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Fed. Circ. Overstepped In Menu Patent Fight, Full Court Told

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Law360 (December 3, 2019, 9:02 PM EST) -- [Ameranth Inc.](#) has asked the full Federal Circuit to revive several of its online menu patent claims challenged by [Domino's Pizza](#), saying the panel deemed them abstract without sufficient evidence and wrongly altered patent eligibility standards.

In a petition for rehearing Monday, Ameranth tore apart the panel's [Nov. 1 decision](#), accusing it of drawing inappropriate conclusions and claiming the company never had the chance to defend certain patent claims. Additionally, Ameranth said the panel added an enablement requirement to challenges under the section of the Patent Act dealing with patent-eligible subject matter.

Ameranth, which sells wireless systems for the hospitality market, had accused some 30 companies of infringing its patent.

Following a motion for summary judgment from [Pizza Hut](#), which Domino's took over once its rival settled, U.S. District Judge Dana M. Sabraw had invalidated 14 claims on summary judgment. The decision was based on the [U.S. Supreme Court's Alice](#) ruling, under which courts first look at whether a patent is abstract and then whether there is an added inventive concept that would make it patent-eligible.

The Federal Circuit affirmed Judge Sabraw's decision for 12 of those claims, including several that had been on the backburner during the litigation.

Early on, Ameranth had been ordered to limit its claims, so it stopped asserting several of them. The panel had 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.

In its petition Monday, Ameranth said it was never given the chance to address the eligibility of those claims. The panel had held that Ameranth was on notice of them and could have addressed their patent eligibility during summary judgment, but Ameranth said that was unfair, as neither Domino's nor Pizza Hut had brought them up in their summary judgment bids.

"The panel put the burden on Ameranth to prove eligibility of claims not addressed in the summary judgment motion," the petition states. "It is axiomatic that this burden-shifting is wrong as a matter of law."

More broadly, Ameranth also pushed back on the idea that those claims could be invalidated, saying a pretrial order and the record made clear that only the claims it prioritized were being litigated.

Ameranth's rehearing petition also claims the Federal Circuit did not view evidence in the company's favor, as it is required to do at the summary judgment stage. In particular, the panel made its own decisions about what was "routine and conventional" at the patent's priority date, "ignor[ing] Ameranth's facts and evidence," the petition states.

The company also claims the Federal Circuit raised and answered questions of "weighing evidence, making credibility judgments, and addressing narrow facts that utterly resist generalization" for the first time on appeal, which was inappropriate.

Then, Ameranth accused the Federal Circuit of adding an enablement requirement to challenges under Section 101 of the Patent Act. This same concern is at issue in another [pending rehearing bid](#) filed by [American Axle & Manufacturing](#) on Nov. 18, which Ameranth cited.

In both cases, the companies say the Federal Circuit wrongfully added a requirement that the claims must make clear to a judge how to use an invention. Enablement is unrelated to whether a patent covers patent-eligible subject matter and involves an analysis of claim construction, a patent's specification, and the knowledge of a skilled artisan, not just whether the judge can use an invention based on its claims, Ameranth said.

"The panel's decision shifts patent-eligibility inquiries to other sections of the patent code," the company said. "Even if enablement were relevant, whether the patent would enable a skilled artisan to practice the claimed invention is an issue of fact, and a panel's announcement that the judges do not know how to make the claimed invention is improper."

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

Ameranth's attorney, Richard Weinblatt of [Stamoulis & Weinblatt LLC](#), told Law360 on Tuesday that "Ameranth's claimed invention was widely recognized by industry-leaders as ground-breaking and innovative at the time it was introduced."

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

Ameranth is represented by Richard Weinblatt of Stamoulis & Weinblatt.

Domino's Pizza 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 et al., 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 Jay Jackson Jr.

