

# EXHIBIT 2013

Docket No. 1004293.005US

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No.:	11/112,990	Confirmation No.:	7098
Applicant(s):	McNally, et al.	Group Art Unit:	2191
Filed:	April 22, 2005	Examiner:	Brophy, Matthew

For: INFORMATION MANAGEMENT AND SYNCHRONOUS COMMUNICATIONS  
SYSTEM WITH MENU GENERATION, AND HANDWRITING AND VOICE  
MODIFICATION OF ORDERS

**SUPPLEMENTAL 'NEXUS' DECLARATION UNDER 37 C.F.R. § 1.132**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I, the undersigned, Keith R. McNally, declare and state that:

1. I am an inventor of the subject matter claimed in the above-identified patent application. I have first-hand knowledge as to all of the facts, all of the referenced Exhibits and all of the information contained herein.

2. I make this supplemental declaration providing additional evidence of 'secondary factors' by correlating and synchronizing all of the previously provided documents and evidence to support the Nexus confirming 'non-obviousness' - in response to the November 16, 2010 Interview.

3. There was clearly a **long felt and growing need** - which Ameranth's invention uniquely solved in September 1998 - (as was disclosed in the September 21, 1999 filing of the original patent application) - which this application claims priority to. This

unsolved need dates back to at least 1995, (with the founding of the Cybermeals company), (which later became Food.com in early 1999) and which was co-founded by Bryan Cupps- (the 'Cupps' of one of the prior art patents asserted against the 11/112,990 application). In fact, 'Cybermeals' was formed with the expressed mission to meet online ordering needs for restaurants, yet after almost four years and \$100M of investments, it had failed to effectively do so and admitted that it needed Ameranth's 'menu and communications wizard' invention and it licensed Ameranth's technology for both web and wireless ordering – (to include smart phones). (Note, this summary in Exhibit #23 of the original 1.132 declaration from September 1999 - Titled: Food.com and Ameranth Technology Link Up – confirmed the wireless device/smart phone aspect of the relationship - "Ameranth, a leader in wireless technology will also work closely with its strategic partners, Symbol Technologies and Food.com to enable the Food.com site to receive orders wirelessly from the emerging generation of wirelessly enabled smart devices."

4. It is difficult (in considering 'obviousness' now) vs. back in 1998 (looking backward in time) - (from a **2010** technology interconnected, 'always on', ubiquitous communications world perspective) to appreciate that things that might '**appear**' obvious now were not so at all in the mid to late 1990s. Microsoft – (the worlds largest software company) - (with almost all of the Hospitality POS and related software application systems riding on/leveraging their core software products – (one way or another) and who had introduced their new 'Windows CE' mobile products also had not met the need. Micros, (the world's largest POS company) - (then and now) was also entirely incapable in 1998/1999 of meeting this need without the technology invented by Ameranth that enables the interfacing and synchronizing of complex and GUI intensive POS and other hospitality based systems

with the internet, with web pages and/or with the modern 'PDA type' wireless devices and smart phones - that were to ride on the internet links.

5. Thus at the inventive date timeframe of the Fall of 1998, if the invention were truly 'obvious' then, certainly if there were three companies in the world that should have been able to solve/invent the unique 'menu wizard' and 'communications wizard' invention - it would have been one or more of these three companies. These companies were all 'software' companies, market leaders, they were clearly operating in the hospitality space and unarguably they had almost unlimited resources, (with Food.com with ~\$100M - the smallest company of the three). Yet, what actually happened in 1998/1999? They all failed to invent what I and my co-inventors did invent and all three companies independently concluded that they needed Ameranth's 'menu wizard' and 'communications wizard' inventive technology and Micros and Food.com sought to gain exclusive rights to it and Microsoft took it to an even higher confirmation level and not only partnered with Ameranth, but made a multi million dollar strategic investment into Ameranth - its only such investment in this space in the world.

6. Further, Microsoft itself confirmed, (the same month Ameranth submitted its parent '850 patent application to the USPTO that Ameranth's invention) met a 'long felt need' in their Fall 1999 Supplemental Hospitality Publication. "*The 21st Century Restaurant System is a fully integrated system that provides a long -awaited hospitality industry mobile wireless solution for traditional restaurant processes*"

7. Not only did Food.com publicly partner with Ameranth in the summer of 1999 and announce why it needed Ameranth's invention but privately (in Exhibit #20 of the original 1.131 declaration) and (inclusive of their entire executive team,

CEO,CFO,CTO,COO and other Senior VP's - it admitted that it needed Ameranth's 'menu wizard' and 'communications wizard' technology and identified the many advantages that Ameranth's inventive technology would provide to them, (despite their nearly five years of development effort) and them having filed for and received allowance on their Cupps patent.

8. Further, this document confirms their already existing relationship with Micros- yet confirms their need for Ameranth to meet that unsolved need. This document and its critical importance was discussed with the Examiner and his superiors in the November 16, 2010 Interview. Further, not only did Food.com conclude that Ameranth's invention was superior to and beyond the Cupps patent, but the Patent Examiner (for Ameranth's allowed parent application), (the '850 patent) – himself, (even without access then to Exhibit #20) independently concluded that Ameranth's inventive technology was superior to the Cupps patent and granted Ameranth allowance over it for both independent and numerous dependent claims and for two subsequent patents as well.

9. Micros also unquestionably concurred - since it had already partnered with Food.com/Cybermeals in early 1999, yet it too had failed and concluded that it needed our breakthrough 'menu generation' invention and not just in a normal licensing way – rather it sought the exclusive licensing rights to it. Obviously, if Micros had 'had' our invention then in 1999 (or any time earlier with any of its systems, and utilizing its vast resources) it would not have sought the exclusive license to our invention and offered Ameranth in May 2000 to pay \$200/Handheld license fee and up to \$1500/restaurant license fee for an exclusive license to our 'menu/communications wizard' invention. Thus, further, any conceptual 'combination' of Micros and/or with Cupps/Food.com having been 'obvious' - to meet our pending claims is innately confirmed false and only reflects 'hindsight conceptualization',

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