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Attorneys for Plaintiff Ameranth, Inc.

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

AMERANTH, INC.

Plaintiff,

v.

PAPA JOHN'S USA, INC.,

Defendant.

Case No. '12CV0729 JLS MDD

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Ameranth, Inc., for its Complaint against defendant Papa John’s USA, Inc.,
3 avers as follows:

4 **PARTIES**

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

14 2. Defendant Papa John’s USA, Inc. (“Papa John’s”) is, on information and belief, a
15 Kentucky corporation having a principal place of business in Louisville, Kentucky. On
16 information and belief, Papa John’s makes, uses, offers for sale or license and/or sells or
17 licenses restaurant and foodservice information technology products, software, components
18 and/or systems within this Judicial District, including the Papa John’s Ordering System as
19 defined herein.

20 **JURISDICTION AND VENUE**

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

23 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and
24 1338(a).

25 5. On information and belief, Defendant engages in (a) the offer for sale or license and
26 sale or license of hospitality, restaurant, food service, ordering, products and/or components in
27 the United States, including this Judicial District, including services, products, software, and
28 components, comprising wireless and internet POS and/or hospitality aspects; (b) the

1 installation and maintenance of said services, products, software, components and/or systems
2 in hospitality industry, restaurant, food service, and/or entertainment information technology
3 systems in the United States, including this Judicial District; and/or (c) the use of hospitality
4 industry, restaurant, food service, and/or entertainment information technology systems
5 comprising said services, products, software, components and/or systems in the United States,
6 including this Judicial District.

7 6. This Court has personal jurisdiction over Defendant because Defendant commits acts
8 of patent infringement in this Judicial District including, *inter alia*, making, using, offering for
9 sale or license, and/or selling or licensing infringing services, products, software, components
10 and/or systems in this Judicial District.

11 7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c) and
12 1400(b).

13 **BACKGROUND**

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

26 9. Ameranth began development of the inventions leading to the patent-in-suit and the
27 other patents in this patent family in the late Summer of 1998, at a time when the then-
28 available wireless and internet hospitality offerings were extremely limited in functionality,

1 were not synchronized and did not provide an integrated system-wide solution to the pervasive
2 ordering, reservations, affinity program and information management needs of the hospitality
3 industry. Ameranth uniquely recognized the actual problems that needed to be resolved in
4 order to meet those needs, and thereafter conceived and developed its breakthrough inventions
5 and products to provide systemic and comprehensive solutions directed to optimally meeting
6 these industry needs. Ameranth has expended considerable effort and resources in inventing,
7 developing and marketing its inventions and protecting its rights therein.

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

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

1 patents issued in 2002. A number of companies have licensed patents and technology from
2 Ameranth, recognizing the value of Ameranth's innovations.

3 **RELATED CASE PREVIOUSLY FILED**

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

7 13. Ameranth is also currently asserting eight claims of the first three of its patents in a
8 separate litigation pending in this Court (*Ameranth v. Pizza Hut, Inc. et al.*, Case No. 3:11-cv-
9 01810-JLS-NLS) against several parties, including Papa John's.

10 **COUNT I**

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

12 **(35 U.S.C. § 271)**

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

15 15. On March 27, 2012, United States Patent No. 8,146,077 entitled "Information
16 Management and Synchronous Communications System with Menu Generation, and
17 Handwriting and Voice Modification of Orders" (a true copy of which is attached hereto as
18 **Exhibit A** and incorporated herein by reference) was duly and legally issued by the United
19 States Patent & Trademark Office.

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

22 17. On information and belief, Defendant directly infringes and continues to directly
23 infringe one or more valid and enforceable claims of the '077 patent, in violation of 35 U.S.C.
24 § 271(a) by making, using, offering for sale or license and/or selling or licensing infringing
25 systems, products, and/or services in the United States without authority or license from
26 Ameranth, including but not limited to the Papa John's ordering system/product/service, which
27 includes, inter alia, wireless and internet POS integration, online and mobile ordering,
28 integration with e-mail and affinity program and social media applications such as Facebook,

1 Twitter, Groupon, and YouTube, and/or other third-party web-based applications, and other
2 hospitality aspects (“Papa John’s Ordering System”).

3 18. On information and belief, the Papa John’s Ordering System, as deployed and/or
4 used at or from one or more locations by Papa John’s, its agents, distributors, partners,
5 affiliates, licensees, franchisees, and/or their customers, infringes one or more valid and
6 enforceable claims of the ‘077 patent, by, *inter alia*, enabling ordering and other hospitality
7 functions via iPhone, Android, and other internet-enabled wireless handheld computing
8 devices as well as via Web pages, storing hospitality information and data on at least one
9 database, on at least one wireless handheld computing device, and on at least one Web server
10 and Web page, and synchronizing applications and data, including but not limited to
11 applications and data relating to orders, between at least one database, wireless handheld
12 computing devices, and at least one Web server and Web page; utilizing communications
13 control software enabled to link and synchronize hospitality information between at least one
14 database, wireless handheld computing device, and web page, to display information on web
15 pages and on different wireless handheld computing device display sizes, and to allow
16 information to be entered via Web pages, transmitted over the internet, and automatically
17 communicated to at least one database and to wireless handheld computing devices; allowing
18 information to be entered via wireless handheld computing devices, transmitted over the
19 internet, and automatically communicated to at least one database and to Web pages.

20 19. On information and belief, Defendant indirectly infringes, as of the date of filing
21 and/or service of this complaint, one or more valid and enforceable claims of the ‘077 patent,
22 in violation of 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct
23 infringement by other persons.

24 20. On information and belief, customers of Papa John’s, including consumers and
25 franchise operators, use the Papa John’s Ordering System in a manner that infringes upon one
26 or more valid and enforceable claims of the ‘077 patent. Papa John’s provides instruction and
27 direction regarding the use of the Papa John’s Ordering System and advertises, promotes, and
28 encourages the use of the Papa John’s Ordering System.

1 21. On information and belief, Defendant actively induces others to infringe the '077
2 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting
3 customers of Papa John's, including consumers and franchise operators, to use the infringing
4 Papa John's Ordering System in the United States without authority or license from Ameranth.

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

11 23. By distributing, selling, offering, offering to sell or license and/or selling or licensing
12 the Papa John's Ordering System, Defendant provides non-staple articles of commerce to
13 others for use in infringing systems, products, and/or services. Additionally, Papa John's
14 provides instruction and direction regarding the use of the Papa John's Ordering System and
15 advertises, promotes, and encourages the use of the Papa John's Ordering System. Users of the
16 Papa John's Ordering System directly infringe one or more valid and enforceable claims of the
17 '077 patent, for the reasons set forth hereinabove.

18 24. On information and belief, the Papa John's Ordering System infringes one or more
19 valid and enforceable claims of the '077 patent, for the reasons set forth hereinabove.

20 25. If Defendant does not cease and desist the aforesaid infringing activities, and instead
21 continues to infringe valid and enforceable claims of the '077 patent after the date of filing
22 and/or service of this complaint, then such infringing actions will have been done with
23 knowledge and willful disregard of Ameranth's patent rights, making this an exceptional case
24 within the meaning of 35 U.S.C. § 285.

25 26. The aforesaid infringing activity of Defendant directly and proximately causes
26 damage to plaintiff Ameranth, including loss of profits from sales it would have made but for
27 the infringements. Unless enjoined, the aforesaid infringing activity will continue and cause
28 irreparable injury to Ameranth for which there is no adequate remedy at law.

PRAYER FOR RELIEF

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

1. Adjudging that the manufacture, use, offer for sale or license and /or sale or license of the Papa John’s Ordering System infringes valid and enforceable claims of the ‘077 patent, as set forth hereinabove;

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

3. If Defendant does not cease and desist the aforesaid infringing activities and instead continues to infringe valid and enforceable claims of the ‘077 patent after the date of filing and/or service of this Complaint, adjudging that Defendant’s infringement of the valid and enforceable claims of the ‘077 patent has been knowing and willful;

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

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

6. If Defendant does not cease and desist the aforesaid infringing activities and instead continues 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 Defendant by reason of the knowing, willful and deliberate nature of Defendant’s acts of infringement pursuant to 35 U.S.C. § 284;

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

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

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

3 **DEMAND FOR JURY TRIAL**

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

6 Respectfully submitted,

7 Dated: March 27, 2012

CALDARELLI HEJMANOWSKI & PAGE LLP

8 By: /s/ William J. Caldarelli
William J. Caldarelli

9 FABIANO LAW FIRM, P.C.
10 Michael D. Fabiano

11 OSBORNE LAW LLC
12 John W. Osborne

13 WATTS LAW OFFICES
Ethan M. Watts

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

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CIVIL COVER SHEET

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Ameranth, Inc.

DEFENDANTS

Papa John's USA, Inc.

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Caldarelli Hejmanowski & Page LLP
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Suite 430
San Diego, CA 92130
(858) 720-8080

'12CV0729 JLS MDD

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
 2 U.S. Government Defendant
 3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 2 1 USC 88 1 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 842 Appeal 28 USC 158 <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities Employment <input type="checkbox"/> 446 Amer. w/Disabilities Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motion to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
35 U.S.C. sections 271, 281-85

Brief description of cause:
Patent Infringement

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Janis L. Sammartino

DOCKET NUMBER 3:11-cv-01810 JLS-NLS

DATE
March 27, 2012

SIGNATURE OF ATTORNEY OF RECORD

William J. Caldwell

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____