EXHIBIT 1

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George Yu
Schiff Hardin LLP
One Market, Spear Street Tower
Thirty-Second Floor
San Francisco, CA 94105

Re: IPDEV Co. adv. Ameranth; Rule 11 Violations

Dear George:

We are in receipt of the complaint filed in the Southern District of California by Schiff Hardin LLP and Ashe, P.C., on behalf of QuikOrder's affiliate, IPDEV Co., against Ameranth, Case No. 14-cv-1303. The complaint purports to seek a judicial determination of priority of invention between QuikOrder/IPDEV's newly issued '449 patent and Ameranth's '077 patent, and further seeks to expand the "interference" claim to Ameranth's '850 and '325 patents. Ameranth has previously sued QuikOrder, Pizza Hut, and other members of their Joint Defense Group for infringement of these patents.

Our analysis of the complaint, the prosecution of the '449 patent, QuikOrder's related efforts before the Patent Office (in many cases while represented by Schiff Hardin), QuikOrder and Pizza Hut's positions in the consolidated patent infringement cases pending before the Southern District of California, and Pizza Hut's and the Joint Defense Group's positions taken in the covered business method petition proceedings before the Patent Trial and Appeal Board with respect to Ameranth's patents, lead to the inescapable conclusions that: (1) the '449 patent is invalid and was procured through deception and inequitable conduct before the Patent Office; (2) the "priority of invention," or "interference" complaint filed in the Southern District of California is entirely without

legitimate legal basis, is presented for an improper purpose, and subjects QuikOrder/IPDEV and its counsel to sanctions under Rule 11; and (3) the continued prosecution of the interference lawsuit, or assertion of the '449 patent in connection with any defense to Ameranth's patent infringement claims, would constitute bad faith litigation and clearly present exceptional case circumstances. Ameranth therefore demands that QuikOrder/IPDEV dismiss the recently filed interference lawsuit with prejudice, renounce entitlement to all claims of the improperly obtained '449 patent, admit that the claims of the '449 patent are not entitled to priority over the claims of Ameranth's '077, '850 or '325 patents, admit that the claims are not supported by the Cupps '739 patent description and admit that QuikOrder/IPDEV has no right to the claims, including notice to the Patent Office and to the District Court. Failure to do so will only increase the level of malfeasance in which QuikOrder and its counsel have already engaged.

The invalidity of the '449 patent, the frivolousness of the interference lawsuit, and the impropriety of the conduct of QuikOrder/IPDEV and its counsel are irrefutably demonstrated by numerous facts. These include, among others, the following.

1. Cupps and Glass did not conceive Ameranth's invention, nor is there any support in the original Cupps patent (No. '739) (from which the '449 patent claims priority), or in the specification of the '449 patent, for numerous central elements of the claims in Ameranth's '077 patent (largely copied into the claims of '449 patent), in violation of 35 U.S.C. section 112. These include several fundamental elements such as wireless handheld computing devices, real time synchronous communication with wireless handheld computing devices, configuration and formatting of menus for display on two or more different wireless handheld computing device display sizes, etc. Likewise, neither Cupps patent ('739 nor '449) contains any support for or disclosure of numerous dependent claim elements of Ameranth's '077 patent, such as direct integration with restaurant point of

sale (POS) systems, reservations, ticketing or wait listing functionality, menu simulators, etc. These claim elements are not contained, described or disclosed in the Cupps '739 patent, of which the '449 patent is supposedly a continuation, or anywhere in the '449 patent specification. Thus, the copy-cat claims of the '449 patent are invalid[1].

2. In its arguments to the Patent Office attempting to manufacture support in the Cupps '739 specification for the copy-cat claims, QuikOrder/IPDEV failed to disclose to the examiner the manner in which a number of the terms of Ameranth's patents have been construed by the District Court for the Eastern District of Texas and by the Patent Trial and Appeal Board in connection with the covered business method petitions that Pizza Hut and other members of the Joint Defense Group have filed against Ameranth's patents.

3. QuikOrder/IPDEV misled the examiner of the 13/592199 application in order to obtain the '449 patent. QuikOrder/IPDEV now suggests, but does not actually say in its interference lawsuit complaint, that it sought an "interference" in the Patent Office, thereby implying that it notified the examiner of the '449 patent that the claims were copied from the patent *of a different inventor.* But QuikOrder/IPDEV did not use the word "interference" in the patent application, did not propose an interference to the Patent Office, did not propose a "count" for an interference, and importantly did not specifically explain that the proposed claims were copied from claims of a different inventor. These procedures were required for proper suggestion of an interference. The examiner of the '449 patent was thus not

[1] As QuikOrder and Pizza Hut, and their litigation counsel, are aware from Ameranth's discovery productions in the District Court patent infringement litigation, Food.com, the original owner of the Cupps patent, partnered with Ameranth in 1999 in order to use Ameranth's inventions because it knew, and publically admitted, that the Cupps patent did *not* encompass Ameranth's inventions.

informed and did not understand that declaration of an interference was being suggested. The allegation in the District Court interference complaint that QuikOrder/IPDEV informed the '449 examiner that claims were being copied from the '077 patent is meaningless. QuikOrder/IPDEV intentionally crafted its preliminary statement for its continuation application to the Patent Office in a manner designed to mislead the examiner into believing that the claims were copied from another QuikOrder/Cupps patent so that the examiner would apply minimal scrutiny to the application. QuikOrder/IPDEV made no statement that the claims were being copied from the application of a *different inventor and patent owner*. QuikOrder/IPDEV overtly misled the examiner in order to deflect the examiner's attention away from, *inter alia*, the lack of support in the Cupps description for the claims QuikOrder/IPDEV lifted from Ameranth's patent and presented to the Patent Office as its own. Furthermore, QuikOrder/IPDEV failed to explain to the examiner that the Cupps '739 patent is cited as a reference in Ameranth's '077 patent and that the '077 patent had been issued by the USPTO *over* Cupps (as, for that matter, have been Ameranth's '850 and '325 patents).

4. QuikOrder has, itself, previously distinguished and traversed the Cupps '739 patent in QuikOrder's prior filings with the Patent Office in support of other patent applications seeking to replicate elements of Ameranth's inventions. In these filings, QuikOrder has argued to the Patent Office—*correctly*—that Cupps does not disclose and in fact teaches away from the concepts contained in Ameranth's patents and now duplicated in the claims of the '449 patent. For example, in its August 10, 2004 Appeal Brief in support of Application No. 09/007,578, QuikOrder argued to the Patent Office that its proposed claims were not anticipated by the Cupps '739 patent because, among other things, Cupps did <u>not</u> disclose or enable the direct downloading of customer orders into

a computer system in order to bypass the conventional store order taking process. Such a concept is obviously at the heart of the synchronous on-line and mobile menu generation and ordering systems described in Ameranth's patents. Yet QuikOrder/IPDEV withheld this information and these prior filings and inconsistent positions from the Patent Office during the prosecution of the '449 patent.

5. The Cupps inventors themselves *later*, and after the priority date of Ameranth's patents, filed unrelated patent applications (not claiming priority from the Cupps '739 patent, although making reference to the Food.com system supposedly practicing the '739 patent) that explain the difficulties and challenges of synchronization with handheld computing devices that they believed were still not solved or addressed even in 2001 by their own or any other prior technology. Thus, for example, Cupps and Glass filed Application No. 09/809,963 on March 16, 2001 describing the supposedly then-existing lack of synchronization with mobile handheld devices and contending that such a concept was a novel invention disclosed for the first time in their 2001 application. Cupps and Glass acknowledged in their March 16, 2001 application that the user interface ("UI") for wireless handhelds was and is entirely different from that of PC's (their '739 patent describes and discloses PCs, including laptops, only)[2]: "There are significant problems with PDAs, Internet Appliances (IA's) and cellular telephones; the PDA, IA and cellular telephone metaphors are dramatically different than what users understand

[2] Cupps and Glass, the inventors of the Cupps '739 patent, expressly distinguished handheld computing devices from PC's and laptops. For example, in their March 16, 2001 Application No. 09/809,963, Cupps and Glass defined (1) "Smart Handheld Device" to include "PDA's, Personal Companions, Smart Phones, Data-enabled Mobile Phones," separately and distinctly from (2) "PC Computers," which they defined to include "Portables, Laptops, Notebooks, Ultra Portables and Desktop Computers." Therefore, Cupps and Glass's references to "laptops" in the '739 patent clearly were not intended to extend to wireless handheld devices, which they categorized differently. And of course this entirely makes sense since laptop computers were and are not "sized to be held in one's hand."

in the PC computing world ..... There is limited screen size and the lack of a mouse or touchscreen, which requires a different UI metaphor, as compared with PC's." These admissions, further supported by their inventors' declaration, demonstrate that Cupps and Glass themselves clearly did not believe that their earlier Cupps '739 patent-- on which QuikOrder/IPDEV's '449 patent relies—taught or disclosed synchronization with wireless handheld computing devices. Of course Ameranth's inventions solved these problems long before Cupps and Glass 2001 statements, but they had left Food.com prior to Food.com learning of Ameranth's invention. The 2001 Cupps and Glass application, and its important admissions, was also not provided to the examiner of the '449 examiner.

6. During its prosecution of the copycat '449 patent, QuikOrder/IPDEV failed to disclose to the Patent Office items of which QuikOrder/IPDEV had previously, in other patent applications, admitted to knowledge and which would clearly have been material to the examiner of the '449 patent. For example, in connection with the prosecution of Patent No. 7,945,479, QuikOrder/IPDEV (represented by Schiff Hardin) stated: "In 1996, a QuikOrder® system made it possible for customers to place pizza orders on the Internet by filling in elements on a web form using their home computer and a browser." Nevertheless, neither the 1996 QuikOrder system, nor the 7,945,479 patent containing the admission of this QuikOrder system being in use a year prior to the Cupps patent, was disclosed or described to the examiner of the '449 patent despite its similarity to the substance of the Cupps specification.

7. In the consolidated District Court litigation involving Ameranth's '077, '850 and '325 patents, QuikOrder, Pizza Hut and other members of the Joint Defense Group have asserted (in affirmative

defenses, counterclaims, invalidity contentions, motions, etc.) that Ameranth's patent claims, including all claims of the '077 patent, are invalid and fail to meet the conditions for patentability under 35 U.S.C. sections 101, 102, 103 and 112. Despite these judicial assertions of unpatentability, QuikOrder/IPDEV has pursued the claims of the '449 patent, which are nearly identical to the claims of Ameranth's '077 patent, through prosecution activities in the USPTO without revealing its contradictory judicial assertions to the examiner of the '449 patent.

8. In the covered business method petitions that Pizza Hut and other members of the Joint Defense Group have pursued against Ameranth's patents, the petitioners have alleged that the claims of the '077, '325 and '850 patents fail to satisfy the written description and definiteness requirements of section 112, and fail to claim patentable subject matter under section 101. QuikOrder and Pizza Hut joined in the motions to stay the consolidated cases before the District Court pending determination of these covered business method petitions. Yet again, QuikOrder/IPDEV failed to disclose the pending covered business method petition challenges to Ameranth's patents, the contradictory positions taken in the covered business method petition proceedings with the Patent Trial and Appeal Board (despite the fact that QuikOrder/IPDEV was concurrently pursuing the '449 patent containing nearly exact duplicates of the claims of Ameranth's '077 patent being challenged before the PTAB), the claim constructions issued by the Patent Office in the covered business method petition proceedings, or the rulings issued by the Patent Office in those proceedings, even those these events all occurred and were known to QuikOrder, Pizza Hut and their counsel well prior to the issuance of the '449 patent.

9. Although Ameranth's '850 and '325 patents contain a multitude of claim elements and limitations distinct from the '077 patent

claims that QuikOrder/IPDEV have copied in the '449 patent, the District Court interference lawsuit nevertheless also attempts to attack the '850 and '325 patents without articulating any factual or legal basis for doing so. The Cupps specification and claims contain no support for numerous unique elements of the claims of the '850 and '325 patents, including but by no means limited to storage of applications and data on wireless handheld computing devices, use of application program interfaces to integrate outside applications with hospitality applications, communications control module, single point of entry, etc.

10. Moreover, as James Kargman of QuikOrder/ IPDEV well knows, QuikOrder has previously admitted to Ameranth that the Cupps patent did not teach or comprise Ameranth's patented inventions. In a December 12, 2007 face to face meeting with Keith McNally of Ameranth at the San Diego airport, Mr. Kargman stated to Mr. McNally: "I know that I probably shouldn't be telling this to you, but my Chicago IP counsel warned me that if Ameranth ever sued us for patent infringement, we were 'screwed,' since they concluded that our Cupps patent was 'trumped' by Ameranth's synchronization patents." Mr. McNally specifically noted Mr. Kargman's precise words and immediately disclosed this admission to several other Ameranth executives and to Ameranth's IP counsel that very same day. This 2007 admission was entirely consistent with the position that QuikOrder and Schiff Hardin took in 2004 with the USPTO as to the Cupps patent in connection with Application No. 09/007,578.

Schiff Hardin, as QuikOrder's longstanding primary patent counsel and as litigation counsel for both QuikOrder/IPDEV and Pizza Hut in the lawsuits pending in the Southern District of California, is deeply implicated in QuikOrder/IPDEV's improper conduct. Schiff Hardin has been responsible for a number of the prior Patent Office filings and positions

taken by QuikOrder that are inconsistent with the positions taken in the prosecution of the '449 patent, none of which were disclosed to the Examiner of the '449 patent. Schiff Hardin is also aware of the contradictory positions taken by QuikOrder, Pizza Hut and other members of the Joint Defense Group in the consolidated patent infringement litigation pending in the Southern District of California and in the covered business method petitions pending before the Patent Trial and Appeal Board, none of which were made known to the '449 Examiner. Based on this knowledge, Schiff Hardin should have required QuikOrder/IPDEV to disclose such material, adverse information to the Patent Office before the '449 patent issued. Furthermore, based on such knowledge, Schiff Hardin should have realized that the '449 patent was invalid and was procured through deception and inequitable conduct before the Patent Office. Consequently, Schiff Hardin should never have filed an interference lawsuit in District Court based on the invalid and improperly procured '449 patent and should not countenance the further maintenance of the suit.

The deceptive conduct of QuikOrder/IPDEV before the Patent Office, and its failure to disclose extensive amounts of material adverse information to the Examiner, constitutes inequitable conduct and presents separate grounds for the invalidity and unenforceability of the '449 patent. To compound the matter, the improvident decision to file and maintain an interference lawsuit based on the invalid '449 patent, or to attempt to assert the '449 patent in any way as a defense to Ameranth's claims for infringement of the '077, '850 or '325 patents, constitutes litigation misconduct and an egregious violation of Rule 11.

For these reasons, Ameranth demands that QuikOrder/IPDEV dismiss the interference action with prejudice and entirely renounce and

repudiate the '449 patent. Please advise us of your intentions no later than June 16, 2014.

Very truly yours,

William J. Caldarelli

cc: Joel Beres
Oliver Ashe, Jr.