

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMERICAN MULTI-CINEMA, INC.; AMC ENTERTAINMENT HOLDINGS, INC.; BOSTON MARKET CORPORATION; MOBO SYSTEMS, INC.; MCDONALD'S CORPORATION; MCDONALD'S USA; PANDA RESTAURANT GROUP, INC.; PANDA EXPRESS INC.; PAPA JOHN'S INTERNATIONAL, INC.; STAR PAPA LP; and PAPA JOHN'S USA, INC.,
Petitioner,

v.

FALL LINE PATENTS, LLC,
Patent Owner.

IPR2019-00610
Patent 9,454,748 B2

Before MICHELLE N. WORMMEESTER, SHEILA F. McSHANE, and JOHN R. KENNY, *Administrative Patent Judges*.

KENNY, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining Some Challenged Claims to be Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

American Multi-Cinema, Inc.; AMC Entertainment Holdings, Inc.; Boston Market Corp; Mobo Systems, Inc. d/b/a OLO Online Ordering; McDonald's Corp; McDonald's USA; Panda Restaurant Group, Inc.; Panda Express Inc.; Papa John's International, Inc.; Star Papa LP; and Papa John's USA, Inc. (collectively, "Petitioner") filed a Petition (Paper 7, "Pet.")¹ requesting an *inter partes* review of claims 1, 2, 5, 7, and 19–22 ("challenged claims") of U.S. Patent No. 9,454,748 B2 (Ex. 1001, "the '748 patent," "challenged patent"). An *inter partes* review of all challenged claims was instituted on August 7, 2019. Paper 14 ("Inst. Dec."). After institution, Fall Line Patents, LLC ("Patent Owner") filed a Patent Owner Response (Paper 17, "PO Resp."), Petitioner filed a Reply (Paper 19, "Pet. Reply"), and Patent Owner filed a Sur-reply (Paper 20, "PO Sur-reply"). An oral hearing was held on April 28, 2020. Paper 25 ("Tr.").

After the oral hearing, we authorized additional briefing on a claim construction issue concerning certain claim terms. Paper 24. Pursuant to that authorization, Petitioner filed a Supplemental Brief (Paper 27) ("Pet. Supp. Br.") as did Patent Owner (Paper 28, "PO Supp. Br."). Petitioner responded to Patent Owner's Supplemental Brief (Paper 29, "Pet. Supp. Resp."), and Patent Owner responded to Petitioner's Supplemental Brief (Paper 30, "PO Supp. Resp.").²

¹ The Petition was also filed on behalf of Starbucks Corporation, but Starbucks entered into a settlement agreement and was terminated from this proceeding. Pet. 1; Paper 11, 13.

² Petitioner requested authorization to file a motion to strike Section II.B. of Patent Owner's supplemental response (Paper 30) on the grounds that

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). As explained below, Petitioner has proven by a preponderance of the evidence that claims 1, 2, 5, and 19–22 of the '748 patent are unpatentable. Petitioner, however, has not proven by a preponderance of the evidence that claim 7 is unpatentable.

A. *Related Proceedings*

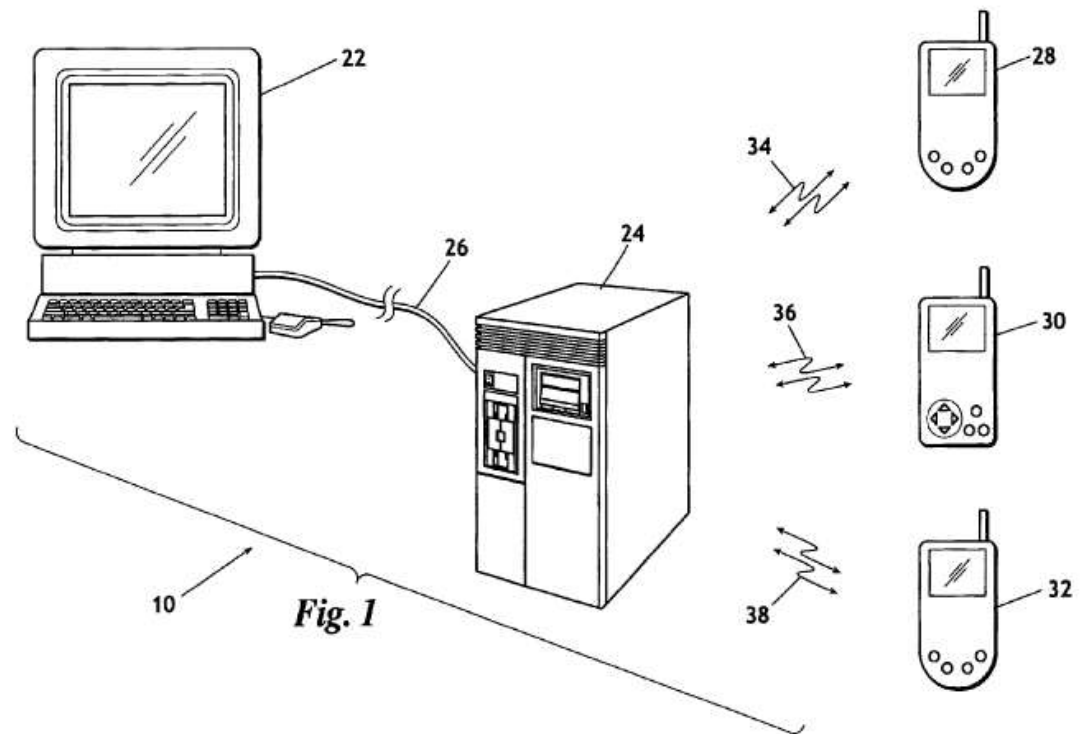
The parties identify a number of related litigations in the Eastern District of Texas involving the challenged patent. Pet. 1–2; Paper 9, 2–3. As the parties state, the challenged patent was also reviewed in IPR2018-00043, which has been remanded to the Board. Pet. 1–2; Paper 9, 2–3; *see Fall Line Patents, LLC v. Unified Patents, LLC*, 2019-1956, 2020 WL 4307768, at *4 (Fed. Cir. July 28, 2020). The parties further indicate that the challenged patent was the subject of the petition filed in IPR2018-00535, but that proceeding was terminated before an institution decision issued. Pet. 2; Prelim. Resp. 3. Petitioner further indicates that U.S. Patent No. 7,822,816, of which the challenged patent is a continuation, was the subject of Reexamination No. 90/012,829 and was the subject of IPR2014-00140, the latter of which was terminated after institution. Pet. 3.

Section II.B. exceeded the authorized scope of briefing. Paper 31. We denied that authorization because we could discern, without additional briefing, whether Section II.B. exceeded its authorized scope. *Id.* Further, the issue is moot because we considered that supplemental response only for the claim construction issue that the parties were authorized to address (Paper 24), and not for any other purpose.

B. The Challenged Patent

The challenged patent is directed to a method of collecting data from a remote computing device, such as a handheld computing device, by creating and delivering a questionnaire to the remote computing device, executing the questionnaire on the remote computing device, and transmitting responses to a server via a network. Ex. 1001, code (57).

Figure 1 reproduced below, is a diagram of a system for data management (Ex. 1001, 6:57, 7:13–23):



In particular, Figure 1 shows system 10 including server 24; handheld computers 28, 30, and 32, which are operated remotely from server 24; and computer 22, which provides for administration of the system and reviewing data collected by the system. *Id.* at 7:13–23, Fig. 1. Server 24 is connected to computer 22 via Internet 26, a local area network, or a private wide area

network. *Id.* at 7:24–28, Fig. 1. Server 24 is connected to handheld computers 28, 30, and 32 via connections 34, 36, and 38, respectively, which are loose network connections, meaning that handheld computers 28, 30, and 32 and server 24 are tolerant of intermittent network connections. *Id.* at 7:24–26, 59–62.

Figure 2, reproduced below, illustrates a diagram of system 10 as it is used for form (e.g., questionnaire) creation (Ex. 1001, 6:58–59, 8:11–17, 8:35–37):

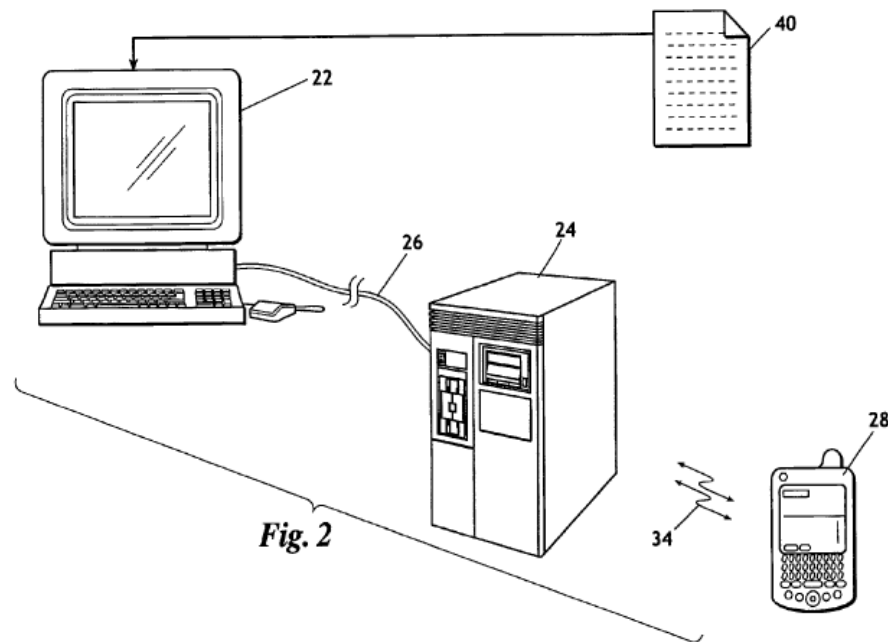


Figure 2 shows system 10 is used to create questionnaire 40. Ex. 1001, 8:38–9:6. Computer 22 has an interface that allows a user to create this questionnaire and distribute it to handheld devices. *Id.* at 8:38–50. As the client enters questions and selects response types, server 24 builds a stack of questions and responses, and assigns indices, or tokens, which point to each question or response. *Id.* at 8:53–56, 9:3–6. Each token can correspond to a

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