

22-1655, 22-1657, 22-1660, 22-1661, 22-1662, 22-1663, 22-1666, 22-1667,  
22-1668, 22-1669, 22-1671, 22-1672, 22-1673, 22-1674, 22-1675, 22-1676,  
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22-1686, 22-1687, 22-1689, 22-1690, 22-1692

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**United States Court of Appeals  
for the Federal Circuit**

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AMERANTH, INC.,

*Plaintiff-Appellant,*

– v. –

PAPA JOHN’S USA, INC., OPENTABLE, INC., SEAMLESS NORTH  
AMERICA, LLC, GRUBHUB, INC., AGILYSYS, INC., HYATT  
CORPORATION, STARWOOD HOTELS & RESORTS WORLDWIDE INC.,  
BEST WESTERN INTERNATIONAL, INC., MARRIOTT INTERNATIONAL,  
INC., RITZ-CARLTON HOTEL COMPANY, L.L.C., MARRIOTT HOTEL  
SERVICES, INC., RENAISSANCE HOTEL OPERATING COMPANY, HOTEL  
TONIGHT, INC., HOTELS.COM, L.P., HILTON RESORTS CORPORATION,

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*(For Continuation of Caption See Inside Cover)*

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*On Appeal from the United States District Court for the  
Southern District of California, Case No. 3:12-cv-00729-DMS-WVG  
Honorable Dana M. Sabraw*

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**REPLY BRIEF FOR PLAINTIFF-APPELLANT**

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*Defendants-Appellees.*

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**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

**CERTIFICATE OF INTEREST**

**Case Number** 2022-1655, 2022-1657, 2022-1660, 2022-1661, 2022-1662, 2022-1663, 2022-1666, 2022-1667, 2022-1668, 2022-1669, 2022-1671, 2022-1672, 2022-1673, 2022-1674, 2022-1675, 2022-1676, 2022-1677, 2022-1678, 2022-1679, 2022-1680, 2022-1681, 2022-1682, 2022-1683, 2022-1684, 2022-1686, 2022-1687, 2022-1689, 2022-1690, 2022-1692

**Short Case Caption** Ameranth, Inc. v. Papa John's USA, Inc. et al.

**Filing Party/Entity** Ameranth, Inc.

**Instructions:** Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box.** Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 11/17/2022

Signature: /s/ Richard C. Weinblatt

Name: Richard C. Weinblatt

<p><b>1. Represented Entities.</b> Fed. Cir. R. 47.4(a)(1).</p>	<p><b>2. Real Party in Interest.</b> Fed. Cir. R. 47.4(a)(2).</p>	<p><b>3. Parent Corporations and Stockholders.</b> Fed. Cir. R. 47.4(a)(3).</p>
<p>Provide the full names of all entities represented by undersigned counsel in this case.</p>	<p>Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities.</p> <p><input checked="" type="checkbox"/> None/Not Applicable</p>	<p>Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities.</p> <p><input checked="" type="checkbox"/> None/Not Applicable</p>
<p>Ameranth, Inc.</p>		

Additional pages attached

**4. Legal Representatives.** List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None/Not Applicable  Additional pages attached

Caldarelli, Hejmanowski, Page & Leer, LLP: William J. Caldarelli	Fabiano Law Firm, P.C: Michael D. Fabiano	Osborne Law LLC: John W. Osborne
Watts Law Offices: Ethan M. Watts		

**5. Related Cases.** Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

None/Not Applicable  Additional pages attached


**6. Organizational Victims and Bankruptcy Cases.** Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None/Not Applicable  Additional pages attached


5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

<i>Caption</i>	<i>Originating District Court Case No.</i>
Ameranth, Inc. v. Papa John's USA, Inc.	3:12-cv-00729-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. OpenTable, Inc.	3:12-cv-00731-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Seamless North America, LLC	3:12-cv-00737-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Grubhub, Inc.	3:12-cv-00739-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Agilysys, Inc.	3:12-cv-00858-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Hyatt Corporation	3:12-cv-01627-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Starwood Hotels & Resorts Worldwide Inc.	3:12-cv-01629-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Best Western International, Inc.	3:12-cv-01630-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California

<i>Caption</i>	<i>Originating District Court Case No.</i>
22-1668 Ameranth, Inc. v. Marriott International, Inc. et al.	3:12-cv-01631-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Hotel Tonight, Inc.	3:12-cv-01633-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Hotels.com, L.P.	3:12-cv-01634-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Hilton Resorts Corporation et al.	3:12-cv-01636-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Kayak Software Corporation	3:12-cv-01640-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Mobo Systems, Inc.	3:12-cv-01642-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Orbitz, LLC	3:12-cv-01644-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. StubHub, Inc.	3:12-cv-01646-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Ticketmaster, LLC et al.	3:12-cv-01648-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California

<i>Caption</i>	<i>Originating District Court Case No.</i>
Ameranth, Inc. v. Travelocity.com LP	3:12-cv-01649-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Usablenet, Inc.	3:12-cv-01650-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Fandango, Inc.	3:12-cv-01651-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
Ameranth, Inc. v. Hotwire, Inc.	3:12-cv-01653-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
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Ameranth, Inc. v. ATX Innovation, Inc.	3:12-cv-01656-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
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<i>Caption</i>	<i>Originating District Court Case No.</i>
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Ameranth, Inc. v. Starbucks Corporation	3:13-cv-01072-DMS-WVG Lead: 3:11-cv-01810-DMS-WVG United States District Court for the Southern District of California
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## I. INTRODUCTION

The district court unfairly took multiple litigation shortcuts and committed clear legal errors by misperceiving prior proceedings when granting judgment of ineligibility under § 101 of claims 4 and 5 of U.S. Patent No. 8,146,077 (the "'077 patent") and unjustly preventing Ameranth from litigating other claims of the '077 patent. Appellees' Response Brief ("Response") does not even contest the district court's misunderstanding of the facts and misapplication of both procedural and substantive law. Instead, it tacitly seems to argue, "So what?" However, clear violations of rights and procedural and substantive rules matter, and they are not harmless errors.

The Supreme Court has held that "[u]nder the Patent Act, and the case law before its passage, a patent is 'presumed valid.' § 282(a); *id.*, at 8, 55 S.Ct. 928. That presumption takes away any need for a plaintiff to prove his patent is valid to bring a claim." *Commil USA, LLC v. Cisco Systems, Inc.*, 575 U.S. 632, 643 (2015). Indeed, a party challenging validity must meet the "high bar Congress is presumed to have chosen: the clear and convincing standard. *See Microsoft Corp. v. i4i Ltd. Partnership*, 564 U.S. ———, ——— ———, 131 S.Ct. 2238, 2245–2247, 180 L.Ed.2d 131 (2011). Defendants must meet that standard to rebut the presumption of validity. *Ibid.*" *Id.* at 644. That did not happen in this case and this appeal will decide if these standards still apply and matter.

Here, claims 4 and 5 were wrongly adjudicated by the district court before Ameranth presented its arguments and evidence in support thereof. The district court voided Ameranth's rights by stripping away the presumption of validity and confirmed it already had decided invalidity, thus indisputably and concomitantly denying Ameranth its right to the presumption of validity when (a) it stated on December 2, 2021 that "[t]his Court has already telegraphed its rulings on claims 4 and 5," Appx6921 at 11.9-21, and (b) it ruled on February 5, 2021 that all claims of the '077 patent were found ineligible, even though that is not what this Court held in *Domino's*. Appx16287 ("After a thorough review the Court found the '077 Patent unpatentable under § 101, and granted the motion. Ameranth appealed that ruling to the Federal Circuit, which affirmed this Court's findings in an unpublished opinion."). All of this occurred before any briefing on claims 4 and 5, or on claims 2 and 12, and after the district court awarded punitive attorney's fees based upon its exceptional case ruling in the *Domino's* action and thus sanctioning Ameranth. In fact, '077 patent claims 2, 3, 10, and 12 were never invalidated by any court and this Court directed the district court to vacate its improper invalidation of claims 4 and 5.

The district court removed Ameranth's presumption of validity, shifted the burden of proof onto Ameranth to prove validity, and blocked Ameranth's efforts to enforce claims 4 and 5 of the '077 patent and/or assert claims 2 and 12.

Nothing in the Response refutes the fact that the district court, contrary to law:

1. Expressed its "presumption" that claims 4 and 5 were invalid as ineligible;
2. Shifted the burden of proof onto Ameranth, the patent owner, to prove the eligibility of claims 4 and 5. Although the Response asserts (citing Appx4) that the district court applied the correct burden, it is crystal clear that Appx4 fails to support the Response's misstated position;
3. Failed to even consider and address the factual disputes specifically related to eligibility raised by an uncontested expert declaration that addressed the claims and the understanding of the claimed invention by a person of ordinary skill in the art ("POSITA") at the time of invention;
4. Misinterpreted the scope of and what claims 4 and 5 are "directed to" by substituting its own lay opinion for that of a POSITA when deciding that their limitations are merely "field of use restrictions";
5. Failed to analyze or address how the additional elements of claims 4 and 5 add *something more* and provide an inventive concept under Step 2 of *Alice*;
6. Misunderstood that the additional elements of claims 4 and 5 narrowed and added inventive concepts beyond those of claim 1, and, instead, incorrectly concluded that they were "broader," and thereby encompassed by claim 1. The Response confirms that claims 4 and 5 are narrower than claim 1;

7. Issued a prejudicial seven-day "show cause" order requiring Ameranth to explain why it should be permitted to assert claims 2, 4, 5, and 12 (none of which this Court found ineligible).

All of these errors individually, and certainly in combination, reflect serious due process violations and result in reversible error.

## II. ARGUMENT

### **A. The District Court's Presumption of Invalidity Denied Ameranth Its Statutory Presumption of Validity and the Rights Associated With That Presumption, and Thus Was Not Harmless Error**

The district court simply ignored blackletter law that each patent claim is entitled to a presumption of validity. It then took its misunderstanding one step further by effectively gifting a presumption of invalidity to the Moving Defendants and then unjustly invalidating claims 4 and 5. The right to the presumption of validity is as important and foundational in patent law as the presumption of innocence is in criminal law.<sup>1</sup> Yet, Ameranth's claims were not afforded that presumption and instead were, if they were people, the equivalent of being presumed

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<sup>1</sup> "The purpose of the presumption of validity, codified at 35 U.S.C. § 282, is to contribute stability to the grant of patent rights. . . . The presumption does not dissolve and the burden of proof does not change during the [case]; rather, the evidence presented by the challenger must be of such quality and weight as to establish invalidity despite the presumption." *Magnivision, Inc. v. Bonneau Co.*, 115 F.3d 956, 958 (1997) (citing *Solder Removal Co. v. U.S. Int'l Trade Comm'n*, 582 F.2d 628, 632 (C.C.P.A. 1978) ("To speak of the presumption as 'no longer attaching' is to risk a concomitant, and unspoken, assumption that the burden of persuasion is thereafter no longer upon him who asserts invalidity.")).



guilty before having a trial.

As explained in Ameranth's Opening Brief ("Opening"), the district court's expansive and pejorative view adopted and clearly stated on February 5, 2021 misperceived the record, ignored this Court's mandate as to claims 4 and 5, and was contrary to long-settled legal principles. The Response does not contradict—nor could it since no contrary evidence exists—that the record evidence establishes Ameranth was compelled to litigate the patent-eligibility of claims 4 and 5 in the context of the district court's prejudged blanket view that (a) the entire '077 patent had been declared ineligible in *Domino's* and that this Court had affirmed that, (b) a cloud had been cast on Ameranth's patents, (c) no reasonable patent litigant would believe that the '077 patent was viable or ever had been so, (d) any further action to even try to enforce claims of the '077 patent would be "obstinate," and thus (e) Ameranth needed to be deterred from even attempting to do so. Appx16283-16303.<sup>2</sup> These facets, alone or in any combination, were highly prejudicial and are not harmless error.

The law is clear: Dependent claims are presumed valid despite an earlier finding of invalidity of the independent claim from which it depends, and the burden of proving invalidity is *always* on the attacker. 35 U.S.C. § 282 ("Each claim of a

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<sup>2</sup> Ameranth's Opening at p. 8 inadvertently cited to Appx16283-13203 instead of Appx16283-16303.

patent (whether in independent, dependent, or multiple dependent form) shall be presumed valid independently of the validity of other claims; dependent or multiple dependent claims shall be presumed valid even though dependent upon an invalid claim."); *Structural Rubber Products v. Park Rubber*, 749 F.2d 707, 714 (Fed. Cir. 1984) ("[T]he burden of proving invalidity is on the attacker. That burden is constant and *never changes* and is to convince the court of invalidity by clear evidence." (emphasis added) (quotation omitted)). Yet it **was changed** here.

This Court also has long held that the presumption of validity applies with full force, even when the invalidity challenge is brought under § 101. *Cellspin Soft, Inc. v. Fitbit Inc.*, 927 F.3d 1306, 1319 (Fed. Cir. 2019) ("This presumption reflects the fact that the Patent and Trademark Office has already examined whether the patent satisfies 'the prerequisites for issuance of a patent,' including § 101." (quoting *Microsoft Corp. v. i4i Ltd. P'ship*, 564 U.S. 91, 95-96 (2011))). Although the Response cited Appx4 when asserting that the district court applied the correct burden, clearly Appx4 fails to support the Response's position. Indeed, *nowhere* in the district court's opinion does it mention the burden of proof required of Moving Defendants to establish by clear and convincing evidence to invalidate Ameranth's patent claims.

By its legal errors, denial of Ameranth's rights, unjust shifting of the burden of proof to Ameranth to prove validity, and then not viewing the record in the light

most favorable to Ameranth, as detailed in the Opening and as further explained below, the district court erred, and such error is not harmless.

**1. Dr. Valerdi's Unrebutted Expert Declaration Correctly Examined and Opined as to Claims 4 and 5, Yet the District Court Wrongly Discarded the Declaration Via a Mere Footnote**

Dr. Valerdi's expert declaration was unrebutted and it explicitly discussed claims 4 and 5 while explaining how a POSITA would view them. Nevertheless, the district court entirely disregarded it, incorrectly asserting that the declaration did not even discuss claims 4 and 5, Appx7 n.1, and the Response continues the same fallacy. Resp. Br. at 13, 28. There is no doubt Dr. Valerdi's declaration analyzes the language of claims 4 and 5, *see* Appx7640-7689, and the Response's complaint is one of form over substance.<sup>3</sup>

More specifically, the Response states:

Dr. Valerdi offered three general categories of opinions: (1) the purported differences between claims 4 and 5 and claim 1; (2) how claims 4 and 5 overcome technical problems; and (3) alleged inventive concepts present in claims 4 and 5. Opening Br. 25–26; Appx7646; Appx7658–7664; Appx7666–7688. Missing from Dr. Valerdi's declaration, *cf.* Appx7640–7689, however, is any analysis of the words of the claims themselves . . . .

Resp. Br. at 28. Not only were the claims printed in his report, (1) how could Dr.

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<sup>3</sup> While further confirming disputes of fact, although Dr. Valerdi's declaration explicitly discusses claims 4 and 5 and what they mean to a POSITA, the Response's criticism is that the claim language should have been quoted more often. *See, e.g.,* Resp. Br. at 28 ("Missing from Dr. Valerdi's declaration, *cf.* Appx7640-7649, however is any analysis of the words of the claims themselves.").

Valerdi discuss the differences between claims 4 and 5 and claim 1 if he did not analyze the words themselves?; and (2) the claims and Dr. Valerdi's report use "ticketing application" and "reservation application."

For example, Dr. Valerdi's declaration explains:

12. The technologies which a POSITA would understand are described and claimed for the reservations embodiment in claim 4 of the '077 patent contain at least the following inventive concepts combined together to enhance computer technology: (1) a single point of entry, (2) maintaining database equilibrium, and (3) reflective routing to the appropriate devices concurrent in with synchronous communications and formatting with/for multiple/different handheld devices that each includes a mobile reservation application.

13. The technologies which a POSITA would understand are described and claimed for the ticketing embodiment in claim 5 of the '077 patent contain at least the following inventive concepts combined together that enhance computer technology: (1) a single point of entry, (2) maintaining database equilibrium, and (3) reflective routing to the appropriate devices concurrent with synchronous communications and formatting with/for multiple/different handheld devices that each include a mobile ticketing application.

Appx7646.

In fact, he analyzed the exact words of claim 4 showing how claim 4 overcomes technical problems, Appx7658-7662 at ¶¶ 51, 54-58, the inventive concepts of claim 4 including equilibrium, reflective routing, and single point of entry for reservations read in view of the specification, Appx7662-7664 at ¶¶ 59-68, and how those concepts would have been implemented using technical requirements and pseudocode (expressly derived from the claim in view of the '077 patent's disclosure), Appx7666-7675 at ¶¶ 72-82, by a person of ordinary skill in the art at the time the invention was

made. Nevertheless, the Response complains that pseudocode is not recited in the claims, Resp. Br. at 30, but the argument exemplifies why attorneys or lay people are not the ones to be relied upon to determine what is included in the claimed invention. That is the purview of a POSITA, such as Dr. Valerdi. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313 (Fed. Cir. 2005) ("[P]atents are addressed to and intended to be read by others *of skill in the pertinent art.*" (emphasis added)); *In re Nelson*, 280 F.2d 172, 181 (C.C.P.A. 1960), *rev'd on other grounds*, *In re Kirk*, 376 F.2d 936 (C.C.P.A. 1967) ("The descriptions in patents are not addressed to the public generally, to lawyers or to judges, but, as section 112 says, *to those skilled in the art* to which the invention pertains or with which it is most nearly connected." (emphasis added)).

Dr. Valerdi also applied the words of claim 5 showing how claim 5 overcomes technical problems, Appx7660-7661 at ¶¶ 53-56; Appx7675-7676 at ¶¶ 84-85, the inventive concepts of claim 5 including equilibrium, reflective routing, and single point of entry for ticketing read in view of the specification, Appx7676-7681 at ¶¶ 86-90, and how those concepts would have been implemented using technical requirements and pseudocode, Appx7680-7688 at ¶¶ 90-100, by a person of ordinary skill in the art.

No record evidence contradicts Dr. Valerdi's declaration, and as mentioned in the Opening, the substance of his declaration was not challenged in district court. (Opening Br. at 10 (citing Appx7758-7772).) Dr. Valerdi's declaration addresses the dispositive points by explaining (1) what the claims mean on their face to a POSITA

in view of the specification, and (2) how the claimed inventions improve technology and the efficiency of the back end/network server. The district court fatally erred when discarding Dr. Valerdi's declaration. *See Cellspin*, 927 F.3d at 1317-18 ("[P]lausible and specific factual allegations that aspects of the claims are inventive are sufficient. As long as what makes the claims inventive is recited by the claims, the specification need not expressly list all the reasons why this claimed structure is unconventional. In this case, Cellspin made specific, plausible factual allegations about why aspects of its claimed inventions were not conventional, e.g., its two-step, two-device structure requiring a connection before data is transmitted. The district court erred by not accepting those allegations as true." (citation omitted)).

The district court incorrectly held that the benefits of the claimed technology, those which make it not routine or conventional, must be explicitly set forth in the claims even though a person of ordinary skill in the art at the time of the invention would understand that those benefits are presented by the claims, Appx6-7, and the Response argues that the benefit has to be found in the specification. Resp. Br. at 30 ("And the specification contains nothing to support Ameranth's and its expert's arguments that these fields pose unique challenges different from other hospitality applications."). There is no case law or statutory requirement that a specification state the benefit achieved or challenges solved by the claimed inventions. The district court erred in discarding an unrebutted declaration from a POSITA that directly discusses

the claims themselves and explains the benefits achieved by the claimed inventions, when all evidence is to be viewed in the light most favorable to Ameranth.

Moreover, given that nothing in the record rebuts Dr. Valerdi's declaration, the Moving Defendants neither presented in district court nor in the Response any evidence to satisfy their burden of proving ineligibility and surely not by clear and convincing evidence. *TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1297 (Fed. Cir. 2020) ("[T]o the extent, if any, that extrinsic evidence is relevant to the summary-judgment analysis at Step 1, the evidence is one-sided. TecSec submitted an expert declaration asserting that the combination of techniques we have discussed was a specific, unconventional improvement in computer network functionality. J.A. 1960–72; see also J.A. 13 (denying Adobe's motion to strike portions of TecSec's declaration). Adobe has pointed to no evidence of its own that it submitted in support of its § 101 motion."). The Response argues that *TecSec* is distinguishable because "Defendants have not reformulated any of their arguments, and Ameranth's supporting evidence fails to address how the language of claims 4 and 5 provides an improvement in computer functionality." Resp. Br. at 32. The Response is wrong that *TecSec* does not apply. Dr. Valerdi's declaration expressly discusses the improvements to computer functionality that result from the inventions of claims 4 and 5 and it is irrelevant whether the Moving Defendants reformulated any of their arguments. Appx7646-7647 at ¶¶ 14-15; Appx7661-7664 at ¶¶ 57-68; Appx7666-7688 at ¶¶ 72-82, 84-101.

Because the Moving Defendants relied on no evidence from a POSITA, Dr. Valerdi's expert declaration provides the only actual evidence that sets forth the viewpoint of how a POSITA would understand the claims and the benefits of the claimed inventions at the time of the inventions. Such evidence, while extrinsic to the patent, should not have been brazenly disregarded so that the Moving Defendants' attorneys and the district court could then simply substitute their lay person opinions to invalidate patent claims.

**2. Claims 4 and 5 Claim Distinct and Different Embodiments and Are Not Merely Field of Use Restrictions**

Patents are not written for lay people, such as attorneys or judges. Yet, even though Dr. Valerdi provided the only unrebutted evidence as to what claims 4 and 5 mean to a person of ordinary skill in the art, the district court entirely ignored this and substituted its own lay person opinion for that of a POSITA when incorrectly deciding claims 4 and 5 are mere field-of-use restrictions. Appx4. Even the Moving Defendants' *own* arguments during claim construction evidenced that the "ticketing application" is *not* a mere field of use when they argued that claim 5's "ticketing application" was case dispositive because their accused systems did not contain the functionality required by a "ticketing application." Appx2915 (Moving Defendants' proposing "ticketing application" means "applications for creation of restaurant guest checks" and arguing "Defendants believe this term is claim [*sic*] dispositive for claim 5 to the extent an accused system does not include an application for the creation of



restaurant guest checks."). A patent challenger should not be permitted to do that which a patent owner is forbidden: a claim cannot be construed one way for infringement and a different way for validity. *Data Engine Technologies LLC v. Google LLC*, 10 F.4th 1375, 1381 (Fed. Cir. 2021) ("We have repeatedly rejected efforts to twist claims, 'like 'a nose of wax,' ' in 'one way to avoid [invalidity] and another to find infringement.'" (quoting *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1351 (Fed. Cir. 2001))).

Likewise, the Opening explained that claims 4 and 5 are back end focused and are not directed to claim 1's front end user interface. Opening Br. at 26-27. The Response does not contend otherwise.

The court failed to consider how the additional elements of claims 4 and 5 add ***something more*** than field of use restrictions and provide an inventive concept under *Alice* Step 2. See, e.g., *Phillips*, 415 F.3d at 1313 ("[P]atents are addressed to and intended to be read by others of skill in the pertinent art."); *In re Nelson*, 280 F.2d at 181 ("The descriptions in patents are not addressed to the public generally, to lawyers or to judges, but, as section 112 says, to those skilled in the art to which the invention pertains or with which it is most nearly connected."). Even the Response acknowledges that claim 1 does not recite the term "hospitality applications" and confirms that claim 1 is directed to *configuring and generating hospitality menus*. Resp. Br. at 23 n.4 ("Claim 1 does not specifically recite the term 'Hospitality

Applications,' but does recite a 'system for configuring and transmitting hospitality menus.' Appx254 at 15:57-58."). Thus, the Response tacitly acknowledges that claims 4 and 5 add *different* functionality (i.e., ticketing applications and reservation applications, respectively) that are not in claim 1.

And, adding significant applications whose software are fundamentally different from claim 1's software for configuring and transmitting menus results in different inventions, and not merely fields of use restrictions. In other words, the inventions of claims 4 and 5, which include, in an ordered combination, reflective technology, equilibrium, and a single point of entry, all of which are different from the invention of claim 1, are different from adding a field of use because they result in *different inventions* and not application of the same invention of claim 1 – unchanged – in one field to another field. *See Parker v. Flook*, 437 U.S. 584, 586 (1978) (applying a formula for computing an updated alarm limit to the petrochemical and oil-refining fields is a field of use limitation because it did not "cover every conceivable application of the formula").

It belies common sense and logic that one can argue that transmitting and generating hospitality menus is the same as adding an event ticketing or hospitality software reservation application. What the district court and the Response have improperly done is turn the claim language into "ticketing menus" and "reservation menus," which effectively and unjustly reads out the embodiments of claims 4 and 5

and their ordered combination of elements. *See GE Lighting Solutions, LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1311 (Fed. Cir. 2014) ("In particular, where claims can reasonably [be] interpreted to include a specific embodiment, it is incorrect to construe the claims to exclude that embodiment, absent probative evidence on the contrary." (quotation omitted)).

Dr. Valerdi's declaration explicitly and clearly discusses what claims 4 and 5 mean to one of ordinary skill in the art at the time of the invention, Appx7661-7663 at ¶¶ 56-60; Appx7666-7677 at ¶¶ 72-86; Appx7680-7688 at ¶¶ 90-100, and it is the only evidence of record as to what these claims mean to a POSITA. Yet, the district court misapprehends the record and its conclusion that the declaration "is not based on the language of the claims," Appx7 n.1, is incorrect and exceeds the bounds within which courts must assess patent eligibility on summary judgment.

For example, a significant portion of Dr. Valerdi's declaration discusses the "reservations applications" and the words of claim 4 itself, viewed *in light of the specification*, how the invention of claim 4 solves computer-based issues, Appx7661-7662 at ¶¶ 57-58, including through the inventive concepts of equilibrium, reflective routing, and single point of entry for reservations, Appx7662-7664 at ¶¶ 59-68, and how those concepts would be executed using pseudocode, Appx7666-7675 at ¶¶ 72-82, by a POSITA at the time the invention was conceived.

Dr. Valerdi also analyzed what is recited in claim 5 itself and its "ticketing

applications" *in light of the specification* and figures to show the technical challenges, Appx7675-7676 at ¶¶ 84-85, how those technical challenges would be solved via the inventive concepts of equilibrium reflective routing and single point of entry for ticketing, Appx7676-7681 at ¶¶ 86-90, and how those concepts would be addressed using technical requirements and pseudocode, Appx7680-7688 at ¶¶ 90-100, by a POSITA. As with claim 4, the technology necessary to implement the computational requirements of claim 5 did not exist at the time of the invention. Appx7658 at ¶ 50.

As Ameranth explained in its Opening, not only are claims 4 and 5 not "pen and paper" claims, but also they are not the same as "food ordering." (Opening Br. at 30-32.) The Response does not contend otherwise, and it does not challenge the correctness of Dr. Valerdi's explanation that the claimed inventions avoid duplication while maintaining system consistency, which results in a system that reduces conflicting and errant reservations from being made or tickets from being sold. (*Id.* (citing Appx7646-7647 at ¶¶ 14-15). As further detailed in the Opening, and also not contested in the Response, this improvement results in a higher degree of quality and predictability in real time reservations or ticket ordering for both customers and vendors, a minimized risk of duplicative reservations or ticket sales for the same seat(s), cost and time efficiency, and reliability. (*Id.* (citing *EcoServices, LLC v. Certified Aviation Services, LLC*, 830 Fed. Appx. 634, 642-43 (Fed. Cir. 2020) ("The systems of the claims at issue achieve a level of automation that provides an

improvement over the prior art human-operated washing systems. This improvement, as set forth in the specification of the '262 patent, provides such advantages as 'a higher degree of quality of an engine washing procedure,' a 'minimize[d] risk of wrongly operat[ed] equipment,' 'a higher degree of safety,' and 'cost efficien[cy] and reliab[ility].'""); *McRO, Inc. v. Bandai Namco Games Am. Inc.*, 837 F.3d 1299, 1314 (Fed. Cir. 2016) ("While the rules are embodied in computer software that is processed by general-purpose computers, Defendants provided no evidence that the process previously used by animators is the same as the process required by the claims.")). Claims 4 and 5 are "not the type of human activity that § 101 is meant to exclude" and the District Court erred. *SRI Int'l, Inc. v. Cisco Systems, Inc.*, 930 F.3d 1295, 1304 (Fed. Cir. 2019).

**3. The Response Admitted to the District Court's Legal Error by Confirming Claims 4 and 5 Are Narrower Than Claim 1, But Which the District Court Incorrectly Deemed to be Broader, and the District Court Relied on That Legal Error to Invalidate Claims 4 and 5**

The district court mistakenly agreed with the Moving Defendants that "reflective technology," "equilibrium," and a "single point of entry" of claims 4 and 5 *broaden* claim 1. Appx6 ("Ameranth attempts to paint claims 4 and 5 as disclosing elements not found in claim 1, namely 'reflective technology,' 'equilibrium,' and a 'single point of entry' system. However, as the Claim 4/5 Defendants point out, Ameranth's arguments ignore the dependent nature of claims 4 and 5, and the axiom 'that a dependent claim cannot be broader than the claim from which it depends.'")

(citation omitted)).

In the Response, Moving Defendants now reverse themselves and contend "[c]laims 4 and 5 unquestionably limit, not broaden claim 1 by applying the method of claim 1 to specific, narrower fields of use." Resp. Br. at 23. Although the Response is wrong that claims 4 and 5 are merely field of use limitations, it is correct that claims 4 and 5 are narrower than claim 1. And, by acknowledging claims 4 and 5 are narrower than claim 1, the Response confirms the district court committed a reversible error when it decided these claims are broader than claim 1.

The Response also incorrectly contends that "Ameranth's arguments were also contrary to Ameranth's previous representations that the '077 patent claims a unitary concept with application to a wide variety of industries," Resp. Br. at 26, and the district court also was duped by the same argument. Appx6 ("Ameranth's arguments also ignore Ameranth's previous descriptions of the invention described in the '077 Patent as a unitary concept with application to a wide variety of industries. (*See* Transcript of Markman Hearing at 11-12, ECF No. 906).") Reviewing the transcript pages relied upon by the district court *in context* indicates that the inventive idea of *menu generation* "arose first in the context of restaurant menus and food ordering, it has application to a wide variety of hospitality uses, including restaurant reservations, event ticketing, hotel reservations, et cetera." Appx6551, l.13 – Appx6554, l.2. This has nothing to do with the back end processing of a user's selection of those menu

items, which is to what the individual software applications in claims 4 and 5 are focused, as Ameranth has consistently explained to the district court throughout the case.<sup>4</sup>

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<sup>4</sup> During a motion hearing seeking summary judgment based on § 101, Ameranth's counsel explained to the district court when describing claim 5's ticketing application that it is different from menu generation:

AND THEN LET ME GIVE YOU AN EXAMPLE OUTSIDE OF THE FOOD ORDERING BECAUSE IT IS EASIER TO THINK OF IT THIS WAY.

TICKETING. ANOTHER ONE OF THE APPLICATIONS DISCUSSED IN ONE OF THE -- ONE OF THE DEPENDENT CLAIMS.

IF YOU GO TO A CONCERT VENUE AND YOU WANT TO SIT IN THE AISLE SEAT ON THE THIRD ROW, FOR ANY PARTICULAR NIGHT FOR THAT PARTICULAR SHOW THERE IS ONLY ONE AISLE SEAT ON THE RIGHT-HAND SIDE OF THE THIRD ROW.

SO A VENUE OPERATOR CAN'T HAVE YOU BUYING THAT TICKET, YOUR HONOR, ON YOUR HANDHELD DEVICE, AND ME BUYING THAT SAME TICKET ON MY SMARTPHONE. AS MUCH AS I LIKE YOU, I DON'T WANT TO SIT IN YOUR LAP FOR A CONCERT, RIGHT?

SO PART OF THE SYNCHRONIZATION NEEDS TO BE, THEN, NOT ONLY SYNCHRONIZING THE MENU INFORMATION AND CHANGES, BUT FOR THIS TYPE OF APPLICATION WHERE THERE IS A, IF YOU WILL, A LIMITED INVENTORY, WHEN AN ORDER COMES IN FROM ONE OF THE HANDHELD DEVICES THAT HAS TO GO INTO THE SINGLE POINT OF ENTRY IN THE SYSTEM. IT HAS TO BE RECONCILED WITH THE -- WHAT IS CALLED THE MASTER MENU OF TICKETS HERE. AND THEN IT HAS TO GET PROMULGATED BACK OUT. SO THAT IF YOU GET THAT TICKET AT 8:59 AND I TRY TO GET THAT SAME TICKET AT, YOU KNOW, 9:05, I HAVE MISSED IT.

Appx16692 ll.1-22; *see also* Appx7622.

Under settled principles, claims 4 and 5 are narrower because the technology is based on the back end reservations and event ticketing technology of claims 4 and 5, respectively. For example, as discussed above, reflective routing technology only applies to the systems of claims 4 and 5 which means that they are *narrower* systems than claim 1's system. *See Phillips*, 415 F.3d at 1315 ("[T]he presence of a dependent claim that adds a particular limitation gives rise to a presumption that the limitation in question is not present in the independent claim." (citing *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 910 (Fed. Cir. 2004))). Dr. Valerdi explained in his declaration that claim 1 is directed to menu generation for hospitality applications, not for the back end processing of a user's selections of those menu items, and that the inventions of claims 4 and 5 improved computer technology, Appx7661-7664 at ¶¶ 57-68; Appx7666-7688 at ¶¶ 72-82, 84-101. Ameranth informed the district court of these facts in its brief, when citing and block quoting from the specification and from Dr. Valerdi's declaration. Appx7610-7639. Nevertheless, the district court ignored all of this evidence and improperly decided that its lay person view trumped that of a POSITA and that claims 4 and 5 were broader than claim 1. This was clear error.

**B. The Response Does Not Dispute the District Court's Misapplication of Both Procedural and Substantive Law**

The Response misses the mark by recasting Ameranth's position inaccurately. *Alice* Step 2 requires courts to determine whether *something more* exists in the claims. The district court failed to do that analysis, and the same is true of the Response.



This Court held in *Intellectual Ventures I LLC v. Capital One Bank (USA)*, 792 F.3d 1363, 1366 (Fed. Cir. 2015), that at *Alice* Step 1, "[a]n abstract idea does not become nonabstract by limiting the invention to a particular field of use or technological environment . . . ." At Step 2, this Court ruled that "limiting the claims to the particular technological environment . . . is, *without more*, insufficient to transform them into patent-eligible applications of the abstract idea at their core", *Electric Power Group v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016) (emphasis added), and whether that something more exists requires **viewing the claims through the lens of one of ordinary skill in the art at the time of the invention**, as patents are not written for judges, attorneys, or lay people, nor may they be the subject of hindsight. *See, e.g., In re Nelson*, 280 F.2d at 181 ("The descriptions in patents are not addressed to the public generally, to lawyers or to judges, but, as section 112 says, **to those skilled in the art** to which the invention pertains or with which it is most nearly connected." (emphasis added)); *Phillips*, 415 F.3d at 1313 ("[P]atents are addressed to and intended to be read by others **of skill in the pertinent art**." (emphasis added)); *see also DataCloud Technologies, LLC v. Squarespace Inc.*, C.A. No. 21-164-LPS, at p. 4 (D. Del. Feb. 2, 2022)<sup>5</sup> (Judge Stark ruling, "It may be that these claims are clearly and

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<sup>5</sup> The *DataCloud Technologies, LLC v. Squarespace Inc.*, C.A. No. 21-164-LPS (D. Del. Feb. 2, 2022), opinion is available at <https://www.ded.uscourts.gov/sites/ded/files/opinions/21-164.pdf> (last accessed Nov. 16, 2022).

convincingly invalid on their face, [but] that would have to be analyzed from the perspective of a person of ordinary skill in the art. I am not such a person and I have nothing in my record to help me understand whether the defendant [is] right that a person of ordinary skill in the art would view the claims exactly the way the defendant argues.").

However, the district court failed to do so, sticking to the negative opinions it had formed earlier and, in its own words, "telegraphed" that the claims are ineligible. Appx6921 at ll.9-21. Ameranth's Opening explained why the court erred, Opening Br. at 23-26, and the Response does not challenge the substance of Ameranth's arguments. Instead, the Response argues that "the district court correctly looked to the language of claims 4 and 5—rather than extrinsic evidence—to determine whether they contained an inventive concept", Resp. Br. at 28, and "'the inventive concept must be evident *in the claims*,'" Resp. Br. at 24 (citation omitted), but it fails to mention that *it must be evident to a POSITA*, not a lay person. As Ameranth's Opening explained, the district court legally erred by substituting its own uncorroborated, lay opinion for the understanding of one of ordinary skill in the art at the time of the invention and disregarding the something more that exists when the claimed inventions are viewed through the eyes of a POSITA. Opening Br. at 24-26.

Further, the Response does not challenge the accuracy of Dr. Valerdi's declaration when the declaration explains why the Moving Defendants and the

district court were wrong:

12. The technologies which a POSITA would understand are described and claimed for the reservations embodiment in claim 4 of the '077 patent contain at least the following inventive concepts combined together to enhance computer technology: (1) a single point of entry, (2) maintaining database equilibrium, and (3) reflective routing to the appropriate devices concurrent in with synchronous communications and formatting with/for multiple/different handheld devices that each includes a mobile reservation application.

13. The technologies which a POSITA would understand are described and claimed for the ticketing embodiment in claim 5 of the '077 patent contain at least the following inventive concepts combined together that enhance computer technology: (1) a single point of entry, (2) maintaining database equilibrium, and (3) reflective routing to the appropriate devices concurrent with synchronous communications and formatting with/for multiple/different handheld devices that each include a mobile ticketing application.

Appx7646.

Accordingly, examining claims from the vantage point of a POSITA is imperative and cannot be disregarded, yet it was. Patent-eligibility determinations are subjective enough as is, but it is wrong to not view claims and claimed inventions through the eyes of a POSITA.<sup>6</sup>

When the facts are viewed, as they must be on a Rule 56 motion and as this Court must do, in the light most favorable to Ameranth, meaningful limitations preclude claims 4 and 5 from impermissibly preempting "the basic tools of scientific

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<sup>6</sup> Ameranth notes that the Supreme Court has called for the Solicitor General's opinion in a case involving § 101. *Interactive Wearables, LLC v. Polar Electro Oy*, \_\_\_ S. Ct. \_\_\_, No. 21-1281, 2022 WL 4651135, at \*1 (Oct. 3, 2022) (call for view of Solicitor General).

and technological work" and "thereby thwarting the primary object of the patent laws." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347, 2354 (2014) (quoting *Association for Molecular Pathology v. Myriad Genetics, Inc.* 133 S. Ct. 2107 (2013)).

**C. The District Court Denied Ameranth Its Due Process Rights by Preventing Ameranth from Fairly Litigating the Merits and Reasserting Claims Not Invalidated in *Domino's***

The Response does not dispute that Ameranth asserted claim 12 against 15 of the Appellees prior to electing five claims pursuant to the district court's order to reduce the number of claims asserted. Appx8640-8684; *see also* Appx1920-1979; Appx2027-2032; Appx2039-2059; Appx2075-2080. Likewise, the Response does not disagree that claims asserted by Ameranth at any time in the litigation—and not formally withdrawn—remain in the case if the opposing party filed a counterclaim seeking invalidity, even if they are not among the limited number of claims the district court required to be litigated first. *Ameranth, Inc. v. Domino's Pizza, LLC*, 792 Fed. Appx. 780, 782-85 (Fed. Cir. 2019). The Response also does not contest that Ameranth informed the district court in *March 2017* that it would have asserted more than five claims but for the court's order. Appx2335 ("Ameranth served Infringement Contentions on Defendants on March 24, 2017, fully complying with the Court's numerical restrictions on the number of claims to be asserted. But for that restriction, Ameranth would have asserted on average about 14 claims against each defendant and all 18 claims against several of the defendants."

added)). Thus, contrary to the district court's unjust conclusion, after having been handcuffed for years, Ameranth's seeking to now add more claims, claims that it had advised the district court it had intended to assert, was not "an attempt at a 'do over.'" Appx12 (citation omitted). The Response also fails to acknowledge that *the cases were stayed for years and administratively closed, and Ameranth promptly sought to add claims when the stay was to be lifted*, as Ameranth explained in its Opening. Opening Br. at 37-38.

Further, as detailed in Ameranth's Opening, 10 months prior to issuing the show cause order, the district court, without even acknowledging this Court's mandate to vacate its improper invalidation of claims 4 and 5, issued a ruling declaring *Domino's* an "exceptional case" and penalizing Ameranth under 35 U.S.C. § 285. Appx16283-16303. In that order the court reiterated its erroneous conclusion that *all* claims of the '077 patent were found ineligible, Appx16287 ("After a thorough review, the Court found the '077 Patent unpatentable under § 101, and granted the motion. Ameranth appealed that ruling to the Federal Circuit, which affirmed this Court's findings in an unpublished opinion."), and that Ameranth's position was so weak that "Ameranth's intent to continue with this litigation, and to pursue litigation on other patents from the same family, is indicative of its obstinate position, and suggests a need to deter similar conduct in the future." Appx16300. Yet, Ameranth's exercising its right to protect its intellectual property (licensed by

48 different companies) and relying on its statutory right to its presumption of validity, a presumption so important that the Supreme Court has stated it is a "common core of thought and truth reflected in this Court's precedents for a century", *Commil*, 575 U.S. at 643 (quotation omitted), is not being obstinate.

Having that prejudged and pejorative mindset, the district court disadvantaged Ameranth by only giving it one (1) week and 15 pages to show cause why it should be permitted to litigate claims this Court did not decide on the merits in *Domino's*, while denying it its right to a reply brief.<sup>7</sup> The court's unfair show cause order failed to provide Ameranth sufficient time to submit an expert declaration and fairly create a factual record for the claims it sought to re-assert or add to the cases. After all, this Court decided that the declarations Ameranth sought to rely on in *Domino's* were "directed to unclaimed features," 792 Fed. Appx. at 788, and Ameranth should have had a fair opportunity to address that criticism. Thus, Ameranth did not waive anything in its Opening, rather it argued as it does again here, that its due process rights were violated, and because the district court had clearly prejudged the outcome anyway, its only recourse was to appeal to this Court.

Unquestionably, the district court had unjustly and erroneously extended its *Domino's* exceptional case findings, Appx16283-16303, to deny Ameranth its rights

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<sup>7</sup> The Response does not contest that the district court issued the show cause order the same day Ameranth's counsel refused to concede during a hearing that claims 4 and 5 were invalid. Appx6921 at 1.9 – Appx6922 1.12.

and due process based on the false premise that the entire '077 patent had been invalidated, that this Court had affirmed that finding to justify a supposed Ameranth lack of diligence in adding claims and supporting its denial of Ameranth's rights to assert claims 2 and 12 or asserting claims 4 and/or 5 against additional defendants/Appellees,<sup>8</sup> and that Ameranth needed to be deterred from enforcing its patent rights. And it sought to do and did just that, i.e., deter/prevent Ameranth from exercising its rights.

### III. CONCLUSION AND PRAYER

For the reasons stated herein and in Ameranth's Opening, this Court should reaffirm the presumption of validity and the clear and convincing evidentiary standard by reversing the district court's grant of the Motion for Summary Judgment of Unpatentability of Claims 4 and 5, reversing the denial of Ameranth's request to litigate claims not decided in *Domino's*, and remanding the case for further proceedings. This appeal should be heard on the same day as companion Appeals 2022-1200 and 2022-2223, which are to be decided by the same panel.

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<sup>8</sup> Ameranth asserted claim 4 against 19 of the Appellees. Appx8640-8684; *see also* Appx1920-1979; Appx2027-2032; Appx2039-2059; Appx2075-2080.

Dated: November 17, 2022

Respectfully submitted,

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**UNITED STATES COURT OF APPEALS  
FOR THE FEDERAL CIRCUIT**

**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS**

**Case Number:** 2022-1655, 2022-1657, 2022-1660, 2022-1661, 2022-1662, 2022-1663, 2022-1666, 2022-1667, 2022-1668, 2022-1669, 2022-1671, 2022-1672, 2022-1673, 2022-1674, 2022-1675, 2022-1676, 2022-1677, 2022-1678, 2022-1679, 2022-1680, 2022-1681, 2022-1682, 2022-1683, 2022-1684, 2022-1686, 2022-1687, 2022-1689, 2022-1690, 2022-1692

**Short Case Caption:** Ameranth, Inc. v. Papa John's USA, Inc. et al.

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The foregoing filing complies with the relevant type-volume limitation of the Federal Rules of Appellate Procedure and Federal Circuit Rules because it meets one of the following:

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Date: 11/17/2022

Signature: /s/ Richard C. Weinblatt

Name: Richard C. Weinblatt