

San Diego Judge Ends Up Letting Domino's Foe Appeal \$2.7M Fee Award

By [Andrew Karpan](#) · [Listen to article](#)

Law360 (August 31, 2022, 5:18 PM EDT) -- A California federal judge changed his mind and decided to give a patent-holding company's lawyers another go at fighting his ruling ordering the company to pay [Domino's Pizza](#) \$2.7 million in attorney fees over a failed patent lawsuit, ruling that a blown deadline resulted from "excusable neglect."

The about-face from U.S. District Judge Dana M. Sabraw came down on Tuesday, on the relatively minor issue of whether lawyers for a San Diego company called Ameranth could file a reconsideration bid over [a decision](#) from the judge last year that Ameranth's patent case against the pizza franchise had been "especially weak." This had eventually opened the door to a [later ruling](#) that Ameranth had to pay Domino's the seven-figure amount billed by the pizza brand's lawyers.

Then, in June, Judge Sabraw [ruled that](#) Ameranth's lawyers had missed the filing deadline to brief him on their arguments for why he was wrong. But on Tuesday, in a short, four-page [order](#), he wrote that he was now convinced, by further briefings, to overlook that blown deadline.

"In the latest round of briefing, Ameranth finally presented evidence in support of its request, and finally explained the prejudice it would suffer if the court declined to reconsider its previous order," he wrote.

These latest briefings from the patent company had introduced a legal idea into the case called "excusable neglect," a phrase that exists at the tail end of a line in the Federal Rule of Civil Procedure that lets federal judges reverse decisions based on "mistake, inadvertence, surprise, or excusable neglect."

The words appeared over 40 times in the brief from Ameranth, and Judge Sabraw appeared convinced.

"The court finds Ameranth has made a sufficient showing of excusable neglect," he wrote, with mention of the "the facts in this case."

In the filings, the company's lawyers argued that they got the deadlines wrong because they had gotten lost in "the complex 'twilight zone' area of finality law." That's why they said they blew past a 30-day deadline to file their appeal, and instead filed it well into the next month.

Now, they would have another 14 days to actually file their arguments for why his earlier ruling was wrong.

In an email, Keith McNally — a designer who once worked for the defense contractor Litton Industries in the 1990s, before starting Ameranth and putting his name on numerous patents — told Law360 in an email that his company mainly wanted to do this so they could appeal his ruling to judges on the [U.S. Court of Appeals for the Federal Circuit](#).

"We are confident that the review on appeal by the Federal Circuit will result in a reversal of these orders," McNally wrote.

His company had already tried to do that last year, but judges on the appeals court [ruled this April](#) that they would wait for Judge Sabraw's ruling on the deadline before looking at the merits of Ameranth's appeal.

McNally wrote that he was feeling optimistic about how this ruling would affect the future of Ameranth's patent litigation campaigns. These lawsuits generally accuse restaurant chains of using digital menus that perform some actions described in Ameranth's patents, which covered a kind of automated assistant that his company brought to market during the dot-com boom.

These days, Ameranth's technology largely shows up in patent suits. Over the past decade, Ameranth's lawyers have filed over 40 suits in federal courts around the country against companies like Domino's Pizza, [Pizza Hut Inc.](#), [Papa John's USA](#) and [GrubHub Inc.](#)

McNally wrote that "pending parallel and companion appeals in our closely related cases"

would also soon "restore the validity of our remaining ... patent claims." He added that his company also owned three other patents, unrelated to the suit, "with all claims valid."

At least two of those appeals are already in front of the Federal Circuit, involving challenges to losses in different lawsuits that Ameranth had filed against other brands.

Representatives for Domino's did not return a request for comment. In the filings, the pizza brand's lawyers had vigorously contested the claims of "excusable neglect." They wrote that "it is simply not possible to establish excusable neglect without evidence of any explanation as to why these clear rules which set the appeal timeline were somehow inapplicable, or how Ameranth misinterpreted them."

The patents-in-suit are U.S. Patent Nos. [6,384,850](#); [6,871,325](#); [6,982,733](#); and [8,146,077](#).

Ameranth is represented by Ethan M. Watts of Watts Law Offices, John W. Osborne of [Osborne Law LLC](#), Michael D. Fabiano of Fabiano Law Firm PC, and William J. Caldarelli of [Caldarelli Hejmanowski Page & Leer LLP](#).

Domino's is represented by Frank A. Angileri and Thomas W. Cunningham of [Brooks Kushman PC](#), Rebecca S. Roberts of [DLA Piper](#) and Stephen S. Korniczky of [Sheppard Mullin Richter & Hampton LLP](#).

The suit is [Ameranth Inc.](#) v. Domino's Pizza LLC et al., case number [3:12-cv-00733](#), in the [U.S. District Court for the Southern District of California](#).

--Additional reporting by Jasmin Jackson and Craig Clough. Editing by Ellen Johnson.