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

AMERANTH, INC.

Plaintiff,

v.

APPLE, INC.,

Defendant.

Case No. '12CV2350 AJB BGS

**COMPLAINT FOR PATENT
INFRINGEMENT**

DEMAND FOR JURY TRIAL

1 Plaintiff Ameranth, Inc., (herein “Ameranth”) for its Complaint against defendant
2 Apple, Inc. (herein “Apple” or “Defendant”), avers as follows:

3 **PARTIES**

4 1. Plaintiff Ameranth is a Delaware corporation having a principal place of business at
5 5820 Oberlin Drive, Suite 202, San Diego, California 92121. Ameranth develops,
6 manufactures and sells, *inter alia*, hospitality industry, entertainment, restaurant and food
7 service information technology solutions under the trademarks 21st Century
8 Communications™, and 21st Century Restaurant™, among others, comprising the
9 synchronization and integration of hospitality information and hospitality software applications
10 between fixed, wireless and/or internet applications, including but not limited to computer
11 servers, web servers, databases, affinity/social networking systems, desktop computers,
12 laptops, “smart” phones and other wireless handheld computing devices. Ameranth’s
13 “Information Management and Synchronous Communications” patent family has been widely
14 recognized as visionary, and the original patent in this family, U.S. Patent No. 6,384,850, was
15 cited as a prior art reference in two Apple iPhone patents issued to named inventors Bas
16 Ording and Steven P. Jobs. Fourteen companies have licensed patents in this Ameranth patent
17 family.

18 2. Defendant Apple is, on information and belief, a California corporation having a
19 principal place of business and headquarters in Cupertino, California. On information and
20 belief, Apple makes, uses, sells and/or offers for sale, computer technology products, including
21 personal computers, mobile communications devices, portable digital music and video players
22 and related hardware, software, components and/or systems within this Judicial District,
23 including their integrated Passbook System (“PBS”), which includes the “pass styles” that
24 Apple has defined as “boarding pass” and “event ticketing” applications within Passbook, and
25 which permits the downloading and storage of, *inter alia*, airline boarding passes, hotel
26 reservations, movie tickets, and event tickets, and is integrated with iPhone 5 and other iPhone
27 and iPod Touch devices that are running Apple’s iOS 6 software, and linked to/with Apple’s
28 iCloud, the “Apple Notification Service”, and Apple’s Safari browser. Apple has already

1 announced and/or implemented Passbook partnerships integrating Passbook-enabled systems
2 with defendants in other Ameranth patent enforcement actions including Ticketmaster,
3 StubHub, Starwood Hotels, Fandango, and others, as well as integrating Apple's Siri speech-
4 recognition and voice control/command application with the system of yet another defendant in
5 an Ameranth patent enforcement action, OpenTable. Industry analysts have called Passbook a
6 "game changer." Apple senior vice president Scott Forstall, in demonstrating Passbook with
7 stored tickets and passes including movie tickets, airline boarding passes, and concert tickets,
8 asserted that "Passbook is the best way to collect all of your passes in one place."

9 **JURISDICTION AND VENUE**

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

12 4. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

13 5. On information and belief, Apple engages in the offer for sale or license and sale or
14 license of computer technology products, including personal computers, mobile
15 communications devices, portable digital music and video players and related hardware,
16 software, components and/or systems, including this Judicial District, including the PBS and
17 Siri as defined herein.

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

22 7. Venue is proper in this Judicial District under 28 U.S.C. §§ 1391(b) and (c) and
23 1400(b).

24 **BACKGROUND**

25 8. Ameranth was established in 1996 to develop and provide its 21st 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 9. 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 10. 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 11. 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 since the first of the two presently-asserted patents issued in 2002. A number of
11 companies have licensed patents and technology from Ameranth, recognizing and confirming
12 the value of Ameranth’s innovations.

13 12. The Ameranth patents asserted herein, U.S. Patent No. 6,384,850 (the “’850 patent”),
14 U.S. Patent No. 6,871,325 (the “’325 patent”), U.S. Patent No. 6,982,733 (the “’733 patent”),
15 and U.S. Patent No. 8,146,077 (the “’077 patent”) are all patents in Ameranth’s “Information
16 Management and Synchronous Communications” patent family.

17 13. Apple is well aware of this Ameranth patent family. One of the Ameranth patents-
18 in-suit, U.S. Patent No. 6,384,850 – the first patent issued in this Ameranth patent family – was
19 cited as a prior art reference in two Apple iPhone patents issued to named inventors Bas
20 Ording and Steven P. Jobs. Also, three of the patents in this Ameranth patent family have been
21 asserted in several patent enforcement actions against Apple business partners, as noted above.

22 **RELATED CASES PREVIOUSLY FILED**

23 14. Ameranth is also currently asserting claims of patents in this patent family in
24 separate lawsuits, against other defendants, that are already pending in this Court. The first-
25 filed lawsuit asserts claims of the ‘850 and ‘325 patents and is entitled *Ameranth v. Pizza Hut,*
26 *Inc. et al.*, Case No. 3:11-cv-01810-JLS-NLS. Lawsuits subsequently filed by Ameranth in
27 this Court, also asserting claims of the ‘077 patent, include but are not limited to Case Nos.
28 3:12-cv-00729-JLS-NLS; 3:12-cv-00731-JLS-NLS; 3:12-cv-00732-JLS-NLS; 3:12-cv-00733-

1 JLS-NLS; 3:12-cv-00737-JLS-NLS; 3:12-cv-00738-JLS-NLS; 3:12-cv-00739-JLS-NLS; 3:12-
2 cv-00742-JLS-NLS, and 3:12-cv-00858-JLS-NLS.

3 **COUNT I**

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

5 **(35 U.S.C. § 271)**

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

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

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

14 18. In or about September 2012, Apple introduced Passbook, a product/service available
15 on iPhone and iPod Touch devices that are running Apple’s iOS 6 software. The Passbook
16 “pass styles” that Apple has defined as “boarding pass” and “event ticketing” permit the
17 downloading and storage of, *inter alia*, airline boarding passes, hotel reservations, movie
18 tickets, and event tickets (e.g., Fandango movie tickets, Ticketmaster and StubHub event
19 tickets, and American Airlines and United Airlines tickets and boarding passes) to an iPhone or
20 iPod Touch, from which the ticket or boarding pass can be displayed and scanned at, for
21 example, the appropriate movie theatre, event venue, hotel, or airport. Passbook may be used
22 by downloading a Passbook-compatible app (e.g., for Fandango, Ticketmaster, StubHub, or
23 United Airlines) from Apple’s “App Store” for the merchant corresponding to the “tickets” that
24 are to be stored in Passbook.

25 19. On information and belief, Apple directly infringes and continues to directly infringe
26 one or more valid and enforceable claims of the ‘850 patent, in violation of 35 U.S.C. § 271(a)
27 by making, using, offering for sale or license and/or selling or licensing infringing systems,
28 products, and/or services in the United States without authority or license from Ameranth,

1 including but not limited to the Apple products/services that include, inter alia, the Passbook
2 Ticketing System (hereinafter “PBS”) which includes the “pass styles” that Apple has defined
3 as “boarding pass” and “event ticketing” applications within Passbook, which permits the
4 downloading and storage of, inter alia, airline boarding passes, hotel reservations, movie
5 tickets, and event tickets, and is integrated with iPhone 5 and other iPhone and iPod Touch
6 devices that are running Apple’s iOS 6 software, and linked to/with Apple’s iCloud, the
7 “Apple Notification Service”, and Apple’s Safari browser.

8 20. On information and belief, defendant Apple has indirectly infringed and continues to
9 indirectly infringe one or more valid and enforceable claims of the ‘850 patent, in violation of
10 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct infringement by
11 other persons, including consumers and the businesses identified elsewhere in this complaint,
12 by making, using, offering for sale or license and/or selling or licensing infringing systems,
13 products, and/or services in the United States without authority or license from Ameranth,
14 including but not limited to PBS.

15 21. Apple infringes by its own actions and through, or in concert with, agents of Apple
16 who are under the direction and control of Apple by virtue of contractual agreements between
17 Apple and such parties.

18 22. On information and belief, systems including the PBS, as deployed and/or used by
19 Apple, its agents, distributors, partners, affiliates, licensees, third-party businesses, and/or their
20 customers, infringe one or more valid and enforceable claims of the ‘850 patent, by, *inter alia*,
21 doing, or providing the capability for doing, at least one of the following: (a) Generating and
22 transmitting menus in a system including a central processing unit, a data storage device, a
23 computer operating system containing a graphical user interface, one or more displayable main
24 menus, modifier menus, and sub-modifier menus, and application software for generating a
25 second menu and transmitting it to a wireless handheld computing device or a Web page;
26 and/or (b) Enabling ticketing, reservations, and other hospitality functions via iPhone and iPod
27 Touch devices, storing hospitality information and data on at least one central database, on at
28 least one wireless handheld computing device, and on at least one Web server and Web page,

1 and synchronizing applications and data, including but not limited to applications and data
2 relating to ordering, between at least one central database, wireless handheld computing
3 devices, and at least one Web server and Web page; utilizing an interface that provides a single
4 point of entry that allows the synchronization of at least one wireless handheld computing
5 device and at least one Web page with at least one central database; allowing information to be
6 entered via Web pages, transmitted over the internet, and automatically communicated to at
7 least one central database and to wireless handheld computing devices; allowing information to
8 be entered via wireless handheld computing devices, transmitted over the internet, and
9 automatically communicated to at least one central database and to Web pages.

10 23. On information and belief, other persons, including consumers and the businesses
11 identified elsewhere in this complaint, use the PBS in a manner that infringes upon one or more
12 valid and enforceable claims of the '850 patent. Apple provides instruction and direction
13 regarding the use of the PBS and advertises, promotes, and encourages the use of the PBS.

14 24. On information and belief, Apple actively induces others to infringe the '850 patent
15 in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting persons,
16 including consumers and those businesses identified elsewhere in this complaint, to use the
17 infringing PBS in the United States without authority or license from Ameranth.

18 25. On information and belief, Apple contributorily infringes and continues to
19 contributorily infringe one or more valid and enforceable claims of the '850 patent, in violation
20 of 35 U.S.C. § 271(c) by offering to sell and/or selling components of systems on which claims
21 of the '850 patent read, constituting a material part of the invention, knowing that the
22 components were especially adapted for use in systems which infringe claims of the '850
23 patent, including the systems of the businesses identified elsewhere in this complaint.

24 26. By distributing, selling, offering, offering to sell or license and/or selling or licensing
25 the PBS, Apple provides non-staple articles of commerce to others, including consumers and
26 those businesses identified elsewhere in this complaint, for use in infringing systems, products,
27 and/or services. Additionally, Apple provides instruction and direction regarding the use of the
28 PBS and advertises, promotes, and encourages the use of the PBS. Users of the PBS directly

1 infringe one or more valid and enforceable claims of the '850 patent, for the reasons set forth
2 hereinabove.

3 27. Apple has long had knowledge of the '850 patent, as set forth above, and, at least as
4 of the filing of this complaint, knowledge that the PBS, which is a non-staple article of
5 commerce, has been used by others, including consumers and those businesses identified
6 elsewhere in this complaint, as a material part of the claimed invention of the '850 patent, and
7 that there are no substantial non-infringing uses for the PBS because use of the PBS includes at
8 least one of the following: (a) Generating and transmitting menus in a system including a
9 central processing unit, a data storage device, a computer operating system containing a
10 graphical user interface, one or more displayable main menus, modifier menus, and sub-
11 modifier menus, and application software for generating a second menu and transmitting it to a
12 wireless handheld computing device or a Web page; and/or (b) Enabling ticketing,
13 reservations, and other hospitality functions via iPhone and iPod Touch devices, storing
14 hospitality information and data on at least one central database, on at least one wireless
15 handheld computing device, and on at least one Web server and Web page, and synchronizing
16 applications and data, including but not limited to applications and data relating to ordering,
17 between at least one central database, wireless handheld computing devices, and at least one
18 Web server and Web page; utilizing an interface that provides a single point of entry that
19 allows the synchronization of at least one wireless handheld computing device and at least one
20 Web page with at least one central database; allowing information to be entered via Web pages,
21 transmitted over the internet, and automatically communicated to at least one central database
22 and to wireless handheld computing devices; allowing information to be entered via wireless
23 handheld computing devices, transmitted over the internet, and automatically communicated to
24 at least one central database and to Web pages.

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

28

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

5 **COUNT II**

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

7 **(35 U.S.C. § 271)**

8 30. Plaintiff reiterates and reincorporates the allegations set forth in paragraphs 1-29
9 above as if fully set forth herein.

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

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

16 33. On information and belief, Apple directly infringes and continues to directly infringe
17 one or more valid and enforceable claims of the ‘325 patent, in violation of 35 U.S.C. § 271(a)
18 by making, using, offering for sale or license and/or selling or licensing infringing systems,
19 products, and/or services in the United States without authority or license from Ameranth,
20 including but not limited to the PBS.

21 34. On information and belief, defendant Apple has indirectly infringed and continues to
22 indirectly infringe one or more valid and enforceable claims of the ‘325 patent, in violation of
23 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct infringement by
24 other persons, including consumers and those businesses identified elsewhere in this complaint,
25 by making, using, offering for sale or license and/or selling or licensing infringing systems,
26 products, and/or services in the United States without authority or license from Ameranth,
27 including but not limited to the PBS.

1 35. Apple infringes by its own actions and through, or in concert with, agents of Apple
2 who are under the direction and control of Apple by virtue of contractual agreements between
3 Apple and such parties.

4 36. On information and belief, systems including the PBS, as deployed and/or used by
5 Apple, its agents, distributors, partners, affiliates, licensees, third-party businesses, and/or their
6 customers, infringe one or more valid and enforceable claims of the '325 patent, by, *inter alia*,
7 doing, or providing the capability for doing, at least one of the following: (a) Generating and
8 transmitting menus in a system including a central processing unit, a data storage device, a
9 computer operating system containing a graphical user interface, one or more displayable main
10 menus, modifier menus, and sub-modifier menus, and application software for generating a
11 second menu and transmitting it to a wireless handheld computing device or a Web page;
12 and/or (b) Enabling ticketing, reservations, and other hospitality functions via iPhone and
13 iPodTouch devices as well as via Web pages, storing hospitality information and data on at
14 least one central 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, including but not
16 limited to applications and data relating to orders, between at least one central database,
17 wireless handheld computing devices, and at least one Web server and Web page.

18 37. On information and belief, persons including consumers and the businesses identified
19 elsewhere in this complaint use the PBS in a manner that infringes upon one or more valid and
20 enforceable claims of the '325 patent. Apple provides instruction and direction regarding the
21 use of the PBS and advertises, promotes, and encourages the use of the PBS.

22 38. On information and belief, Apple actively induces others to infringe the '325 patent
23 in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting persons
24 including consumers and those businesses identified elsewhere in this complaint, to use the
25 infringing PBS in the United States without authority or license from Ameranth.

26 39. On information and belief, Apple contributorily infringes and continues to
27 contributorily infringe one or more valid and enforceable claims of the '325 patent, in violation
28 of 35 U.S.C. § 271(c) by offering to sell and/or selling components of systems on which claims

1 of the '325 patent read, constituting a material part of the invention, knowing that the
2 components were especially adapted for use in systems which infringe claims of the '325
3 patent, including the systems of the businesses identified elsewhere in this complaint.

4 40. By distributing, selling, offering, offering to sell or license and/or selling or licensing
5 the PBS, Apple provides non-staple articles of commerce to others, including consumers and
6 those businesses identified elsewhere in this complaint, for use in infringing systems, products,
7 and/or services. Additionally, Apple provides instruction and direction regarding the use of the
8 PBS and advertises, promotes, and encourages the use of the PBS. Users of the PBS directly
9 infringe one or more valid and enforceable claims of the '325 patent, for the reasons set forth
10 hereinabove.

11 41. Apple has had knowledge of the '325 patent, at least as early as the filing of this
12 complaint, including knowledge that the PBS which is a non-staple article of commerce, has
13 been used by others, including consumers and those businesses identified elsewhere in this
14 complaint, as a material part of the claimed invention of the '325 patent, and that there are no
15 substantial non-infringing uses for the PBS because use of the PBS includes at least one of the
16 following: (a) Generating and transmitting menus in a system including a central processing
17 unit, a data storage device, a computer operating system containing a graphical user interface,
18 one or more displayable main menus, modifier menus, and sub-modifier menus, and
19 application software for generating a second menu and transmitting it to a wireless handheld
20 computing device or a Web page; and/or (b) Enabling ticketing, reservations, and other
21 hospitality functions via iPhone and iPodTouch devices as well as via Web pages, storing
22 hospitality information and data on at least one central database, on at least one wireless
23 handheld computing device, and on at least one Web server and Web page, and synchronizing
24 applications and data, including but not limited to applications and data relating to orders,
25 between at least one central database, wireless handheld computing devices, and at least one
26 Web server and Web page.

1 49. On information and belief, defendant Apple has indirectly infringed and continues to
2 indirectly infringe one or more valid and enforceable claims of the '733 patent, in violation of
3 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct infringement by
4 other persons, including consumers and the businesses identified elsewhere in this complaint,
5 by making, using, offering for sale or license and/or selling or licensing infringing systems,
6 products, and/or services in the United States without authority or license from Ameranth,
7 including but not limited to the PBS and Siri.

8 50. Apple infringes by its own actions and through, or in concert with, agents of Apple
9 who are under the direction and control of Apple by virtue of contractual agreements between
10 Apple and such parties.

11 51. On information and belief, systems including the PBS, and/or Siri, as deployed and/or
12 used by Apple, its agents, distributors, partners, affiliates, licensees, third-party businesses,
13 and/or their customers, infringe one or more valid and enforceable claims of the '733 patent, by
14 doing, or providing the capability for doing, at least one of the following: (a) Generating menus
15 in a system including a central processing unit, a data storage device connected to said central
16 processing unit, an operating system including a graphical user interface, a first menu stored on
17 said data storage device, application software for generating a second menu from said first menu
18 that facilitates the generation of the second menu by allowing selection of items from the first
19 menu, addition of items to the second menu and assignment of parameters to items in the
20 second menu using the graphical user interface of said operating system and data comprising the
21 second menu is synchronized between the data storage device connected to the central
22 processing unit and at least one other computing device, and said second menu is manually
23 modified by voice recording or capture or recognition after generation; and/or (b) Generating
24 menus in a system including a microprocessor, a display device, a data and instruction input
25 device, a data storage device for storing information and instructions entered through said data
26 and instruction input means or information generated by said microprocessor, an operating
27 system, a master menu stored on said data storage device for generating a modified menu, and
28 application software, wherein said microprocessor, operating system and application software

1 are operative to display the master menu on the display device in response to instructions
2 programmed into said microprocessor, operating system, application software and information
3 and instructions entered through said data input device, and said microprocessor, operating
4 system and application software are operative to create the modified menu from said master
5 menu in response to information and instructions entered through said data and instruction input
6 device and data comprising the modified menu is synchronized between the data storage device
7 and at least one other computing device, wherein said modified menu is manually modified
8 after generation.

9 52. On information and belief, persons, including consumers and the businesses
10 identified elsewhere in this complaint, use the PBS and Siri in a manner that infringes upon one
11 or more valid and enforceable claims of the '733 patent. Apple provides instruction and
12 direction regarding the use of the PBS and Siri and advertises, promotes, and encourages the
13 use of the PBS and Siri.

14 53. On information and belief, Apple actively induces others to infringe the '733 patent
15 in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting persons,
16 including consumers and those businesses identified elsewhere in this complaint, to use the
17 infringing PBS and Siri in the United States without authority or license from Ameranth.

18 54. On information and belief, Apple contributorily infringes and continues to
19 contributorily infringe one or more valid and enforceable claims of the '733 patent, in violation
20 of 35 U.S.C. § 271(c) by offering to sell and/or selling components of systems on which claims
21 of the '733 patent read, constituting a material part of the invention, knowing that the
22 components were especially adapted for use in systems which infringe claims of the '733
23 patent, including the systems of the businesses identified elsewhere in this complaint.

24 55. By distributing, selling, offering, offering to sell or license and/or selling or licensing
25 the PBS, Apple provides non-staple articles of commerce to others, including consumers and
26 those businesses identified elsewhere in this complaint, for use in infringing systems, products,
27 and/or services. Additionally, Apple provides instruction and direction regarding the use of the
28 PBS and advertises, promotes, and encourages the use of the PBS. Users of the PBS directly

1 infringe one or more valid and enforceable claims of the '733 patent, for the reasons set forth
2 hereinabove.

3 56. Apple has had knowledge of the '733 patent, at least as early as the filing of this
4 complaint, including knowledge that the PBS, which is a non-staple article of commerce, has
5 been used by others, including consumers and those businesses identified elsewhere in this
6 complaint, as a material part of the claimed invention of the '733 patent, and that there are no
7 substantial non-infringing uses for the PBS because use of the PBS includes at least one of the
8 following: (a) Generating menus in a system including a central processing unit, a data storage
9 device connected to said central processing unit, an operating system including a graphical
10 user interface, a first menu stored on said data storage device, application software for
11 generating a second menu from said first menu that facilitates the generation of the second
12 menu by allowing selection of items from the first menu, addition of items to the second menu
13 and assignment of parameters to items in the second menu using the graphical user interface of
14 said operating system and data comprising the second menu is synchronized between the data
15 storage device connected to the central processing unit and at least one other computing device,
16 and said second menu is manually modified by voice recording or capture or recognition after
17 generation; and/or (b) Generating menus in a system including a microprocessor, a display
18 device, a data and instruction input device, a data storage device for storing information and
19 instructions entered through said data and instruction input means or information generated by
20 said microprocessor, an operating system, a master menu stored on said data storage device for
21 generating a modified menu, and application software, wherein said microprocessor, operating
22 system and application software are operative to display the master menu on the display device
23 in response to instructions programmed into said microprocessor, operating system, application
24 software and information and instructions entered through said data input device, and said
25 microprocessor, operating system and application software are operative to create the modified
26 menu from said master menu in response to information and instructions entered through said
27 data and instruction input device and data comprising the modified menu is synchronized
28

1 between the data storage device and at least one other computing device, wherein said
2 modified menu is manually modified after generation.

3 57. On information and belief, the aforesaid infringing activities of defendant Apple have
4 been done with knowledge and willful disregard of Ameranth's patent rights, making this an
5 exceptional case within the meaning of 35 U.S.C. § 285.

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

10 **COUNT IV**

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

12 **(35 U.S.C. § 271)**

13 59. Plaintiff reiterates and incorporates the allegations set forth in paragraphs 1-58 above
14 as if fully set forth herein.

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

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

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

27 63. On information and belief, defendant Apple has indirectly infringed and continues to
28 indirectly infringe one or more valid and enforceable claims of the '077 patent, in violation of

1 35 U.S.C. § 271(b), by actively, knowingly, and intentionally inducing direct infringement by
2 other persons, including consumers and those businesses identified elsewhere in this complaint,
3 by making, using, offering for sale or license and/or selling or licensing infringing systems,
4 products, and/or services in the United States without authority or license from Ameranth,
5 including but not limited to the PBS.

6 64. Apple infringes by its own actions and through, or in concert with, agents of Apple
7 who are under the direction and control of Apple by virtue of contractual agreements between
8 Apple and such parties.

9 65. On information and belief, systems including the PBS, as deployed and/or used by
10 Apple, its agents, distributors, partners, affiliates, licensees, third-party businesses, and/or their
11 customers, infringe one or more valid and enforceable claims of the '077 patent, by, *inter alia*,
12 doing, or providing the capability for doing, at least one of the following: (a) Configuring and
13 transmitting menus in a system including a central processing unit, a data storage device, a
14 computer operating system containing a graphical user interface, one or more displayable
15 master menus, menu configuration software enabled to generate a menu configuration for a
16 wireless handheld computing device in conformity with a customized display layout, and
17 enabled for synchronous communications and to format the menu configuration for a
18 customized display layout of at least two different wireless handheld computing device display
19 sizes, and/or (b) Enabling ticketing, reservations, and other hospitality functions via iPhone and
20 iPod Touch devices as well as via Web pages, storing hospitality information and data on at
21 least one database, on at least one wireless handheld computing device, and on at least one
22 Web server and Web page, and synchronizing applications and data, including but not limited
23 to applications and data relating to orders, between at least one database, wireless handheld
24 computing devices, and at least one Web server and Web page; utilizing communications
25 control software enabled to link and synchronize hospitality information between at least one
26 database, wireless handheld computing device, and web page, to display information on web
27 pages and on different wireless handheld computing device display sizes, and to allow
28 information to be entered via Web pages, transmitted over the internet, and automatically

1 communicated to at least one database and to wireless handheld computing devices; allowing
2 information to be entered via wireless handheld computing devices, transmitted over the
3 internet, and automatically communicated to at least one database and to Web pages.

4 66. On information and belief, persons including consumers and those businesses
5 identified elsewhere in this complaint use the PBS in a manner that infringes upon one or more
6 valid and enforceable claims of the '077 patent. Apple provides instruction and direction
7 regarding the use of the PBS and advertises, promotes, and encourages the use of the PBS.

8 67. Apple has had knowledge of the '077 patent, at least as early as the filing of this
9 complaint. On information and belief, Apple actively induces others to infringe the '077 patent
10 in violation of 35 U.S.C. §271(b) by knowingly encouraging, aiding and abetting persons
11 including consumers and those businesses identified elsewhere in this complaint, to use the
12 infringing PBS in the United States without authority or license from Ameranth.

13 68. On information and belief, the aforesaid infringing activities of defendant Apple have
14 been done with knowledge and willful disregard of Ameranth's patent rights, making this an
15 exceptional case within the meaning of 35 U.S.C. § 285.

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

20 **PRAYER FOR RELIEF**

21 WHEREFORE, plaintiff Ameranth respectfully prays for judgment against defendant
22 Apple, as follows:

23 1. Adjudging that the manufacture, use, offer for sale or license and /or sale or license
24 of the PBS indirectly infringes valid and enforceable claims of the '850 patent, and the '325
25 patent, and the '733 patent, and the '077 patent, as set forth hereinabove;

26 2. Adjudging that Apple has infringed, actively induced others to infringe and/or
27 contributorily infringed valid and enforceable claims of the '850 patent, and the '325 patent,
28 and the '733 patent, and the '077 patent, as set forth hereinabove;

1 3. Adjudging that Apple's indirect infringement of the valid and enforceable claims of
2 the '850 patent, and the '325 patent, and the '733 patent, and the '077 patent, has been
3 knowing and willful;

4 4. Enjoining Apple, and its officers, directors, employees, attorneys, agents,
5 representatives, parents, subsidiaries, affiliates and all other persons acting in concert,
6 participation or privity with Apple, and their successors and assigns, from infringing,
7 contributorily infringing and/or inducing others to infringe the valid and enforceable claims of
8 the '850 patent, and the '325 patent, and the '733 patent, and the '077 patent;

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

11 6. Awarding Ameranth increased damages of three times the amount of damages found
12 or assessed against Apple by reason of the knowing, willful and deliberate nature of Apple's
13 acts of infringement pursuant to 35 U.S.C. § 284;

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

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

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

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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 26, 2012

CALDARELLI HEJMANOWSKI & PAGE LLP

By: /s/ William J. Caldarelli
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