

1 **CALDARELLI HEJMANOWSKI & PAGE LLP**

William J. Caldarelli (SBN #149573)

2 Ben West (SBN #251018)

12340 El Camino Real, Suite 430

3 San Diego, CA 92130

Tel: (858) 720-8080

4 Fax: (858) 720-6680

wjc@chplawfirm.com

5 dbw@chplawfirm.com

6 **FABIANO LAW FIRM, P.C.**

Michael D. Fabiano (SBN #167058)

7 12526 High Bluff Drive, Suite 300

San Diego, CA 92130

8 Telephone: (619) 742-9631

mdfabiano@fabianolawfirm.com

9 **OSBORNE LAW LLC**

10 John W. Osborne (*Appointed Pro Hac Vice*)

33 Habitat Lane

11 Cortlandt Manor, NY 10567

Telephone: (914) 714-5936

12 josborne@osborneipl.com

13 **WATTS LAW OFFICES**

Ethan M. Watts (SBN #234441)

14 12340 El Camino Real, Suite 430

San Diego, CA 92130

15 Telephone: (858) 509-0808

Facsimile: (619) 878-5784

16 emw@ewattslaw.com

17 Attorneys for Plaintiff Ameranth, Inc.

18 ///

19 ///

20 ///

21

22

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

AMERANTH, INC.,  
Plaintiff,  
v.  
MICROS SYSTEMS, INC.,  
Defendant.

Civil Action No.: 12-cv-1655 DMS-WVG  
Consolidated with  
11-cv-01810-DMS-WVG  
**FIRST AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT AGAINST  
MICROS SYSTEMS, INC.  
DEMAND FOR JURY TRIAL**



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

3 **JURISDICTION AND VENUE**

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

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

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

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

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

3 **BACKGROUND**

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

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

1 solutions directed to optimally meeting these industry needs. Ameranth has  
2 expended considerable effort and resources in inventing, developing and  
3 marketing its inventions and protecting its rights therein.

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

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

1 Ameranth, recognizing and confirming the value of Ameranth's innovations. At  
2 all relevant times, Ameranth marked its own products with the numbers of the  
3 Ameranth patents then issued, thereby providing companies, competitors and  
4 participants in the hospitality industry with notice of Ameranth's patents.  
5 Furthermore, companies that license Ameranth's products have marked their  
6 products with Ameranth's patent numbers, thereby also providing notice of  
7 Ameranth's patents. Ameranth has also filed a number of patent infringement  
8 actions against companies that use or practice Ameranth's patented inventions  
9 without license, including companies with which Micros does business and to  
10 whom Micros supplies, licenses and/or sells the products accused of infringement  
11 herein.

12 **RELATED CASES PREVIOUSLY FILED**

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

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

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

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



**COUNT I**

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

**(35 U.S.C. § 271)**

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

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

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

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

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

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

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

24 22. On information and belief, consumers and customers of Micros,  
25 including hotel, restaurant, and travel aggregator operators use and/or integrate  
26 with the Micros Systems, in a manner that infringes the Ameranth patents. These  
27 include businesses identified in the infringement contentions previously served  
28

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

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

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

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

26 26. By distributing, selling, offering, offering to sell or license and/or selling  
27 or licensing the Micros Systems, which are specialized software systems  
28

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

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

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

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

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

6 **COUNT II**

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

8 **(35 U.S.C. § 271)**

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

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

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

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

23 35. On information and belief, each of the Micros Systems, as  
24 deployed and/or used at or from one or more locations by Micros, its  
25 agents, distributors, partners, affiliates, licensees, and/or their customers,  
26 infringes one or more valid and enforceable claims of the '325 patent, by, *inter*  
27 *alia*, doing at least one of the following: (a) Generating and transmitting menus in  
28

1 a system including a central processing unit, a data storage device, a computer  
2 operating system containing a graphical user interface, one or more displayable  
3 main menus, modifier menus, and sub-modifier menus, and application software  
4 for generating a second menu and transmitting it to a wireless handheld  
5 computing device or a Web page; and/or (b) Enabling ordering and other  
6 hospitality functions via iPhone, Android, and other internet-enabled wireless  
7 handheld computing devices as well as via Web pages, storing hospitality  
8 information and data on at least one central database, on at least one wireless  
9 handheld computing device, and on at least one Web server and Web page, and  
10 synchronizing applications and data, including but not limited to applications and  
11 data relating to orders, between at least one central database, wireless handheld  
12 computing devices, and at least one Web server and Web page; and sending  
13 alerts, confirmations, and other information regarding orders to various wireless  
14 mobile devices. Ameranth has previously served Micros with infringement  
15 contentions in this action further describing the details of Micros' infringement of  
16 Ameranth's patents. Those infringement contentions, filed under seal to protect  
17 confidential information, are attached hereto as **Exhibit D** and incorporated  
18 herein by reference.

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

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

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

13 38. On information and belief, Defendant actively induces others to infringe  
14 the '325 patent in violation of 35 U.S.C. §271(b), by knowingly encouraging,  
15 aiding and abetting customers of Micros, including consumers and hotel and  
16 restaurant operators, to use the infringing Micros Systems in the United States  
17 without authority or license from Ameranth, with the knowledge that said  
18 customers of Micros were directly infringing the '325 patent in a manner  
19 understood and intended by Micros to infringe Ameranth's patents, as described  
20 above.

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



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

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

10 **COUNT III**

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

12 **(35 U.S.C. § 271)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 **PRAYER FOR RELIEF**

13 WHEREFORE, plaintiff Ameranth prays for judgment against Defendants,  
14 and each of them, as follows:

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

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

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

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

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

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

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

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

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

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

17 **DEMAND FOR JURY TRIAL**

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

20 Respectfully submitted,

21 Dated: October 1, 2013

CALDARELLI HEJMANOWSKI & PAGE LLP

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

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

25 OSBORNE LAW LLC  
John W. Osborne

26 WATTS LAW OFFICES  
27 Ethan M. Watts

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