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18 IPDEV Co.

19 UNITED STATES DISTRICT COURT
20 SOUTHERN DISTRICT OF CALIFORNIA

21 IPDEV CO.,
22
23 Plaintiff,
24
25 v.
26
27 AMERANTH, INC.,
28 Defendant.

CASE NO. **'14CV1303 GPC JLB**

**COMPLAINT FOR DETERMINATION
OF PRIORITY OF INVENTION
AMONG INTERFERING PATENTS
UNDER 35 U.S.C. § 291 (PRE-AIA)**

Complaint Filed: May 27, 2014

1 Plaintiff IPDEV Co. ("IPDEV") files this Complaint against Defendant Ameranth, Inc.
2 ("Ameranth") to seek an adjudication of priority of invention under 35 U.S.C. § 291 (pre-America
3 Invents Act ("AIA")) of U.S. Patent Nos. 8,738,449 (the "IPDEV '449 patent") and 5,991,739
4 (the "'739 patent"), assigned to IPDEV, over U.S. Patent Nos. 6,384,850 (the "Ameranth '850
5 patent"), 6,871,325 (the "Ameranth '325 patent"), and 8,146,077 (the "Ameranth '077 patent");
6 collectively, the "Ameranth patents"), which on information and belief, are assigned to Ameranth.

7 **PARTIES**

8 1. Plaintiff IPDEV is an Illinois corporation located at 414 North Orleans Street
9 Suite 501, Chicago, IL 60654-4498. IPDEV owns certain intellectual property assets, including
10 the IPDEV patents. IPDEV is an affiliated company of QuikOrder, Inc. ("QuikOrder").

11 2. On information and belief, Defendant Ameranth is a Delaware corporation with a
12 principal place of business at 5820 Oberlin Drive, Suite 202, San Diego, CA 92121-3744.
13 Ameranth is listed as the assignee of the Ameranth patents.

14 **JURISDICTION AND VENUE**

15 3. This is an interfering patents action arising under 35 U.S.C. § 291 (pre-AIA). This
16 Court has subject matter jurisdiction over this action under 35 U.S.C. § 291 and 28 U.S.C.
17 §§ 1391(b) and (c).

18 4. This Court has personal jurisdiction over Ameranth. Ameranth has its principal
19 place of business within this judicial district and has engaged in substantial business activities
20 within this judicial district. Ameranth is also the plaintiff in a number of patent infringement
21 actions in this district in which Ameranth has alleged infringement of the Ameranth patents, for
22 example the consolidated action styled *Ameranth, Inc. v. Pizza Hut, Inc., et al.*, case number 3:11-
23 cv-01810-DMS-WVG ("the Ameranth patent infringement litigations").

24 5. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c).

25 **THE AMERANTH PATENT INFRINGEMENT LITIGATIONS**

26 6. On August 15, 2011, Ameranth filed a complaint alleging infringement of the
27 Ameranth '850 and '325 patents in this Judicial District, case number 3:11-cv-1810, against a
28 number of defendants, including QuikOrder.

1 7. On March 27, 2012, Ameranth filed a complaint in this Judicial District alleging
2 infringement of the Ameranth '077 patent against Pizza Hut of America, Inc., Pizza Hut, Inc., and
3 QuikOrder, case number 3:12-cv-00742-DMS-WVG. This action, along with other patent
4 infringement actions, was consolidated in the 3:11-cv-1810 action for pre-trial purposes.

5 8. IPDEV, while an affiliate of QuikOrder, is not a party to the Ameranth patent
6 infringement litigations.

7 **THE INTERFERING PATENTS**

8 **The IPDEV Patents**

9 9. On November 24, 1997, Bryan Cupps and Tim Glass filed U.S. Patent Application
10 serial number 08/976,793 (the "'793 application"). The '793 application issued on November 23,
11 1999 as the '739 patent. Thus, Cupps and Glass conceived and reduced to practice the invention
12 claimed in the '739 patent, which is entitled "Internet Online Order Apparatus and Method," by
13 no later than November 24, 1997.

14 10. On March 31, 1999, U.S. Patent Application serial number 09/282,645 (the "'645
15 application") was filed as a continuation of the '793 application.

16 11. On August 22, 2012, U.S. Patent Application serial number 13/592,199 (the "'199
17 application") was filed as a continuation of the '645 application. Thus, the '199 application also
18 claims an effective filing date of November 24, 1997. The '199 application issued on May 27,
19 2014 as the IPDEV '449 patent, which is also entitled "Internet Online Order Method and
20 Apparatus." The IPDEV '449 patent is attached as Exhibit A to this Complaint.

21 **The Ameranth Patents**

22 12. On information and belief, the Ameranth '850 patent, which is attached as Exhibit
23 B to this Complaint, issued from U.S. Patent Application serial number 09/400,413 (the "'413
24 application"), which was filed on September 21, 1999.

25 13. On information and belief, the Ameranth '325 patent, which is attached as Exhibit
26 C to this Complaint, issued from U.S. Patent Application serial number 10/015,729 (the "'729
27 application") and is a continuation of the '413 application. Thus, the Ameranth '325 patent is
28 entitled to an effective filing date no earlier than September 21, 1999.

1 a. a central processing unit,
2 b. a data storage device connected to said central processing unit,
3 c. an operating system including a first graphical user interface,
4 d. a master menu including at least menu categories, menu items and
5 modifiers, wherein said master menu is capable of being stored on said data
6 storage device pursuant to a master menu file structure and said master menu is
7 capable of being configured for display to facilitate user operations in at least one
8 window of said first graphical user interface as cascaded sets of linked graphical
9 user interface screens, and
10 e. menu configuration software enabled to generate a programmed
11 handheld menu configuration from said master menu for wireless transmission to
12 and programmed for display on a wireless handheld computing device, said
13 programmed handheld menu configuration comprising at least menu categories,
14 menu items and modifiers and wherein the menu configuration software is
15 enabled to generate said programmed handheld menu configuration by utilizing
16 parameters from the master menu file structure defining at least the menu
17 categories, menu items and modifiers of the master menu such that at least the
18 menu categories, menu items and modifiers comprising the programmed handheld
19 menu configuration are synchronized in real time with analogous information
20 comprising the master menu,
21 wherein the menu configuration software is further enabled to generate the
22 programmed handheld menu configuration in conformity with a customized
23 display layout unique to the wireless handheld computing device to facilitate user
24 operations with and display of the programmed handheld menu configuration on
25 the display screen of a handheld graphical user interface integral with the wireless
26 handheld computing device, wherein said customized display layout is compatible
27 with the displayable size of the handheld graphical user interface wherein the
28 programmed handheld menu configuration is configured by the menu

1 configuration software for display as programmed cascaded sets of linked
2 graphical user interface screens appropriate for the customized display layout of
3 the wireless handheld computing device, wherein said programmed cascaded sets
4 of linked graphical user interface screens for display of the handheld menu
5 configuration are configured differently from the cascaded sets of linked graphical
6 user interface screens for display of the master menu on said first graphical user
7 interface, and

8 wherein the system is enabled for real time synchronous communications
9 to and from the wireless handheld computing device utilizing the programmed
10 handheld menu configuration including the capability of real time synchronous
11 transmission of the programmed handheld menu configuration to the wireless
12 handheld computing device and real time synchronous transmissions of selections
13 made from the handheld menu configuration on the wireless handheld computing
14 device, and

15 wherein the system is further enabled to automatically format the
16 programmed handheld menu configuration for display as cascaded sets of linked
17 graphical user interface screens appropriate for a customized display layout of at
18 least two different wireless handheld computing device display sizes ~~in the same~~
19 connected to the system, and

20 wherein a cascaded set of linked graphical user interface screens for a
21 wireless handheld computing device in the system includes a different number of
22 user interface screens from at least one other wireless handheld computing device
23 in the system.

24 20. On information and belief, claims 1-18 of the Ameranth '077 patent encompass the
25 same or substantially the same subject matter as claims 1-18 of the IPDEV '449 patent.

26 21. Consequently, there exists an interference-in-fact between one or more claims of
27 the Ameranth '077 patent and one or more claims of the IPDEV '449 patent (and, hence, the
28 IPDEV '449 patent) and vice-versa.

1 22. On information and belief, the claims of the Ameranth '850 patent comprise
2 obvious variants of the claims of the Ameranth '077 patent (and, hence, the IPDEV '449 patent)
3 and vice-versa.

4 23. Consequently, there exists an interference-in-fact between one or more claims of
5 the Ameranth '850 patent and one or more claims of the IPDEV '449 patent.

6 24. On information and belief, the claims of the Ameranth '325 patent likewise
7 comprise obvious variants of the claims of the Ameranth '077 patent.

8 25. Consequently, there exists an interference-in-fact between one or more claims of
9 the Ameranth '325 patent and one or more claims of the IPDEV '449 patent.

10 26. The IPDEV '449 patent has an earlier effective filing date (November 24, 1997)
11 than the purported effective filing date for the Ameranth patents (September 21, 1999). Under the
12 Regulations that govern interference practice at the United States Patent and Trademark Office,
13 the party with the earlier filing date is designated the "Senior Party" and is presumed to be the
14 first to invent. 37 C.F.R. § 41.207(a)(1) ("Order of invention. Parties are presumed to have
15 invented interfering subject matter in the order of the dates of their accorded benefit for each
16 count."); 37 C.F.R. § 41.201 ("... Senior party means the party entitled to the presumption under
17 § 41.207(a)(1) that it is the prior inventor. Any other party is a junior party. ..."). Accordingly,
18 IPDEV is the Senior Party and Ameranth is the Junior Party for the purposes of this interfering
19 patents action.

20 27. Because the IPDEV '449 patent has priority of invention over the Ameranth
21 patents, all claims of the Ameranth patents that interfere with the claims of the IPDEV '449
22 patent are invalid under 35 U.S.C. § 102(g) (pre-AIA).

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment as follows:

25 A. That the IPDEV '449 patent has priority of invention over the Ameranth '850,
26 '325, and '077 patents.

27 B. That, because the IPDEV '449 patent has priority of invention over the claims of
28 the Ameranth '850, '325, and '077 patents, the interfering claims of the Ameranth '850, '325, and

1 '077 patents are invalid.

2 C. That the Court deem the case exceptional and award attorney fees in favor of
3 IPDEV.

4 D. Such other and further relief as the Court deems just and proper.
5

6 Dated: May 27, 2014

SCHIFF HARDIN LLP

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By: /s/ George C. Yu
George C. Yu

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Attorneys for Plaintiff
IPDEV Co.

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SCHIFF HARDIN LLP
ATTORNEYS AT LAW
SAN FRANCISCO

- 8 -

COMPLAINT UNDER 35 U.S.C. § 291 (PRE-AIA)

CIVIL COVER SHEET

JS 44 (Rev. 12/07)

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

I. (a) PLAINTIFFS

IPDEV Co.

DEFENDANTS

AMERANTH, INC.

(b) County of Residence of First Listed Plaintiff Cook (IL)
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant San Diego (CA)
(IN U.S. PLAINTIFF CASES ONLY)

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

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

SCHIFF HARDIN LLP
One Market, Spear Twr., 32nd Fl.

Attorneys (If Known)

'14CV1303 GPC JLB

San Francisco, CA 94105
(415) 901-8700

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

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

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

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

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input checked="" type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 875 Customer Challenge
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 890 Other Statutory Actions
	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 790 Other Labor Litigation		<input type="checkbox"/> 891 Agricultural Acts
		<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<input type="checkbox"/> 892 Economic Stabilization Act
		<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 893 Environmental Matters
		<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 894 Energy Allocation Act
		<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
				<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

35 U.S.C. 291; 35:271 - Patent Infringement

Brief description of cause: Patent interference

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23

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

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Sabraw

DOCKET NUMBER 11-cv-1810; 12-cv-742

DATE

05/27/14

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

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

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