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# Justices Urged To Look At 'Unfairness' In Domino's Patent Win

By [Tiffany Hu](#)

Law360 (August 27, 2020, 6:39 PM EDT) -- Ameranth is pressing the [U.S. Supreme Court](#) to consider whether its online menu patent asserted against [Domino's Pizza](#) was correctly invalidated, citing a recent Federal Circuit ruling that it says highlights the "unfairness inherent in its unsettled law on patent eligibility."

In a supplemental brief filed Wednesday, [Ameranth Inc.](#) urged the high court to take up its petition for certiorari, which argued that the Federal Circuit in November [incorrectly upheld](#) a lower court decision finding several claims of its patent were [invalid](#) under the high court's Alice ruling.

The certiorari petition centered on the panel's affirmance of the district judge's ["profoundly wrong"](#) decision to grant summary judgment on claims Ameranth was not allowed to assert against Domino's. The ruling had ramifications far beyond patent law, it argued.

Weeks after the petition was filed, the Federal Circuit issued a revised version of a split October ruling that struck down two claims in an American Axle patent. The new ruling, which was also divided, [affirmed one claim](#) as ineligible but remanded the other for further proceedings because "the abstract idea basis was not adequately presented and litigated in the district court."

In its latest brief, Ameranth said the American Axle ruling revealed a deep divide among circuit judges on due process and procedural issues in the majority's approach. While half the en banc court believed it correctly applied high court precedent, the other half argued that the decision was, in the words of U.S. Circuit Judge Kimberly A. Moore, a "dramatic expansion" of patent law.

Ameranth warned that the impasse brought by the judges' differing opinions "exacerbates

the unfairness inherent in its unsettled law on patent eligibility," making the justices' guidance on the contentious issue "immediate and dire."

"The recent modified opinion and en banc denial in American Axle demonstrate why certiorari should be granted here," Ameranth wrote. "The judicial system works properly only when parties have a fair opportunity to provide courts with the evidence, arguments and information essential for sound adjudication."

Counsel for the parties did not immediately respond to requests for comment Thursday.

Ameranth, which sells wireless systems for the hospitality market, had accused around 30 companies of infringing the patent at issue 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, according to the panel's November opinion.

At the very beginning of the litigation, Ameranth had named 12 out of 14 patent claims, but the court ordered Ameranth to limit its claims to five, so Ameranth stopped asserting the other claims, 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 claims beyond the five it was allowed to pursue for its infringement claims. In its November ruling, the Federal Circuit said this proves Ameranth was on notice about the additional claims and was able to address them.

The panel then affirmed that all the claims it had jurisdiction to review — 12 of the 14 claims — were invalid under *Alice*, which holds that abstract ideas are ineligible for patent protection absent an added inventive concept.

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.

The patent-in-suit is U.S. Patent No. [8.146.077](#).

Ameranth is represented by Robert F. Ruyak of [RuyakCherian LLP](#), and Jerrold J. Ganzfried of Ganzfried Law.

Domino's is represented by Frank A. Angileri of [Brooks Kushman PC](#).

The case is Ameranth Inc. v. Domino's Pizza LLC et al., case number [19-1351](#), before the U.S. Supreme Court.

--Additional reporting by Dani Kass and Ryan Davis. Editing by Adam LoBelia.