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# Fed. Circ. Largely Clears Axing Menu Patent In Domino's Fight

By [Dani Kass](#)

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Law360 (November 4, 2019, 8:39 PM EDT) -- A California federal court was clear to invalidate several abstract claims from an [Ameranth Inc.](#) online menu patent even though some of those claims had fallen into the background of the litigation against [Domino's Pizza LLC](#), the Federal Circuit said Friday.

Ameranth's [appeal](#) said nine of the 14 claims U.S. District Judge Dana M. Sabraw had invalidated on [summary judgment](#) couldn't be axed, as they weren't asserted against Domino's. But the Federal Circuit largely disagreed, saying all but two of the nine challenged claims had been asserted, even if they were put on the back burner.

Ameranth, which sells wireless systems for the hospitality market, 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 all but the two claims rebuffed by the Federal Circuit. But the court ordered Ameranth to limit its claims, so Ameranth stopped asserting the other nine, 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. The panel said this proves Ameranth was on notice about the additional claims and was able to address them.

The Federal Circuit then affirmed that all the claims it had jurisdiction to review — 12 of the 14 invalidated claims — were invalid under the [U.S. Supreme Court's Alice](#) decision. Under Alice, courts first look at whether a patent is abstract and then whether there is an added inventive concept that would make it patent eligible.

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.

Richard Weinblatt of [Stamoulis & Weinblatt LLC](#), representing Ameranth, said the company will be challenging the ruling.

“Ameranth believes the ruling is incorrect for several reasons, some of which are the subject of currently pending petitions for writ of certiorari before the Supreme Court,” he said. Weinblatt didn’t immediately respond to requests for clarification on those pending petitions.

Counsel for Domino’s didn’t immediately respond to a request for comment.

U.S. Circuit Judges Sharon Prost, S. Jay Plager and Timothy B. Dyk sat on the panel for the Federal Circuit.

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

Ameranth is represented by Richard Weinblatt of Stamoulis & Weinblatt.

Domino's is represented by Frank Angileri, Thomas W. Cunningham and John P. Rondini of [Brooks Kushman PC](#).

The case is Ameranth Inc. v. Domino's Pizza LLC, case number [19-1141](#), in the [U.S. Court of Appeals for the Federal Circuit](#).

--Additional reporting by Ryan Davis and Matt Bernardini. Editing by Abbie Sarfo.