the date it
23 first acquired knowledge of the '325 patent, Domino's knew or should have
24 known that its continued offering and deployment of the Domino's Ordering
25 System, and its continued support of consumers, franchisees, and restaurant
26 operators would induce direct infringement by those users. Despite its
27 knowledge, Domino's continued its infringing conduct described herein.

1 Additionally, Domino's intended that its actions would induce direct
2 infringement by those users.

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

10 37. By distributing, selling, offering, offering to sell or license and/or
11 selling or licensing the Domino's Ordering System, Domino's provides non-
12 staple articles of commerce to others for use, including consumers, franchisees,
13 and restaurant operators, in infringing systems, products, and/or services.
14 Additionally, Domino's provides instruction and direction regarding the use of
15 the Domino's Ordering System and advertises, promotes, and encourages the
16 use of the Domino's Ordering System, in a manner understood and intended by
17 Domino's to infringe Ameranth's patents, as described above. On information
18 and belief, Domino's instructs on and requires use of the Domino's Ordering
19 System by its franchisees and restaurant operators in connection with online
20 and mobile product ordering. Users of the Domino's Ordering System,
21 including, but not limited to, consumers, franchisees, and restaurant operators,
22 directly infringe one or more valid and enforceable claims of the '325 patent for
23 the reasons set forth hereinabove. Those components consist of the same
24 elements and features of the Domino's Ordering System described above, as
25 accessed, used, or benefited from by third parties, including consumers,
26 franchisees, and restaurant operators through computers, and wireless handheld
27 computing devices in the possession of such third parties. Although Ameranth
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1 alleges, as set forth above, that Domino's directly infringes the patents-in-suit,
2 Ameranth alternatively alleges that Domino's indirectly infringes to the extent
3 that such third parties are determined to be the "users" of the Domino's
4 Ordering System and direct infringers of the patents-in-suit.

5 38. After the date it first acquired knowledge of the '325 patent, as
6 described above, Domino's had knowledge that the Domino's Ordering System,
7 which is a specialized software system and a non-staple article of commerce,
8 has been used as a material part of the claimed invention of the '325 patent, and
9 that there are no substantial non-infringing uses for the Domino's Ordering
10 System because of the highly specialized and customized nature of the
11 Domino's Ordering System's software, components, and integrations. As
12 described herein, the Domino's Ordering System, which is designed and
13 developed to permit online and mobile food ordering in a manner that infringes
14 Ameranth's patents, does not have substantial non-infringing uses and is not a
15 staple article of commerce. Thus, the Domino's Ordering System is used by
16 third parties in connection with online and mobile food ordering and other
17 hospitality functions in a way that infringes the patents-in-suit and in no other
18 substantial or meaningful way.

19 39. On information and belief, the aforesaid infringing activities of
20 Domino's have been done with knowledge and willful disregard of Ameranth's
21 patent rights, making this an exceptional case within the meaning of 35 U.S.C.
22 § 285.

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

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COUNT III

Patent Infringement ('077 Patent)

(35 U.S.C. § 271)

41. Plaintiff reiterates and reincorporates the allegations set forth in the preceding paragraphs above as if fully set forth herein.

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

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

44. On information and belief, Domino's directly infringes and continues to directly infringe one or more valid and enforceable claims of the '077 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, said systems including but not limited to the Domino's Ordering System. Ameranth previously served Domino's with infringement contentions further describing the details of Domino's infringement of Ameranth's patents. Those infringement contentions are attached hereto as **Exhibit D** and incorporated herein by reference.

45. On information and belief, the Domino's Ordering System, as deployed and/or used at or from one or more locations by Domino's, its agents, distributors, partners, affiliates, licensees, franchisees, and/or their customers, infringes the '077 patent, by, *inter alia*, enabling product ordering and other hospitality functions via iPhone, Android, and other internet-enabled wireless

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

15 46. On information and belief, Domino's actively induces others to
16 infringe the '077 patent in violation of 35 U.S.C. §271(b) by knowingly
17 encouraging, aiding and abetting third parties, including consumers,
18 franchisees, and restaurant operators, to use the infringing Domino's Ordering
19 System in the United States without authority or license from Ameranth in a
20 manner understood and intended by Domino's to infringe Ameranth's patents,
21 as described above.

22 47. On information and belief, third parties, including consumers,
23 franchisees, and franchise operators, use the Domino's Ordering System in a
24 manner that infringes upon valid and enforceable claims of the '077 patent.
25 Domino's provides instruction and direction regarding the use of the Domino's
26 Ordering System and advertises, promotes, and encourages the use of the
27 Domino's Ordering System, in a manner understood and intended by Domino's
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1 to infringe Ameranth's patents. Domino's provides such instruction, direction
2 and encouragement regarding infringing use of the Domino's System on its
3 webpages, in user videos, in offerings in "app stores," in press releases and in
4 statements in industry news articles, as demonstrated in the infringement
5 contentions attached hereto as **Exhibit D** and in the references cited in the
6 appendix thereto. Further, on information and belief, Domino's instructs on
7 and requires the use of the Domino's Ordering System by its franchisees and
8 restaurant operators.

9 48. Domino's had knowledge of the '077 patent at least since the filing
10 and service of the Domino's II complaint. After the date it first acquired
11 knowledge of the '077 patent, Domino's knew or should have known that its
12 continued offering and deployment of the Domino's Ordering System, and its
13 continued support of consumers, franchisees, and restaurant operators, and
14 other users of this system/product/service, would induce direct infringement by
15 those users. Despite its knowledge, Domino's continued its infringing conduct
16 described herein. Additionally, Domino's intended that its actions would
17 induce direct infringement by those users.

18 49. On information and belief, Domino's contributorily infringes and
19 continues to contributorily infringe one or more valid and enforceable claims of
20 the '077 patent, in violation of 35 U.S.C. § 271(c), by making, using, offering
21 to sell and/or selling components of systems on which claims of the '077 patent
22 read, constituting a material part of the invention, knowing that the components
23 were especially adapted for use in systems which infringe claims of the '077
24 patent.

25 50. By distributing, selling, offering, offering to sell or license and/or
26 selling or licensing the Domino's Ordering System, Domino's provides non-
27 staple articles of commerce to others for use, including consumers, franchisees,
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1 and restaurant operators, in infringing systems, products, and/or services.
2 Additionally, Domino's provides instruction and direction regarding the use of
3 the Domino's Ordering System and advertises, promotes, and encourages the
4 use of the Domino's Ordering System, in a manner understood and intended by
5 Domino's to infringe Ameranth's patents, as described above. On information
6 and belief, Domino's instructs on and requires use of the Domino's Ordering
7 System by its franchisees and restaurant operators in connection with online
8 and mobile product ordering. Users of the Domino's Ordering System,
9 including, but not limited to, consumers, franchisees, and restaurant operators,
10 directly infringe one or more valid and enforceable claims of the '077 patent for
11 the reasons set forth hereinabove. Those components consist of the same
12 elements and features of the Domino's Ordering System described above, as
13 accessed, used, or benefited from by third parties, including consumers,
14 franchisees, and restaurant operators through computers, and wireless handheld
15 computing devices in the possession of such third parties. Although Ameranth
16 alleges, as set forth above, that Domino's directly infringes the patents-in-suit,
17 Ameranth alternatively alleges that Domino's indirectly infringes to the extent
18 that such third parties are determined to be the "users" of the Domino's
19 Ordering System and direct infringers of the patents-in-suit.

20 51. After the date it first acquired knowledge of the '077 patent, as
21 described above, Domino's had knowledge that the Domino's Ordering System,
22 which is a specialized software system and a non-staple article of commerce,
23 has been used as a material part of the claimed invention of the '077 patent, and
24 that there are no substantial non-infringing uses for the Domino's Ordering
25 System because of the highly specialized and customized nature of the
26 Domino's Ordering System's software, components, and integrations. As
27 described herein, the Domino's Ordering System, which is designed and
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1 developed to permit online and mobile food ordering in a manner that infringes
2 Ameranth's patents, does not have substantial non-infringing uses and is not a
3 staple article of commerce. Thus, the Domino's Ordering System is used by
4 third parties in connection with online and mobile food ordering and other
5 hospitality functions in a way that infringes the patents-in-suit and in no other
6 substantial or meaningful way.

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

12 **COUNT IV**

13 **Patent Infringement ('733 Patent)**

14 **(35 U.S.C. § 271)**

15 53. Plaintiff reiterates and reincorporates the allegations set forth in the
16 preceding paragraphs above as if fully set forth herein.

17 54. On January 3, 2006, the '733 patent entitled "Information Management
18 and Synchronous Communications System with Menu Generation, and
19 Handwriting and Voice Modification of Orders" (a true and correct copy of
20 which is attached hereto as **Exhibit E**) was duly and legally issued by the
21 United States Patent & Trademark Office

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

24 56. On information and belief, Domino's directly infringes and continues
25 to directly infringe one or more valid and enforceable claims of the '733 patent,
26 in violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
27 and/or selling or licensing infringing systems, products, and/or services in the
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1 United States without authority or license from Ameranth, including but not
2 limited to the Domino's Ordering System, as configured for use with wireless
3 mobile handheld computing devices/smartphones running at least Windows
4 Phone 8 OS with voice recognition capability which enables voice controlled or
5 assisted ordering of food items from wireless devices/smartphones running said
6 OS.

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

19 58. On information and belief, Domino's infringes by its own actions and
20 through, or in concert with, agents of Domino's who are under the direction and
21 control of Domino's by virtue of contractual agreements between Domino's
22 and such parties including, for example, Domino's franchisees and restaurant
23 operators.

24 59. On information and belief, systems including the Domino's Ordering
25 System as configured for use with wireless mobile handheld computing
26 devices/smartphones running at least Windows Phone 8 OS with voice
27 recognition capability, as deployed and/or used at or from one or more locations
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1 by Domino's, its agents, distributors, partners, affiliates, licensees, franchisees,
2 operators, third-party businesses, and/or their customers, infringes one or more
3 valid and enforceable claims of the '733 patent, by doing, or providing the
4 capability for doing, at least one of the following: (a) Generating and
5 transmitting menus in a system including a central processing unit, a data
6 storage device connected to said central processing unit, an operating system
7 including a graphical user interface, a first menu stored on said data storage
8 device, application software for generating a second menu from said first menu
9 and transmitting said second menu to a wireless handheld computing device or
10 Web page, wherein the application software facilitates the generation of the
11 second menu by allowing selection of items from the first menu, addition of
12 items to the second menu and assignment of parameters to items in the second
13 menu using the graphical user interface of said operating system, and said
14 second menu is manually modified by voice recording or capture or recognition
15 after generation; (b) Generating menus in a system including a central
16 processing unit, a data storage device connected to said central processing unit,
17 an operating system including a graphical user interface, a first menu stored on
18 said data storage device, application software for generating a second menu
19 from said first menu wherein the application software facilitates the generation
20 of the second menu by allowing selection of items from the first menu, addition
21 of items to the second menu and assignment of parameters to items in the
22 second menu using the graphical user interface of said operating system and
23 wherein data comprising the second menu is synchronized between the data
24 storage device connected to the central processing unit and at least one other
25 computing device, and said second menu is manually modified by voice
26 recording or capture or recognition after generation; and/or (c) Generating
27 menus in a system including a microprocessor, a display device, a data and
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1 instruction input device, a data storage device for storing information and
2 instructions entered through said data and instruction input means or
3 information generated by said microprocessor, an operating system, a master
4 menu stored on said data storage device for generating a modified menu, and
5 application software, wherein said microprocessor, operating system and
6 application software are operative to display the master menu on the display
7 device in response to instructions programmed into said microprocessor,
8 operating system, application software and information and instructions entered
9 through said data input device, and said microprocessor, operating system and
10 application software are operative to create the modified menu from said master
11 menu in response to information and instructions entered through said data and
12 instruction input device and data comprising the modified menu is
13 synchronized between the data storage device and at least one other computing
14 device, wherein said modified menu is manually modified after generation.

15 60. On information and belief, third parties, including consumers,
16 franchisees, and restaurant operators, use the Domino's Ordering System as
17 configured for use with wireless mobile handheld computing
18 devices/smartphones running at least Windows Phone 8 OS with voice
19 recognition capability in a manner that infringes upon one or more valid and
20 enforceable claims of the '733 patent. For example, the Domino's Ordering
21 System provides generated menus for selection of menu categories, items,
22 modifiers and sub-modifiers and ordering and purchasing food as encompassed
23 by claims of the '733 patent. Domino's provides instruction and direction
24 regarding the use of the Domino's Ordering System as configured for use with
25 wireless mobile handheld computing devices/smartphones running at least
26 Windows Phone 8 OS with voice recognition capability and advertises,
27 promotes, and encourages the use of same. For example, Domino's touted and
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1 promoted the Windows Phone 8/Domino's integration as detailed herein. On
2 information and belief, Domino's instructs on and requires use of the Domino's
3 Ordering System by its franchisees and restaurant operators.

4 61. On information and belief, Domino's actively induces others to
5 infringe the '733 patent in violation of 35 U.S.C. §271(b) by actively,
6 knowingly and intentionally encouraging, aiding and abetting franchisees,
7 operators and third parties, including consumers and those businesses and
8 persons identified elsewhere in this Complaint, to use the infringing Domino's
9 Ordering System as configured for use with wireless mobile handheld
10 computing devices/smartphones running at least Windows Phone 8 OS with
11 voice recognition capability in the United States without authority or license
12 from Ameranth. For example, Domino's CEO Patrick Doyle has given
13 interviews explaining the capability of the Domino's Ordering System to use
14 voice ordering capability directly from a menu displayed on a smartphone
15 running Windows Phone 8 OS. *See, e.g.*, [http://www.bloomberg.com/video/35-
16 40-of-domino-s-sales-are-from-digital-doyle-
17 7IwmiYqTNGzkcIw2l67IA.html](http://www.bloomberg.com/video/35-40-of-domino-s-sales-are-from-digital-doyle-7IwmiYqTNGzkcIw2l67IA.html); *see also* [http://www.prnewswire.com/news-
18 releases/dominos-launches-new-ordering-app-for-windows-phone-8-
19 210284991.html](http://www.prnewswire.com/news-releases/dominos-launches-new-ordering-app-for-windows-phone-8-210284991.html) ("In a first for a Domino's mobile app, the Windows Phone
20 release adds voice capabilities. From the 'Menu' section of the app, users can
21 choose to order by voice, telling the app the item they'd like to order, for
22 example, 'medium, pepperoni Handmade Pan Pizza.'). Domino's thus
23 promotes the ordering of food items via the Domino's Ordering System on
24 wireless devices via voice control by consumers and the sale of such items and
25 processing of such orders by Domino's restaurant operators and franchisees.

26 62. Domino's became aware of Ameranth's patent family which includes
27 the '733 patent well before the Complaint in Domino's III was filed. Domino's
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1 learned of this patent family at least as early as 2006 during business partnering
2 discussions concerning Ameranth and Intercontinental Hotels Group's "eHost"
3 product/project - in which hotel guest pizza ordering to guest hotel rooms was
4 planned to occur through online ordering and Ameranth's "eHost" e-concierge
5 project. Further, Domino's knew of the '733 patent before the filing of the
6 complaint in Domino's III. The '733 patent is a continuation of the '850 patent
7 asserted in Domino's I. The '077 patent asserted in Domino's II is a
8 continuation of the '733 patent. Ameranth discussed the '733 patent in
9 Domino's presence at a Case Management Conference in Domino's I on
10 November 14, 2012. Ameranth served Domino's on March 1, 2013 with Rule
11 26(a) disclosures which listed the '733 patent. Domino's proposed that
12 Ameranth's lawsuit against Apple, which asserts the '733 patent, be added to
13 the consolidated action. On January 26, 2012 Domino's served requests for
14 production on Ameranth which requested documents concerning the '733
15 patent. In response, Ameranth produced the file wrapper of the '733 patent to
16 Domino's and other Defendants who are members of a joint defense group that,
17 on information and belief, share information about Ameranth's patents and
18 infringement suits. Prior to asserting infringement of the '733 patent against
19 Domino's, Ameranth filed infringement actions on the '733 patent against other
20 defendant in the same joint defense group Domino's has thus obtained the level
21 of knowledge required to support a claim for inducement of infringement
22 regarding Domino's actions involving the Domino's Ordering System as
23 detailed herein in numerous different and independent ways.

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

4 64. By making, distributing, selling, offering, offering to sell or license
5 and/or selling or licensing the Domino's Ordering System as configured for use
6 with wireless mobile handheld computing devices/smartphones running at least
7 Windows Phone 8 OS with voice recognition capability, Domino's provides
8 non-staple articles of commerce to others, including those consumers,
9 franchisees, and restaurant operators, for use in infringing systems, products,
10 and/or services. Additionally, Domino's provides instruction and direction
11 regarding the use of the Dominos Ordering System as configured for use with
12 wireless mobile handheld computing devices/smartphones running at least
13 Windows Phone 8 OS with voice recognition capability and advertises,
14 promotes, and encourages the use of same in a manner understood and intended
15 by Domino's to infringe the '733 patent. For example, Domino's touted and
16 promoted the Windows Phone 8/Domino's integration as detailed herein.
17 Although Ameranth alleges that Domino's directly infringes the patents-in-suit,
18 Ameranth alternatively alleges that Dominos indirectly infringes to the extent
19 that third party users of the Domino's Ordering System, including consumers,
20 franchisees, and restaurant operators, are determined to be the "users" of the
21 Domino's Ordering System and direct infringers of the '733 patent, for the
22 reasons set forth hereinabove.

23 65. Domino's has had knowledge of the '733 patent, as set forth above, at
24 least as early as the filing of the complaints in Domino's I and Domino's II, *i.e.*,
25 August 15, 2011 and March 27, 2012 and in connection with discovery and
26 litigation activities conducted in Domino's I and Domino's II. In addition,
27 Domino's has had knowledge of the patent family which includes the '733
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1 patent since 2006, as discussed above. Dominos has thus obtained the level of
2 knowledge required to support a claim for contributory infringement regarding
3 Domino's actions involving the Domino's Ordering System as configured for
4 use with wireless mobile handheld computing devices/smartphones running at
5 least Windows Phone 8 OS with voice recognition capability in numerous
6 different and independent ways.

7 66. After the date it first acquired knowledge of the '733 patent, as
8 described above, Domino's had knowledge that the Domino's Ordering System,
9 as configured for use with wireless mobile handheld computing
10 devices/smartphones running at least Windows Phone 8 OS with voice
11 recognition capability, is a specialized software system and a non-staple article
12 of commerce and has been used as a material part of the claimed invention of
13 the '733 patent, and that there are no substantial non-infringing uses for the
14 Domino's Ordering System because of the highly specialized and customized
15 nature of the Domino's Ordering System's software, components, and
16 integrations. As described herein, the Domino's Ordering System, which is
17 designed and developed to permit online and mobile food ordering in a manner
18 that infringes Ameranth's patents, does not have substantial non-infringing uses
19 and is not a staple article of commerce. Thus, the Domino's Ordering System is
20 used by third parties in connection with online and mobile food ordering and
21 other hospitality functions in a way that infringes the patents-in-suit and in no
22 other substantial or meaningful way.

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

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

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Ameranth prays for judgment against Domino's, as
16 follows:

17 1. Adjudging that the manufacture, use, offer for sale or license
18 and/or sale or license of the Domino's Ordering System infringes valid and
19 enforceable claims of the '850 patent, the '325 patent, the '077 patent, and the
20 '733 patent;

21 2. Adjudging that Domino's has infringed, actively induced others to
22 infringe and/or contributorily infringed valid and enforceable claims of the '850
23 patent, the '325 patent, the '077 patent, and the '733 patent;

24 3. Adjudging that Domino's infringement of the valid and
25 enforceable claims of the '850 patent, the '325 patent, the '077 patent, and the
26 '733 patent has been knowing and willful;

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1 4. Enjoining Domino’s, and its officers, directors, employees,
2 attorneys, agents, representatives, parents, subsidiaries, affiliates and all other
3 persons acting in concert, participation or privity with them, and their
4 successors and assigns, from infringing, contributorily infringing and/or
5 inducing others to infringe the valid and enforceable claims of the ‘850 patent,
6 the ‘325 patent, the ‘077 patent, and the ‘733 patent;

7 5. Awarding Ameranth the damages it has sustained by reason of
8 Domino’s infringement, together with interest and costs pursuant to 35 U.S.C. §
9 284;

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

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

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

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

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DEMAND FOR JURY TRIAL

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

Respectfully submitted,

Dated: September 20, 2013 CALDARELLI HEJMANOWSKI & PAGE LLP

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