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Menu Patent In Case Against Domino's, Others Axed By Alice

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Law360 (September 27, 2018, 5:58 PM EDT) -- The week before a series of trials were set to begin, a California federal judge has ruled that an online menu patent asserted against [Domino's Pizza Inc.](#) and dozens of other restaurant, hotel and online ordering companies is invalid under Alice for claiming only abstract ideas.

In a decision Tuesday, Judge Dana Sabraw of the Southern District of California granted Domino's motion for summary judgment that [Ameranth Inc.](#)'s patent on Web-based ordering technology is invalid because it covers patent-ineligible subject matter. The Patent Trial and Appeal Board [previously denied](#) several petitions challenging the patent.

A trial against Domino's in the case was set to get underway on Monday. It was scheduled to be followed by a separate trial in November against [Papa John's USA Inc.](#), with trials against companies like Seamless North America LLC, [Starbucks Corp.](#), Marriott Hotel Services Inc., [Hotels.com LP](#), [Apple Inc.](#), [Ticketmaster LLC](#) and many others slated for the following months.

Ameranth, which sells wireless systems for the hospitality market, accused around 30 companies of infringing the patent in suits filed since 2011 that were consolidated by Judge Sabraw.

After finding the patent invalid as ineligible under Section 101 of the Patent Act, the judge vacated all the trial dates and asked the parties to file briefs next week on whether final judgment should be issued in the Domino's case or in each individual case as well.

William J. Caldarelli of [Caldarelli Hejmanowski Page & Leer LLP](#), an attorney for Ameranth, said Wednesday that "while we have great esteem for Judge Sabraw, we respectfully disagree with his decision and plan to promptly pursue an appeal of this issue to the Federal Circuit."

"We believe in the merits of our planned appeal," he added. "The law on patentability under Section 101 is a topic of considerable debate and is going through a great deal of development recently. Ameranth believes this issue is appropriate for de novo review by the Federal Circuit."

Ameranth's patent describes an information-management and communications system that generates menus and allows handwriting and voice modification of orders.

The patent says that the claimed technology “facilitates user-friendly and efficient generation of computerized menus for restaurants,” and allows them to enter and manage information and automatically update the online menu when a new item is added or modified.

Following the two-part test established under the [U.S. Supreme Court](#)’s Alice v. CLS Bank decision, Judge Sabraw first found that the patent is directed to the abstract idea of configuring and transmitting menu information. He then found that the patent does not claim an inventive concept and simply uses commonly known computer hardware and software.

“There is nothing in these elements, either individually or in combination, that transforms the claimed abstract idea into a patent-eligible application of the abstract ideas,” the judge wrote. “Accordingly, the asserted claims ... are unpatentable under Section 101.”

Ameranth began suing companies that offer online ordering over its patents seven years ago, initially asserting two patents, then adding two others.

However, many claims of three of the patents were found invalid under Alice by the PTAB in covered business method patent reviews requested by the accused infringers. The Federal Circuit [affirmed those findings](#) in 2016 and also invalidated other claims the PTAB had upheld.

The defendants also filed petitions for CBM review of the fourth patent, the only one remaining in the case, but the PTAB refused to review the validity of that patent. That set the stage for infringement trials to be scheduled in California, until Tuesday’s ruling invalidated the patent. [Pizza Hut Inc.](#) was initially slated to be the first company to go on trial, but it [settled last month](#).

Ameranth said in a statement earlier this year about an earlier ruling in the case that it has licensed its patents to 45 companies, including some that sublicense its technology to major restaurant chains.

An attorney for Domino’s could not immediately be reached for comment.

The patent-in-suit is U.S. Patent Number [8,146,077](#).

Domino’s is represented by Thomas W. Cunningham, Frank A. Angileri and William E. Thomson Jr. of [Brooks Kushman PC](#), and Stephen S. Korniczky of [Sheppard Mullin Richter & Hampton LLP](#).

Ameranth is represented by William J. Caldarelli, Lee E. Hejmanowski and Ben West of Caldarelli Hejmanowski Page & Leer LLP, Michael D. Fabiano of Fabiano Law Firm PC, John W. Osborne of [Osborne Law LLC](#), Ethan M. Watts of Watts Law Offices, and Brandon J. Witkow and Cory A. Baskin of Witkow Baskin.

The case is In re: Ameranth Cases, case number [3:11-cv-01810](#), in the U.S. District Court for the Southern District of California.