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# Domino's Patent Win 'Profoundly Wrong,' Justices Told

By [Tiffany Hu](#)

Law360 (June 5, 2020, 8:38 PM EDT) -- [Ameranth Inc.](#) told the [U.S. Supreme Court](#) that a decision invalidating its online menu patent asserted against [Domino's Pizza](#) was "profoundly wrong" because it axed claims not at issue in the case, and will have ramifications far beyond patent law.

In a petition filed Wednesday, Ameranth, which sells wireless systems for the hospitality market, urged the justices to take up its appeal of the Federal Circuit's [November decision](#) that upheld a lower court decision finding several claims of its patent were invalid under the high court's Alice ruling.

Ameranth told the justices that although the district judge said in a pretrial order that it could only assert five claims of its patent against Domino's, he granted summary judgment [invalidating](#) numerous other claims as well.

"Something is profoundly wrong when a court rules on matters that – at the court's explicit direction – were not contested by the litigants," the petition states. "The judicial system and the constitutional protection of due process do not work that way."

Ameranth urged the justices to grant its petition, saying the Federal Circuit ruling has ramifications that "run deeper and wider" than just patent cases, including in Racketeering Influenced and Corrupt Organizations Act cases, class actions and multidistrict litigation.

They "would be turned upside down if motions limited to specific defined issues could – without notice and without any evidentiary record – lead to broad rulings on other matters," it said.

Jerrold Ganzfried of Ganzfried Law, an attorney for Ameranth, told Law360 in an email Thursday that the petition "addresses a pervasive problem that arises frequently, especially in local patent rules that limit the number of claims that can be asserted."

"The commonly-used litigation streamlining in this case adversely affects the rights of patentholders whose ability to defend valuable intellectual property is hampered," Ganzfried said. "And these commonly-used shortcuts pose broader practical consequences for many other types of cases. The Federal Circuit decision conflicts with the majority of circuit courts on an important question that deserves the Supreme Court's review."

A Domino's spokeswoman did not immediately respond to a request for comment Thursday.

Ameranth accused around 30 companies of infringing the patent in a string of lawsuits filed starting in 2011. One of those companies, [Pizza Hut](#), had moved for summary judgment, which Domino's joined when Pizza Hut settled, the panel said.

At the very beginning of the litigation, Ameranth had named 12 out of 14 patent claims, but the court ordered Ameranth to limit its claims to five, so Ameranth stopped asserting the other claims, the opinion said.

But the panel said that amendment "does not mean that a case or controversy with respect to those claims disappeared," so those patent claims can still be invalidated.

While Pizza Hut hadn't named those extra nine claims, an Ameranth filing during summary judgment with Domino's addressed more than those five claims it was allowed to pursue for its infringement claims. In its November ruling, the Federal Circuit said this proves Ameranth was on notice about the additional claims and was able to address them.

The panel then affirmed that all the claims it had jurisdiction to review — 12 of the 14 claims — were invalid under Alice, which holds that abstract ideas are ineligible for patent protection absent an added inventive concept.

Several of the claims describe the abstract concept of "synchronous communications and automatic formatting for different handheld devices" without adding an inventive concept, the panel said. The other claims likewise failed to pass the Alice test, the Federal Circuit said.

"Even after reviewing the evidence in the light most favorable to Ameranth, it does not create a genuine dispute of material fact that would preclude summary judgment," the opinion said.

The patent-in-suit is U.S. Patent No. [8,146,077](#).

Amaranth is represented by Robert F. Ruyak of [RuyakCherian LLP](#) and Jerrold J. Ganzfried of Ganzfried Law.

Counsel information for Domino's was not immediately available Thursday.

The case is Ameranth Inc. v. Domino's Pizza LLC, case number unavailable, before the U.S. Supreme Court.

--Additional reporting by Dani Kass and Ryan Davis. Editing by Steven Edelstone.