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Paper 19
Entered: March 26, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AGILYSYS, INC., ET AL.
Petitioner,

v.

AMERANTH, INC.
Patent Owner.

Case CBM2014-00014
Patent 8,146,077 B2

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

RICE, *Administrative Patent Judge*.

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

INTRODUCTION

Agilysys, Inc. and 34 other entities[1] (collectively, "Petitioner"), filed an amended petition ("Pet.") requesting a review under the transitional program for covered business method patents of U.S. Patent No. 8,146,077 B2 (Ex. 1001, "the '077 patent"). Paper 8. Ameranth, Inc. ("Patent Owner") filed a preliminary response ("Prelim. Resp."). Paper 10. We have jurisdiction under 35 U.S.C. § 324.[2]

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

> 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

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[1] Expedia, Inc., Fandango, LLC, Hotel Tonight, Inc., Hotwire, Inc., Hotels.com, L.P., Kayak Software Crop., Live Nation Entertainment, Inc., Micros Systems, Inc., Orbitz, LLC, Opentable, Inc., Papa John's USA, Inc., Stubhub, Inc., Ticketmaster, LLC., Travelocity.com LP, Wanderspot LLC, Pizza Hut, Inc., Pizza Hut of America, Inc., Domino's Pizza, Inc., Domino's Pizza, LLC, Grubhub, Inc., Seamless North America, LLC, Order.in, Inc., Mobo Systems, Inc., Starbucks Corporaton, Eventbrite, Inc., Best Western International, Inc., Hilton Resorts Corp., Hilton Worldwide, Inc., Hilton International Co., Hyatt Corporation, Marriott International, Inc., Starwood Hotels & Resorts Worldwide, Inc., Usablenet, Inc., and Apple, Inc.

[2] *See* § 18(a) of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, 125 Stat. 284, 329 (2011) ("AIA") (providing that the transitional program for covered business method patents will be regarded as a post-grant review under chapter 32 of title 35, United States Code, and will employ the standards and procedures of a post-grant review, subject to certain exceptions).

> 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 1-18 of the '077 patent under 35 U.S.C. §§ 101, 112 ¶ 1, and 112 ¶ 2. Taking into account Patent Owner's preliminary response, we determine that the information presented in the petition does not establish that at least one of the challenged claims is more likely than not unpatentable. Accordingly, we do not institute a covered business method patent review as to any claim of the '077 patent. The petition is *denied*.

A. Petitioner's Standing

Section 18 of the AIA governs the transitional program for covered business method patent reviews. Section 18(a)(1)(B) of the AIA limits the filing of a petition for such reviews to persons or their privies who have been sued or charged with infringement of a covered business method patent.

Each of the entities listed as Petitioner asserts that it has been sued for infringement of the '077 patent. Pet. 25-26 (identifying 30 separate district court litigations).

B. The '077 patent

The '077 patent alleges that an inherent problem of personal digital assistant ("PDA") devices is that the small size of their displays limits the amount of information that may be displayed at any one time. Ex. 1001, 1:54-62. PDAs have not been "quickly assimilated into the restaurant and

hospitality industries," according to the patent, because "their small display sizes are not readily amenable to display of menus as they are commonly printed on paper or displayed on, e.g., large, color desktop computer screens." *Id.* at 2:12-17. A principal object of the '077 patent "is to provide an improved information management and synchronous communications system and method which facilitates . . . generation of computerized menus for restaurants and other applications that utilize equipment with non-PC-standard graphical formats, display sizes and/or applications." *Id.* at 2:61-67.

The specification of the '077 patent describes a procedure for configuring a menu on a desktop computer and then downloading the menu configuration onto a point of sale ("POS") interface on a handheld device. *Id.* at 7:44-47. The procedure comprises the following steps:

1. Add Modifiers;
2. Add Sub-Modifiers and link them to the Modifiers;
3. Create Menu categories;
4. Add menu items to the categories;
5. Assign Modifiers to the menu items;
6. Preview the menu on the POS emulator on the desktop PC;
7. Download the menu database to the handheld device.

Id. at 8:28-36. "[M]enu items are stored using a tree metaphor similar to how files are stored on a PC with folders and subfolders." *Id.* at 8:4-6.

In the preferred embodiment, a "synchronous communications control module . . . . provides a single point of entry for all hospitality applications to communicate with one another wirelessly or over the Web." *Id.* at 12:39-42. "The single point of entry works to keep all wireless handheld devices

and linked Web sites in synch with the backoffice server (central database)," such that, for example, "a reservation made online is automatically communicated to the backoffice server which then synchronizes with all the wireless handheld devices wirelessly." *Id.* at 12:47-54.

Figure 9 of the '077 patent is reproduced below:

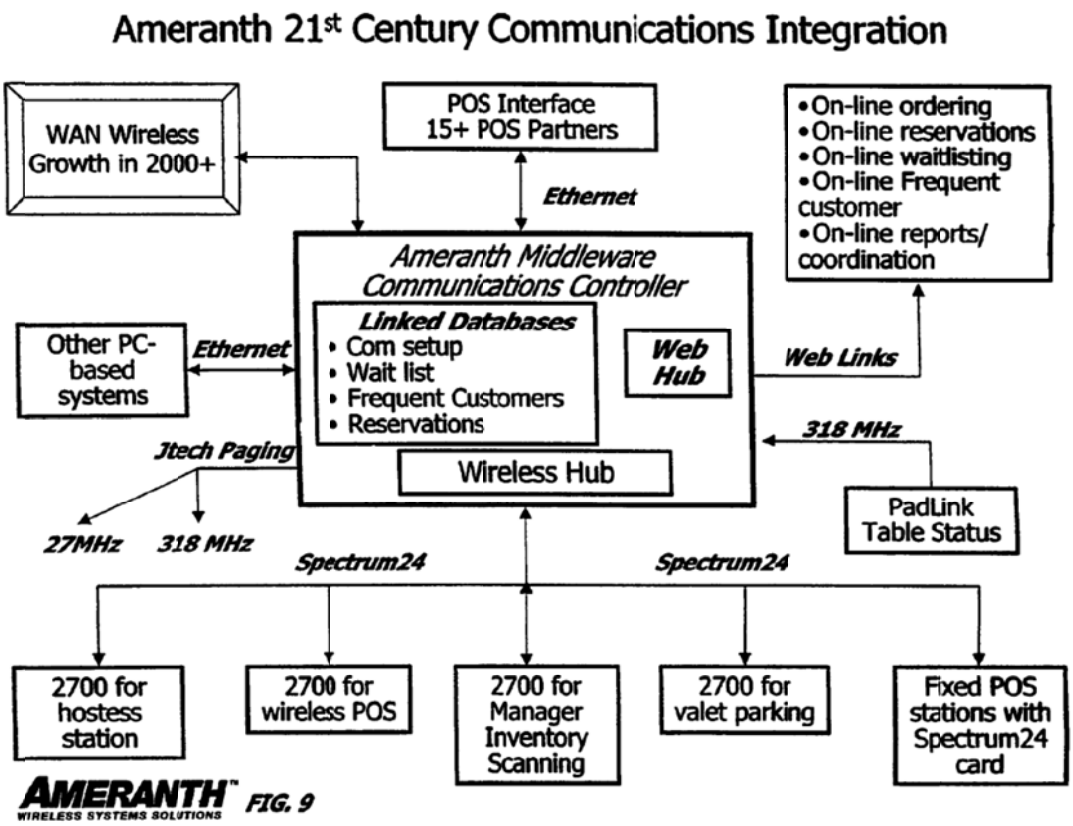

Figure 9 is an exemplary system diagram that illustrates how "[a] single point of entry works to keep all wireless handheld devices and linked web sites in synch with the backoffice server applications so that the different

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