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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMERANTH, INC.,

Plaintiff,

v.

PIZZA HUT, INC., PIZZA HUT OF AMERICA, INC., DOMINO'S PIZZA, LLC, DOMINO'S PIZZA, INC., PAPA JOHN'S USA, INC., OPENTABLE, INC., GRUBHUB, INC., TICKETMOB, LLC, EXIT 41, LLC, QUIKORDER, INC., SEAMLESS NORTH AMERICA, LLC, and O-WEB TECHNOLOGIES LTD.,

Defendants.

Case No. 3:11-cv-01810-JLS-NLS

DEFENDANTS' INITIAL PROPOSED CLAIM CONSTRUCTIONS

JURY TRIAL DEMANDED

I. INTRODUCTION

Pursuant to this Court's revised scheduling order of May 25, 2012 and the agreement of the parties, Pizza Hut, Inc., Pizza Hut of America, Inc., Domino's Pizza, LLC, Domino's Pizza, Inc., Papa John's USA, Inc., OpenTable, Inc., GrubHub, Inc., TicketMob, LLC, QuickOrder, Inc., Seamless North America, LLC, and O-Web Technologies Ltd. (collectively, "Defendants") hereby provide their Initial Proposed Claim Constructions with Extrinsic Evidence. Each of the identified Defendants joins in the same. Defendants reserve the right to add or remove claim terms from those proposed for construction, and to amend or supplement these proposed constructions. Further, by proposing a construction for claim term, or failing to propose a

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1 construction for claim term, Defendants in no way admit that construction of a particular claim
 2 term is required, not required, or possible. Defendants reserve their rights to challenge the
 3 validity of claims under 35 U.S.C. § 112 (as well as on any other ground). Defendants also
 4 reserve their rights to cite additional extrinsic evidence, including dictionary definitions, citations
 5 to learned treatises and prior art, and testimony of percipient and expert witnesses, to rebut the
 6 proposed constructions of Plaintiff. To the extent Plaintiff contends patent applications that claim
 7 priority to the Patents-in-Suit are extrinsic evidence, Defendants identify the prosecution histories
 8 for such applications. Defendants further identify Plaintiff Ameranth Inc.'s Disclosure of
 9 Asserted Claims and Infringement Contentions against Menusoft Systems Corporation and Cash
 10 Register Sales & Service of Houston, Inc. (dba CRS Texas) Pursuant to P.R. 3-1 and
 11 Identification of Document Production Accompanying Disclosure Pursuant to P.R. 3-2, and
 12 documents referenced therein, as additional extrinsic evidence.

13 **II. CLAIM TERMS PROPOSED FOR CONSTRUCTION**

14 The following table lists the claim constructions that Defendants propose, as well as
 15 where these terms are found in the asserted claims of U.S. Pat. Nos. 6,384,850 and 6,871,325
 16 (collectively "the Patents-in-Suit). Defendants also serve the cited extrinsic evidence as Exhibits
 17 A-K.

CLAIM TERM, PHRASE, OR CLAUSE	DEFENDANTS' CONSTRUCTIONS	EXTRINSIC EVIDENCE
1. "[An] [The] information management and synchronous communications system [for use with wireless handheld computing devices and the internet]" ('850 Claims 12-15) ('325 Claims 11-13, 15)	"a computerized system having multiple connected components, each of which stores hospitality applications and data, in which a change made to the hospitality applications and data stored on one of the components is instantaneously made in real time to hospitality applications and data stored on all other connected components"	AM0035260-87. AM0035249-59. Exhibit K – Webster's New World Computer Dictionary, 10th edition (2003).
2. "synchronous" ('850 Claims 12-15) ('325 Claims 11-13, 15)	"a change made to hospitality applications and data stored on one component is instantaneously made in real time to hospitality applications and data stored on other connected components"	AM0035260-87. AM0035249-59. Exhibit A – Microsoft Press Computer Dictionary, 3rd Edition (1997).

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CLAIM TERM, PHRASE, OR CLAUSE	DEFENDANTS' CONSTRUCTIONS	EXTRINSIC EVIDENCE
		<p>Exhibit B - IBM Dictionary of Computing, 10th Edition (1993).</p> <p>Exhibit K – Webster’s New World Computer Dictionary, 10th edition (2003).</p>
<p>3. “a central database containing hospitality applications and data” (‘850 Claim 12) (‘325 Claims 11-13)</p>	<p>“A single master database that holds (1) two or more software programs used to provide operational solutions in hospitality industries such as restaurants and hotels concerning, for example, food ordering, menus, wait-lists, and reservations and (2) data concerning food ordering, menus, wait-lists, and reservations”</p>	<p>Exhibit A – Microsoft Press Computer Dictionary, 3rd Edition (1997).</p> <p>Exhibit C - Computer Dictionary, 4th Edition (1993).</p> <p>Exhibit D - McGraw-Hill Dictionary of Computer & Electrical Engineering (2004).</p> <p>Exhibit E - Introduction to Database and Knowledge-Base Systems (1992).</p> <p>Exhibit F - Webster's Third New International Dictionary, 3rd Edition, (2002).</p> <p>Exhibit G – Webster’s Encyclopedic Unabridged Dictionary (1996).</p> <p>Exhibit H – American Heritage Dictionary, 3rd Edition (1996).</p> <p>Exhibit I - Prentice Hall Illustrated Dictionary of Computing, 2nd Edition (1995).</p>
<p>4. “hospitality applications and data / applications and data” (‘850 Claims 12, 13) (‘325 Claims 11-13, 15)¹</p>	<p>“two or more software programs used to provide operational solutions in hospitality industries such as restaurants and hotels concerning, for example, food ordering, menus, wait-lists, and reservations and data concerning food ordering, menus, wait-lists, and reservations”</p>	<p>Exhibit F - Webster's Third New International Dictionary, 3rd Edition, (2002).</p> <p>Exhibit G – Webster’s Encyclopedic Unabridged Dictionary (1996).</p> <p>Exhibit H – American Heritage</p>

¹ ‘325 Claims 11-13, and 15 are invalid as indefinite under 35 U.S.C. § 112, ¶ 2 because necessary claim language has been omitted from the claim. It is not possible to discern that this limitation in these claims requires plural applications simply by reading the patent and the patent owner did not seek correction of this error under 35 U.S.C. § 254 prior to this litigation.

CLAIM TERM, PHRASE, OR CLAUSE	DEFENDANTS' CONSTRUCTIONS	EXTRINSIC EVIDENCE
		Dictionary, 3rd Edition (1996).
5. "hospitality applications" (850 Claims 12, 13) (325 Claims 11-13)	"two or more software programs used to provide operational solutions in hospitality industries such as restaurants and hotels concerning, for example, food ordering, menus, wait-lists, and reservations"	Exhibit F - Webster's Third New International Dictionary, 3rd Edition, (2002). Exhibit G - Webster's Encyclopedic Unabridged Dictionary (1996). Exhibit H - American Heritage Dictionary, 3rd Edition (1996).
6. "hospitality . . . data" (850 Claims 12, 13) (325 Claims 11-13, 15)	"data concerning food ordering, menus, wait-lists, and reservations"	Exhibit F - Webster's Third New International Dictionary, 3rd Edition, (2002). Exhibit G - Webster's Encyclopedic Unabridged Dictionary (1996). Exhibit H - American Heritage Dictionary, 3rd Edition (1996).
7. "information" (850 Claims 12-15) (325 Claims 11-13, 15)	Plain and ordinary meaning.	
8. "wireless handheld computing device" (850 Claims 12-15) (325 Claims 11-13, 15)	"a wireless computing device that is sized to be held in one's hand"	
9. "web server" (850 Claim 12) (325 Claims 11-13)	"the computer that stores and serves [the at least one web page]"	Exhibit A - Microsoft Press Computer Dictionary, 3rd Edition (1997).
10. "web page" (850 Claims 12-15) (325 Claims 11-13)	"a document, with associated files for graphics and scripts, in a particular directory on a particular computer identifiable by a URL"	Exhibit A - Microsoft Press Computer Dictionary, 3rd Edition (1997).
11. "synchronize[d]" (850 Claim 12) (325 Claims 11-13)	"updating instantaneously and in real time the hospitality applications and data stored on all connected system components to reflect a change made to hospitality applications and data stored on one system component"	AM0035260-87. AM0035249-59. Exhibit A - Microsoft Press Computer Dictionary, 3rd Edition (1997). Exhibit K - Webster's New World Computer Dictionary, 10th edition (2003).
12. "synchronization" (850 Claims 12-13)	See "synchronized."	AM0035260-87. AM0035249-59.

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CLAIM TERM, PHRASE, OR CLAUSE	DEFENDANTS' CONSTRUCTIONS	EXTRINSIC EVIDENCE
('325 Claims 11-13)		Exhibit A – Microsoft Press Computer Dictionary, 3rd Edition (1997). Exhibit K – Webster’s New World Computer Dictionary, 10th edition (2003).
13. “[an] application program interface” ('850 Claims 12-15) ('325 Claims 11-13, 15)	“a set of routines used by a third party, non-hospitality software program to direct the performance of procedures by the operating system of the computerized system having multiple connected components”	Exhibit A – Microsoft Press Computer Dictionary, 3rd Edition (1997).
14. “[a] communications control module” ('850 Claims 12, 13) ('325 Claims 11-13)	Cannot be construed/insolubly ambiguous	Exhibit A – Microsoft Press Computer Dictionary, 3rd Edition (1997).
15. “wherein applications and data are synchronized between the central data base, at least one wireless handheld computing device, at least one Web server and at least one Web page” ('850 Claim 12) ('325 Claims 11-13)	This is a step, and the claim impermissibly combines two different classes of invention into a single claim. <i>See IPXL Holdings, LLC v. Amazon.com, Inc.</i> , 430 F.3d 1377 (Fed. Cir. 2005). The system must perform the step of making the same change to the hospitality applications and data contained in the central data base and the hospitality applications and data stored on the at least one connected wireless handheld computing device, at least one Web server, and at least one Web page, such that each contains identical hospitality applications and data. See “synchronized,” “central database containing hospitality applications and data,” wireless handheld computing device,” “web server,” and “web page.”	AM0035260-87. AM0035249-59.
16. “[wherein] the application program interface enables integration of outside applications with the hospitality applications”	See “application program interface,” “hospitality applications,” and “outside applications.” Otherwise, plain and ordinary meaning.	

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CLAIM TERM, PHRASE, OR CLAUSE	DEFENDANTS' CONSTRUCTIONS	EXTRINSIC EVIDENCE
('850 Claim 12) ('325 Claims 11-13)		
17. "outside applications" ('850 Claim 12) ('325 Claims 11-13)	"third-party non-hospitality software programs"	
18. "any other communications protocol" ('850 Claim 12) ('325 Claims 11-13)	Cannot be construed/insolubly ambiguous	
19. "[wherein the communications control module is] an interface between the hospitality applications and any other communications protocol" ('850 Claims 12-15) ('325 Claims 11-13, 15)	Cannot be construed/insolubly ambiguous	
20. "[a] single point of entry" ('850 Claim 13)	Plain and ordinary meaning.	
21. "allows the synchronization" ('850 Claim 13)	See construction of "synchronized" and "synchronization." Otherwise, plain and ordinary meaning.	
22. "synchronization of at least one wireless handheld computing device and at least one Web page with the central database so that at least one handheld device, at least one Web page and central database are consistent" ('850 Claim 13)	See construction of "synchronized," "synchronization," and "consistent." Otherwise, plain and ordinary meaning.	
23. "consistent" ('850 Claim 13)	"store the identical hospitality applications and data"	
24. "automatically communicated" ('850 Claim 14)	"instantaneously transmitted without human intervention"	Exhibit B - IBM Dictionary of Computing, 10th Edition (1993). Exhibit I - Prentice Hall Illustrated Dictionary of Computing, 2nd Edition (1995). Exhibit J - Webster's New

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CLAIM TERM, PHRASE, OR CLAUSE	DEFENDANTS' CONSTRUCTIONS	EXTRINSIC EVIDENCE
		World Dictionary of Computer Terms, 5th Edition (1994).
25. "information entered on at least one web page/information entered on at least one wireless handheld computing device" (850 Claims 14, 15)	See "web page" and "wireless handheld computing device." Otherwise, plain and ordinary meaning.	
26. "[information entered on at least one wireless handheld computing device is] automatically communicated to the central database and at least one Web page" (850 Claim 15)	See "web page" and "central database." Otherwise, plain and ordinary meaning.	Exhibit B - IBM Dictionary of Computing, 10th Edition (1993). Exhibit I - Prentice Hall Illustrated Dictionary of Computing, 2nd Edition (1995). Exhibit J - Webster's New World Dictionary of Computer Terms, 5th Edition (1994).
27. "[information entered on at least one web page and transmitted over the internet is] automatically communicated to the central database and at least one wireless handheld computing device" (850 Claim 14)	See "central database" and "wireless handheld computing device." Otherwise, plain and ordinary meaning.	Exhibit B - IBM Dictionary of Computing, 10th Edition (1993). Exhibit I - Prentice Hall Illustrated Dictionary of Computing, 2nd Edition (1995). Exhibit J - Webster's New World Dictionary of Computer Terms, 5th Edition (1994).
28. "the synchronized data" (325 Claims 11-13)	See "hospitality data" and "synchronized."	
29. "relates to orders" (325 Claim 13)	"pertaining to a purchase of hospitality goods or services"	
30. "orders" (325 Claim 13)	"purchase of hospitality goods or services"	
31. "the data" (325 Claim 15)	See "hospitality data."	
32. "[the data is sent to a] wireless paging device" (325 Claim 15)	"wireless pager"	
33. "containing" (850 Claim 12) (325 Claims 11-13)	Plain and ordinary meaning.	
34. "[are] stored" (850 Claim 12) (325 Claims 11-13)	"persistently saved and retained"	Exhibit B - IBM Dictionary of Computing, 10th Edition (1993).

Dated: July 13, 2012

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By /s/ Thomas W. Cunningham
Thomas W. Cunningham (Pro Hac Vice)
Frank A. Angileri (Pro Hac Vice)

SHEPPARD MULLIN RICHTER & HAMPTON
LLP
Stephen S. Korniczky
Rebecca S. Roberts

**Attorneys for Defendants
DOMINO'S PIZZA, LLC and DOMINO'S
PIZZA, INC.**

Dated: July 13, 2012

ROBERTSON & ASSOCIATES, APC

By: /s/ Les W. Robertson
Les W. Robertson

THE LAW OFFICES OF
KONRAD SHERINIAN, LLC
Konrad Shrinian (*Pro Hac Vice*)

THE LAW OFFICES OF
EUGENE M. CUMMINGS, P.C.
David Lesht (*Pro Hac Vice*)

**Attorneys for Defendant
GRUBHUB, INC.**

Dated: July 13, 2012

LATHAM & WATKINS LLP

By: /s/ James L. Day
James L. Day
Mark A. Flagel

**Attorneys for Defendant
OPENTABLE, INC.**

Dated: July 13, 2012

THOMPSON HINE

By: /s/ Troy S. Prince
Troy S. Prince (Pro Hac Vice)
John R. Mitchell (Pro Hac Vice)

JANIS LAW GROUP, APC
Dean T. Janis

**Attorneys for Defendant O-WEB
TECHNOLOGIES LTD.**

1 Dated: July 13, 2012

FULBRIGHT & JAWORSKI L.L.P.

2 By: /s/ Richard S. Zembek
Richard S. Zembek (Pro Hac Vice)

3 **Attorney for Defendant**
4 **PAPA JOHN'S USA, INC.**

5
6 Dated: July 13, 2012

STITES & HARBISON, PLLC

7 By: /s/ Joel T. Beres
Joel T. Beres

8 **Attorney for Defendants**
9 **PIZZA HUT, INC. and PIZZA HUT OF**
10 **AMERICA, INC.**

11 Dated: July 13, 2012

BAKER BOTTS L.L.P.

12 By: /s/ Eric J. Faragi
Eric J. Faragi

13
14 Robert C. Scheinfeld (*Pro Hac Vice*)
15 Eliot D. Williams (*Pro Hac Vice*)
Eric J. Faragi (*Pro Hac Vice*)

16 LAW OFFICE OF RICHARD A. CLEGG
17 Richard A. Clegg

18 **Attorneys for Defendant**
19 **SEAMLESS NORTH AMERICA, LLC**

20 Dated: July 13, 2012

SCHIFF HARDIN LLP

21 By: /s/ George C. Yu
George C. Yu

22
23 **Attorney for Defendant**
24 **QUIKORDER, INC.**

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CERTIFICATE OF SERVICE

I hereby certify that on July 13, 2012, I served Defendants' Initial Proposed Claim

Constructions via email on:

William J. Caldarelli
wjc@chplawfirm.com

Michael D. Fabiano
mdfabiano@fabianolawfirm.com

John William Osborne
josborne@osborneipl.com

Ethan Mahoney Watts
emw@ewattslaw.com

DATED: July 13, 2012.

/s/ Dustin M. Mauck