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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AMERANTH, INC.,)	Civil No. 11cv1810 JLS (NLS)
)	
Plaintiff,	)	Consolidated with:
v.	)	12cv729 JLS (NLS) 12cv1640 JLS (NLS)
	)	12cv731 JLS (NLS) 12cv1642 JLS (NLS)
PIZZA HUT, INC.; ET AL.,	)	12cv732 JLS (NLS) 12cv1643 JLS (NLS)
	)	12cv733 JLS (NLS) 12cv1644 JLS (NLS)
Defendants.	)	12cv737 JLS (NLS) 12cv1646 JLS (NLS)
	)	12cv739 JLS (NLS) 12cv1648 JLS (NLS)
	)	12cv742 JLS (NLS) 12cv1649 JLS (NLS)
AND RELATED COUNTERCLAIMS.	)	12cv858 JLS (NLS) 12cv1650 JLS (NLS)
	)	12cv1627 JLS (NLS) 12cv1651 JLS (NLS)
	)	12cv1629 JLS (NLS) 12cv1652 JLS (NLS)
	)	12cv1630 JLS (NLS) 12cv1653 JLS (NLS)
	)	12cv1631 JLS (NLS) 12cv1654 JLS (NLS)
	)	12cv1633 JLS (NLS) 12cv1655 JLS (NLS)
	)	12cv1634 JLS (NLS) 12cv1656 JLS (NLS)
	)	12cv1636 JLS (NLS) 12cv1659 JLS (NLS)

**SCHEDULING ORDER REGULATING
DISCOVERY AND OTHER PRETRIAL
PROCEEDINGS IN A PATENT CASE**

On February 20, 2013, the court held a second Case Management Conference pursuant to Rule 16 of the Federal Rules of Civil Procedure and the Patent Local Rules. After consulting with the attorneys of record for the parties and being advised of the status of the case, and good cause appearing,

IT IS ORDERED:

1. **Motions to Amend.** Any motion to join other parties, to amend the pleadings, or to file additional pleadings shall be filed on or before **September 6, 2013.**
2. **Disclosure of Asserted Claims and Infringement Contentions.** According to the staggered schedule set forth in paragraph 4(E) the February 22, 2013 Order Following Second Case Management Conference and Case Management Order,¹ Plaintiff shall serve a “Disclosure of Asserted Claims and Infringement Contentions.” Separately for each opposing party, the “Disclosure of Asserted Claims and Infringement Contentions” must contain the following information:
- a. Each claim of each patent in the suit that is allegedly infringed by each opposing party;
 - b. Separately for each asserted claim, each accused apparatus, product, device, process, method, act, or other instrumentality (“Accused Instrumentality”) of each opposing party of which the party is aware. This identification must be as specific as possible. Each product, device and apparatus must be identified by name or model number, if known. Each method or process must be identified by name, if known, or by any product, device, or apparatus which, when used, allegedly results in the practice of the claimed method or process;
 - c. A chart identifying specifically where each element of each asserted claim is found within each Accused Instrumentality, including for each element that such party contends is governed by 35 U.S.C. § 112(6), the identity of the structure(s), act(s), or material(s) in the Accused Instrumentality that performs the claimed function;
 - d. For each claim which is alleged to have been indirectly infringed, an identification of any direct infringement and a description of the acts of the alleged indirect infringer that contribute to or are inducing that direct infringement. Insofar as alleged direct infringement is based on joint acts of multiple parties, the role of each such party in the direct infringement must be described.
 - e. Whether each element of each asserted claim is claimed to be literally present and/or present under the doctrine of equivalents in the Accused Instrumentality;
 - f. For any patent that claims priority to an earlier application, the priority date to which each asserted claim allegedly is entitled;
 - g. If a party claiming patent infringement asserts or wishes to preserve the right to rely, for any purpose, on the assertion that its own apparatus, product, device, process, method, act, or other instrumentality practices the claimed invention, the party must identify, separately for each asserted claim, each such apparatus, product, device, process, method, act, or other instrumentality that incorporates or reflects that particular claim; and

¹That schedule provides that Ameranth will serve its infringement contentions according to the following schedule: (1) Pizza Companies and Providers on **April 1, 2013;** (2) Food Ordering Companies on **April 15, 2013;** (3) Reservations Companies on **April 29, 2013;** (4) Hotel Companies on **May 13, 2013;** (5) Travel Aggregators on **May 28, 2013;** (6) Ticketing Companies on **June 10, 2013;** (7) POS (Point of Sale) Companies on **June 24, 2013;** and (8) Others on **July 8, 2013.**

1 h. If a party claiming patent infringement alleges willful infringement, the basis for such
2 allegation.

3 3. **Document Production Accompanying Disclosure.** With the “Disclosure of Asserted Claims
4 and Infringement Contentions,” the party claiming patent infringement must produce to each
5 opposing party, or make available for inspection and copying, the following documents in the
6 possession, custody and/or control of that party:

7 a. Documents (e.g., contracts, purchase orders, invoices, advertisements, marketing
8 materials, offer letters, beta site testing agreements, and third party or joint development
9 agreements) sufficient to evidence each discussion with, disclosure to, or other manner of
10 providing to a third party, or sale of or offer to sell, the claimed invention prior to the
11 date of application for the patent in suit. A party’s production of a document as required
12 herein does not constitute an admission that such document evidences or is prior art
13 under 35 U.S.C. §102;

14 b. All documents evidencing the conception, reduction to practice, design, and development
15 of each claimed invention, which were created on or before the date of application for the
16 patent in suit or the priority date identified pursuant to P.L.R. 3.1(e), whichever is earlier;

17 c. A copy of the file history for each patent in suit and each application to which a claim for
18 priority is made under P.L.R. 3.1(e); and

19 d. Documents sufficient to evidence ownership of the patent rights by the party asserting
20 patent infringement; and

21 e. If a party identifies instrumentalities pursuant to Patent L.R. 3.1.g, documents sufficient
22 to show the operation of any aspects or elements of such instrumentalities the patent
23 claimant relies upon as embodying any asserted claims.

24 The producing party must separately identify by production number which documents
25 correspond to each category.

26 The party claiming patent infringement is required to use its best efforts to obtain the documents
27 to make a timely disclosure if the documents identified above are not in the possession, custody and/or
28 control of that party.

4. **Invalidity Contentions.** On or before **September 6, 2013**, the Defendants will serve, to the
extent reasonably feasible, a Joint Set of Invalidity Contentions under Patent Local Rule 3.3,
along with all materials described in Patent Local Rules 3.4(a) and (b). The “Invalidity
Contentions” must contain the following information:

a. The identity of each item of prior art that allegedly anticipates each asserted claim or
renders it obvious. This includes information about any alleged knowledge or use of the
invention in this country prior to the date of invention of the patent. Each prior art patent

1 must be identified by its number, country of origin, and date of issue. Each prior art
 2 publication must be identified by its title, date of publication, and where feasible, author
 3 and publisher. Prior art under 35 U.S.C. §102(b) must be identified by specifying the
 4 item offered for sale or publicly used or known, the date the offer or use took place or the
 5 information became known, and the identity of the person or entity which made the use
 6 or which made and received the offer, or the person or entity which made the information
 7 known or to whom it was made known. Prior art under 35 U.S.C. §102(f) must be
 8 identified by providing the name of the person(s) from whom and the circumstances
 9 under which the invention or any part of it was derived. Prior art under 35 U.S.C.
 10 §102(g) must be identified by providing the identities of the person(s) or entities involved
 11 in and the circumstances surrounding the making of the invention before the patent
 12 applicant(s);

- 13 b. Whether each item of prior art anticipates each asserted claim or renders it obvious. If
 14 obviousness is alleged, an explanation of why the prior art renders the asserted claim
 15 obvious, including an identification of any combinations or prior art showing
 16 obviousness;
- 17 c. A chart identifying where specifically in each alleged item of prior art each element of
 18 each asserted claim is found, including for each element that such party contends is
 19 governed by 35 U.S.C. §112(6), the identity of the structure(s), act(s), or material(s) in
 20 each item of prior art that performs the claimed function;
- 21 d. Any grounds of invalidity based on indefiniteness under 35 U.S.C. §112(2) of any of the
 22 asserted claims; and
- 23 e. Any grounds of invalidity based on lack of written description, lack of enabling
 24 disclosure, or failure to disclose the best mode under 35 U.S.C. §112(1).

25 5. **Document Production Accompanying Invalidity Contentions.** With the “Invalidity
 26 Contentions,” the party opposing a claim of patent infringement must produce or make available
 27 for inspection and copying:

- 28 a. Source code, specifications, schematics, flow charts, artwork, formulas, or other
 documentation sufficient to show the operation of any aspects or elements of any
 Accused Instrumentality identified by the patent claimant in its Patent Local Rule 3.1.c
 chart;
- b. A copy of each item of prior art identified pursuant to Patent Local Rule 3.3.a, which
 does not appear in the file history of the patent(s) at issue. To the extent any such item is
 not in English, an English translation of the portion(s) relied upon must be produced.

6. **Exchange of Proposed Claim Constructions and Extrinsic Evidence.**

- a. On or before **September 26, 2013**, the parties will simultaneously exchange a proposed
 construction of each claim term, phrase, or clause which the parties have identified for
 claim construction purposes. Each such “Proposed Claim Construction” will also for
 each element which any party contends is governed by 35 U.S.C. §112(6), identify the
 structure(s), act(s), or material(s) corresponding to that element.
- b. At the same time the parties exchange their respective “Proposed Claim Constructions,”
 they must also provide an identification of extrinsic evidence, including without
 limitation, dictionary definitions, citations to learned treatises and prior art, and

1 testimony of percipient and expert witnesses they contend support their respective claim
 2 constructions. The parties must identify each such item of extrinsic evidence by
 3 production number or produce a copy of any such item not previously produced. With
 respect to any such witness, percipient or expert, the parties must also provide a brief
 description of the substance of that witness' proposed testimony.

4 c. On or before **October 24, 2013**, the parties shall simultaneously exchange "Responsive
 5 Claim Constructions" identifying whether the responding party agrees with the other
 party's proposed construction, or identify an alternate construction in the responding
 party's proposed construction, or set forth the responding party's alternate construction.

6 d. At the same time the parties exchange their respective "Responsive Claim
 7 Constructions," they must also provide a identification of extrinsic evidence, including
 without limitation, dictionary definitions, citations to learned treatises and prior art, and
 8 testimony of percipient and expert witnesses they contend support any responsive claim
 constructions. The parties must identify each such item of extrinsic evidence by
 9 production number or produce a copy of any such item not previously produced. With
 respect to any such witness, percipient or expert, the parties must also provide a brief
 10 description of the substance of that witness' proposed testimony.

11 e. The parties must thereafter meet and confer for the purposes of narrowing the issues and
 12 finalizing preparation of a Joint Claim Construction Chart, Joint Claim Construction
 Worksheet and Joint Hearing Statement.

13 7. **Joint Claim Construction Chart, Worksheet and Hearing Statement.** On or before

14 **November 21, 2013**, the parties shall complete and file a Joint Claim Construction Chart, Joint
 15 Claim Construction Worksheet and Joint Hearing Statement.

16 a. The Joint Hearing Statement must include an identification of the terms whose
 17 construction will be most significant to the resolution of the case up to a maximum of 10
 18 terms. The parties must also identify any term among the 10 whose construction will be
 case or claim dispositive. If the parties cannot agree on the 10 most significant terms, the
 19 parties must identify the ones which they do agree are most significant and then they may
 evenly divide the remainder with each party identifying what it believes are the
 remaining most significant terms. However, the total terms identified by all parties as
 20 most significant cannot exceed 10. For example, in a case involving 2 parties, if the
 parties agree upon the identification of 5 terms as most significant, each may only
 21 identify 2 additional terms as most significant; if the parties agree upon 8 such terms,
 each party may only identify only 1 additional terms as most significant;

22 b. The Joint Claim Construction Chart must have a column listing complete language of
 23 disputed claims with the disputed terms in bold type and separate columns for each
 party's proposed construction of each disputed term. Each party's proposed construction
 24 of each disputed claim term, phrase, or clause, must identify all references from the
 specification or prosecution history that support that construction and an identification of
 25 any extrinsic evidence known to the party on which it intends to rely either to support its
 proposed construction of the claim or to oppose any other party's proposed construction
 26 of the claim, including, but not limited to, as permitted by law, dictionary definitions,
 citations to learned treatises and prior art, and testimony of percipient and expert
 27 witnesses. For every claim with a disputed term, each party shall identify with specificity
 the impact of the proposed constructions on the merits of the case.

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1 c. The parties Joint Claim Construction Worksheet must be in the format set forth in
2 **Appendix A** and include any proposed constructions to which the parties agree, as well
3 as those in dispute. The parties must jointly submit the Joint Claim Construction
Worksheet on computer disk in both Word and Wordperfect format or in such other
format as the court may direct.

4 d. The Joint Hearing Statement must include:

5 i. The anticipated length of time necessary for the Claim Construction Hearing;

6 ii. Whether any party proposes to call one or more witnesses, including experts, at
7 the Claim Construction Hearing, the identity of each such witness, and for each
8 expert, a summary of each opinion to be offered in sufficient detail to permit a
9 meaningful deposition of that expert; and

10 iii. The order of presentation at the Claim Construction Hearing.

11 e. At the court's discretion, within 7 days of the submission of the Joint Claim Construction
12 Chart, Joint Claim Construction Worksheet and Joint Hearing Statement, the court will
13 hold a status conference with the parties, in person or by telephone, to discuss the
14 schedule, witnesses and any other matters regarding the Claim Construction Hearing.

15 8. **Completion of Claim Construction Discovery.** The parties shall complete all discovery,
16 including any depositions of any witnesses, including experts, the parties intend to use in the
17 Claim Construction Hearing by **December 19, 2013**. Fed.R.Civ.P. 30 applies to depositions,
18 except as to experts. An expert witness identified in a party's Joint Hearing Statement may be
19 deposed on claim construction issues. The identification of said expert in the Joint Hearing
20 Statement may be deemed good cause for a further deposition on all substantive issues.

21 9. **Claim Construction Briefs.**

22 a. On or before **January 16, 2014**, the parties shall simultaneously file and serve opening
23 briefs and any evidence supporting their claim construction.

24 b. On or before **February 27, 2014**, the parties shall simultaneously file and serve briefs
25 responsive to the opposing party's opening brief and any evidence directly rebutting the
26 supporting evidence contained in the opposing party's opening brief.

27 c. Absent leave of Court, the provisions of Civ.L.R. 7.1.h for length of briefs for supporting
28 and reply memoranda shall apply to the length of opening and responsive claim
construction briefs.

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1 10. **Claim Construction Hearing.** On **March 27, 2014** at **9:00 a.m.**, **Judge Sammartino** will
2 conduct a Claim Construction Hearing, to the extent that parties or the court believe a hearing is
3 necessary for construction of the claims at issue.

4 **IT IS SO ORDERED.**

5 DATED: February 22, 2013

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7 Hon. Nita L. Stormes
8 U.S. Magistrate Judge
9 United States District Court
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