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

AMERANTH, INC.,

Plaintiff,

v.

OPENTABLE, INC.,

Defendant.

Case No. 3:12-cv-00731-DMS-WVG
[Consolidated with lead case 3:11-cv-01810-DMS-WVG and other related cases]

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

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

5 **PARTIES**

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

17 2. Defendant OpenTable, Inc. (“OpenTable” or “Defendant”) is, on
18 information and belief, a Delaware corporation having a principal place of
19 business in San Francisco, California. On information and belief, OpenTable
20 makes, uses, offers for sale or license and/or sells or licenses restaurant and
21 foodservice information technology products, software, components and/or
22 systems within this Judicial District, including the OpenTable System as defined
23 herein. As is explained herein, OpenTable’s already widespread infringement of
24 Ameranth's patents has significantly expanded recently -- with new product
25 introductions including its new “Next Generation” system, new mobile payment
26 processing functionality, and integration with Apple's Siri voice recognition
27 features on iPhone, iPod Touch and iPad devices.

JURISDICTION AND VENUE

1
2 3. This is an action for patent infringement arising under the Patent
3 Laws 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, Defendant engages in (a) the offer for sale
7 or license and sale or license of hospitality, restaurant, food service, reservation,
8 ordering, products and/or components in the United States, including this Judicial
9 District, including services, products, software, and components, comprising
10 wireless and internet POS and/or hospitality aspects; (b) the installation and
11 maintenance of said services, products, software, components and/or systems in
12 hospitality industry, restaurant, food service, and/or entertainment information
13 technology systems in the United States, including this Judicial District; and/or
14 (c) the use of hospitality industry, restaurant, food service, and/or entertainment
15 information technology systems comprising said services, products, software,
16 components and/or systems in the United States, including this Judicial District.

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

26 7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§
27 1391(b) and (c) and 1400(b).

28 ///

BACKGROUND

1
2 8. Ameranth was established in 1996 to develop and provide its 21st
3 Century Communications™ innovative information technology solutions for the
4 hospitality industry (inclusive of, e.g., restaurants, hotels, casinos, nightclubs,
5 cruise ships and other entertainment and sports venues). Ameranth has been
6 widely recognized as a technology leader in the provision of wireless and
7 internet-based systems and services to, *inter alia*, restaurants, hotels, casinos,
8 cruise ships and entertainment and sports venues. Ameranth’s award winning
9 inventions enable, in relevant part, generation and synchronization of menus,
10 including but not limited to restaurant menus, event tickets, reservations and
11 other products across fixed, wireless and/or internet platforms as well as
12 synchronization of hospitality information and hospitality software applications
13 across fixed, wireless and internet platforms, including but not limited to,
14 computer servers, web servers, databases, affinity/social networking systems,
15 desktop computers, laptops, “smart” phones and other wireless handheld
16 computing devices.

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

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

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

1 Furthermore, companies that license Ameranth's products have marked their
2 products with Ameranth's patent numbers, thereby also providing notice of
3 Ameranth's patents. As a result of Ameranth's technological breakthroughs and
4 successes, business activities, awards, press releases and coverages, participation
5 in industry conferences, licensing and enforcement activities, Ameranth, and its
6 technology and patents, are well-known throughout the hospitality industry,
7 including to the Defendants herein.

8 **RELATED CASES PREVIOUSLY FILED**

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

16 13. Ameranth is also currently asserting some or all of the four patents
17 against OpenTable and some or all of them against other defendants in over 30
18 related cases consolidated under the case entitled *Ameranth v. Pizza Hut, Inc. et*
19 *al.*, Case No. 3:11-cv-01810-DMS-WVG (the "Lead Case"), that are already
20 pending in this Court (collectively the "Consolidated Cases"). In the Lead Case,
21 which was filed on August 15, 2011, Ameranth asserts claims of the '850 and
22 '325 patents against several defendants, including OpenTable. Ameranth
23 subsequently filed a second lawsuit against OpenTable on March 27, 2012
24 asserting claims of the '077 Patent (Case No. 3:12-cv-00731-DMS-WVG). On
25 August 8, 2013, Ameranth filed a third lawsuit against OpenTable asserting
26 claims of the '850, '325, '733 and '077 Patents (Case No. 3:13-cv-01840-DMS-
27 WVG) based on OpenTable's new product introductions, including OpenTable's
28 new "Next Generation" system, new mobile payment processing functionality and

1 integration with Apple's Siri voice recognition features on iPhone, iPod Touch
2 and iPad devices, that also infringe upon Ameranth's patents including patent
3 claims that had not been previously asserted against OpenTable. All of the above
4 still-pending cases are coordinated for discovery and claim construction purposes.
5 This First Amended Complaint includes Ameranth's claims against OpenTable
6 from the Lead Case and second and third lawsuits against OpenTable (Case Nos.
7 3:11-cv-01810-DMS-WVG, 3:12-cv-00731-DMS-WVG and 3:13-cv-01840-
8 DMS-WVG, respectively), and is filed pursuant to the Court's September 13,
9 2013 Order Following Status Conference (ECF Document No. 491 in Case No.
10 3:11-cv-01810-DMS-WVG).

11 14. The original complaint in the Lead Case asserting patents in this
12 Ameranth patent family against OpenTable was filed in this Court on August 15,
13 2011, asserting claims under the '850 and '325 patents, and was served on
14 OpenTable shortly thereafter. In connection with discovery, disclosures and case
15 management activities in that original case, as well, on information and belief,
16 though the independent investigation of OpenTable and its counsel, the existence
17 and content of the other patents in this patent family have been made known to
18 OpenTable. Thus, at least since the time of the filing of the original complaint in
19 this action, or shortly thereafter, OpenTable has had direct knowledge of
20 Ameranth's patents and that OpenTable's reservations system infringes those
21 patents as alleged therein. Nonetheless, OpenTable has continued, and is
22 continuing, to make, use, offer for sale or license and/or sell or license infringing
23 systems, products, and/or services in the United States without authority or
24 license from Ameranth and to engage in acts of infringement as set forth herein.
25 As is explained herein, OpenTable's already widespread infringement of
26 Ameranth's patents has significantly expanded recently - with new product
27 introductions including OpenTable's new "Next Generation" system, new mobile
28 payment processing functionality, and integration with Apple's Siri voice

1 recognition features on iPhone, iPod Touch and iPad devices (thereby also
2 infringing upon Ameranth's '733 patent.)

3 **COUNT I**

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

5 **(35 U.S.C. § 271)**

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

8 16. On May 7, 2002, United States Patent No. 6,384,850 entitled
9 "Information Management and Synchronous Communications System with Menu
10 Generation" ("the '850 patent") (a true and copy of which is attached hereto as
11 **Exhibit A**) was duly and legally issued by the United States Patent & Trademark
12 Office ("USPTO"). The '850 patent meets all patentability requirements of 35
13 U.S.C. §§101, 102, 103 and 112, including patent eligible subject matter,
14 enablement, definiteness, novelty and non-obviousness, as evidenced by the
15 USPTO's thorough review of the disclosure and claims of the '850 patent and
16 allowance of the claims based on said review in light of all applicable law and
17 USPTO rules and guidelines respecting patentability under Title 35.

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

20 18. On information and belief, Defendant 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 "OpenTable System," OpenTable's online and mobile restaurant
26 reservations system, which, as used herein, means and includes the current and all
27 previous "versions" (and regardless of whether alleged by OpenTable to be
28 revisions, different versions, or different systems) of the OpenTable

1 system/products/services, including, *inter alia*, OpenTable’s new “Next
2 Generation” system, (which is both deployed “live” by numerous customers and
3 also offered for sale (see references in paragraph 20)), its website, mobile
4 website, iPhone, Android, Windows Phone, BlackBerry and other mobile apps,
5 mobile payments through OpenTable’s mobile apps (which is both deployed
6 “live” and also offered for sale (see references in paragraph 20)), integration with
7 point-of sale systems including MICROS and others, wireless and internet
8 restaurant-reservation, table-management, and guest-management integration,
9 online and mobile restaurant reservations via, for example, OpenTable’s website
10 and mobile website and mobile apps, integration with e-mail and affinity
11 programs and social media applications such as Facebook, Twitter, Groupon, and
12 YouTube, and/or other third-party web-based and/or mobile-device based
13 applications and other hospitality aspects including integration with, *inter alia*,
14 Locu, Yelp, Siri, Zagat, Venga, Evernote Food, Foursquare, Google Maps, and
15 mobile-phone calendar functions. Ameranth has served OpenTable with
16 infringement contentions in previously filed actions further describing
17 OpenTable’s infringement of Ameranth’s patents. A true and correct copy of the
18 most recently-served infringement contentions is attached hereto as **Exhibit E**
19 and incorporated herein by reference.

20 19. On information and belief, the OpenTable System, as
21 deployed and/or used at or from one or more locations by OpenTable, its
22 agents, distributors, partners, affiliates, licensees, restaurant owners/operators,
23 and/or their customers, infringes one or more valid and enforceable claims of the
24 ‘850 patent, by, *inter alia*, doing or providing the capability for doing at least one
25 of the following: (a) Generating and transmitting menus regarding, for example,
26 restaurant reservations information, in a system including a central processing
27 unit, a data storage device, a computer operating system containing a graphical
28 user interface, one or more displayable main menus, modifier menus, and sub-

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

18 20. On information and belief, OpenTable has indirectly infringed and
19 continues to indirectly infringe one or more valid and enforceable claims of the
20 '850 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
21 intentionally inducing direct infringement by other persons, including restaurant
22 owners and operators and customers of such restaurants, by making, using,
23 offering for sale or license and/or selling or licensing infringing systems, products,
24 and/or services in the United States without authority or license from Ameranth,
25 including but not limited to the OpenTable System as defined herein, in a manner
26 understood and intended to infringe Ameranth's patents. For example, OpenTable
27 regularly advertises, promotes, and encourages the use of OpenTable's integrated
28 system to restaurant owners/operators, and OpenTable's website, mobile website,

1 and mobile apps, which include, among other things, integration with Apple's IOS
2 7 and iPhone 5S/5C devices and direct integration with Facebook via application
3 programming interface, to, for example, restaurant owners/operators and
4 consumers in a manner understood and intended to infringe Ameranth's patents.
5 *See, e.g.*, [http://www.opentable.com/opentable-restaurant-management-](http://www.opentable.com/opentable-restaurant-management-system#/increase_bookings)
6 [system#/increase_bookings](http://www.opentable.com/info/diningrewards.aspx) ; <http://www.opentable.com/info/diningrewards.aspx>;
7 <http://www.opentable.com/mobile/>; [http://seekingalpha.com/article/1597462-](http://seekingalpha.com/article/1597462-opentable-management-discusses-q2-2013-results-earnings-call-transcript?source=email_rt_article_title)
8 [opentable-management-discusses-q2-2013-results-earnings-call-](http://seekingalpha.com/article/1597462-opentable-management-discusses-q2-2013-results-earnings-call-transcript?source=email_rt_article_title)
9 [transcript?source=email_rt_article_title](http://seekingalpha.com/article/1597462-opentable-management-discusses-q2-2013-results-earnings-call-transcript?source=email_rt_article_title) ;
10 [http://bits.blogs.nytimes.com/2013/07/30/opentable-begins-testing-mobile-](http://bits.blogs.nytimes.com/2013/07/30/opentable-begins-testing-mobile-payments/)
11 [payments/?](http://bits.blogs.nytimes.com/2013/07/30/opentable-begins-testing-mobile-payments/) ; <http://blog.opentable.com/>;
12 [http://rsmindex.com/blog/2013/8/13/facebook-to-partner-with-opentable-to-make-](http://rsmindex.com/blog/2013/8/13/facebook-to-partner-with-opentable-to-make-restaurant-reservations-available-on-mobile)
13 [restaurant-reservations-available-on-mobile](http://rsmindex.com/blog/2013/8/13/facebook-to-partner-with-opentable-to-make-restaurant-reservations-available-on-mobile). Such statements of inducement
14 appear on OpenTable's website, its advertising, its blog, user videos, industry
15 articles, mobile "app stores," *etc.*

16 21. On information and belief, OpenTable infringes by its own actions
17 and through, or in concert with, agents of OpenTable who are under the direction
18 and control of OpenTable by virtue of contractual agreements between
19 OpenTable and such parties including, for example, restaurant owners/operators
20 who benefit from reservations, mobile payments, and other uses of the
21 OpenTable System.

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

26 23. On information and belief, customers of OpenTable, including
27 consumers, restaurant owners/operators, and others, use the OpenTable System in
28 a manner that infringes upon one or more valid and enforceable claims of the '850

1 patent. For example, the OpenTable System provides generated menus for
2 selection of locations, restaurants, reservation times, and making restaurant
3 reservations as encompassed by claims of the '850 patent, and synchronizes
4 restaurant-reservation information between wireless handheld mobile devices
5 including smartphones using OpenTable mobile apps and/or accessing
6 OpenTable's website, desktop and laptop computers accessing OpenTable's
7 website, and "back-office" databases and associated servers. OpenTable provides
8 instruction and direction regarding the use of the OpenTable System and
9 advertises, promotes, and encourages the use of same to restaurant
10 owners/operators and consumers in a manner understood and intended to infringe
11 Ameranth's patents. See, e.g., the references set forth in paragraph 20 herein.

12 24. On information and belief, OpenTable actively induces others to
13 infringe the '850 patent in violation of 35 U.S.C. §271(b) by actively, knowingly
14 and intentionally encouraging, aiding and abetting restaurant owners/operators,
15 customers of OpenTable, and others, including consumers and those businesses
16 and persons identified elsewhere in this First Amended Complaint, to use the
17 infringing OpenTable System in the United States without authority or license
18 from Ameranth in an infringing manner. For example, OpenTable regularly
19 advertises, promotes, and encourages the use of OpenTable's integrated system to
20 restaurant owners/operators, and OpenTable's website, mobile website, and
21 mobile apps to restaurant owners/operators and consumers. See, e.g., the
22 references set forth in paragraph 20 herein.

23 25. OpenTable has been aware of Ameranth's patent family which
24 includes this patent well before the instant First Amended Complaint was filed.
25 Two of the patents in this Ameranth patent family (the '850 and '325 patents)
26 were asserted in a prior action against OpenTable and other defendants filed on
27 August 15, 2011, as noted above. A second action (this lawsuit) was subsequently
28 commenced against OpenTable on March 27, 2012 (originally on the '077 patent).

1 In connection with investigation, discovery, disclosures and case management
2 events that transpired in connection with the original lawsuit, and by virtue of
3 Ameranth's assertion of the patents against other defendants that are involved in
4 the Consolidated Cases and are part of a joint defense group of which OpenTable
5 is a member and, on information and belief, in which information and knowledge
6 about Ameranth's patents and infringement lawsuits is shared, the existence and
7 content of all four of the patents-in-suit here were previously made known to
8 OpenTable. Ameranth has served OpenTable with infringement contentions in
9 those previously filed actions further describing OpenTable's infringement of
10 Ameranth's '850, '325 and '077 patents. A true and correct copy of the most
11 recently-served infringement contentions is attached hereto as **Exhibit E** and
12 incorporated herein by reference. Further, on information and belief, OpenTable
13 had knowledge of Ameranth's patent family, including this patent, due to the
14 widespread recognition Ameranth has received for its pioneering inventions as
15 evidenced by the twelve different technology awards Ameranth has received,
16 media recognition in The Wall Street Journal, New York Times, and USA Today,
17 Bill Gates' nomination of Ameranth for the Computerworld Honors Award, and
18 the numerous press releases Ameranth has issued over the years. OpenTable has
19 thus obtained the level of knowledge required to support a claim for inducement
20 of infringement regarding OpenTable's actions involving the OpenTable System,
21 as detailed herein.

22 26. On information and belief, OpenTable contributorily infringes and
23 continues to contributorily infringe one or more valid and enforceable claims of
24 the '850 patent, in violation of 35 U.S.C. § 271(c), by making, using, offering to
25 sell and/or selling components of systems on which claims of the '850 patent read,
26 constituting a material part of the invention, knowing that the components were
27 especially adapted for use in systems which infringe claims of the '850 patent and
28 therefore have no substantial non-infringing use. These "components" consist of

1 the same elements and features of the OpenTable System described above, as
2 accessed, used or benefited from by third parties—such as restaurant operators
3 and consumers—through computers and wireless handheld computing devices in
4 the possession of such third parties. Although Ameranth alleges, as set forth
5 above, that OpenTable directly infringes its patents, Ameranth alternatively
6 alleges that OpenTable indirectly infringes the patents to the extent that such third
7 parties are determined to be the “users” of the OpenTable System and direct
8 infringers of the patents.

9 27. By making, distributing, selling, offering, offering to sell or license
10 and/or selling or licensing the OpenTable System, OpenTable provides non-staple
11 articles of commerce to others, including those businesses and persons identified
12 elsewhere in this First Amended Complaint, for use in infringing systems,
13 products, and/or services. Because of the highly specialized and customized
14 nature of the OpenTable System software, components, integrations, etc., as
15 described herein, the OpenTable System—which is designed and built in such a
16 way that it infringes Ameranth’s patents as alleged in this First Amended
17 Complaint-- does not have substantial non-infringing uses and is a non-staple
18 article of commerce. Thus, the OpenTable System is used by third parties—
19 including restaurant operators and consumers—to manage, find, view and make
20 restaurant reservations and perform other hospitality functions in a manner that
21 infringes Ameranth’s patents and in no other substantial or meaningful way.
22 Additionally, OpenTable provides instruction and direction regarding the use of
23 the OpenTable System and advertises, promotes, and encourages the use of same
24 in a manner understood and intended to infringe Ameranth’s patents. For
25 example, OpenTable regularly advertises, promotes, and encourages the use of
26 OpenTable’s integrated system to restaurant owners/operators, and OpenTable’s
27 website, mobile website, and mobile apps to restaurant owners/operators and
28 consumers. See, e.g., the references set forth in paragraph 20 herein. Users of the

1 OpenTable System directly infringe one or more valid and enforceable claims of
2 the '850 patent, for the reasons set forth hereinabove.

3 28. OpenTable has been aware of Ameranth's patent family which
4 includes this patent well before this First Amended Complaint was filed. Two of
5 the patents in this Ameranth patent family (the '850 and '325 Patents) have been
6 asserted in a prior action against OpenTable and other defendants filed on August
7 15, 2011, as noted above. A second action (this lawsuit) was subsequently
8 commenced against OpenTable with the filing of the complaint on March 27,
9 2012 (originally on the '077 patent). In connection with investigation, discovery,
10 disclosures and case management events that transpired in connection with the
11 original lawsuit, and by virtue of Ameranth's assertion of the patents against other
12 defendants that are involved in the Consolidated Cases and are part of a joint
13 defense group of which OpenTable is a member and, on information and belief, in
14 which information and knowledge about Ameranth's patents and infringement
15 lawsuits is shared, the existence and content of all four of the patents-in-suit here
16 were previously made known to OpenTable. Ameranth has served OpenTable
17 with infringement contentions in those previously filed actions further describing
18 OpenTable's infringement of Ameranth's '850, '325 and '077 Patents (a true and
19 correct copy of the most recently-served infringement contentions is attached
20 hereto as **Exhibit E** and incorporated herein by reference). Further, on
21 information and belief, OpenTable had knowledge of Ameranth's patent family,
22 including this patent, due to the widespread recognition Ameranth has received for
23 its pioneering inventions as evidenced by the twelve different technology awards
24 Ameranth has received, media recognition in The Wall Street Journal, New York
25 Times, and USA Today, Bill Gates' nomination of Ameranth for the
26 Computerworld Honors Award, and the numerous press releases Ameranth has
27 issued over the years. OpenTable has thus obtained the level of knowledge
28

1 required to support a claim for contributory infringement regarding OpenTable's
2 actions involving the OpenTable System as detailed herein.

3 29. On information and belief, the aforesaid infringing activities of
4 OpenTable have been done with knowledge and willful disregard of Ameranth's
5 patent rights, making this an exceptional case within the meaning of 35 U.S.C. §
6 285. As detailed above, OpenTable has had knowledge of the patent family which
7 includes this patent since at least August 2011, well before the filing of the original
8 complaint in this action (Case No. 3:12-cv-00731-DMS-WVG) and well before the
9 filing of the complaint in the third lawsuit against OpenTable (Case No. 3:13-cv-
10 01840-DMS-WVG). Nonetheless, despite such knowledge, OpenTable continued
11 to introduce new versions and features of the OpenTable System that infringe
12 Ameranth's patents, including patents upon which Ameranth has previously sued
13 OpenTable for infringement. Further, on information and belief, OpenTable was
14 also aware of the Ameranth patents due to the widespread recognition Ameranth
15 has received for its pioneering inventions as detailed above. OpenTable has thus
16 obtained the level of knowledge required to support a claim for willful
17 infringement. OpenTable's deliberate decision to introduce new versions and
18 features of its system after August 2011 that infringe Ameranth's patents after
19 obtaining said knowledge constitutes objectively reckless behavior justifying a
20 finding of willfulness.

21 30. OpenTable's deliberate decision to introduce new versions and
22 features of its system after August 2011 that infringe Ameranth's patents after
23 obtaining the knowledge described above has been done with knowledge and
24 willful disregard of Ameranth's patent rights, making this an exceptional case
25 within the meaning of 35 U.S.C. § 285. Further, if OpenTable does not cease and
26 desist the aforesaid infringing activities with respect to new versions and features
27 of its system that OpenTable introduced after August 2011, and instead continues
28 to infringe valid and enforceable claims of the '850 patent, then such infringing

1 actions will have been done with knowledge and willful disregard of Ameranth's
2 patent rights, making this an exceptional case within the meaning of 35 U.S.C. §
3 285.

4 31. The aforesaid infringing activity of OpenTable has directly and
5 proximately caused damage to plaintiff Ameranth, including loss of profits from
6 sales or licensing revenues it would have made but for the infringements. Unless
7 enjoined, the aforesaid infringing activity will continue and cause irreparable
8 injury to 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 32. Plaintiff reiterates and reincorporates the allegations set forth in
13 paragraphs 1-31 above as if fully set forth herein.

14 33. 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 USPTO. The '325 patent
18 meets all patentability requirements of 35 U.S.C. §§101, 102, 103 and 112,
19 including patent eligible subject matter, enablement, definiteness, novelty and
20 non-obviousness, as evidenced by the USPTO's thorough review of the
21 disclosure and claims of the '325 patent and allowance of the claims based on
22 said review in light of all applicable law and USPTO rules and guidelines
23 respecting patentability under Title 35.

24 34. Plaintiff Ameranth is the lawful owner by assignment of all right,
25 title and interest in and to the '325 patent.

26 35. On information and belief, Defendant directly infringes and continues
27 to directly infringe one or more valid and enforceable claims of the '325 patent,
28 in violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license

1 and/or selling or licensing infringing systems, products, and/or services in the
2 United States without authority or license from Ameranth, including but not
3 limited to the OpenTable System. Ameranth has served OpenTable with
4 infringement contentions in previously filed actions further describing
5 OpenTable's infringement of Ameranth's patents. A true and correct copy of the
6 most recently-served infringement contentions is attached hereto as **Exhibit E**
7 and incorporated herein by reference.

8 36. On information and belief, the OpenTable System, as
9 deployed and/or used at or from one or more locations by OpenTable, its
10 agents, distributors, partners, affiliates, licensees, restaurant owners/operators,
11 and/or their customers, infringes one or more valid and enforceable claims of the
12 '325 patent, by, *inter alia*, doing or providing the capability for doing at least one
13 of the following: (a) Generating and transmitting menus regarding, for example,
14 restaurant reservations information, in a system including a central processing
15 unit, a data storage device, a computer operating system containing a graphical
16 user interface, one or more displayable main menus, modifier menus, and sub-
17 modifier menus, and application software for generating a second menu and
18 transmitting it to a wireless handheld computing device or a Web page; and/or (b)
19 Enabling reservations and other hospitality functions via iPhone, Android, and
20 other internet-enabled wireless handheld computing devices as well as via Web
21 pages, storing hospitality information and data on at least one central database, on
22 at least one wireless handheld computing device, and on at least one Web server
23 and Web page, and synchronizing applications and data, including but not limited
24 to applications and data relating to reservations, between at least one central
25 database, wireless handheld computing devices, and at least one Web server and
26 Web page; utilizing an interface that provides a single point of entry that allows
27 the synchronization of at least one wireless handheld computing device and at
28 least one Web page with at least one central database; allowing information to be

1 entered via Web pages, transmitted over the internet, and automatically
2 communicated to at least one central database and to wireless handheld
3 computing devices; allowing information to be entered via wireless handheld
4 computing devices, transmitted over the internet, and automatically
5 communicated to at least one central database and to Web pages.

6 37. On information and belief, OpenTable has indirectly infringed and
7 continues to indirectly infringe one or more valid and enforceable claims of the
8 ‘325 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
9 intentionally inducing direct infringement by other persons, by making, using,
10 offering for sale or license and/or selling or licensing infringing systems, products,
11 and/or services in the United States without authority or license from Ameranth,
12 including but not limited to the OpenTable System as defined herein. For
13 example, OpenTable regularly advertises, promotes, and encourages the use of
14 OpenTable’s integrated system to restaurant owners/operators, and OpenTable’s
15 website, mobile website, and mobile apps to restaurant owners/operators and
16 consumers. See, e.g., the references set forth in paragraph 20 herein.

17 38. On information and belief, OpenTable infringes by its own actions
18 and through, or in concert with, agents of OpenTable who are under the direction
19 and control of OpenTable by virtue of contractual agreements between
20 OpenTable and such parties including, for example, restaurant owners/operators
21 who benefit from reservations, mobile payments, and other uses of the
22 OpenTable System.

23 39. On information and belief, defendant OpenTable has indirectly
24 infringed and continues to indirectly infringe one or more valid and enforceable
25 claims of the ‘325 patent, in violation of 35 U.S.C. § 271(b), by actively,
26 knowingly, and intentionally inducing direct infringement by other persons,
27 including restaurant owners/operators and their customers.

1 40. On information and belief, customers of OpenTable, including
2 consumers, restaurant owners/operators, and others, use the OpenTable System in
3 a manner that infringes upon one or more valid and enforceable claims of the ‘325
4 patent. For example, the OpenTable System provides generated menus for
5 selection of locations, restaurants, reservation times, and making restaurant
6 reservations as encompassed by claims of the ‘325 patent, and synchronizes
7 restaurant-reservation information between wireless handheld mobile devices
8 including smartphones using OpenTable mobile apps and/or accessing
9 OpenTable’s website, desktop and laptop computers accessing OpenTable’s
10 website, and “back-office” databases and associated servers. OpenTable provides
11 instruction and direction regarding the use of the OpenTable System and
12 advertises, promotes, and encourages the use of same to restaurant owners/
13 operators and consumers in a manner understood and intended to infringe
14 Ameranth’s patents. See, e.g., the references set forth in paragraph 20 herein.

15 41. On information and belief, OpenTable actively induces others to
16 infringe the ‘325 patent in violation of 35 U.S.C. §271(b) by actively, knowingly
17 and intentionally encouraging, aiding and abetting restaurant owners/operators,
18 customers of OpenTable, and others, including consumers and those businesses
19 and persons identified elsewhere in this First Amended Complaint, to use the
20 infringing OpenTable System in the United States without authority or license
21 from Ameranth in a manner that infringes Ameranth’s patents. For example,
22 OpenTable regularly advertises, promotes, and encourages the use of OpenTable’s
23 integrated system to restaurant owners/operators, and OpenTable’s website,
24 mobile website, and mobile apps to restaurant owners/operators and consumers.
25 See, e.g., the references set forth in paragraph 20 herein.

26 42. OpenTable has been aware of Ameranth’s patent family which
27 includes this patent well before the instant First Amended Complaint was filed.
28 Two of the patents in this Ameranth patent family were asserted in a prior action

1 against OpenTable and other defendants filed on August 15, 2011, as noted above,
2 and this action was subsequently commenced against OpenTable with the filing of
3 the complaint on March 27, 2012 (originally on the '077 patent). In connection
4 with investigation, discovery, disclosures and case management events that
5 transpired in connection with the original lawsuit, and by virtue of Ameranth's
6 assertion of the patents against other defendants that are involved in the
7 Consolidated Cases and are part of a joint defense group of which OpenTable is a
8 member and, on information and belief, in which information and knowledge
9 about Ameranth's patents and infringement lawsuits is shared, the existence and
10 content of all four of the patents-in-suit here were previously made known to
11 OpenTable. Ameranth has served OpenTable with infringement contentions in
12 those previously filed actions further describing OpenTable's infringement of
13 Ameranth's '850, '325 and '077 patents. A true and correct copy of the most
14 recently-served infringement contentions is attached hereto as **Exhibit E** and
15 incorporated herein by reference. Further, on information and belief, OpenTable
16 had knowledge of Ameranth's patent family, including this patent, due to the
17 widespread recognition Ameranth has received for its pioneering inventions as
18 evidenced by the twelve different technology awards Ameranth has received,
19 media recognition in The Wall Street Journal, New York Times, and USA Today,
20 Bill Gates' nomination of Ameranth for the Computerworld Honors Award, and
21 the numerous press releases Ameranth has issued over the years. OpenTable has
22 thus obtained the level of knowledge required to support a claim for inducement
23 of infringement regarding OpenTable's actions involving the OpenTable System
24 as detailed herein.

25 43. On information and belief, OpenTable contributorily infringes and
26 continues to contributorily infringe one or more valid and enforceable claims of
27 the '325 patent, in violation of 35 U.S.C. § 271(c), by making, using, offering to
28 sell and/or selling components of systems on which claims of the '325 patent read,

1 constituting a material part of the invention, knowing that the components were
2 especially adapted for use in systems which infringe claims of the '325 patent and
3 therefore have no substantial non-infringing use. These "components" consist of
4 the same elements and features of the OpenTable System described above, as
5 accessed, used or benefited from by third parties—such as restaurant operators
6 and consumers—through computers and wireless handheld computing devices in
7 the possession of such third parties. Although Ameranth alleges, as set forth
8 above, that OpenTable directly infringes its patents, Ameranth alternatively
9 alleges that OpenTable indirectly infringes the patents to the extent that such third
10 parties are determined to be the "users" of the OpenTable System and direct
11 infringers of the patents.

12 44. By making, distributing, selling, offering, offering to sell or license
13 and/or selling or licensing the OpenTable System, OpenTable provides non-staple
14 articles of commerce to others, including those businesses and persons identified
15 elsewhere in this First Amended Complaint, for use in infringing systems,
16 products, and/or services. Because of the highly specialized and customized
17 nature of the OpenTable System software, components, integrations, etc., as
18 described herein, the OpenTable System—which is designed and built in such a
19 way that it infringes Ameranth's patents as alleged in this First Amended
20 Complaint-- does not have substantial non-infringing uses and is a non-staple
21 article of commerce. Thus, the OpenTable System is used by third parties—
22 including restaurant operators and consumers—to manage, find, view and make
23 restaurant reservations and perform other hospitality functions in a manner that
24 infringes Ameranth's patents and in no other substantial or meaningful way.
25 Additionally, OpenTable provides instruction and direction regarding the use of
26 the OpenTable System and advertises, promotes, and encourages the use of same
27 in a manner understood and intended to infringe Ameranth's patents. For
28 example, OpenTable regularly advertises, promotes, and encourages the use of

1 OpenTable's integrated system to restaurant owners/operators, and OpenTable's
2 website, mobile website, and mobile apps to restaurant owners/operators and
3 consumers. See, e.g., the references set forth in paragraph 20 herein. Users of the
4 OpenTable System directly infringe one or more valid and enforceable claims of
5 the '325 patent, for the reasons set forth hereinabove.

6 45. OpenTable has been aware of Ameranth's patent family which
7 includes this patent well before this First Amended Complaint was filed. Two of
8 the patents in this Ameranth patent family have been asserted in a prior action
9 against OpenTable and other defendants filed on August 15, 2011, as noted above,
10 and this action was subsequently commenced against OpenTable with the filing of
11 the complaint on March 27, 2012 (originally on the '077 patent). In connection
12 with investigation, discovery, disclosures and case management events that
13 transpired in connection with the original lawsuit, and by virtue of Ameranth's
14 assertion of the patents against other defendants that are involved in the
15 Consolidated Cases and are part of a joint defense group of which OpenTable is a
16 member and, on information and belief, in which information and knowledge
17 about Ameranth's patents and infringement lawsuits is shared, the existence and
18 content of all four of the patents-in-suit here were previously made known to
19 OpenTable. Ameranth has served OpenTable with infringement contentions in
20 those previously filed actions further describing OpenTable's infringement of
21 Ameranth's '850, '325 and '077 patents. A true and correct copy of the most
22 recently-served infringement contentions is attached hereto as **Exhibit E** and
23 incorporated herein by reference. Further, on information and belief, OpenTable
24 had knowledge of Ameranth's patent family, including this patent, due to the
25 widespread recognition Ameranth has received for its pioneering inventions as
26 evidenced by the twelve different technology awards Ameranth has received,
27 media recognition in The Wall Street Journal, New York Times, and USA Today,
28 Bill Gates' nomination of Ameranth for the Computerworld Honors Award, and

1 the numerous press releases Ameranth has issued over the years. OpenTable has
2 thus obtained the level of knowledge required to support a claim for contributory
3 infringement regarding OpenTable's actions involving the OpenTable System as
4 detailed herein.

5 46. On information and belief, the aforesaid infringing activities of
6 OpenTable have been done with knowledge and willful disregard of Ameranth's
7 patent rights, making this an exceptional case within the meaning of 35 U.S.C. §
8 285. As detailed above, OpenTable has had knowledge of the patent family which
9 includes this patent since at least August 2011, well before the filing of the
10 original complaint in this action (Case No. 3:12-cv-00731-DMS-WVG) and well
11 before the filing of the complaint in the third lawsuit against OpenTable (Case No.
12 3:13-cv-01840-DMS-WVG). Nonetheless, despite such knowledge, OpenTable
13 continued to introduce new versions and features of the OpenTable System that
14 infringe Ameranth's patents, including patents upon which Ameranth has
15 previously sued OpenTable for infringement. Further, on information and belief,
16 OpenTable was also aware of the Ameranth patents due to the widespread
17 recognition Ameranth has received for its pioneering inventions as detailed above.
18 OpenTable has thus obtained the level of knowledge required to support a claim
19 for willful infringement. OpenTable's deliberate decision to introduce new
20 versions and features of its system after August 2011 that infringe Ameranth's
21 patents after obtaining said knowledge constitutes objectively reckless behavior
22 justifying a finding of willfulness.

23 47. If OpenTable does not cease and desist the aforesaid infringing
24 activities, and instead continues to infringe valid and enforceable claims of the
25 '325 patent after the date of filing and/or service of this First Amended Complaint,
26 then such infringing actions will have been done with knowledge and willful
27 disregard of Ameranth's patent rights, making this an exceptional case within the
28 meaning of 35 U.S.C. § 285.

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

6 **COUNT III**

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

8 **(35 U.S.C. § 271)**

9 49. Plaintiff reiterates and reincorporates the allegations set forth in
10 paragraphs 1-48 above as if fully set forth herein.

11 50. On January 3, 2006, United States Patent No. 6,982,733 entitled
12 “Information Management and Synchronous Communications System with Menu
13 Generation, and Handwriting and Voice Modification of Orders” (“the ‘733
14 patent”) (a true and correct copy of which is attached hereto as **Exhibit C**) was
15 duly and legally issued by the USPTO. The ‘733 patent meets all patentability
16 requirements of 35 U.S.C. §§101, 102, 103 and 112, including patent eligible
17 subject matter, enablement, definiteness, novelty and non-obviousness, as
18 evidenced by the USPTO’s thorough review of the disclosure and claims of the
19 ‘733 patent and allowance of the claims based on said review in light of all
20 applicable law and USPTO rules and guidelines respecting patentability under
21 Title 35.

22 51. Plaintiff Ameranth is the lawful owner by assignment of all right, title
23 and interest in and to the ‘733 patent. By virtue of information provided to or
24 obtained by OpenTable through its participation in the original lawsuit filed in
25 August of 2011, including discovery, disclosure, investigation and case
26 management activities, and by virtue of Ameranth’s assertion of the ‘733 patent
27 against other defendants that are involved in the Consolidated Cases and are
28 members of a joint defense group agreement with OpenTable, OpenTable was

1 aware of the existence and scope of the ‘733 patent long before Ameranth filed
2 suit against OpenTable on the ‘733 patent.

3 52. Siri is a speech-recognition and voice control/command application
4 available on certain models of the Apple iPhone, iPod Touch and iPad. With iOS
5 version 6.1, as of 2012, Siri is integrated with third-party systems/products/
6 services including, *inter alia*, the OpenTable System. Siri sends commands
7 through a remote server using a wireless data connection.

8 53. On information and belief, OpenTable directly infringes and continues
9 to directly infringe one or more valid and enforceable claims of the ‘733 patent, in
10 violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
11 and/or selling or licensing infringing systems, products, and/or services in the
12 United States without authority or license from Ameranth, including but not
13 limited to the OpenTable System as defined herein.

14 54. On information and belief, OpenTable has indirectly infringed and
15 continues to indirectly infringe one or more valid and enforceable claims of the
16 ‘733 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
17 intentionally inducing direct infringement by other persons, including restaurant
18 owners/operators and their customers, by making, using, offering for sale or
19 license and/or selling or licensing infringing systems, products, and/or services in
20 the United States without authority or license from Ameranth, including but not
21 limited to the OpenTable System as configured for use with wireless mobile
22 handheld computing devices/smartphones/tablets and other devices running iOS
23 with Siri voice recognition capability. For example, OpenTable touted and
24 promoted the Siri/OpenTable integration after Apple announced the launch of iOS
25 6.1.

26 55. On information and belief, OpenTable infringes by its own actions
27 and through, or in concert with, agents of OpenTable who are under the direction
28 and control of OpenTable by virtue of contractual agreements between OpenTable

1 and such parties including, for example, restaurant owners/operators who benefit
2 from reservations and other uses of the OpenTable System.

3 56. On information and belief, the OpenTable System as configured for
4 use with wireless mobile handheld computing devices/smartphones running iOS
5 with Siri voice recognition capability, as deployed and/or used at or from one or
6 more locations by OpenTable, its agents, distributors, partners, affiliates,
7 licensees, restaurant owners/operators, third-party businesses, and/or their
8 customers, infringes one or more valid and enforceable claims of the '733 patent,
9 by doing, or providing the capability for doing, at least one of the following: (a)
10 Generating and transmitting menus regarding, for example, restaurant reservations
11 information, in a system including a central processing unit, a data storage device
12 connected to said central processing unit, an operating system including a
13 graphical user interface, a first menu stored on said data storage device,
14 application software for generating a second menu from said first menu and
15 transmitting said second menu to a wireless handheld computing device or Web
16 page, wherein the application software facilitates the generation of the second
17 menu by allowing selection of items from the first menu, addition of items to the
18 second menu and assignment of parameters to items in the second menu using the
19 graphical user interface of said operating system, and said second menu is
20 manually modified by voice recording or capture or recognition after generation;
21 (b) Generating menus in a system including a central processing unit, a data
22 storage device connected to said central processing unit, an operating system
23 including a graphical user interface, a first menu stored on said data storage
24 device, application software for generating a second menu from said first menu
25 wherein the application software facilitates the generation of the second menu by
26 allowing selection of items from the first menu, addition of items to the second
27 menu and assignment of parameters to items in the second menu using the
28 graphical user interface of said operating system and wherein data comprising the

1 second menu is synchronized between the data storage device connected to the
2 central processing unit and at least one other computing device, and said second
3 menu is manually modified by voice recording or capture or recognition after
4 generation and/or (c) Generating menus in a system including a microprocessor, a
5 display device, a data and instruction input device, a data storage device for
6 storing information and instructions entered through said data and instruction
7 input means or information generated by said microprocessor, an operating
8 system, a master menu stored on said data storage device for generating a
9 modified menu, and application software, wherein said microprocessor, operating
10 system and application software are operative to display the master menu on the
11 display device in response to instructions programmed into said microprocessor,
12 operating system, application software and information and instructions entered
13 through said data input device, and said microprocessor, operating system and
14 application software are operative to create the modified menu from said master
15 menu in response to information and instructions entered through said data and
16 instruction input device and data comprising the modified menu is synchronized
17 between the data storage device and at least one other computing device, wherein
18 said modified menu is manually modified after generation.

19 57. On information and belief, customers of OpenTable, including
20 consumers, restaurant owners/operators, and others, use the OpenTable System as
21 configured for use with wireless mobile handheld computing
22 devices/smartphones/tablets and other devices running iOS with Siri voice
23 recognition capability in a manner that infringes upon one or more valid and
24 enforceable claims of the '733 patent. For example, the OpenTable System
25 provides generated menus for selection of locations, restaurants, reservation times,
26 and making restaurant reservations as encompassed by claims of the '733 patent.
27 OpenTable provides instruction and direction regarding the use of the OpenTable
28 System as configured for use with wireless mobile handheld computing

1 devices/smartphones/tablets and other devices running iOS with Siri voice
2 recognition capability and advertises, promotes, and encourages the use of same.
3 For example, OpenTable touted and promoted the Siri/OpenTable integration after
4 Apple announced the launch of iOS 6.1.

5 58. On information and belief, OpenTable actively induces others to
6 infringe the '733 patent in violation of 35 U.S.C. §271(b) by actively, knowingly
7 and intentionally encouraging, aiding and abetting restaurant owners/operators,
8 customers of OpenTable, and others, including consumers and those businesses
9 and persons identified elsewhere in this First Amended Complaint, to use the
10 infringing OpenTable System as configured for use with wireless mobile handheld
11 computing devices/smartphones/tablets and other devices running iOS with Siri
12 voice recognition capability in the United States without authority or license from
13 Ameranth in a manner understood and intended to infringe Ameranth's patents.
14 For example, OpenTable is integrated with Apple/Siri for restaurant reservations.
15 *See, e.g:*

16 http://www.pcmag.com/slideshow_viewer/0,3253,l=248141&a=248134&po=8,00
17 [.asp](#). Further, OpenTable touted and promoted the Siri/OpenTable integration
18 after Apple announced the launch of iOS 6.1. OpenTable encourages the use of
19 the infringing system via press releases, internet postings, user videos, on "app
20 stores," *etc.*

21 59. OpenTable has been aware of Ameranth's patent family which
22 includes this patent well before the instant First Amended Complaint was filed.
23 Two of the patents in this Ameranth patent family (the '850 and '325 Patents)
24 were asserted in a prior action against OpenTable and other defendants filed on
25 August 15, 2011, as noted above, and this action was subsequently commenced
26 against OpenTable with the filing of the complaint on March 27, 2012 (originally
27 on the '077 patent). On March 1, 2013, Ameranth served OpenTable with
28 Ameranth's Initial Disclosures in the consolidated cases, in which Ameranth

1 listed, in writing, the '733 Patent. In connection with investigation, discovery,
2 disclosures and case management events that transpired in connection with the
3 original lawsuit, and by virtue of Ameranth's assertion of the patents against other
4 defendants that are involved in the Consolidated Cases and are part of a joint
5 defense group of which OpenTable is a member and in which, on information and
6 belief, information and knowledge about Ameranth's patents and infringement
7 lawsuits is shared, the existence and content of all four of the patents-in-suit here
8 were previously made known to OpenTable. For example, the '733 patent was
9 discussed at a case management conference in the Consolidated Cases in which
10 OpenTable participated, and the '733 patent file has been produced in discovery in
11 the Consolidated Cases. Ameranth has served OpenTable with infringement
12 contentions in those previously filed actions further describing OpenTable's
13 infringement of Ameranth's '850, '325 and '077 patents. A true and correct copy
14 of the most recently-served infringement contentions is attached hereto as **Exhibit**
15 **E** and incorporated herein by reference. Additionally, on August 8, 2013,
16 Ameranth filed a lawsuit against OpenTable asserting claims of the '850, '325,
17 '733 and '077 Patents (Case No. 3:13-cv-01840-DMS-WVG). Further, on
18 information and belief, OpenTable had knowledge of Ameranth's patent family,
19 including the '733 patent, due to the widespread recognition Ameranth has
20 received for its pioneering inventions as evidenced by the twelve different
21 technology awards Ameranth has received, media recognition in The Wall Street
22 Journal, New York Times, and USA Today, Bill Gates' nomination of Ameranth
23 for the Computerworld Honors Award, and the numerous press releases Ameranth
24 has issued over the years. OpenTable has thus obtained the level of knowledge
25 required to support a claim for inducement of infringement regarding OpenTable's
26 actions involving the OpenTable System as detailed herein.

27 60. On information and belief, OpenTable contributorily infringes and
28 continues to contributorily infringe one or more valid and enforceable claims of

1 the '733 patent, in violation of 35 U.S.C. § 271(c), by making, using, offering to
2 sell and/or selling components of systems on which claims of the '733 patent read,
3 constituting a material part of the invention, knowing that the components were
4 especially adapted for use in systems which infringe claims of the '733 patent and
5 therefore have no substantial non-infringing use. These “components” consist of
6 the same elements and features of the OpenTable System as configured for use
7 with wireless mobile handheld computing devices/smartphones/tablets and other
8 devices running iOS with Siri voice recognition capability described above, as
9 accessed, used or benefited from by third parties—such as restaurant operators
10 and consumers—through devices in the possession of such third parties. Although
11 Ameranth alleges, as set forth above, that OpenTable directly infringes its patents,
12 Ameranth alternatively alleges that OpenTable indirectly infringes the patents to
13 the extent that such third parties are determined to be the “users” of the
14 OpenTable System and direct infringers of the patents.

15 61. By making, distributing, selling, offering, offering to sell or license
16 and/or selling or licensing the OpenTable System as configured for use with
17 wireless mobile handheld computing devices/smartphones/tablets and other
18 devices running iOS with Siri voice recognition capability, OpenTable provides
19 non-staple articles of commerce to others, including those businesses and persons
20 identified elsewhere in this First Amended Complaint, for use in infringing
21 systems, products, and/or services. Because of the highly specialized and
22 customized nature of the OpenTable System software, components, integrations,
23 etc., as described herein, the OpenTable System—which is designed and built in
24 such a way that it infringes Ameranth’s patents as alleged in this First Amended
25 Complaint-- does not have substantial non-infringing uses and is a non-staple
26 article of commerce. Thus, the OpenTable System is used by third parties—
27 including restaurant operators and consumers—to manage, find, view and make
28 restaurant reservations and perform other hospitality functions in a manner that

1 infringes Ameranth's patents and in no other substantial or meaningful way.
2 Additionally, OpenTable provides instruction and direction regarding the use of
3 the OpenTable System as configured for use with wireless mobile handheld
4 computing devices/smartphones running iOS with Siri voice recognition
5 capability and advertises, promotes, and encourages the use of same in a manner
6 understood and intended to infringe Ameranth's patents. For example, OpenTable
7 touted and promoted the Siri/OpenTable integration after Apple announced the
8 launch of iOS 6.1. OpenTable encourages the use of the infringing system via
9 press releases, internet postings, user videos, on "app stores," *etc.* Users of the
10 OpenTable System directly infringe one or more valid and enforceable claims of
11 the '733 patent, for the reasons set forth hereinabove.

12 62. OpenTable has been aware of Ameranth's patent family which
13 includes this patent well before the instant First Amended Complaint was filed.
14 Two of the patents in this Ameranth patent family (the '850 and '325 Patents)
15 were asserted in a prior action against OpenTable and other defendants filed on
16 August 15, 2011, as noted above, and this action was subsequently commenced
17 against OpenTable with the filing of the complaint on March 27, 2012 (originally
18 on the '077 patent). In connection with investigation, discovery, disclosures and
19 case management events that transpired in connection with the original lawsuit,
20 and by virtue of Ameranth's assertion of the patents against other defendants that
21 are involved in the Consolidated Cases and are part of a joint defense group of
22 which OpenTable is a member and, on information and belief, in which
23 information and knowledge about Ameranth's patents and infringement lawsuits
24 is shared, the existence and content of all four of the patents-in-suit here were
25 previously made known to OpenTable. For example, the '733 patent was
26 discussed at a case management conference in the Consolidated Cases in which
27 OpenTable participated, and the '733 patent file has been produced in discovery in
28 the Consolidated Cases. Ameranth has served OpenTable with infringement

1 contentions in those previously filed actions further describing OpenTable's
2 infringement of Ameranth's '850, '325 and '077 patents. A true and correct copy
3 of the most recently-served infringement contentions is attached hereto as **Exhibit**
4 **E** and incorporated herein by reference. On March 1, 2013, Ameranth served
5 OpenTable with Ameranth's Initial Disclosures in the consolidated cases, in
6 which Ameranth listed, in writing, the '733 Patent. Additionally, on August 8,
7 2013, Ameranth filed a lawsuit against OpenTable asserting claims of the '850,
8 '325, '733 and '077 Patents (Case No. 3:13-cv-01840-DMS-WVG). Further, on
9 information and belief, OpenTable had knowledge of Ameranth's patent family,
10 including the '733 patent, due to the widespread recognition Ameranth has
11 received for its pioneering inventions as evidenced by the twelve different
12 technology awards Ameranth has received, media recognition in The Wall Street
13 Journal, New York Times, and USA Today, Bill Gates' nomination of Ameranth
14 for the Computerworld Honors Award, and the numerous press releases Ameranth
15 has issued over the years. OpenTable has thus obtained the level of knowledge
16 required to support a claim for contributory infringement regarding OpenTable's
17 actions involving the OpenTable System as configured for use with wireless
18 mobile handheld computing devices/smartphones/tablets and other devices
19 running iOS with Siri voice recognition capability as detailed herein.

20 63. On information and belief, the aforesaid infringing activities of
21 OpenTable have been done with knowledge and willful disregard of Ameranth's
22 patent rights, making this an exceptional case within the meaning of 35 U.S.C. §
23 285. As detailed above, OpenTable has had knowledge of the patent family which
24 includes this patent since at least August 2011, well before the filing of the
25 original complaint in this action (Case No. 3:12-cv-00731-DMS-WVG) and well
26 before the filing of the complaint in the third lawsuit against OpenTable (Case No.
27 3:13-cv-01840-DMS-WVG). Nonetheless, despite such knowledge, OpenTable
28 continued to introduce new versions and features of the OpenTable System that

1 infringe Ameranth's patents, including patents upon which Ameranth has
2 previously sued OpenTable for infringement. Further, on information and belief,
3 OpenTable was also aware of the Ameranth patents due to the widespread
4 recognition Ameranth has received for its pioneering inventions as detailed above.
5 OpenTable has thus obtained the level of knowledge required to support a claim
6 for willful infringement. OpenTable's deliberate decision to introduce new
7 versions and features of its system after August 2011 that infringe Ameranth's
8 patents after obtaining said knowledge constitutes objectively reckless behavior
9 justifying a finding of willfulness.

10 64. If OpenTable does not cease and desist the aforesaid infringing
11 activities, and instead continues to infringe valid and enforceable claims of the
12 '733 patent after the date of filing and/or service of this First Amended Complaint,
13 then such infringing actions will have been done with knowledge and willful
14 disregard of Ameranth's patent rights, making this an exceptional case within the
15 meaning of 35 U.S.C. § 285.

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

21 **COUNT IV**

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

23 **(35 U.S.C. § 271)**

24 66. Plaintiff reiterates and incorporates the allegations set forth in
25 paragraphs 1-65 above as if fully set forth herein.

26 67. On March 27, 2012, United States Patent No. 8,146,077 entitled
27 "Information Management and Synchronous Communications System with Menu
28 Generation, and Handwriting and Voice Modification of Orders" (a true copy of

1 which is attached hereto as **Exhibit D** and incorporated herein by reference) was
2 duly and legally issued by the USPTO. The '077 patent meets all patentability
3 requirements of 35 U.S.C. §§101, 102, 103 and 112, including patent eligible
4 subject matter, enablement, definiteness, novelty and non-obviousness, as
5 evidenced by the USPTO's thorough review of the disclosure and claims of the
6 '077 patent and allowance of the claims based on said review in light of all
7 applicable law and USPTO rules and guidelines respecting patentability under
8 Title 35.

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

11 69. On information and belief, Defendant directly infringes and continues
12 to directly infringe one or more valid and enforceable claims of the '077 patent,
13 in violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license
14 and/or selling or licensing infringing systems, products, and/or services in the
15 United States without authority or license from Ameranth, including but not
16 limited to the OpenTable System. Ameranth has served OpenTable with
17 infringement contentions in previously filed actions further describing
18 OpenTable's infringement of Ameranth's patents. A true and correct copy of the
19 most recently-served infringement contentions is attached hereto as **Exhibit E**
20 and incorporated herein by reference.

21 70. On information and belief, the OpenTable System, as
22 deployed and/or used at or from one or more locations by OpenTable, its
23 agents, distributors, partners, affiliates, licensees, and/or their customers,
24 infringes one or more valid and enforceable claims of the '077 patent, by, *inter*
25 *alia*, enabling reservations and other hospitality functions via iPhone, Android,
26 and other internet-enabled wireless handheld computing devices as well as via
27 Web pages, storing hospitality information and data on at least one database, on
28 at least one wireless handheld computing device, and on at least one Web server

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

13 71. On information and belief, OpenTable has indirectly infringed and
14 continues to indirectly infringe one or more valid and enforceable claims of the
15 '077 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and
16 intentionally inducing direct infringement by other persons, including restaurant
17 owners/operators and their customers, by making, using, offering for sale or
18 license and/or selling or licensing infringing systems, products, and/or services in
19 the United States without authority or license from Ameranth, including but not
20 limited to the OpenTable System as defined herein. For example, OpenTable
21 regularly advertises, promotes, and encourages the use of OpenTable's integrated
22 system to restaurant owners/operators, and OpenTable's website, mobile website,
23 and mobile apps to restaurant owners/operators and consumers in a manner
24 understood and intended to infringe Ameranth's patents. See, e.g., the references
25 set forth in paragraph 20 herein.

26 72. On information and belief, OpenTable infringes by its own actions
27 and through, or in concert with, agents of OpenTable who are under the direction
28 and control of OpenTable by virtue of contractual agreements between

1 OpenTable and such parties including, for example, restaurant owners/operators
2 who benefit from reservations, mobile payments, and other uses of the
3 OpenTable System.

4 73. On information and belief, defendant OpenTable has indirectly
5 infringed and continues to indirectly infringe one or more valid and enforceable
6 claims of the '077 patent, in violation of 35 U.S.C. § 271(b), by actively,
7 knowingly, and intentionally inducing direct infringement by other persons.

8 74. On information and belief, customers of OpenTable, including
9 consumers, restaurant owners/operators, and others, use the OpenTable System in
10 a manner that infringes upon one or more valid and enforceable claims of the '077
11 patent. For example, the OpenTable System provides generated menus for
12 selection of locations, restaurants, reservation times, and making restaurant
13 reservations as encompassed by claims of the '077 patent, and synchronizes
14 restaurant-reservation information between wireless handheld mobile devices
15 including smartphones using OpenTable mobile apps and/or accessing
16 OpenTable's website, desktop and laptop computers accessing OpenTable's
17 website, and "back-office" databases and associated servers. OpenTable provides
18 instruction and direction regarding the use of the OpenTable System and
19 advertises, promotes, and encourages the use of same to restaurant
20 owners/operators and consumers in a manner understood and intended to infringe
21 Ameranth's patents.

22 75. On information and belief, OpenTable actively induces others to
23 infringe the '077 patent in violation of 35 U.S.C. §271(b) by actively, knowingly
24 and intentionally encouraging, aiding and abetting restaurant owners/operators,
25 customers of OpenTable, and others, including consumers and those businesses
26 and persons identified elsewhere in this First Amended Complaint, to use the
27 infringing OpenTable System in the United States without authority or license
28 from Ameranth in a manner understood and intended to infringe Ameranth's

1 patents. For example, OpenTable regularly advertises, promotes, and encourages
2 the use of OpenTable's integrated system to restaurant owners/operators, and
3 OpenTable's website, mobile website, and mobile apps to restaurant
4 owners/operators and consumers. See, e.g., the references set forth in paragraph
5 20 herein.

6 76. OpenTable has been aware of Ameranth's '077 patent at least since
7 the original complaint in this action was filed on March 27, 2012 (Ameranth's
8 second lawsuit against OpenTable). Ameranth has served OpenTable with
9 infringement contentions in the previously filed actions further describing
10 OpenTable's infringement of Ameranth's '850, '325 and '077 patents. A true and
11 correct copy of the most recently-served infringement contentions is attached
12 hereto as **Exhibit E** and incorporated herein by reference. On March 1, 2013,
13 Ameranth served OpenTable with Ameranth's Initial Disclosures in the
14 consolidated cases, in which Ameranth listed, in writing, the '077 Patent.
15 Additionally, on August 8, 2013, Ameranth filed a lawsuit against OpenTable
16 asserting claims of the '850, '325, '733 and '077 Patents (Case No. 3:13-cv-
17 01840-DMS-WVG). OpenTable has thus obtained the level of knowledge
18 required to support a claim for inducement of infringement regarding OpenTable's
19 actions involving the OpenTable System as detailed herein.

20 77. On information and belief, OpenTable contributorily infringes and
21 continues to contributorily infringe one or more valid and enforceable claims of
22 the '077 patent, in violation of 35 U.S.C. § 271(c), by making, using, offering to
23 sell and/or selling components of systems on which claims of the '077 patent read,
24 constituting a material part of the invention, knowing that the components were
25 especially adapted for use in systems which infringe claims of the '077 patent and
26 therefore have no substantial non-infringing use. These "components" consist of
27 the same elements and features of the OpenTable System described above, as
28 accessed, used or benefited from by third parties—such as restaurant operators

1 and consumers—through computers and wireless handheld computing devices in
2 the possession of such third parties. Although Ameranth alleges, as set forth
3 above, that OpenTable directly infringes its patents, Ameranth alternatively
4 alleges that OpenTable indirectly infringes the patents to the extent that such third
5 parties are determined to be the “users” of the OpenTable System and direct
6 infringers of the patents.

7 78. By making, distributing, selling, offering, offering to sell or license
8 and/or selling or licensing the OpenTable System, OpenTable provides non-staple
9 articles of commerce to others, including those businesses and persons identified
10 elsewhere in this First Amended Complaint, for use in infringing systems,
11 products, and/or services. Because of the highly specialized and customized
12 nature of the OpenTable System software, components, integrations, etc., as
13 described herein, the OpenTable System—which is designed and built in such a
14 way that it infringes Ameranth’s patents as alleged in this First Amended
15 Complaint-- does not have substantial non-infringing uses and is a non-staple
16 article of commerce. Thus, the OpenTable System is used by third parties—
17 including restaurant operators and consumers—to manage, find, view and make
18 restaurant reservations and perform other hospitality functions in a manner that
19 infringes Ameranth’s patents and in no other substantial or meaningful way.
20 Additionally, OpenTable provides instruction and direction regarding the use of
21 the OpenTable System and advertises, promotes, and encourages the use of same
22 in a manner understood and intended to infringe Ameranth’s patents. For
23 example, OpenTable regularly advertises, promotes, and encourages the use of
24 OpenTable’s integrated system to restaurant owners/operators, and OpenTable’s
25 website, mobile website, and mobile apps to restaurant owners/operators and
26 consumers. See, e.g., the references set forth in paragraph 20 herein. Users of the
27 OpenTable System directly infringe one or more valid and enforceable claims of
28 the ‘077 patent, for the reasons set forth hereinabove.

1 79. OpenTable has been aware of Ameranth's '077 patent at least since
2 the original complaint in this action was filed on March 27, 2012 (Ameranth's
3 second lawsuit against OpenTable). Ameranth has served OpenTable with
4 infringement contentions in the previously filed actions further describing
5 OpenTable's infringement of Ameranth's '850, '325 and '077 patents. A true and
6 correct copy of the most recently-served infringement contentions is attached
7 hereto as **Exhibit E** and incorporated herein by reference. OpenTable has thus
8 obtained the level of knowledge required to support a claim for contributory
9 infringement regarding OpenTable's actions involving the OpenTable System as
10 detailed herein.

11 80. As detailed above, OpenTable has had knowledge of Ameranth's
12 '077 patent at least since the filing of the original complaint in this action in
13 March of 2012 (Ameranth's second lawsuit against OpenTable), and well before
14 the filing of the complaint in the third lawsuit against OpenTable (Case No. 3:13-
15 cv-01840-DMS-WVG) accusing OpenTable's new versions and features of
16 infringement. Nonetheless, despite such knowledge, OpenTable continued to
17 introduce new versions and features of the OpenTable System that infringe
18 Ameranth's patents, including the '077 patent and other patents upon which
19 Ameranth has previously sued OpenTable for infringement. Therefore, such later
20 releases and product introductions have, on information and belief, been done
21 with knowledge and willful disregards of Ameranth's patent rights, making this an
22 exceptional case within the meaning of 35 U.S.C. § 285. OpenTable has thus
23 obtained the level of knowledge required to support a claim for willful
24 infringement. OpenTable's deliberate decision to introduce new versions and
25 features of its system after August 2011 that infringe Ameranth's patents after
26 obtaining said knowledge constitutes objectively reckless behavior justifying a
27 finding of willfulness.

1 81. If OpenTable does not cease and desist the aforesaid infringing
2 activities, and instead continues to infringe valid and enforceable claims of the
3 '077 patent after the date of filing and/or service of this First Amended Complaint,
4 then such infringing actions will have been done with knowledge and willful
5 disregard of Ameranth's patent rights, making this an exceptional case within the
6 meaning of 35 U.S.C. § 285.

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

12 **PRAYER FOR RELIEF**

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

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

18 2. Adjudging that Defendant has infringed, actively induced others to
19 infringe and/or contributorily infringed valid and enforceable claims of the '850,
20 '325, '733, and '077 patents, as set forth hereinabove;

21 3. Adjudging that, to the extent Defendant introduced new infringing
22 versions, features and components of its system after becoming aware of
23 Ameranth's patents, Defendant's infringement of the valid and enforceable
24 claims of the '850, '325, '733, and '077 patents has been knowing and willful;

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

1 others to infringe the valid and enforceable claims of the '850, '325, '733, and
2 '077 patents;

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

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

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

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

14 9. Awarding to Ameranth such other and further relief that this Court
15 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

By: /s/ William J. Caldarelli
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