Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	11112990	MCNALLY ET AL.
	Examiner	Art Unit
	MATTHEW J BROPHY	2191

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	03/07/2008	08/15/2008							
	103	✓	✓							
	104	✓	✓							
	105	✓	✓							
	106	✓	✓							
	107	✓	✓							
	108	✓	✓							
	109	✓	✓							
	110	✓	✓							
	111	✓	✓							
	112	✓	✓							
	113	✓	✓							
	114	✓	✓							
	115	✓	✓							
	116	✓	✓							
	117	✓	✓							
	118	✓	✓							
	119	✓	✓							
	120	✓	✓							
	121	✓	✓							
	122	✓	✓							
	123	✓	✓							
	124	✓	✓							
	125	✓	✓							
	126	✓	✓							
	127	✓	✓							

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	11112990	MCNALLY ET AL.
	Examiner	Art Unit
	MATTHEW J BROPHY	2191

SEARCHED			
Class	Subclass	Date	Examiner
715	810-845	8/15/2008	MJB

SEARCH NOTES		
Search Notes	Date	Examiner
See EAST search History	8/15/2008	MJB
inventor search in EDAN	8/15/2008	MJB

INTERFERENCE SEARCH			
Class	Subclass	Date	Examiner

FORM PTO-1449A INFORMATION DISCLOSURE CITATION	Attorney Docket: 3125-4003US1	Serial No.: 11/112,990
	Applicant: Keith McNally et al.	
	Filing Date: April 22, 2005	Group Art Unit: 2191

U.S. PATENT / PUBLICATION DOCUMENTS

Examiner Initial		Patent/Publication Number	Publication/Issue Date	Name	Filing Date
	1.	5,974,238	October 26, 1999	Chase, Jr.	August 7, 1996

FOREIGN PATENT DOCUMENTS

Examiner Initial		Patent Number	Publication Date	Country	Copy Filed	Translation
					☐ Yes	☐ Yes ☐ No ☐ Abstract ☐ N/A
					☐ Yes	☐ Yes ☐ No ☐ Abstract ☐ N/A
					☐ Yes	☐ Yes ☐ No ☐ Abstract ☐ N/A
					☐ Yes	☐ Yes ☐ No ☐ Abstract ☐ N/A
					☐ Yes	☐ Yes ☐ No ☐ Abstract ☐ N/A
					☐ Yes	☐ Yes ☐ No ☐ Abstract ☐ N/A

Examiner	Date Considered

EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP §609.
Draw line through citation if not in conformance and not considered.
Include copy of this form with next communication to Applicant.

Docket No. 3125-4003US1

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
		Customer No.:	27123

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

REQUEST FOR RECONSIDERATION

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

Sir:

In response to the pending non-Final Office Action dated August 22, 2008, reconsideration and allowance of the pending claims of the above-identified application is respectfully requested.

Remarks begin on page 2 of this paper.

REMARKS

Claims 1-102 were previously cancelled without prejudice or disclaimer by preliminary amendments filed in this application on April 22, 2005 and September 25, 2007. Claims 103-127 are now pending in the application.

Claims 103-122 were rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 1 and 12 respectively of U.S. Patent No. 6,384,850 in view of U.S. Patent No. 5,937,041 ("Cardillo"). [8/22/08 Office Action at p.2]. Applicants do not acquiesce to the characterization of Cardillo made in the Office Action and respectfully assert that Cardillo's teaching is not pertinent to the subject matter of the pending claims. However, in the interest of furthering prosecution, Applicants submit herewith a Terminal Disclaimer signed by the Assignee's authorized representative, noting that U.S. Patent No. 6,384,850 is commonly owned by the Assignee of the present application,

Applicants believe that the nonstatutory obviousness-type double patenting rejection has been overcome by the submission of the Terminal Disclaimer.

CONCLUSION

Based on the foregoing remarks, the Applicants respectfully request reconsideration and withdrawal of the pending rejections and allowance of this application. The Applicants respectfully submit that claims 103-127 are now patentable and in condition for allowance. An action passing this case to issue is therefore respectfully requested.

If any issues remain, or if the Examiner has any suggestions for expediting issuance of this application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below. Favorable and prompt consideration is requested.

AUTHORIZATION

Applicants believe that this preliminary amendment is timely filed prior to examination on the merits and that no additional fee is required. However, to the extent that any extension of time is necessary or any additional fees are required, Applicants hereby authorize the Commissioner to charge any additional fees, or credit any overpayment, to Deposit Account No. 13-4500 (Order No. 3125-4003US1).

Respectfully submitted,
MORGAN & FINNEGAN LLP

Dated: August 29, 2008

By: _____
Angus R. Gill
Registration No. 51,133

CORRESPONDENCE ADDRESS:
MORGAN & FINNEGAN L.L.P.
3 World Financial Center
New York, New York 10281
(212) 415-8700 (Telephone)
(212) 415-8701 (Facsimile)

Docket No. 3125-4003US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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

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

TERMINAL DISCLAIMER UNDER 37 C.F.R. §1.321(C)
TO OBVIATE DOUBLE PATENTING REJECTION

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

Sir:

Identity of Assignee

The petitioner, Ameranth Wireless, Inc., having a business address at 5820 Oberlin Drive, Suite 202, San Diego, CA 92121, is the owner by assignment of the entire, right, title and interest in the above-identified application, Serial No. 11/112,990. The petitioner is also the owner of the entire, right, title and interest in U.S. Patent No. 6,384,850.

Identification of Person(s) Making This Disclaimer

Name of disclaimant: Angus R. Gill. Disclaimant represents that he is a Registered Patent Agent, Registration No. 51,133, and authorized to sign on behalf of the assignee identified above.

Extent of Interest

The extent of assignee's interest is in the whole of this invention.

Declaration Under 37 C.F.R. 3.73(b)

I, the undersigned, have reviewed all the documents in the chain of title of the patent application identified above and, to the best of my knowledge and belief, title is in the assignee identified above.

Disclaimer

The petitioner, through its Agent of Record, hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, of United States Patent No. 6,384,850. Petitioner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and United States Patent 6,384,850 are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, petitioner does not disclaim the terminal part of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 to 156 and 173 of U.S. Patent 6,384,850, in the event that U.S. Patent 6,384,850 expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. 1.321, has all claims cancelled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as shortened by any terminal disclaimer filed prior to its grant.

Fee Status

(37 C.F.R. 1.20(d) and 37 C.F.R. 1.321)

☒ large entity--fee $110.00

☐ small entity--fee $55.00

Fee Payment

☐ Attached is a check in the sum of $.

☒ Charge Deposit Account 13-4500, Order No. 3125-4003US1 any fee required by this paper.

AUTHORIZATIONS:

The Commissioner is hereby authorized to charge any additional fees which may be required for timely consideration of this Terminal Disclaimer under 37 C.F.R. §§1.16 -§1.20 or credit any overpayment to Deposit Account No. 13-4500,Order No. 3125-4003US1.

A DUPLICATE COPY OF THIS DISCLAIMER IS ATTACHED.

Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Dated: August 29, 2008 By: _____
Angus R. Gill
Registration No. 51,133

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FORM PTO-1449B INFORMATION DISCLOSURE CITATION	Attorney Docket: 3125-4003US1	Serial No.: 11/112,990
	Applicant: Keith McNally et al.	
	Filing Date: April 22, 2005	Group Art Unit: 2191

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No.[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.
	1.	SQUIRREL SYSTEMS, company information web page, http://web.archive.org/web/19990508153731/www.squirrelsystems.com/about/company.html, May 8, 1999
	2.	SQUIRREL SYSTEMS, products web page, http://web.archive.org/web/19990508175824/www.squirrelsystems.com/products/newsq.html, May 8 ,1999
	3.	ROBIN BERGER, "POS Positions Spago For Growth," http://web.archive.org/web/19991009105324/www.squirrelsystems.com/media/articles/spago.html, http://web.archive.org/web/19991112165756/www.squirrelsystems.com/media/articles.html, Hospitality Technology, April/May 1997
	4.	SQUIRREL COMPANIES INC., System Setup Version 3.0x, Copyright 1989
	5.	SQUIRREL COMPANIES INC., Squirrel Restaurant Management System Brochure, Pre-September 21, 1999??
	6.	SQUIRREL SYSTEMS, "SQUiRREL® Companies Inc. wins the California Restaurant Association's 1998 EXPO Innovator Award in the Technology category", http://web.archive.org/web/19991013045515/squirrelsystems.com/media/pr/aug2098.html, August 20, 1998
	7.	BUSINESS WIRE, Fujitsu and Sulcus Hospitality Group partner to develop first wireless computer for restaurant industry, Business Wire, August 30, 1993
	8.	BUSINESS WIRE, "Sulcus's Squirrel and cybermeals Ink Technology Alliance; cybermeals New Menucaster Software to be Bundled into Squirrel's Touch Tomorrow Point of Sale Package," http://findarticles.com/p/articles/mi_m0EIN/is_1998_Feb_24/ai_20316339?tag=content;col1, Business Wire, February 24, 1998
	9.	BUSINESS WIRE, "Accel Partners Invest $10 Million in cybermeals", http://www.allbusiness.com/banking-finance/financial-markets-investing/6840069-1.html, Business Wire, May 28, 1998
	10.	REVSHARE.com, cybermeal revenue sharing program, http://web.archive.org/web/19980124080645/http://www.revshare.com/, January 24, 1998
	11.	SQUIRREL SYSTEMS, SQ Classic product webpage, http://web.archive.org/web/19991010022213/www.squirrelsystems.com/products/sq_classic.html, October 10, 1999

Examiner Signature		Date Considered	

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FORM PTO-1449B INFORMATION DISCLOSURE CITATION	Attorney Docket: 3125-4003US1	Serial No.: 11/112,990
	Applicant: Keith McNally et al.	
	Filing Date: April 22, 2005	Group Art Unit: 2191

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	12.	SQUIRREL SYSTEMS, "Brew Moon Management Toasts SQUiRREL's 'Seamless Solution'", http://web.archive.org/web/19990508170309/www.squirrelsystems.com/media/articles/brewmoon.html, November 1998
	13.	SQUIRREL SYSTEMS, "Squirrel Customer Profile: CHEVY'S FRESH MEX", http://www.squirrelsystems.com/news/articles/9808.html, August 1998
	14.	MICROS SYSTEMS, INC., "8700 HMS Version 2.10 User's Manual", http://web.archive.org/web/19961111034156/www.micros.com/frames/servdine.htm, Copyright 1997
	15.	MICROS SYSTEMS, INC., core products web page, http://web.archive.org/web/19961111034156/www.micros.com/frames/servdine.htm, November 11, 1996
	16.	MICROS SYSTEMS, INC., new products web page, http://web.archive.org/web/1996111103410/www.micros.com/frames/innovats.htm, November 11, 1996
	17.	MICROS SYSTEMS, INC., quick service products web page, http://web.archive.org/web/19961111034149/www.micros.com/frames/quikserv.htm, November 11, 1996
	18.	MICROS SYSTEMS, INC., company information web page, http://web.archive.org/web/19961111034029/www.micros.com/frames/about.htm, November 11, 1996
	19.	MICROS SYSTEMS, INC., 8700 HMS Product Overview, http://web.archive.org/web/19990508144340/www.micros.com/mktg/html/8700over.htm, May 8, 1999
	20.	MICROS HOSPITALITY INFORMATION SYSTEMS, "Preliminary Information Packet for the: Micros Hand-Held Touchscreen," Pre-September 21, 1999??
	21.	MICROS SYSTEMS, INC., "The MICROS 2700 HTS Touchscreen", Pre September 21, 1999??
	22.	INTEGRATED RESTAURANT SOFTWARE, RMS Touch - Touch Screen Restaurant Management System product description, http://web.archive.org/web/19970215025823/www.rmstouch.com/pos.htm, February 15, 1997.

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	Applicant: Keith McNally et al.	
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	23.	INTEGRATED RESTAURANT SOFTWARE, company profile web page, http://web.archive.org/web/19970215025858/www.rmstouch.com/profile.htm, February 15, 1997
	24.	COMPUWAVE TECHNOLOGIES, INC., Elite32 Palm System brochure, Pre-September 21, 1999??
	25.	COMPUWAVE TECHNOLOGIES, INC., POSInfrared Restaurant System brochure, Pre-September 21, 1999??
	26.	COMPUWAVE TECHNOLOGIES, INC., Wireless POS DRIVE-THRU SYSTEM brochure, Pre-September 21, 1999??
	27.	COMPUWAVE TECHNOLOGIES, INC., "Compuwave Technologies Approved as Supplier to McDonald's Canada", Compuwave Press Release, Sept. 14, 2000
	28.	COMPUWAVE TECHNOLOGIES, INC., Revolutionary WIRELESS Restaurant System brochure, Pre-September 21, 1999??
	29.	MENUSOFT SYSTEMS CORPORATION, "Winning with Windows Digital Dining: Austin 97", Austin, Texas Digital Dining Users' Conference, Feb. 20, 1997
	30.	MENUSOFT SYSTEMS CORPORATION, "Digital Dining for Windows User Manual", Copyright 1997
	31.	MENUSOFT SYSTEMS CORPORATION, "Digital Dining for Windows v7.0 User Manual", Copyright 1997
	32.	MENUSOFT SYSTEMS CORPORATION, "Digital Dining for Windows v7.0 setup manual", Copyright 1997
	33.	MICROS SYSTEMS, INC., "POS Configuration User's Guide: 3700 POS", Copyright 1998
	34.	IBERTECH, INC., "Ibertech, cybermeals Announce Technology Partnership", http://findarticles.com/p/articles/mi_m0EIN/is_1998_Feb_2/ai_20205914/print?tag=artBody;col1, Business Wire. February 2, 1998
	35.	ED RUBENSTEIN, "Future Food for Thought", http://findarticles.com/p/articles/mi_m3190/is_/ai_20462276, Nation's Restaurant News, March 30, 1998
	36.	AMERANTH TECHNOLOGY SYSTEMS, INC., company home page, http://web.archive.org/web/19981202001436/http://www.ameranth.com/, December, 02, 1998

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	Applicant: Keith McNally et al.	
	Filing Date: April 22, 2005	Group Art Unit: 2191

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	37.	COMPUWAVE TECHNOLOGIES, INC., company information web page, http://web.archive.org/web/20010207174316/www.compuwave.net/about.htm. February 7, 2001
	38.	COLLINS & MALIK, "HOSPITALITY INFORMATION TECHNOLOGY", pp. 214-376, Kendall/Hunt Pub. Co., 3d Ed., 1998
	39.	HOSPITALITY TECHNOLOGY, pages 14,26,34, January 1997
	40.	"Wireless Technologies and the National Information Infrastructure", OTA-ITC-622 GPO stock #052-003-01421-1, pp. 99-131, September 1995

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If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Electronic Patent Application Fee Transmittal

Application Number:	11112990
Filing Date:	22-Apr-2005
Title of Invention:	Information management and synchronous communications system with menu generation, and handwriting and voice modification of orders
First Named Inventor/Applicant Name:	Keith R. McNally
Filer:	Allen CS Chein/Marvette Ferguson
Attorney Docket Number:	3125-4003US1

Filed as Large Entity

Utility under 35 USC 111(a) Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
Submission- Information Disclosure Stmt	1806	1	180	180
Statutory disclaimer	1814	1	130	130
		Total in USD ($)		**310**

Electronic Acknowledgement Receipt

EFS ID:	3863604
Application Number:	11112990
International Application Number:	
Confirmation Number:	7098
Title of Invention:	Information management and synchronous communications system with menu generation, and handwriting and voice modification of orders
First Named Inventor/Applicant Name:	Keith R. McNally
Customer Number:	27123
Filer:	Allen CS Chein/Marvette Ferguson
Filer Authorized By:	Allen CS Chein
Attorney Docket Number:	3125-4003US1
Receipt Date:	29-AUG-2008
Filing Date:	22-APR-2005
Time Stamp:	15:11:44
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	$310
RAM confirmation Number	457
Deposit Account	134500
Authorized User	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/	Multi	Pages (if appl.)

1	Information Disclosure Statement Letter	31254003US1SupplementalInformationDisclosureStatement.pdf	180553 b8c9d9421d95911e45f4333ebd7aba3b971c0efa	no	4
Warnings:					
Information:					
2		31254003US1RequestForConsideration.pdf	83659 881e52b5e67538df35725cfcb1860f0401c147a2	yes	3
	Multipart Description/PDF files in .zip description				
	Document Description		**Start**	**End**	
	Amendment - After Non-Final Rejection		1	1	
	Applicant Arguments/Remarks Made in an Amendment		2	3	
Warnings:					
Information:					
3	Terminal Disclaimer Filed	31254003US1TerminalDisclaimer.pdf	91298 bfa25c8bc1cd8b40e921caa94c9ce8229e69d423	no	3
Warnings:					
Information:					
4	Information Disclosure Statement Letter	31254003US1FormPTO1449A.pdf	33039 3db936f56164ba47771afdcb27f609f2e84c6707	no	1
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Information:					
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Information:					
7	NPL Documents	1B.pdf	102393 35f80e8bd9965c0a7de1b21f5978f84a6e2a8a4f	no	4
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Information:					
8	NPL Documents	1C.pdf	223634 a8a2da174f9d06d23eaa8450c7cf7970549a	no	5

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10	NPL Documents	1F.pdf	100690 d92ead02c36e5338167914e77ce6be585e3b3eea	no	3
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Information:					
12	NPL Documents	1H.pdf	97234 30f042a25fc055a8805c0b52e70163d10e22fcfc	no	1
Warnings:					
Information:					
13	NPL Documents	1I.pdf	444906 ffa4b432348f7b57428353c25b51e91dac443ca2	no	5
Warnings:					
Information:					
14	NPL Documents	1J.pdf	281391 78fcc9a2490b57ec0928f6888c1a2ef9e0d310df	no	4
Warnings:					
Information:					
15	NPL Documents	1K.pdf	313512 0d2730ad752990d8bbad0bf7b0c44f9cac63ba11	no	5
Warnings:					
Information:					
16	NPL Documents	1L.pdf	3329385 5574dcb4082da421b8facf89d25d48d676670fa5	no	41
Warnings:					
Information:					
17	NPL Documents	1M.pdf	193446	no	4

Warnings:					
Information:					
18	NPL Documents	1N.pdf	142561 86557299f1bfff81f38b24e061fd1fe16bad4907	no	2
Warnings:					
Information:					
19	NPL Documents	3.pdf	24830011 d8fb5567337228f437435a2bb1f6f11c3b673ea6	no	535
Warnings:					
Information:					
20	NPL Documents	2.pdf	1151600 f94f6be33e482c6dfc0a9a4ca1515748f81ce754	no	21
Warnings:					
Information:					
21	Fee Worksheet (PTO-06)	fee-info.pdf	31636 6e76d2e8e4f9cea49652316c5672510507461d9b	no	2
Warnings:					
Information:					
			Total Files Size (in bytes):	50313956	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

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
		Examiner:	Brophy, Matthew J.
Filed:	April 22, 2005		
		Customer No.:	27123

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

SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT

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

Sir:

This Information Disclosure Statement is filed in accordance with 37 C.F.R. §§1.56, 1.97 and 1.98. The items listed on Form PTO-1449, a copy of which is enclosed, are made of record to assist the Patent and Trademark Office in its examination of this application. The Examiner is respectfully requested to fully consider the items and to independently ascertain their teaching.

The submitted references were provided to the assignee of the present application very recently in a litigation (Ameranth, Inc. v. Menusoft Systems Corp. et al., 2:07-cv-00271-TJW-CE, E.D. Tex.) involving patents claiming common priority with the present application. The references were put forth in invalidity contentions as required by E.D. Tex. Local Patent Rule 3-3 (see www.txed.uscourts.gov/Rules/LocalRules/Documents/Appendix%20M.pdf). The invalidity contentions comprise nearly 3000 pages. Applicants submit herewith the alleged prior art references referred to in the invalidity contentions document which were provided to Applicants. Due to the volume, Applicants do not presently submit the non-prior art invalidity contentions document. However, if the Examiner wishes to review the aforesaid invalidity contentions document, Applicants request that he inform the Applicants' undersigned agent. Applicants will promptly provide the aforesaid invalidity contentions document pursuant to any such request.

Also, please note that items 5, 20-21, 24-26 and 28 (Non Patent Literature Documents on Form 1449B) have been alleged by defendants in the above-referenced action to be prior art. However, those documents are undated. Accordingly, for purposes of examination, Applicants respectfully request that those references be treated as prior art based upon the allegations, but Applicants reserve the right to challenge that status if information becomes available indicating that defendants' allegations are not correct.

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   ☐ 37 C.F.R. §1.97(b)(3), before the mailing date of a first Office action on the merits; or

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☐ A check in the amount of $180.00 is enclosed in payment of the fee.

☒ Charge the fee to Deposit Account No. **13-4500**, Order No. 3125-4003US1.

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Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Dated: August 29, 2008

By: _____
Angus R. Gill
Registration No. 51,133

Correspondence Address:
Address Associated With Customer Number:
27123

(212) 415-8700 Telephone
(212) 415-8701 Facsimile

09.02.08

Docket No. 3125-4003US1

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
		Examiner:	Brophy, Matthew J.
Filed:	April 22, 2005		
		Customer No.:	27123

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Also, please note that item 2 (Non Patent Literature Documents on Form 1449B) has been alleged by defendants in the above-referenced action to be prior art. However, that document is undated. Accordingly, for purposes of examination, Applicants respectfully request that the reference be treated as prior art based upon the allegations, but Applicants reserve the right to challenge that status if information becomes available indicating that defendants' allegations are not correct.

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Respectfully submitted,
MORGAN & FINNEGAN, L.L.P.

Dated: August 29, 2008 By: _____
Angus R. Gill
Registration No. 51,133

Correspondence Address:
Address Associated With Customer Number:
27123

(212) 415-8700 Telephone
(212) 415-8701 Facsimile

FORM PTO-1449B INFORMATION DISCLOSURE CITATION	Attorney Docket: 3125-4003US1	Serial No.: 11/112,990
	Applicant: Keith McNally et al.	
	Filing Date: April 22, 2005	Group Art Unit: 2191

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No.[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.
	1.	INTEGRATED RESTAURANT SOFTWARE, "Dining Out: Baltimore - D.C." video, November 4, 1994
	2.	CompuWave Media Publication in Taiwan, Pre-9/21/99??

Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. 1 Applicant's unique citation designation number (optional). 2 Applicant is to place a check mark here if English language Translation is attached. This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

1159071 v1

ARTIFACT SHEET

Enter artifact number below. Artifact number is application number + artifact type code (see list below) + sequential letter (A, B, C …). The first artifact folder for an artifact type receives the letter A, the second B, etc..
Examples: 59123456PA, 59123456PB, 59123456ZA, 59123456ZB

11112990SA

Indicate quantity of a single type of artifact received but not scanned. Create individual artifact folder/box and artifact number for each Artifact Type.

2 CD(s) containing:
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  Doc Code: Computer Artifact Type Code: P
- pages of specification and/or sequence listing and/or table **2**
  Artifact Type Code: S
  Doc Code: Artifact
- content unspecified or combined ☐
  Doc Code: Artifact Artifact Type Code: U

☐ Stapled Set(s) Color Documents or B/W Photographs
Doc Code: Artifact Artifact Type Code: C

☐ Microfilm(s)
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☐ Confidential Information Disclosure Statement or Other Documents marked Proprietary, Trade Secrets, Subject to Protective Order, Material Submitted under MPEP 724.02, etc.
Doc Code: Artifact Artifact Type Code X

☐ Other, description: _____
Doc Code: Artifact Artifact Type Code: Z

March 8, 2004

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
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The cited reference herein was identified in a prior IDS (Item No. 5 of IDS submitted August 29, 2008) but the reference document was not submitted due to apparent clerical error.

Also, the submitted reference was provided to the assignee of the present application very recently in a litigation (Ameranth, Inc. v. Menusoft Systems Corp. et al., 2:07-cv-00271-TJW-CE, E.D. Tex.) involving patents claiming common priority with the present application. The references were put forth in invalidity contentions as required by E.D. Tex. Local Patent Rule 3-3 (see www.txed.uscourts.gov/Rules/LocalRules/Documents/Appendix%20M.pdf). The invalidity contentions comprise nearly 3000 pages. Applicants submit herewith (as with the IDS submitted August 29, 2008) an alleged prior art reference referred to in the invalidity contentions document which were provided to Applicants. Due to the volume, Applicants do not presently submit the

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	Filing Date: April 22, 2005	Group Art Unit: 2191

NON PATENT LITERATURE DOCUMENTS

Examiner Initials*	Cite No.[1]	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.
	1.	SQUIRREL COMPANIES INC., Squirrel Restaurant Management System Brochure, Pre-September 21, 1999??

Examiner Signature		Date Considered	

*EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant. 1 Applicant's unique citation designation number (optional). 2 Applicant is to place a check mark here if English language Translation is attached. This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Electronic Patent Application Fee Transmittal

Application Number:	11112990
Filing Date:	22-Apr-2005
Title of Invention:	Information management and synchronous communications system with menu generation, and handwriting and voice modification of orders
First Named Inventor/Applicant Name:	Keith R. McNally
Filer:	Allen CS Chein/Marvette Ferguson
Attorney Docket Number:	3125-4003US1

Filed as Large Entity

Utility under 35 USC 111(a) Filing Fees

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD($)
Miscellaneous:				
Submission- Information Disclosure Stmt	1806	1	180	180
		Total in USD ($)		**180**

Electronic Acknowledgement Receipt

EFS ID:	3981058
Application Number:	11112990
International Application Number:	
Confirmation Number:	7098
Title of Invention:	Information management and synchronous communications system with menu generation, and handwriting and voice modification of orders
First Named Inventor/Applicant Name:	Keith R. McNally
Customer Number:	27123
Filer:	Allen CS Chein/Marvette Ferguson
Filer Authorized By:	Allen CS Chein
Attorney Docket Number:	3125-4003US1
Receipt Date:	22-SEP-2008
Filing Date:	22-APR-2005
Time Stamp:	15:15:26
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	yes
Payment Type	Deposit Account
Payment was successfully received in RAM	$180
RAM confirmation Number	565
Deposit Account	134500
Authorized User	

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/	Multi	Pages (if appl.)

1	Information Disclosure Statement Letter	31254003US1SupplementalIDS.pdf	179816 548774c6e0cb42ff97289f025cdf595a7aa128f7	no	4
Warnings:					
Information:					
2	Information Disclosure Statement Letter	31254003US1PTOForm1449B.pdf	56000 8757f68b1cc2718f94cbe588698f885293053e74	no	1
Warnings:					
Information:					
3	NPL Documents	Squirrel.pdf	468056 9e8e1cb40dcc4e60e13ae8998f5c60048ea8b647	no	4
Warnings:					
Information:					
4	Fee Worksheet (PTO-06)	fee-info.pdf	30316 9b809f1c0122fdb659dedaad169ce4249c70cfe6	no	2
Warnings:					
Information:					
		Total Files Size (in bytes):	734188		

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/112,990	04/22/2005	Keith R. McNally	3125-4003US1	7098

27123 7590 12/15/2008

MORGAN & FINNEGAN, L.L.P.
3 WORLD FINANCIAL CENTER
NEW YORK, NY 10281-2101

EXAMINER	
BROPHY, MATTHEW J	

ART UNIT	PAPER NUMBER
2191	

NOTIFICATION DATE	DELIVERY MODE
12/15/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOPatentCommunications@Morganfinnegan.com
Shopkins@Morganfinnegan.com
jmedina@Morganfinnegan.com

Office Action Summary	Application No.	Applicant(s)	
	11/112,990	MCNALLY ET AL.	
	Examiner	Art Unit	
	MATTHEW J. BROPHY	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 December 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *103-127* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *103-127* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *8/29.2008 9/2/2008*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This office action is in response to amendment and terminal disclaimer filed September 8, 2008.

2. Claims 103-127 are pending.

3.

Response to Amendment

Terminal Disclaimer

4. The terminal disclaimer filed on September 9, 2008 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of USPN 6,384,850 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Upon further consideration of the prior art of record, Claims 103-122 rejected under 35 U.S.C. 103(a) as being unpatentable over Mircos systems Inc. "POS Configuration User's Guide: 3700 POS", Copyright 1998 in view of USPN 6,973,437 Olewicz and further in view of US PG Pub 20020059405 Angwin

Regarding Claims 103, 118 and 123 Mircos teaches:

An information management and synchronous communications system for generating and transmitting hospitality menus comprising:

a. a central processing unit **(Page 1-2, "The 3700 system uses client/server architecture to manage the unique information about each restaurant's POS environment. Details about the restaurant's operation reside in tables on a database server, an application that manages the database. The database server in turn resides on the server PC. In a MICROS 3700 system, POS Configurator is the gateway to the tables managed by the database server and makes programming a 3700 system easier.")**,

b. a data storage device connected to said central processing unit, **((Page 1-2, "The 3700 system uses client/server architecture to manage the unique information about each restaurant's POS environment. Details about the restaurant's operation reside in tables on a database server, an application that manages the database. The database server in turn resides on the server PC. In a MICROS 3700 system, POS Configurator is the gateway to the tables managed by the database server and makes programming a 3700 system easier.")**

c. an operating system including a first graphical user interface, **(Page 1-3, "POS Configurator is the software layer between you and RDBM S. It's your interface to the database.")**

d. a master menu including menu categories **(see menu levels, Page 6-10 or alternatively menu item classes)**, menu items **("menu items" e.g. Page 6-32)**,

modifiers **(e.g. Condiment groups Page 6-36)** and sub- modifiers **(Condiment Membership Page 6-37)**

wherein said master menu is capable of being stored on said data storage device pursuant to a master menu file structure and said master menu is capable of being displayed in at least one window of said first graphical user interface, **(Page 1-2, "The 3700 system uses client/server architecture to manage the unique information about each restaurant's POS environment. Details about the restaurant's operation reside in tables on a database server, an application that manages the database. The database server in turn resides on the server PC. In a MICROS 3700 system, POS Configurator is the gateway to the tables managed by the database server and makes programming a 3700 system easier." And Page 3-2, "The 3700 POS Configurator interface is easy to learn and use. Refer to the topics on the following pages to understand the tools and functionality of POS Configurator.")**and

e. application software configured to generate a second menu for transmission [to a wireless handheld computing device] ~~or web page,~~ wherein the application software is configured to generate said second menu by utilizing parameters from the master menu file structure [defining the categories, items, modifiers and sub-modifiers] of the master menu **(Page 4-11, "Use the User Workstations form to assign touchscreens, options, order devices, and printers to each UWS. Option settings can be customized for each UWS.")**

such that the information comprising the second menu is synchronized in real time with analogous information comprising the master menu, **(Page 3-8, "The Options menu allows you toturn Caching on or off. Select Cached Updates to cause saved :changes to be posted to the databasewhen you exit a form. When this option is not selected, changes are posted to the database immediately (upon saving)")**

Mircos does not explicitly teach:

a wireless hand held computing device. However, this limitation is taught by Olewicz: **(Col. 9, Ln 2-5, "Take Order function: displays restaurant's menu and specials. Using the touch screen/stylus pen type interface the waiter will be able to easily take orders and forward them directly to the kitchen." See also Col. 3, Ln 30-35, "The system will also include a series of staff communication units such as wait staff or waiter, manager, kitchen and cleanup units, having short range wireless communication capability such as a pager or Palm sized computer, that can be carried on waiters belts or incorporated into an order pad to be used to record customer orders."**

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Mircos with the teachings of Olewicz, as Olewicz teaches a system of real time menu display and order taking that would improve the customer service of Mircos by adding portability as well as accessibility. (Col 2. Ln 59-

65, “The present invention generally relates to a computer aided communication system for use in restaurants and other business environments, such as nightclubs or other areas where communication between customers and business staff is critical for compiling real time data and for tailoring advertisements to customers and time of day for improving customer service.”)

Mircos in view of Olewicz does not explicitly teach:

wherein the application software is further configured to format the second menu such that the second menu may include additional parameters to facilitate user operations with and display of the second menu on the display screen of a second graphical user interface integral with the wireless handheld computing device, said second menu and any additional parameters satisfying any applicable display constraints and conforming to any applicable specialized display characteristics of the wireless handheld computing device screen ~~or web page or series of web pages.~~ However, Agwin teaches: **(Paragraph [0046] “After receiving the Request Services Menu message the Service Boot Host parses the message to obtain the information contained in the message such as a source address, the user identification, device information or the like (block 202). This information is then used to generate the services menu information to be provided to the device specified by the source address of the Request Services Menu message (block 204).”)**

In addition it would have been obvious to one of ordinary skill in the art to combine the teachings of Mircos in view of Olewicz with the teachings of Agwin as Olewicz contemplates the presentation of information on a heterogenous set of wireless systems (Col 6, Ln 27-29, “An example of this type of unit could be a "3COM Palm Pilot", "H P Jornada", "MAXTECH PD-910)" or "CASIO Cassiopeia" having a display such as a LCD screen 27.”) and Agwin teaches a system for displaying menus on a set of heterogenous systems (Paragraph [0020] “By providing an update procedure to the services menu of the pervasive computing device, the present invention may assure that the user is displayed a current services menu. Furthermore, such an ability allows for the control of the services menu presented to a user, for example, to add and remove services which are only temporarily accessible to the user or to present different services menus for different user environments.”)

Regarding the different limitation of claim 118 and 122

118: Mircos further teaches: such that the second menu as displayed on the second graphical user interface appears to a user to be substantially similar to the first menu as displayed on the first graphical user interface. **(Page 4-11, “Use the User Workstations form to assign touchscreens, options, order devices, and printers to each UWS. Option settings can be customized for each UWS.”)**

122: Olewicz further teaches: that the hospitality application information is synchronized between any connected users, wherein the communications control

module is configured to act as an interface between the elements of the system and any applicable communications protocol and wherein the system is configured to format the hospitality application information for display on both the wireless handheld device and web page in conformity with any applicable display constraints of the wireless handheld computing device or web page. **("Col 14. Ln. 13-21, "Similarly, if the request is part of survey data in step 146, survey information and questions are displayed on the table unit and responses are entered into a database in step 202 from which data is compiled by the central server unit to enable management to combine real time and statistical data in step 203 for inventory control and tracking of service such as wait times, etc., which further information also can be posted to a restaurant Internet website.")**

Regarding Claims 104-106, 110, 119, 120 and 123 Mircos further teaches:

104. (Currently amended) The information management and synchronous communications system in accordance with claim 103, further configured to automatically generate and transmit the second menu from the master menu. **(Page 3-8, "The Options menu allows you toturn Caching on or off. Select Cached Updates to cause saved :changes to be posted to the databasewhen you exit a form. When this option is not selected, changes are posted to the database immediately (upon saving)")**

105. (Currently amended) The information management and synchronous communications system in accordance with claim 104, further configured to

automatically generate and transmit the second menu from the master menu in response to at least one of a predetermined time, or the occurrence of an event or a change in the master menu. **(Mircos e.g. Page 6-10, "Distinguish between menu items ordered in different meal periods (such as Breakfast, Lunch, And Dinner)")**

106, 120, 123: wherein the second menu relates to hospitality applications including at least one of restaurant service, or point of sale systems, or reservations, or waitlists, or ordering, or customer affinity or frequent customer programs. **(Page 1-2, "The 3700 system uses client/server architecture to manage the unique information about each restaurant's POS environment. Details about the restaurant's operation reside in tables on a database server, an application that manages the database. The database server in turn resides on the server PC. In a MICROS 3700 system, POS Configurator is the gateway to the tables managed by the database server and makes programming a 3700 system easier.")**

Regarding Claims 110, 119, Mircos further teaches:

The information management and synchronous communications systems in accordance with claim 103 in which the modifiers and sub-modifiers in either the master or second menus may be further configured to be either required or not required. **(Page 6-38, "Create the allowed and required condiment selections required for each type of menu item in this restaurant.").**

Regarding Claims 107-109, 111-117, and 121, 124-127 Olewicz teaches:

107, 125 (Previously presented) The information management and synchronous communications system in accordance with claim 103 further configured to transmit user selections from the second menu to a receiving computer by wireless link or via the internet. **(Col. 9, Ln 2-5, "Take Order function: displays restaurant's menu and specials. Using the touch screen/stylus pen type interface the waiter will be able to easily take orders and forward them directly to the kitchen.")**

108, 121, 124: further configured such that user selections from a second menu on the wireless computing device ~~or web page~~ are automatically reflected in all other storage or display elements of the system. **(Col. 9, Ln 2-5, "Take Order function: displays restaurant's menu and specials. Using the touch screen/stylus pen type interface the waiter will be able to easily take orders and forward them directly to the kitchen." See also Col. 3, Ln 30-35, "The system will also include a series of staff communication units such as wait staff or waiter, manager, kitchen and cleanup units, having short range wireless communication capability such as a pager or Palm sized computer, that can be carried on waiters belts or incorporated into an order pad to be used to record customer orders."**

109. (Previously presented) The information management and synchronous communications system in accordance with claim 103, further configured to automatically format the second menu for display as cascaded sets of linked graphical

user interface screens appropriate for the display characteristics of the wireless computing device. **(FIG. 6a-6b, Col. 9-10 discusses the multiple function screens on the wait-staff portable order unit)**

111. (Previously presented) The information management and synchronous communications system in accordance with claim 103, further configured to include direct handwriting capture on the wireless device or conversion of the captured handwriting to text capabilities. **(Col. 9, Ln 2-5, "Take Order function: displays restaurant's menu and specials. Using the touch screen/stylus pen type interface the waiter will be able to easily take orders and forward them directly to the kitchen." See also Col. 3, Ln 30-35, "The system will also include a series of staff communication units such as wait staff or waiter, manager, kitchen and cleanup units, having short range wireless communication capability such as a pager or Palm sized computer, that can be carried on waiters belts or incorporated into an order pad to be used to record customer orders."**

Olewicz 112. (Previously presented) The information management and synchronous communications system in accordance with claim 103, further configured to include voice capture or conversion to text capabilities. **(Col. 8, Ln 42-51, "As shown in FIGS. 6A-6B, the staff communication units 13 of the waitstaff and manager 16 generally will comprise a hand held computer 40, possibly same or similar to the one used as the table communication unit, for example a "Palm Pilot" or Cassiopeia. The unit will include an input mechanism 41 such as touch screen, pen stylus 41',**

voice input, light pen, alphanumeric key pad or other input mechanism having features, which will allow information, such as an order taken by a water unit 14 (FIG. 2), to be taken and transmitted electronically.")

Olewicz 113. (Previously presented) The information management and synchronous communications system in accordance with claim 103 wherein the second menu relates to ordering and in which the order can be associated with a particular customer or customers seated at a particular table or area. **(Col. 9, Ln 2-5, "Take Order function: displays restaurant's menu and specials. Using the touch screen/stylus pen type interface the waiter will be able to easily take orders and forward them directly to the kitchen." See also Col. 3, Ln 30-35, "The system will also include a series of staff communication units such as wait staff or waiter, manager, kitchen and cleanup units, having short range wireless communication capability such as a pager or Palm sized computer, that can be carried on waiters belts or incorporated into an order pad to be used to record customer orders."**

114. (Currently amended) The information management and synchronous communications system in accordance with claim 103 in which the wireless handheld computing device is configured to facilitate selection of a printer to print receipts, checks or orders directly from the user interface of the wireless handheld computing device to the printer in closest proximity to the wireless handheld computing device at a given time. **(Col. 8, Ln 12-24, "In an additional embodiment of the table unit 12, the**

communication unit can be a standard type alphanumeric pager, a cell phone, or other similar low cost communication device. In this case some functions described above in the full-featured embodiment unit may not be available. The table unit will also have an optional charge card payment unit 35, with a built in printer to print out customer receipts. This feature will allow the customers to pay the bill, get the receipt, and leave without having to wait for the waiter to perform the transaction. This will not only save time for the customer, but it will also free up the table sooner, which in turn will help the restaurant to do more business.")

115, 127: which the wireless computing device is a smart phone or other consumer wireless communications device. **(Col. 8, Ln 42-51, "As shown in FIGS. 6A-6B, the staff communication units 13 of the waitstaff and manager 16 generally will comprise a hand held computer 40, possibly same or similar to the one used as the table communication unit, for example a "Palm Pilot" or Cassiopeia. The unit will include an input mechanism 41 such as touch screen, pen stylus 41', voice input, light pen, alphanumeric key pad or other input mechanism having features, which will allow information, such as an order taken by a water unit 14 (FIG. 2), to be taken and transmitted electronically.")**

116, 126: further configured to facilitate payment processing from the wireless handheld computing device. **(Col. 8, Ln 12-24, "In an additional embodiment of the table unit 12, the communication unit can be a standard type alphanumeric pager, a cell**

phone, or other similar low cost communication device. In this case some functions described above in the full-featured embodiment unit may not be available. The table unit will also have an optional charge card payment unit 35, with a built in printer to print out customer receipts. This feature will allow the customers to pay the bill, get the receipt, and leave without having to wait for the waiter to perform the transaction. This will not only save time for the customer, but it will also free up the table sooner, which in turn will help the restaurant to do more business.")

117. (Currently amended) The information management and synchronous communications system in accordance with claim 103, further configured such that both the master menu and the generated second menus reflect a billing summary to facilitate processing of payments for an order on the wireless handheld computing device. **(Col. 8, Ln 12-24, "In an additional embodiment of the table unit 12, the communication unit can be a standard type alphanumeric pager, a cell phone, or other similar low cost communication device. In this case some functions described above in the full-featured embodiment unit may not be available. The table unit will also have an optional charge card payment unit 35, with a built in printer to print out customer receipts. This feature will allow the customers to pay the bill, get the receipt, and leave without having to wait for the waiter to perform the transaction. This will not only save time for the customer, but it will also free up the table sooner, which in turn will help the restaurant to do more business.")**

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. BROPHY whose telephone number is 571-270-1642. The examiner can normally be reached on Monday-Thursday 8:00AM-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJB

12/6/2008

/Wei Y Zhen/

Supervisory Patent Examiner, Art Unit 2191

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	11112990	MCNALLY ET AL.
	Examiner	Art Unit
	MATTHEW J BROPHY	2191

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	03/07/2008	08/15/2008	12/08/2008						
	103	✓	✓	✓						
	104	✓	✓	✓						
	105	✓	✓	✓						
	106	✓	✓	✓						
	107	✓	✓	✓						
	108	✓	✓	✓						
	109	✓	✓	✓						
	110	✓	✓	✓						
	111	✓	✓	✓						
	112	✓	✓	✓						
	113	✓	✓	✓						
	114	✓	✓	✓						
	115	✓	✓	✓						
	116	✓	✓	✓						
	117	✓	✓	✓						
	118	✓	✓	✓						
	119	✓	✓	✓						
	120	✓	✓	✓						
	121	✓	✓	✓						
	122	✓	✓	✓						
	123	✓	✓	✓						
	124	✓	✓	✓						
	125	✓	✓	✓						
	126	✓	✓	✓						
	127	✓	✓	✓						

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	11112990	MCNALLY ET AL.
	Examiner	Art Unit
	MATTHEW J BROPHY	2191

SEARCHED			
Class	Subclass	Date	Examiner
715	810-845	12/8/2008	MJB

SEARCH NOTES		
Search Notes	Date	Examiner
See EAST search History	12/8/2008	MJB
inventor search in EDAN	12/8/2008	MJB
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INTERFERENCE SEARCH			
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Docket No. 3125-4003US1

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Serial No.:	11/112,990	Confirmation No.:	7098
Applicant(s):	McNally, et al.	Group Art Unit:	2191
Filed:	April 22, 2005	Examiner:	Brophy, Matthew
		Customer No.:	27123

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

REPLY AND AMENDMENT UNDER 37 C.F.R. 1.111

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

Sir:

In response to the pending non-Final Office Action dated December 15, 2008, including the cancellation of certain claims, reconsideration and allowance of the still-pending claims of the above-identified application is respectfully requested for the reasons stated herein.

Please amend the above-identified application as follows:

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper; and

Remarks begin on page 9 of this paper.

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application. Claims 1-102 were canceled without prejudice or disclaimer by previous amendments. By the present amendment, Claims 111 thru 114 are canceled. Claims 103-110 and 115-127 are now pending in the application. No new matter has been added by the present amendment.

1-102. (Canceled).

103. (Previously presented) An information management and synchronous communications system for generating and transmitting hospitality menus comprising:

a. a central processing unit,

b. a data storage device connected to said central processing unit,

c. an operating system including a first graphical user interface,

d. a master menu including menu categories, menu items, modifiers and sub-modifiers, wherein said master menu is capable of being stored on said data storage device pursuant to a master menu file structure and said master menu is capable of being displayed in at least one window of said first graphical user interface, and

e. application software configured to generate a second menu for transmission to a wireless handheld computing device,

wherein the application software is configured to generate said second menu by utilizing parameters from the master menu file structure defining the categories, items, modifiers and sub-modifiers of the master menu such that the information comprising the second menu is synchronized in real time with analogous information comprising the master menu, wherein the

application software is further configured to format the second menu such that the second menu may include additional parameters to facilitate user operations with and display of the second menu on the display screen of a second graphical user interface integral with the wireless handheld computing device, said second menu and any additional parameters satisfying any applicable display constraints and conforming to any applicable specialized display characteristics of the wireless handheld computing device screen.

104. (Previously presented) The information management and synchronous communications system in accordance with claim 103, further configured to automatically generate and transmit the second menu from the master menu.

105. (Previously presented) The information management and synchronous communications system in accordance with claim 104, further configured to automatically generate and transmit the second menu from the master menu in response to at least one of a predetermined time, or the occurrence of an event or a change in the master menu.

106. (Previously presented) The information management and synchronous communications system in accordance with claim 103 wherein the second menu relates to hospitality applications including at least one of restaurant service, or point of sale systems, or reservations, or waitlists, or ordering, or customer affinity or frequent customer programs.

107. (Previously presented) The information management and synchronous communications system in accordance with claim 103 further configured to transmit user selections from the second menu to a receiving computer by wireless link or via the internet.

108. (Previously presented) The information management and synchronous communications system in accordance with claim 103, further configured such that user

selections from a second menu on the wireless computing device are automatically reflected in all other storage or display elements of the system.

109. (Previously presented) The information management and synchronous communications system in accordance with claim 103, further configured to automatically format the second menu for display as cascaded sets of linked graphical user interface screens appropriate for the display characteristics of the wireless computing device.

110. (Previously presented) The information management and synchronous communications systems in accordance with claim 103 in which the modifiers and sub-modifiers in either the master or second menus may be further configured to be either required or not required.

111-114. (Canceled).

115. (Previously presented) The information management and synchronous communications system in accordance with claim 103 in which the wireless computing device is a smart phone or other consumer wireless communications device.

116. (Previously presented) The information management and synchronous communications system in accordance with claim 103, further configured to facilitate payment processing from the wireless handheld computing device.

117. (Previously presented) The information management and synchronous communications system in accordance with claim 103, further configured such that both the master and the generated second menus reflect a billing summary to facilitate processing of payments for an order on the wireless handheld computing device.

118. (Previously presented) An information management and synchronous

communications system for generating and transmitting hospitality menus comprising:

a. a central processing unit,

b. a data storage device connected to said central processing unit,

c. an operating system including a first graphical user interface, said operating system configured to interoperate with the central processing unit, the data storage device and application software,

d. a master menu including menu categories and menu items, wherein said master menu is capable of being stored on said data storage device,

e. a modifier menu capable of being stored on said data storage device, and

f. a sub-modifier menu capable of being stored on said data storage device,

wherein the application software is configured to generate a second menu for transmission to a wireless handheld computing device, wherein the application software is configured to generate said second menu by utilizing parameters from the master menu file structure defining the categories and items of the master menu, modifiers from the modifier menu and sub-modifiers from the sub-modifier menu such that the information comprising the second menu is synchronized in real time with analogous information comprising the master, modifier and sub-modifier menus,

wherein the application software is further configured to format the second menu for use and display on the display screen of a second graphical user interface integral with the wireless handheld computing device in conformity with any applicable display constraints of such second graphical user interface of the wireless handheld computing device, and

wherein the application software is also configured to format the second menu for user

operations and display on the display screen of the second graphical user interface of the wireless handheld computing device such that the second menu as displayed on the second graphical user interface appears to a user to be substantially similar to the first menu as displayed on the first graphical user interface.

119. (Previously presented) The information management and synchronous communications system in accordance with claim 118, further configured to automatically generate the second menu from the master menu, the modifier menu and the sub-modifier menu.

120. (Previously presented) The information management and synchronous communications system in accordance with claim 118, wherein the second menu relates to hospitality applications including at least one of restaurant service, or point of sale systems, or reservations, or waitlists, or ordering, or customer affinity or frequent customer programs.

121. (Previously presented) The information management and synchronous communications system in accordance with claim 118, further configured such that user selections from a second menu on the wireless computing device are automatically reflected in all other storage or display elements of the system.

122. (Previously presented) An information management and synchronous communications system for use with wireless handheld computing devices and the internet comprising:

a. a master database connected in said system and configured to store hospitality application information pursuant to a master database file structure,

b. at least one wireless handheld computing device connected in said system and configured to display said hospitality application information,

c. at least one web server connected in said system and configured to display said hospitality application information,

d. at least one web page connected in said system and configured to display said hospitality application information, and

e. a communications control module linking the master database, wireless handheld computing device, web server and web page,

wherein the system is configured to utilize parameters from the master database file structure to synchronize the hospitality application information in real time between the master database, at least one wireless handheld computing device, at least one web server and at least one web page such that substantially the same information comprising the hospitality application information is capable of being displayed on the wireless handheld computing device, at least one web page and other display screens of the synchronized system, such that the hospitality application information is synchronized between any connected users, wherein the communications control module is configured to act as an interface between the elements of the system and any applicable communications protocol and wherein the system is configured to format the hospitality application information for display on both the wireless handheld device and web page in conformity with any applicable display constraints of the wireless handheld computing device or web page.

123. (Previously presented) The information management and synchronous communications system of claim 122, wherein the hospitality application information relates to at least one of restaurant service, or point of sale systems, or reservations, or waitlists, or ordering, or customer affinity or frequent customer programs.

124. (Previously presented) The information management and synchronous communications system of claim 122, further configured to automatically communicate selections made from a menu on at least one web page or at least one wireless computing device and transmitted over the internet to either the master database or at least one wireless handheld computing device or at least one web page.

125. (Previously presented) The information management and synchronous communications system of claim 122, further configured to automatically communicate selections made from a menu on at least one wireless handheld computing device to either the master database or the web server.

126. (Previously presented) The information management and synchronous communications system in accordance with claim 122, wherein the hospitality information relates to payment processing.

127. (Previously presented) The information management and synchronous communications system in accordance with claim 122, wherein the wireless handheld computing device is a smart phone or other consumer wireless communications device.

REMARKS

Claims 1-102 were previously canceled without prejudice or disclaimer by preliminary amendments filed in this application on April 22, 2005 and September 25, 2007. Claims 103-105, 108, 110, 114, 117-119, 121, 122, 124 and 125 were amended by amendment dated May 28, 2008. Claims 111-114 are canceled by the present Amendment. Claims 103-110 and 115-127 are now pending in the application.

In a non-Final Office Action dated December 15, 2008, claims 103-127 were rejected under 35 U.S.C. 103(a) as being unpatentable over Micros Systems Inc. POS Configuration User's Guide: 3700 POS in view of USPN 6,973,437 to Olewicz and further in view of US PG Pub 20020059405 to Angwin.

First, the Olewicz and Angwin reference priority dates are actually later than the invention date to which the present claims are entitled (as confirmed by the inventor's Rule 1.131 Declaration submitted herewith). As such, all of the rejections should thus be withdrawn. The Applicants also assert that, irrespective of the priority dates of the asserted references, the Examiner applied a number of disparate references for which no basis, suggestion or reason has been shown for the combination as urged by the Examiner to render obvious the invention as claimed. As fully explained below, each of the applied references is not pertinent to Applicants' invention as claimed and/or teaches away from the invention as claimed. Each of the applied references suffer from infirmities vis-à-vis a description of the elements of the pending claims and none of the references alone, nor even the references when combined, render the pending claims obvious when combined with the knowledge of a person skilled in the art. Moreover, the

knowledge of a person skilled in the art at the time of the invention would not have sufficed to fill the large gaps in the reference teachings or otherwise provide a reason to combine the references in the manner suggested by the Examiner. However, in addition to the fact that none of the applied references, either together or separately, render the claimed invention obvious, the Olewicz and Angwin reference priority dates are later than the invention date asserted for the present claims as discussed below and confirmed by the Rule 1.131 Declaration submitted herewith and as such the Applicants respectfully request that the rejections be withdrawn.

I. DECLARATION ANTEDATING OLEWICZ AND ANGWIN REFERENCES

A 37 CFR 1.131 inventor's declaration antedating the Olewicz and Angwin references is submitted herewith. The Olewicz priority date is apparently June 29, 1999 (note that the Olewicz priority provisional application appears to have been filed on June 29, 1999, even though the filing date is listed as June 9, 1999 on the issued patent). The Angwin priority date is apparently June 17, 1999. As detailed in the inventor's declaration, the presently-claimed invention was conceived at least as early as August 1998 and reduced to practice as early as November 14, 1998 in connection with the introduction to the public of subject matter embodied by the present claims at a major Hospitality Technology Show in Atlanta, Georgia. Moreover, the inventors continued development of their invention toward commercialization on a constant and diligent basis up to the filing of the priority application on September 21, 1999. Applicants therefore respectfully request withdrawal of the pending rejections since the remaining applied reference, the Micros 3700 manual, alone does not teach or suggest all of the claimed elements

of each of the pending claims (as admitted by the Examiner) and a person skilled in the art would not have known how to make the invention from the teaching of the Micros reference.

II. THE MICROS REFERENCE DOES NOT TEACH OR SUGGEST ALL OF THE CLAIM ELEMENTS ASSERTED BY THE EXAMINER

In 1998, the date attributed to the Micros reference by the Examiner, the inventors of the present application conceived of leveraging GUI-based hospitality information or data (e.g., parameters defining modifiers/sub-modifiers and other parameters) from a master or central database for, inter alia, the synchronous, real time generation and transmission to or from other components of the system, and which was displayable dependent on the specialized and unique display characteristics and constraints of each system node or device type, e.g., for wireless handheld computing devices. The result of Applicants' invention was the first hospitality solution to, inter alia, achieve and maintain overall consistency of data across all connected system nodes at any given time and to account for the specialized user interface requirements of wireless handheld computing devices. Nothing in the prior art, including the Micros reference, taught or suggested such an approach.

The inventors of the present claims understood that to achieve full integration of a hospitality system including different display devices, a synchronous system would have to be capable of accommodating different display size and format requirements and be capable of converting the data stored on the central database, leveraging the data parameters from the central database and generating and transmitting data to each individual system node in a format that could be displayable, useful and actionable on that particular device. Such usability is a function of aspects unique to the hospitality market including, for example, the need for linked

cascading, custom menus with modifiers, sub-modifiers and other specialized user interface requirements for a particular hospitality environment. The inventors likewise appreciated that user inputs from these nodes would also have to be formatted and recognized by the synchronized system to be the same as if they had been entered into the system from any other node in the system – otherwise the system would be dealing with inconsistent information and this would not be an integrated, synchronized system. The Micros reference describes nothing more than a client/server system for use with homogeneous elements, e.g., a menu on the server/database would be displayable on each of the display components exactly the same because the display constraints of all of the components were substantially the same and as such there was no need for any menu conversions or generation of any "second menus" for, e.g., a handheld display. The Micros reference is entirely devoid of any appreciation, teaching or suggestion of the need to "generate and transmit" a "second menu" from the "master menu" and to integrate heterogeneous display components, e.g., handheld displays and standard PC terminal screens, to achieve a completely synchronized hospitality system as reflected in the presently-claimed invention.

Specifically, independent Claims 103 and 118 recite "application software configured to generate a second menu for transmission to a wireless handheld computing device, wherein the application software is configured to generate said second menu by utilizing parameters from the master menu file structure . . . ." The passage from the Micros reference cited by the Examiner as allegedly teaching this limitation does not, however, have anything to do with generating a "second menu" from a master menu file structure for transmission to a wireless handheld computing device. The Examiner mistakenly equated the mere linking of

peripheral hardware devices (e.g. a printer or a CRT display/touchscreen) to a particular computer workstation of the system, as discussed by the Micros reference, with the "generation and transmission" of a "second menu" for the specialized display requirements of a handheld device as presently claimed. The passage quoted from the Micros reference, i.e., "[u]se the User Workstations form to assign touchscreens, options, order devices and printers to each UWS. Option Settings can be customized for each UWS" has nothing to do with, inter alia, hospitality menus, handheld menus or "generating and transmitting" menus. The cited passage from the Micros reference merely relates to workstation configuration attributes (much the same as the setup of, for example, a home PC, wherein the user can link the PC to, e.g., a scanner, monitor, or printer and define their hardware attributes). The cited passage from the Micros reference has nothing to do with the generation of a specialized menu from a master menu file structure and transmission to the specialized device. The presently-claimed invention is directed to, inter alia, facilitation of mobile ordering by leveraging of GUI-based information or data from a master/central database for synchronous generation, transmission and display (as appropriate) on various nodes of a hospitality system. Micros describes a fixed POS system with similarly configured, e.g., standard PC type displays, but the Micros reference did not envision integration of a fixed POS system with a mobile, wireless system including devices having different display/size characteristics and a synchronous, real time system solution to maintain same in the manner claimed.

Independent Claims 103 and 118 further recite "such that the information comprising the 'second menu' is synchronized in real time with analogous information comprising the master menu . . ." The Examiner cited a passage from Page 3-8 of the Micros

reference which refers to turning "caching" on or off as meeting this limitation. According to the cited passage, when caching is not selected, "changes are posted to the database immediately (upon saving)." The Applicants respectfully disagree with the Examiner's interpretation of this passage as applied to the presently-claimed invention. The "caching" discussed in the Micros reference does not relate to real time synchronization of information across a synchronous communications network of connected devices comprising a "second menu" with analogous information comprising the master menu as presently claimed. The Examiner mistakenly equated the immediate posting of changes to the database unless caching is enabled (as described in the cited Micros passage) with the inventive real time generation and transmission of a "second menu" from a master menu file structure across an entire network of connected, wireless and internet linked devices (as presently claimed). The passage quoted from the Micros reference has nothing to do with, inter alia, generating and transmitting "second menus" from a master menu wherein the generated "second menu" is synchronized in an entire network with analogous information comprising the master menu and, as previously stated, the Micros reference did not even envision the generation of a "second menu" in the first place. The cited passage from the Micros reference relates to configuration attributes entered via forms and their storage either in cache or the database depending on the option selected. To the extent menus are modified via these forms (if at all) , the modification is to the menu stored in the fixed database, which is exactly the same menu displayed on the various other workstations – thus there is no teaching or suggestion in the Micros reference of the generation of a new, different, "second" menu from the master menu file structure stored on the database. The immediate updating of a database with the information entered on such a form does not, however, relate in any way to the real time

generation and synchronization of information comprising a "second menu" with analogous information comprising the master menu. The Micros reference describes a system wherein a single menu only is distributed from a server to client workstations, but because the workstations are standard PC-type devices, the master menu is configured for display thereon without the need for the inventive generated and transmitted "second menus" (configured to satisfy device-specific display requirements). It is clear from the Micros reference that touchscreens are created only for standard PC-type devices and the menu stored on the database is displayed via the touchscreens; thus there is no need for any re-configuration and conversion of the database menu file structure for display of a menu on the PC-type device screens because the touchscreen configurations stored on the database are designed specifically for PC-type display devices. (See Micros pages 3-28, 4-25, 4-26 and 4-27). The Micros reference thus teaches away from the generation of a "second menu" for specialized display on a handheld screen having vastly different and far more limited display parameters than a standard PC-type device screen. The Micros reference does not suggest or teach the generation, transmission or use of handheld devices or "second menus" nor does the cited passage from the Micros reference have anything to do with the generation of specialized "second menus" from a master menu file structure and synchronous, real time transmission to and with any kind of device, handheld or otherwise.

The Examiner stated that Micros further teaches the limitation of independent claim 118 directed to the requirement that the "second menu" (which is generated from the master menu but is configured for display on a handheld device) appears to a user to be substantially similar to the master menu as displayed on the first GUI. This recitation in claim

118 adds the requirement that the logic in the system needs to not only format the "second menu" so that it is displayable on the other specialized displays, but also that the system logic needs to produce the "second menu" so that it is as consistent in user interface as possible with the master menu. This additional, unique aspect of the invention is applicable to minimizing waiter/server training in restaurant POS environments since some staff use the fixed POS systems and some use handhelds but all staff members need to be able to easily and seamlessly move from one user interface to the other. As Micros does not teach or suggest synchronous, real time generation and transmission of a "second menu" from a master menu file structure nor the usage of handheld devices, as discussed above, Micros thus cannot teach or suggest the generation of a "second menu" such that the "second menu" appears substantially similar to the master menu displayed on the first graphical user interface, nor was there any reason for a person skilled in the art to supply the missing element. Claim 118 is thus believed allowable on this additional basis vis-à-vis claim 103.

Nor does the Micros reference ever mention reservations, waitlisting, customer frequency, etc. as encompassed by various of the present claims, including claims 106, 120 and 122-127. The Micros reference simply describes extending the same GUI from a fixed POS system to more displays of substantially the same size/orientation/layout and that is not the subject matter of the present claims nor does the Micros reference suggest the presently-claimed invention. Claims 103 and 118 are directed to leveraging data that is displayable on one GUI for display on a second, different GUI, and synchronizing the information in real time between the separate nodes - even though the display constraints and parameters of the different GUIs are very different.

Applicants respectfully submit that the rejections should therefore be withdrawn as to all of the pending claims based on the above distinctions over the Micros reference.

III. THE OLEWICZ REFERENCE DOES NOT MEET THE CLAIM LIMITATIONS EVEN IF IT WERE AVAILABLE AS PRIOR ART

The Examiner cited the Olewicz reference as teaching a wireless handheld computing device corresponding to some of the claim elements as presently claimed in all pending claims. The Examiner appears to have read aspects of the Olewicz patent as synonymous with the Applicants' claimed invention, e.g., an integrated, synchronized menu and ordering system comprising a master menu file structure from which a handheld menu is "generated and transmitted" to the wireless device with its unique display characteristics. The Examiner's combination of Olewicz with Micros has no sound basis. Initially, as discussed above, the Olewicz patent is not prior art to the present application and claims because the Applicants have established an invention date prior to the earliest claimed priority date for the Olewicz patent. Moreover, the Examiner's apparent reading of the Olewicz patent is unjustified even if Olewicz were available as prior art against the present claims.

First, Olewicz does not teach or suggest a real time, synchronous menu/ordering system. In col. 9, lines 7-12 and col. 12, lines 24-27 of the Olewicz reference, and in the flow charts as step 114, it is admitted that the ordering devices do not "know" whether the items sought to be ordered from the menu are available when the order is entered ("waiter will know immediately after sending the order if the food ordered is still available. If the food is not available, the computer will send the order back to the waiter instead [of] to the kitchen, and allow the waiter to retake the order and send it again."). The salient word is "after" (which

means that the menu presented to the waiter is not generated synchronously in real time from a master menu file structure on a central database). The Olewicz reference thus actually teaches away from a real time, synchronous system as presently claimed.

Further, Olewicz refers to a primary function of the device described therein as "Up/Down Scroll" (see, e.g., col. 10, lines 2-4) ("The Up/Down Scroll: this will allow the waiter to scroll up and down the selected lists such as: consumer request, food orders, or other."). This is yet another very significant teaching away from the claimed invention. Scrolling is a very poor technique for displaying information on devices having limited display attributes such as small screen size, however, because such an approach is painstakingly slow for operators and largely ineffective in a hospitality application. The presently claimed invention, inter alia, eliminates the need to rely on scrolling in the display of menu information on small screen devices. The generation of a "second menu" specifically configured for the handheld device user interface screen from a master menu file structure as claimed substantially eliminates the need for such scrolling because the menu screens of the "second menu" are generated specifically to satisfy the display constraints of the handheld display screen; i.e., the generation of cascading and linked menu screens unique for the handheld device substantially eliminates the need for scrolling because each screen fits properly on the display device and additional user screens are created and linked appropriately to provide a coherent, user friendly menu flow for the particular display device. In one embodiment of the presently claimed invention, the need for scrolling to display an entire screen of menu options can be entirely eliminated because each menu screen can be configured to accomplish that purpose within the display constraints of the target device. However, it should be appreciated that any combination of the inventive menu generation as

claimed, even with some degree of scrolling, falls within the scope of the present claims. The inclusion of "scrolling" by Olewicz as a primary means to display an entire list of options thus further indicates that Olewicz did not appreciate the inherent benefits of the presently claimed invention and that the teaching of Olewicz in fact teaches away from the Applicant's unique inventive solution. Further, even with "scrolling" and all of its limitations, Olewicz had no idea whatsoever of the many other critical aspects of the inventive technique, all of which are required to yield the total solution of the presently claimed invention.

The Examiner relied on the following statement from Olewicz as purportedly teaching a wireless handheld computing device: "Take Order function: displays restaurant's menu and specials. Using the touch screen/stylus pen type interface the waiter will be able to easily take orders and forward them directly to the kitchen." However, as discussed above, the mere teaching of the use of a wireless device does not teach or suggest the claimed invention. Displaying a menu on a handheld device and forwarding orders to the kitchen says nothing about how the menus were generated or even of the need for "second menus," and most certainly does not teach or suggest that such "second" menus were generated synchronously, in real time from a master menu file structure, and configured for the particular display characteristics of the target handheld device as presently claimed. Nothing in Olewicz even remotely refers to or suggests generating and transmitting "second menus" from a master menu file structure for display on a handheld computing device as presently claimed.

The Examiner further stated that "it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Micros with the teachings of Olewicz, as Olewicz teaches a system of real time menu display and order taking that would

improve the customer service of Micros by adding portability as well as accessibility." The passage from Olewicz quoted by the Examiner states only that "communication between customers and business staff is critical for compiling real time data and for tailoring advertisements to customers and time of day for improving customer service." Applicants respectfully submit that this passage in no way suggests the unique aspects of the claimed invention. Combining the teachings of Olewicz with Micros does not produce a real time system of handheld, "second menu" generation from a master menu file structure as presently claimed in Claims 103 and 118. Olewicz generically discusses ordering from remote wireless handheld devices, but Olewicz clearly failed to appreciate how the remote ordering solution of the presently-claimed invention was actually accomplished, i.e., by incorporation of a central/master database which drives the other system GUI based "second menus" operator interfaces through leveraging of the parameters in the central database to achieve synchronization of information or data across connected nodes of the system. Moreover, Olewicz failed to even appreciate the need for "menu conversions" in a synchronous system of disparate connected devices having different display characteristics; and thus Olewicz fails to teach or suggest the generation and transmission of "second menus", synchronously, to e.g., mobile wireless devices or the web. The "real time" aspect of Olewicz relied on by the Examiner had to do merely with the compiling of data related to improving customer service but there is no teaching or suggestion in Olewicz of real time, synchronous generation of handheld menus from a master database file structure as presently claimed. "[C]ompiling real time data" as described by Olewicz merely refers to the storing of data as it is created, which is entirely different from generating and transmitting custom, "second menu" displays throughout a synchronized system in real time.

Micros teaches nothing about handheld devices or integration of disparate GUI based operator interfaces having different display characteristics. Contrary to the Examiner's assertion, the combination of Olewicz and Micros thus does not teach or suggest real time "second menu" generation and display as presently claimed.

The Examiner further stated that Olewicz teaches the recitation of independent claim 122 directed to synchronization across both wireless handheld devices and the internet via a communications control module. However, claim 122 adds the explicit requirement that both handheld and web server/web page elements are connected and synchronized in the same system at the same time through a single "communications control module" acting as an interface between the elements of the system and any applicable communications protocol. Olewicz does not teach or suggest these elements nor provide any reason or motivation to add these additional elements to its teachings, nor was there any reason for a person skilled in the art to have known to supply the missing elements. Moreover, separate references cannot properly be combined to teach this claimed aspect because, by definition, separate references cannot teach nor suggest the connected and synchronized system comprised of multiple elements which the inventors uniquely conceived over ten years ago. The nature of the present invention was to, inter alia, maintain real-time consistency of information across disparate nodes with very different display characteristics and communications protocols in a synchronous, connected system. The Examiner has pointed to no suggestion, motivation or reason to combine Olewicz and the other cited references and, in fact, the separate references teach away from the present invention by virtue of the total lack of synchronization as claimed in any of the references. Also, Olewicz makes no mention of synchronous, real time reservations, waitlisting, customer frequency etc.

(which are encompassed by independent claim 122 and recited by several dependent claims). The reference to "wait times" being posted to a "restaurant internet website" in the cited passage from Olewicz has nothing to do with real time, synchronous waitlisting. It is merely a posting of historical service information. Without the present invention, a completely integrated and synchronized hospitality system is not possible and Olewicz did not teach or suggest such a system. Further, there is no mention in Olewicz of ordering and/or menus in the context of the internet, i.e. on-line ordering, which is also encompassed by independent claim 122 and several dependent claims. The only mention of the internet in Olewicz is in the context of corporate type reporting and as such did not even remotely envision, teach or suggest the subject matter of claim 122 and its dependent claims. Claim 122 is thus believed allowable on this additional basis vis-à-vis claims 103 and 118. Further, as previously stated in regards to the Micros reference, it did not teach the requisite unique aspects of claim 122 either.

The rejections should therefore be withdrawn as to all of the pending claims based on the above distinctions over the Olewicz reference.

IV. THE ANGWIN REFERENCE DOES NOT MEET THE CLAIM LIMITATIONS EVEN IF IT WERE AVAILABLE AS PRIOR ART

The Examiner cited the Angwin reference as teaching aspects of the recitations in claims 103 and 118 directed to the formatting of the "second menu" for display on the GUI of a wireless handheld computing device. First, Angwin is not directed to a "hospitality" application; the Applicants respectfully submit that after adding this claim limitation (based on the Examiners request at the April 22, 2008 interview), the Examiner's inclusion of a rejection based on a "non hospitality" reference was inappropriate and as such, the Angwin reference should be withdrawn

on this point alone. Further though, the Examiner relied on Angwin's teaching of a "services menu" as purportedly teaching this claimed limitation, and appears to have read Angwin's discussion of the display of such a "services" menu on a handheld device as synonymous with the Applicants' claimed invention, i.e., an integrated, synchronized hospitality menu and ordering system comprising a master menu file structure from which a handheld, "second" menu is generated and transmitted to the wireless device. The Examiner's combination of Angwin with Olewicz and Micros has no sound basis. Initially, as discussed above, the Angwin reference is not prior art to the present application and claims because the Applicants have established an invention date prior to the earliest claimed priority date for the Angwin reference. Second, as stated above, Angwin is not a "hospitality" directed application. Further, the Examiner's apparent reading of the Angwin reference is unjustified even if Angwin were available as prior art against the present claims and/or it was directed to a hospitality application.

The Angwin reference has nothing to do with the presently-claimed invention or hospitality menus in general. The Examiner may have cited this reference because of its use of the word "menu." However, the menus referred to by Angwin are not hospitality "second menus" for use on a handheld device which are synchronously generated from a master menu file structure. Angwin relates to primarily cell phone communication networks and the control of access to various authorized services such as voice telephony, text messaging, etc., by users/subscribers in such a network. For example, Angwin states "[f]or example, a user may have prepaid for 1 hour of use of a particular service. After that hour has expired, the user's services menu could be updated to remove that particular service from the services menu." (Para. 56). Angwin's use of the word "menu" to refer to access to such services has absolutely nothing

to do with restaurant/hospitality menus as presently claimed. The menu screens of the "second menu" as presently claimed are generated specifically to satisfy the specialized display constraints of the handheld display screen; i.e., cascading and linked menu screens unique for the handheld display device are generated including the creation and linking of additional screens vis-à-vis the master menu file structure to provide a coherent menu flow for the particular display device and the synchronous maintaining of consistency. Angwin's "services menu" in no way teaches or suggests such a menu generation system.

Angwin states that a services menu is a:

> [S]et of available services that the user may access from within the network environment in which the device currently resides (i.e., a services menu). Such a list of services may be provided, for example, as a Hyper-Text Markup Language (HTML) home page for networked computers, a Wireless Markup Language (WML) deck for smart phones and PDAs or a Speech Markup Language (SpeechML) of Voice Markup Language (VoXML) menu for voice-based devices. (Para. 5).

A services menu as described by Angwin is thus a list of available communications services which a remote device may access. Such a services menu is not at all analogous to a hospitality menu which includes, e.g., linked and cascading menu screens including categories, items, modifiers and sub-modifiers which may be selected to facilitate, e.g., food ordering.

Angwin further states with regard to the purpose for the described procedure:

> [T]he present invention provides for obtaining a services menu for a pervasive computing device without requiring the device to know in advance the location from which the services menu is to be obtained. Accordingly, a user of the device may simply connect to the network and the services menu may be automatically obtained without requiring the user to know the specifics of the network configuration to which the device is attached. (Para. 13).

If the procedure of Angwin was followed with respect to the provision of hospitality menus to remote devices, a user device would be connected to a network and every hospitality menu item would be listed (including multiple and different menus from different hospitality enterprises). Such a reading of Angwin's teaching is erroneous for multiple reasons. First, hospitality menus are not made available on a network as a communications service. Second, there is no reason to provide a listing of all available menus simply because a user connects a remote device into a network. A user or device seeking a particular hospitality menu will either know or use other methodologies to determine which hospitality menu is desired. For example, in the restaurant POS environment, the remote device will be configured to access the menu on the database associated with the POS network. In the smart/cell phone environment, a user will either know which menu is desired, use search or reviews/recommendations to converge on a particular menu or the device will be programmed to access a particular menu or menus using, e.g., widget technology. Angwin thus teaches away from the presently-claimed invention.

Moreover, the particular passage from Angwin relied on by the Examiner refers to generation of a services menu based on "a source address, the user identification, device information or the like." The passage relied on by the Examiner clearly does not teach or suggest the use of GUI based parameters from a master menu to create a second menu configured for the unique display requirements of hospitality menus as discussed above.

Further, Angwin states that remote device users must periodically send out a so-called "request services menu" message. (E.g., Para. 39). This also is a teaching away from the claimed real time, synchronized system in and of itself. In the presently-claimed synchronous,

real time system, no such "request services menu" message ever needs to be sent, since all linked devices are always synchronized with each other. Additionally, Angwin states "[f]urthermore, the services may be tailored based on other factors such as billing information, for example, if the use of services is to be prepaid or if different levels of services are provided to different customers." (Para. 40). This too is consistent with a cell phone network services type system and has nothing to do with a real time, synchronous hospitality system. Angwin teaches away further by stating "[f]urthermore, because the connection type may change from session to session, the menu of services may change from session to session." (Para. 40). The recitation of a "session" is an unassailable confirmation that Angwin's description is of a non-real time, non-synchronous system and is thus another teaching away from the claimed invention. Even further, in Para. 51 Angwin discusses "adding," "deleting," "changing" and "replacing" functions which all teach away from the presently-claimed invention directed to a master database driven system in which a change in any element of the system is synchronously reflected in all system elements.

The Angwin reference is thus entirely inapplicable to the hospitality menu environment and specifically is inapplicable to the invention claimed in independent claims 103 and 118, i.e., a system for synchronous generation and transmission of hospitality menu information between a master/central database and a wireless handheld device. And none of the other cited references (Micros and Olewicz) teach or suggest the claimed aspects missing from Angwin because none of the cited references is directed to synchronous generation and transmission of hospitality menu information between a central database and a wireless handheld device having unique display characteristics. There is thus no motivation or reason to combine

the teachings of Micros, Olewicz and Angwin, and even if there was a basis to combine these references the combination does not teach or suggest the invention as claimed nor would a person of ordinary skill in the art have been in possession of the missing elements.

Further, Angwin fails to even recognize the additional characteristics of an overall synchronized hospitality system including such additional hospitality applications including reservations, wait-listing, frequency etc. and Angwin doesn't even mention the internet or web pages. Angwin is thus not applicable to claims including these features, including claims 106, 120 and 122-127.

The rejections should therefore be withdrawn as to all of the pending claims based on the above distinctions over the Angwin reference.

V. NUMEROUS DEPENDENT CLAIMS ARE INDEPENDENTLY PATENTABLE OVER THE CITED REFERENCES

The dependent claims are believed to be allowable on the same bases as independent claims 103, 118 and 122 as discussed above. Applicants also disagree with the Examiner's positions regarding the cited references with respect to various dependent claims as follows.

The Examiner cited the Micros reference description of setting a memory cache on or off as teaching the recitation of claims 104 and 105 that the system is configured to automatically generate and transmit the second menu from the master menu. However, as discussed above, the cited passage from Micros is inapt. Micros does not teach or suggest generating a "second menu" from a master menu file structure for transmission to a wireless

handheld computing device, and thus Micros does not teach or suggest the automatic generation and transmission of such a menu. This rejection should therefore also be withdrawn.

The Examiner cited the Micros reference description of "[d]istinguish[ing] between menu items ordered in different meal periods (such as Breakfast, Lunch, and Dinner)" as teaching the recitation of claim 105 that the system is configured to automatically generate and transmit the "second menu" from the master menu in response to at least one of a predetermined time, or the occurrence of an event or a change in the master menu. However, as discussed above, Micros does not teach or suggest generating a "second menu" from a master menu file structure for transmission to a wireless handheld computing device, and thus Micros does not teach or suggest the automatic generation and transmission of such a menu in response to the recited criteria. This rejection should therefore also be withdrawn.

The cited passage from Micros relied on by the Examiner as teaching the recitations of claims 106, 120 and 123 is not applicable to the claimed subject matter. These dependent claims further recite that the hospitality applications include at least one of restaurant service, point of sale systems, reservations, waitlists, ordering, customer affinity or frequent customer programs. The mere fact that Micros describes a client/server architecture is no basis for attributing to such an architecture, e.g., the generation of a "second menu" unique to the display characteristics of handhelds or the synchronization of such hospitality information between a central database, handhelds and the internet as presently claimed. The Micros system was merely a central terminal with connected dumb terminals which all used the same standard PC type screens. The Micros reference does not teach or suggest the claimed synchronous, real

time system incorporating handhelds and the internet directed to the enumerated hospitality applications. This rejection should therefore also be withdrawn.

The cited passage from Micros relied on by the Examiner as teaching the recitations of claims 110 and 119 is not applicable to the claimed subject matter. These dependent claims further recite that the modifiers and sub-modifiers in either the master or second menus may be further configured to be either "required" or "not required." It is true that the Micros reference relates to a POS system which, like most "fixed" POS systems, allowed for "required" or "not required" modifiers and sub-modifiers. However, these functions are special parameters which directly impact the logic flow and user interface linkages of a menu system, fixed or otherwise. Incorporation of such functionality in a handheld menu requires the creation of cascading links of a significantly greater number of smaller screen menus unique to the display characteristics of handhelds and thus the logic flow linkages have to be adapted in the "second menu" generation to reflect and maintain these new linkages and flows. Having this basic menu feature on a fixed POS system does not translate straightforwardly to handheld/smart phones since the particular menu pages and button links for the handheld menu are substantially different vis-à-vis the master menu. This rejection should therefore also be withdrawn.

The Examiner cited the Olewicz reference description of using a touch screen/stylus pen type interface to take orders and forward to the kitchen as teaching the recitation of claims 107 and 125 that the system is configured to transmit user selections from a "second menu" to a receiving computer by wireless link or the internet. However, as discussed above, Olewicz does not teach or suggest generating a "second menu" from a master menu file structure for transmission to a wireless handheld computing device (or the internet), and thus

Olewicz does not teach or suggest the making of selections from such a menu or the transmission of such selections to a receiving computer. This rejection should therefore also be withdrawn.

The Examiner also cited the Olewicz reference description of using a touch screen/stylus pen type interface to take orders and forward to the kitchen as teaching the recitation of claims 108, 121 and 124 that the system is configured such that user selections from a "second menu" on the wireless computing device or web page are automatically reflected in all other storage or display elements of the system. However, as discussed above, Olewicz does not teach or suggest generating a "second menu" from a master menu file structure for transmission to a wireless handheld computing device (or the internet), and thus Olewicz does not teach or suggest the making of selections from such a menu, the transmission of such selections to a receiving computer or the automatic reflection of such selections in all other storage or display elements of the system. This rejection should therefore also be withdrawn.

The Examiner cited Olewicz as teaching the recitation of claim 109 that the system is further configured to automatically format the "second menu" for display as cascaded sets of linked graphical user interface screens appropriate for the display characteristics of the wireless computing device. However, there is no teaching in Olewicz of a "second menu" generated from a master menu and synchronously transmitted to a wireless device or how such a "second menu" would be generated even if the need to do so had been appreciated by Olewicz, which it was not. Moreover, as discussed above, the Olewicz scrolling function teaches away from this claimed aspect as does the admission in Olewicz that smart phone devices (in the limited system concept described therein) have only "limited functionality." This rejection should therefore be withdrawn.

The Examiner applied the Olewicz patent against the recitations of claims 115 and 127 that the wireless computing device is a smart phone or other consumer wireless communications device. As discussed above, Olewicz teaches away from the claimed synchronous, real time system involving, e.g., hospitality "second menus" generated for handheld devices or the internet by admitting that a full solution for smart phones was not disclosed as part of the Olewicz system. Further, as previously stated, the aspects of the Micros reference necessary to in combination support the rejection of this claim cannot be found in that reference. The rejections of claims 115 and 127 should thus be withdrawn.

* * *

Neither of the cited references, either alone or in combination, describe or suggest the presently-claimed aspects of the Applicants' claimed information management and synchronous communications system, nor would a person of ordinary skill in the art have known to supply either of these aspects missing from the descriptions of the cited references. Moreover, for at least the reasons stated above, there is no basis for imputing knowledge of either of the presently-claimed aspects to a person of ordinary skill in the art or for combining any such imputed knowledge with either of the cited references. Further, the art made of record but not relied on by the Examiner in making the claims rejections does not supply the claimed aspects which are missing from the descriptions of the applied references, nor would the knowledge of a person skilled in the art combined with the art made of record supply the aspects missing from the cited references for the reasons stated above. The Applicants therefore believe the claims as presently presented are patentably distinguishable over the references of record, either alone or in combination.

An early and favorable examination on the merits is requested. In the event that a telephone conference would facilitate the examination of this application in any way, the Examiner is invited to contact the undersigned at the number provided.

CONCLUSION

Based on the foregoing remarks and amendments, the Applicants respectfully request reconsideration and withdrawal of the pending rejections and allowance of this application. The Applicants respectfully submit that claims 103-110 and 115-127 are patentable and in condition for allowance. An early action passing this case to issue is therefore respectfully requested.

If any issues remain, or if the Examiner has any suggestions for expediting issuance of this application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below. Favorable and prompt consideration is requested.

AUTHORIZATION

Applicants believe that no additional fee is required as a result of the present Amendment. However, to the extent that any extension of time is necessary or any additional fees are required, Applicants hereby authorize the Commissioner to charge any additional fees, or credit any overpayment, to Deposit Account No. 13-4500 (Order No. 3125-4003US1).

Respectfully submitted,
MORGAN & FINNEGAN LLP

Dated: January 23, 2009

By: _____
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Docket No. 3125-4003US1

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
		Customer No.:	27123

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

DECLARATION UNDER 37 C.F.R. § 1.131

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 Declaration to establish conception of the invention claimed in this application in the United States at least as early as August 1998, well prior to June 17, 1999, the filing date of U.S. Patent Publication No. 20020059405 to Angwin et al. ("Angwin publication") and June 29, 1999, the apparent priority date of U.S. Patent No. 6,973,437 to Olewicz et al. ("Olewicz patent") – both of which were cited by the Examiner against the pending claims of the present application—coupled with actual reduction to

practice of the claimed invention from September 1998 and subsequent constructive reduction to practice of the claimed invention as a filed U.S. patent application on September 21, 1999.

3. Prior to June 17, 1999, my co-inventors and I conceived of the subject matter of the invention claimed in this application. In short, the November 1998 21st Century Restaurant System Diagram and brochures, the offers for sale, the actual product demonstrations at the November 1998 FSTEC show and the numerous additional contemporaneous references discussed and detailed below, as well as our continual efforts to commercialize a product encompassed by the present claims illustrated the invention in sufficiently clear terms to demonstrate conception in the United States prior to June 17, 1999.

4. The invention claimed in the above-identified patent application was actually reduced to practice in or about November 1998 as detailed below. To the extent the November 1998 activities could possibly be deemed insufficient to establish reduction to practice of the claimed invention (notwithstanding the clear evidence demonstrating that the invention was actually reduced to practice in November 1998), additional evidence submitted herein regarding our activities subsequent to November 1998 shows clearly that the claimed invention was actually reduced to practice prior to June 17, 1999. The invention was thereafter constructively reduced to practice on September 21, 1999.

5. From a period from September 1998 to September 1999, my co-inventors and I were diligent in working to reduce the invention to practice, both actually and constructively. During this period, both the actual and constructive reduction to practice of the claimed invention was active and reasonably continuous.

6. After conceiving the core inventive ideas encompassed in the pending claims of the present application in late summer 1998 (as part of preparations for a new generation of products to be introduced at the upcoming November 1998 FSTEC show), my co-inventors and I initiated and then continued the development effort and worked diligently at designing and developing an initial prototype of the claimed invention during the period from September 1998 to November 1998. We then introduced the invention and showed this first prototype and offered the product for sale to the public and to customers and partners at the Food Service Technology Show (FSTEC) in Atlanta, Georgia from November 14-16, 1998. Thereafter, we continued to make further refinements of a commercial embodiment of the claimed invention throughout the remainder of 1998 and well into 1999. Copies of actual photographs of us introducing, demonstrating, and offering for sale this invention and product, the "wizard" (our company's only software product at the time), in our large booth at the November 1998 show and numerous additional confirming documents substantiating our continual inventive activities based upon the "wizard" - up to an including our constructive reduction to practice are attached as exhibits. Our company's "wizard" products were the only software products under development at Ameranth from September 1998 thru at least September 21, 1999, and thus all of our software development activities, de facto, involved development of a commercial embodiment of the claimed invention. A detailed chronology of our invention activities as evidenced by contemporaneous documentation is provided in the following paragraphs.

7. Exhibit 1 is a copy of a photograph taken during November 1998 which shows the assignee of the present application (Ameranth, Inc.) actually demonstrating and offering for the first time to the public an embodiment of the claimed menu generation

and wireless/web data synchronization inventions. This embodying product was part of Ameranth's 21st Century Restaurant™ system. This product introduction and demonstration occurred in Atlanta, Georgia at the Food Service Technology (FSTEC) Show during November 14-16, 1998. Exhibit 1 is copy of a photograph of Ameranth's 20X20 foot booth within the show. All three inventors attended the show, however co-inventor William Roof left and returned to San Diego - after assisting with the set up of the system in Ameranth's booth. In the photograph (taken by co-inventor Richard Bergfeld), seated at the front table with his back to the camera is Dave Miller, founder of JTECH, Ameranth's paging system partner. Clockwise after Mr. Miller is Jeff Graham, CEO of JTECH, Keith McNally of Ameranth (co-inventor), Dan Drummond of Ameranth and then Jeff Tobin, the President of JTECH at the time. Looking toward the camera from one of Ameranth's system demonstration stations is Kathie Sanders, then Ameranth's Director of Marketing. In front of Ms. Sanders is a customer. Standing immediately to the right of Ameranth's booth, with his arms folded, is Ed Lyznick (now deceased) who was then Ameranth's Sales Director. Immediately to the right of Ms. Sanders and just above her head is the Systems Diagram of Exhibit 3 (which can be seen more clearly in Exhibit 2). Exhibit 3 was shown to and discussed with potential customers and partners at this show and Ameranth provided demonstrations of the initial prototype which embodied the claimed invention. The prototype demonstrated at the show was a working device which included aspects recited by the claims of the present application and, in concert with, inter alia, the Systems Diagram, included all aspects of the present claims. Ameranth demonstrated the capabilities of the invention at the show by live demonstrations of the prototype along with passing out copies of the system

diagrams and product brochures. The product brochures were handed out by Ms. Sanders at the demonstration stations and also were available for customers/partners to obtain through the brochure brackets along each of the four legs of the booth (most visible on the right booth leg). The computer screen to the left of Ms. Sanders' head is one of the stations where the product demonstrations were shown. Directly overhead are screen shots of the then planned Ameranth mobile ordering hardware device, which Ameranth intended at the time to source from Japan. While the photograph of Exhibit 1 is not marked with a date, it was unarguably taken at the FSTEC show of November 1998, since Jeff Tobin was no longer part of JTECH shortly after this show and regretfully, Ed Lyznick died of a sudden heart attack within days of this show.

8. Exhibit 2 is a copy of an additional photograph taken at Ameranth's 1998 FSTEC show product introductions. In this photograph, Ameranth's system diagram (Exhibit 3), including the core inventive elements of the claims of the present application, is clearly visible in the upper right of the center block within Ameranth's booth. This photograph clearly shows that the Ameranth "wizard" product was introduced and shown to the public at the FSTEC hospitality technology show in November 1998.

9. Exhibit 3 is a copy of Ameranth's 21st Century Restaurant™ System Diagram. This diagram was first exhibited at the November 1998 FSTEC show as confirmed by the photographs of Exhibits 1 and 2. The description contained within the diagram of Exhibit 3 encompassed the core inventive elements of Ameranth's later issued patents and the claims of the present application as embodied in Ameranth's "wizard" prototype and disclosure. Already, at this time, Ameranth had a working capability of the

invention and continued to diligently advance and refine the commercial embodiment of the invention subsequent to its introduction at the 1998 FSTEC show. Ameranth's invention uniquely recognized, for the first time, the need for an integrated and synchronized wireless/web hospitality system and that a breakthrough innovation (embodied in Ameranth's "IntraSet wizard" - shown on the screen of the center PC within the wireless communication center in the photograph of Exhibits 1 and 2) was needed to act as the central and master controller for the entire synchronized system. My co-inventors and I were the first to recognize that the system would need to integrate with POS systems, leverage and manage the database (including menu items, prices, orders, frequent customers etc), and seamlessly and automatically "generate and transmit" menus to touchscreen handhelds and the internet, as well as to place orders, conduct payment processing and integrate with other hospitality functions such as table management, reservations, waitlists, paging, valet, etc. All of these aspects which are recited in the pending claims of the present application are shown in the Systems Diagram of Exhibit 3.

10. Exhibit 4 is a copy of a letter dated December 30, 1998 to me from John Harker of Symbol, who met me at the November 1998 FSTEC show in Atlanta and observed Ameranth's software "wizard" products for the first time at the show. Symbol was very interested in Ameranth's "wizard" technology as an application for its wireless handheld devices and to meet the then unsolved need for a solution to "generating and transmitting" menus from fixed POS systems to mobile devices and then maintaining synchronization. The letter specifically refers to Symbol's interest in Ameranth's 21st Century Restaurant System. Follow up actions and meetings subsequent to this letter led to the signing of a strategic alliance agreement between Ameranth and Symbol, which

included the "wizard" invention as an essential aspect. The strategic alliance agreement, executed on February 3, 1999, is attached as Exhibit 7.

11. Exhibit 5 is a copy of a system diagram in my handwriting, (which conveyed the core elements of our invention, but from a slightly different perspective, primarily the "communications flows") and which was and is consistent with the original November 1998 system diagram. I made this drawing on or about January 1, 1999.

12. Exhibit 6 is the system diagram shown in Exhibit 5 after its conversion to a PowerPoint chart. As can be seen, this system diagram shows that my co-inventors and I were in possession of the subject matter of the pending claims of the present application. For example, the diagram of Exhibit 6 shows hospitality menu generation and transmission from a master/central database to wireless handheld devices ("wireless POS" in this figure) as encompassed by, e.g., present claim 103 and synchronization of hospitality information between a master/central database, wireless devices and the web as encompassed by, e.g., present claim 122.

13. Exhibit 7 is a copy of the strategic alliance agreement signed on February 3, 1999 between Symbol Technologies and Ameranth (with attached Exhibit A thereto). As discussed above, this agreement was a direct result of Ameranth's introduction of its inventions at the November 1998 FSTEC show. At that show, John Harker, then Symbol's Hospitality Market Director, was seeking the optimal systems integration partner for Symbol's new mobile handhelds. Ameranth demonstrated its "wizard" prototype and provided, inter alia, copies of the system diagram of Exhibit 3 to Mr. Harker at the FSTEC show. This document (which essentially represents a sale of our products) further confirms that my co-inventors and I had possession of the claimed

invention and were diligent in developing it for commercialization and/or continually working to reduce it to practice as evidenced by the selection of Ameranth's technology embodying the claimed invention by the world's largest rugged mobile device manufacturer within just six weeks of the FSTEC show. Notably, Paragraph 2(D) of the attachment of Exhibit 7 refers to Ameranth's provision of a "totally integrated system solution" to customers. Additionally, Paragraph 2(E) of the attachment of Exhibit 7 clearly reflects Symbol's recognition of the importance of Ameranth's "software wizard" invention and its relevance to both their planned Windows CE and Palm device introductions:

> Ameranth will modify its Software Wizard development environment to enable POS suppliers and/or the customers themselves to quickly develop hand-held POS applications for the CE screen of the 2700. . . . Ameranth will also provide a tailored version for the smaller screen of the 1700 . . . .

This Paragraph also reflected the recognition of the need for our invention to customize the "generated" handheld menus uniquely for the smaller sized screens of these handhelds as recited by, e.g., pending claim 103 of the present application. With the signing of this February 1999 agreement with Symbol, Ameranth then moved away from the previously targeted hardware device from Japan shown at the November 1998 FSTEC show and focused on integrating its products encompassed by the claimed invention with the new Symbol mobile devices. As made clear in the strategic agreement, Ameranth would continue development of its "Software Wizard" product for launch with Symbol's handheld devices at the upcoming May 1999 National Restaurant Association (NRA) show in Chicago. Note that the "pen and ink" handwritten changes/insertions in the

document attached as Exhibit 7 were made at the time of its signing.

14. Exhibit 8 is a copy of a press release announcing the introduction of Ameranth's updated 21st Century Restaurant™ System to include the Symbol Windows CE Device at the National Restaurant Association (NRA) show in Chicago, Illinois on May 22, 1999. The references in this press release to, e.g., "seamless integration" and "fully integrated software and hardware solutions" were with respect to Ameranth's provision of a solution involving the leveraging of central/master database information for generation of, e.g., menus for display on handheld devices and/or web pages and/or provision of a synchronized solution for hospitality applications between a central/master database, handheld devices and the internet as recited in various of the presently-pending claims. Also noteworthy in this press release was the inclusion of IBM and Microsoft as partners (in addition to Symbol) as well as our first/charter POS System partner, Hospitality Solutions International (HSI) – which had already placed a large order for our devices and for our "software wizard" development kit in March 1999, (thus further confirming that a commercially acceptable embodiment of the invention existed at that time) and further establishing reduction to practice of the claimed invention prior to June 17, 1999.

15. Exhibit 9 is a copy of a May 22, 1999 press release announcing the signing of Ameranth's first hospitality POS partner, Hospitality Solutions International ("HSI"), which adopted Ameranth's "wizard" technology and became a strategic partner of Ameranth as discussed above. The following passage from Exhibit 9, inter alia, reflects and further confirms that Ameranth's solution as of this date involved the leveraging of central/master database information for generation of, e.g., menus for

display on handheld devices and/or web pages and/or provision of a synchronized solution for hospitality applications between a central/master database, handheld devices and the internet as recited in various of the presently-pending claims:

> The 21st Century Restaurant System allows for wireless automation and integration of all restaurant processes including order taking, payment processing, inventory control, process control, wait-list management, table management, short and long range communications, and a host of other applications. Palm-in-hand control increases productivity, reduces costs and can dramatically improve customer service.

16. Exhibit 10 is a copy of a full page color advertisement in the May 1999 issue of the leading hospitality publication, Nations Restaurant News, in which Ameranth was advertising its new system to the public. While undated, the inclusion of Ameranth's actual booth number in the advertisement (which is only known shortly before the show) and the invitation for the public to visit Ameranth at that booth number at the NRA show demonstrates that the date of the advertisement was prior to the May 22, 1999 NRA show. The following passages from Exhibit 10, inter alia, reflect and further confirm that Ameranth's solution as of this date involved the leveraging of central/master database information for generation of, e.g., menus for display on handheld devices and/or web pages and/or provision of a synchronized solution for hospitality applications between a central/master database, handheld devices and the internet as recited in various of the presently-pending claims:

> [Y]ou can rely on Ameranth Technology Systems to be the Hospitality Industry's one source for advanced wireless and e-commerce integration.
>
> - Wireless handheld solutions operating on Microsoft's Pocket PC Platform

- Wireless Local and Wide Area Networks
- Customized B2B and consumer e-commerce Internet applications
- Integration of Legacy Systems and databases (including Point of Sale and Back Office Software.)
- Wireless technology such as handhelds, phones, and pagers.

Whether you're a single venue relying on a POS provider or a large chain with your own MIS team, Ameranth's approach ensures that you will benefit from the latest technological innovations without having to worry about compatibility or fragmented support.

17. Exhibit 11 is a copy of a drawing showing the layout of Ameranth's booth at the May 1999 NRA show. Note that Ameranth maintained the same basic booth configuration as at the FSTEC show of November 1998. However, the artwork was updated to reflect Ameranth's new advertising campaign including the model hired to assist with the advertising campaign referenced in Exhibit 10. The model was actually in Ameranth's booth at the May 1999 show and she operated and assisted with the demonstration of Ameranth's handheld computers to show how easy the solution was when Ameranth's "wizard" invention was included.

18. Exhibit 12 is a copy of the updated Ameranth 21st Century Restaurant™ system diagram introduced at the NRA Show in Chicago on May 22, 1999. This diagram was shown within Ameranth's booth and copies were widely distributed. This diagram maintains all of the core elements of the original system diagram (shown at the November 1998 FSTEC show), but depicts them somewhat differently and reflects the use of the new Symbol, Windows CE mobile devices in lieu of the previous

generation of mobile hardware devices. The diagram of Exhibit 12 reflects and further confirms that Ameranth's solution as of this date involved the leveraging of central/master database information for generation of, e.g., menus for display on handheld devices and/or web pages and/or provision of a synchronized solution for hospitality applications between a central/master database, handheld devices and the internet as recited in various of the presently-pending claims.

19. Exhibit 13 is a copy of an Ameranth wireless handheld product brochure. The product referred to in the brochure was a key element of Ameranth's overall 21st Century Restaurant System and was intended for the newly introduced Symbol Windows CE mobile device. This brochure was first made available at the NRA show on May 22, 1999. Note that while Ameranth had become a software company at this time in 1999 (based on the strategic alliance with Symbol signed in February 1999), Ameranth was responsible for assisting Symbol in making its mobile hardware device the dominant choice in the hospitality market. The following passage from Exhibit 13 reflects and further confirms that Ameranth's solution as of this date involved the leveraging of central/master database information for generation (see "projected" in the quote below) of, e.g., menus for display on handheld devices:

> For the first time, there is a mobile, handheld computer that has the same kind of broad applicability as a PC, allowing end-users to use the same device for virtually any application. And with Ameranth's Advanced Systems Integration, legacy and current generation applications can be projected easily from existing DOS, Windows, and NT environments into the mobile, wireless, CE environment, making it unnecessary to replace existing systems or to change systems providers.

20. Exhibit 14 is a copy of a publication called "Restaurant Show Daily"

from the Chicago, Illinois NRA show in May 1999. In this issue, Ameranth's wireless handhelds were mentioned as one of the most interesting things seen at the show by an actual restaurant customer, and this recognition was made with respect to thousands of different products in a wide range of areas of the hospitality industry. This is another confirmation of the breakthrough aspects of Ameranth's "wizard" inventions.

21. Exhibit 15 comprises a copy of a set of photographs from the May 1999 NRA show further verifying Ameranth's participation in the show. In the photographs numbered 201 and 202 Dan Drummond of Ameranth is shown along with John Harker of Symbol and an executive from COMTEC. In photograph 226, Kathie Sanders of Ameranth (far left), Keith McNally of Ameranth (third from the right) and four other customers/partners are shown.

22. Exhibit 16 is an article from Hospitality Technology magazine dated July/August 1999. Hospitality Technology was a leading publication at the time. The article described the debut of Ameranth's new products and partnerships at the NRA show of May 1999. The photograph at the top, which was taken at the NRA show, includes Keith McNally of Ameranth, Manny Negreiro, President of Ibertech (who had become Ameranth's second POS partner) and Bill Schwartz, President of Foodtrak, another Ameranth partner at the NRA show, as well as Larry Hausman, Publisher of Hospitality Technology magazine. The conclusion of this article referred to the "buzz" that Ameranth received from its exhibits on the floor at the NRA show. This was yet another confirmation of the breakthrough aspects of Ameranth's inventions.

23. Exhibit 17 is a copy of a July 15, 1999 press release announcing a strategic partnership between Food.com and Ameranth. This is relevant to the story

behind the development of the present invention for several reasons. First, just as Symbol saw Ameranth's "software wizard" technology at the November 1998 FSTEC show and then very rapidly chose to partner with Ameranth, the same thing occurred with Food.com after Food.com representatives saw Ameranth's product demonstrations and displays at the May 1999 NRA show in Chicago. Food.com's selection of Ameranth as its POS integration partner is especially significant because Food.com, previously known as "Cybermeals, Inc.," owned Cupps U.S. Patent No. 5,991,739 (which Ameranth's issued U.S. Patent Nos. 6,384,850; 6,871,325 and 6,982,733 were allowed over). Additionally, this time period was in the middle of the "dot com" period and companies such as Food.com had unprecedented access to capital. In fact, by this time Food.com had attracted nearly $100 million in investment capital. As such, for such a well-funded company, which was the number one "on line" ordering company in the world at that time, to have determined that it too needed Ameranth's "wizard" technology was yet another confirmation of the breakthrough aspects of the claimed invention.

24. Exhibit 18 is a copy of a July 26, 1999 press release announcing the Ibertech/Ameranth strategic partnership. Ibertech was the world's largest supplier of Windows based POS systems at the time, had seen Ameranth's 'wizard' products at the May 1999 NRA show, and thus Ibertech's selection of Ameranth as its wireless partner was yet another confirmation of the breakthrough aspects of the claimed invention.

25. Exhibit 19 is a copy of a memorandum which I sent to Ed Rothenberg on August 31, 1999. Mr. Rothenberg was the senior engineering executive for POS systems for Micros Systems, Inc. at the time. He and Micros had also expressed serious interest in partnering with Ameranth after the May 1999 NRA show - as had many other

companies as discussed herein. This memo clearly characterized the core inventive aspects of Ameranth's "wizard" technology and what its advantages would be for Micros:

> [O]ur "Menu Wizard" . . . enables the rapid creation of operator screens for the Windows CE Ultrapad. Essentially, we have a standard CE POS GUI we make available to POS partners, we assist them with importing their existing POS databases into this tool . . . . . and then very quickly . . . . . a wireless POS application can be developed- . . .
>
> We also will provide you our "communications wizard" that resides under Windows in the back office . . . that accepts incoming wireless messages, and/or internet orders (i.e. Food.com) . . . . . and translates and exchanges them with the host POS system i.e., Micros . . . even better . . . the "Menu Wizard" . . . will create **both** the Windows CE and HTML code from the same database inputs . . . . . so that when the "master POS" e.g., you guys changes a price and/or POS code and/or product availability status . . . the "communications wizard" . . . will update the wireless and web status automatically . . . . . and when you use our tool to develop the wireless POS equivalent of your system . . . . you will really be "killing tow [sic: two] birds with one stone" in that the web equivalent will be easy to do . . .

It is particularly noteworthy that this memorandum included, inter alia, one of the core aspects of the presently pending claims, i.e., the memorandum referred to a "master POS" which controlled the generation of handheld menu "screens" from "existing POS databases." The above-quoted passages from Exhibit 19 reflect and further confirm that Ameranth's commercially-offered "software wizard" products during this time period and the preceding 10 months involved the leveraging of central/master database information for generation of, e.g., menus for display on handheld devices and/or web pages and/or provision of a synchronized solution for hospitality applications between a central/master database, handheld devices and the internet as recited in various of the

presently-pending claims.

26. Exhibit 20 is a copy of an internal email memorandum dated September 13, 1999 (provided to Ameranth at that time by the author, Bob Nugent) reflecting Food.com's internal assessment of the uniqueness of Ameranth's "menu wizard" technology and shows why even a very large and well funded company such as Food.com chose to partner with Ameranth. While Mr. Nugent was innately a "non-technical" person (i.e., he was the marketing person at Food.com), even he came to appreciate the breakthrough aspects of Ameranth's invention when he stated:

> 1. Menu Wizard --- this is a tool which digitally constructs and updates restaurant menus. This [sic: the] benefits to us with this tool would be the following:
>
> a) create and update menus faster with significant labor savings
>
> b) lower cost of maintenance (restaurant customers will be able to update and change specials themselves)
>
> c) exclusive rights to this tool (barrier to entry)
>
> 2. Communications Wizard --- this tool creates a standard that can be used to integrate with any POS terminal and establishes the online ordering protocol.
>
> 3. Reservations --- Food.com would have exclusive rights to the online reservation system. They would help us create a hybrid system that can connect with the POS but can also operate through a call center as we establish the POS integration.

This was yet another confirmation of the uniqueness of Ameranth's "wizard" technology, which was first introduced in a working prototype to the public in November 1998 and continuously commercially refined from that date forward until the constructive reduction

to practice eight days after this memorandum was written in the form of the filing of Ameranth's priority patent application.

27. Beginning in or about July 1999, I coordinated with our outside counsel to prepare a patent application directed to the presently claimed invention. To assist in preparing the application in a diligent manner, I spoke with outside counsel over the telephone, provided information used to prepare the application, exchanged information regarding the application with my co-inventors and worked with counsel to finalize and file the application. On September 21, 1999, our outside counsel filed the application in the U.S. Patent and Trademark Office ("USPTO"). My co-inventors and I subsequently submitted to the USPTO our declarations of inventorship and assignment of our rights in the invention to our employer. The present application is entitled to priority to the September 21, 1999 application.

28. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Dated: January 22, 2009

Keith R. McNally

Exhibit 1

LAWSON
Management System
LAWSON
Software
21ST
Century

Exhibit 2

SAMERANTH

Exhibit 3

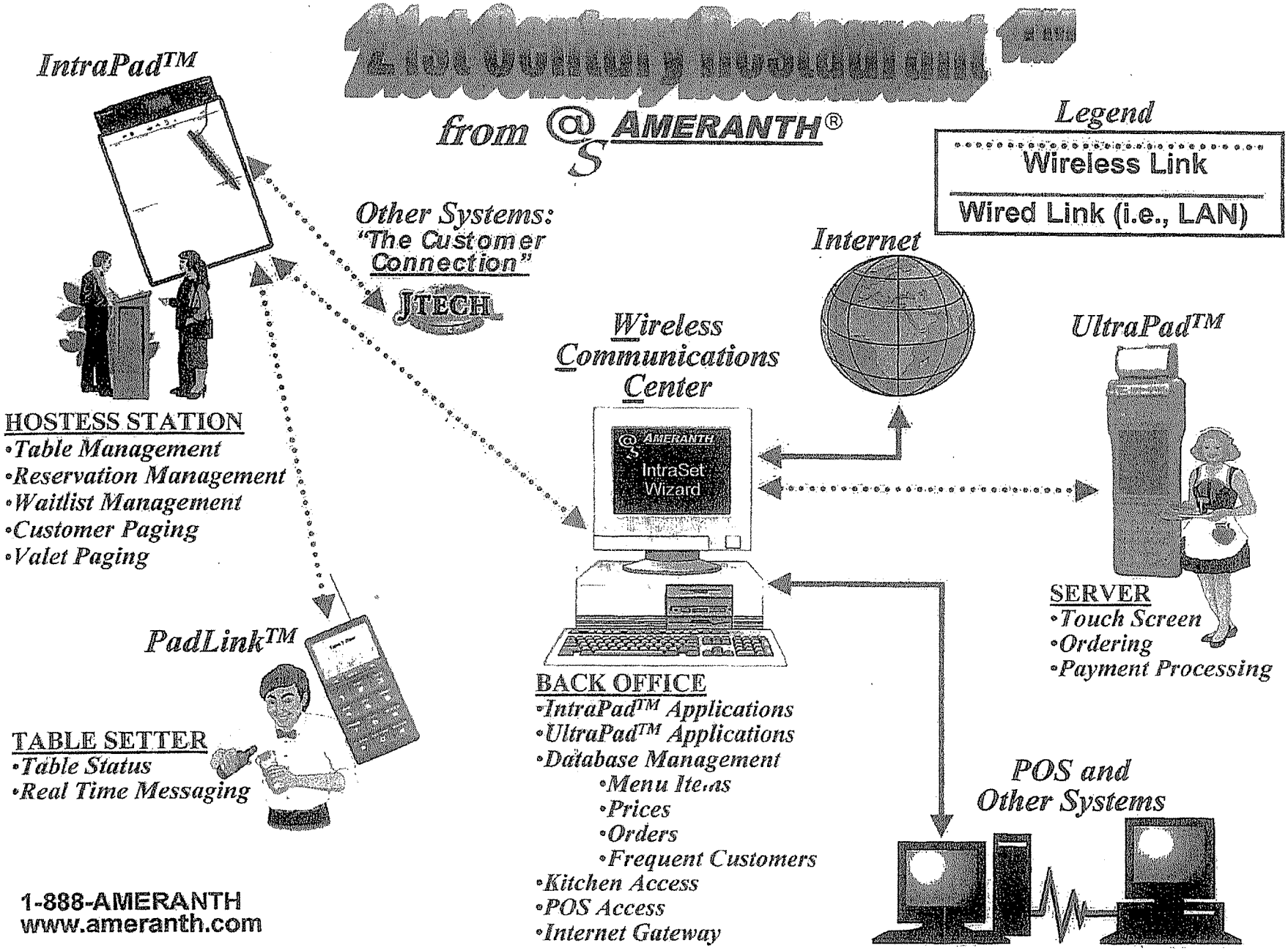


Exhibit 4

Symbol Technologies, Inc.
72 Colonel Enoch
Carmel, NY 10512

December 30, 1998

Keith McNally
Ameranth Technology Systems
16079 San Dieguito Road
Rancho Santa Fe, CA 92067

Dear Mr. McNally:

I want to thank you for your time the other day. Per our conversation, Symbol Technologies would like to have the opportunity to work with Ameranth. Symbol's Spectrum 24 Wireless LAN Technology, I believe, would be a great compliment to your 21st Century Restaurant System.

On January 18 - 20th, in New York City will be the National Retail Federation Show (NRF). Symbol will be exhibiting and will have conference rooms available to meet. I want to extend to Ameranth the opportunity to meet with Symbol Technologies, review our Mobile and Wireless products, and discuss how we might possibly work together. It would be a great opportunity to meet with Symbol Senior Executives and address your concerns of working with a Billion dollar company.

I look forward to meeting with you. I would like to target the 19th at Jacob Javitz to get together. Please call me to schedule a time convenient to you.

Very truly yours,

John V. Harker
Symbol Technologies

OEM Scanner Sales ✦ Phone: 914-277-2234 ✦ Fax: 914-277-2235 ✦ Internet: Harker@symbol.com
AMARNT.DOT

Exhibit 5

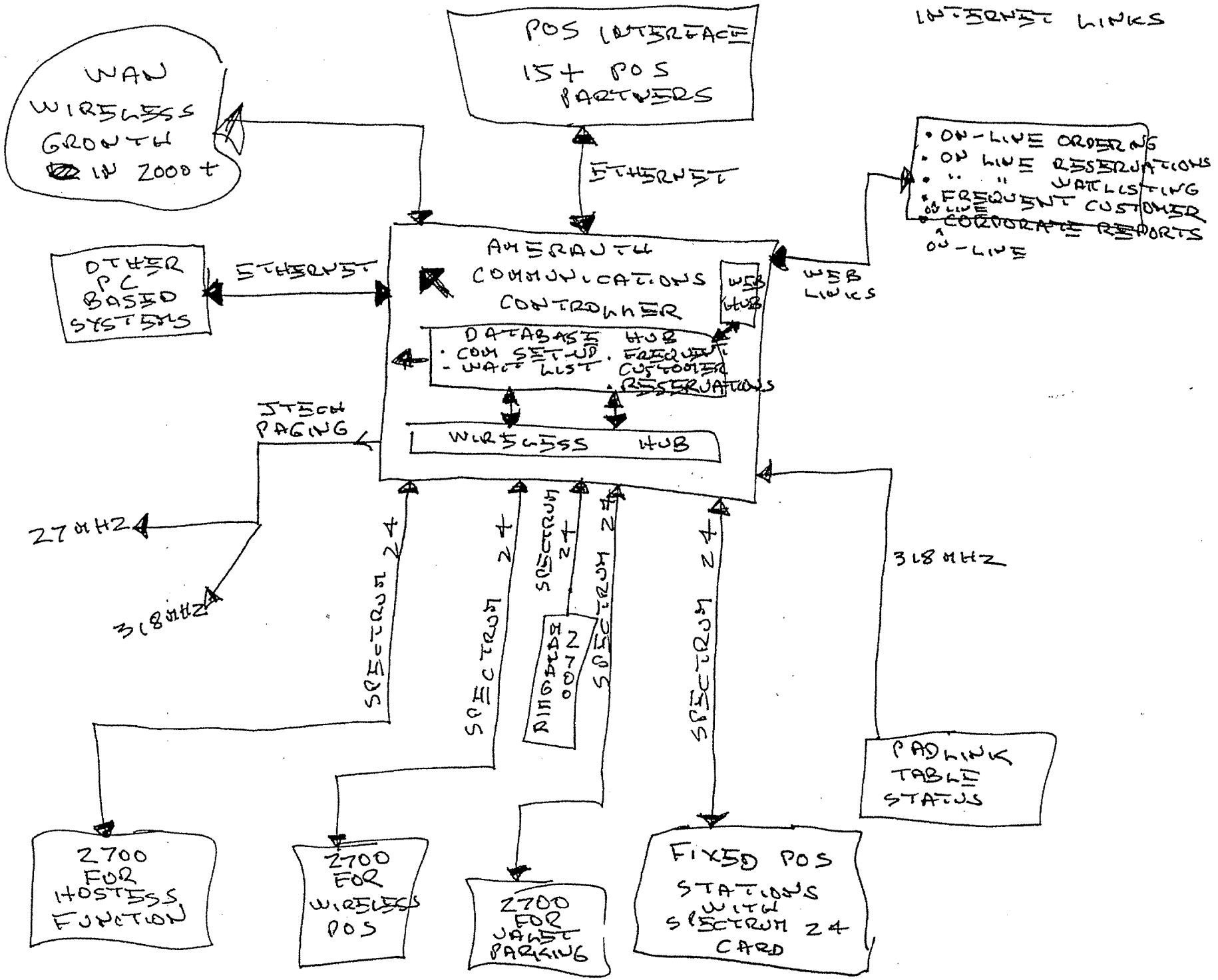

INTERNET LINKS
WAN
WIRELESS
GROWTH
IN 2000+
POS INTERFACE
15+ POS
PARTNERS
ETHERNET
• ON-LINE ORDERING
• ON LINE RESERVATIONS
• " " WAITLISTING
• FREQUENT CUSTOMER
• CORPORATE REPORTS
ON-LINE
OTHER
PC
BASED
SYSTEMS
ETHERNET
AMERAUTH
COMMUNICATIONS
CONTROLLER
WEB
HUB
WEB
LINKS
DATABASE HUB
· COM SET-UP · FREQUENT
- WAIT LIST CUSTOMER
RESERVATIONS
WIRELESS HUB
ITECH
PAGING
27 MHZ
318 MHZ
SPECTRUM 24
SPECTRUM 24
SPECTRUM 24
SPECTRUM 24
318 MHZ
RADIOLAN
2700
PADLINK
TABLE
STATUS
2700
FOR
HOSTESS
FUNCTION
2700
FOR
WIRELESS
POS
2700
FOR
VALET
PARKING
FIXED POS
STATIONS
WITH
SPECTRUM 24
CARD

Exhibit 6

Ameranth 21st Century Communications Integration

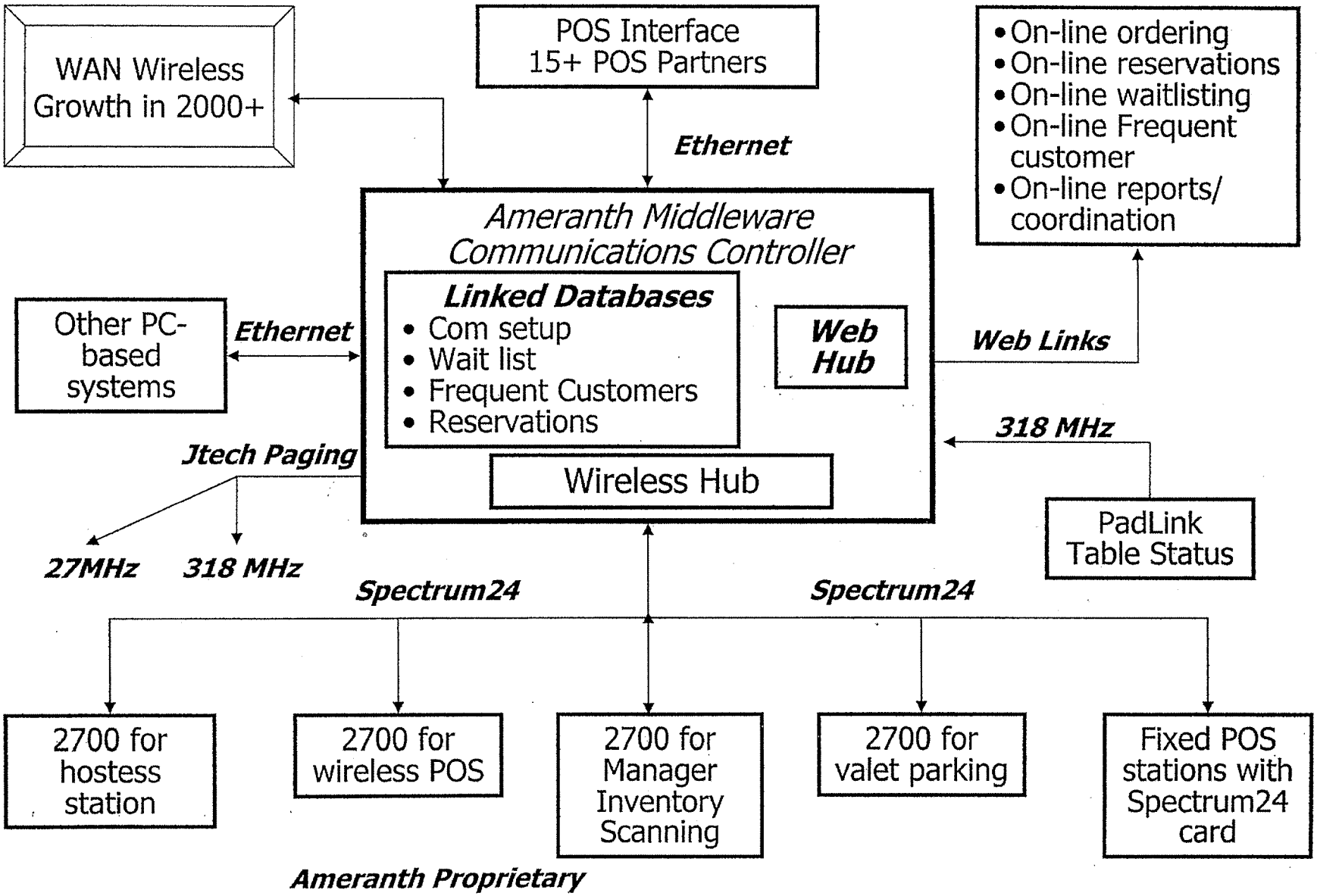


Exhibit 7

PWRW&G Draft:
[^] 1/29/99

Memorandum of Agreement

This Memorandum of Agreement (the "Agreement") is entered into as of 3 February, 1999, between Symbol Technologies, Inc. ("Symbol"), having its corporate offices at One Symbol Plaza Holtsville, NY 11742, and Ameranth Technology Systems, [^] Inc. ("Ameranth"), having its corporate offices at 16079 San Dieguito Road, suite A-1, Rancho Santa Fe, CA.

WHEREAS, the parties believe that a mutually beneficial relationship should be established to leverage their respective capabilities toward the goal of maximizing sales of the parties' products in the Hospitality/Gaming and selected DOD/Law Enforcement markets (the "Markets"):

THEREFORE, the parties state and agree as follows:

1. The parties have signed a non-disclosure agreement that is in force and will survive this Agreement.

2. Attached as Exhibit A is a summary of the business agreement setting forth the respective responsibilities of the parties with respect to this Agreement.

WITHIN 30 DAYS KAM OEM KAM

3. Ameranth and Symbol will also execute a Symbol ~~Distributor~~ Agreement, substantially in the form of Exhibit B, [^] modified as the parties shall agree, and each party will adhere to all of the standard conditions [^] and obligations set forth in the agreement.

4. The term of this agreement will be one year from the date first written above, renewable [^] automatically for successive one-year periods, unless written notice of termination is given under paragraph 5 of this Agreement.

5. This Agreement may be canceled upon six months written notice from either [^] party setting forth the details of a breach of this Agreement or a default of any obligations under this Agreement, provided, however, that the defaulting party shall have ninety (90) days to cure [^] the breach or default, unless the breach or default cannot be cured in ninety days, in which case, the Agreement shall not be canceled if the defaulting party shall have undertaken commercially reasonable efforts designed to cure the breach or default. If a cancellation of Ameranth's role as the "master distributor" for Symbol products in the Markets occurs, Ameranth shall retain the right to purchase and [^] use Symbol wireless products [^] within its products.

6. The nature of this agreement, the fluidity of technology, market evolution, the introduction of new products and related developments require an exceptional level of trust between the parties and flexibility in the implementation of

the Agreement to ensure that the relationship is fair and equitable to both parties. As the "master distributor" for Symbol in the Markets Ameranth will be committing assets and making investments to further the sales of Symbol products. In so doing, Ameranth will realize benefits in margins between the prices it pays for products and those offered to others in the distribution network, and enjoy collateral sales of its products through these efforts and opportunities. Ameranth's efforts in these markets and the benefits that it realizes will be directly related to the value that Ameranth brings to the efforts and in such cases where sales occur in the Markets for which Ameranth did not contribute (e.g. Symbol "exclusions" as indicated in [^] Exhibit A[^]), Ameranth will not realize any direct compensation. The parties will address and resolve any issues in this regard in an equitable and fair manner.

7. The parties will designate within 10 days of the signing of this agreement the official representative for each party through which all actions, changes and/or issues associated with the Agreement will be addressed.

8. Changes will be subject to mutual agreement. [^] **The** parties will cooperate closely on pricing strategies because it is expected that frequent changes will be required to accommodate competitor actions and market changes.

9. This Agreement will be governed by the laws of the State of New York **applicable to contracts made and to be performed entirely in that state.**
[^]

10. This Agreement, Exhibit A, **the non-disclosure agreement** and the Symbol Distributor Agreement, **as executed,** comprise the entire agreement and understanding of the parties relating to the subject matter of this Agreement and supersede all prior agreements, arrangements and understandings, whether written or oral, relating to the subject matter of this Agreement. [^]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Agreement on the date first written above.

SYMBOL TECHNOLOGIES, INC.

By: _____
Name: MARK SCHRATE
Title: V.P. WESTERN AREA

AMERANTH TECHNOLOGY SYSTEMS, INC.

By: _____
Name: Keith McNally
Title: Chief Executive Officer

Doc#:DS5:207966.1

PWRW&G Draft:
1/29/99

Agreement to Synchronize Efforts in Selected Markets

1. Symbol Technologies, Inc. ("Symbol") and Ameranth Technology Systems, Inc. ("Ameranth") have agreed to combine their efforts in the Hospitality/Gaming and selected DOD/Law Enforcement markets [^] with the expectation that the resulting cooperation will achieve better results for the companies than if they pursued these markets independently. The cooperation will primarily take the form of a product distribution agreement. To maximize results, however, the two companies will attempt to synchronize their development and marketing efforts in order to achieve the earliest and broadest market results possible.

2. Ameranth responsibilities/key actions:

A. Ameranth will establish the Symbol Spectrum 24™ wireless LAN network as its standard for its 21ST Century Restaurant™ System and other 21ST Century systems. Ameranth will also change its current product upgrade paths for the Intrapad™, Padlink™[^] and Ultrapad™ from previous wireless baselines to the Spectrum 24 [^] ™ network products and ensure that these Ameranth products are interoperable with the Spectrum 24™ network. Ameranth will also seek to link the Spectrum 24™ backbone to/with its other emerging partner links (e.g. CDMA/CDPD) and with web based links designed to achieve a totally integrated solution around the Spectrum 24™ standard.

B. Ameranth will cancel its planned CE upgrade to the Ultrapad™ and switch to the 2700 product family as its future mobile computing device. This will also include switching its outstanding proposals to a 2700 baseline as soon as feasible. Ameranth will work with Symbol to develop a modified version of the standard 2700 (e.g., case color change or other minor changes) to enable Ameranth to market a unique, branded version. Ameranth also [^] reserves the right [^] to produce custom accessory options (e.g. a SMART Card reader, and/or a slightly more EMI robust case) and to offer these options to Symbol for possible broader application in non-Ameranth markets. Additionally, [^] having agreed that there is a mutual desire for broader cooperation, Ameranth will propose to align its future product developments (e.g Bluetooth enabled devices) to leverage from and complement Symbol's strategic direction.

C. Ameranth will dedicate its resources to making the Spectrum 24™ wireless network and family of products [^] the industry standards within Ameranth's core markets as quickly and as broadly as possible.

D. Ameranth will develop and execute a comprehensive product launch strategy for the Spectrum 24™ network and the 1700/2700 mobile devices for the May[^] 1999 National Restaurant Association ("NRA") Show in Chicago. This strategy will include an advertising campaign, a complete upgrade of

brochures/handouts, a mailing campaign[^], preparation of dealer/distributor packages, a press release, a state-of-the-art booth, pricing strategies, software development kits, and similar actions [^] designed to achieve maximum results. Additionally, Ameranth will, in cooperation with Symbol, select 5-10 leading POS companies [^](e.g., Infogenesis, HSI, Aloha, Squirrel, GEAC[^] and Radiant) to have the products launched simultaneously in their booths at NRA. These POS companies and other partners will be under [^] non-disclosure agreements prior to the product launch. In parallel, [^] the parties will jointly select with the Symbol team other best-of-breed partners in additional key areas of the 21ST Century Restaurant™ system (e.g. IBM for servers/displays/integration), 1-2 frequent dining database suppliers, 1-2 paging companies (e.g., JTECH, Signologies)[^] and 1-2 credit card authorization companies (e.g., NPC), so that a totally integrated system solution is available for customers of [^] various sizes and needs, centered around the Spectrum 24™ wireless network and family of products.

E. Ameranth will modify its Software Wizard development environment to enable POS suppliers and/or the customers themselves to quickly develop hand-held POS applications for the CE screen of the 2700. [^] Ameranth will work with Symbol, Microsoft and others to offer a [very easy] [^] programming environment. [^] Ameranth will also provide a tailored version for the smaller screen of the 1700 and work with one or more software developers Symbol selects from its ongoing efforts with the Palm OS [^] as an option for the integrated 21ST Century Restaurant™ system.

F. Ameranth will prepare and present to Symbol management a detailed 1999/2000 business plan for this coordinated effort. A draft will be presented by March 1, 1999 (assuming the relationship is established not later than February 1, 1999) and it will be finalized approximately April 1, 1999. It is envisioned that the development of this plan will be a team effort leveraging from Symbol's experience in similar product/market launches. Subsequently, the plan will be reviewed at least quarterly and appropriate adjustments will be made to either exploit success or address any shortfalls.

G. Ameranth will initiate infrastructure and personnel expansion efforts in preparation for and in parallel with the product launch at NRA [^] so that the proper resources are in place/available not later than May 20, 1999 to ensure quality support for the expected large industry response to the product launch. This will include, but not be limited to, sufficiency of prototypes, software development kits, 1-800 call-in support, rapid repair and equipment support options, technical support, dealer kits, availability of supplies/accessories etc. Additionally, Ameranth will prepare a significant upgrade to its web-site to make all key specifications and product information available over the web and to [^] prepare for web commerce. The details of this structure will be coordinated with Symbol in advance and included in the overall business plan referred to in paragraph 2(F) above.

H. Ameranth will develop and support a comprehensive distribution/pricing strategy so that sufficient margin exists at the various channels to provide attractive margins/profits for the family of products to become the runaway success both companies wish them to be. This will require Ameranth to [^] **work closely with** the channel partners, and in coordination with Symbol, to make adjustments to maximize market share and to focus on optimizing the sales volume and market share.

I. Ameranth management will work closely with the Symbol management team to ensure that this cooperative effort is very successful and that problems/issues, if any, are dealt with quickly and through the cooperation of the respective management teams.

J. Ameranth [^] **[registers]**[1/] the following accounts as Ameranth accounts: Litton, SAIC, Cache Box, HSI, WirelessKnowledge, Tangent, JTECH and 4-5 international military markets with an aggregate potential of approx 50,000 2700's, and many thousands of Spectrum 24 wireless cards/phones and Access Points during the period of Q499 to Q2 03. Note: these are markets/contracts that will be reached through/with Litton as opposed to direct sales. [^] **Ameranth will respect the [excluded registered accounts] of which Symbol advises it.**

3. Symbol Responsibilities/key actions:

A. Symbol [^] **has selected** Ameranth as ~~its master distributor~~ and launch partner for the Spectrum 24™ and 1700/2700 products within the Hospitality/Gaming and [^] **certain** DOD/Law Enforcement markets. Ameranth will be authorized to brand a version of the 2700. Symbol will support Ameranth's 21st Century Restaurant™ System with the Spectrum 24™ family of products.

B. Symbol will assist Ameranth in achieving success through its experience, marketing networks, pricing incentives, engineering support and other appropriate actions that Symbol deems complementary to the overall objectives. Symbol will provide Ameranth a reasonable amount of no-cost loaners, demo units etc. to facilitate preparations for the NRA product launch.

C. Symbol will provide its Spectrum 24™ ~~PC cards~~ **to Ameranth** at very aggressive prices [^]~~(e.g., $150.00)~~ for those embedded applications only within Ameranth products so as to enable them to meet the requisite price points and to achieve a totally integrated Spectrum 24™ network. Ameranth will not disclose these special prices (nor will they be discernable to the market), **except as required by law,** and these specially priced cards will only be for Ameranth's embedded product use.

1/ To be clarified.

successful-M KEM

D. Symbol will make its Spectrum 24™ family of products available to Ameranth for overall distribution within Ameranth's markets and at price points that enable Ameranth to be ~~profitable~~ while distributing products to the channel partners/distributors/dealers.

E. Symbol will keep Ameranth reasonably apprised of its future product strategy so as to enable Ameranth to align its strategy to be complementary.

F. Symbol will, from time to time, offer Ameranth an opportunity to bid to provide hardware/software options supportive to the Symbol product line (e.g., a SMART Card reader option). It will be in Symbol's sole discretion to determine if Ameranth's bid provides the best-value solution for [^] **Symbol's** needs.

G. Symbol will share leads and cooperate on market strategy with Ameranth in areas supportive to the common goals and that do not conflict with Symbol's other partners, commitments and/or relationships.

H. After reviewing Ameranth's business plan in March/April 1999, Symbol will consider providing financial support and/or incentives (e.g., deferred payments, advances etc.) so as to enable Ameranth to achieve [^] **greater** market penetration and sales. It will be in Symbol's sole discretion to determine what support of this nature, if any, is provided depending on the merits of the business plan and the results achieved.

I. Symbol will assign an Ameranth account manager through which regular business arrangements will be transacted. Strategic actions/decisions will be coordinated with/through the Symbol Director of Hospitality/Gaming.

J. Symbol will support Ameranth's efforts in its registered accounts. **Symbol will advise Ameranth of the [registered accounts] to be excluded from this Agreement. A mutually agreed upon list of [registered accounts] will be finalized within ninety (90) days of the date of the Memorandum of Agreement.**

Exhibit 8

AMERANTH™
WIRELESS SYSTEMS SOLUTIONS
NEWS

Contact: Kathie Sanders (703) 281-4995
12230 El Camino Real, Ste 330, San Diego, CA 92130
Tel: (888) AMERANTH Fax: (858) 794-8222
http://www.ameranth.com mailto:info@ameranth.com

AMERANTH TECHNOLOGY SYSTEMS™ and SYMBOL TECHNOLOGIES® ANNOUNCE 21ST CENTURY RESTAURANT™ SYSTEM

Handheld Computer and Wireless LAN Technology Automates Traditional Restaurant Processes

CHICAGO, May 22, 1999 -- Ameranth Technology Systems, Inc., a leading provider of Wireless Systems Solutions™ to the hospitality industry, and Symbol Technologies, Inc., (NYSE: SBL) a world leader in wireless mobile computing, today announced the 21st Century Restaurant System at this year's National Restaurant Association (NRA) show.

The 21st Century Restaurant System is a fully integrated system that provides a long-awaited hospitality industry solution for traditional restaurant processes. The centerpiece of the 21st Century Restaurant System is Ameranth's UltraPad™ 2700, a handheld computer that integrates Symbol's Spectrum24 wireless local-area network and the Microsoft (NSDQ: MSFT) Windows CE operating system.

The combination of the three technologies offers unprecedented benefits to restaurateurs and their clientele. The 21st Century Restaurant System allows restaurant processes, including order taking, payment processing (credit card, debit card, smart card), inventory control, process control, waitlist management, table management, personnel management, management interface, valet parking, frequent-diner program interface, short- and long-range communications, and other applications, to be managed and controlled from Ameranth's handheld computer, dramatically increasing productivity, reducing cost, and improving customer service.

The Ameranth handheld computer communicates to other restaurant computers and devices by the Symbol Spectrum24 wireless local area network. Symbol's wireless local area network is based on industry standards and is the technology of choice at more than 40,000 customer locations in a number of global markets.

Other key partners in the 21st Century Restaurant™ System include IBM, for back-office server hardware and large-scale implementations; JTECH, the world leader in on-premise paging, for paging systems; COMTEC, a world leader in mobile printing, for portable printers; The Customer Connection, a leader in frequent dining-programs, for frequency programs; System Concepts, Inc., the developer of FOOD-TRAK®, the industry's first and foremost food and beverage management system for back-office inventory and recipe and menu management; and leading POS, companies, led by the charter POS partner, Hospitality Systems International HSI, a leading POS company for both restaurants and hotels. Additional partners will be announced.

Spectrum24, Symbol's open-architecture wireless network, provides high-performance data and voice-over-IP communications with excellent immunity to interference. Its frequency hopping technology ensures robust and reliable data throughout. Spectrum24 also features selectable power management for application optimization, as well as encryption capabilities to ensure data security. Spectrum24 is designed to support the IEEE 802.11 wireless LAN standard. Operating in the 2.4GHz band using spread-spectrum modulation, Spectrum24 allows fast, seamless roaming with load balancing among cells. Its capacity and range are expandable through the use of multiple access points.

Microsoft Windows CE offers exceptional capabilities with seamless integration with the databases of information already in place throughout the hospitality industry.

-more-

"Our mission is to work with Symbol and Microsoft to provide worldwide-standard wireless systems solutions," said Keith McNally, CEO of Ameranth. "Ameranth's integration of Symbol's unparalleled technological advancements and the Microsoft Windows CE platform with the other capabilities of our partners will allow customers to deploy fully integrated software and hardware solutions that will provide optimal service, efficiency, and profitability for years to come."

"As a world-leading supplier of mobile computing wireless local area networks and related technologies, Symbol already provides the standard wireless solution for many industries. Our agreement with Ameranth and relationship with Microsoft will allow Ameranth to carry our standard of technological excellence into industries where they are already playing a leading role," said Joe McCormick, Senior Director for Emerging Technologies at Symbol Technologies.

"We are pleased that Ameranth and Symbol have chosen Windows CE as the mobile-computing backbone for the introduction of their 21st Century Restaurant System," said Tony Barbagallo, group product manager, Productivity Appliances Division, Microsoft Corp. "With Symbol's proven expertise in mobile computing and wireless networks,

Ameranth's vision and integration skills, and Microsoft's innovative family of software products and solutions, we share in their vision for the 21st Century Restaurant System."

In addition to appearing at booth 6254 at the National Restaurant Association Show, Ameranth/Symbol will showcase their new products at HITEC in Atlanta, June 22-24; The Western Foodservice & Hospitality Expo in Los Angeles, August 21-23; MUFSO in Dallas, September 12-15; The World Gaming Congress & Expo in Las Vegas, September 14-16; FS/TEC'99 in Dallas, November 1-3; and the International Hotel, Motel & Restaurant Show in New York, November 6-9.

Ameranth Technology Systems, Inc., was founded in 1996 primarily to provide wireless computing solutions to the hospitality, gaming, defense, and law-enforcement industries and markets. Ameranth's products include handheld computers, scanners, access points, printers, and related software.

Symbol Technologies, Inc., is a global leader in mobile data management systems and services with innovative customer solutions based on wireless local-area networking for voice and data, application-specific mobile computing, and bar-code data capture. Symbol's wireless LAN solutions are installed at more than 40,000 customer locations, and more than 7 million Symbol scanners and application-specific scanner-integrated mobile computer systems are in use worldwide. Symbol and its global network of business partners provide solutions for retailing, transportation and distribution logistics, parcel and postal delivery, healthcare, education, manufacturing, and other industries.

-30-

Exhibit 9

News Release

May 22, 1999
Contact: John Cavanaugh
Phone: (888)HSI-POS1
E-mail: johnc@hsi-pos.com

Embargoed Material
For Release May 22, 1999

Hospitality Solutions International Signs on as Charter POS Partner for Ameranth Technology System's *21st Century Restaurant System*

Hospitality Solutions International (HSI), total solution provider to the international hospitality community, has signed on as the charter POS partner for Ameranth Technology System's *21st Century Restaurant System™*, debuting this week at the National Restaurant Association Show in Chicago's McCormick Place. The 21st Century Restaurant System features Ameranth's UltraPad™ 2700, a ¾ pound, wireless, handheld computer utilizing Microsoft Windows™ CE. Other key partners include Symbol® Technologies, Inc., IBM®, JTECH℠ Communications, Inc., COMTEC Information Systems, Inc., and The Customer Connection, Inc. This state of the art wireless technology will be displayed at the two company's tradeshow exhibit booths, #5571 (HSI) and #6254 (Ameranth), located on the third level of McCormick Place. Hospitality Solutions International is a recognized leader in the development of technology solutions for the hospitality industry. The complete line of HSI products, **HSI POS™, Jaguar™ PMS, Falcon™ CRS and Cobra™ Sales and Catering** are designed utilizing the latest tools in the Microsoft Development Library and realize the inherent benefits of Windows NT™ 4.0 O/S and Microsoft SQL™ Server.

The 21st Century Restaurant System utilizes the Microsoft's family of software products and Symbol Technologies Spectrum24 wireless network. Spectrum24 is an affordable, 2.4 Ghz spread spectrum, frequency hopping, wireless Local Area Network, which is 802.11 compliant and provides robust, secure, data and voice communications. It communicates at 2 Mbps and handles data and real-time voice simultaneously over the same wireless LAN. Microsoft Windows CE offers exceptional capabilities with seamless integration with the databases of information already in place throughout the hospitality industry.

HSI recognizes the positive, long-term effects wireless communications will have on the hospitality technology industry. "HSI is particularly excited about the benefits that wireless communication provide to the end user," says George A. Zugmier, President of HSI. "When coupled with a comprehensive POS application like our own, the rewards for operators of restaurants, hotels, resorts and stadiums are endless. Ameranth and their partners have worked diligently to develop wireless technologies that will serve the hospitality community well into the next century," he adds.

"We are very excited that HSI has chosen to be our charter POS partner HSI has a strong leadership position in the industry and enjoys a reputation as an innovator," said Keith McNally, CEO of Ameranth.

The 21st Century Restaurant System allows for wireless automation and integration of all restaurant processes including order taking, payment processing, inventory control, process control, wait-list management, table management, short and long range communications, and a host of other applications. Palm-in-hand control increases productivity, reduces costs and can dramatically improve customer service.

Ameranth Technology Systems, Inc. was founded in 1996 primarily to provide wireless computing solutions to the hospitality, gaming, Department c Defense, and law-enforcement industries and markets. Ameranth's products include handheld computers, scanners, access points, printers, and related software. You can view their entire line of products at the NRA Show, Booth #6254.

Hospitality Solutions International, a Microsoft Certified Solution Provider, maintains corporate offices strategically located in Scottsdale, Arizona and Boca Raton, Florida. Regional offices are established in Los Angeles and Chicago, with additional satellite offices located throughout the United States. International offices are located in Toronto and Vancouver, Canada as well as London, Paris, Stockholm, Hong Kong and Sydney. HSI is financially backed by GEOCapital Partners.

###

Exhibit 10

Your One and Only

When it comes to Management Information Systems, everybody wants someone to rely on. And, you can rely on Ameranth Technology Systems to be the Hospitality Industry's one source for advanced wireless and e-commerce integration.

- **Wireless handheld solutions operating on Microsoft's Pocket PC Platform**
- **Wireless Local and Wide Area Networks**
- **Customized B2B and consumer e-commerce Internet applications**
- **Integration of Legacy Systems and Databases (including Point of Sale and Back Office Software.)**
- **Wireless technology such as handhelds, phones, and pagers.**

Whether you're a single venue relying on a POS provider or a large chain with your own MIS team, Ameranth's approach ensures that you will benefit from the latest technological innovations without having to worry about compatibility or fragmented support.

So call Ameranth or visit us on our Web site or at Booth 6254 at the National Restaurant Association Show to see our UltraPad 2700 wireless handheld from the one and only e-commerce and wireless integrator you'll ever need.

AMERANTH™
WIRELESS SYSTEMS SOLUTIONS

AMERANTH TECHNOLOGY SYSTEMS, INC.
www.ameranth.com ❖ info@ameranth.com
12230 El Camino Real, Suite 330,
San Diego, California 92130
(888) AMERANTH ❖ (858) 794-8282
FAX: (858) 794-8222

Exhibit 11

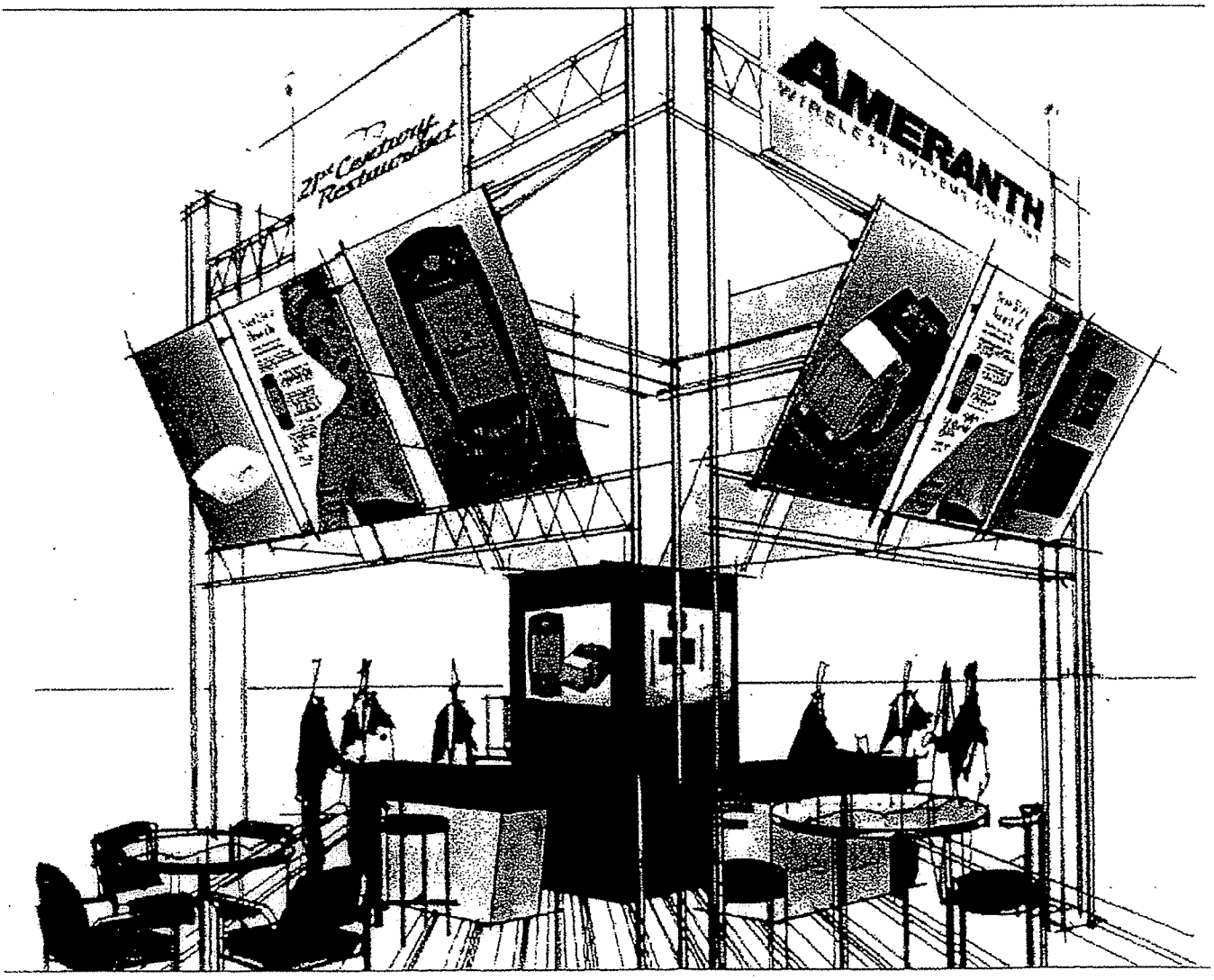

AMERANTH

Exhibit 12

Wireless Systems Integration

Valet Parking
- Remote wireless input of Frequent Dining card, name, license plate, etc.
- Auto-request car when finished dining

Hostess Station
- Table management
- Reservation management
- Wait-list management
- Frequent Dining tracking
- Customer paging
- Valet paging

Server
- Touch screen ordering
- Credit card/ payment processing
- Signature capturing

Manager
- Notified of top customers
- Reports safety issues
- Manager functions

POS Station
Monitor/Printer options

symbol Spectrum24® Access Point

Server

Kitchen
- Direct wireless server order input
- Wireless ready server notification
- POS system interface

Bus Staff
- Table status
- Real-time messaging

AMERANTH™

21st Century Restaurant™

Waiting for Seating
- Pager lets customer relax in bar or garden while waiting
- Auto-page when table ready

JTECH

Back Office
Microsoft
- Applications software
- Database management
  - Menu items
  - Prices
  - Orders
  - Frequent customers
- Kitchen access
- POS access
- Internet gateway

Frequent Dining, credit card processing, POS, Corporate and other systems

The Customer Connection
- Frequent Dining Program

Real Time Web Access
- Credit card approval
- Frequent Dining data updates
- Corporate data exchange
- Online reservations and waitlisting

UltraPad™ 2700 | AmPrint™ 2100 | Spectrum24® Access Point | PadLink™ 100 | IBM® Server

AMERANTH™
WIRELESS SYSTEMS SOLUTIONS
1 (888) AMERANTH
www.ameranth.com

Exhibit 13

UltraPad™ 2700

Like the technological revolutions that preceded it, the Wireless Revolution began with technologists recognizing that the emerging technology would change the way people live, work, and play. The years since those initial predictions have been filled with promise and disappointment. Promise has come in the form of proprietary wireless systems developed and installed by large companies, such as car-rental and overnight-shipping companies, that were able to fund the development of hardware and applications specific to their work processes. Disappointment has come with the cost of these proprietary installations and the resulting unavailability of these technologies to the rest of the world.

During this early period of development, it became clear that the sea of changes foreseen as the Wireless Revolution would have to wait for a standard, open-architecture, software-tailorable, wireless, handheld computer with the right form factor and functionality at the right price. With the introduction of Ameranth's UltraPad™ 2700, the wait is over.

For the first time, there is a mobile, handheld computer that has the same kind of broad applicability as a PC...

Ameranth's UltraPad 2700 computer is 3.625x7x1 inches and weighs only 12 ounces, complete with radio and bar-code scanner, making it easy to carry in hand, in a holster, or in the breast pocket of a jacket. The UltraPad offers long battery life and is ruggedized to withstand the rigors of commercial use.

The UltraPad 2700 integrates Symbol Technologies™ Spectrum24® wireless local-area network and the Microsoft® Windows® CE operating system. This combination offers unprecedented benefits. For the first time, there is a mobile, handheld computer that has the same kind of broad applicability as a PC, allowing end-users to use the same device for virtually any application. And with Ameranth's Advanced Systems Integration, legacy and current generation applications can be projected easily from existing DOS, Windows, and NT environments into the mobile, wireless, CE environment, making it unnecessary to replace existing systems or to change systems providers.

Key UltraPad™ 2700 Features

- Compatible with DOS, Windows®, and Windows NT programs
- Palm-size and lightweight
- Windows CE®
- NEC RISC-based processor
- Optional integrated scanner
- Serial HotSynch support
- PIM compatible
- 802.11 wireless LAN option
- IrDA port
- 1400mAhour lithium-ion battery
- Fully ruggedized

Key Radio Features

- Uses the revolutionary SYMBOL™ Spectrum24® system
- 2Mbps data rate
- 2.4GHz spread-spectrum and frequency hopping for sure, secure communications

AMERANTH™
WIRELESS SYSTEMS SOLUTIONS

Exhibit 14

RESTAURANT SHOW
MONDAY DAILY MAY 24, 1999
VOLUME 15 • NUMBER 3
PENTON FOODSERVICE NETWORK

What's the most interesting thing you've seen or heard during the Show?

"Tomorrow, the Women's Foodservice Forum will be announcing some important info from a study on women executives in the foodservice industry."

—David Winkel, executive vp business development, Marketing Strategy and Planning, Inc., Rocky Mount, NC

"What I thought was really cool was Smucker's Plate Scapers and Ameranth's wireless point-of-sale system. We're looking into it."

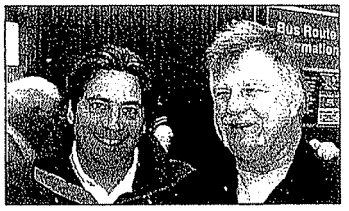
—Dean Langfitt, director of management information services, Grinders, Minerva, OH

"McFarland's Foods has an all-chicken bacon alternative. Nutrition is the way to go."

—Jeff Guilmette, command foodservice manager, Air Force, Hurlburt Field, FL

"There's a new French fry from Lamb Weston that doesn't need to be frozen. It can sit in the refrigerator for up to five days."

—Karen Roberts, marketing manager, Sodexho Marriott Services, Newark, DE



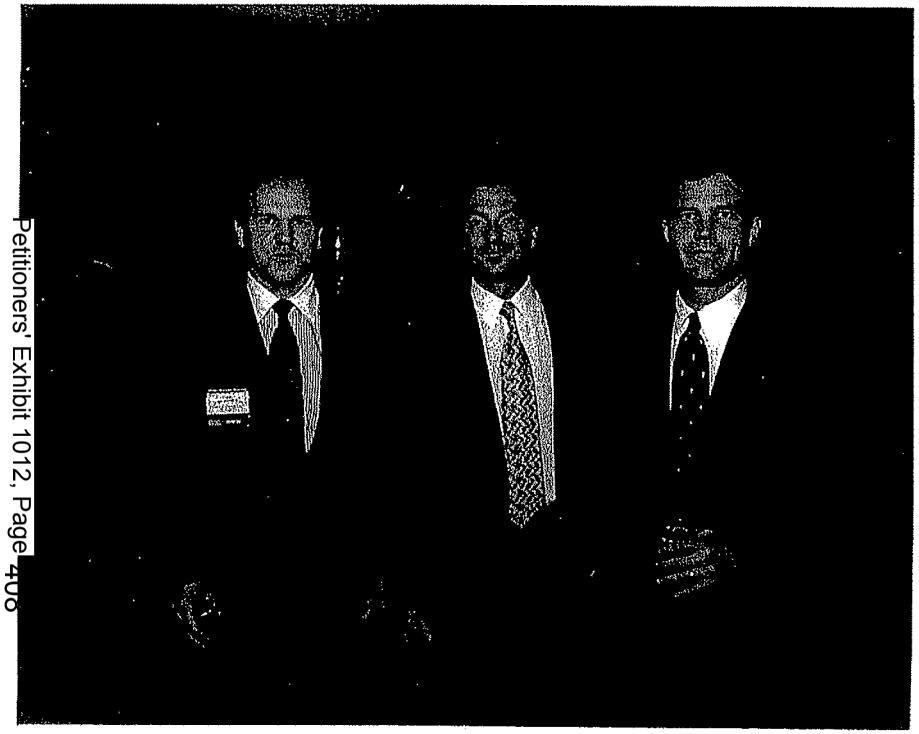
"Coconut breaded onion rings."

—Michael Dant Miller, Bob Marks, owners, Wilbert's Bar & Grille, Cleveland, OH

Exhibit 15

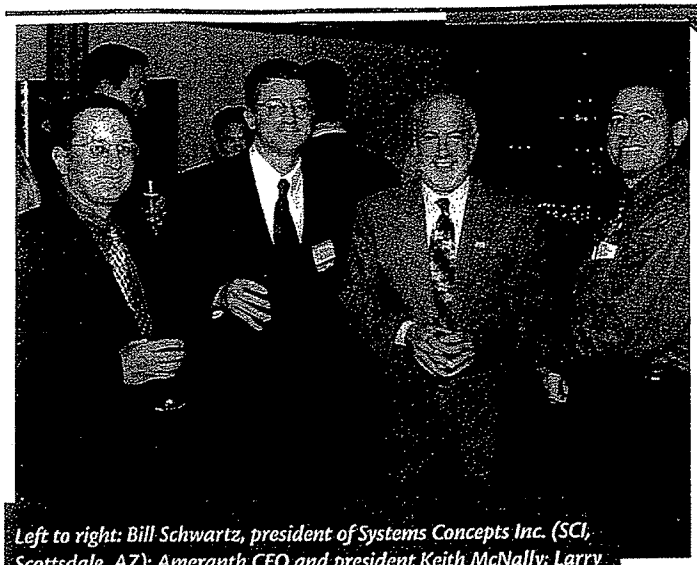
#226

#202



#201

Exhibit 16



Left to right: Bill Schwartz, president of Systems Concepts Inc. (SCI, Scottsdale, AZ); Ameranth CEO and president Keith McNally; Larry Hausman, publisher of Hospitality Technology and Manny Negreiro, president of Ibertech (Bedford, TX).

Ameranth Debuts Handheld, Partnerships at NRA

CHICAGO—Ameranth Technology Systems (Rancho Santa Fe, CA) celebrated five partnerships and the launch of its Windows CE-based 21st Century Restaurant System at the 80th annual National Restaurant Association Show.

The Ameranth and Symbol Technologies (Holtsville, NY) strategic alliance has produced a wireless computing solution that marries the UltraPad 2700 Windows CE handheld with the Spectrum24 2.4 GHz data and voice communications system. Operators may process orders and payments, take inventory counts and manage guest-seating arrangements with the portable, handheld solution.

Comtec Information Systems (Warwick, RI) is on-board to produce a portable, POS receipt printer. Other partners with Ameranth include Hospitality Solutions International (HSI, Boca Raton, FL), IBM (Raleigh, NC), JTech Communications (Boca Raton, FL) and The Customer Connection (Escondido, CA).

An Ameranth-hosted cocktail party held at the Ritz Carlton Hotel culminated the most audible "buzz" heard on the show floor at McCormick Place.

Ameranth Technology Systems, infoNOW #200

Krystal-Lighthouse Union has Radiant Beaming

Atlanta—Quick service hamburger chain, The Krystal Company (Chattanooga, TN), will roll out the Lighthouse Site & Headquarters Management Solution from Radiant Hospitality Systems. The front- and back-of-the-house platform will be installed in about 350 sites company-wide. The Windows NT-based solution "puts information into the hands of store managers, providing them with powerful tools to make decisions that positively impact the business," said David Bibb, director of information systems for Krystal.

Radiant also landed similar installations at 470 owned and domestic-franchised locations of Ruby Tuesday's (Mobile, AL), the casual dining chain that includes three concepts: Ruby Tuesday's, American Café and Tia's Tex-Mex.

Radiant Hospitality Systems, infoNOW # 201

Foodservice ERP Deals for Lawson

Minneapolis—Lawson Software has added three restaurant chains to its growing list of foodservice operators that have purchased Lawson INSIGHT II, the company's ERP solution. Einstein/Noah Bagel (Golden, CO), a 536-unit chain, has purchased the financials, procurement and human resources process suites, as well as Lawson's Performance Indicator and Web Self-Service modules. Harrigan's Restaurants operator Pinnacle Restaurant Group (Irving, TX) will use INSIGHT II Financials through an implementation team that includes Stonebridge Technologies (Dallas) and Ernst & Young (New York).

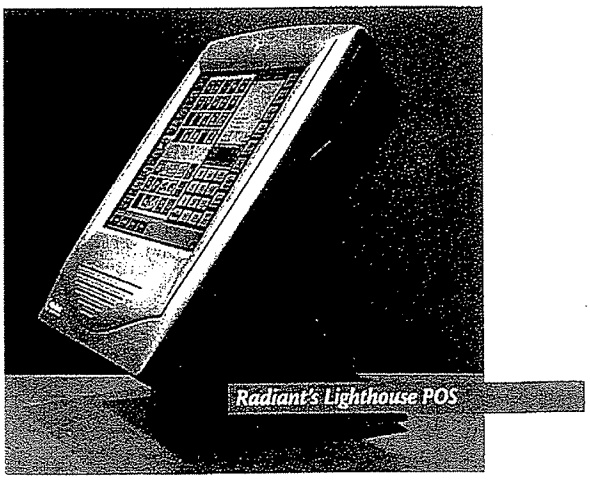
Seattle Crab and Skipper's Seafood 'n Chowder franchisor Skipper's Inc. (Bellevue, WA) purchased INSIGHT Human Resources and Financials suites to process payroll and accounting on the operator's IBM AS/400 midrange system.

Lawson Software, infoNOW #202

Progressive Adds Distribution Trio

Charlotte, NC—Progressive Software has expanded its presence in the indirect reseller channel with the addition of three distributors for its foodservice technology solutions. Applied Technology Ventures (ATV, Cleveland and Irvine, CA) has 18 years of foodservice integration experience. ATV is providing store training services and installation for Progressive's IRIS POS/Back Office and Smart 2 for Windows NT solution at Krispy Kreme Doughnut Corporation. Century Data Systems (Raleigh, NC) will target mid- and large-sized franchisees from its nine east coast offices. Retail Data Systems (Omaha, NE) has been tabbed to represent Progresive in the small chain and franchisee market, through its 22 nationwide locations.

Progressive Software, infoNOW #203



Radiant's Lighthouse POS

Exhibit 17

FOOD.COM
825 BATTERY STREET
THE ENTIRE THIRD FLOOR
SAN FRANCISCO, CA 94111
PH: 415.981.5505
FX: 415.981.4801

FOOD.COM AND AMERANTH TECHNOLOGY ANNOUNCE PARTNERSHIP TO DEVELOP LINK FROM FOOD.COM SITE WITH AMERANTH'S 21ST CENTURY RESTAURANT SYSTEM

Partnership Expected to Extend Transmission of Internet Takeout and Delivery Orders to Restaurant Kitchens and to Point of Sale Systems; Online Reservations and Wait-Listing Also Planned

SAN FRANCISCO AND SAN DIEGO, CA - July 15, 1999 - Food.com, the Internet's premiere online takeout and delivery service, and Ameranth Technology Systems, Inc., a leading provider of wireless systems solutions to the hospitality industry, today announced a partnership that company officials expect will extend the transmission of takeout and delivery orders placed online at www.food.com directly to restaurant kitchens and point of sale systems, thereby speeding transactions, reducing handling, and improving accuracy. Company officials also announced that the partnership will enable users to check wait times for restaurants, to place themselves on wait-lists before leaving for restaurants, and to make reservations online. Ameranth will also work closely with its strategic partners, such as Symbol Technologies, to enable the Food.com site to receive orders wirelessly from the emerging generation of wirelessly enabled smart devices.

"Our partnership with Ameranth fits perfectly into our plans for the delivery of online orders from a consumer's keyboard to a restaurant's kitchen," said Food.com's Chairman and CEO, Rich Frank. "Ameranth's technology will help us to increase both the speed and the efficiency in transmitting orders to our partner restaurants, and will significantly decrease our margin of error. The same capabilities that will allow for these improvements in online ordering will also enable users to make reservations, check wait times, and place themselves on wait-lists so that they don't have to spend endless hours waiting to get seated when they decide to dine out."

(more)

Ameranth introduced its 21st Century Restaurant(system in conjunction with Symbol Technologies, the world leader in mobile computing, at the National Restaurant Association tradeshow in Chicago on May 22, 1999. The 21st Century Restaurant system is a fully integrated hardware, software, mobile, and wireless architecture that provides the long-awaited hospitality industry standard for wireless automation and integration. The entire system employs the Microsoft(family of software products and Symbol Technologies Spectrum24 (wireless networks. The centerpiece of the 21st Century Restaurant system is Ameranth's UltraPad(2700, a 3/4 pound, wireless, handheld computer using Microsoft Windows CE, which provides state-of-the-art capabilities for wireless POS, table management, wait-list management, reservations, frequent dining, Web-based links, management interface, and communications.

"We believe that our partnership with Food.com will provide restaurateurs and their clientele with the most convenient, most efficient solution possible," said Keith McNally, President and CEO of Ameranth. "Orders placed at www.food.com will find their way directly into the kitchen and into the point of sale system through our relationships with our POS partners - wait times, wait-lists, and reservations will be accessible online to customers, and will be available over the wireless LAN to hosts/hostesses whose handheld terminals will be updated as soon as customers make a reservation or place themselves on a wait-list."

About Ameranth Technology Systems

Ameranth founders and principals have extensive experience in developing, producing and deploying innovative and totally integrated wireless products, mobile computing and software systems. Based in the San Diego, CA area, Ameranth has established a wide range of key strategic alliances with industry leaders and best-of-breed product suppliers that enable Ameranth to provide breakthrough solutions that optimize efficiency, bust lines and eliminate waits in a wide variety of applications. Ameranth's most important alliances are with Symbol
Technologies(, a world leader in wireless, bar-code scanning and rugged terminals, and Microsoft who provides Windows CE and its comprehensive family of Windows(products around which Ameranth has built the backbone of its wireless system solutions.

About Food.com

Food.com was founded in December of 1996 and is the largest service of its kind offering home and business meals on the Internet. With over 12,000 restaurants on the service nationwide and over 550,000 members, Food.com is also the exclusive takeout and delivery partner of America Online. Food.com has been a leader in aggregating the highly fragmented restaurant industry in order to provide consumers with a one-stop shopping site on the web for food takeout and delivery ordering. Eventually, Food.com intends to expand its offerings to include restaurant reservations, restaurant reviews, sending meals as gifts, specialty food offerings, and news related to food and dining. Food.com can be found on the World Wide Web at www.food.com. Located in San Francisco, California, Food.com can also be contacted at (415) 981-5505.

(###)

Exhibit 18

AMERANTH™
WIRELESS SYSTEMS SOLUTIONS
NEWS

Contact: Kathie Sanders (703) 281-4995
12230 El Camino Real, Ste 330, San Diego, CA 92130
Tel: (888) AMERANTH Fax: (858) 794-8222
http://www.ameranth.com mailto:info@ameranth.com

AMERANTH TECHNOLOGY SYSTEMS™ AND IBERTECH®, CREATORS OF ALOHA POS®, ANNOUNCE FORMATION OF A STRATEGIC ALLIANCE

SAN DIEGO, California, July 26, 1999 -- Ameranth Technology Systems, Inc., a leading provider of Wireless Systems Solutions™, announced today that an Agreement has been reached on the creation of a new Strategic Alliance with Ibertech, Inc., Bedford, Texas, creators of Aloha point-of-sale software. The Ameranth-Ibertech Alliance will leverage Ameranth's existing strategic alliance with Symbol Technologies that was announced on April 19, 1999 and will incorporate Ameranth's 21st Century Restaurant™ system into Aloha's offerings.

Under terms of the Ameranth-Ibertech Agreement, Ameranth and Ibertech will integrate Ameranth's 21st Century Restaurant solutions and products into Aloha's offerings, and Aloha will designate Ameranth's hardware as its "recommended" wireless products. Ameranth's 21st Century Restaurant system is a fully integrated system that provides a long-awaited hospitality industry solution for traditional restaurant processes. The centerpiece of the 21st Century Restaurant system is Ameranth's UltraPad™ 2700, a handheld computer that integrates Symbol's Spectrum24 wireless local-area network and the Microsoft Windows CE operating system.

The combination of the three technologies offers unprecedented benefits to restaurateurs and their clientele. The 21st Century Restaurant System allows restaurant processes, including order taking, payment processing (credit card, debit card, smart card), inventory control, process control, wait-list management, table management, personnel management, management interface, valet parking, frequent-diner program interface, short- and long-range communications, and other applications, to be managed and controlled from Ameranth's handheld computer, dramatically increasing productivity, reducing cost, and improving customer service.

The Ameranth handheld computer communicates to other restaurant computers and devices by the Symbol Spectrum24 wireless local area network. Symbol's wireless local area network is based on industry standards and is the technology of choice at more than 40,000 customer locations in a number of global markets.

"We are excited about the alliance with Aloha," said Keith McNally, CEO of Ameranth, "because Ibertech is a first-rate organization providing first-rate products. They have been looking for a handheld solution that offers functionality, reliability, and value that is consistent with their other offerings, and we are pleased that they have found that solution in the 21st Century Restaurant system."

"All of us at Ibertech are pleased to enter into this alliance with Ameranth," said Manny Negreiro, president and CEO of Ibertech. "We are confident that this partnership will provide outstanding value to customers who seek the latest wireless technology in the new millennium. Ibertech believes that integrating Ameranth handheld computers into our solutions will bring even greater business opportunities for our customers."

Ameranth will showcase its new products at the Western Foodservice & Hospitality Expo in Los Angeles, August 21-23; the Multi-Unit Foodservice Operator Show (MUFSO) in Dallas, September 12-15; the World Gaming Congress & Expo in Las Vegas, September 14-15; the Foodservice Technology Show (FSTEC '99) in Dallas, November 1-3; and the International Hotel, Motel, and Restaurant Show in New York, November 6-9.

-more-

Ameranth Technology Systems, Inc., was founded in 1996 primarily to provide wireless portable computing solutions to the hospitality, gaming, defense, and law enforcement industries. Amaranth's products include handheld computers, scanners, access points, printers, and related software.

Founded in 1992, Ibertech is an innovative software company that provides a comprehensive suite of point-of-sale solutions to the foodservice and hospitality industries. Ibertech's world-renowned products allow customers to implement hospitality systems that precisely meet their needs and demands. Ibertech's family of software products includes Aloha TableService, Aloha QuickService, Aloha Back Office Solutions, Aloha Customer Management Solutions, and aloha enterprise.com. Aloha can be contacted at (800) 79-ALOHA, or visit www.alohapos.com.

-30-

Exhibit 19

AMERANTH
WIRELESS SYSTEMS SOLUTIONS

8/31/99

To: Ed Rothenberg

From: Keith McNally

Subject: Ameranth POS SDK

We look forward to seeing you at 3:00PM on Thursday. Attached is an example of the developer GUI for our "Menu Wizard" (an easy to use explorer type interface) which enables the rapid creation of operator screens for the Windows CE Ultrapad. Essentially, we have a standard CE POS GUI we make available to POS partners, we assist them with importing their existing POS databases into this tool..... and then very quickly..... a wireless POS application can be developed-... then all of the special apps, drivers etc.... e.g. credit card processing, signature capture, bar code scanner, mag stripe reader, wireless messaging etc..... can be easily called from the tool and integrated with the application....

We also will provide you our " communications wizard" that resides under Windows in the back office... that accepts incoming wireless messages, and/or internet orders (i.e. Food.com)..... and translates and exchanges them with the host POS system i.e. Micros... even better... the "Menu Wizard"... will create **both** the Windows CE and HTML code from the same database inputs..... so that when the "master POS" e.g. you guys changes a price and/or POS code and/or product availability status... the "communications wizard"... will update the wireless and web status automatically..... and when you use our tool to develop the wireless POS equivalent of your system.... you will really be "killing tow birds with one stone" in that the web equivalent will be easy to do... also we know that you will want to customize the CE versions for your unique needs... our tools will help you do that... and/or we will be glad to help you... your choice-

So that is a quick overview.... we will give you a complete demonstration and briefing on Thursday... I would appreciate it if you would have a bilateral NDA available for me to sign in a format Micros likes so we can have open exchanges-

Regards,

Keith

12230 El Camino Real, Suite 330♦♦♦San Diego, CA 92130-2090♦♦♦(888) AMERANTH

Exhibit 20

From: Bnugent <bnugent@food.com>
To: John Laing <jlaing@food.com>; Joan Varrone <jvarrone@food.com>; Tanya Dins <tanya@food.com>; Rich Frank <rfrank@food.com>
Date: Monday, September 13, 1999 3:34 PM
Subject: Ameranth Licenseing Contract

I have met with Keith McNally to agree on the deal points on a Licensing Agreement. Here are the products and services we would want.

1. Menu Wizard --- this is a tool which digitally constructs and updates restaurant menus. This benefits to us with this tool would be the following:
   a) create and update menus faster with significant labor savings
   b) lower cost of maintenance (restaurant customers will be able to update and change specials themselves)
   c) exclusive rights to this tool (barrier to entry)

2. Communications Wizard--- this tool creates a standard that can be used to integrate with any POS terminal and establishes the online ordering protocol.

3. Reservations--- Food.com would have exclusive rights to the online reservation system. They would help us create a hybrid system that can connect with the POS but can also operate through a call center as we establish the POS integration. *This would be a revenue split arrangement 50/50*

4. Registered Users and Order incentives--- we would pay Ameranth a fee for registered users brought to us as well as the initial order placed by new registered users. *We talked about $1.00 for a new registered user and $3.00 for the first order a new registered user would place.*

Ameranth would integrate us with the following POS companies that they say they either have contracts or will have signed contracts by the end of the month.
HSI
Aloha
Squirrel
Infogenisis
Positouch
Ameranth would agrees to develop the tools that would give us immediate intergrations with all of the above as well as any POS companies we signed agreements with independently (Micros and Radiant). Ameranth would give us a NTE (**not to exceed)** estimate for all of the tools mentioned above of $200,000 and commit to a goal of $150,000 for this work.
Tiny will be taking these deal points to our lawyers so I would ask you all to make your comments and corrections to myself and Tanya as quickly as possible.

Electronic Acknowledgement Receipt

EFS ID:	4665120
Application Number:	11112990
International Application Number:	
Confirmation Number:	7098
Title of Invention:	Information management and synchronous communications system with menu generation, and handwriting and voice modification of orders
First Named Inventor/Applicant Name:	Keith R. McNally
Customer Number:	27123
Filer:	Angus Robert Gill/Gary Rymer
Filer Authorized By:	Angus Robert Gill
Attorney Docket Number:	3125-4003US1
Receipt Date:	23-JAN-2009
Filing Date:	22-APR-2005
Time Stamp:	14:12:03
Application Type:	Utility under 35 USC 111(a)

Payment information:

Submitted with Payment	no

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Amendment/Req. Reconsideration-After Non-Final Reject	Reply.pdf	1852133 628e3d76ac0e8b57c3652c84a3542f3c66545262	no	33

Warnings:	
Information:	

2	Oath or Declaration filed	Declaration.pdf	919044 b7c6ac6d0527686aa6bed7deb08d5c8903101d2e	no	17
Warnings:					
Information:					
3	Oath or Declaration filed	Exhibits.pdf	5224726 2759685815 82f4569a34b1139f0c73dbc6e36738	no	49
Warnings:					
Information:					
			Total Files Size (in bytes):	7995903	

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	PATENT NUMBER	GROUP ART UNIT	FILE WRAPPER LOCATION
11/112,990		2191	0270

OC000000034506350

Correspondence Address/Fee Address Change

The following fields have been set to Customer Number 85775 on 02/10/2009

- **Correspondence Address**
- **Power of Attorney Address**

The address of record for Customer Number 85775 is:

85775
Locke Lord Bissell & Liddell LLP
Attn: IP Docketing
Three World Financial Center
New York, NY 10281-2101

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NUMBER	PATENT NUMBER	GROUP ART UNIT	FILE WRAPPER LOCATION
11/112,990		2191	0270

OC000000035252770

Correspondence Address/Fee Address Change

The following fields have been set to Customer Number 85775 on 03/30/2009

- **Correspondence Address**
- **Maintenance Fee Address**
- **Power of Attorney Address**

The address of record for Customer Number 85775 is:

85775
Locke Lord Bissell & Liddell LLP
Attn: IP Docketing
Three World Financial Center
New York, NY 10281-2101

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/112,990	04/22/2005	Keith R. McNally	3125-4003US1	7098

85775 7590 06/26/2009

Locke Lord Bissell & Liddell LLP
Attn: IP Docketing
Three World Financial Center
New York, NY 10281-2101

EXAMINER	
BROPHY, MATTHEW J	

ART UNIT	PAPER NUMBER
2191	

NOTIFICATION DATE	DELIVERY MODE
06/26/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptopatentcommunication@lockelord.com

Office Action Summary	Application No.	Applicant(s)	
	11/112,990	MCNALLY ET AL.	
	Examiner	Art Unit	
	MATTHEW J. BROPHY	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 January 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *103-110 and 115-127* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *103-110 and 115-127* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This office action is in response to amendment filed January 21, 2009.

2. Claims 103-127 are pending.

Response to Amendment

Affidavit Under 37 C.F.R. 1.131

3. The affidavit filed on January 21, 2009, under 37 CFR 1.131 has been considered but is ineffective to overcome the USPN 6,973,437 Olewicz and US PG Pub 20020059405 Angwin references. The evidence submitted is insufficient to establish applicant's alleged actual reduction to practice of the invention in this country or a NAFTA or WTO member country after the effective date of the USPN 6,973,437 Olewicz and US PG Pub 20020059405 Angwin references.

Specifically, Applicant's Affidavit does not produce evidence of actual reduction to practice of the details presented in claim 103, including "menu items, menu categories, modifiers and sub-modifiers", "real-time synchronization" and other elements of claim 103. Exhibits 1-6 suggest that there was a prototype of a system of applicant's prior to the reference dates, but do not provide sufficient detail to establish the particular elements in the claim were actually reduced to practice. Additionally, the highlighted portion of Exhibit 7 actually suggests that further modification was necessary to reduce the claimed invention to practice as of January 31, 1999. "Ameranth will modify its Software Wizard development environment to enable POS suppliers and/or customers to quickly develop hand-held POS applications for the CE screen of the 2700."

Exhibits 8-16 include various press releases, corporate literature and pictures regarding Ameranth's successful showing at the May 1999 NRA show in Chicago. However, these also fail to provide the details described previously and are therefore unable to establish actual reduction to practice prior to the date of the references. Finally Exhibits 17-20 describe activities subsequent to the priority data of both references, and therefore are ineffective with regards to actual reduction to practice prior to those dates

In addition, The evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the USPN 6,973,437 Olewicz and US PG Pub 20020059405 Angwin references to either a constructive reduction to practice or an actual reduction to practice. Here, there are large gaps in time unaccounted for by applicant's affidavit, For example between November 1998 and January 1999 as well as February 1999 to May of 1999. Applicant has not shown reasonable diligence in detail, and applicant's conclusive statements of diligences are not sufficient to find diligence to connect applicant's conception to the constructive or actual reduction to practice.

Finally, Applicant's attempt to antedate these references is moot with respect to at least claims 103-121 because of the new grounds of rejection provided below.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 103-110, 115-121 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 103 and 118 recites the limitation "the information comprising the second menu" in claim body. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 103, 105-110, 115-118 and 120-121 are rejected under 35 U.S.C. 103(a) as being unpatentable over Micros systems Inc. " 8700 HMS 2.10 User's Manual", Copyright 1997 in view of US Patent 5,023,438 –Wakatsuki et al .

Regarding Claims 103 and 118 Micros teaches:

103. (Previously presented) An information management and synchronous communications system for generating and transmitting hospitality menus comprising:

a. a central processing unit, **(Micros '97 Page 1-2, "The 8700 is an integrated Point-Of-Sal e (POS) system comprising modular hardware and flexible, user-configured software." See also 1-12, "The PC Workstation (PCWS) is a personal computer that functions both as a PC and a User Workstation. …System board supporting a variety of true 32,bit processors…")**

b. a data storage device connected to said central processing unit, **(Micros '97 1-3, "The SQL module provides an industry standard set of commands that allow you to define, display, and update 8700 database information in tables (similar to a typical spreadsheet). These commands also allow you to import database information into many accounting packages as well as Standard database applications like dBase IV. The Unix cron command allows SQL commands to be executed at specified dates and times. Thus, updates to the 8700 database can be performed unattended.")**

c. an operating system including a first graphical user interface, **(1-4, "User Workstations (UWS) are used to record all sales and time keeping activity in the system…. UWS Procedures This mode of operation is used to perform manager-related duties, (such as changing menu item prices, assigning employee privilege codes, and assigning training status, et c:). U WS Procedures mode is generally used exclusively by managers and supervisors." And 1-7, "Screen Display The Screen Display displays transaction information during POS Operations…This illustration shows the screen display format for UWS/1 and U WS/2." See also Appendix D, detailing GUI procedures for adding/manipulating records)**

d. a master menu including menu categories **(1-18, "A lookup key lists a set of items on the operator display and allows the operator to choose one. It optimizes**

keyboard space by linking multi pie menu items or functions to a single key. For example, one set of menu items might be linked to an appetizer lookup. When an operator presses the appetizer lookup, a numbered list of appetizers appear on the display…"),

menu items **(Micros '97 1-18, "A lookup key lists a set of items on the operator display and allows the operator to choose one. It optimizes keyboard space by linking multiple menu items or functions to a single key. For example, one set of menu items might be linked to an appetizer lookup. When an operator presses the appetizer lookup, a numbered list of appetizers appears on the display…")**,

modifiers and sub-modifiers, **(5-22, "Post Condiments Many menu items are programmed to require or allow condiments. The term "condiment" includes anything that may modify a menu item-accompaniments, toppings, dressing, preparation instructions, etc. You will be prompted for required condiments, but not for condiments that are allowed (not required)." See also, 5-2, "Condiments requiring other condiments")**

wherein said master menu is capable of being stored on said data storage device pursuant to a master menu file structure **(See "Master Item Menu File" Appendix D, Structure can be seen on Pages D-33 to D-35)**

and said master menu is capable of being displayed in at least one window of said first graphical user interface, **(e.g. 1-18, "A lookup key lists a set of items on the**

operator display and allows the operator to choose one. It optimizes keyboard space by linking multi pie menu items or functions to a single key. For example, one set of menu items might be linked to an appetizer lookup. When an operator presses the appetizer lookup, a numbered List of appetizers appear on the display…")

and e. application software configured to generate a second menu **(Micros '97 Page 3-2, "Default Transaction Touchscreens can be programmed in several files, depending on the establishment's preferences. When an employee signs in, the system reviews these files and produces the correct default transaction touchscreen based on the programming of these files." See further, touchscreens on e.g. 3-3 to 3-10, applicable to the HHT as indicated by the HHT icon)** *[here, Micros '97 anticipates this limitation because the touchscreen files, include a touchscreen menu (i.e. second menu) which is displayed as seen in Chapter 3 of the reference]*

for transmission to a wireless handheld computing device **(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST),**

and the BST transmits guest check information and [menu] database modifications to the HHT.")

wherein the application software is configured to generate said second menu by utilizing parameters from the master menu file structure defining the categories **(e.g. Touchscreen Menu Categories: 3-8 "Salads, Entrées, Apps, Sandwich…")**, items **(e.g. Touchscreen Menu Items: 3-8 "Taco Salad, Caesar Salad, Calamari Salad…")**, modifiers and sub- modifiers **(See. E.g. the dressings & condiments on Touchscreen Menu Page 3-12, "1000 Island, blue cheese, French…yogurt, pepper, ranch…")** of the master menu

such that the information comprising the second menu is synchronized …with analogous information comprising the master menu **(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT." See also Page 5-13)**

wherein the application software is further configured to format the second menu such that the second menu may include additional parameters to facilitate user operations with and display of the second menu on the display screen of a second graphical user interface integral with the wireless handheld computing device, said second menu and any additional parameters satisfying any applicable display constraints and conforming to any applicable specialized display characteristics of the wireless handheld computing device screen. **(Micros '97 1-15, "…The HHT's LCD touchscreen displays 12 lines of 20 to 30 character& (It varies by use a proportional font is used.)The touchscreen overlay features 8 columns by 5 rows, for a total of up to 40 touchscreen keys. Two character sizes are available for key legends…" …Micros '97 Page 3-2, "Default Transaction Touchscreens can be programmed in several files, depending on the establishment's preferences. When an employee signs in, the system reviews these files and produces the correct default transaction touchscreen based on the programming of these files." See further, touchscreens on e.g. 3-3 to 3-10, applicable to the HHT as indicated by the HHT icon)** *[Inherent here is that the touchscreen menus are programmed to satisfy the display constraints described here above.]*

Micros '97 does not explicitly teach:

… synchronized in real time with analogous information comprising the master menu. However, this limitation is taught by Wakatsuki **(Col. 5, Ln 66 to Col 6, Ln 2. "The order data stored in the data memory 16a is instantaneously sent to the data**

processing device 19 in a wireless manner, by operating the data transmission key 12.")

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Micros '97 and Wakatsuki as both systems teach Handheld wireless terminals, and Wakatsuki teaches the provides the instanteously update data so as to allow updated wireless communication and allow the servers to be continuously apprised of the menu offerings as contemplated on e.g. 5-13 of Micros '97.

Regarding the different limitation of claim 118:

118: Micros further teaches: such that the second menu as displayed on the second graphical user interface appears to a user to be substantially similar to the first menu as displayed on the first graphical user interface. **(Page 3-1, "...there is little difference between the functionality of a Touchscreen UWS/3 [second menu] and the micro-motion keyboards on the UWS/1 and UWS/2 [first menu]...")**

105. Micro '97 Teaches: The information management and synchronous communications system in accordance with claim 104, further configured to automatically generate and transmit the second menu from the master menu in

response to at least one of a predetermined time, or the occurrence of an event or a change in the master menu. **(11-9, "Change Serving Period This procedure changes the active Serving Period. A Serving Period is any time span for which sales totals tracking and reporting are desired by management. For example, Breakfast, Lunch, and Dinner.")**

106. Micro '97 Teaches: The information management and synchronous communications system in accordance with claim 103 wherein the second menu relates to hospitality applications including at least one of restaurant service, or point of sale systems, or reservations, or waitlists, or ordering, or customer affinity or frequent customer programs. **(1-2, "The System Configurator module is an integral part of the 8700 System, providing :the means to create and edit the database files that define the parameters of the system--to program the restaurant's operation into the system.")**

Claim 120 is rejected for the same reasons as Claim 106 here above.

107. Micro '97 Teaches: The information management and synchronous communications system in accordance with claim 103 further configured to transmit user selections from the second menu to a receiving computer by wireless link or via the internet. **(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most**

every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT.")

108. Micro '97 Teaches: The information management and synchronous communications system in accordance with claim 103, further configured such that user selections from a second menu on the wireless computing device are automatically reflected in all other storage or display elements of the system. **(5-13 "Post Limited Availability Menu Item The limited availability menu item feature allows you to define menu items to have a limited quantity available: After a programmed number of sales are posted, the system indicates that the menu item is unavailable when that menu item is entered. Example At the beginning of his shift, the manager entered the number of daily special s available during lunch, N ear the end of the lunch shift, Mary entered an order for five daily specials. She received the system prompt: "ONLY 4 DAILY SPECIAL REMAINING,'. She returned to her table and informed the group that one would have to order something else which one of the customers was happy to do. She then placed the order for four daily specials, Immediately after service totalling her check, her order, George, tried to enter an order for the daily special and received this message: "NO MORE DAILY SPECIAL REMAI N I NG."**

Privileges There are no particular privilege restrictions associated with limited availability items Menu Item Counts are set by privileged employees using Workstation Procedure #14 (Change Menu Item Availability).")

Claim 121 is rejected for the same reasons as Claim 108 here above.

109. Micro '97 Teaches: The information management and synchronous communications system in accordance with claim 103, further configured to automatically format the second menu for display as cascaded sets of linked graphical user interface screens appropriate for the display characteristics of the wireless computing device. **(See e.g. set of touchscreen menus on 3-8)**

110. Micro '97 Teaches: The information management and synchronous communications systems in accordance with claim 103 in which the modifiers and sub-modifiers in either the master or second menus may be further configured to be either required or not required. **(5-22, "Post Condiments Many menu items are programmed to require or allow condiments. The term "condiment" includes anything that may modify a menu item-accompaniments, toppings, dressing, preparation instructions, etc. You will be prompted for required condiments, but not for condiments that are allowed (not required)." See also, 5-1)**

115. Micro '97 Teaches: The information management and synchronous communications system in accordance with claim 103 in which the wireless computing device is a smart phone or other consumer wireless communications device. **(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT.")** *[here, the HHT of Micros anticipates the "consumer wireless communication device" as that term is not defined in the applicant's specification and the HHT is a wireless is used by restaurant industry consumers.]*

116. Micro '97 Teaches: The information management and synchronous communications system in accordance with claim 103, further configured to facilitate payment processing from the wireless handheld computing device. **(8-9, "Print Guest Checks [Service Total] initiates guest check printing for By-round operators. For On- demand operators no printing takes place. [Print Check] (which is a service total key programmed to print) initiates guest check printing for On-demand operators and reprints checks for By-round operators. Example On-demand:**

Pressing [Service Total] as an On-demand operator will not cause a guest check to print. However, if you dose the check with a payment key or press [Print Check], a guest check will print. By-round: Pressing [Service Total] as a By-round operator will print the guest check, If your UWS is programmed to print guest checks at theslip printer, you must place the guest check in the printer." *Note the HHT icon on this page, indicating the check printing can be processed from the HHT, see also set up on 11-38)* *[here, the wireless HHT facilitates payment processing by printing the check to tender to the customer]*

117. Micro '97 Teaches: The information management and synchronous communications system in accordance with claim 103, further configured such that both the master and the generated second menus reflect a billing summary to facilitate processing of payments for an order on the wireless handheld computing device. **(See e.g. B-13, "Check Summary Section The summary section of t he guest check will be formatted by the type of tender used (some print trailer lines), the type of tax implemented (exclusive or VAT) and by t h e type of operator printing the check (By-Round or On-Demand)." See also 5-7"Press a menu item key, for example, [N .Y. Strip]. The menu item and price posts to the check detail…")**

8. Claims 104 and 119 are rejected under 35 U.S.C. 103(a) as being unpatentable over Micros systems Inc. " 8700 HMS 2.10 User's Manual", Copyright 1997 in view of US Patent 5,023,438 –Wakatsuki et al as applied to claims 103 and 118 above and

further in view of Micros Systems Inc. "*Preliminary Information Packet for the Micros Hand-Held Touchscreen*" September 2, 1992.

104. Micro '92 Teaches: The information management and synchronous communications system in accordance with claim 103, further configured to automatically generate and transmit the second menu from the master menu. **(Micros '92 page 8, "Changes made to the 4700 HMS database [master menu] using Manager Procedures are automatically downloaded over RF to the appropriate HHT terminals")**

Claim 119 is rejected for the same reasons as Claim 104 here above. In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Micros '97 and Micros '92 as both systems teach Micros' Handheld wireless touchscreen terminal, and Micros' '92 teaches the provides the ability to automatically update the HHT so as to allow updated wireless communication and allow the servers to be continuously apprised of the menu offerings as contemplated on e.g. 5-13 of Micros '97.

9. Claims 122-127 are rejected under 35 U.S.C. 103(a) as being unpatentable over Micros systems Inc. " 8700 HMS 2.10 User's Manual", Copyright 1997 in view of US Patent 5,023,438 –Wakatsuki et al and further in view of USPN 5,991,739 Cupps et al hereinafter Cupps.

Regarding Claim 122 Micros teaches: An information management and synchronous communications system for use with wireless handheld computing devices and the internet comprising:

a. a master database connected in said system and configured to store hospitality application information pursuant to a master database file structure, **(Micros '97 1-3, "The SQL module provides an industry standard set of commands that allow you to define, display, and update 8700 database information in tables (similar to a typical spreadsheet). These commands also allow you to import database information into many accounting packages as well as Standard database applications like dBase IV. The Unix cron command allows SQL commands to be executed at specified dates and times. Thus, updates to the 8700 database can be performed unattended." See "Master Item Menu File" Appendix D, Structure can be seen on Pages D-33 to D-35)**

b. at least one wireless handheld computing device connected in said system and configured to display said hospitality application information, **(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can**

post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT.")

e. a communications control module linking the master database, wireless handheld computing device…**(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT.")**

such that substantially the same information comprising the hospitality application information is capable of being displayed on the wireless handheld computing device, … and other display screens of the synchronized system, **(Page 3-1, "…there is little difference between the functionality of a Touchscreen UWS/3 [second menu] and the micro-motion keyboards on the UWS/1 and UWS/2 [first menu]…")**

wherein the system is configured to utilize parameters from the master database file structure to synchronize the hospitality application information… between the master database, at least one wireless handheld computing device…**(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT.")**

such that the hospitality application information is synchronized between any connected users, **(5-13 "Post Limited Availability Menu Item**
The limited availability menu item feature allows you to define menu items to have a limited quantity available: After a programmed number of sales are posted, the system indicates that the menu item is unavailable when that menu item is entered. Example At the beginning of his shift, the manager entered the number of daily
special s available during lunch, N ear the end of the lunch shift, Mary entered an order for five daily specials. She received the system prompt: "ONLY 4 DAILY

SPECIAL REMAINING,'. She returned to her table and informed the group that one would have to order something else which one of the customers was happy to do. She then placed the order for four daily specials, Immediately after service totalling her check, her order, George, tried to enter an order for the daily special and received this message: "NO MORE DAILY SPECIAL REMAI N I NG."
Privileges There are no particular privilege restrictions associated with limited availability items
Menu Item Counts are set by privileged employees using Workstation Procedure #14 (Change Menu Item Availability).")

wherein the communications control module is configured to act as an interface between the elements of the system and any applicable communications protocol and **(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT.")**

wherein the system is configured to format the hospitality application information for display on both the wireless handheld device … in conformity with any applicable display constraints of the wireless handheld computing device …**(Micros '97 1-15, "…The HHT's LCD touchscreen displays 12 lines of 20 to 30 character& (It varies by use a proportional font is used.)The touchscreen overlay features 8 columns by 5 rows, for a total of up to 40 touchscreen keys. Two character sizes are available for key legends…" …Micros '97 Page 3-2, "Default Transaction Touchscreens can be programmed in several files, depending on the establishment's preferences. When an employee signs in, the system reviews these files and produces the correct default transaction touchscreen based on the programming of these files." See further, touchscreens on e.g. 3-3 to 3-10, applicable to the HHT as indicated by the HHT icon)** *[Inherent here is that the touchscreen menus are programmed to satisfy the display constraints described here above.]*

Micros '97 does not explicitly teach:

…synchronize the hospitality application information in real time between the master database, at least one wireless handheld computing device… However, this limitation is taught by Wakatsuki **(Col. 5, Ln 66 to Col 6, Ln 2. "The order data stored in the data memory 16a is instantaneously sent to the data processing device 19 in a wireless manner, by operating the data transmission key 12.")**

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Micros '97 and Wakatsuki as both systems teach Handheld wireless terminals, and Wakatsuki teaches the provides the instanteously update data so as to allow updated wireless communication and allow the servers to be continuously apprised of the menu offerings as contemplated on e.g. 5-13 of Micros '97.

Micros does not explicitly teach:

c. at least one web server connected in said system and configured to display said hospitality application information,

d. at least one web page connected in said system and configured to display said hospitality application information

wherein the system is configured to utilize parameters from the master database file structure to synchronize the hospitality application information in real time between… at least one web server and at least one web page

such that substantially the same information comprising the hospitality application information is capable of being displayed …at least one web page and other display screens of the synchronized system

wherein the system is configured to format the hospitality application information for display on … web page in conformity with any applicable display constraints of the…web page.

However, these limitations are taught by Cupps:

c. at least one web server connected in said system and configured to display said hospitality application information,

(Col. 2, Ln 22-25, "The distributed computer system includes a group of customers connected to client computers and at least one server computer system that executes the online ordering machine.")

d. at least one web page connected in said system and configured to display said hospitality application information **(Col. 2, Ln 41-44,"The online ordering machine is a Web server including a web creation procedure that dynamically generates menu web pages in response to a customer's request.")**, and

wherein the system is configured to utilize parameters from the master database file structure to synchronize the hospitality application information in real time between…at least one web server and at least one web page

(Col. 8, Ln 42 to Col. 9, Ln 7,"Dynamically Created Menu Web Pages: The online ordering machine 106 generates menu web pages 144 that are specific to a particular customer's request. The creation of the menu web pages 144 is done dynamically at runtime in order to provide data that accommodates a customer's request …each menu web page 144 is configured at runtime and customized for a particular customer's request… FIG. 7 illustrates the components used to dynamically generate a menu web page 144. ……The data included in the menu web page 144 is retrieved from the order database 128 and the menu file system 146. The order database 128 contains information such as the operational time of a vendor, the restaurant's logo, the categories of the food products served, and

the like. The menu file system 146 includes menu data associated with each vendor. The menu file system 146 includes a number of menu files stored in an encoded binary format for faster retrieval purposes. The web page creation procedure 126 uses the data in the order database 128 and the menu file system 146 to dynamically generate one or more menu web pages 144 that are customized to a customer's request.")

such that substantially the same information comprising the hospitality application information is capable of being displayed …at least one web page and other display screens of the synchronized system **(Col. 8, Ln 42 to Col. 9, Ln 7, "Dynamically Created Menu Web Pages: The online ordering machine 106 generates menu web pages 144 that are specific to a particular customer's request. The creation of the menu web pages 144 is done dynamically at runtime in order to provide data that accommodates a customer's request …each menu web page 144 is configured at runtime and customized for a particular customer's request… FIG. 7 illustrates the components used to dynamically generate a menu web page 144. ……The data included in the menu web page 144 is retrieved from the order database 128 and the menu file system 146. The order database 128 contains information such as the operational time of a vendor, the restaurant's logo, the categories of the food products served, and the like. The menu file system 146 includes menu data associated with each vendor. The menu file system 146 includes a number of menu files stored in an encoded binary format for faster retrieval purposes. The web page creation procedure 126 uses the data in the order database 128 and the**

menu file system 146 to dynamically generate one or more menu web pages 144 that are customized to a customer's request.")

wherein the system is configured to format the hospitality application information for display on … web page in conformity with any applicable display constraints of the…web page. **(Col 10, Ln 7-16, "The customer can then select a particular vendor or restaurant and one or more menu web pages 144 including the selected information that is dynamically created by the web creation procedure 126 and provided to the customer's client computer 102. The customer can then browse through the menu web pages 144 and select items of interest. The user's selection or requests are used by the web creation procedure 126 to generate one or more menu web pages 144 that are displayed to the customer (step 306). FIGS. 8-10 illustrate such exemplary menu web pages 144.")**

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Micros with the teachings of Cupps as Micros teaches a POS database including menu information that could be combined with Cupps dynamic menu creation mechanism to allow increased functionality to the Micros system. Particularly, one of ordinary skill in the art would be motivated because: "[t]he Internet has provided consumers with a new medium for electronic commerce…Internet services such as Cupp's invention provides consumers with access to menus for food products that can be ordered online…"

123. Micro '97 Teaches: The information management and synchronous communications system of claim 122, wherein the hospitality application information relates to at least one of restaurant service, or point of sale systems, or reservations, or waitlists, or ordering, or customer affinity or frequent customer programs. **(1-2, "The System Configurator module is an integral part of the 8700 System, providing :the means to create and edit the database files that define the parameters of the system--to program the restaurant's operation into the system.")**

124. Micro '97 Teaches: The information management and synchronous communications system of claim 122, further configured to automatically communicate selections made from a menu on at least one web page or at least one wireless computing device and transmitted over the internet to either the master database or at least one wireless handheld computing device or at least one web page. **(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base**

Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT.")

125. Micro '97 Teaches: The information management and synchronous communications system of claim 122, further configured to automatically communicate selections made from a menu on at least one wireless handheld computing device to either the master database or the web server. **(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT."**

126. Micro '97 Teaches: The information management and synchronous communications system in accordance with claim 122, wherein the hospitality information relates to payment processing. **(8-9, "Print Guest Checks [Service Total] initiates guest check printing for By-round operators. For On- demand operators no printing takes place. [Print Check] (which is a service total key programmed to print) initiates guest check printing for On-demand operators and reprints checks**

for By-round operators. Example On-demand: Pressing [Service Total] as an On-demand operator will not cause a guest check to print. However, if you dose the check with a payment key or press [Print Check], a guest check will print. By-round: Pressing [Service Total] as a By-r ound operator will print the guest check, If your UWS is programmed to print guest checks at the slip printer, you must place the guest check in the printer." ***Note the HHT icon on this page, indicating the check printing can be processed from the HHT, see also set up on 11-38)*** *[here, the wireless HHT facilitates payment processing by printing the check to tender to the customer]*

127. Micro '97 Teaches: The information management and synchronous communications system in accordance with claim 122, wherein the wireless handheld computing device is a smart phone or other consumer wireless communications device. **(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the <u>BST transmits guest check information and [menu] database modifications</u> to the HHT.")** *[here, the HHT of Micros anticipates the*

"consumer wireless communication device" as that term is not defined in the applicant's specification and the HHT is a wireless is used by restaurant industry consumers.]

10. Claims 122-127 are rejected under 35 U.S.C. 103(a) as being unpatentable over Micros systems Inc. " 8700 HMS 2.10 User's Manual", Copyright 1997 in view of in view of US Patent 5,023,438 –Wakatsuki et al .. and further in view of USPN 6,973,437 Olewicz.

Regarding Claim 122 Micros '97 teaches: An information management and synchronous communications system for use with wireless handheld computing devices and the internet comprising:

a. a master database connected in said system and configured to store hospitality application information pursuant to a master database file structure, **(Micros '97 1-3, "The SQL module provides an industry standard set of commands that allow you to define, display, and update 8700 database information in tables (similar to a typical spreadsheet). These commands also allow you to import database information into many accounting packages as well as Standard database applications like dBase IV. The Unix cron command allows SQL commands to be executed at specified dates and times. Thus, updates to the 8700 database can be performed unattended." See "Master Item Menu File" Appendix D, Structure can be seen on Pages D-33 to D-35)**

b. at least one wireless handheld computing device connected in said system and configured to display said hospitality application information, **(1-15"Hand-Held**

Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT.")

e. a communications control module linking the master database, wireless handheld computing device…**(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT.")**

such that substantially the same information comprising the hospitality application information is capable of being displayed on the wireless handheld computing device, … and other display screens of the synchronized system, **(Page 3-1, "…there is little**

difference between the functionality of a Touchscreen UWS/3 [second menu] and the micro-motion keyboards on the UWS/1 and UWS/2 [first menu]…")

wherein the system is configured to utilize parameters from the master database file structure to synchronize the hospitality application information… between the master database, at least one wireless handheld computing device…**(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT.")**

such that the hospitality application information is synchronized between any connected users, **(5-13 "Post Limited Availability Menu Item**
The limited availability menu item feature allows you to define menu items to have a limited quantity available: After a programmed number of sales are posted, the system indicates that the menu item is unavailable when that menu item is entered. Example At the beginning of his shift, the manager entered the number of daily

special s available during lunch, N ear the end of the lunch shift, Mary entered an order for five daily specials. She received the system prompt: "ONLY 4 DAILY SPECIAL REMAINING,'. She returned to her table and informed the group that one would have to order something else which one of the customers was happy to do. She then placed the order for four daily specials, Immediately after service totalling her check, her order, George, tried to enter an order for the daily special and received this message: "NO MORE DAILY SPECIAL REMAI N I NG."

Privileges There are no particular privilege restrictions associated with limited availability items

Menu Item Counts are set by privileged employees using Workstation Procedure #14 (Change Menu Item Availability).")

wherein the communications control module is configured to act as an interface between the elements of the system and any applicable communications protocol and

(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base

Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT.")

wherein the system is configured to format the hospitality application information for display on both the wireless handheld device … in conformity with any applicable display constraints of the wireless handheld computing device …**(Micros '97 1-15, "…The HHT's LCD touchscreen displays 12 lines of 20 to 30 character& (It varies by use a proportional font is used.)The touchscreen overlay features 8 columns by 5 rows, for a total of up to 40 touchscreen keys. Two character sizes are available for key legends…" …Micros '97 Page 3-2, "Default Transaction Touchscreens can be programmed in several files, depending on the establishment's preferences. When an employee signs in, the system reviews these files and produces the correct default transaction touchscreen based on the programming of these files." See further, touchscreens on e.g. 3-3 to 3-10, applicable to the HHT as indicated by the HHT icon)** *[Inherent here is that the touchscreen menus are programmed to satisfy the display constraints described here above.]*

Micros '97 does not explicitly teach:

…synchronize the hospitality application information in real time between the master database, at least one wireless handheld computing device… However, this limitation is taught by Wakatsuki **(Col. 5, Ln 66 to Col 6, Ln 2. "The order data stored in the data**

memory 16a is instantaneously sent to the data processing device 19 in a wireless manner, by operating the data transmission key 12.")

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Micros '97 and Wakatsuki as both systems teach Handheld wireless terminals, and Wakatsuki teaches the provides the instanteously update data so as to allow updated wireless communication and allow the servers to be continuously apprised of the menu offerings as contemplated on e.g. 5-13 of Micros '97.

Micros does not explicitly teach:
c. at least one web server connected in said system and configured to display said hospitality application information,
d. at least one web page connected in said system and configured to display said hospitality application information
wherein the system is configured to utilize parameters from the master database file structure to synchronize the hospitality application information in real time between… at least one web server and at least one web page
such that substantially the same information comprising the hospitality application information is capable of being displayed …at least one web page and other display screens of the synchronized system

wherein the system is configured to format the hospitality application information for display on … web page in conformity with any applicable display constraints of the…web page.

However, these limitations are taught by Olewicz:

c. at least one web server connected in said system and configured to display said hospitality application information, **("The present invention in use in a restaurant, for example, includes a central server unit or main data collecting and transmitting unit generally includes a conventional PC or processing unit with a display, memory, including a backup memory, and a keyboard or similar data input mechanism. The central server unit typically is positioned in the manager's office or can be placed on the floor of the restaurant, at the front of the restaurant or at the hostess stand.")**

d. at least one web page connected in said system and configured to display said hospitality application information, and**("Col 14. Ln. 13-21, "Similarly, if the request is part of survey data in step 146, survey information and questions are displayed on the table unit and responses are entered into a database in step 202 from which data is compiled by the central server unit to enable management to combine real time and statistical data in step 203 for inventory control and tracking of service such as wait times, etc., which further information also can be posted to a restaurant Internet website.")**

wherein the system is configured to utilize parameters from the master database file structure to synchronize the hospitality application information in real time between… at least one web server and at least one web page **("Col 14. Ln. 13-21, "Similarly, if the request is part of survey data in step 146, survey information and questions are displayed on the table unit and responses are entered into a database in step 202 from which data is compiled by the central server unit to enable management to combine real time and statistical data in step 203 for inventory control and tracking of service such as wait times, etc., which further information also can be posted to a restaurant Internet website.")**

such that substantially the same information comprising the hospitality application information is capable of being displayed …at least one web page and other display screens of the synchronized system **("Col 14. Ln. 13-21, "Similarly, if the request is part of survey data in step 146, survey information and questions are displayed on the table unit and responses are entered into a database in step 202 from which data is compiled by the central server unit to enable management to combine real time and statistical data in step 203 for inventory control and tracking of service such as wait times, etc., which further information also can be posted to a restaurant Internet website.")**

wherein the system is configured to format the hospitality application information for display on … web page in conformity with any applicable display constraints of the wireless …web page. **(e.g. Col 14, Ln 44-62 "FIG. 9 illustrates the updating of the Internet website for the restaurant in which the main computer or central server unit 11 sends a signal in step 220 to update the restaurant website "I". Thereafter, as persons log onto the website in step 221, the user is asked in step 222 whether they are a customer or a manager. If the user is a customer, they are directed to information about seating availability and wait times in step 223, which site page can also provide directions, enable reservations to be made online, and display discounts and/or specials.")**

In addition it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Micros with the teachings of Olewicz as Olewicz teaches a system of Restaurant Management including the use of a website that would allow customers in the Micros system to view inventory control (e.g. menu) information as well as wait times and availability for the system of Micros over the internet (see Col 14, Ln 44-62)

123. Micro '97 Teaches: The information management and synchronous communications system of claim 122, wherein the hospitality application information relates to at least one of restaurant service, or point of sale systems, or reservations, or waitlists, or ordering, or customer affinity or frequent customer programs. **(1-2, "The System Configurator module is an integral part of the 8700 System, providing :the**

means to create and edit the database files that define the parameters of the system--to program the restaurant's operation into the system.")

124. Micro '97 Teaches: The information management and synchronous communications system of claim 122, further configured to automatically communicate selections made from a menu on at least one web page or at least one wireless computing device and transmitted over the internet to either the master database or at least one wireless handheld computing device or at least one web page. **(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT.")**

125. Micro '97 Teaches: The information management and synchronous communications system of claim 122, further configured to automatically communicate selections made from a menu on at least one wireless handheld computing device to either the master database or the web server. **(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an**

8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT."

126. Micro '97 Teaches: The information management and synchronous communications system in accordance with claim 122, wherein the hospitality information relates to payment processing. **(8-9, "Print Guest Checks [Service Total] initiates guest check printing for By-round operators. For On- demand operators no printing takes place. [Print Check] (which is a service total key programmed to print) initiates guest check printing for On-demand operators and reprints checks for By-round operators. Example On-demand: Pressing [Service Total] as an On-demand operator will not cause a guest check to print. However, if you dose the check with a payment key or press [Print Check], a guest check will print. By-round: Pressing [Service Total] as a By-r ound operator will print the guest check, If your UWS is programmed to print guest checks at the slip printer, you must place the guest check in the printer."** ***Note the HHT icon on this page, indicating the check printing can be processed from the HHT, see also set up on 11-38)***

[here, the wireless HHT facilitates payment processing by printing the check to tender to the customer]

127. Micro '97 Teaches: The information management and synchronous communications system in accordance with claim 122, wherein the wireless handheld computing device is a smart phone or other consumer wireless communications device. **(1-15"Hand-Held Touchscreen Features "The HHT is a portable User Workstation. Like the UWS/3, it contains an 8700 Revenue Center database. Using the HHT, an operator can post orders, close guest checks, and perform al most every other operation that is available on a UWS. The HHT communicates by radio frequency with a Base Station, which is cabled roan LCC or RCC in one of the PCs in an 8700 System. The HHT transmits posting and transaction information to the Base Station (BST), and the BST transmits guest check information and [menu] database modifications to the HHT.")** *[here, the HHT of Micros anticipates the "consumer wireless communication device" as that term is not defined in the applicant's specification and the HHT is a wireless is used by restaurant industry consumers.]*

Response to Arguments

11. Applicant's arguments with respect to claims 103-110,115-127 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW J. BROPHY whose telephone number is

571-270-1642. The examiner can normally be reached on Monday-Thursday 8:00AM-5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJB

4/9/2009

/Wei Y Zhen/

Supervisory Patent Examiner, Art Unit 2191

Index of Claims	Application/Control No.	Applicant(s)/Patent Under Reexamination
	11112990	MCNALLY ET AL.
	Examiner	Art Unit
	MATTHEW J BROPHY	2191

✓	Rejected	-	Cancelled	N	Non-Elected	A	Appeal
=	Allowed	÷	Restricted	I	Interference	O	Objected

☐ Claims renumbered in the same order as presented by applicant ☐ CPA ☐ T.D. ☐ R.1.47

CLAIM		DATE								
Final	Original	03/07/2008	08/15/2008	12/08/2008	04/11/2009					
	103	✓	✓	✓	✓					
	104	✓	✓	✓	✓					
	105	✓	✓	✓	✓					
	106	✓	✓	✓	✓					
	107	✓	✓	✓	✓					
	108	✓	✓	✓	✓					
	109	✓	✓	✓	✓					
	110	✓	✓	✓	✓					
	111	✓	✓	✓	-					
	112	✓	✓	✓	-					
	113	✓	✓	✓	-					
	114	✓	✓	✓	-					
	115	✓	✓	✓	✓					
	116	✓	✓	✓	✓					
	117	✓	✓	✓	✓					
	118	✓	✓	✓	✓					
	119	✓	✓	✓	✓					
	120	✓	✓	✓	✓					
	121	✓	✓	✓	✓					
	122	✓	✓	✓	✓					
	123	✓	✓	✓	✓					
	124	✓	✓	✓	✓					
	125	✓	✓	✓	✓					
	126	✓	✓	✓	✓					
	127	✓	✓	✓	✓					

Search Notes	Application/Control No.	Applicant(s)/Patent Under Reexamination
	11112990	MCNALLY ET AL.
	Examiner	Art Unit
	MATTHEW J BROPHY	2191

SEARCHED			
Class	Subclass	Date	Examiner
715	810-845	4/9/2009	MJB

SEARCH NOTES		
Search Notes	Date	Examiner
See EAST search History	4/9/2009	MJB
inventor search in EDAN	4/9/2009	MJB
NPL (Google Scholar, ACM, IEEE)	4/9/2009	MJB

INTERFERENCE SEARCH			
Class	Subclass	Date	Examiner

/MATTHEW J BROPHY/ Examiner.Art Unit 2191	

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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85775 7590 08/03/2009

Locke Lord Bissell & Liddell LLP
Attn: IP Docketing
Three World Financial Center
New York, NY 10281-2101

EXAMINER	
BROPHY, MATTHEW J	

ART UNIT	PAPER NUMBER
2191	

NOTIFICATION DATE	DELIVERY MODE
08/03/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptopatentcommunication@lockelord.com

Interview Summary	Application No.	Applicant(s)	
	11/112,990	MCNALLY ET AL.	
	Examiner	Art Unit	
	MATTHEW J. BROPHY	2191	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MATTHEW J. BROPHY*.

(2) *Li Zhen*.

(3)*John Osborne*.

(4)*Keith McNally*.

Date of Interview: *21 July 2009*.

Type: a)☐ Telephonic b)☐ Video Conference
c)☒ Personal [copy given to: 1)☐ applicant 2)☐ applicant's representative]

Exhibit shown or demonstration conducted: d)☐ Yes e)☐ No.
If Yes, brief description: _____.

Claim(s) discussed: *103,118 and 123*.

Identification of prior art discussed: *Mircos HMS 8700 Manual et al.*.

Agreement with respect to the claims f)☒ was reached. g)☐ was not reached. h)☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: *See Continuation Sheet*.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

/Wei Y Zhen/
Supervisory Patent Examiner, Art Unit 2191

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record
A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews
Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.
All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

———

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:
- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

1) A brief description of the nature of any exhibit shown or any demonstration conducted,
2) an identification of the claims discussed,
3) an identification of the specific prior art discussed,
4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
5) a brief identification of the general thrust of the principal arguments presented to the examiner,
   (The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
6) a general indication of any other pertinent matters discussed, and
7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Applicant presented an explanation of the invention and its place among the cited references. Applicant stated that they understood the pending rejection, and proposed amendments to change "second menu" to "handheld menu configuration" and that the menu configuration software configuring cascaded sets of related graphical user interface screens, as well as "real time synchronous transmission with the wireless handheld devices. Examiner agreed that the proposed amendment changed the scope of the claims, and should overcome the rejection of record, but the examiner would require further search and consideration of the art. The examiner agreed to interview telephonically with the applicant's representative next week to follow up on the proposed amendments. Additionally, applicant responded to examiner's remarks regarding the 37 CFR 1.131 declaration by describing the activities previous to the filing date, and agreed to submit a supplemental declaration should it be necessary.

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LLB&L
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Fax Cover Sheet

July 8, 2009

To:	Organization:	Fax Number:	Phone Number:
Examiner Matthew Brophy	USPTO Art Unit 2191	571-270-2642	

Total Pages (including coversheet): 3
If you do not receive all pages, please call 212-415-8509.

Message:

Our File Number: 1004293.005US

NY:1004293/005US:606930v1

PTOL-413A (06-09)
Approved for use through 07/31/2009. OMB 0651-0031
U.S. Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

Applicant Initiated Interview Request Form

Application No.: 11/112,990 First Named Applicant: McNally

Examiner: Brophy, Matthew Art Unit: 2191 Status of Application: non-final rej.

Tentative Participants:

(1) John Osborne (2) Keith McNally

(3) Matthew Brophy (4) _____

Proposed Date of Interview: July 20, 2009 **Proposed Time:** 2:00 PM **AM/PM**

Type of Interview Requested:

(1) ☐ **Telephonic** (2) ☑ **Personal** (3) ☐ **Video Conference**

Exhibit To Be Shown or Demonstrated: ☐ **YES** ☑ **NO**

If yes, provide brief description: _____

Issues To Be Discussed

Issues (Rej., Obj., etc)	Claims/ Fig. #s	Prior Art	Discussed	Agreed	Not Agreed
(1) Rej. 35 USC 112	103-10, 115-21		☐	☐	☐
(2) Rej. 35 USC 103	103-10, 115-27	Micros 8700 Man	☐	☐	☐
(3) "	"	USP 5,023,438	☐	☐	☐
(4) "	"	Micros HHT Doc	☐	☐	☐

☑ Continuation Sheet Attached

Brief Description of Argument to be Presented:

Distinctions over cited references, proposed amendments and 1.131 Declaration to be discussed.

An interview was conducted on the above-identified application on _____ .

NOTE: This form should be completed by applicant and submitted to the examiner in advance of the interview (see MPEP § 713.01).

This application will not be delayed from issue because of applicant's failure to submit a written record of this interview. Therefore, applicant is advised to file a statement of the substance of this interview (37 CFR 1.133(b)) as soon as possible.

John W. Osborne
Applicant/Applicant's Representative Signature

John W. Osborne
Typed/Printed Name of Applicant or Representative

36,231
Registration Number, if applicable

Examiner/SPE Signature

Issues To Be Discussed – Continuation Sheet

(5)	Rej. 35 USC 103	103-10, 115-27	USP 5,991,739
(6)	"	"	USP 6,973,437
(7)	Rej. 37 CFR 1.131	"	

UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/112,990	04/22/2005	Keith R. McNally	3125-4003US1	7098

85775 7590 08/06/2009

Locke Lord Bissell & Liddell LLP
Attn: IP Docketing
Three World Financial Center
New York, NY 10281-2101

EXAMINER	
BROPHY, MATTHEW J	

ART UNIT	PAPER NUMBER
2191	

NOTIFICATION DATE	DELIVERY MODE
08/06/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ptopatentcommunication@lockelord.com

Interview Summary	Application No.	Applicant(s)	
	11/112,990	MCNALLY ET AL.	
	Examiner	Art Unit	
	MATTHEW J. BROPHY	2191	

All participants (applicant, applicant's representative, PTO personnel):

(1) *MATTHEW J. BROPHY*. (3)_____.

(2) *John Osborne*. (4)_____.

Date of Interview: *29 July 2009*.

Type: a)☒ Telephonic b)☐ Video Conference
c)☐ Personal [copy given to: 1)☐ applicant 2)☐ applicant's representative]

Exhibit shown or demonstration conducted: d)☐ Yes e)☐ No.
If Yes, brief description: _____.

Claim(s) discussed: *103*.

Identification of prior art discussed: *Mircos et al*.

Agreement with respect to the claims f)☐ was reached. g)☒ was not reached. h)☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: *Applicant described amendments clarifying that the second menu was a handheld menu, which was generated from the master menu and that the menu included a cascaded set of menus. Examiner described his interpretation of the art with respect to these amendments. The Applicant suggested that the prior art of record does not teach generation of the handheld menu from the master menu. The examiner suggested possible additional amendments including the clarification that configuration is not done at the handheld, which applicant contends is a difference between the present invention and the art of record. Additionally, the applicant suggested the possibility of a declaration of secondary considerations, which the examiner agreed might be useful as evidence against obviousness. Applicant agreed to consider this possibility in the future. Applicant agreed to confer with his client and prepare an amendment in light of the interviews. Examiner agreed to consider the amendment when entered and if an examiner's amendment becomes appropriate, contact the applicant.* .

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN A NON-EXTENDABLE PERIOD OF THE LONGER OF ONE MONTH OR THIRTY DAYS FROM THIS INTERVIEW DATE, OR THE MAILING DATE OF THIS INTERVIEW SUMMARY FORM, WHICHEVER IS LATER, TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

/Wei Y Zhen/
Supervisory Patent Examiner, Art Unit 2191

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record
A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews
Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.
All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

———

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:
- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case. It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

1) A brief description of the nature of any exhibit shown or any demonstration conducted,
2) an identification of the claims discussed,
3) an identification of the specific prior art discussed,
4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
5) a brief identification of the general thrust of the principal arguments presented to the examiner,
   (The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
6) a general indication of any other pertinent matters discussed, and
7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

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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
		Customer No.:	27123

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

REPLY AND AMENDMENT UNDER 37 C.F.R. 1.111

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

Sir:

In response to the pending non-Final Office Action dated June 26, 2009, including extensive amendments of the pending claims, a supplemental inventor's declaration under 37 C.F.R. 1.131 and a 37 C.F.R. 1.132 declaration providing substantial evidence of secondary indicia of nonobviousness, reconsideration and allowance of the amended pending claims of the above-identified application is respectfully requested for the reasons stated herein.

Please amend the above-identified application as follows:

Amendments to the Claims are reflected in the listing of claims which begins on page 2 of this paper; and

Remarks begin on page 13 of this paper.

Amendments to the Claims:

This listing of claims will replace all prior versions, and listings, of claims in the application. Claims 1-102 and 111-114 were canceled without prejudice or disclaimer by previous amendments. By the present amendment, Claims 103-110 and 115-127 are amended. Claims 103-110 and 115-127 are now pending in the application. No new matter has been added by the present amendment.

1-102. (Canceled).

103. (Currently Amended) An information management and real time synchronous communications system for ~~generating~~ configuring and transmitting hospitality menus comprising:

a. a central processing unit,

b. a data storage device connected to said central processing unit,

c. an operating system including a first graphical user interface,

d. a master menu including at least menu categories, menu items[,] and modifiers ~~and sub-modifiers~~, wherein said master menu is capable of being stored on said data storage device pursuant to a master menu file structure and said master menu is capable of being ~~displayed~~ configured for display to facilitate user operations in at least one window of said first graphical user interface as cascaded sets of linked graphical user interface screens, and

e. ~~application~~ menu configuration software ~~configured~~ enabled to generate a ~~second~~ programmed handheld menu configuration from said master menu for wireless transmission to and programmed for display on a wireless handheld computing device, said programmed handheld menu configuration comprising at least menu categories, menu items and modifiers and

wherein the ~~application~~ menu configuration software is ~~configured~~ enabled to generate said ~~second~~ programmed handheld menu configuration by utilizing parameters from the master menu file structure defining at least the menu categories, menu items [,] and modifiers ~~and sub-modifiers~~ of the master menu such that ~~the information comprising the second menu is~~ at least the menu categories, menu items and modifiers comprising the programmed handheld menu configuration are synchronized in real time with analogous information comprising the master menu,

wherein the ~~application~~ menu configuration software is further ~~configured~~ enabled to ~~format the second menu such that the second menu may include additional parameters~~ generate the programmed handheld menu configuration in conformity with display screen parameters unique to the wireless handheld computing device to facilitate user operations with and display of the ~~second~~ programmed handheld menu configuration on the display screen of a ~~second~~ handheld graphical user interface integral with the wireless handheld computing device, wherein said display screen parameters comprise at least the displayable size of the handheld graphical user interface ~~said second menu and any additional parameters satisfying any applicable display constraints and conforming to any applicable specialized display characteristics of the wireless handheld computing device screen~~,

wherein the programmed handheld menu configuration is configured by the menu configuration software for display as programmed cascaded sets of linked graphical user interface screens appropriate for the display screen parameters of the wireless handheld computing device, wherein said programmed cascaded sets of linked graphical user interface screens for display of the handheld menu configuration are configured differently from the

cascaded sets of linked graphical user interface screens for display of the master menu on said first graphical user interface, and

wherein the system is enabled for real time synchronous communications to and from the wireless handheld computing device utilizing the programmed handheld menu configuration including the capability of real time synchronous transmission of the programmed handheld menu configuration to the wireless handheld computing device and real time synchronous transmissions of selections made from the handheld menu configuration on the wireless handheld computing device.

104. (Currently Amended) The information management and real time synchronous communications system in accordance with claim 103, ~~further configured to automatically generate and transmit the second menu form the master menu~~ wherein the menu configuration software is further enabled to automatically generate the programmed handheld menu configuration for display using more screens than the number of screens configured to display the master menu and wherein the menu configuration software is also enabled to generate the programmed handheld menu configuration to facilitate user operations with and display of the programmed handheld menu configuration on the display screen of the handheld graphical user interface of the wireless handheld computing device such that the programmed handheld menu configuration as displayed on the handheld graphical user interface appears to a user to be substantially similar to the master menu as displayed on the first graphical user interface.

105. (Currently Amended) The information management and real time synchronous communications system in accordance with claim 103, ~~further configured~~ wherein the menu configuration software is further enabled to automatically generate and transmit the ~~second~~

programmed handheld menu configuration from the master menu in response to at least one of a predetermined time, or the occurrence of an event or a change in the master menu.

106. (Currently Amended) The information management and real time synchronous communications system in accordance with claim 103 wherein ~~the second menu relates to~~ information comprising at least a part of the programmed handheld menu configuration is synchronized in real time between multiple hospitality software applications including at least [one] two of ~~restaurant service, or~~ point of sale systems, or reservations, or waitlists, ~~or ordering, or customer affinity~~ or frequent customer or ticketing programs.

107. (Currently Amended) The information management and real time synchronous communications system in accordance with claim 103 further ~~configured~~ enabled to transmit user selections from the ~~second~~ programmed handheld menu configuration to a receiving computer ~~by wireless link or~~ via the internet.

108. (Currently Amended) The information management and real time synchronous communications system in accordance with claim 103, further ~~configured~~ enabled such that user selections from ~~a second~~ the programmed handheld menu configuration on the wireless computing device are automatically reflected in ~~all other storage or~~ real time on two or more other different-type display elements of the system.

109. (Currently Amended) The information management and real time synchronous communications system in accordance with claim 103, further ~~configured~~ enabled to automatically format the ~~second~~ programmed handheld menu configuration for display as cascaded sets of linked graphical user interface screens appropriate for the display ~~characteristics~~ parameters of ~~the wireless computing device~~ at least two different wireless handheld computing

device display sizes in the same connected system.

110. (Currently Amended) The information management and real time synchronous communications systems in accordance with claim 103 in which the modifiers ~~and sub-modifiers~~ in either the master menu or ~~second~~ programmed handheld menu[s] configuration may be further configured to be either required or not required.

111-114. (Canceled).

115. (Currently Amended) The information management and real time synchronous communications system in accordance with claim 103 in which the wireless handheld computing device is a smart phone ~~or other consumer wireless communications device~~.

116. (Currently Amended) The information management and real time synchronous communications system in accordance with claim 103, further ~~configured~~ enabled to facilitate and complete payment processing directly from the wireless handheld computing device.

117. (Currently Amended) The information management and real time synchronous communications system in accordance with claim 103, ~~further configured such that both the master and the generated second menus reflect a billing summary to facilitate processing of payments for an order on~~ wherein one or more of layout, views or fonts of the programmed handheld menu configuration are created in conformity with the display screen parameters of the wireless handheld computing device and wherein the system is enabled to generate the programmed handheld menu configuration for user review prior to transmission of the programmed handheld menu configuration to the wireless handheld computing device.

118. (Currently Amended) An information management and real time synchronous communications system for ~~generating~~ configuring and transmitting hospitality menus

comprising:

a. a central processing unit,

b. a data storage device connected to said central processing unit,

c. an operating system including a first graphical user interface, said operating system configured to interoperate with the central processing unit, the data storage device and application software,

d. a master menu including menu categories and menu items, wherein said master menu is capable of being stored on said data storage device pursuant to a master menu file structure and said master menu is capable of being configured for display to facilitate user operations in at least one window of said first graphical user interface as cascaded sets of linked graphical user interface screens, and

e. a modifier menu capable of being stored on said data storage device, and

f. ~~a sub-modifier menu capable of being stored on said data storage device,~~

~~wherein the application~~ menu configuration software ~~is configured~~ enabled to automatically generate a ~~second~~ programmed handheld menu configuration from said master menu for ~~transmission to~~ display on a wireless handheld computing device, said programmed handheld menu configuration comprising at least menu categories, menu items and modifiers and wherein the ~~application~~ menu configuration software is ~~configured~~ enabled to generate said ~~second~~ programmed handheld menu configuration by utilizing parameters from the master menu file structure defining at least the categories and items of the master menu[,] and modifiers from the modifier menu ~~and sub-modifiers from the sub-modifier menu~~ such that ~~the information comprising the second menu is~~ at least the menu categories, menu items and modifiers

comprising the programmed handheld menu configuration are synchronized in real time with analogous information comprising the master[,] and modifier ~~and sub-modifier~~ menus,

wherein the ~~application~~ menu configuration software is further ~~configured to format the second menu for use and display~~ enabled to generate the programmed handheld menu configuration in conformity with display screen parameters unique to the wireless handheld computing device to facilitate user operations with and display of the programmed handheld menu configuration on the display screen of a ~~second~~ handheld graphical user interface integral with the wireless handheld computing device, wherein said display screen parameters comprise at least the displayable size of the handheld graphical user interface, ~~in conformity with any applicable display constraints of such second graphical user interface of the wireless handheld computing device, and~~

wherein the programmed handheld menu configuration is configured by the menu configuration software for display as cascaded sets of linked graphical user interface screens appropriate for the display screen parameters of the wireless handheld computing device, wherein said cascaded sets of linked graphical user interface screens for display of the programmed handheld menu configuration are configured differently from the cascaded sets of linked graphical user interface screens for display of the master menu on said first graphical user interface, and

wherein the system is enabled for real time synchronous communications to and from the wireless handheld computing device utilizing the programmed handheld menu configuration including the capability of real time synchronous transmission of at least the menu categories, menu items and modifiers comprising the programmed handheld menu configuration to the

wireless handheld computing device and real time synchronous transmissions of selections made from the handheld menu configuration on the wireless handheld computing device

~~wherein the menu configuration software is also configured to format the second menu for user operations and display on the display screen of the second graphical user interface of the wireless handheld computing device such that the second menu as displayed on the second graphical user interface appears to a user to be substantially similar to the first menu as displayed on the first graphical user interface~~.

119. (Currently Amended) The information management and real time synchronous communications system in accordance with claim 118, ~~further configured to automatically generate the second menu from the master menu, the modifier menu and the sub-modifier menu~~ wherein the system is further enabled such that multiple menu screens are capable of being displayed on the handheld graphical user interface simultaneously.

120. (Currently Amended) The information management and real time synchronous communications system in accordance with claim 118, wherein ~~the second~~ information comprising at least part of the programmed handheld menu ~~relates to~~ configuration is synchronized between multiple hospitality software applications including at least [one] two of ~~restaurant service, or~~ point of sale systems, or reservations, or waitlists, ~~or ordering, or customer affinity~~ or frequent customer or ticketing programs.

121. (Currently Amended) The information management and real time synchronous communications system in accordance with claim 118, further ~~configured~~ enabled such that user selections from ~~a second~~ the programmed handheld menu configuration on the wireless handheld computing device are automatically reflected in ~~all other storage or~~ real time on two or more

other different-type display elements of the system.

122. (Currently Amended) An information management and real time synchronous communications system for use with wireless handheld computing devices and the internet comprising:

a. a master database connected in said system and configured to store hospitality application information pursuant to a master database file structure,

b. at least one wireless handheld computing device connected in said system and configured to display said hospitality application information,

c. at least one web server connected in said system and configured to display said hospitality application information,

d. at least one web page connected in said system and configured to display said hospitality application information, and

e. [a] real time communications control ~~module~~ software ~~linking~~ enabled to link and synchronize hospitality application information simultaneously between the master database, wireless handheld computing device, web server and web page,

wherein the ~~system is configured~~ communications control software is enabled to utilize parameters from the master database file structure to synchronize the hospitality application information in real time between the master database, at least one wireless handheld computing device, at least one web server and at least one web page such that substantially the same information comprising the hospitality application information is capable of being displayed on the wireless handheld computing device, at least one web page and other display screens of the synchronized system, such that the hospitality application information is synchronized between

any connected users,

wherein the communications control ~~module is configured~~ software is enabled to act as [an] a real time interface between the elements of the system and any applicable communications protocol,

wherein the ~~system is configured to format~~ communications control software is enabled to automatically and simultaneously configure the hospitality application information for display on both the wireless handheld computing device and the web page in conformity with display screen parameters unique to ~~any applicable display constraints of~~ the wireless handheld computing device or the web page, wherein said display screen parameters comprise at least the displayable size of the handheld computing device display screen or the web page, and

wherein the system is enabled for real time synchronous transmission of the configured hospitality application information to the wireless handheld computing device, the web server and the web page and real time synchronous transmissions of inputs responding to the configured hospitality application information from the wireless handheld computing device, or the web server or the web page.

123. (Currently Amended) The information management and real time synchronous communications system of claim 122, wherein the hospitality application information ~~relates~~ simultaneously synchronizes to and from at least [one] two of ~~restaurant service, or~~ point of sale systems, or reservations, or waitlists, ~~or ordering, or customer affinity~~ or frequent customer or ticketing programs.

124. (Currently Amended) The information management and real time synchronous communications system of claim 122, further ~~configured~~ enabled to automatically communicate

selections made from a menu on at least one web page or at least one wireless computing device and transmitted over the internet to either the master database or at least one wireless handheld computing device or at least one web page.

125. (Currently Amended) The information management and real time synchronous communications system of claim 122, further ~~configured~~ enabled to automatically communicate selections made from a menu on at least one wireless handheld computing device to either the master database or the web server.

126. (Currently Amended) The information management and real time synchronous communications system in accordance with claim 122, wherein the hospitality application information relates to payment processing.

127. (Currently Amended) The information management and real time synchronous communications system in accordance with claim 122, wherein the configured wireless handheld computing device is a smart phone ~~or other consumer wireless communications device~~.

REMARKS

Claims 1-102 and 111-114 were canceled without prejudice or disclaimer by previous amendments. Claims 103-110 and 115-127 are presently amended. Claims 103-110 and 115-127 are now pending in the application.

I. SUMMARY OF OFFICE ACTION

In a non-Final Office Action dated June 26, 2009, the Examiner raised issues regarding the sufficiency of the inventor's 37 C.F.R. 1.131 Declaration and made rejections of the claims. Claims 103-110 and 115-121 were rejected under 35 U.S.C. 112, second paragraph as being indefinite. Claims 103, 105-110, 115-118 and 120-121 were rejected under 35 U.S.C. 103(a) as being unpatentable over Micros Systems Inc. 8700 HMS 2.10 User's Manual ("Micros '97") in view of USP 5,023,438 ("Wakatsuki"). Claims 104 and 119 were rejected under 35 U.S.C. 103(a) as being unpatentable over Micros '97 in view of Wakatsuki and further in view of Micros Systems Inc. Preliminary Information Packet for the Micros Hand-held Touchscreen (Micros '92). Claims 122-127 were rejected under 35 U.S.C. 103(a) as being unpatentable over Micros '97 in view of Wakatsuki and further in view of USP 5,991,739 ("Cupps"). Claims 122-127 were also rejected under 35 U.S.C. 103(a) as being unpatentable over Micros '97 in view of Wakatsuki and further view of USP 6,973,437 ("Olewicz").

II. SUMMARY OF EXAMINER INTERVIEWS

Applicants thank the Examiner for the courtesies extended at the in-person and telephonic Interviews and the helpful and insightful suggestions made by the Examiner directed to obtaining

agreement on allowable subject matter vis-à-vis the prior art references applied in the June 26, 2009 Office Action. The Examiner summarized the Interviews as follows:

> Applicants presented an explanation of the invention and its place among the cited references. Applicant stated that they understood the pending rejection and proposed amendments to change 'second menu' to 'handheld menu configuration' and that the menu configuration software configuring cascading sets of related graphical user interface screens, as well as real time synchronous transmission with the wireless handheld devices. Examiner agreed that the proposed amendment changed the scope of the claims and should overcome the rejection of record, but the examiner would require further search and examination of the art. The examiner agreed to interview telephonically with the applicants representative next week to follow up on the proposed amendments. Additionally, applicant responded to examiners remarks regarding the 37 C.F.R. 1.131 declaration by describing the activities previous to the filing date, and agreed to submit a supplemental declaration should it be necessary.
>
> Applicant described amendments clarifying that the second menu was a handheld menu, which was generated from the master menu and that the menu included a cascaded set of menus. The applicant suggested that the prior art of record does not teach generation of the handheld menu from the master menu. The examiner suggested possible additional amendments including the clarification that configuration is not done at the handheld, which applicant contends is a difference between the present invention and the art of record. Additionally the applicant suggested the possibility of a declaration of secondary considerations, which the examiner agreed might be useful as evidence against obviousness. Applicant agreed to consider this possibility in the future. Applicant agreed to confer with his client and prepare an amendment in light of the interviews. Examiner agreed to consider the amendment when entered and if an examiners amendment becomes appropriate, contact the applicant.

Applicants agree with the Examiner's characterizations of the Interviews and, as discussed below, have addressed each of the issues and/or incorporated each of the suggestions made by the Examiner into the presently-amended claims.

As indicated by the Interview Summary, Mr. McNally, the principal inventor, explained how he and the other inventors of the present application were the first to conceive of leveraging GUI-based hospitality information or data (e.g., parameters defining modifiers/sub-modifiers and

other parameters) from a master or central database for, inter alia, the synchronous, real time generation and transmission of configured "menus" to or from other components of the system, and which was displayable dependent on the specialized and unique display characteristics and constraints of each system node or device type, e.g., for wireless handheld computing devices or for web pages. The result of the Applicants' invention was the first hospitality solution to, inter alia, achieve and maintain real time and synchronous overall consistency of data across all connected system nodes at any given time and to account for the specialized user interface requirements of wireless handheld computing devices. As Mr. McNally explained at the July 21, 2009 Interview, the title of the application "'Information Management and Synchronous Communications System with Menu Generation . . ." was specifically chosen to reflect the unique aspects of configuring programmed "menus" and to distinguish the described invention from a database distribution approach (which it was and is not). Nothing in the prior art, including the cited Micros and Wakatsuki references, taught or even remotely suggested such an approach. In fact, as Mr. McNally explained, nothing in the prior art even recognized the inherent problems with a database distribution approach requiring separate configuration and separate programming with respect to different device interfaces, e.g., handheld device interfaces and web pages.

The inventors of the presently-amended claims were the first to understand that to achieve full, real time and synchronous integration of a hospitality system including different display devices with "non-standard sized displays," the system would have to be capable of synchronously accommodating different display size and format requirements in real time and be capable of converting the data stored on the central database, by leveraging the data parameters

from the central database (while knowing the relevant display characteristics of the target displays), and configuring/programming, generating and transmitting "menus" to each individual system node in a format that could be displayable, useful and actionable on the display of that particular device. The need for such usability is a function of aspects unique to the hospitality market including high time pressures and expectations from customers for "speed of service" and, for example, touchscreen GUIs with the need for linked cascading screens, custom menus with modifiers and other specialized user interface requirements for a particular hospitality environment. The inventors likewise appreciated that user inputs from these nodes would also have to be formatted and recognized by the synchronized system in real time to be the same as if they had been entered into the system from any other node in the system – otherwise the system would be dealing with inconsistent information and this would then not be a truly real time integrated, and synchronized system. None of the cited prior art references, either alone or in combination, teach or suggest the present Applicants' synchronized system which satisfies all of the above-stated requirements. In fact, the cited prior art reference teachings establish that the cited references could not have been combined to produce the presently claimed invention.

With the above written confirmation of the explanation also provided to the Examiner at the Interview on July 21, 2009 and the amendments directed to the stated unique aspects of the invention as explained below, Applicants respectfully assert that all pending rejections have been overcome and thus all amended claims should be allowed.

III. SUMMARY OF APPLICANTS' RESPONSE

Applicants respectfully submit extensively-revised claims in response to the prior outstanding Office Action as well as suggestions made by the Examiner in Interviews. The amendments are believed to address and clearly overcome all of the Examiner's stated concerns.

Also submitted herewith is a supplemental inventor's declaration under 37 C.F.R. 1.131 further supporting the 1.131 Declaration submitted January 23, 2009, as well as a 37 C.F.R. 1.132 declaration of Ms. Kathie Sanders supporting the initial and supplemental 1.131 declarations by addressing one of the issues raised by the Examiner in the Office Action.. The supplemental 1.131 declaration was summarized verbally at the July 21 Interview.

Applicants further submit substantial evidence of secondary considerations clearly indicating nonobviousness of the presently-claimed invention in the form of a 37 C.F.R. 1.132 declaration.

IV. THE PRIOR ART REJECTIONS OF CLAIMS 103, 105-110, 115-118 AND 120-121 SHOULD BE WITHDRAWN IN VIEW OF THE PRESENT AMENDMENTS

A. Present Claim Amendments

Independent claims 103 and 118 have been extensively amended to more clearly distinguish over the applied prior art, including multiple suggestions made by the Examiner to further distinguish the applied references.

Claims 103 and 118 have been amended to recite that the generated menu configuration is a "handheld" menu configuration. And Claims 103 and 118 have been amended to more clearly recite that a "programmed handheld menu configuration" is generated from the master menu and that the programmed handheld menu configuration is generated by menu configuration

software. The claimed programmed handheld menu configuration is not merely a "database" nor a database update, it is a "programmed" menu configuration optimized and suitable for display on and operations from a handheld device.

Claims 103 and 118 have been further amended to recite that the programmed handheld menu configuration is configured for display as "cascaded sets of linked graphical user interface screens" appropriate for the handheld GUI, e.g., claim 103 as amended now recites:

> wherein the programmed handheld menu configuration is configured by the menu configuration software for display as cascaded sets of linked graphical user interface screens appropriate for the display screen parameters of the wireless handheld computing device, wherein said cascaded sets of linked graphical user interface screens for display of the programmed handheld menu configuration are configured differently from the cascaded sets of linked graphical user interface screens for display of the master menu on said first graphical user interface

Claims 103 and 118 have been further amended to clarify that the programmed handheld menu configuration is generated in a real time synchronous communications system wherein the programmed handheld configuration is generated prior to wireless transmission to the handheld device and wherein selections made on the handheld device are transmitted in real time and synchronously to and from the handheld device, e.g., claim 103 as amended now recites:

> wherein the system is enabled for real time synchronous communications to and from the wireless handheld computing device utilizing the programmed handheld menu configuration including the capability of real time synchronous transmission of the programmed handheld menu configuration to the wireless handheld computing device and real time synchronous transmissions of selections made from the handheld menu configuration on the wireless handheld computing device

Claims 103 and 118 have been further amended to include more details about the parameters considered by the configuration application software by including the claim recitation

"at least the displayable size of the handheld graphical user interface" into the body of the claims.

Claims 103 and 118 have been further amended to add the term "synchronous" to the body of the claim. This term was previously recited in the preamble of each claim but Applicants do not believe that the Examiner gave it any weight in the prior examination. Applicants drafted the claims originally to include the "synchronous" limitation in the preamble to give meaning to other claim terms defining the claimed synchronous system and thus Applicants assert that the preamble limitation is the recitation of a patentably distinctive element. However, to address the issue and assure that the Examiner considers this limitation in the examination, and without acquiescence, Applicants have simply added "synchronous" to the main body of the claim to indicate that this element is being relied on as one among many recited elements which separately and in combination distinguish over the applied prior art.

B. The References Applied In The Pending Office Action Do Not Meet The Limitations of The Claims As Amended Either Alone Or In Any Combination

1. The Micros References Suffer Critical Deficiencies And Teach Away From The Present Invention

The above amendments further clearly distinguish over the cited prior art.[1] The Micros '97 reference describes nothing more than a fixed point of sale ("POS") system capable of very limited communications with a handheld device in a non-real time, non-synchronous manner and with no capability to generate a "programmed" handheld menu configuration from a master

[1]Applicants submit the present amendments to more explicitly define elements previously claimed, but Applicants do not agree that the recitations presently added by amendment were not present in the prior claims, either expressly or inherently, by the nature of the claimed subject matter. Nor do the Applicants agree that the claims as previously presented prior to the present amendment were not distinguishable from the present or previously applied prior art.

menu for wireless transmission and maintain real time, synchronous communications with it as is claimed in the amended claims submitted herewith. The Micros '92 reference likewise only describes a handheld device capable of limited communications with a backoffice POS system in a non-real time, non-synchronous manner and with no capability to generate a "programmed" handheld menu configuration from a master menu as claimed in the presently-amended claims. In fact, not only does the Micros '92 reference actually teach away from the "menu generation" inventive concept embodied in the present claims, it renders any possible combination of references including Micros '92 unworkable (due, inter alia, to the reference's repeated use of the term "must" in requiring user/installer/ programming actions on the handheld itself), thus negating a prime benefit from the inventive menu configuration software itself.

There is no teaching or suggestion in either Micros reference of an implementation consistent with the presently-claimed invention and the Micros references inherently teach away from the presently-claimed invention. The Micros POS/HHT required dual menu programming/configuration to facilitate display of menus on both the main POS and the handheld. The menus displayed on the Micros HHT were configured separately from the configuration of the backoffice menus of the Micros '97 POS. The only connection between the HHT and the backoffice was in transmitting orders from the HHT and receiving very limited updates from the backoffice. And none of the updates were real time or synchronous as admitted by the Examiner in the Office Action. Moreover, the data updates to the HHT were not a programmed handheld menu configuration as presently claimed. The invention as presently claimed eliminated the dual programming/configuration requirements and enabled an entire POS system including handhelds to operate real time and synchronously based on a single

programming/configuration effort. There was no such solution nor any appreciation for such a solution prior to the conception of the present invention in 1998. At the time, dual menu programming and configuration systems were deemed necessary to provide a functional handheld menu system because of the unique programming/configuration/display requirements of handheld devices because of, inter alia, their small and non-standard screen sizes. This is readily apparent from the Micros '92 document itself, which required separate programming with respect to the handheld menu display. This is a clear teaching away from the presently claimed invention and is highly indicative of nonobviousness under applicable Supreme Court precedent. "[W]hen the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007) (*citing United States* v. *Adams*, 383 U. S. 39, 51-52 (1966) (companion case to *Graham v. John Deere*)). All of the elements of the presently claimed invention were not even known at the time of the invention, as discussed separately below, and even the known aspects of the cited prior art references teach away from the present invention.

The Micros references are entirely devoid of any appreciation, teaching or suggestion of the need for and the software required to generate a "programmed handheld menu configuration" from a "master menu" in real time, synchronously, prior to transmission to a handheld device as claimed in independent claims 103 and 118. Claims 103 and 118 have been amended to explicitly recite that the menu configuration is generated in real time and synchronously, i.e., the "programmed" handheld menu configuration is transmitted from the back office to the handheld device and selections from the configuration are transmitted from the handheld. The presently

claimed system is an entirely integrated, real time and synchronous system which avoids the need for dual menu configurations and made practical and affordable the widespread deployments of complex hospitality systems using "non standard graphical screen" sized displays – which widespread deployments did not exist prior to Applicants' invention.

The HHT device referenced in the Micros '92 document did not receive a "programmed" handheld menu, fully configured from a master menu. First, the "touchscreens" described in Micros '97 pp. 3-3 to 3-10 which were relied on by the Examiner as teaching "application software configured to generate a second menu" is in no way a programmed handheld menu configuration as presently claimed, nor are these "touchscreens" even relevant to the HHT. The HHT had its own touchscreen files. The Micros '92 document makes clear that the HHT touchscreen files that yield the actual HHT menus display "reside in the HHT itself." (Micros '92, p. 4). The touchscreens are generated when a key is depressed on the HHT (*Id.*, p. 5) and this functionality is programmed separately (by a "programmer/installer") from the programming for display of the master menu on standard screens. There is no direct conversion between the Micros '97 back office menu to the actual HHT programmed display configuration. The proposed amendments clearly recite that the "programmed" handheld menu configuration is generated from the master menu (taking into consideration the display attributes of the target handheld display) in advance and then it is transmitted to the handheld device.

Further, the passage from Micros '92 cited by the Examiner regarding wireless database modifications transmitted to the Micros HHT does not teach or suggest the configuration of a "programmed" handheld menu from a master menu and subsequent transmission of the handheld menu configuration to the wireless device. Moreover, the transmission of modifications to the

HHT is further inherently constrained by the "non real time" and "non synchronous" limitations of the Micros '97/Micros '92 combination made by the Examiner. A menu configuration is not merely a database and is certainly much more (and different) than a simple database element. Some of the constituents of a menu are stored in a database in the Micros system, but Micros '97 did not involve the generation of a "programmed" configured handheld menu in any form prior to transmission to the wireless device. The HHT menu is configured for its display separate from the Micros 8700 back office/fixed terminal menu display. Transmitting some updated data elements of the Micros 8700 database to the HHT (not in real time and not synchronously) did not involve nor suggest the transmission of "programmed" information regarding how the elements were to be optimally displayed on and operated from the target device. The HHT pre-release document (Micros '92) explicitly stated that the display configuration was manually programmed specifically by the HHT "installer/programmer:"

> User-generated screens are completely defined by a user (programmer/installer). They are programmed in a similar fashion to a traditionally keyboard. Each key location, legend and font size is custom chosen and a function code assigned
>
> The user must also choose a touchscreen that will display while the system is awaiting a sign in. After signing in, the system can be set to select one of several transaction touchscreens. The programmer/installer must set a default initial transaction screen but this can be overridden in two ways.

Micros '92, p.5 (emphasis added).

> The Micros '92 document further states, with regard to "system generated screens:"
>
> System-generated screens are displayed when a SLU key is depressed or a condiment entry is required. When one of these situations occurs, the software scans through the menu item file and assembles all those items that have been programmed to belong to this SLU or condiment group. The system has a Touchscreen Style file which details how each system generated screen should display. This includes key and font sizes.

Id. This is clear and indisputable evidence that the HHT screen definitions and linkages are "programmed" via application software directly on the HHT device, not previous to transmission to the device as occurs by operation of the presently claimed menu configuration software. The Micros '92 document explicitly states that the application software for the HHT resides on the HHT itself:

> A MICROS HHT is an intelligent device which contains locally in each HHT, the application database required to service most all transaction requests.

Id. at p. 4.

> Each HHT terminal contains application software and database

Id. at p. 7. There is thus no way the actual screen definitions could be programmed anywhere except on the HHT. The "Touchscreen Style file" referred to in the Micros '92 documents is clearly part of the HHT application software/database and is thus manifestly stored on the HHT, and likewise it is clearly not updated from the backoffice database. Moreover, the "Touchscreen Style file" is programmed separately from menu item programming during the HHT programming process as referenced by the Micros '97 reference to a "separate" HHT programming and operations manual. (Micros '97, p. xvii ("installing, configuring, testing, and operating HHTs") (emphasis added)). Only menu item updates are stated as being transmitted from the Micros '97 backoffice database to the HHT (and not synchronously and not in real time - as previously admitted by the Examiner). The display configuration of the items is determined by software code resident on the HHT itself as distinguished from the presently claimed invention wherein the claimed menu configuration occurs prior to transmission to the handheld device.

Still further, when items are assembled for display by the application software code on the HHT (via Touchscreen Style file) as described in the Micros '92 document, there is no mention in that document of determining whether the group of items is displayed on a single screen or is broken up into multiple screens for display because of the limited display area of the HHT as compared to a standard PC size display. This is a very important aspect of the invention as claimed, i.e., the capability of generating different cascaded screen sets for display of the handheld menu as compared to the cascaded screen sets for display of the master menu. There is thus a lack of any teaching or suggestion in the Micros references of a synchronous, real time system for menu generation, the lack of any teaching or suggestion of performing menu configuration for a handheld prior to transmitting the configuration to the handheld device, the lack of any teaching or suggestion of generating a handheld menu configuration from a master menu prior to wireless transmission of the handheld menu configuration and the lack of any teaching or suggestion of configuring a handheld menu for display using different cascaded screen relationships as compared to the master menu as configured for display on a PC size display.

Not only is there no teaching or suggestion of real time, synchronous configuration, from a master menu, of assembled menu items for display as cascaded screens on a handheld device different from cascaded screens for display of the master menu, there is no teaching or suggestion whatsoever of display on the HHT of menu items on multiple linked screens, and in fact the HHT Pre-Release document (Micros '02) teaches away by stating the opposite:

> Orders occupying more screen space than is available can be scrolled up/down for viewing.[2]

Micros '92, p. 8. This is a further indisputable teaching away from the invention as presently claimed. Moreover, the scrolling function of the HHT reference would be inoperable to provide the handheld menu configuration of cascading screens functionality of the present claims. *KSR v. Teleflex* and *Graham v. John Deere* preclude a combination of inoperable references because, inter alia, there can be no "apparent reason" to combine elements of different references into an inoperable system. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007) (Relevant inquiry is "whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue."); *see also* M.P.E.P. 2143.01 ("If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious."). *KSR* and *Graham* also put a high value on teaching away as an indicator of nonobviousness. *See KSR*, 550 U.S. at 416. Scrolling in the Micros '92 document is an indication that no menu configuration specific to a handheld display is performed real time synchronously from a master menu remote from, and prior to transmission to, the handheld device as presently claimed. Segmentation into multiple linked screens was not described at all in the Micros '92 document -- the HHT instead relied entirely on scrolling of a single page to show all items in a menu level – even though the Micros 8700 screens were broken up when there were too many items to display on a single screen. (*See* Micros '97, pp. 3-11, 3-12). Moreover, there is clearly no "HHT icon"

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[2]It is clear that this passage refers to menus displayed on the HHT as evidenced by the immediately following passage:

> Orders display with full alphanumeric description. Optionally, an operator may "touch" the screen and view abbreviated menu item descriptors and item prices.

on pages 3-11 and 3-12 of the Micros '97 document, which clearly shows that the "page up/page down" functionality of the Micros 8700 standard terminals was not present in the HHT. The reason for this difference between the Micros 8700 and the Micros HHT is abundantly clear -- the back office and handheld menu configurations were "separate" in the HHT and Micros 8700 systems, the exact opposite of the presently-claimed invention. It should be appreciated, however, that an option of scrolling of menu screens is not precluded in the context of practice of the claimed invention as long as the claimed configuration of a handheld menu from a master menu is present.

The Micros HHT display required manual "programming" and was not generated by menu configuration software directly from the master menu and prior to transmission to the handheld device. Moreover, there is no teaching of real time synchronization of any display configurations between master and handheld menu configurations in either of the Micros references, nor does the simple database update of the Micros references teach or suggest any such real time synchronization of "programmed" menu display configurations between the back office and the handheld device.

Claims 103 and 118 are directed to leveraging data that is displayable on one GUI for optimal display on a second, different GUI, and synchronizing the information in real time between the separate nodes - even though the display constraints and parameters of the different GUIs are very different. Claims 103 and 118 as amended recite that master menu display screens and handheld menu screens are programmed and configured differently. This is a key element of the claimed invention. Fixed terminal and handheld device menu configurations were not synchronously linked in the prior art because of the perceived inability to do so because of

the different display attributes of screens in the different systems. Configurations were done separately in the applied prior art. The current amendment clarifies that the handheld menu configuration is generated from the master menu even though the display configurations are different and with the menu configuration taking into account the known size of the handheld display into its configurations. Micros '92 taught away from real time synchronous configuration of the "programmed" handheld menu because the handheld menu on the HHT had to be configured manually by a user/programmer and separately from the master menu in the Micros 8700 POS. The cascaded nature of menus requires that all links be correct no matter what the display requires. Micros did not even envision the possibility of directly generating a "programmed" handheld configuration from a master menu and converting all of the links required to maintain the correct relationships in a real time and synchronous system. In the invention as presently claimed, once the target device display parameters are entered into the claimed system, manual "programming" of the handheld is not required. That is very different from the separate programming required for the HHT display configuration, in fact it is the opposite and, as previously stated, Micros's repeated use of the term "must" in regards to the requirement for manual programming on the handheld precludes any approach of combining any other prior art with it to remove the separate programming requirement.

Moreover, the Examiner's correct recognition of Micros's inability to provide real time communications and its requirement to "buffer changes until the HHT terminal is available to accept the changes" teaches away from a synchronous system and further precludes any combination of other prior art to fill the large gaps in the Micros references in regards to the "non real time" and "non synchronous" teachings of the Micros references. In fact, combination of

Micros '97 and Micros '92 with any other reference allegedly teaching synchronous real time communication would yield an unworkable system because of the "non real time" and "non synchronous" teachings of the Micros references, just as no combination of any kind with Micros can overcome the recitation of "programmed" in the presently-claimed invention - when Micros (through extensive statements contrary to the present inventive concept and numerous "must" requirements) mandates that "programming" be done on the Micros HHT by a "programmer/installer." Such a combination is prohibited by applicable Supreme Court and Federal Circuit precedent. *KSR* requires, inter alia, the identification of an "apparent reason" to combine references. There simply cannot be a reason to combine references which would yield an unworkable result. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007) (Relevant inquiry is "whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.") (emphasis added); *see also* M.P.E.P. 2143.01 ("If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.").

The statement in the Micros '92 document regarding downloading a revenue center specific database to the HHT (Micros '92, p. 7) is not a teaching or suggestion of real time synchronous generation of a "programmed" handheld menu configuration from a master menu. First, as admitted by the Examiner, the Micros references do not teach or suggest a real time system, let alone a synchronous system for communicating information involving a programmed handheld menu configuration. Further, this statement in the Micros '92 document does not in any way teach or suggest the generation of a handheld menu configuration from a master menu.

This was, at most, the loading of a set of data and applications software for operation of the separately programmed and configured HHT but there is no teaching or suggestion in either Micros '92 or Micros '97 of any generation of a programmed handheld menu configuration from a back office master menu. The only reasonable inference that could have been drawn by a person of ordinary skill in the art at the time of the present invention in 1998 was that a handheld database and application software specific to the handheld was downloaded via the HHT base station only when the HHT was first turned on (not real time synchronously), and that there was no downloading of a programmed handheld menu configuration even then. In fact, the Micros '92 document itself teaches away from any notion that handheld menus were generated real time synchronously from a master database:

> When a HHT terminal is powered on for the first time, the system checks to insure the correct application software and database are loaded over RF to the HHT terminal

Id., p. 8.

> The system "buffers" changes until the HHT terminal is available to accept the changes

Id. (quotes in original, underline added). These passages from the Micros '92 document clearly show that the HHT was not real time or synchronous as presently claimed in all of the claims as amended. Moreover, as discussed above, Micros '92 is abundantly clear that the HHT menu screens were programmed by a programmer/installer on the HHT. (Micros '92, p. 5). Reading the Micros references any other way would be to impermissibly apply hindsight analysis using the claimed invention as a roadmap.

Supreme Court precedent precludes hindsight analysis in an obviousness determination. *See, e.g.,* M.P.E.P Sec. 2141 ("[T]he focus when making a determination of obviousness should be on what a person of ordinary skill in the pertinent art would have known at the time of the invention.") (Patent Office interpretation of *KSR v. Teleflex*) (emphasis added)). "[H]indsight . . . reasoning is always inappropriate for an obviousness test based on the language of Title 35 that requires the analysis to examine 'the subject matter as a whole' to ascertain if it 'would have been obvious at the time the invention was made.'" *Ortho-McNeil Pharm., Inc., v. Mylan Labs., Inc.*, 520 F.3d 1358, 1364 (Fed. Cir. 2008) (following *KSR* and quoting 35 U.S.C. 103 (emphasis in original)).

The same Supreme Court precedent also precludes an obviousness determination based on a generalized combination of references that does not teach or suggest all of the claimed elements:

> When considering obviousness of a combination of known elements, the operative question is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions."

M.P.E.P. Sec. 2141 (*citing KSR v. Teleflex*, 550 U.S. 398, 417 (2007) (emphasis added)).

The Supreme Court in *KSR* gave the following examples of situations that might warrant obviousness determinations based on a claim of patentability of a combination of known elements: "the mere substitution of one element for another known in the field," known elements "in combination did no more than they would in separate, sequential operation" and "simply arranges old elements with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement." *KSR*, 550 U.S. at 416-17.

None of the situations cited by the Supreme Court in *KSR* is applicable to the presently claimed invention. The invention as presently claimed in amended claims 103 and 118 is not a combination of known elements. Numerous claimed elements are entirely missing from any prior art reference. For example, there is simply no teaching, suggestion or motivation in any prior art reference of software for generating a programmed handheld menu configuration optimized for the display characteristics of the target wireless device prior to transmission of the configuration to a handheld device as claimed. Nor is there any teaching, suggestion or motivation in any prior art reference of generating such handheld menu configuration from a master menu as claimed. Nor is there any teaching, suggestion or motivation in any prior art reference of the incorporation of the recited menu configuration software into a real time synchronous hospitality communications system as claimed. Nor is there any indication that a person of ordinary skill in the art at the time of the invention would have known of the missing, unknown, elements or the unique combination conceived of by the present inventors. Nor could there have been any "apparent reason" as required by *KSR* to combine elements unknown to a person of ordinary skill in the art at the time of the invention to the teachings of the references cited by the Examiner. No principle of law, and manifestly not the *KSR* decision, supports the importation of a previously unknown element into the obviousness determination. An unknown element, *ipso facto*, could not have been known to a person of ordinary skill in the art at the time of the invention. Only impermissible conclusions using hindsight based on the teaching of the application itself could fill in the missing, unknown, elements from the claims as presently amended.

KSR applied only to the substitution of an element from a different field of endeavor to the field of the claimed invention. *KSR* is not applicable to the present application because, inter alia, the Examiner's rejections do not involve any substitution of the pertinent elements with elements known at the time of the invention. In *KSR*, an electric switch was substituted for a mechanical switch. A switch existed in the cited prior art reference, the only question was whether it would have been obvious to substitute the mechanical switch disclosed in one prior art reference with an electrical switch from a different field of endeavor. In contrast, there is no teaching or suggestion in any of the applied references of, inter alia, real time synchronous generation of a programmed handheld menu configuration optimized for the display characteristics of the target wireless device from a master menu as presently claimed in amended independent claims 103 and 118. The claimed elements simply do not exist in any of the applied references, either separately or in combination.

The Supreme Court made clear in *KSR* that an obviousness determination involving more than "simple substitution" would be much more difficult than the facts presented in *KSR* itself:

> Following these principles may be more difficult in other cases than it is here because the claimed subject matter may involve more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement. Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit.

KSR, 550 U.S. at 417-18 (emphasis added) (citing *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory

statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness")). Any view that *KSR* somehow opens up the possibility of a nonspecific type of prima facie obviousness determination is thus improper and is particularly improper when unknown claimed elements are recited in the claims as in the present claims.

The facts regarding the presently-claimed invention are clearly of the type that the Supreme Court in *KSR* warned are not amenable to a generalized conclusion of obviousness based on a combination of elements previously unknown in the prior art. The presently claimed invention includes elements which were wholly new at the time the invention was made in 1998. Moreover, where claimed elements are not even present in the prior art, it is impossible to point to an apparent reason for combining cited references to render a claim obvious as required by *KSR*. *See Takeda Chemical Industries, Ltd. v. Alphapharm Pty., Ltd.*, 492 F.3d 1350, 1356-57 (Fed. Cir. 2007) (noting that the Supreme Court in *KSR* acknowledged the importance of identifying "a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in a way the claimed new invention does."). It is clear that there cannot be a reason to combine a reference with a claimed element which did not exist at the time of the invention.

Applicants point out that the "appears to a user to be substantially similar to the master menu as displayed on the first graphical user interface" recitation previously recited in independent claim 118 has been removed from claim 118 but has been added to dependent claim 104 (discussed below). The Applicants disagree with the Examiner's citation of the passage from Page 3-1 of the Micros '97 reference as teaching this limitation. This passage related only

to generic touchscreen functionality as contrasted to a keyboard. Configuration of a menu as claimed in the amended claims is not analogous to or in any way suggested by a touchscreen or touchscreen functionality per se. The "Touchscreen UWS/3" is not a second menu nor does it contain a second or handheld menu as indicated by the Examiner. Nor are the "UWS/1 and UWS/2" a first or master menu. Moreover, the UWS/3 Touchscreen is not generated from keyboards on the UWS/1 and UWS/2 in the Micros '97 reference. In any even, the present amendment's clarification that the second menu is a handheld menu obviates the rejection.

Applicants respectfully submit that the rejections should therefore be withdrawn as to all of the pending claims based on the above distinctions over the Micros references.

2. The Wakatsuki Reference Does Not Meet The Claim Limitations And Is Not Pertinent To The Field Of The Present Invention

The Examiner cited the Wakatsuki reference as teaching aspects of the recitations in independent claims 103 and 118 directed to "real time" wireless communication. The Applicants respectfully disagree with the Examiner's characterization as explained at the July 21 Interview. Moreover, the present claim amendments obviate the Examiner's rejections.

Initially, Wakatsuki is not directed to a "hospitality" application as presently claimed in all amended claims. This is especially relevant considering that the claim limitation "hospitality" was accepted by the Applicants after suggestion by the Examiner in a previous Interview. Applicants believe it is improper for the Examiner to apply a reference outside a field specifically excluded by a claim term amendment at the Examiner's suggestion. Moreover, Wakatsuki was not directed to a handheld menu configuration, it related only to a simple one way data transmission, not configuration and transmission of "programmed" menu

configurations. The differences between the one-way "short burst" type of wireless communication in Wakatsuki and the transmission of a menu configuration as presently claimed in independent claims 103 and 118 are very substantial. Further, with the explicit addition of the term "synchronous" in the body of the claims, which clearly requires bi-directional communications, since Wakatsuki was only a one-way transmission, the Wakatsuki reference has nothing to do with the presently-claimed invention or hospitality menus in general. The menu screens of the "programmed handheld menu configuration" as presently claimed in claims 103 and 118 are generated specifically to satisfy the specialized display constraints of the handheld display screen; i.e., cascading and linked menu screens unique for the handheld display device are generated including the creation and linking of additional screens vis-à-vis the master menu file structure to provide a coherent menu flow for the particular display device and the synchronous maintenance of consistency. Wakatsuki thus in no way teaches or suggests such a menu configuration and generation system. Merely adding the one way, short wireless burst from Wakatsuki to the Micros references would not yield the inventive menu generation concept as embodied in the present claims in any way. Further, as stated above, numerous key limitations of the Micros references inherently preclude such a combination anyway.

Wakatsuki's one way, non synchronous aspect teaches away from the invention presently-recited in claims 103 and 118 by relying on only a short digital burst communication. The Wakatsuki reference is thus entirely inapplicable to the "hospitality" configured menu environment and specifically is inapplicable to the invention claimed in independent claims 103 and 118, i.e., a system for synchronous generation and transmission of configured hospitality menu information between a master/central database and a wireless handheld device. And none

of the other cited references (Micros' 97 and Micros '92) teach or suggest the claimed aspects missing from Wakatsuki because none of the cited references is directed to synchronous generation and transmission of hospitality menu information between a central database and a wireless handheld device having unique display characteristics as well as numerous other inherent limitations. There is no communication of "programmed" configured menus in either reference and they teach away from the claimed invention because the handheld menu in Micros '92 is programmed and configured for display separately from the master menu as well as the Micros HHT being non real time and non synchronous. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007) ("[W]hen the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious."). Further the installer/programmer in the Micros system must perform certain "programming" functions on the HHT and as such, no combination with Wakatsuki can negate this mandatory teaching away from the inventive concept as presently claimed. There is thus no motivation or reason to combine the teachings of the Micros references with Wakatsuki, and even if there was a basis to combine these references the combination does not teach or suggest the invention as claimed nor would a person of ordinary skill in the art have been in possession of the missing elements.

Applications respectfully assert that the rejections should therefore be withdrawn as to all of the pending claims based on the above distinctions over the Wakatsuki reference.

V. THE 35 U.S.C. 112 REJECTIONS OF CLAIMS 103-110 AND 115-118 SHOULD BE WITHDRAWN IN VIEW OF THE PRESENT AMENDMENTS

As discussed above, independent claims 103 and 118 have been amended to recite that the generated menu configuration is a "handheld" menu configuration and the claims are further

amended to define the handheld menu configuration. The rejection based on insufficient antecedent basis for the prior recitation of "the information comprising the second menu" should thus be withdrawn because this recitation is no longer in the claims.

VI. THE PRIOR ART REJECTIONS OF CLAIMS 122-127 SHOULD BE WITHDRAWN IN VIEW OF THE PRESENT AMENDMENTS

A. Present Claim Amendments

Independent claim 122 has been extensively amended, similar in numerous respects to the amendments to independent claims 103 and 118, to more clearly distinguish over the applied prior art, including multiple suggestions made by the Examiner to further distinguish the applied references.

Claim 122 has been amended to recite "real time communications control software enabled to link and synchronize hospitality application information simultaneously" between the master database, the wireless handheld device and the internet/web.

Claim 122 has been further amended to recite that the "communications control software" is enabled to utilize parameters from the master database file structure to synchronize the hospitality application information in real time between the master database, the wireless handheld device and the internet/web.

Claim 122 has been further amended to recite that the system includes "communications control software which is enabled to automatically and simultaneously configure" the hospitality application information for display on both the wireless handheld computing device and the web page. The claimed "configured hospitality application information" is not merely a "database"

nor a database update, it is a configuration of information optimized and suitable for display on, and operations from, a handheld device and a web page in a system including a master database.

Claim 122 has been further amended to clarify that the configured hospitality application information is generated in a real time synchronous communications system wherein the configured hospitality application information is generated prior to wireless transmission to the handheld device or transmission to the web/internet and wherein selections made on the handheld device or web page are transmitted in real time and synchronously to and from the handheld device and/or web/internet, e.g., claim 122 as amended now recites:

> wherein the system is enabled for real time synchronous transmission of the configured hospitality application information to the wireless handheld computing device, the web server and the web page and real time synchronous transmissions of inputs responding to the configured hospitality application information from the wireless handheld computing device, or the web server or the web page

Claim 122 has been further amended to include more details about the parameters considered by the communications control software by including the claim recitation "wherein said display screen parameters comprise at least the displayable size of the handheld computing device display screen or the web page" into the body of the claim.

Claim 122 has been further amended to add the term "synchronous" to the body of the claim. This term was previously recited in the preamble of claim 122 but it does not appear that the Examiner gave it any weight in the examination. Applicants drafted the claim originally to include the "synchronous" limitation in the preamble to give meaning to other claim terms defining the claimed synchronous system and thus Applicants assert that the preamble limitation is the recitation of a patentably distinctive element. However, to address the issue and assure that the Examiner considers this limitation in the examination, and without acquiescence,

Applicants have simply added "synchronous" to the main body of the claim to indicate that this element is being relied on as one among many recited elements which separately and in combination distinguish over the applied prior art.

B. The Rejections Based On The Combination Of References Including Cupps Should Be Withdrawn

Independent claim 122 is presently amended to explicitly recite that hospitality application information is automatically and simultaneously configured by communications control software for display on both a wireless device and web page and the configured information is transmitted real time synchronously. The cited references do not teach or suggest these claimed aspects.

The Applicants respectfully assert that the Examiner applied disparate references for which no basis, suggestion or apparent reason has been shown for the combination as urged by the Examiner to render obvious the invention as presently claimed. As fully explained below, each of the applied references is not pertinent to Applicants' invention as presently claimed and/or teaches away from the invention as presently claimed. Each of the applied references suffer from infirmities vis-à-vis the recited elements of the pending amended claims and none of the references alone, nor the references when combined in the manner stated by the Examiner, render the pending claims obvious when combined with the knowledge of a person skilled in the art. Moreover, the knowledge of a person skilled in the art at the time of the invention would not have sufficed to fill the large gaps in the reference teachings or otherwise provide a reason to combine the references in the manner suggested by the Examiner.

As discussed previously with respect to independent claims 103 and 118, neither Micros '97, Micros '92 nor Wakatsuki described or suggested the configuration of anything from a master database for display on a handheld device prior to transmission to the handheld.

Moreover, Cupps did not describe the configuration of a web menu in a synchronous communication system including handhelds and in fact teaches away from the claimed 3-way synchronization of the present application. Cupps' system did not connect to a restaurant database in either direction or synchronously or in real time. Orders were transmitted to restaurants by phone or fax (Cupps; Col. 2, line 62 – col. 3, line 6) requiring human actions and inputs at the restaurant upon receipt and neither menu configurations nor anything else were transmitted from the restaurants to the Cupps system. This is a clear teaching away from a synchronous system including real time configuration of handheld and web displays automatically and simultaneously. *See KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007) ("[W]hen the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious."). Thus, Cupps did not synchronize in either direction, which is very different from the multiple device and multiple direction synchronization of the present invention as claimed in claim 122 which synchronizes multiple devices in multiple directions simultaneously; nor did Cupps generate either menus or configure anything (that was synchronously transmitted to the restaurants in real time).

The rejections of claims 122-127 in view of this combination of references is based on an improper and unworkable combination of different types of communication teachings. There can be no "apparent reason" to combine elements of different references into an inoperable system. *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 418 (2007) (Relevant inquiry is "whether

there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.") (emphasis added); *see also* M.P.E.P. 2143.01 ("If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.").

As an example of an unworkable combination cited by the Examiner in the prior Office Action, independent claim 122 recites that "substantially the same information" is capable of being displayed on both the web and wireless devices. This is not in any way taught by the cited combinations. For instance, the Examiner relied on web page menu generation from Cupps merely for its own use/display on its own controlled web site for the web aspect but did not rely on menu generation or transmission for the handheld aspect. The examiner combined mere web page menu display with touchscreen and keyboard cites. As discussed previously, the Examiner's touchscreen based rejection was improper because this is not, inter alia, a teaching of a programmed configured menu. Moreover, there is no teaching anywhere of either synchronous web menu generation or handheld menu generation from a master database as claimed.

Further, the rejection based on the simple, non real time "item out" messaging in Micros '97 is not properly combinable with Cupps (which has no means to even accept or transmit data to/from itself) . There cannot be any real time synchronous reflection of "item out" in Cupps because the Cupps system was not even connected to an actual restaurant nor is Micros "real time." Once again, this is an improper combination of two different, and incompatible, types of communications teachings into a purported teaching of the 3-way synchronization as presently claimed.

Still further, the rejection is improperly based on menu data of Cupps combined with the one way, short wireless burst of bar code data of the non-hospitality Wakatsuki reference. There is no reason to combine these references into the claimed system reciting the 3-way, real time synchronization of the same information for different display devices nor would such a combination yield a workable solution.

Still further, the rejection is improperly based on a combination of Micros '97 with Wakatsuki to purportedly teach the claimed wireless aspect of claim 122, and combination of Micros '97 with Cupps to purportedly teach the web aspect of claim 122. However, in addition to Micros '97 not properly being combinable with either Wakatsuki or Cupps, the combination of Cupps with Wakatsuki is entirely non-workable. As discussed above with respect to independent claims 103 and 118, *KSR* precludes combinations of references that, when combined, do not produce a system that will work as claimed. There is no reason to combine these disparate systems, and even if there were, they would not work as presently claimed.

C. The Rejections Based On The Combination Of References Including Olewicz Should Be Withdrawn

1. The Inventor's Supplemental 1.131 Declaration Addresses The Issues Raised By The Examiner And Removes Olewicz As A Prior Art Reference

A 37 C.F.R. 1.131 inventor's declaration antedating the Olewicz references was previously submitted. A further supplemental declaration is submitted herewith, along with a supporting declaration under 37 C.F.R. 1.132. The Olewicz priority date is apparently June 29, 1999 (note that the Olewicz priority provisional application appears to have been filed on June 29, 1999, even though the filing date is mistakenly listed as June 9, 1999 on the issued patent).

The Olewicz reference priority date is later than the invention date to which the present claims are entitled (as confirmed by the inventor's Rule 1.131 Declaration submitted January 26, 2009, the inventor's Supplemental Rule 1.131 Declaration submitted herewith and the Rule 1.132 Declaration of Kathie Sanders submitted herewith). As detailed in the inventor's declaration, the presently-claimed invention was conceived at least as early as August 1998 and reduced to practice as early as November 14, 1998 in connection with the introduction to the public of subject matter embodied by the present claims at a major Hospitality Technology Show in Atlanta, Georgia. Moreover, the inventors continued development of their invention toward commercialization on a constant and diligent basis up to the filing of the priority application on September 21, 1999. Applicants therefore respectfully request withdrawal of the pending rejection based on the Olewicz reference since the remaining applied references, Micros and Wakatsuki, do not alone or together teach or suggest all of the claimed elements of each of the pending claims (as admitted by the Examiner) and a person skilled in the art would not have known how to make the invention from the teaching of the Micros references or Wakatsuki.

2. The Micros References and Wakatsuki Do Not Meet The Claim Limitations Either Alone Or In Combination

Applicants repeat their distinctions over the Micros references and Wakatsuki made above with respect to the combination of references including Cupps.

3. The Olewicz Reference Does Not Meet The Claim Limitations Even If It Were Available As Prior Art

The Examiner cited the Olewicz reference as teaching the claimed web/internet aspects of independent claim 122 which the Examiner admitted were missing from the Micros references. The Examiner's combination of Olewicz with Micros is unjustified for a number of

separate and distinct reasons. Initially, as discussed above, the Olewicz patent is not prior art to the present application and claims because the Applicants have established an invention date prior to the earliest claimed priority date for the Olewicz patent. Moreover, the Examiner's apparent reading of the Olewicz patent is unjustified even if Olewicz were available as prior art against the present claims.

First, Olewicz does not teach or suggest a real time, synchronous hospitality system. In col. 9, lines 7-12 and col. 12, lines 24-27 of the Olewicz reference, and in the flow charts as step 114, it is admitted that the handheld ordering devices do not "know" whether the items sought to be ordered from the menu are available when the order is entered ("waiter will know immediately after sending the order if the food ordered is still available. If the food is not available, the computer will send the order back to the waiter instead [of] to the kitchen, and allow the waiter to retake the order and send it again."). The salient word is "after" (which means that the menu presented to the waiter is not generated synchronously in real time from a master menu file structure on a central database). Since the Olewicz reference does not teach or suggest a real time synchronous menu generation system, there is thus no basis to conclude that any other hospitality information mentioned by Olewicz would be configured for display on a handheld device synchronously and in real time. There is thus no reason to combine the handheld of Olewicz with any alleged synchronous internet functionality of Olewicz even if it existed (which it does not). The Olewicz reference thus actually teaches away from a real time, synchronous system as presently claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007) ("[W]hen the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.").

Further, Olewicz refers to a primary function of the described handheld device as "Up/Down Scroll" (see, e.g., col. 10, lines 2-4) ("The Up/Down Scroll: this will allow the waiter to scroll up and down the selected lists such as: consumer request, food orders, or other."). This is yet another very significant teaching away from the claimed invention including configuration of programmed handheld screens prior to transmission of the configuration to the handheld device. Scrolling is a very poor technique for displaying information on devices having limited display attributes such as small screen size because such an approach is painstakingly slow for operators and largely ineffective in a time critical hospitality application. The presently claimed invention, inter alia, eliminates the need to rely entirely on scrolling in the display of menu or other hospitality information on small screen devices. The generation of configured hospitality application information optimized for the handheld device user interface screen from a master database file structure as presently claimed substantially eliminates the need for such scrolling because the configured hospitality application information is generated specifically to satisfy the display constraints of the handheld display screen; i.e., the generation of configured screens unique for the handheld device substantially eliminates the need for scrolling because each screen fits properly on the display device and additional user screens are created and linked appropriately to provide a coherent, user friendly flow for the particular display device. In one embodiment of the presently claimed invention, the need for scrolling to display a "screen" of menu/information options can be entirely eliminated because each screen can be configured to accomplish that purpose within the display constraints of the target device. However, it should be appreciated that any combination of the inventive system as claimed, even with some degree of scrolling, falls within the scope of the present claims. The inclusion of "scrolling" by

Olewicz as a primary means to display an entire list of options thus further indicates that Olewicz did not appreciate the inherent benefits of the presently claimed invention and that the teaching of Olewicz in fact teaches away from the Applicant's unique inventive solution. Further, even with "scrolling" and all of its limitations, Olewicz had no idea whatsoever of the many other critical aspects of the inventive technique, all of which are required to yield the total solution of the presently claimed invention. Applicants respectfully note that they distinguished the present invention from the primary scrolling function of Olewicz as applied to claims 103 and 118 in a prior response, and the Examiner subsequently withdrew the rejections of those claims over Olewicz. The same distinctions apply to claim 122 as presently amended.

The Examiner relied on Olewicz Col. 14, lines 13-21 as allegedly describing several of the elements recited in independent claim 122 prior to amendment of that claim. However, the passage from Olewicz quoted by the Examiner states only that "data is compiled by the central server unit to enable management to combine real time and statistical data in step 203 for inventory control and tracking of service such as wait times, etc., which further information can be posted to a restaurant Internet website." Applicants respectfully submit that this passage in no way suggests the unique aspects of the presently claimed invention. Olewicz does not teach or suggest the configuration of information for display in a real time synchronous communications system including both a wireless handheld device and web page simultaneously as presently recited in amended claim 122. Mere posting of information on a web site in no way teaches or suggests the presently claimed invention.

Nor does combining the teachings of Olewicz with Micros produce a real time synchronous system for configuring hospitality information for display on both handheld and

web pages as presently recited in claim 122. The "real time" aspect of Olewicz relied on by the Examiner had to do merely with the compiling of data related to improving customer service but there is no teaching or suggestion in Olewicz of real time, synchronous generation of configured hospitality information for display on a handheld device and web page as presently claimed. "[C]ompiling real time data" as described by Olewicz merely refers to the storing of data as it is created, which is entirely different from generating and transmitting custom, configured displays throughout a synchronized system in real time and maintaining synchronous real time communications throughout the connected system. Moreover, the Micros references teach nothing about the integration of disparate GUI based operator interfaces having different display characteristics. Contrary to the Examiner's assertion, the combination of Olewicz and Micros thus does not teach or suggest the real time synchronous web/internet aspects of the invention as presently recited in claim 122.

The Examiner further relied on Olewicz Col. 14, lines 44-62 as allegedly teaching the recitation of independent claim 122 directed to configuration of the system to format the hospitality application information for display on a web page in conformity with any applicable display constraints of the web page. This reading of Olewicz is improper for a number of reasons. First, claim 122 adds the explicit requirement that both handheld and web server/web page elements are connected and synchronized in the same system via "communications control software" acting as an interface between the elements of the system and any applicable communications protocol. Olewicz does not teach or suggest these elements nor provide any reason or motivation to add these additional elements to its teachings, nor was there any reason for a person skilled in the art to have known to supply the missing elements. Moreover, separate

references cannot properly be combined to teach this claimed aspect because, by definition, separate references cannot teach nor suggest the connected and synchronized system comprised of multiple elements which the inventors uniquely conceived over ten years ago. The nature of the present invention was to, inter alia, maintain real-time consistency of information across disparate nodes with very different display characteristics and communications protocols in a synchronous, connected system. The Examiner has pointed to no suggestion, motivation or reason to combine Olewicz and the other cited references and, in fact, the separate references teach away from the present invention by virtue of the total absence of synchronization as claimed from any of the references.

Also, Olewicz makes no mention of synchronous, real time hospitality applications, e.g., reservations, waitlisting, customer frequency etc. (which are encompassed by independent claim 122 and recited by several dependent claims). The mere reference to "wait times," "seating availability" and "reservations" in the cited passage from Olewicz is not a teaching or suggestion of real time, synchronous waitlisting or reservations in a 3-way synchronized system including a master database, a handheld and a web page. These are merely references to a posting of historical "restaurant service" information and a vague reference to the potential for online reservations, with no mention or suggestion that any such functionality is done synchronously and in real time. Without the present invention, a completely integrated and synchronized hospitality system is not possible and Olewicz did not teach or suggest such a system. The only mention of the internet in Olewicz is in the context of corporate type reporting and the vague reference to enabling reservations to be made online and as such Olewicz did not even remotely envision, teach or suggest the subject matter of independent claim 122 and its dependent claims,

i.e., a real time synchronous system including, inter alia, configuration of hospitality information for both wireless and web page display prior to transmission to the target device/screen. Claim 122 is thus believed allowable on this additional basis vis-à-vis claims 103 and 118. Further, as previously stated in regards to the Micros references, they did not teach the requisite unique aspects of claim 122 either.

Likewise, the inadequacies of Wakatsuki as discussed above (with respect to independent claims 103 and 118) are not remedied by Olewicz. Olewicz does not teach or suggest the configuration of anything from a master database for optimized display on a handheld device prior to transmission to the handheld device on which the transmitted information is to be displayed as presently claimed.

The rejections should therefore be withdrawn as to all of the pending claims based on the above distinctions over the Olewicz reference.