

# Exhibit 1031 (A)

**CALDARELLI HEJMANOWSKI & PAGE LLP**

William J. Caldarelli (SBN #149573)

12340 El Camino Real, Suite 430

San Diego, CA 92130

Tel: (858) 720-8080

Fax: (858) 720-6680

wjc@chplawfirm.com

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

Michael D. Fabiano (SBN #167058)

12526 High Bluff Drive, Suite 300

San Diego, CA 92130

Telephone: (619) 742-9631

mdfabiano@fabianolawfirm.com

**OSBORNE LAW LLC**

John W. Osborne (*Pro Hac Vice* App. Pending)

33 Habitat Lane

Cortlandt Manor, NY 10567

Telephone: (914) 714-5936

josborne@osborneipl.com

**WATTS LAW OFFICES**

Ethan M. Watts (SBN #234441)

12340 El Camino Real, Suite 430

San Diego, CA 92130

Telephone: (858) 509-0808

Facsimile: (619) 878-5784

emw@ewattslaw.com

Attorneys for Plaintiff Ameranth, Inc.

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

AMERANTH, INC.

Plaintiff,

v.

AGILYSYS, INC.,

Defendant.

Case No.

**'12CV0858 H MDD**

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Ameranth, Inc., for its Complaint against defendant Agilysys, Inc.  
3 (“Agilysys”), 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 21<sup>st</sup> 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 Agilysys, Inc. (“Agilysys”) is, on information and belief, an Ohio  
15 corporation having a principal place of business and headquarters in Solon, Ohio, with offices  
16 for its Hospitality Services business in Santa Barbara, California, Alpharetta, Georgia, and Las  
17 Vegas, Nevada. On information and belief, Agilysys makes, uses, sells and/or offers for sale,  
18 restaurant, foodservice, point-of-sale and property management and other hospitality  
19 information technology products, software, components and/or systems within this Judicial  
20 District, including, *inter alia*, Infogenesis POS by Agilysys with Infogenesis Roam Mobile  
21 Software Solution and/or mPOS; Lodging Management Solution by Agilysys with LMS  
22 ResNet and/or Mobile ResNet, Guest360 Property Management Solution by Agilysys; and  
23 ResPAK Restaurant Management (collectively, the “Agilysys Systems”).

24 **JURISDICTION AND VENUE**

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

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



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

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

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

17 11. The adoption of Ameranth’s technology by industry leaders and the wide acclaim  
18 received by Ameranth for its technological innovations are just some of the many  
19 confirmations of the breakthrough aspects of Ameranth’s inventions. Ameranth has received  
20 twelve different technology awards (three with “end customer” partners) and has been widely  
21 recognized as a hospitality wireless/internet technology leader by almost all major national and  
22 hospitality print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today and  
23 many others. Ameranth was personally nominated by Bill Gates, the Founder of Microsoft, for  
24 the prestigious Computerworld Honors Award that Ameranth received in 2001 for its  
25 breakthrough synchronized reservations/ticketing system with the Improv Comedy Theatres.  
26 In his nomination, Mr. Gates described Ameranth as “one of the leading pioneers of  
27 information technology for the betterment of mankind.” This prestigious award was based on  
28 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 various 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, including a limited-scope patent license with Agilysys for many years, which has now expired..

### **RELATED CASES PREVIOUSLY FILED**

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

13. Ameranth is also currently asserting claims of these same patents in separate lawsuits, against other defendants, that are already pending in this Court. The first-filed lawsuit asserts claims of the '850 and '325 patents and is entitled *Ameranth v. Pizza Hut, Inc. et al.*, Case No. 3:11-cv-01810-JLS-NLS. Lawsuits subsequently filed by Ameranth in this Court, asserting claims of the '077 patent, are Case Nos. 3:12-cv-00729-JLS-NLS; 3:12-cv-00731-JLS-NLS; 3:12-cv-00732-JLS-NLS; 3:12-cv-00733-JLS-NLS; 3:12-cv-00737-JLS-NLS; 3:12-cv-00738-JLS-NLS; 3:12-cv-00739-JLS-NLS; and 3:12-cv-00742-JLS-NLS.

### **COUNT I**

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

#### **(35 U.S.C. § 271)**

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

15. On May 7, 2002, United States Patent No. 6,384,850 entitled "Information Management and Synchronous Communications System with Menu Generation" ("the '850 patent") (a true and copy of which is attached hereto as **Exhibit A**) was duly and legally issued by the United States Patent & Trademark Office.

1       16. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in  
2 and to the '850 patent.

3       17. On information and belief, Defendant directly infringes and continues to directly  
4 infringe one or more valid and enforceable claims of the '850 patent, in violation of 35 U.S.C.  
5 § 271(a) by making, using, offering for sale or license and/or selling or licensing infringing  
6 systems, products, and/or services in the United States without authority or license from  
7 Ameranth, including but not limited to the Agilysys Systems.

8       18. On information and belief, each of the Agilysys Systems, as deployed and/or used  
9 at or from one or more locations by Agilysys, its agents, distributors, partners, affiliates,  
10 licensees, and/or their customers, infringes one or more valid and enforceable claims of the  
11 '850 patent, by, *inter alia*, doing at least one of the following: (a) Generating and transmitting  
12 menus in a system including a central processing unit, a data storage device, a computer  
13 operating system containing a graphical user interface, one or more displayable main menus,  
14 modifier menus, and sub-modifier menus, and application software for generating a second  
15 menu and transmitting it to a wireless handheld computing device or a Web page; and/or (b)  
16 Enabling ordering and other hospitality functions via iPhone, Android, and other internet-  
17 enabled wireless handheld computing devices as well as via Web pages, storing hospitality  
18 information and data on at least one central database, on at least one wireless handheld  
19 computing device, and on at least one Web server and Web page, and synchronizing  
20 applications and data, including but not limited to applications and data relating to ordering,  
21 between at least one central database, wireless handheld computing devices, and at least one  
22 Web server and Web page; utilizing an interface that provides a single point of entry that  
23 allows the synchronization of at least one wireless handheld computing device and at least one  
24 Web page with at least one central database; allowing information to be entered via Web pages,  
25 transmitted over the internet, and automatically communicated to at least one central database  
26 and to wireless handheld computing devices; allowing information to be entered via wireless  
27 handheld computing devices, transmitted over the internet, and automatically communicated to  
28 at least one central database and to Web pages.

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

5        20. On information and belief, customers of Agilysys, including consumers and  
6 restaurant operators, use the Agilysys Systems. Agilysys provides instruction and direction  
7 regarding the use of the Agilysys Systems, and advertises, promotes, and encourages the use of  
8 the Agilysys Systems.

9        21. On information and belief, each of the Agilysys Systems infringes one or more valid  
10 and enforceable claims of the '850 patent for the reasons set forth hereinabove.

11        22. Agilysys has long had knowledge of the '850 patent, and knew or should have  
12 known that its continued offering and deployment of the Agilysys Systems, and its continued  
13 support of consumers, restaurant operators, and other users of this system/product/service,  
14 would induce direct infringement by those users. Additionally, Agilysys intended that its  
15 actions would induce direct infringement by those users.

16        23. On information and belief, Defendant has indirectly infringed and continues to  
17 indirectly infringe one or more valid and enforceable claims of the '850 patent, in violation of  
18 35 U.S.C. § 271(c).

19        24. By distributing, selling, offering, offering to sell or license and/or selling or licensing  
20 the Agilysys Systems, Agilysys provides non-staple articles of commerce to others for use in  
21 infringing systems, products, and/or services. Additionally, Agilysys provides instruction and  
22 direction regarding the use of the Agilysys Systems, and advertises, promotes, and encourages  
23 the use of the Agilysys Systems. Users of one or more of the Agilysys Systems directly  
24 infringe one or more valid and enforceable claims of the '850 patent for the reasons set forth  
25 hereinabove.

26        25. On information and belief, each of the Agilysys Systems infringes one or more valid  
27 and enforceable claims of the '850 patent, for the reasons set forth hereinabove.



1        33. On information and belief, each of the Agilysys Systems, as deployed and/or used  
2 at or from one or more locations by Agilysys, its agents, distributors, partners, affiliates,  
3 licensees, and/or their customers, infringes one or more valid and enforceable claims of the  
4 ‘325 patent, by, *inter alia*, doing at least one of the following: (a) Generating and transmitting  
5 menus in a system including a central processing unit, a data storage device, a computer  
6 operating system containing a graphical user interface, one or more displayable main menus,  
7 modifier menus, and sub-modifier menus, and application software for generating a second  
8 menu and transmitting it to a wireless handheld computing device or a Web page; and/or (b)  
9 Enabling ordering and other hospitality functions via iPhone, Android, and other internet-  
10 enabled wireless handheld computing devices as well as via Web pages, storing hospitality  
11 information and data on at least one central database, on at least one wireless handheld  
12 computing device, and on at least one Web server and Web page, and synchronizing  
13 applications and data, including but not limited to applications and data relating to orders,  
14 between at least one central database, wireless handheld computing devices, and at least one  
15 Web server and Web page; and sending alerts, confirmations, and other information regarding  
16 orders to various wireless mobile devices.

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

21        35. On information and belief, customers of Agilysys, including consumers and  
22 restaurant operators, use the Agilysys Systems in a manner that infringes upon one or more  
23 valid and enforceable claims of the ‘325 patent. Agilysys provides instruction and direction  
24 regarding the use of the Agilysys Systems and advertises, promotes, and encourages the use of  
25 the Agilysys Systems.

26        36. On information and belief, Defendant actively induces others to infringe the ‘325  
27 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting  
28

1 customers of Agilysys, including consumers and restaurant operators, to use the infringing  
2 Agilysys Systems in the United States without authority or license from Ameranth.

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

9 38. By distributing, selling, offering, offering to sell or license and/or selling or licensing  
10 the Agilysys Systems Defendant provides non-staple articles of commerce to others for use in  
11 infringing systems, products, and/or services. Additionally, Agilysys provides instruction and  
12 direction regarding the use of the Agilysys Systems and advertises, promotes, and encourages  
13 the use of the Agilysys Ordering System. Users of the Agilysys Systems directly infringe one  
14 or more valid and enforceable claims of the '325 patent, for the reasons set forth hereinabove.

15 39. On information and belief, each of the Agilysys Systems infringes one or more valid  
16 and enforceable claims of the '325 patent, for the reasons set forth hereinabove.

17 40. Agilysys has long had knowledge of the '325 patent, including knowledge that each  
18 of the Agilysys Systems, which are non-staple articles of commerce, were used as a material  
19 part of the claimed invention of the '325 patent, and that there were no substantial non-  
20 infringing uses for the Agilysys Systems.

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

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

**COUNT III**

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

**(35 U.S.C. § 271)**

43. Plaintiff reiterates and incorporates the allegations set forth in paragraphs 1-42 above as if fully set forth herein.

44. 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 C** and incorporated herein by reference) was duly and legally issued by the United States Patent & Trademark Office.

45. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in and to the ‘077 patent.

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

47. On information and belief, each of the Agilysys Systems, as deployed and/or used at or from one or more locations by Agilysys, its agents, distributors, partners, affiliates, licensees, and/or their customers, infringes one or more valid and enforceable claims of the ‘077 patent, by, *inter alia*, doing at least one of the following: (a) Configuring 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 master menus, menu configuration software enabled to generate a menu configuration for a wireless handheld computing device in conformity with a customized display layout, and enabled for synchronous communications and to format the menu configuration for a customized display layout of at least two different wireless handheld computing device display sizes, and/or (b) Enabling ordering and other hospitality functions via iPhone, Android, and other internet-

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

14 48. On information and belief, Defendant has indirectly infringed and continues to  
15 indirectly infringe one or more valid and enforceable claims of the '077 patent, in violation of  
16 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct infringement by  
17 other persons.

18 49. On information and belief, customers of Agilysys, including consumers and  
19 restaurant operators, use the Agilysys Systems in a manner that infringes upon one or more  
20 valid and enforceable claims of the '077 patent. Agilysys provides instruction and direction  
21 regarding the use of the Agilysys Systems and advertises, promotes, and encourages the use of  
22 the Agilysys Systems.

23 50. On information and belief, Defendant actively induces others to infringe the '077  
24 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting  
25 customers of Agilysys, including consumers and restaurant operators, to use the infringing  
26 Agilysys Systems in the United States without authority or license from Ameranth.

27 51. On information and belief, Defendant contributorily infringes and continues to  
28 contributorily infringe one or more valid and enforceable claims of the '077 patent, in violation

1 of 35 U.S.C. § 271(c) by offering to sell and/or selling components of systems on which claims  
2 of the '077 patent read, constituting a material part of the invention, knowing that the  
3 components were especially adapted for use in systems which infringe claims of the '077  
4 patent.

5 52. By distributing, selling, offering, offering to sell or license and/or selling or licensing  
6 the Agilysys Systems, Defendant provides non-staple articles of commerce to others for use in  
7 infringing systems, products, and/or services. Additionally, Agilysys provides instruction and  
8 direction regarding the use of the Agilysys Systems and advertises, promotes, and encourages  
9 the use of the Agilysys Systems. Users of the Agilysys Systems directly infringe one or more  
10 valid and enforceable claims of the '077 patent, for the reasons set forth hereinabove.

11 53. On information and belief, each of the Agilysys Systems infringes one or more valid  
12 and enforceable claims of the '077 patent, for the reasons set forth hereinabove.

13 54. Agilysys has had knowledge of the '077 patent at least as of the filing and/or service  
14 of this complaint, including knowledge that each of the Agilysys Systems, which are non-  
15 staple articles of commerce, were used as a material part of the claimed invention of the '077  
16 patent, and that there were no substantial non-infringing uses for the Agilysys Systems.

17 55. On information and belief, the aforesaid infringing activities of defendant Agilysys  
18 have been done with knowledge and willful disregard of Ameranth's patent rights, making this  
19 an exceptional case within the meaning of 35 U.S.C. § 285.

20 56. The aforesaid infringing activity of defendant Agilysys has directly and proximately  
21 caused damage to plaintiff Ameranth, including loss of profits from sales it would have made  
22 but for the infringements. Unless enjoined, the aforesaid infringing activity will continue and  
23 cause irreparable injury to Ameranth for which there is no adequate remedy at law.

24 //

25 //

26 //

27 //

28 //

**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 each of the Agilysys Systems infringes valid and enforceable claims of the '850 patent, and the '325 patent, and 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 '850 patent, and the '325 patent, and the '077 patent, as set forth hereinabove;

3. Adjudging that Defendant's infringement of the valid and enforceable claims of the '850 patent, and the '325 patent, and 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 '850 patent, and the '325 patent, and 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. Awarding Ameranth increased damages of three times the amount of damages 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

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

//

//

**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: April 6, 2012

CALDARELLI HEJMANOWSKI & PAGE LLP

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

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

OSBORNE LAW LLC  
John W. Osborne

WATTS LAW OFFICES  
Ethan M. Watts

**Attorneys for Plaintiff AMERANTH, INC.**

# Exhibit 1031 (B)

**CALDARELLI HEJMANOWSKI & PAGE LLP**

William J. Caldarelli (SBN #149573)

12340 El Camino Real, Suite 430

San Diego, CA 92130

Tel: (858) 720-8080

Fax: (858) 720-6680

wjc@chplawfirm.com

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

Michael D. Fabiano (SBN #167058)

12526 High Bluff Drive, Suite 300

San Diego, CA 92130

Telephone: (619) 742-9631

mdfabiano@fabianolawfirm.com

**OSBORNE LAW LLC**

John W. Osborne (*Pro Hac Vice* App. Pending)

33 Habitat Lane

Cortlandt Manor, NY 10567

Telephone: (914) 714-5936

josborne@osborneipl.com

**WATTS LAW OFFICES**

Ethan M. Watts (SBN #234441)

12340 El Camino Real, Suite 430

San Diego, CA 92130

Telephone: (858) 509-0808

Facsimile: (619) 878-5784

emw@ewattslaw.com

Attorneys for Plaintiff Ameranth, Inc.

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

AMERANTH, INC.

Plaintiff,

v.

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

Defendants.

Case No. **'12CV0733 JLS WMc**

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**





1 software applications across fixed, wireless and internet platforms, including but not limited to,  
2 computer servers, web servers, databases, affinity/social networking systems, desktop  
3 computers, laptops, “smart” phones and other wireless handheld computing devices.

4 9. Ameranth began development of the inventions leading to the patent-in-suit and the  
5 other patents in this patent family in the late Summer of 1998, at a time when the then-  
6 available wireless and internet hospitality offerings were extremely limited in functionality,  
7 were not synchronized and did not provide an integrated system-wide solution to the pervasive  
8 ordering, reservations, affinity program and information management needs of the hospitality  
9 industry. Ameranth uniquely recognized the actual problems that needed to be resolved in  
10 order to meet those needs, and thereafter conceived and developed its breakthrough inventions  
11 and products to provide systemic and comprehensive solutions directed to optimally meeting  
12 these industry needs. Ameranth has expended considerable effort and resources in inventing,  
13 developing and marketing its inventions and protecting its rights therein.

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

18 11. The adoption of Ameranth’s technology by industry leaders and the wide acclaim  
19 received by Ameranth for its technological innovations are just some of the many  
20 confirmations of the breakthrough aspects of Ameranth’s inventions. Ameranth has received  
21 twelve different technology awards (three with “end customer” partners) and has been widely  
22 recognized as a hospitality wireless/internet technology leader by almost all major national and  
23 hospitality print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today and  
24 many others. Ameranth was personally nominated by Bill Gates, the Founder of Microsoft, for  
25 the prestigious Computerworld Honors Award that Ameranth received in 2001 for its  
26 breakthrough synchronized reservations/ticketing system with the Improv Comedy Theatres.  
27 In his nomination, Mr. Gates described Ameranth as “one of the leading pioneers of  
28 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 various 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 CASE PREVIOUSLY FILED**

12. 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.

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

### **COUNT I**

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

#### **(35 U.S.C. § 271)**

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

15. 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.

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

17. On information and belief, Defendants 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.

1 § 271(a) by making, using, offering for sale or license and/or selling or licensing infringing  
2 systems, products, and/or services in the United States without authority or license from  
3 Ameranth, including but not limited to the Domino's ordering system/product/service, which  
4 includes, inter alia, wireless and internet POS integration, online and mobile ordering,  
5 integration with e-mail and affinity program and social media applications such as Facebook,  
6 Twitter, Groupon, and YouTube, and/or other third-party web-based applications, and other  
7 hospitality aspects ("Domino's Ordering System").

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

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

1       20. On information and belief, customers of Domino's, including consumers and  
2 franchise operators, use the Domino's Ordering System in a manner that infringes upon one or  
3 more valid and enforceable claims of the '077 patent. Domino's provides instruction and  
4 direction regarding the use of the Domino's Ordering System and advertises, promotes, and  
5 encourages the use of the Domino's Ordering System.

6       21. On information and belief, Defendants actively induce others to infringe the '077  
7 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting  
8 customers of Domino's, including consumers and franchise operators, to use the infringing  
9 Domino's Ordering System in the United States without authority or license from Ameranth.

10       22. On information and belief, Defendants contributorily infringe and continue to  
11 contributorily infringe one or more valid and enforceable claims of the '077 patent, in violation  
12 of 35 U.S.C. § 271(c) by offering to sell and/or selling components of systems on which claims  
13 of the '077 patent read, constituting a material part of the invention, knowing that the  
14 components were especially adapted for use in systems which infringe claims of the '077  
15 patent.

16       23. By distributing, selling, offering, offering to sell or license and/or selling or licensing  
17 the Domino's Ordering System, Defendants provide non-staple articles of commerce to others  
18 for use in infringing systems, products, and/or services. Additionally, Domino's provides  
19 instruction and direction regarding the use of the Domino's Ordering System and advertises,  
20 promotes, and encourages the use of the Domino's Ordering System. Users of the Domino's  
21 Ordering System directly infringe one or more valid and enforceable claims of the '077 patent,  
22 for the reasons set forth hereinabove.

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

25       25. If Defendants do not cease and desist the aforesaid infringing activities, and instead  
26 continue to infringe valid and enforceable claims of the '077 patent after the date of filing  
27 and/or service of this complaint, then such infringing actions will have been done with  
28

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

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

### 7 **PRAYER FOR RELIEF**

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

10 1. Adjudging that the manufacture, use, offer for sale or license and /or sale or  
11 license of the Domino's Ordering System infringes valid and enforceable claims of the '077  
12 patent, as set forth hereinabove;

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

16 3. If Defendants do not cease and desist the aforesaid infringing activities and  
17 instead continue to infringe valid and enforceable claims of the '077 patent after the date of  
18 filing and/or service of this Complaint, adjudging that Defendants' infringement of the valid  
19 and enforceable claims of the '077 patent has been knowing and willful;

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

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

27 6. If Defendants do not cease and desist the aforesaid infringing activities and  
28 instead continue to infringe valid and enforceable claims of the '077 patent after the date of

1 filing and/or service of this Complaint, awarding Ameranth increased damages of three times  
2 the amount found or assessed against Defendants by reason of the knowing, willful and  
3 deliberate nature of Defendants' acts of infringement pursuant to 35 U.S.C. § 284;

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

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

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

9 **DEMAND FOR JURY TRIAL**

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

12 Respectfully submitted,  
13 Dated: March 27, 2012 CALDARELLI HEJMANOWSKI & PAGE LLP  
14 By: /s/ William J. Caldarelli  
15 William J. Caldarelli  
16 FABIANO LAW FIRM, P.C.  
Michael D. Fabiano  
17 OSBORNE LAW LLC  
John W. Osborne  
18 WATTS LAW OFFICES  
19 Ethan M. Watts  
20 **Attorneys for Plaintiff AMERANTH, INC.**

# Exhibit 1031 (C)

**CALDARELLI HEJMANOWSKI & PAGE LLP**

William J. Caldarelli (SBN #149573)

Ben West (SBN #251018)

12340 El Camino Real, Suite 430

San Diego, CA 92130

Telephone: (858) 720-8080

Facsimile: (858) 720-6680

[wjc@chplawfirm.com](mailto:wjc@chplawfirm.com)

[dbw@chplawfirm.com](mailto:dbw@chplawfirm.com)

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

Michael D. Fabiano (SBN #167058)

12526 High Bluff Drive, Suite 300

San Diego, CA 92130

Telephone: (619) 742-9631

[mdfabiano@fabianolawfirm.com](mailto:mdfabiano@fabianolawfirm.com)

**OSBORNE LAW LLC**

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

33 Habitat Lane

Cortlandt Manor, NY 10567

Telephone: (914) 714-5936

[josborne@osborneipl.com](mailto:josborne@osborneipl.com)

**WATTS LAW OFFICES**

Ethan M. Watts (SBN #234441)

12340 El Camino Real, Suite 430

San Diego, CA 92130

Telephone: (858) 509-0808

Facsimile: (619) 878-5784

[emw@ewattslaw.com](mailto:emw@ewattslaw.com)

Attorneys for Plaintiff Ameranth, Inc.

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

AMERANTH, INC.,

Plaintiff,,

v.

HILTON RESORTS  
CORPORATION, HILTON  
WORLDWIDE, INC., and  
HILTON INTERNATIONAL  
CO.,

Defendants.

Civil Action No. 12-cv-1636 DMS-WVG

Consolidated with  
11-cv-01810-DMS-WVG

**FIRST AMENDED COMPLAINT FOR  
PATENT INFRINGEMENT AGAINST  
HILTON RESORTS CORPORATION,  
HILTON WORLDWIDE, INC. AND  
HILTON INTERNATIONAL CO.**

**DEMAND FOR JURY TRIAL**

---

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT  
AGAINST HILTON RESORTS CORP., HILTON WORLDWIDE, INC.  
AND HILTON INT'L CO.**

**12-cv-1636-DMS-WVG**

Petitioners' Exhibit 1031, Page 29

1                   **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

2           Plaintiff Ameranth, Inc. (“Ameranth”), for its First Amended Complaint  
3 against Defendants Hilton Resorts Corporation, Hilton Worldwide, Inc. and  
4 Hilton International Co. (collectively referred to herein as “Hilton” or  
5 “Defendant”), avers as follows:

6                   **PARTIES**

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

18           2. Defendant Hilton Resorts Corporation is, on information and belief, a  
19 Delaware corporation having a principal place of business and headquarters in  
20 Orlando, Florida. Defendant Hilton Worldwide, Inc., is, on information and  
21 belief, a Delaware corporation having a principal place of business in McLean,  
22 Virginia. Defendant Hilton International Co. is, on information and belief, a  
23 Delaware corporation having a principal place of business in McLean, Virginia.  
24 These three entities are collectively referred to herein as “Hilton”. On  
25 information and belief, Hilton makes, uses, offers for sale or license and/or sells  
26 or licenses hotel and lodging, reservation, restaurant, foodservice, point-of-sale  
27

1 and/or property management and other hospitality information-technology  
2 products, software, components and/or systems within this Judicial District,  
3 including the Hilton Reservation System as defined herein.

4 **JURISDICTION AND VENUE**

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

7 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§  
8 1331 and 1338(a).

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

21 6. This Court has personal jurisdiction over Hilton because Hilton  
22 commits acts of patent infringement in this Judicial District including, *inter*  
23 *alia*, making, using, offering for sale or license, and/or selling or licensing  
24 infringing services, products, software, components and/or systems in this  
25 Judicial District. Additionally, Defendant has already appeared in this action  
26 and submitted to the jurisdiction of the Court. Hilton has continued to engage

1 in and perform such acts of infringement since the filing and service of the  
 2 original complaint in this matter accusing Hilton of infringement of the  
 3 Ameranth patents at issue herein.

4 7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§  
 5 1391(b) and (c) and 1400(b).

### 6 **BACKGROUND**

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

22 9. Ameranth began development of the inventions leading to patents in  
 23 this patent family in the late Summer of 1998, at a time when the then-available  
 24 wireless and internet hospitality offerings were extremely limited in  
 25 functionality, were not synchronized and did not provide an integrated system-  
 26 wide solution to the pervasive ordering, reservations, affinity program and

1 information management needs of the hospitality industry. Ameranth uniquely  
2 recognized the actual problems that needed to be resolved in order to meet  
3 those needs, and thereafter conceived and developed its breakthrough  
4 inventions and products to provide systemic and comprehensive solutions  
5 directed to optimally meeting these industry needs. Ameranth has expended  
6 considerable effort and resources in inventing, developing and marketing its  
7 inventions and protecting its rights therein.

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

12 11. The adoption of Ameranth's technology by industry leaders and the  
13 wide acclaim received by Ameranth for its technological innovations are just  
14 some of the many confirmations of the breakthrough aspects of Ameranth's  
15 inventions. Ameranth has received twelve different technology awards (three  
16 with "end customer" partners) and has been widely recognized as a hospitality  
17 wireless/internet technology leader by almost all major national and hospitality  
18 print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today  
19 and many others. Ameranth was personally nominated by Bill Gates, the  
20 Founder of Microsoft, for the prestigious Computerworld Honors Award that  
21 Ameranth received in 2001 for its breakthrough synchronized  
22 reservations/ticketing system with the Improv Comedy Theatres. In his  
23 nomination, Mr. Gates described Ameranth as "one of the leading pioneers of  
24 information technology for the betterment of mankind." This prestigious award  
25 was based on Ameranth's innovative synchronization of wireless/web/fixed  
26 hospitality software technology. Subsequently, the United States Patent and

Trademark Office granted Ameranth a number of currently-issued patents, some 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 since the first of the presently-asserted patents issued in 2002. A number of companies have licensed patents and technology from Ameranth, recognizing and confirming the value of Ameranth's innovations. At all relevant times, Ameranth marked its own products with the numbers of the Ameranth patents then issued, thereby providing companies, competitors and participants in the hospitality industry with notice of Ameranth's patents. Furthermore, companies that license Ameranth's products have marked their products with Ameranth's patent numbers, thereby also providing notice of Ameranth's patents.

#### **RELATED CASES PREVIOUSLY FILED**

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

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

Other lawsuits filed by Ameranth in this Court asserting claims of the ‘850, ‘325, and ‘077 patents are Case No. 3:12-cv-00858-DMS-WVG; 3:12-cv-1201-JLS-NLS (settled); 3:12-cv-01651-DMS-WVG; 3:12-cv-01629-DMS-WVG; 3:12-cv-01630-DMS-WVG; 3:12-cv-01631-DMS-WVG; 3:12-cv-01634-DMS-WVG; 3:12-cv-01654-DMS-WVG; 3:12-cv-01649-DMS-WVG; 3:12-cv-01653-DMS-WVG; 3:12-cv-01642-DMS-WVG; 3:12-cv-01643-DMS-WVG; 3:12-cv-01646-DMS-WVG 3:12-cv-01647-JLS-NLS (settled); 3:12-cv-01648-DMS-WVG; 3:12-cv-01640-DMS-WVG; 3:12-cv-01650-DMS-WVG; 3:12-cv-01652-DMS-WVG; 3:12-cv-01633-DMS-WVG; 3:12-cv-01627-DMS-WVG; 3:12-cv-01655-DMS-WVG; 3:12-cv-01656-DMS-WVG; 3:12-cv-01659-DMS-WVG (settled); 3:13-cv-00350-DMS-WVG; 3:13-cv-00352-DMS-WVG; 3:13-cv-00353-DMS-WVG; 3:13-cv-0836-DMS-WVG (settled) and 3:13-cv-01072-DMS-WVG. All of the above still-pending cases have been consolidated for pre-trial through claim construction except for 3:13-cv-00350-DMS-WVG; 3:13-cv-00352-DMS-WVG; 3:13-cv-00353-DMS-WVG; and 3:13-cv-01072-DMS-WVG. These include lawsuits against business partners of Defendant, such as travel aggregators with whom Defendant does business.

14. The original complaint in this matter against Defendant was filed in this Court on June 29, 2012, and subsequently served upon Hilton. At least since that time, Hilton has had direct and knowledge of Ameranth’s patents and that Hilton’s online and mobile reservations system infringes those patents as alleged therein. Nonetheless, Defendant has continued, and is continuing, to make, use, offer for sale or license and/or sell or license infringing systems, products, and/or services in the United States without authority or license from Ameranth and to engage in acts of infringement as set forth herein.

///

**COUNT I**

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

**(35 U.S.C. § 271)**

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

16. On May 7, 2002, United States Patent No. 6,384,850 entitled “Information Management and Synchronous Communications System with Menu Generation” (“the ‘850 patent”) (a true and copy of which is attached hereto as **Exhibit A**) was duly and legally issued by the United States Patent & Trademark Office.

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

18. On information and belief, Hilton 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 Hilton Reservation system/product/service, which includes, *inter alia*, wireless and internet POS and hotel/lodging-reservation and property management integration, online and mobile reservations, integration with e-mail and affinity program and social media applications such as Facebook, Twitter, Groupon, and YouTube, and/or other third-party web-based applications, and other hospitality aspects (the “Hilton Reservation System”). Ameranth has previously served Defendant with infringement contentions in this action further describing the details of Hilton’s infringement of Ameranth’s patents. Those infringement contentions are attached hereto as **Exhibit D** and incorporated herein by reference.

19. On information and belief, the Hilton Reservation System, as deployed and/or used at or from one or more locations by Hilton, its agents, distributors, partners, affiliates, licensees, hotel operators 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 reservations and other hospitality functions via iPhone, Android, and other internet-enabled wireless handheld computing devices as well as via Web pages, storing hospitality information and data on at least one central database, on at least one wireless handheld computing device, and on at least one Web server and Web page, and synchronizing applications and data, including but not limited to applications and data relating to ordering, between at least one central database, wireless handheld computing devices, and at least one Web server and Web page; utilizing an interface that provides a single point of entry that allows the synchronization of at least one wireless handheld computing device and at least one Web page with at least one central database; allowing information to be entered via Web pages, transmitted over the internet, and automatically communicated to at least one central database and to wireless handheld computing devices; allowing information to be entered via wireless handheld computing devices, transmitted over the internet, and automatically communicated to at least one central database and to Web pages.

///

1       20. On information and belief, Hilton has indirectly infringed and  
2 continues to indirectly infringe one or more valid and enforceable claims of the  
3 ‘850 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and  
4 intentionally inducing direct infringement by other persons.

5       21. On information and belief, customers of Hilton, including consumers  
6 and hotel/restaurant operators, use the Hilton Reservation System in a manner  
7 that infringes the Ameranth patents. Hilton provides instruction and direction  
8 regarding the use of the Hilton Reservation System, and advertises, promotes,  
9 and encourages the use of the Hilton Reservation System in a manner  
10 understood and intended by Hilton to infringe Ameranth’s patents. Defendant  
11 provides such instruction, direction and encouragement regarding infringing use  
12 of the Hilton Reservations System on its webpages, in advertising, in user  
13 videos, in offerings on mobile “app stores,” in press releases and in statements  
14 in industry news articles, as demonstrated in the infringement contentions  
15 attached hereto as **Exhibit D** and in the references cited in the appendix thereto.

16       22. On information and belief, the Hilton Reservation System infringes one  
17 or more valid and enforceable claims of the ‘850 patent for the reasons set forth  
18 hereinabove.

19       23. At least since the filing and service of the original complaint against  
20 Defendant in this matter, Hilton has had knowledge of the ‘850 patent, and  
21 knew or should have known that its continued offering and deployment of the  
22 Hilton Reservation System, and its continued support of consumers,  
23 hotel/restaurant operators, and other users of this system/product/service, would  
24 induce direct infringement by those users. Additionally, Hilton intended that its  
25 actions would induce direct infringement of the Ameranth patents by those  
26 users.

1       24. On information and belief, Hilton has indirectly infringed and  
2 continues to indirectly infringe one or more valid and enforceable claims of the  
3 ‘850 patent, in violation of 35 U.S.C. § 271(c).

4       25. By distributing, selling, offering, offering to sell or license and/or  
5 selling or licensing the Hilton Reservation System, which is a specialized  
6 custom software system designed for specific usage, Hilton provides non-staple  
7 articles of commerce to others, including consumers and hotel/restaurant  
8 operators, for use in infringing systems, products, and/or services.  
9 Additionally, Hilton provides instruction and direction regarding the use of the  
10 Hilton Reservation System, and advertises, promotes, and encourages the use of  
11 the Hilton Reservation System in a manner understood and intended by Hilton  
12 to infringe Ameranth’s patents. Users of the Hilton Reservation System  
13 directly infringe one or more valid and enforceable claims of the ‘850 patent for  
14 the reasons set forth hereinabove.

15       26. On information and belief, the Hilton Reservation System infringes one  
16 or more valid and enforceable claims of the ‘850 patent, for the reasons set  
17 forth hereinabove.

18       27. On information and belief, Hilton has had knowledge of the ‘850  
19 patent at least since the filing and service of the original complaint in this  
20 matter against Hilton, including knowledge that the Hilton Reservation System,  
21 which is a non-staple article of commerce, has been used as a material part of  
22 the claimed invention of the ‘850 patent, and that there are no substantial non-  
23 infringing uses for the Hilton Reservation System.

24       28. The aforesaid infringing activity of Hilton has directly and proximately  
25 caused damage to plaintiff Ameranth, including loss of profits from sales or  
26 licensing it would have made but for the infringements. Unless enjoined, the  
27

1 aforesaid infringing activity will continue and cause irreparable injury to  
 2 Ameranth for which there is no adequate remedy at law.

### 3 COUNT II

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

#### 5 **(35 U.S.C. § 271)**

6 29. Plaintiff reiterates and reincorporates the allegations set forth in  
 7 paragraphs 1-28 above as if fully set forth herein.

8 30. On March 22, 2005, United States Patent No. 6,871,325 entitled  
 9 “Information Management and Synchronous Communications System with  
 10 Menu Generation” (“the ‘325 patent”) (a true and correct copy of which is  
 11 attached hereto as **Exhibit B**) was duly and legally issued by the United States  
 12 Patent & Trademark Office.

13 31. Plaintiff Ameranth is the lawful owner by assignment of all right, title  
 14 and interest in and to the ‘325 patent.

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

25 ///

26 ///

1        33. On information and belief, the Hilton Reservation System, as  
 2        deployed and/or used at or from one or more locations by Hilton, its  
 3        agents, distributors, partners, affiliates, licensees, hotel operators and/or their  
 4        customers, infringes one or more valid and enforceable claims of the ‘325  
 5        patent, by, *inter alia*, doing at least one of the following: (a) Generating and  
 6        transmitting menus in a system including a central processing unit, a data  
 7        storage device, a computer operating system containing a graphical user  
 8        interface, one or more displayable main menus, modifier menus, and sub-  
 9        modifier menus, and application software for generating a second menu and  
 10        transmitting it to a wireless handheld computing device or a Web page; and/or  
 11        (b) Enabling reservations and other hospitality functions via iPhone, Android,  
 12        and other internet-enabled wireless handheld computing devices as well as via  
 13        Web pages, storing hospitality information and data on at least one central  
 14        database, on at least one wireless handheld computing device, and on at least  
 15        one Web server and Web page, and synchronizing applications and data,  
 16        including but not limited to applications and data relating to orders, between at  
 17        least one central database, wireless handheld computing devices, and at least  
 18        one Web server and Web page; and sending alerts, confirmations, and other  
 19        information regarding orders to various wireless mobile devices.

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

24        35. On information and belief, customers of Hilton, including consumers  
 25        and hotel/restaurant operators, use the Hilton Reservation System in a manner  
 26        that infringes upon one or more valid and enforceable claims of the ‘325 patent.

Hilton provides instruction and direction regarding the use of the Hilton Reservation System and advertises, promotes, and encourages the use of the Hilton Reservation System in a manner understood and intended by Defendant to infringe Ameranth's patents. Defendant provides such instruction, direction and encouragement regarding infringing use of the Hilton Reservations System on its webpages, in advertising, in user videos, in offerings on mobile "app stores," in press releases and in statements in industry news articles, as demonstrated in the infringement contentions attached hereto as **Exhibit D** and in the references cited in the appendix thereto.

36. On information and belief, Hilton actively induces others to infringe the '325 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting customers of Hilton, including consumers and hotel/restaurant operators, to use the infringing Hilton Reservation System in the United States without authority or license from Ameranth, with the knowledge that said customers of Hilton were directly infringing the '325 patent in a manner understood and intended by Hilton to infringe Ameranth's patents, as described above.

37. On information and belief, Hilton contributorily infringes and continues to contributorily infringe one or more valid and enforceable claims of the '325 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 '325 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 '325 patent.

38. By distributing, selling, offering, offering to sell or license and/or selling or licensing the Hilton Reservation System, which is a specialized custom software system designed for specific usage, Hilton provides non-staple

1 articles of commerce to others for use in infringing systems, products, and/or  
 2 services. Additionally, Hilton provides instruction and direction regarding the  
 3 use of the Hilton Reservation System and advertises, promotes, and encourages  
 4 the use of the Hilton Reservation System in manner understood and intended by  
 5 Defendant to infringe Ameranth's patents, as described above. Users of the  
 6 Hilton Reservation System directly infringe one or more valid and enforceable  
 7 claims of the '325 patent, for the reasons set forth hereinabove.

8 39. On information and belief, the Hilton Reservation System infringes one  
 9 or more valid and enforceable claims of the '325 patent, for the reasons set  
 10 forth hereinabove.

11 40. On information and belief, Hilton has had knowledge of the '325  
 12 patent at least since the filing and service of the original complaint in this  
 13 matter upon Hilton, including knowledge that the Hilton Reservation System,  
 14 which is a non-staple articles of commerce, has been used as a material part of  
 15 the claimed invention of the '325 patent, and that there are no substantial non-  
 16 infringing uses for the Hilton Reservation System.

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

### 22 **COUNT III**

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

#### 24 **(35 U.S.C. § 271)**

25 42. Plaintiff reiterates and incorporates the allegations set forth in  
 26 paragraphs 1-41 above as if fully set forth herein.

1       43. On March 27, 2012, United States Patent No. 8,146,077 entitled  
2 “Information Management and Synchronous Communications System with  
3 Menu Generation, and Handwriting and Voice Modification of Orders” (a true  
4 copy of which is attached hereto as **Exhibit C** and incorporated herein by  
5 reference) was duly and legally issued by the United States Patent & Trademark  
6 Office.

7       44. Plaintiff Ameranth is the lawful owner by assignment of all right, title  
8 and interest in and to the ‘077 patent.

9       45. On information and belief, Hilton directly infringes and continues to  
10 directly infringe one or more valid and enforceable claims of the ‘077 patent, in  
11 violation of 35 U.S.C. § 271(a), by making, using, offering for sale or license  
12 and/or selling or licensing infringing systems, products, and/or services in the  
13 United States without authority or license from Ameranth, including but not  
14 limited to the Hilton Reservation System.

15       46. On information and belief, the Hilton Reservation System, as  
16 deployed and/or used at or from one or more locations by Hilton, its  
17 agents, distributors, partners, affiliates, licensees, and/or their customers,  
18 infringes one or more valid and enforceable claims of the ‘077 patent, by, *inter*  
19 *alia*, doing at least one of the following: (a) Configuring and transmitting  
20 menus in a system including a central processing unit, a data storage device, a  
21 computer operating system containing a graphical user interface, one or more  
22 displayable master menus, menu configuration software enabled to generate a  
23 menu configuration for a wireless handheld computing device in conformity  
24 with a customized display layout, and enabled for synchronous communications  
25 and to format the menu configuration for a customized display layout of at least  
26 two different wireless handheld computing device display sizes, and/or (b)

Enabling reservations and other hospitality functions via iPhone, Android, and other internet-enabled wireless handheld computing devices as well as via Web pages, storing hospitality information and data on at least one database, on at least one wireless handheld computing device, and on at least one Web server and Web page, and synchronizing applications and data, including but not limited to applications and data relating to orders, between at least one database, wireless handheld computing devices, and at least one Web server and Web page; utilizing communications control software enabled to link and synchronize hospitality information between at least one database, wireless handheld computing device, and web page, to display information on web pages and on different wireless handheld computing device display sizes, and to allow information to be entered via Web pages, transmitted over the internet, and automatically communicated to at least one database and to wireless handheld computing devices; allowing information to be entered via wireless handheld computing devices, transmitted over the internet, and automatically communicated to at least one database and to Web pages.

47. On information and belief, Hilton has indirectly infringed and continues to indirectly infringe 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.

48. On information and belief, customers of Hilton, including consumers and hotel/restaurant operators, use the Hilton Reservation System in a manner that infringes upon one or more valid and enforceable claims of the '077 patent. Hilton provides instruction and direction regarding the use of the Hilton Reservation System and advertises, promotes, and encourages the use of the Hilton Reservation System in a manner understood and intended by Defendant

1 to infringe Ameranth's patents. Defendant provides such instruction, direction  
2 and encouragement regarding infringing use of the Hilton Reservations System  
3 on its webpages, in advertising, in user videos, in offerings on mobile "app  
4 stores," in press releases and in statements in industry news articles, as  
5 demonstrated in the infringement contentions attached hereto as **Exhibit D** and  
6 in the references cited in the appendix thereto.

7 49. On information and belief, Hilton actively induces others to infringe  
8 the '077 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging,  
9 aiding and abetting customers of Hilton, including consumers and  
10 hotel/restaurant operators, to use the infringing Hilton Reservation System in  
11 the United States without authority or license from Ameranth, with the  
12 knowledge that said customers of Hilton were directly infringing the '077  
13 patent in a manner understood and intended by Hilton to infringe Ameranth's  
14 patents, as described above.

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

21 51. By distributing, selling, offering, offering to sell or license and/or  
22 selling or licensing the Hilton Reservation System, which is a specialized  
23 custom software system designed for specific usage, Hilton provides non-staple  
24 articles of commerce to others for use in infringing systems, products, and/or  
25 services. Additionally, Hilton provides instruction and direction regarding the  
26 use of the Hilton Reservation System and advertises, promotes, and encourages

1 the use of the Hilton Reservation System in manner understood and intended  
 2 by Defendant to infringe Ameranth's patents, as described above. Users of the  
 3 Hilton Reservation System directly infringe one or more valid and enforceable  
 4 claims of the '077 patent, for the reasons set forth hereinabove.

5 52. On information and belief, the Hilton Reservation System infringes one  
 6 or more valid and enforceable claims of the '077 patent, for the reasons set  
 7 forth hereinabove.

8 53. On information and belief, Hilton has had knowledge of the '077  
 9 patent at least since the filing and service of the original complaint in this  
 10 matter upon Defendant, including knowledge that the Hilton Reservation  
 11 System, which is a non-staple article of commerce, has been used as a material  
 12 part of the claimed invention of the '077 patent, and that there are no substantial  
 13 non-infringing uses for the Hilton Reservation System.

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

### 19 **PRAYER FOR RELIEF**

20 WHEREFORE, plaintiff Ameranth respectfully prays for judgment  
 21 against Hilton, as follows:

22 1. Adjudging that the manufacture, use, offer for sale or license  
 23 and/or sale or license of the Hilton Reservation System infringes valid and  
 24 enforceable claims of the '850 patent, and the '325 patent, and the '077 patent,  
 25 as set forth hereinabove;

26 ///

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

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

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

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

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

///

///

///

**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 30, 2013 CALDARELLI HEJMANOWSKI & PAGE LLP

By: /s/ William J. Caldarelli

William J. Caldarelli

FABIANO LAW FIRM, P.C.

Michael D. Fabiano

OSBORNE LAW LLC

John W. Osborne

WATTS LAW OFFICES

Ethan M. Watts

**Attorneys for Plaintiff Ameranth, Inc.**

# Exhibit 1031 (D)

**CALDARELLI HEJMANOWSKI & PAGE LLP**

William J. Caldarelli (SBN #149573)

12340 El Camino Real, Suite 430

San Diego, CA 92130

Tel: (858) 720-8080

Fax: (858) 720-6680

wjc@chplawfirm.com

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

Michael D. Fabiano (SBN #167058)

12526 High Bluff Drive, Suite 300

San Diego, CA 92130

Telephone: (619) 742-9631

mdfabiano@fabianolawfirm.com

**OSBORNE LAW LLC**

John W. Osborne (*Pro Hac Vice* App. Pending)

33 Habitat Lane

Cortlandt Manor, NY 10567

Telephone: (914) 714-5936

josborne@osborneipl.com

**WATTS LAW OFFICES**

Ethan M. Watts (SBN #234441)

12340 El Camino Real, Suite 430

San Diego, CA 92130

Telephone: (858) 509-0808

Facsimile: (619) 878-5784

emw@ewattslaw.com

Attorneys for Plaintiff Ameranth, Inc.

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

AMERANTH, INC.

Plaintiff,

v.

MOBO SYSTEMS, INC.,

Defendant.

Case No. **'12CV1642 BEN BLM**

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Ameranth, Inc., for its Complaint against defendant Mobo Systems, Inc., a/k/a  
3 OLO, a/k/a OLO Online Ordering (herein “OLO”), 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 21<sup>st</sup> 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 Mobo Systems, Inc., a/k/a OLO, a/k/a OLO Online Ordering (herein  
15 “OLO”) is, on information and belief, a Delaware corporation having a principal place of  
16 business and headquarters in New York, New York. On information and belief, OLO makes,  
17 uses, sells and/or offers for sale, restaurant, foodservice, point-of-sale and property  
18 management and other hospitality information technology products, software, components  
19 and/or systems within this Judicial District, including the OLO Ordering System as defined  
20 herein.

21 **JURISDICTION AND VENUE**

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

24 4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and  
25 1338(a).

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

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

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

12 7. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c) and  
 13 1400(b).

#### 14 **BACKGROUND**

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

27 9. Ameranth began development of the inventions leading to the patent-in-suit and the  
 28 other patents in this patent family in the late Summer of 1998, at a time when the then-

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

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

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

1 companies have licensed patents and technology from Ameranth, recognizing and confirming  
2 the value of Ameranth's innovations.

### 3 RELATED CASES PREVIOUSLY FILED

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

8 13. Ameranth is also currently asserting claims of these same patents in separate  
9 lawsuits, against other defendants, that are already pending in this Court. The first-filed  
10 lawsuit asserts claims of the '850 and '325 patents and is entitled *Ameranth v. Pizza Hut, Inc.*  
11 *et al.*, Case No. 3:11-cv-01810-JLS-NLS. Lawsuits subsequently filed by Ameranth in this  
12 Court, asserting claims of the '077 patent, include Case Nos. 3:12-cv-00729-JLS-NLS; 3:12-  
13 cv-00731-JLS-NLS; 3:12-cv-00732-JLS-NLS; 3:12-cv-00733-JLS-NLS; 3:12-cv-00737-JLS-  
14 NLS; 3:12-cv-00738-JLS-NLS; 3:12-cv-00739-JLS-NLS; and 3:12-cv-00742-JLS-NLS.  
15 Another lawsuit subsequently filed by Ameranth in this Court, asserting claims of the '850,  
16 '325, and '077 patents, is Case No. 3:12-cv-00858-JLS-NLS.

### 17 COUNT I

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

#### 19 **(35 U.S.C. § 271)**

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

22 15. On May 7, 2002, United States Patent No. 6,384,850 entitled "Information  
23 Management and Synchronous Communications System with Menu Generation" ("the '850  
24 patent") (a true and copy of which is attached hereto as **Exhibit A**) was duly and legally issued  
25 by the United States Patent & Trademark Office.

26 16. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in  
27 and to the '850 patent.

1        17. On information and belief, Defendant directly infringes and continues to directly  
2 infringe one or more valid and enforceable claims of the '850 patent, in violation of 35 U.S.C.  
3 § 271(a) by making, using, offering for sale or license and/or selling or licensing infringing  
4 systems, products, and/or services in the United States without authority or license from  
5 Ameranth, including but not limited to the OLO ordering system/product/service, which  
6 includes, *inter alia*, wireless and internet POS integration, online and mobile ordering,  
7 integration with e-mail and affinity program and social media applications such as Facebook,  
8 Twitter, Groupon, and YouTube, and/or other third-party web-based applications, and other  
9 hospitality aspects ("OLO Ordering System").

10        18. On information and belief, the OLO Ordering System, as deployed and/or used at or  
11 from one or more locations by OLO, its agents, distributors, partners, affiliates, licensees,  
12 and/or their customers, infringes one or more valid and enforceable claims of the '850 patent,  
13 by, *inter alia*, doing at least one of the following: (a) Generating and transmitting menus in a  
14 system including a central processing unit, a data storage device, a computer operating system  
15 containing a graphical user interface, one or more displayable main menus, modifier menus,  
16 and sub-modifier menus, and application software for generating a second menu and  
17 transmitting it to a wireless handheld computing device or a Web page; and/or (b) Enabling  
18 ordering and other hospitality functions via iPhone, Android, and other internet-enabled  
19 wireless handheld computing devices as well as via Web pages, storing hospitality information  
20 and data on at least one central database, on at least one wireless handheld computing device,  
21 and on at least one Web server and Web page, and synchronizing applications and data,  
22 including but not limited to applications and data relating to ordering, between at least one  
23 central database, wireless handheld computing devices, and at least one Web server and Web  
24 page; utilizing an interface that provides a single point of entry that allows the synchronization  
25 of at least one wireless handheld computing device and at least one Web page with at least one  
26 central database; allowing information to be entered via Web pages, transmitted over the  
27 internet, and automatically communicated to at least one central database and to wireless  
28 handheld computing devices; allowing information to be entered via wireless handheld

1 computing devices, transmitted over the internet, and automatically communicated to at least  
2 one central database and to Web pages.

3 19. On information and belief, defendant OLO has indirectly infringed and continues to  
4 indirectly infringe one or more valid and enforceable claims of the '850 patent, in violation of  
5 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct infringement by  
6 other persons.

7 20. On information and belief, customers of OLO, including consumers and restaurant  
8 operators, use the OLO Ordering System. OLO provides instruction and direction regarding  
9 the use of the OLO Ordering System, and advertises, promotes, and encourages the use of the  
10 OLO Ordering System.

11 21. On information and belief, the OLO Ordering System infringes one or more valid  
12 and enforceable claims of the '850 patent for the reasons set forth hereinabove.

13 22. OLO has long had knowledge of the '850 patent, and knew or should have known  
14 that its continued offering and deployment of the OLO Ordering System, and its continued  
15 support of consumers, restaurant operators, and other users of this system/product/service,  
16 would induce direct infringement by those users. Additionally, OLO intended that its actions  
17 would induce direct infringement by those users.

18 23. On information and belief, Defendant has indirectly infringed and continues to  
19 indirectly infringe one or more valid and enforceable claims of the '850 patent, in violation of  
20 35 U.S.C. § 271(c).

21 24. By distributing, selling, offering, offering to sell or license and/or selling or licensing  
22 the OLO Ordering System, OLO provides non-staple articles of commerce to others for use in  
23 infringing systems, products, and/or services. Additionally, OLO provides instruction and  
24 direction regarding the use of the OLO Ordering System, and advertises, promotes, and  
25 encourages the use of the OLO Ordering System. Users of one or more of the OLO Ordering  
26 System directly infringe one or more valid and enforceable claims of the '850 patent for the  
27 reasons set forth hereinabove.



1 systems, products, and/or services in the United States without authority or license from  
2 Ameranth, including but not limited to the OLO Ordering System.

3 33. On information and belief, the OLO Ordering System, as deployed and/or used at or  
4 from one or more locations by OLO, its agents, distributors, partners, affiliates, licensees,  
5 and/or their customers, infringes one or more valid and enforceable claims of the '325 patent,  
6 by, *inter alia*, doing at least one of the following: (a) Generating and transmitting menus in a  
7 system including a central processing unit, a data storage device, a computer operating system  
8 containing a graphical user interface, one or more displayable main menus, modifier menus,  
9 and sub-modifier menus, and application software for generating a second menu and  
10 transmitting it to a wireless handheld computing device or a Web page; and/or (b) Enabling  
11 ordering and other hospitality functions via iPhone, Android, and other internet-enabled  
12 wireless handheld computing devices as well as via Web pages, storing hospitality information  
13 and data on at least one central database, on at least one wireless handheld computing device,  
14 and on at least one Web server and Web page, and synchronizing applications and data,  
15 including but not limited to applications and data relating to orders, between at least one central  
16 database, wireless handheld computing devices, and at least one Web server and Web page;  
17 and sending alerts, confirmations, and other information regarding orders to various wireless  
18 mobile devices.

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

23 35. On information and belief, customers of OLO, including consumers and restaurant  
24 operators, use the OLO Ordering System in a manner that infringes upon one or more valid and  
25 enforceable claims of the '325 patent. OLO provides instruction and direction regarding the  
26 use of the OLO Ordering System and advertises, promotes, and encourages the use of the OLO  
27 Ordering System.

1       36. On information and belief, Defendant actively induces others to infringe the '325  
2 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting  
3 customers of OLO, including consumers and restaurant operators, to use the infringing OLO  
4 Ordering System in the United States without authority or license from Ameranth.

5       37. On information and belief, Defendant contributorily infringes and continues to  
6 contributorily infringe one or more valid and enforceable claims of the '325 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 '325 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 '325  
10 patent.

11       38. By distributing, selling, offering, offering to sell or license and/or selling or licensing  
12 the OLO Ordering System, Defendant provides non-staple articles of commerce to others for  
13 use in infringing systems, products, and/or services. Additionally, OLO provides instruction  
14 and direction regarding the use of the OLO Ordering System and advertises, promotes, and  
15 encourages the use of the OLO Ordering System. Users of the OLO Ordering System directly  
16 infringe one or more valid and enforceable claims of the '325 patent, for the reasons set forth  
17 hereinabove.

18       39. On information and belief, the OLO Ordering System infringes one or more valid  
19 and enforceable claims of the '325 patent, for the reasons set forth hereinabove.

20       40. OLO has had knowledge of the '325 patent, including knowledge that the OLO  
21 Ordering System, which is a non-staple articles of commerce, has been used as a material part  
22 of the claimed invention of the '325 patent, and that there are no substantial non-infringing  
23 uses for the OLO Ordering System.

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

27       42. The aforesaid infringing activity of defendant OLO has directly and proximately  
28 caused damage to plaintiff Ameranth, including loss of profits from sales it would have made

1 but for the infringements. Unless enjoined, the aforesaid infringing activity will continue and  
2 cause irreparable injury to Ameranth for which there is no adequate remedy at law.

3 **COUNT III**

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

5 **(35 U.S.C. § 271)**

6 43. Plaintiff reiterates and incorporates the allegations set forth in paragraphs 1-42 above  
7 as if fully set forth herein.

8 44. On March 27, 2012, United States Patent No. 8,146,077 entitled “Information  
9 Management and Synchronous Communications System with Menu Generation, and  
10 Handwriting and Voice Modification of Orders” (a true copy of which is attached hereto as  
11 **Exhibit C** and incorporated herein by reference) was duly and legally issued by the United  
12 States Patent & Trademark Office.

13 45. Plaintiff Ameranth is the lawful owner by assignment of all right, title and interest in  
14 and to the ‘077 patent.

15 46. On information and belief, Defendant directly infringes and continues to directly  
16 infringe one or more valid and enforceable claims of the ‘077 patent, in violation of 35 U.S.C.  
17 § 271(a) by making, using, offering for sale or license and/or selling or licensing infringing  
18 systems, products, and/or services in the United States without authority or license from  
19 Ameranth, including but not limited to the OLO Ordering System.

20 47. On information and belief, the OLO Ordering System, as deployed and/or used at or  
21 from one or more locations by OLO, its agents, distributors, partners, affiliates, licensees,  
22 and/or their customers, infringes one or more valid and enforceable claims of the ‘077 patent,  
23 by, *inter alia*, doing at least one of the following: (a) Configuring and transmitting menus in a  
24 system including a central processing unit, a data storage device, a computer operating system  
25 containing a graphical user interface, one or more displayable master menus, menu  
26 configuration software enabled to generate a menu configuration for a wireless handheld  
27 computing device in conformity with a customized display layout, and enabled for  
28 synchronous communications and to format the menu configuration for a customized display

1 layout of at least two different wireless handheld computing device display sizes, and/or (b)  
2 Enabling ordering and other hospitality functions via iPhone, Android, and other internet-  
3 enabled wireless handheld computing devices as well as via Web pages, storing hospitality  
4 information and data on at least one database, on at least one wireless handheld computing  
5 device, and on at least one Web server and Web page, and synchronizing applications and data,  
6 including but not limited to applications and data relating to orders, between at least one  
7 database, wireless handheld computing devices, and at least one Web server and Web page;  
8 utilizing communications control software enabled to link and synchronize hospitality  
9 information between at least one database, wireless handheld computing device, and web page,  
10 to display information on web pages and on different wireless handheld computing device  
11 display sizes, and to allow information to be entered via Web pages, transmitted over the  
12 internet, and automatically communicated to at least one database and to wireless handheld  
13 computing devices; allowing information to be entered via wireless handheld computing  
14 devices, transmitted over the internet, and automatically communicated to at least one database  
15 and to Web pages.

16 48. On information and belief, Defendant has indirectly infringed and continues to  
17 indirectly infringe one or more valid and enforceable claims of the '077 patent, in violation of  
18 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct infringement by  
19 other persons.

20 49. On information and belief, customers of OLO, including consumers and restaurant  
21 operators, use the OLO Ordering System in a manner that infringes upon one or more valid and  
22 enforceable claims of the '077 patent. OLO provides instruction and direction regarding the  
23 use of the OLO Ordering System and advertises, promotes, and encourages the use of the OLO  
24 Ordering System.

25 50. On information and belief, Defendant actively induces others to infringe the '077  
26 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting  
27 customers of OLO, including consumers and restaurant operators, to use the infringing OLO  
28 Ordering System in the United States without authority or license from Ameranth.

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

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

14        53. On information and belief, each of the OLO Ordering System infringes one or more  
15 valid and enforceable claims of the '077 patent, for the reasons set forth hereinabove.

16        54. On information and belief, OLO has had knowledge of the '077 patent, including  
17 knowledge that the OLO Ordering System, which is a non-staple article of commerce, has been  
18 used as a material part of the claimed invention of the '077 patent, and that there are no  
19 substantial non-infringing uses for the OLO Ordering System.

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

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

**PRAYER FOR RELIEF**

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

1. Adjudging that the manufacture, use, offer for sale or license and /or sale or license of the OLO Ordering System infringes valid and enforceable claims of the '850 patent, and the '325 patent, and 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 '850 patent, and the '325 patent, and the '077 patent, as set forth hereinabove;

3. Adjudging that Defendant's infringement of the valid and enforceable claims of the '850 patent, and the '325 patent, and 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 '850 patent, and the '325 patent, and 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. Awarding Ameranth increased damages of three times the amount of damages 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

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

///

**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: June 29, 2012

CALDARELLI HEJMANOWSKI & PAGE LLP

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

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

OSBORNE LAW LLC  
John W. Osborne

WATTS LAW OFFICES  
Ethan M. Watts

**Attorneys for Plaintiff AMERANTH, INC.**

# Exhibit 1031 (E)

**CALDARELLI HEJMANOWSKI & PAGE LLP**

William J. Caldarelli (SBN #149573)  
12340 El Camino Real, Suite 430  
San Diego, CA 92130  
Tel: (858) 720-8080  
Fax: (858) 720-6680  
wjc@chplawfirm.com

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

Michael D. Fabiano (SBN #167058)  
12526 High Bluff Drive, Suite 300  
San Diego, CA 92130  
Telephone: (619) 742-9631  
mdfabiano@fabianolawfirm.com

**OSBORNE LAW LLC**

John W. Osborne (*Pro Hac Vice* App. Pending)  
33 Habitat Lane  
Cortlandt Manor, NY 10567  
Telephone: (914) 714-5936  
josborne@osborneipl.com

**WATTS LAW OFFICES**

Ethan M. Watts (SBN #234441)  
12340 El Camino Real, Suite 430  
San Diego, CA 92130  
Telephone: (858) 509-0808  
Facsimile: (619) 878-5784  
emw@ewattslaw.com

Attorneys for Plaintiff Ameranth, Inc.

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

AMERANTH, INC.

Plaintiff,

v.

PIZZA HUT, INC., PIZZA HUT OF  
AMERICA, INC., and QUIKORDER, INC.,

Defendants.

Case No. **'12CV0742 JLS WMC**

**COMPLAINT FOR PATENT  
INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 **COMPLAINT FOR PATENT INFRINGEMENT**

2 Plaintiff Ameranth, Inc., for its Complaint against defendants Pizza Hut, Inc., Pizza Hut  
3 of America, Inc. , and QuikOrder, Inc. (all three collectively, “Defendants”), 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 21<sup>st</sup> 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 Pizza Hut, Inc. is, on information and belief, a California corporation  
15 having a principal place of business in Plano, Texas. Defendant Pizza Hut of America, Inc. is,  
16 on information and belief, a Delaware corporation having a principal place of business in  
17 Plano, Texas. On information and belief, Pizza Hut, Inc. and Pizza Hut of America, Inc. are  
18 agents and affiliates of one another and knowingly and intentionally acted in concert and under  
19 common and coordinated plan, design and control in committing the acts alleged herein, such  
20 that each entity is jointly and severally liable for the acts of each other. Pizza Hut, Inc. and  
21 Pizza Hut of America, Inc. shall be referred to herein collectively as “Pizza Hut.” On  
22 information and belief, Pizza Hut makes, uses, offers for sale or license and/or sells or licenses  
23 restaurant and foodservice information technology products, software, components and/or  
24 systems within this Judicial District, including the Pizza Hut Ordering System as defined  
25 herein.

26 3. Defendant QuikOrder, Inc. (“QuikOrder”) is, on information and belief, an Illinois  
27 corporation having a principal place of business in Chicago, Illinois. On information and  
28 belief, QuikOrder makes, uses, offers for sale or license and/or sells or licenses restaurant and

1 foodservice information technology products, software, components and/or systems within this  
2 Judicial District, including the Pizza Hut Ordering System as defined herein.

3 **JURISDICTION AND VENUE**

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

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

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

18 7. This Court has personal jurisdiction over Defendants, and each of them, as each  
19 Defendant commits acts of patent infringement in this Judicial District including, *inter alia*,  
20 making, using, offering for sale or license, and/or selling or licensing infringing services,  
21 products, software, components and/or systems in this Judicial District.

22 8. Venue is proper in this Judicial District pursuant to 28 U.S.C. §§ 1391(b) and (c) and  
23 1400(b) as regards all Defendants, both separately and together.

24 **BACKGROUND**

25 9. Ameranth was established in 1996 to develop and provide its 21<sup>st</sup> Century  
26 Communications™ innovative information technology solutions for the hospitality industry  
27 (inclusive of, e.g., restaurants, hotels, casinos, nightclubs, cruise ships and other entertainment  
28 and sports venues). Ameranth has been widely recognized as a technology leader in the

1 provision of wireless and internet-based systems and services to, *inter alia*, restaurants, hotels,  
2 casinos, cruise ships and entertainment and sports venues. Ameranth's award winning  
3 inventions enable, in relevant part, generation and synchronization of menus, including but not  
4 limited to restaurant menus, event tickets, and other products across fixed, wireless and/or  
5 internet platforms as well as synchronization of hospitality information and hospitality  
6 software applications across fixed, wireless and internet platforms, including but not limited to,  
7 computer servers, web servers, databases, affinity/social networking systems, desktop  
8 computers, laptops, "smart" phones and other wireless handheld computing devices.

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

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

23 12. The adoption of Ameranth's technology by industry leaders and the wide acclaim  
24 received by Ameranth for its technological innovations are just some of the many  
25 confirmations of the breakthrough aspects of Ameranth's inventions. Ameranth has received  
26 twelve different technology awards (three with "end customer" partners) and has been widely  
27 recognized as a hospitality wireless/internet technology leader by almost all major national and  
28 hospitality print publications, *e.g.*, The Wall Street Journal, New York Times, USA Today and

1 many others. Ameranth was personally nominated by Bill Gates, the Founder of Microsoft, for  
 2 the prestigious Computerworld Honors Award that Ameranth received in 2001 for its  
 3 breakthrough synchronized reservations/ticketing system with the Improv Comedy Theatres.  
 4 In his nomination, Mr. Gates described Ameranth as “one of the leading pioneers of  
 5 information technology for the betterment of mankind.” This prestigious award was based on  
 6 Ameranth’s innovative synchronization of wireless/web/fixed hospitality software technology.  
 7 Subsequently, the United States Patent and Trademark Office granted Ameranth a number of  
 8 currently-issued patents, two of which are the basis for this lawsuit. Ameranth has issued press  
 9 releases announcing these patent grants on business wires, on its web sites and at numerous  
 10 trade shows attended by various of the Defendants since the first of the two presently-asserted  
 11 patents issued in 2002. A number of companies have licensed patents and technology from  
 12 Ameranth, recognizing the value of Ameranth’s innovations.

### 13 **RELATED CASE PREVIOUSLY FILED**

14 13. The Ameranth patent asserted herein, U.S. Patent No. 8,146,077 (the “’077 patent”),  
 15 is the fourth patent to issue in Ameranth’s “Information Management and Synchronous  
 16 Communications” patent family.

17 14. Ameranth is also currently asserting eight claims of the first three of its patents in a  
 18 separate litigation pending in this Court (*Ameranth v. Pizza Hut, Inc. et al.*, Case No. 3:11-cv-  
 19 01810-JLS-NLS) against several parties, including the Defendants named in this Complaint.

### 20 **COUNT I**

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

#### 22 **(35 U.S.C. § 271)**

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

25 16. On March 27, 2012, United States Patent No. 8,146,077 entitled “Information  
 26 Management and Synchronous Communications System with Menu Generation, and  
 27 Handwriting and Voice Modification of Orders” (a true copy of which is attached hereto as  
 28

1 **Exhibit A** and incorporated herein by reference) was duly and legally issued by the United  
2 States Patent & Trademark Office.

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

5 18. On information and belief, Defendants directly infringe and continue to directly  
6 infringe one or more valid and enforceable claims of the '077 patent, in violation of 35 U.S.C.  
7 § 271(a) by making, using, offering for sale or license and/or selling or licensing infringing  
8 systems, products, and/or services in the United States without authority or license from  
9 Ameranth, including but not limited to The Pizza Hut ordering system/product/service, which  
10 includes, inter alia, wireless and internet POS integration, online and mobile ordering,  
11 integration with e-mail and affinity program and social media applications such as Facebook,  
12 Twitter, Groupon, and YouTube, and/or other third-party web-based applications, and other  
13 hospitality aspects ("Pizza Hut Ordering System").

14 19. On information and belief, the Pizza Hut Ordering System, as deployed and/or used  
15 at or from one or more locations by Pizza Hut, its agents, distributors, partners, affiliates,  
16 licensees, franchisees, and/or their customers, infringes one or more valid and enforceable  
17 claims of the '077 patent, by, *inter alia*, enabling ordering and other hospitality functions via  
18 iPhone, Android, and other internet-enabled wireless handheld computing devices as well as  
19 via Web pages, storing hospitality information and data on at least one database, on at least one  
20 wireless handheld computing device, and on at least one Web server and Web page, and  
21 synchronizing applications and data, including but not limited to applications and data relating  
22 to orders, between at least one database, wireless handheld computing devices, and at least one  
23 Web server and Web page; utilizing communications control software enabled to link and  
24 synchronize hospitality information between at least one database, wireless handheld  
25 computing device, and web page, to display information on web pages and on different  
26 wireless handheld computing device display sizes, and to allow information to be entered via  
27 Web pages, transmitted over the internet, and automatically communicated to at least one  
28 database and to wireless handheld computing devices; allowing information to be entered via

1 wireless handheld computing devices, transmitted over the internet, and automatically  
2 communicated to at least one database and to Web pages.

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

7 21. On information and belief, customers of Pizza Hut, including consumers and  
8 franchise operators, use the Pizza Hut Ordering System in a manner that infringes upon one or  
9 more valid and enforceable claims of the '077 patent. Pizza Hut provides instruction and  
10 direction regarding the use of the Pizza Hut Ordering System and advertises, promotes, and  
11 encourages the use of the Pizza Hut Ordering System.

12 22. On information and belief, Defendants actively induce others to infringe the '077  
13 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting  
14 customers of Pizza Hut, including consumers and franchise operators, to use the infringing  
15 Pizza Hut Ordering System in the United States without authority or license from Ameranth.

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

22 24. By distributing, selling, offering, offering to sell or license and/or selling or licensing  
23 the Pizza Hut Ordering System, Defendants provide non-staple articles of commerce to others  
24 for use in infringing systems, products, and/or services. Additionally, Pizza Hut provides  
25 instruction and direction regarding the use of the Pizza Hut Ordering System and advertises,  
26 promotes, and encourages the use of the Pizza Hut Ordering System. Users of the Pizza Hut  
27 Ordering System directly infringe one or more valid and enforceable claims of the '077 patent,  
28 for the reasons set forth hereinabove.

25. On information and belief, the Pizza Hut Ordering System infringes one or more valid and enforceable claims of the '077 patent, for the reasons set forth hereinabove.

26. If Defendants 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, then such infringing actions 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.

27. The aforesaid infringing activity of Defendants directly and proximately causes 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.

### **PRA YER 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 Pizza Hut Ordering System infringes valid and enforceable claims of the '077 patent, as set forth hereinabove;

2. 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;

3. If Defendants 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 Defendants' infringement of the valid and enforceable claims of the '077 patent has been knowing and willful;

4. Enjoining each of the Defendants, and their respective 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,

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

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

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

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

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

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

15 **DEMAND FOR JURY TRIAL**

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

18 Respectfully submitted,  
19 Dated: March 27, 2012 CALDARELLI HEJMANOWSKI & PAGE LLP  
20 By: /s/ William J. Caldarelli  
21 William J. Caldarelli  
22 FABIANO LAW FIRM, P.C.  
Michael D. Fabiano  
23 OSBORNE LAW LLC  
John W. Osborne  
24 WATTS LAW OFFICES  
25 Ethan M. Watts  
26 **Attorneys for Plaintiff AMERANTH, INC.**  
27  
28

# Exhibit 1031 (F)

**CALDARELLI HEJMANOWSKI & PAGE LLP**

William J. Caldarelli (SBN #149573)  
12340 El Camino Real, Suite 430  
San Diego, CA 92130  
Tel: (858) 720-8080  
Fax: (858) 720-6680  
wjc@chplawfirm.com

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

Michael D. Fabiano (SBN #167058)  
12526 High Bluff Drive, Suite 300  
San Diego, CA 92130  
Telephone: (619) 742-9631  
mdfabiano@fabianolawfirm.com

**OSBORNE LAW LLC**

John W. Osborne (Appointed *Pro Hac Vice*)  
33 Habitat Lane  
Cortlandt Manor, NY 10567  
Telephone: (914) 714-5936  
josborne@osborneipl.com

**WATTS LAW OFFICES**

Ethan M. Watts (SBN #234441)  
12340 El Camino Real, Suite 430  
San Diego, CA 92130  
Telephone: (858) 509-0808  
Facsimile: (619) 878-5784  
emw@ewattslaw.com

Attorneys for Plaintiff Ameranth, Inc.

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

AMERANTH, INC.,

Plaintiff,

v.

USABLENET, INC.,

Defendant.

Case No. 12-CV-1650 JLS (NLS)

**FIRST AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1                   **FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT**

2           Plaintiff Ameranth, Inc., for its First Amended Complaint against  
3 defendant Usablenet, Inc. (herein “Usablenet”), avers as follows:

4                   **PARTIES**

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

16           2. Defendant Usablenet, Inc. (herein “Usablenet”) is, on information and  
17 belief, a Delaware corporation having a principal place of business and  
18 headquarters in New York, New York. On information and belief, Usablenet  
19 makes, uses, sells and/or offers for sale, hotel and lodging, restaurant,  
20 foodservice, point-of-sale and/or property management and other hospitality  
21 information-technology products, software, components and/or systems within  
22 this Judicial District, including the Usablenet Products as defined herein.

23                   **JURISDICTION AND VENUE**

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

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

1           5. On information and belief, Defendant engages in (a) the offer for sale or  
 2 license and sale or license of hospitality, restaurant, food service, ordering,  
 3 products and/or components in the United States, including this Judicial District,  
 4 including services, products, software, and components, comprising wireless and  
 5 internet POS and/or hospitality aspects; (b) the installation and maintenance of  
 6 said services, products, software, components and/or systems in hospitality  
 7 industry, hotel and lodging, restaurant, food service, and/or entertainment  
 8 information technology systems in the United States, including this Judicial  
 9 District; and/or (c) the use of hospitality industry, hotel and lodging, restaurant,  
 10 food service, and/or entertainment information technology systems comprising  
 11 said services, products, software, components and/or systems in the United  
 12 States, including this Judicial District.

13           6. This Court has personal jurisdiction over Defendant because Defendant  
 14 commits acts of patent infringement in this Judicial District including, *inter alia*,  
 15 making, using, offering for sale or license, and/or selling or licensing infringing  
 16 services, products, software, components and/or systems in this Judicial District.  
 17 Usablenet has continued to engage in and perform such activities since the filing  
 18 and service of the original complaint in this matter accusing Usablenet of  
 19 infringement of the three Ameranth patents at issue herein.

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

## 22                                   **BACKGROUND**

23           8. Ameranth was established in 1996 to develop and provide its 21<sup>st</sup>  
 24 Century Communications™ innovative information technology solutions for the  
 25 hospitality industry (inclusive of, e.g., restaurants, hotels, casinos, nightclubs,  
 26 cruise ships and other entertainment and sports venues). Ameranth has been  
 27 widely recognized as a technology leader in the provision of wireless and  
 28 internet-based systems and services to, *inter alia*, restaurants, hotels, casinos,

1 cruise ships and entertainment and sports venues. Ameranth's award winning  
2 inventions enable, in relevant part, generation and synchronization of menus,  
3 including but not limited to restaurant menus, event tickets, and other products  
4 across fixed, wireless and/or internet platforms as well as synchronization of  
5 hospitality information and hospitality software applications across fixed,  
6 wireless and internet platforms, including but not limited to, computer servers,  
7 web servers, databases, affinity/social networking systems, desktop computers,  
8 laptops, "smart" phones and other wireless handheld computing devices.

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

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

25 11. The adoption of Ameranth's technology by industry leaders and the wide  
26 acclaim received by Ameranth for its technological innovations are just some of  
27 the many confirmations of the breakthrough aspects of Ameranth's inventions.  
28 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, *e.g.*, 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 since the first of the presently-asserted patents issued in 2002. A number of companies have licensed patents and technology from Ameranth, recognizing and confirming the value of Ameranth’s innovations. At all relevant times, Ameranth marked its own products with the numbers of the Ameranth patents then issued, thereby providing companies, competitors and participants in the hospitality industry with notice of Ameranth’s patents. Furthermore, companies that license Ameranth’s products have marked their products with Ameranth’s patent numbers, thereby also providing notice of Ameranth’s patents.

#### **RELATED CASES PREVIOUSLY FILED**

12. The Ameranth patents asserted herein, U.S. Patent No. 6,384,850 (the “850 patent”), U.S. Patent No. 6,871,325 (the “325 patent”), and U.S. Patent No. 8,146,077 (the “077 patent”), are all patents in Ameranth’s “Information Management and Synchronous Communications” patent family.

13. Ameranth is also currently asserting claims of these same patents in separate lawsuits, against other defendants, that are already pending in this Court. The first-filed lawsuit asserts claims of the '850 and '325 patents and is entitled *Ameranth v. Pizza Hut, Inc. et al.*, Case No. 3:11-cv-01810-JLS-NLS. Lawsuits subsequently filed by Ameranth in this Court, asserting claims of the '077 patent, include Case Nos. 3:12-cv-00729-JLS-NLS; 3:12-cv-00731-JLS-NLS; 3:12-cv-00732-JLS-NLS; 3:12-cv-00733-JLS-NLS; 3:12-cv-00737-JLS-NLS; 3:12-cv-00738-JLS-NLS (settled); 3:12-cv-00739-JLS-NLS and 3:12-cv-00742-JLS-NLS. Other lawsuits filed by Ameranth in this Court asserting claims of the '850, '325, and '077 patents are Case No. 3:12-cv-00858-JLS-NLS; 3:12-cv-1201-JLS-NLS (settled); 3:12-cv-01627-JLS-NLS; 3:12-cv-01629-JLS-NLS; 3:12-cv-01630-JLS-NLS; 3:12-cv-01631-JLS-NLS; 3:12-cv-01633-JLS-NLS; 3:12-cv-01634-JLS-NLS; 3:12-cv-01636-JLS-NLS; 3:12-cv-01640-JLS-NLS; 3:12-cv-01642-JLS-NLS; 3:12-cv-01643-JLS-NLS; 3:12-cv-01644-JLS-NLS; 3:12-cv-01646-JLS-NLS 3:12-cv-01647-JLS-NLS (settled); 3:12-cv-01648-JLS-NLS; 3:12-cv-01649-JLS-NLS; 3:12-cv-01651-JLS-NLS; 3:12-cv-01652-JLS-NLS; 3:12-cv-01653-JLS-NLS; 3:12-cv-01654-JLS-NLS; 3:12-cv-01655-JLS-NLS; 3:12-cv-01656-JLS-NLS; 3:12-cv-01659-JLS-NLS; 3:13-cv-00350-JLS-NLS; 3:13-cv-00352-JLS-NLS; 3:13-cv-00353-JLS-NLS; 3:13-cv-0836-JLS-NLS and 3:13-cv-01072-MMA-BGS. All of the above still-pending cases have been consolidated for pre-trial through claim construction except for 3:13-cv-00350-JLS-NLS; 3:13-cv-00352-JLS-NLS; 3:13-cv-00353-JLS-NLS; 3:13-cv-0836-JLS-NLS and 3:13-cv-01072-MMA-BGS. These related cases include patent infringement actions against customers and business partners of Usablenet to whom Usablenet has sold, licensed or otherwise provided the Usablenet products accused of infringement herein and to whom, upon information and belief, Usablenet continues to provide supporting services, upgrades, maintenance, *etc.*, including, for example, Marriot, Hilton, Best Western, and

Starwood. On information and belief, Usablenet's contracts and agreements with such Usablenet customers contain intellectual property infringement indemnity provisions such that Usablenet has been made aware of the claims of patent infringement asserted by Ameranth against such Usablenet customers and business partners implicating the Usablenet products.

14. The original complaint in this matter was filed in this Court on June 29, 2012, and subsequently served upon Usablenet. At least since that time, Usablenet has had direct and acknowledge knowledge of Ameranth's patents and that Usablenet's products infringe those patents as alleged therein. Nonetheless, Usablenet has continued, and is continuing, to make, use, offer for sale or license and/or sell or license infringing systems, products, and/or services in the United States without authority or license from Ameranth and to engage in acts of infringement as set forth herein.

### **COUNT I**

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

#### **(35 U.S.C. § 271)**

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

16. On May 7, 2002, United States Patent No. 6,384,850 entitled "Information Management and Synchronous Communications System with Menu Generation" ("the '850 patent") (a true and copy of which is attached hereto as **Exhibit A**) was duly and legally issued by the United States Patent & Trademark Office.

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

18. On information and belief, defendant Usablenet has indirectly infringed and continues to indirectly infringe one or more valid and enforceable claims of the '850 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and

1 intentionally inducing direct infringement by other persons, in the United States  
2 without authority or license from Ameranth, by providing customized software  
3 and custom mobile web interfaces/sites linked to and synchronized with the  
4 databases/servers used by the systems of the direct infringers, integration,  
5 instruction, and technical support (collectively, the “Usablenet Products”), to  
6 hotel companies, travel aggregators, and other direct infringers (including but not  
7 limited to Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia) for use  
8 in their online/mobile reservation systems and marketing and advertising  
9 Usablenet’s software, mobile web interfaces/sites, apps, integration, technical  
10 support, and related products and services to hotel companies, travel aggregators,  
11 and other direct infringers. Additionally, Usablenet contributorily infringes by  
12 selling and/or offering for sale the aforementioned customized software and  
13 custom mobile web interfaces/sites to direct infringers including but not limited  
14 to Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia. Ameranth has  
15 previously served Usablenet with infringement contentions in this action further  
16 describing the details of Usablenet’s infringement of Ameranth’s patents. Those  
17 infringement contentions, redacted to protect confidential information, are  
18 attached hereto as **Exhibit D** and incorporated herein by reference.

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

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

16 20. On information and belief, customers of Usablenet, including consumers  
17 and hotel and restaurant operators, use the Usablenet Products. These include  
18 customers and business partners that Ameranth has sued for patent infringement  
19 (such as Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia), which  
20 lawsuits are known to Usablenet by virtue of Usablenet's business relationship  
21 with such defendants and Usablenet's own participation in the consolidated  
22 patent infringement actions pending in this Court. Usablenet provides instruction  
23 and direction regarding the use of the Usablenet Products, and advertises,  
24 promotes, and encourages the use of the Usablenet Products in a manner  
25 understood and intended to infringe the claims of Ameranth's patents, as further  
26 described herein.

27 21. For example, Usablenet provides direct infringers (including, *inter alia*,  
28 Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia) of the asserted

1 Ameranth Patents with customized software and custom mobile web  
2 interfaces/sites linked to and synchronized with the databases/servers used by the  
3 systems of the direct infringers, and Usablenet further provides technical support  
4 and services to those direct infringers. The Usablenet Products thus provided are  
5 intended to cause, and do cause, the direct infringers and their accused systems to  
6 infringe the claims of Ameranth's patents, for example by enabling operation on  
7 handheld computing devices via mobile websites and interfaces, providing  
8 integrations with third party applications, *etc.*

9 22. As a further example, when a consumer directs his or her mobile-phone  
10 browser to, for example, Starwood Hotels' mobile website, the browser is  
11 automatically redirected to a Usablenet-operated URL. For Marriott's mobile  
12 website, according to a published article, "Marriott chose m-commerce  
13 technology vendor Usablenet Inc. to build and maintain the site ... Consumers  
14 don't need to know a special URL for the mobile site—entering  
15 www.marriott.com into a mobile browser automatically redirects them to the  
16 mobile-optimized site ... Part of the reason the hotel chain went with [Usablenet]  
17 was because Marriott could optimize an m-commerce site for thousands of types  
18 of handsets."

19 23. Hyatt's mobile website, "created by Usablenet, lets guests locate and  
20 book a hotel, access reservations and check in or out through any Web-enabled  
21 mobile device. The multi brand functionality is available to guests from around  
22 the world who are traveling to any Hyatt location. ... 'Our new Hyatt Mobile  
23 functionality provides access to all the tools and content our guests need to  
24 interact with Hyatt when they do not have access to a computer,' said Lynda  
25 Bott, director of Hyatt brand Web sites at Hyatt Hotels & Resorts," in another  
26 published article.

27 24. As another example, an article on Usablenet's website advertises the  
28 company's success in creating a mobile "app" for the Best Western hotel chain;

1 Usablenet's chief marketing officer describes that Usablenet-created app (and  
2 some of its infringing capabilities) as follows: "When the user opens the app  
3 they are able to get to local content quickly via the 'find hotels near me' function,  
4 as well as access the full range of app capabilities by viewing the main menu  
5 which contains the navigation to key areas such as Best Western Rewards log-in,  
6 ability to make reservations, view maps, access favorite location lists, do trip  
7 planning and find nearby reservations, attractions and more . . . The app also  
8 offers an array of customer service options such as click-to-call and connect with  
9 Best Western via a number of social networks."

10 25. Usablenet's website further advertises the company's ability to create  
11 "custom mobile experiences" and Usablenet's "industry-leading experience in  
12 creating and delivering mobile sites and experiences that support all the major  
13 smart phones and newest operating systems".

14 26. Usablenet's head of innovation and platform strategy stated in a recent  
15 article that, "In the last couple of years we've been doing not just mobile, but  
16 things like Facebook apps, kiosk apps, tablet apps; the explosion of the devices  
17 that the consumer has in their hands beyond just a mobile smartphone is also  
18 driving our growth ... That's really what our platform is about ... Providing it to  
19 our clients so we can power the different versions of their mobile sites or apps for  
20 all the different devices that come out for market." Another article notes  
21 Usablenet's "niche, providing mobile versions of websites to a variety of  
22 industries" including hospitality companies."

23 27. Usablenet's website also advertises the functionality (including  
24 infringing features) of the mobile website created by Usablenet for Expedia:  
25 "Expedia.com is leveraging the Usablenet Mobile 2.0 platform to include  
26 advanced new features using the smartphone's internal GPS to offer hotel options  
27 based on the user's current location ... [and] can expand the navigation on their  
28 HTML5 mobile site via collapsible menus and pop-up windows that streamline

1 purchasing by maximizing the small screen design ... For example, Expedia can  
2 display multiple images that let users scroll, swipe and zoom in on a product or  
3 property image. The platform also uses advanced GPS functionality that  
4 customizes a user's experience based on location. "By offering rich app-like  
5 features to all Web-enabled mobile phones, the platform provides brands with a  
6 cost-effective service that creates app-like mobile sites across all major mobile  
7 operating systems, resulting in an enhanced consumer experience that increases  
8 customer engagement and drives sales," [Usablenet president Nick] Taylor said.

9 28. Usablenet has also advertised its relevant products and services as  
10 "Usablenet's unique mobile Web platform, Usablenet Mobile, is a fully managed  
11 service that enables companies to translate all existing Web site functionality to a  
12 full-featured mobile interface. Usablenet Mobile provides leading brands with a  
13 new channel to extend marketing, commerce and client service efforts to their  
14 customers' mobile phones. The solution requires no IT resources on the client  
15 side, works on all Web-enabled mobile devices worldwide and can be  
16 implemented in six weeks," and Usablenet works with leading brands to translate  
17 their existing website content and functionality to mobile Web, mobile  
18 application, kiosk, and assistive platforms. The solution requires no IT resources  
19 on the client side and can be implemented in eight to ten weeks. The platform  
20 extends marketing, commerce, and other client services to their customers'  
21 chosen interface."

22 29. The Usablenet Products thus are intended to enable and assist, and in fact  
23 enable and assist, the direct infringers and their systems to practice and infringe  
24 upon the claims of Ameranth's patents, which patents are known to Usablenet as  
25 alleged herein. Usablenet's websites, product literature, statements in industry  
26 articles, customer materials, *etc.*, including those described herein and in the  
27 infringement contentions previously served upon Usablenet by Ameranth in this  
28

1 matter, encourage and promote use of the Usablenet Products to infringe the  
2 claims of the Ameranth patents asserted in this lawsuit.

3 30. At least since the filing and service of the original complaint in this  
4 action against Usablenet, Usablenet has had direct and actual knowledge of the  
5 '850 patent, and knew or should have known that its continued offering and  
6 deployment of the Usablenet Products, and its continued support of consumers,  
7 restaurant operators, and other users of the Usablenet Products, would induce  
8 direct infringement by those users. Additionally, Usablenet intended that its  
9 actions would induce direct infringement by those users, as described herein.

10 31. On information and belief, Defendant has indirectly infringed and  
11 continues to indirectly infringe one or more valid and enforceable claims of the  
12 '850 patent, in violation of 35 U.S.C. § 271(c).

13 32. By distributing, selling, offering, offering to sell or license and/or selling  
14 or licensing the Usablenet Products, Usablenet provides non-staple articles of  
15 commerce to others customized and specially adapted for use in infringing  
16 systems, products, and/or services, including but not limited to customers/  
17 business partners that Ameranth has sued for infringement, of which suits  
18 Usablenet is aware. Such Usablenet products, as deployed, sold, licensed and  
19 otherwise provided to direct infringers, are specialized and customized for use in  
20 infringing systems, including integration with hospitality applications, databases  
21 and data, such that they have no substantial non-infringing use. Additionally,  
22 Usablenet provides instruction and direction regarding the use of the Usablenet  
23 Products, and advertises, promotes, and encourages the use of the Usablenet  
24 Products, as described herein. Users of systems including one or more of the  
25 Usablenet Products directly infringe one or more valid and enforceable claims of  
26 the '850 patent for the reasons set forth hereinabove.

27 33. On information and belief, at least since the filing of the original  
28 complaint in this action against Usablenet, Usablenet has had direct and actual

1 knowledge of the ‘850 patent, including knowledge that the Usablenet Products,  
 2 which are non-staple articles of commerce, have been used as a material part of  
 3 the claimed invention of the ‘850 patent, and that there are no substantial non-  
 4 infringing uses for the Usablenet Products.

5 34. The aforesaid infringing activity of defendant Usablenet 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 II**

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

#### 12 **(35 U.S.C. § 271)**

13 35. Plaintiff reiterates and reincorporates the allegations set forth in  
 14 paragraphs 1-34 above as if fully set forth herein.

15 36. On March 22, 2005, United States Patent No. 6,871,325 entitled  
 16 “Information Management and Synchronous Communications System with Menu  
 17 Generation” (“the ‘325 patent”) (a true and correct copy of which is attached  
 18 hereto as **Exhibit B**) was duly and legally issued by the United States Patent &  
 19 Trademark Office.

20 37. Plaintiff Ameranth is the lawful owner by assignment of all right, title  
 21 and interest in and to the ‘325 patent.

22 38. On information and belief, defendant Usablenet has indirectly infringed  
 23 and continues to indirectly infringe one or more valid and enforceable claims of  
 24 the ‘325 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and  
 25 intentionally inducing direct infringement by other persons, in the United States  
 26 without authority or license from Ameranth, by providing customized software  
 27 and custom mobile web interfaces/sites linked to and synchronized with the  
 28 databases/servers used by the systems of the direct infringers, integration,

1 instruction, and technical support (collectively, the “Usablenet Products”), to  
2 hotel companies, travel aggregators, and other direct infringers (including but not  
3 limited to Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia) for use  
4 in their online/mobile reservation systems and marketing and advertising  
5 Usablenet’s software, mobile web interfaces/sites, apps, integration, technical  
6 support, and related products and services to hotel companies, travel aggregators,  
7 and other direct infringers. Additionally, Usablenet contributorily infringes by  
8 selling and/or offering for sale the aforementioned customized software and  
9 custom mobile web interfaces/sites to direct infringers including but not limited  
10 to Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia. Ameranth has  
11 previously served Usablenet with infringement contentions in this action further  
12 describing the details of Usablenet’s infringement of Ameranth’s patents. Those  
13 infringement contentions, redacted to protect confidential information, are  
14 attached hereto as **Exhibit D** and incorporated herein by reference.

15 39. On information and belief, systems including one or more of the  
16 Usablenet Products, as deployed and/or used at or from one or more locations by  
17 Usablenet, its agents, distributors, partners, affiliates, licensees, and/or their  
18 customers, infringe one or more valid and enforceable claims of the ‘325 patent,  
19 by, *inter alia*, doing at least one of the following: (a) Generating and transmitting  
20 menus in a system including a central processing unit, a data storage device, a  
21 computer operating system containing a graphical user interface, one or more  
22 displayable main menus, modifier menus, and sub-modifier menus, and  
23 application software for generating a second menu and transmitting it to a  
24 wireless handheld computing device or a Web page; and/or (b) Enabling  
25 ordering, reservations, and other hospitality functions via iPhone, Android, and  
26 other internet-enabled wireless handheld computing devices as well as via Web  
27 pages, storing hospitality information and data on at least one central 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 central database,  
3 wireless handheld computing devices, and at least one Web server and Web page;  
4 and sending alerts, confirmations, and other information regarding orders to  
5 various wireless mobile devices.

6 40. On information and belief, customers of Usablenet, including consumers  
7 and hotel and restaurant operators, use the Usablenet Products in a manner that  
8 infringes upon one or more valid and enforceable claims of the '325 patent.  
9 These include customers and business partners that Ameranth has sued for patent  
10 infringement and which lawsuits are known to Usablenet by virtue of Usablenet's  
11 business relationship with such defendants and Usablenet's own participation in  
12 the consolidated patent infringement actions pending in this Court. Usablenet  
13 provides instruction and direction regarding the use of the Usablenet Products  
14 and advertises, promotes, and encourages the use of the Usablenet Products in a  
15 manner understood and intended to infringe the claims of Ameranth's patents.  
16 Some examples are set forth in paragraphs 21-28 herein.

17 41. The Usablenet Products thus are intended to enable and assist, and in fact  
18 enable and assist, the direct infringers and their systems to practice and infringe  
19 upon the claims of Ameranth's patents, which patents are known to Usablenet as  
20 alleged herein. Usablenet's websites, product literature, statements in industry  
21 articles, customer materials, *etc.*, including those described herein and in the  
22 infringement contentions previously served upon Usablenet by Ameranth in this  
23 matter, encourage and promote use of the Usablenet Products to infringe the  
24 claims of the Ameranth patents asserted in this lawsuit.

25 42. On information and belief, Defendant actively induces others to infringe  
26 the '325 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging,  
27 aiding and abetting customers of Usablenet, including consumers and hotel and  
28 restaurant operators, to use the infringing Usablenet Products in the United States

1 in an manner known, understood, and intended to infringe Ameranth's patents  
2 without authority or license from Ameranth.

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

9 44. By distributing, selling, offering, offering to sell or license and/or selling  
10 or licensing the Usablenet Products, Defendant provides non-staple articles of  
11 commerce to others customized and specially adapted for use in infringing  
12 systems, products, and/or services, including but not limited to customer/  
13 business partners that Ameranth has previously sued for patent infringement and  
14 of which suits Usablenet is aware. Such Usablenet Products, as deployed, sold,  
15 licensed and otherwise provided to direct infringers, are specialized and  
16 customized for use in infringing systems, including integration with hospitality  
17 applications, databases and data, such that they have no substantial non-  
18 infringing use. Additionally, Usablenet provides instruction and direction  
19 regarding the use of the Usablenet Products and advertises, promotes, and  
20 encourages the use of the Usablenet Products, as describe herein. Users of the  
21 Usablenet Products directly infringe one or more valid and enforceable claims of  
22 the '325 patent, for the reasons set forth hereinabove.

23 45. At least since the filing and service of the original complaint in this  
24 action against Usablenet, Usablenet has had direct and actual knowledge of the  
25 '325 patent, including knowledge that the Usablenet Products, which are non-  
26 staple articles of commerce, have been used as a material part of the claimed  
27 invention of the '325 patent, and that there are no substantial non-infringing uses  
28

1 for the Usablenet Products. Usablenet has, nonetheless, continued to engage in  
2 infringing acts despite such knowledge.

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

### 8 **COUNT III**

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

#### 10 **(35 U.S.C. § 271)**

11 47. Plaintiff reiterates and incorporates the allegations set forth in paragraphs  
12 1-46 above as if fully set forth herein.

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

18 49. Plaintiff Ameranth is the lawful owner by assignment of all right, title  
19 and interest in and to the ‘077 patent.

20 50. On information and belief, defendant Usablenet has indirectly infringed  
21 and continues to indirectly infringe one or more valid and enforceable claims of  
22 the ‘077 patent, in violation of 35 U.S.C. § 271(b), by actively, knowingly, and  
23 intentionally inducing direct infringement by other persons, in the United States  
24 without authority or license from Ameranth, by providing customized software  
25 and custom mobile web interfaces/sites linked to and synchronized with the  
26 databases/servers used by the systems of the direct infringers, integration,  
27 instruction, and technical support (collectively, the “Usablenet Products”), to  
28 hotel companies, travel aggregators, and other direct infringers (including but not

1 limited to Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia) for use  
2 in their online/mobile reservation systems and marketing and advertising  
3 Usablenet's software, mobile web interfaces/sites, apps, integration, technical  
4 support, and related products and services to hotel companies, travel aggregators,  
5 and other direct infringers. Additionally, Usablenet contributorily infringes by  
6 selling and/or offering for sale the aforementioned customized software and  
7 custom mobile web interfaces/sites to direct infringers including but not limited  
8 to Best Western, Hilton, Hyatt, Marriott, Starwood, and Expedia. Ameranth has  
9 previously served Usablenet with infringement contentions in this action further  
10 describing the details of Usablenet's infringement of Ameranth's patents. Those  
11 infringement contentions, redacted to protect confidential information, are  
12 attached hereto as **Exhibit D** and incorporated herein by reference.

13 51. On information and belief, systems including one or more of the  
14 Usablenet Products, as deployed and/or used at or from one or more locations by  
15 Usablenet, its agents, distributors, partners, affiliates, licensees, and/or their  
16 customers, infringe one or more valid and enforceable claims of the '077 patent,  
17 by, *inter alia*, doing at least one of the following: (a) Configuring and  
18 transmitting menus in a system including a central processing unit, a data storage  
19 device, a computer operating system containing a graphical user interface, one or  
20 more displayable master menus, menu configuration software enabled to generate  
21 a menu configuration for a wireless handheld computing device in conformity  
22 with a customized display layout, and enabled for synchronous communications  
23 and to format the menu configuration for a customized display layout of at least  
24 two different wireless handheld computing device display sizes, and/or (b)  
25 Enabling ordering, reservations, and other hospitality functions via iPhone,  
26 Android, and other internet-enabled wireless handheld computing devices as well  
27 as via Web pages, storing hospitality information and data on at least one  
28 database, on at least one wireless handheld computing device, and on at least one

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

13 52. On information and belief, customers of Usablenet, including consumers  
14 and hotel and restaurant operators, use the Usablenet Products in a manner that  
15 infringes upon one or more valid and enforceable claims of the '077 patent.  
16 These include customers and business partners that Ameranth has sued for patent  
17 infringement, which lawsuits are known to Usablenet by virtue of Usablenet's  
18 business relationship with such defendants and Usablenet's own participation in  
19 the consolidated patent infringement actions pending in this Court. Usablenet  
20 provides instruction and direction regarding the use of the Usablenet Products  
21 and advertises, promotes, and encourages the use of the Usablenet Products in a  
22 manner understood and intended to infringe the claims of Ameranth's patents.  
23 Some examples are set forth in paragraphs 21-28, above.

24 53. The Usablenet Products thus are intended to enable and assist, and in  
25 fact enable and assist, the direct infringers and their systems to practice and  
26 infringe upon the claims of Ameranth's patents, which patents are known to  
27 Usablenet as alleged herein. Usablenet's websites, product literature, statements  
28 in industry articles, customer materials, *etc.*, including those described herein and

1 in the infringement contentions previously served upon Usablenet by Ameranth  
2 in this matter, encourage and promote use of the Usablenet Products to infringe  
3 the claims of the Ameranth patents asserted in this lawsuit.

4  
5 54. On information and belief, Defendant actively induces others to infringe  
6 the '077 patent in violation of 35 U.S.C. §271(b) by knowingly encouraging,  
7 aiding and abetting customers of Usablenet, including consumers and hotel  
8 restaurant operators, including entities that Ameranth has sued for infringement  
9 and which suits are known to Usablenet, to use the infringing Usablenet Products  
10 in the United States without authority or license from Ameranth in a manner  
11 known, understood, and intended to infringe Ameranth's patents.

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

18 56. By distributing, selling, offering, offering to sell or license and/or selling  
19 or licensing the Usablenet Products, Defendant provides non-staple articles of  
20 commerce to others customized and specially adapted for use in infringing  
21 systems, products, and/or services, including but not limited to customers/  
22 business partners that Ameranth has sued for infringement, of which suits  
23 Usablenet is aware. Such Usablenet Products, as deployed, sold, licensed and  
24 otherwise provided to direct infringers, are specialized and customized for use in  
25 infringing systems, including integration with hospitality applications, databases  
26 and data, such that they have no substantial non-infringing use. Additionally,  
27 Usablenet provides instruction and direction regarding the use of the Usablenet  
28 Products and advertises, promotes, and encourages the use of the Usablenet

1 Products, as described herein. Users of the Usablenet Products directly infringe  
2 one or more valid and enforceable claims of the '077 patent, for the reasons set  
3 forth hereinabove.

4 57. On information and belief, at least since the filing of the original  
5 complaint in this matter against Usablenet, Usablenet has had direct and actual  
6 knowledge of the '077 patent, including knowledge that the Usablenet Products,  
7 which are non-staple articles of commerce, have been used as a material part of  
8 the claimed invention of the '077 patent, and that there are no substantial non-  
9 infringing uses for the Usablenet Products. Nonetheless, Usablenet has continued  
10 to engage in acts of infringement as described herein.

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

16 **PRAYER FOR RELIEF**

17 WHEREFORE, plaintiff Ameranth respectfully prays for judgment against  
18 defendant Usablenet, as follows:

19 1. Adjudging that the manufacture, use, offer for sale or license and /or sale  
20 or license of the Usablenet Products indirectly infringes valid and enforceable  
21 claims of the '850 patent, and the '325 patent, and the '077 patent, as set forth  
22 hereinabove;

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

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

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

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

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

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

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

13  
14 **DEMAND FOR JURY TRIAL**

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

17 Respectfully submitted,

18 Dated: July 15, 2013

CALDARELLI HEJMANOWSKI & PAGE LLP

19 By: /s/ William J. Caldarelli

20 William J. Caldarelli

21 FABIANO LAW FIRM, P.C.

22 Michael D. Fabiano

23 OSBORNE LAW LLC

24 John W. Osborne

25 WATTS LAW OFFICES

26 Ethan M. Watts

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