UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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APPLE, INC., ET AL
Petitioner,

v.

AMERANTH, INC.
Patent Owner.

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Case CBM2014-00013
Patent 6,982,733 B1

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Before JAMESON LEE, RICHARD E. RICE, and STACEY G. WHITE,
Administrative Patent Judges.

WHITE, *Administrative Patent Judge*.

DECISION
Institution of Covered Business Method Patent Review
37 C.F.R. § 42.208

I. INTRODUCTION

Apple Inc., Fandango, LLC, OpenTable, Inc., Domino's Pizza, Inc., and Domino's Pizza, LLC. ("Petitioner") filed an amended petition (Paper 10, "Pet.") requesting a review under the transitional program for covered business method patents of claims 1-16 of U.S. Patent No. 6,982,733 B1 (Ex. 1033, "the '733 Patent"). Ameranth, Inc. ("Patent Owner") filed a preliminary response (Paper 13, "Prelim. Resp."). The Board has jurisdiction under 35 U.S.C. § 324.[1]

The standard for instituting a covered business method patent review is set forth in 35 U.S.C. § 324(a), which provides as follows:

> THRESHOLD—The Director may not authorize a post-grant review to be instituted unless the Director determines that the information presented in the petition filed under section 321, if such information is not rebutted, would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.

Petitioner challenges the patentability of claims 1-16 of the '733 Patent under 35 U.S.C. §§ 101 and 112. Taking into account Petitioner's evidence and arguments and Patent Owner's preliminary response, we determine that the '733 patent is a covered business method patent and that Petitioner has demonstrated that it is more likely than not that claims 1-16 are directed to non-statutory subject matter and, thus, unpatentable under 35 U.S.C. § 101. Therefore, we institute a covered business method patent

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[1] *See* Section 18(a) of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 329 (2011) ("AIA").

review for claims 1-16 of the '733 Patent based upon Petitioner's challenge that the claims are unpatentable under § 101.

A. The '733 Patent (Ex. 1033)

The '733 Patent relates to an information management and synchronous communications system and method for generating and transmitting computerized menus for restaurants. Ex. 1033, Abstract. Figure 1 of the '733 Patent is set forth below:
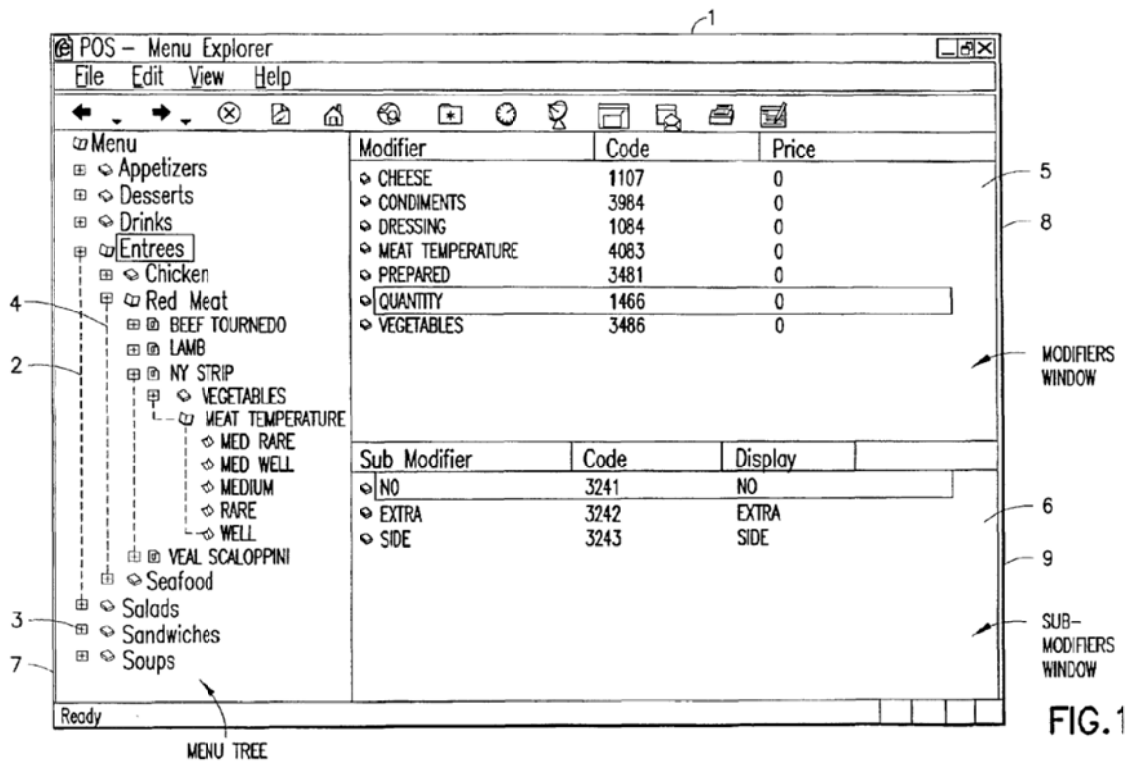

FIG. 1

Figure 1 is a schematic representation of the menu display/user interface of the preferred embodiment of the '733 Patent. *Id.* at 5:41-45, 7:25-27. As shown in Figure 1, Graphical User Interface ("GUI") 1 includes menu tree 7, modifiers window 8, and sub-modifiers window 9. *Id.* at 7:44-48. GUI 1 is

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used to build a menu on a desktop or other computer. *Id.* at 7:28-29. Menu items are categorized and displayed in a hierarchical manner in menu tree 7. Modifiers (e.g., salad dressing) are shown in modifiers window 8 and sub-modifiers (e.g., Italian dressing, French dressing, Ranch dressing, etc.) are shown in sub-modifiers window 9. Ex. 1033, 7:30-36. Once the menu is built using GUI 1, the menu may be downloaded to a handheld device or Web page. *Id.* at 10:1-9, 11:12-18.
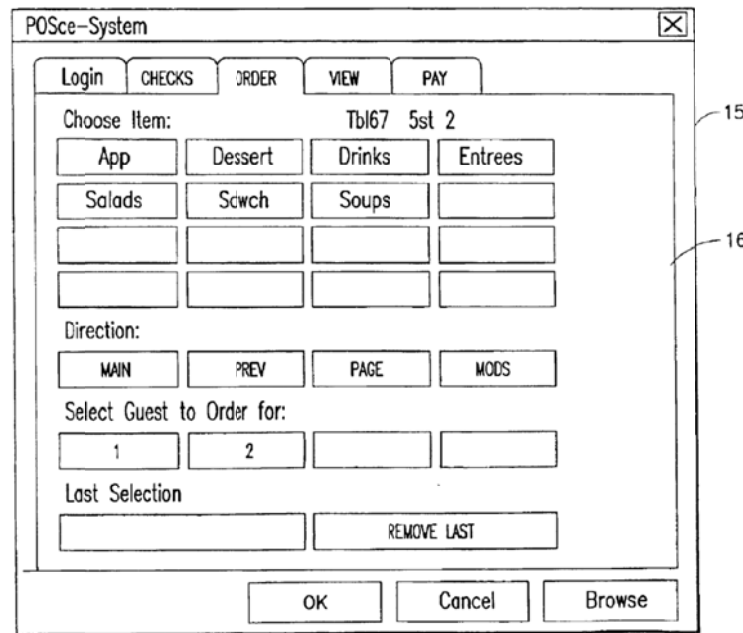
Figure 7 is reproduced below:

FIG.7

Figure 7 depicts the interface on a typical wireless device used in conformity with the invention of the '733 Patent. *Id.* at 13:2-4. As shown in Figure 7, "the page menu is displayed in a catalogue-like point-and-click format . . . [thereby allowing] a person with little expertise [to] 'page through' to complete a transaction with the POS [point of sale] interface and avoid

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having to review the entire menu of Fig. 1 to place an order." *Id.* at 11:34-39. This interface could be shown on a PDA or Web page. *Id.* at 11:40.
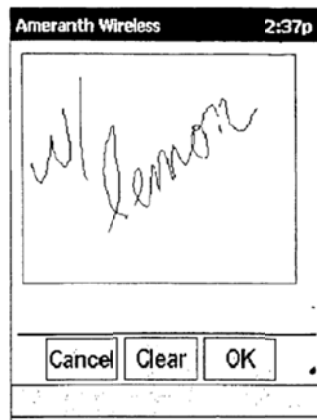
Figure 8 is reproduced below:

Figure 8 depicts the handwritten screen according to one embodiment of the '733 Patent. In that embodiment, a server may take a drink order by selecting "Iced Tea" from the menu on the handheld device. Ex. 1033, 4:6-7. As shown in Fig. 8, the server then manually modifies the order by writing "w/ lemon" on the screen on the device. *Id.* at 4:7-9, Fig. 8. The manually modified drink order is then presented to the individual preparing the drinks. *Id.* at 4:9-11.

B. Related Matters

Petitioner identifies the following proceedings in the U.S. District Court for the Southern District of California involving the '733 patent: *Ameranth, Inc. v. Apple Inc.,* No. 3-12-cv-02350; *Ameranth, Inc. v. Fandango, Inc.,* No. 3-12-cv-01651; *Ameranth, Inc. v. Domino's Pizza, LLC et al,* No. 3-12-cv-00733; *Ameranth, Inc. v. OpenTable, Inc.,* No. 3-12-cv-00731; *Ameranth, Inc. v. OpenTable, Inc.,* No. 3-13-cv-01840; *Ameranth,*

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