UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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UNIFIED PATENTS INC.
Petitioner,

v.

FALL LINE PATENTS, LLC
Patent Owner.

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Case IPR2019-00610
Patent 9,454,748 B2

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

KENNY, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

This is a preliminary proceeding to decide whether to institute an *inter partes* review of U.S. Patent No. 9,454,748 B2 (Ex. 1001, "the '748 patent" or "the challenged patent"). *See* 35 U.S.C. § 314(a); 37 C.F.R § 42.4(a) (delegating authority to institute trial to the Board). Institution of an *inter partes* review is authorized by statute when "the information presented in the

petition . . . and any response . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." 35 U.S.C. § 314(a).

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. (collectively, "Petitioner") and Starbucks Corporation[1] filed a Petition (Paper 7, "Pet.") seeking *inter partes* review of claims 1, 2, 5, 7, and 19–22 of the challenged patent ("challenged claims"). Patent Owner, Fall Line Patents, LLC, filed a Preliminary Response (Paper 10, "Prelim. Resp.") to the Petition.

Having considered the Petition and the Preliminary Response, we determine that the information presented shows a reasonable likelihood that Petitioner would prevail in establishing the unpatentability of at least one of the challenged claims, and we institute *inter partes* review as to all challenges presented in the Petition. At this stage of the proceeding, we have not made a final determination as to the patentability of any challenged claim or any underlying factual or legal issues.

A. Related Proceedings

The parties identify a number of related litigations involving the challenged patent. Pet. 1–2; Paper 9, 2–3. As the parties state, the challenged patent was also reviewed in IPR2018-00043. Pet. 1–2; Paper 9, 2–3. The parties further indicate that the challenged patent was the subject

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[1] This proceeding has been terminated with respect to Starbucks Corporation. Paper 13.

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.

B. Overview of 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, at [57].

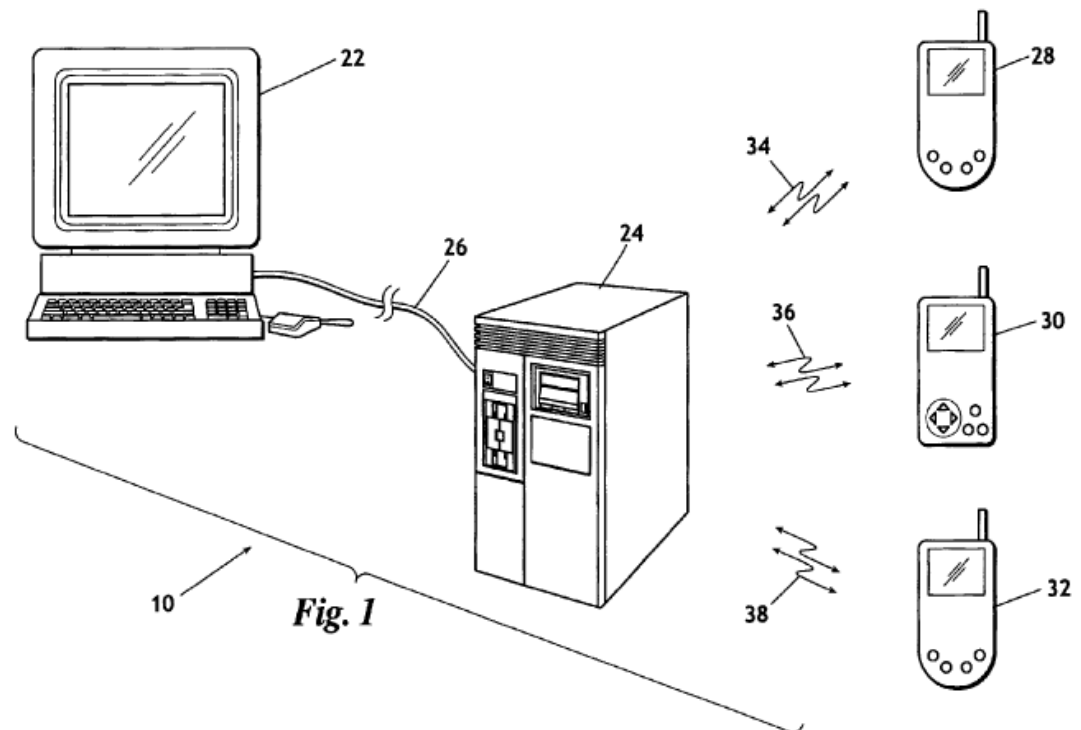Figure 1 of the challenged patent is reproduced below:

Fig. 1

Figure 1 is a diagram of the challenged patent's system for data management. Ex. 1001, 6:57, 7:13–23. System 10 includes 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. *Id.* at 7:24–26. Connections 34, 36, and 38 are loose network connections, meaning that handheld computers 28, 30, and 32 and server 24 are tolerant of intermittent network connections. *Id.* at 7:59–62. Computer 22 is used for administrating system 10 and for reviewing data collected by the system. *Id.* at 7:21–23.

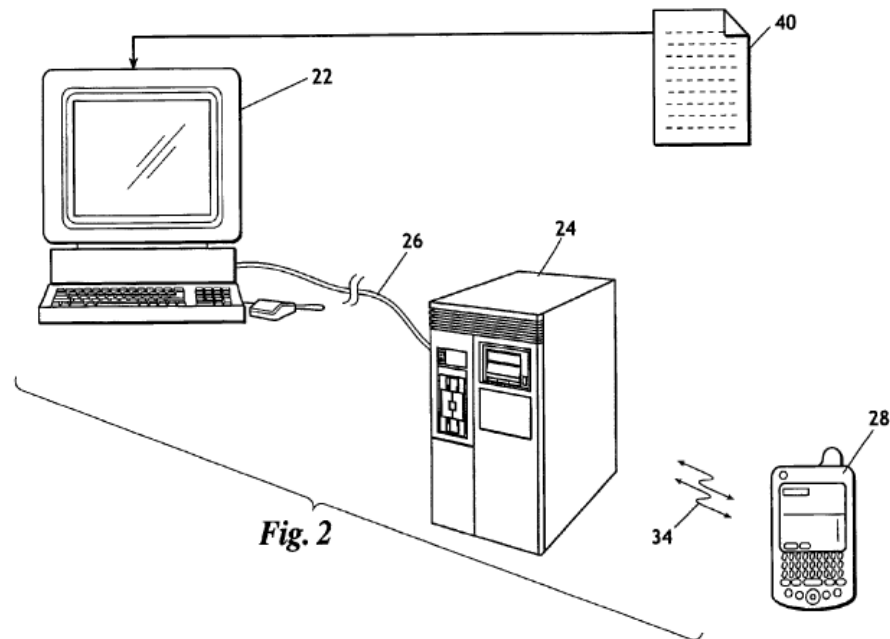Figure 2 of the challenged patent is reproduced below:

Fig. 2

Figure 2 is a diagram of system 10 as it is used for form creation. Ex. 1001, 6:58–59; 8:11–17. Computer 22 has an interface that allows a user to create a form and distribute it to handheld devices using computer 22. *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 logical, mathematical, or branching operation. *Id.* at 8:56–59, 9:3–6. When questionnaire 40 is complete, server 24 sends the stack of questions and defined responses to the handheld devices (e.g., handheld computer 28). *Id.* at 9:3–6. System 10 can incrementally update the questionnaire on the handheld devices. *Id.* at 9:14–18.

For example, system 10 can track mystery shoppers at restaurant chains. Ex. 1001, 10:37–43. System 10 can track the time it takes a mystery shopper to go through a drive through window. *Id.* at 10:41–43. When the mystery shopper enters a parking lot for a franchise, a handheld device with a GPS receiver can identify the franchise. *Id.* at 10:55–59. The device can also record the amount of time it takes for the shopper to go through a drive through line. *Id.* at 10:55–11:21.

C. Illustrative Claims

Petitioner challenges claims 1, 2, 5, 7, and 19–22 of the challenged patent, of which, claims 1, 7, 19, and 21 are independent. Claim 19 is reproduced below:

19. A method for managing data comprising the steps of:

(a) establishing communications between a handheld computing device and an originating computer wherein said handheld computing device has a GPS integral thereto;

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