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11
 12 UNITED STATES DISTRICT COURT
 13 SOUTHERN DISTRICT OF CALIFORNIA
 14

15 IPDEV CO.,
 16 Plaintiff,
 17 v.
 18 AMERANTH, INC.,
 19 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 14. On information and belief, on or about November 16, 2004, in response to a
 2 rejection of the then-pending claims of the -729 application for obviousness-type double
 3 patenting, the applicants of the -729 application disclaimed the part of the patent term for any
 4 patent that would issue from the -729 application that would extend beyond the expiration date of
 5 the term for the Ameranth -850 patent.

6 15. On information and belief, the Ameranth -077 patent, which is attached as Exhibit
 7 D to this Complaint, issued from U.S. Patent Application serial number 11/112, 990 (the -990
 8 application) and claims priority to a series of continuations to the -413 application. Thus, the
 9 Ameranth -077 patent is entitled to an effective filing date no earlier than September 21, 1999.

10 16. On information and belief, on or about August 29, 2008, in response to a rejection
 11 of the then-pending claims of the -990 application for obviousness-type double patenting, the
 12 applicants of the -990 application disclaimed the part of the patent term for any patent that would
 13 issue from the -990 application that would extend beyond the expiration date of the term for the
 14 Ameranth -850 patent.

INTERFERENCE-IN-FACT

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 16 17. During the prosecution of IPDEV's -199 applications, the applicants amended the
 17 claims by copying claims 1-18 of the Ameranth -077 patent and added claims 19-21. The
 18 applicants specifically indicated in a preliminary statement during the prosecution that they had
 19 copied the claims from the Ameranth -077 patent pursuant to 35 U.S.C. § 135(b).

20 18. During prosecution of the -199 application, applicants made minor amendments to
 21 claims 1-21 in response to an indefiniteness rejection under 35 U.S.C. § 112(b).

22 19. The following is a comparison of claim 1 of the Ameranth -077 patent with
 23 claim 1 of the IPDEV -449 patent. Deletions from the text of claim 1 of the Ameranth -077
 24 patent in the IPDEV -449 patent are indicated by a strikethrough, and additions are indicated by
 25 underlining:

26 1. An information management and real time synchronous
 27 communications system for configuring and transmitting hospitality menus
 28 comprising:

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 -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.
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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
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