

https://www.law360.com/ip/articles/1231712/full-fed-circ-won-t-take-up-menu-patent-fight?nl_pk=7545a5b5-6a94-47d3-8aa3-2e19884905c5&utm_source=newsletter&utm_medium=email&utm_campaign=ip

Full Fed. Circ. Won't Take Up Menu Patent Fight

By [Dani Kass](#)

Share us on: By [Dani Kass](#)

Law360 (January 7, 2020, 6:16 PM EST) -- The full Federal Circuit on Monday said it won't hear [Ameranth Inc.](#)'s objections to a panel ruling allowing its online menu patent claims to be invalidated, in a victory for [Domino's Pizza LLC](#).

Ameranth had [asked the full court](#) to step in on Dec. 2, saying the panel deemed the company's patent claims abstract without sufficient evidence and added an enablement requirement to challenges under the section of the Patent Act dealing with patent-eligible subject matter. But the Federal Circuit wasn't persuaded, with both the original panel and the full court refusing to rehear the case.

Richard Weinblatt of [Stamoulis & Weinblatt](#), Ameranth's attorney, told Law360 that they'll be appealing to the [U.S. Supreme Court](#).

"Ameranth still strongly believes in the merits of its petition and will be timely petitioning the Supreme Court to correct the errors and confusion from Section 101 law, which both the Federal Circuit itself and the U.S. solicitor general believe is urgently needed," Weinblatt said in an email.

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

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, a motion Domino's joined when Pizza Hut settled, the panel said.

U.S. District Judge Dana M. Sabraw invalidated 14 claims based on that summary judgment request, and the Federal Circuit in [November upheld](#) the majority of that ruling.

Ameranth's appeal to the full court faulted the panel for allowing the California court to invalidate claims that had been on the back burner during the litigation. The panel had said Ameranth was on notice about the additional claims and was able to address them.

Additionally, Ameranth said the panel added an enablement requirement to challenges under Section 101 of the Patent Act. To meet enablement requirements, a person skilled in the art has to be able to make and use the patented invention.

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 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. Editing by Jack Karp.