

CALDARELLI HEJMANOWSKI PAGE & LEER LLP

William J. Caldarelli (SBN 149573)
Ben West (SBN 251018)
3398 Carmel Mountain Road, Suite 250
San Diego, CA 92121
Tel: 858-720-8080
Email: wjc@chpllaw.com; dbw@chpllaw.com

WATTS LAW OFFICES

Ethan M. Watts (SBN 234441)
3398 Carmel Mountain Road, Suite 250
San Diego, CA 92121
Tel: (858) 509-0808
Email: emw@ewattslaw.com

Attorneys for Plaintiff,
AMERANTH, INC.

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

AMERANTH, INC. a Delaware
corporation,

Plaintiff,

v.

SPLICK-IT, INC., a Delaware
corporation, and DOES 1 through 20,
inclusive,

Defendants.

Case No. 17-cv-1093-DMS (WVG)

**AMERANTH, INC.'S REQUEST
FOR EXTENSION OF TIME TO
FILE MOTION FOR DEFAULT
JUDGMENT PURSUANT TO FED.
R. CIV. PROC. 55(b)(2) AND CIVIL
LOCAL RULE 55.1**

Ctrm: 13A

Judge: Hon. Dana M. Sabraw

**AND RELATED CROSS-
COMPLAINT.**

1 **I. INTRODUCTION**

2 Plaintiff, Ameranth, Inc., respectfully requests a 90-day extension of time to
3 file a Motion for Entry of Default Judgment under Fed. R. Civ. Proc. 55(b) and
4 Civil Local Rule 55.1. This request is made because the default judgment debtor-
5 Splick-It, Inc., itself appears to be defunct, but its operations seem to have been
6 transferred to other entities that may be successors, alter-egos, or otherwise persons
7 responsible for Splick-It, and discovery is necessary in order to determine the
8 nature of such relationships and provide the information required for judgment.

9 **II. BACKGROUND**

10 This is an action for breach of a patent license agreement that Ameranth, as
11 the patent-holder and licensor, brought against Splick-It, as the licensee. The
12 action was originally filed in San Diego County Superior Court, but Splick-It
13 removed the matter to District Court pursuant to 28 U.S.C. section 1454. The case
14 was coordinated with the consolidated Ameranth patent infringement litigation
15 cases (Dk. No. 32), and essentially placed at the “end of the line” in the case
16 schedule.

17 Splick-It, as an independent legal entity, does not appear to have endured the
18 various stays, delays, and scheduling suspensions and extensions that have marked
19 this matter. Eventually, both of its legal counsel of record withdrew from
20 representation (although, confusingly, both remain counsel of record in the
21 consolidated patent infringement action for defendant O-Web Technologies, Inc.,
22 dba Onosys, an entity that Splick-It acquired and with which it claimed to have
23 merged).

24 On January 29, 2021, the Court granted a motion for entry of default against
25 Splick-It (Dkt. No. 44), and the Clerk’s Office entered Splick-It’s default (Dkt. No.
26 45).

1 The Court’s Order for entry of default also directs Ameranth to: “file its
2 motion for entry of default judgment under Fed. R. Civ. Proc. 55(b) and Civil
3 Local Rule 55.1.” Dkt. No. 44, p. 2, ll. 16-17. Under Local Rule 55.1, such
4 motions are to be filed “within thirty (30) days of the entry of default” Civil
5 Local Rule 55.1. Based on the Clerk’s January 29, 2021 entry of default, the
6 current deadline to bring such a motion is March 1, 2021.

7 Because of the very unusual circumstances surrounding Splick-It, and the
8 murky relationships concerning the company and various other entities that appear
9 to be its successors¹ and/or potential alter-egos, Ameranth respectfully requests a
10 90-day extension, to June 1, 2021, to the deadline to bring a motion for entry of
11 default judgment so that it can conduct necessary discovery and investigation to
12 explore such relationships and then provide evidence to the Court on which a
13 judgment can be based.

14 As Ameranth advised the Court in its January 5, 2021, response to the
15 Court’s Order to Show Cause (Dkt. No. 41), a rather extraordinary set of facts exist
16 which require Ameranth to conduct discovery into the successor entities, assigns
17 and/or alter-egos of Splick-It.² While Splick-It itself no longer appears to exist and
18 no longer has legal counsel (and thus cannot respond to discovery or directly
19 provide any evidence of sales and transactions within the scope of license
20 agreement on which a judgment for royalties would be based), the operations of
21 Splick-It appear to have been passed along to inter-related entities, and Ameranth
22

23 ¹ The Ameranth-Splick-It patent license agreement from which this lawsuit arises
24 provides, in paragraph 2.3, that: “This Agreement shall be binding upon and inure
25 to the benefit of the respective successors and permitted assigns of the Parties
26 hereto.”

26 ² “Further investigation and discovery would be required to fully comprehend the
27 byzantine relationships and machinations behind the Splick-It/ O-Web/ nuOnosys/
28 Restaurant Technologies Investors, but it seems likely that some form of successor
or alter ego relationships exist that have not yet been fully explored.” Dkt. No. 41,
pp. 3-4.

1 believes Splick-It’s legal obligations and liabilities do as well.

2 The information Ameranth currently possesses has been obtained mostly
3 from publicly-available sources. Splick-It acquired O-Web Technologies, Inc.
4 (dba Onosys) in 2016 and claims to have merged with Onosys. While Splick-It
5 purports to have gone out of business, somehow Onosys (with which it merged),
6 continues to operate and is still a defendant in the Ameranth patent litigation cases.
7 Onosys itself, however, appears to have transitioned or re-formed somehow into a
8 new entity call nuOnosys, Inc.³, run by the same core group of people and
9 conducting business under the tradename Onosys.

10 As Ameranth explained in its January 5, 2021, response to the Court’s OSC⁴,
11 nuOnosys (suspected by Ameranth to be a successor or alter-ego of Splick-It
12 and/or Onosys), filed IPR 2020-01706 with the Patent Office on September 30,
13 2020, against another Ameranth licensee, RRT. In that IPR, nuOnosys, through its
14 lead counsel Thomas Cunningham (counsel for Domino’s in the consolidated
15 patent infringement litigation) and its new expert, Dr. Jeremy Glassenberg, adopted
16 positions as to Ameranth’s ‘077 patent which are contradictory to positions that
17 both Onosys/O-Web and Domino’s, both relying on the same prior expert, Stephen
18 Gray, asserted previously against the ‘077 patent in this Court.

20 ³ O-Web/Onosys, which purportedly had been acquired by and merged
21 with Splick-It, nonetheless and perplexingly apparently has been transformed into
22 yet another entity, nuOnosys, Inc. See <https://www.onosys.com/privacy-policy>
23 (“Thank you for choosing to be part of our community at nuOnosys, Inc., doing
business as Onosys”).

24 ⁴ “Creating further complication, nuOnosys’s legal counsel in recent IPR
25 proceedings before the Patent Trial and Appeal Board is Tom Cunningham of
26 Brooks Kushman PC, who represents Domino’s in the consolidated infringement
27 cases. See nuOnosys., Inc. v. RRT Holdings, LLC, IPR Case No. IPR2020-01706.
28 In the Petition for *Inter Partes* Review in that IPR proceeding, nuOnosys and
counsel Mr. Cunningham now favorably cite Ameranth’s ‘077 patent and Mr.
McNally’s inventions as the principal prior art to RRT’s ‘351 patent after
disparaging Ameranth’s patents for years before this Court.” Dkt. No. 41, p. 3 at n.
1.

1 The '077 patent is also one of the patents covered by the scope of the Ameranth-
2 Splick-It license agreement, and several of its claims remain pending and at issue
3 in the consolidated infringement action before the Court.

4 In order to sort out these complex inter-relationships, and obtain evidence on
5 which the Court can meaningfully assess and enter a default judgment, Ameranth
6 requests a 90-day extension of time to file a motion for entry of default judgment
7 so that it can conduct appropriate discovery on these issues. A 90-day extension is
8 warranted here, in light of the fact that the discovery involves out of state persons
9 and entities and is likely to be resisted, thus requiring motions to compel
10 compliance.

11 **III. CONCLUSION**

12 For the foregoing reasons, Ameranth respectfully requests the Court to grant
13 it a 90-day extension (to June 1, 2021) to file a motion for default judgment under
14 Civil Local Rule 55.1 so that Ameranth can conduct discovery necessary to the
15 preparation of such motion.

16 Respectfully submitted,

17 Dated: February 1, 2021

**CALDARELLI HEJMANOWSKI PAGE &
LEER LLP**

20 By: /s/ William J. Caldarelli

21 _____
William J. Caldarelli
22 Ben West

23 **WATTS LAW OFFICES**
Ethan M. Watts

24 Attorneys for Plaintiff,
25 AMERANTH, INC.