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November 7, 2019

Via CM/ECF

Peter R. Marksteiner
Circuit Executive & Clerk of the Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439

> Re: *CardioNet, LLC v. InfoBionic, Inc.*, No. 19-1149:
> **CardioNet's Response to InfoBionic's Rule 28(j) Letter (ECF No.
> 54) concerning *Ameranth, Inc. v. Domino's Pizza, LLC*, No. 19-1141,
> Slip Op., 2019 WL 5681315 (Fed. Cir. Nov. 1, 2019) ("*Ameranth*")**

Dear Col. Marksteiner:

I write in response to InfoBionic's 28(j) letter concerning *Ameranth, Inc. v. Domino's Pizza, LLC*. *Ameranth* represents neither new nor "pertinent and significant" authority, Fed. R. App. P. 28(j), and InfoBionic's attempt to use it to re-argue issues already briefed should be rejected.

Ameranth is a nonprecedential decision that does not change the law. Slip Op. at 1 ("This disposition is nonprecedential."). All of the legal propositions that InfoBionic quotes in its letter originate in cases other than *Ameranth*. *See* InfoBionic Ltr. at 1 (quoting *Ameranth* quoting *BSG*, *Synopsys*, *Myriad*, and *Ultramercial*). InfoBionic either could have, or already has, relied on those authorities in its briefing in this appeal. *E.g.*, Red Br. at 5, 38, 45.

Ameranth also breaks no new ground factually. The patent held ineligible in *Ameranth* is in the same family of restaurant menu-generating patents that the Court previously held ineligible in *Apple Inc. v. Ameranth, Inc.*, 842 F.3d 1229 (Fed. Cir.

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2016). *See* Slip Op. at 10. *Ameranth* is quite similar to *Apple* (presumably the reason why *Ameranth* is nonprecedential). InfoBionic cited the prior *Apple* decision seven times in its red brief, and CardioNet responded. Red Br. 21, 23, 29, 37, 40, 46; Gray Br. 17, 28.

Overall, InfoBionic uses *Ameranth* merely as a vehicle to rehash arguments from its brief and oral argument. CardioNet has already explained why those arguments fail. *See* Gray Br. at 3-5, 16-17, 25-30, 32.

Respectfully submitted,

/s/ *Ching-Lee Fukuda*
Ching-Lee Fukuda
SIDLEY AUSTIN LLP
Counsel for Appellants

cc: Counsel of Record

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2019, I electronically filed

the foregoing with the Clerk of the Court for the United States Court of Appeals for

the Federal Circuit using the Court's CM/ECF system, which will send notifications

to all counsel registered to receive electronic notices.

/s/ *Ching-Lee Fukuda*
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