

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

	x		
AMERANTH, INC.	:		
Plaintiff,	:		
	:	Case No. 2:12-cv-164	
v.	:		
	:	JURY TRIAL DEMANDED	
PAR TECHNOLOGY CORP. AND PARTECH, INC.	:		
	:		
Defendants.	:		
	:		
	x		

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Ameranth, Inc. (“Ameranth”), for its Complaint against Par Technology Corporation (“Par”) and ParTech, Inc. (“ParTech”), avers as follows:

PARTIES

1. Plaintiff Ameranth, Inc. (“Ameranth”) is a Delaware corporation based in San Diego, California, and having a principal place of business at 5820 Oberlin Drive, Suite 202, San Diego, California. Ameranth develops, manufactures and sells, inter alia, hospitality industry, entertainment, restaurant and food service information technology products and solutions under the trademarks 21st Century Communications™, and 21st Century Restaurant™, among others, comprising the synchronization and integration of hospitality information and hospitality software applications between fixed, wireless and/or internet applications, including but not

limited to computer servers, web servers, databases, affinity/social networking systems, desktop computers, laptops, “smart” phones and other wireless handheld computing devices.

2. Defendant Par is, on information and belief, a Delaware corporation having a principal place of business at 8383 Seneca Turnpike, New Hartford, New York 13413. On information and belief, Defendant Par makes, uses, sells and/or offers for sale restaurant, foodservice, property management and other hospitality information technology products, software, components and/or systems within this Judicial District, which includes, inter alia, wireless and internet Point of Sale (“POS”) integration, online and mobile product ordering, integration with social media and/or other third-party web-based applications, reservations and other hospitality aspects.

3. Defendant ParTech is, on information and belief, a Delaware corporation having a principal place of business at 8383 Seneca Turnpike, New Hartford, New York 13413 and is a wholly-owned subsidiary of defendant Par. On information and belief, Defendants Par and ParTech are agents of one another and knowingly and intentionally acted in concert and under common and coordinated plan, design and control in committing the acts alleged herein, such that each entity is jointly and severally liable for the acts of each other. On information and belief, Defendant ParTech makes, uses, sells and/or offers for sale restaurant, foodservice, property management and other hospitality information technology products, software, components and/or systems within this Judicial District, which includes, inter alia, wireless and internet POS integration, online and mobile product ordering, integration with social media and/or other third-party web-based applications, reservations and other hospitality aspects.

JURISDICTION AND VENUE

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

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

6. On information and belief, Defendants Par and ParTech, and each of them, engage in (a) the offer for sale or license and sale or license of hospitality, restaurant, food service, reservations and/or property management technology services, products and/or components in the United States, including this Judicial District, including services, products, software, components, and/or systems comprising wireless and internet POS and/or hospitality aspects; (b) the installation and maintenance of said services, products, software, components and/or systems in hospitality industry, restaurant, food service, reservations and/or property management information technology systems in the United States, including this Judicial District; and/or (c) the use of hospitality industry, restaurant, food service, reservation and/or property management information technology systems comprising said services, products, software, components and/or systems in the United States, including this Judicial District.

7. This Court has personal jurisdiction over Defendants Par and ParTech, and each of them, as each Defendant commits acts of patent infringement in this Judicial District including, inter alia, making, using, offering for sale or license, and/or selling or licensing infringing services, products, software, components and/or systems in this Judicial District. On information and belief, Defendants Par and ParTech, and each of them, knowingly and actively infringe,

contribute to infringement and/or induce others to commit such acts of infringement in this Judicial District.

8. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1400(b) as regards all Defendants, both separately and together.

BACKGROUND

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

10. Ameranth began development of the inventions leading to the patents-in-suit in the late Summer of 1998, at a time when the then-available wireless and internet hospitality offerings were extremely limited in functionality, were not synchronized and did not provide an integrated system-wide solution to the pervasive ordering, reservations, affinity program and information management needs of the hospitality industry. Ameranth uniquely recognized the

actual problems that needed to be resolved in order to meet those needs, and thereafter conceived and developed its breakthrough inventions and products to provide systemic and comprehensive solutions directed to optimally meeting these industry needs. Ameranth has expended considerable effort and resources in inventing, developing and marketing its inventions and protecting its rights therein.

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

12. The adoption of Ameranth's technology by industry leaders and the wide acclaim received by Ameranth for its technological innovations are just some of the many confirmations of the breakthrough aspects of Ameranth's inventions. Ameranth has received twelve different technology awards (three with "end customer" partners) and has been widely recognized as a hospitality wireless/internet technology leader by almost all major national and hospitality print publications, including, The Wall Street Journal, New York Times, USA Today and many others. Ameranth was personally nominated by Bill Gates, the Founder of Microsoft, for the prestigious Computerworld Honors Award that Ameranth received in 2001 for its breakthrough synchronized reservations/ticketing system with the Improv Comedy Theatres. In his nomination, Mr. Gates described Ameranth as "one of the leading pioneers of information technology for the betterment of mankind." This prestigious award was based on Ameranth's innovative synchronization of wireless/web/fixed hospitality software technology. Subsequently, the United States Patent and Trademark Office granted Ameranth a number of currently-issued patents, two of which are the basis for this lawsuit. Ameranth has issued press releases announcing these patent grants on business wires, on its web sites and at numerous trade shows

attended by several of the Defendants since the first of the two presently-asserted patents issued in 2002. A number of companies have licensed patents and technology from Ameranth, recognizing the value of Ameranth's innovations.

RELATED CASES

13. The Ameranth patent asserted herein, U.S. Patent No. 8,146,077 (the "077 patent"), is the fourth patent to issue in Ameranth's "Information Management and Synchronous Communications" patent family.

14. Seven claims of the three earlier patents in this family were previously asserted in this Court (*Ameranth v. Menusoft et al.*, Case No. 2:07-cv-271-RSP). In the *Ameranth v. Menusoft* case, the seven asserted claims were held invalid at trial, Ameranth appealed, the parties settled while the case was pending on appeal, and this Court vacated the verdicts and judgment of invalidity of the seven asserted claims. Thus all claims of the first three of Ameranth's patents are valid and enforceable.

15. Ameranth is also currently asserting eight additional claims of the first three of its patents (claims in addition to, and different from, the claims asserted in *Ameranth v. Menusoft*) in a separate litigation in this Court (*Ameranth v. Par et al.*, Case No. 2:10-cv-294-JRG-RSP) against the Defendants named in this Complaint (Par and ParTech). All other Defendants in *Ameranth v. Par*, Case No. 2:10-cv-294-JRG-RSP, have settled and been dismissed from that case.

COUNT I

Patent Infringement (U.S. Pat. No. 8,146,077) (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 March 27, 2012, United States Patent No. 8,146,077 entitled “Information Management and Synchronous Communications System with Menu Generation, and Handwriting and Voice Modification of Orders” (a true copy of which is attached hereto as **Exhibit A** and incorporated herein by reference) 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 ‘077 patent.

19. On information and belief, Defendants Par and ParTech directly infringe and continue to directly infringe one or more valid and enforceable claims of the ‘077 patent, in violation of 35 U.S.C. § 271(a) by making, using, offering for sale or license and/or selling or licensing infringing systems, products, and/or services in the United States without authority or license from Ameranth, including but not limited to systems, products, and/or services provided under the Par, ParTech, EverServ QSR, EverServ TSR, Siva, iSiva, PixelPoint, Springer-Miller or ATRIO trademarks or tradenames which include, inter alia, wireless and internet POS integration, online and mobile product ordering, integration with social media and/or other third-party web-based applications, reservations, property management systems and other hospitality aspects.

20. On information and belief, Par's and ParTech's systems, products and/or services, as deployed and/or used at or from one or more locations by Par, ParTech, their agents, distributors, partners, affiliates, licensees, franchisees, and/or their customers, infringe one or more claims of the '077 patent, by, inter alia, enabling wireless and internet POS integration, online and mobile product ordering, integration with social media and/or other third-party web-based applications, reservations, property management systems and other hospitality functions via, inter alia, iPhone, Android, and other internet-enabled wireless handheld computing devices.

21. On information and belief, Defendants Par and ParTech indirectly infringe, as of the date of filing and/or service of this Complaint, one or more valid and enforceable claims of the '077 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct infringement by other persons.

22. On information and belief, customers of Par and ParTech, and each of them, including distributors, consumers and franchise operators, use Par's and ParTech's systems/products/services in a manner that infringes upon valid and enforceable claims of the '077 patent. Par and ParTech provide instruction and direction regarding the use of its systems/products/services and advertises, promotes, and encourages the use of its systems/products/services.

23. On information and belief, Defendants Par and ParTech actively induce others to infringe the '077 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting restaurant, food service, property management and other users in the hospitality industry to use infringing systems/products/services which include, inter alia, wireless and internet POS integration, online and mobile product ordering, integration with social media and/or other third-party web-based applications, reservations, property management systems and other hospitality

functions via, inter alia, iPhone, Android, and other internet-enabled wireless handheld computing devices under the Par, ParTech, EverServ QSR, EverServ TSR, Siva, iSiva, PixelPoint, Springer-Miller or ATRIO trademarks or tradenames in the U.S. without authority or license from Ameranth.

24. On information and belief, Defendants Par and ParTech contributorily infringe and continue to contributorily infringe one or more valid and enforceable claims of the '077 patent, in violation of 35 U.S.C. § 271(c).

25. By distributing, selling, offering, offering to sell or license and/or selling or licensing its infringing systems/products/services, Defendants Par and ParTech, and each of them, provide non-staple articles of commerce to others for use in infringing systems, products, and/or services. Additionally, Par and ParTech provide instruction and direction regarding the use of its infringing systems/products/services and advertises, promotes, and encourages the use of its systems/products/services. Users of the Par and ParTech systems/products/services directly infringe one or more valid and enforceable claims of the '077 patent, for the reasons set forth hereinabove.

26. On information and belief, Defendants Par and ParTech contributorily infringe the '077 patent in violation of 35 U.S.C. §271(c) by offering to sell and/or selling components of systems on which claims of the '077 patent read, constituting a material part of the invention, knowing that the components were especially adapted for use in systems which infringe claims of the '077 patent, to distributors and/or to restaurant, foodservice, property management and other users in the hospitality industry for use in infringing systems which include, inter alia, wireless and internet POS integration, online and mobile product ordering, integration with social media and/or other third-party web-based applications, reservations, property management

systems and other hospitality functions via, inter alia, iPhone, Android, and other internet-enabled wireless handheld computing devices under the Par, ParTech, EverServ QSR, EverServ TSR, Siva, iSiva, PixelPoint, Springer-Miller or ATRIO trademarks or tradenames in the U.S. without authority or license from Ameranth.

27. On information and belief, the Par and ParTech systems/products/services infringe one or more valid and enforceable claims of the '077 patent, for the reasons set forth hereinabove.

28. If Defendants Par and Partech do not cease and desist the aforesaid infringing activities and instead continue to infringe valid and enforceable claims of the '077 patent after the date of filing and/or service of this Complaint, such infringing activities will have been done with knowledge and willful disregard of Ameranth's patent rights, making this an exceptional case within the meaning of 35 U.S.C. § 285.

29. The aforesaid infringing activities of Defendants Par and ParTech directly and proximately cause damage to plaintiff Ameranth, including loss of profits from sales it would have made but for the infringements. Unless enjoined, the aforesaid infringing activity will continue and cause irreparable injury to Ameranth for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment and an order against Defendants, and each of them, as follows:

A. Adjudging that the manufacture, use, offer for sale or license and/or sale or license of Par's and ParTech's accused products, services, software and/or hardware including those under the Par, ParTech, EverServ QSR, EverServ TSR, Siva, iSiva, PixelPoint, Springer-Miller or ATRIO trademarks or tradenames infringes valid and enforceable claims of the '077 patent, as set forth hereinabove;

B. Adjudging that each of the Defendants has infringed, actively induced others to infringe and/or contributorily infringed valid and enforceable claims of the '077 patent, as set forth hereinabove;

C. If Defendants Par and Partech do not cease and desist the aforesaid infringing activities and instead continue to infringe valid and enforceable claims of the '077 patent after the date of filing and/or service of this Complaint, adjudging that each Defendant's infringement of valid and enforceable claims of the '077 patent has been knowing and willful;

D. Enjoining Defendants Par and ParTech, their officers, directors, employees, attorneys, agents, representatives, parents, subsidiaries, affiliates and all other persons acting in concert, participation or privity with them, and their successors and assigns, from infringing, contributorily infringing and/or inducing others to infringe the valid and enforceable claims of the '077 patent;

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

F. If Defendants Par and ParTech do not cease and desist the aforesaid infringing activities and instead continue to infringe valid and enforceable claims of the '077 patent after the date of filing and/or service of this Complaint, awarding Ameranth increased damages of three times the amount found or assessed against defendants by reason of the knowing, willful and deliberate nature of Defendants' acts of infringement pursuant to 35 U.S.C. § 284;

G. Adjudging this to be an exceptional case and awarding Ameranth its attorney fees pursuant to 35 U.S.C. §285;

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

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

DEMAND FOR JURY TRIAL

Ameranth hereby demands a trial by jury in the above-captioned action on all claims for relief which it is entitled to have tried to a jury.

Respectfully submitted,

This 27th day of March, 2012.

By: /s/ Michael C. Smith

Michael C. Smith
Texas Bar No. 18650410
Email: michaelsmith@siebman.com
Siebman, Burg, Phillips & Smith, L.L.P.
113 East Austin Street
Marshall, TX 75671
(903) 938-8900 – Telephone

(972) 767-4620 – Facsímile

John W. Osborne
josborne@osborneipl.com
Osborne Law LLC
33 Habitat Lane
Cortlandt Manor, NY 10567
914-714-5936 – Telephone
914-734-7333 -- Facsimile

William J. Caldarelli
Caldarelli Hejmanowski & Page LLP
12340 El Camino Real, Suite 430
San Diego, CA 92130
858-720-8080 Telephone
858-720-6680 Facsimile
wjc@chplawfirm.com

Michael D. Fabiano
Fabiano Law Firm
12526 High Bluff Drive, Suite 300
San Diego, CA 92130
619-742-9631 Telephone
mdfabiano@fabianolawfirm.com

Ethan M. Watts
Watts Law Offices
12340 El Camino Real, Suite 430
San Diego, CA 92130
619-694-9710 Telephone
619-878-5784 Facsimile
emw@ewattslaw.com

Attorneys for Plaintiff Ameranth, Inc.