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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IPDEV CO., vs. AMERANTH, INC., <hr style="width: 100%;"/>	Plaintiff, Defendant.	CASE NO. 14cv1303 DMS (WVG) ORDER GRANTING DEFENDANT’S MOTION TO CONSOLIDATE
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This case comes before the Court on Defendant’s motion to consolidate this case with 35 related patent infringement cases designated *In re Ameranth Patent Litigation Cases*, Lead Case Number 11cv1810. Plaintiff filed an opposition to the motion, and Defendant filed a reply. For the reasons set out below, the motion is granted.

**I.
BACKGROUND**

Plaintiff IPDEV Co. filed the present case against Defendant Ameranth Inc. on May 27, 2014. Plaintiff seeks a determination that its United States Patent Number 8,738,449 (“the ‘449 Patent”) has priority of inventorship over Ameranth’s United States Patents Numbers 6,384,850 (“the ‘850 Patent”), 6,871,325 (“the ‘325 Patent”) and 8,146,077 (“the ‘077 Patent”).

Ameranth has asserted these patents against numerous parties in the related patent infringement cases. IPDEV is not named as a defendant in any of those cases,

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1 but its affiliate QuikOrder, Inc. is so named. *See* Case Nos. 11cv1810, 12cv0742.¹
2 Pizza Hut, a customer and indemnitee of QuikOrder, is also named as a defendant in
3 those cases. *See id.*

4 On October 15, 2013, Pizza Hut and numerous other defendants in the patent
5 infringement cases filed a petition with the Patent Trial and Appeal Board (“PTAB”)
6 seeking review of the validity of Ameranth’s patents under the Transitional Program for
7 Covered Business Method (“CBM”) Patents.² The PTAB declined to review any claims
8 of the ‘077 Patent, but agreed to review certain claims of the ‘850 and ‘325 Patents.
9 Those claims will be tried before the PTAB, and those proceedings are expected to
10 conclude by late January or mid February 2015.

11 After the petitions for CBM review were filed, all defendants in the patent
12 infringement cases, including QuikOrder and Pizza Hut, moved to stay those cases
13 pending the outcome of the PTAB proceedings. The Court granted that motion, and
14 stayed the patent infringement cases pending the outcome of the PTAB proceedings.
15 As stated above, Ameranth now moves to consolidate this case with the related patent
16 infringement cases.

17 **II.**
18 **DISCUSSION**

19 The legal basis for Defendant’s request is Federal Rule of Civil Procedure 42(a).
20 Rule 42(a) provides: “If actions before the court involve a common question of law or
21 fact, the court may: (1) join for hearing or trial any or all matters at issue in the actions;
22 (2) consolidate the actions; or (3) issue any other orders to avoid unnecessary cost or
23 delay.” Fed. R. Civ. P. 42(a). Defendant argues this case involves a number of issues
24 common to the patent infringement cases, therefore this case should be consolidated

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26 ¹ IPDEV and QuikOrder are represented by the same counsel, Schiff Hardin
27 LLP.

28 ² QuikOrder was one of the few defendants that did not petition for CBM review.

1 with those cases and all of the cases should be litigated together. The Court agrees with
2 Defendant for the following reasons.

3 First, there are questions of fact and law common to this case and the patent
4 infringement cases. Although the legal claims in this case are different from the legal
5 claims in the patent infringement cases, both this case and the patent infringement case
6 involve the same Ameranth patents, namely the '077, '850 and '325 Patents. Two of
7 those patents (the '850 and '325) are currently being reviewed by the PTAB, and the
8 outcome of those proceedings may affect the scope of this case, *i.e.*, what claims from
9 those patents are subject to this interference proceeding.

10 Second, because this case and the patent infringement cases involve the same
11 Ameranth patents, it would be more efficient and economical to litigate issues related
12 to those patents together. For instance, it would be more efficient and economical to
13 proceed with claim construction issues on the Ameranth patents on a consolidated basis
14 rather than in two separate proceedings. The same goes for any validity issues related
15 to the Ameranth patents.

16 **III.**

17 **CONCLUSION**

18 For these reasons, the Court grants Defendant's motion to consolidate this case
19 with the related patent infringement cases. In accordance with the stay imposed in the
20 patent infringement cases, the Court stays this case as well pending the outcome of the
21 PTAB proceedings.

22 **IT IS SO ORDERED.**

23 DATED: October 14, 2014

24 

25 HON. DANA M. SABRAW
26 United States District Judge