

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

Title: System for Marketing Goods and  
Services Utilizing Computerized  
Central and Remote Facilities

Inventor: Stephen C. Wren  
Serial No.: 12/124,027  
Filed: 05-20-2008

Art Unit 3625  
Mr. James Zurita  
Examiner

**APPEAL BRIEF**

This Appeal Brief is in response to a final rejection mailed 11/24/09.

**(i) Real Party in Interest**

The real parties in interest are Variant Holdings, LLC, the assignee of record, and Variant, Inc., the exclusive licensee.

**(ii) Related Appeals and Interferences**

This case is copending with serial number 11/894,000, filed August 17, 2007, and with serial number 12/556,353, filed September 9, 2009.

It is related to prior appeals 2008-2765, decided March 31, 2009, and 2007-3066 decided September 7, 2007 (see section x).

It is related to interference 90/010,701, now pending.

It is also related to judicial proceedings 6:2009cv00079, 3:2008cv00725, 3:2008cv00405 and 6:2008cv00478, all now closed. No decisions were rendered.

There are no other prior or pending appeals, interferences or judicial proceedings to which Variant Holdings, LLC or Variant, Inc. is presently a party.

### **(iii) Status of Claims**

Claims 1-6 were canceled. The claims on appeal in this application are 7-26. These claims all stand rejected and have been reproduced in section viii.

**(iv) Status of Amendments**

No amendments were filed after final rejection.

### **(v) Summary Of Claimed Subject Matter**

In the first section that follows a concise explanation is given for each independent claim on appeal. In the second section support for each such claim and dependent claim argued separately is set forth in tabular form.

#### Explanation

Claim 7 relates to an apparatus for providing marketing and/or sales information relating to goods and/or services over a network of remote and central computers where a customer can select and contact a central computer of a different provider and thus access information from different providers.

Claim 15 relates to an apparatus for providing marketing and/or sales information relating to goods and/or services over a network of remote and central computers where a presentation stopping point can be recorded.

Claim 23 relates to a method for electronically selling and/or marketing goods and/or services between a customer at one or more remote locations and a plurality of providers of goods and/or services where a customer can access a database of a first provider from the database of another provider.

## Support

Support for each of the above claims can be found in Applicant's parent application 08/268,309 filed June 29, 1994 (incorporated in instant application by reference) and in the instant application. To facilitate following this support the below Table is presented:<sup>1</sup>

Claim	Support in the '309 Application	Support in the Instant Application
7. An apparatus for providing marketing and/or sales information relating to goods and/or services comprising:	The specification at 1:10-18 (page 1, lines 10-18) discloses: "a system and method for communicating ...information...to sell...goods and/or services"); and; the specification at page 8 lines 1-4 discloses: "The method by which the transactions are facilitated reduces the costs associated with creating, marketing, administering, and selling these products and services...";	The specification at 1:22-26 (page 1, lines 22-26) discloses: "system and means for...transmitting... information on goods and services... used to market, sell, finance, and insure goods and/or services..."
a computerized central communications facility;	The specification at 1:10-14 discloses: "a system and method ...utilizing central and remote facilities"	The specification at 6: 6-8 discloses: " The system ... includes... a central computerized communications facility remote therefrom..."
a database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility, and;	The specification at 16:3-7 discloses: "the customer may establish contact with the central facility's equipment ... where he may browse through databases of goods and services"	Figure 1 discloses Goods And Services Databases 37, and; 1:25-26 "Such systems will be used to market, sell, finance, and insure goods and/or services."
a communications device at said computerized central communications facility;	See modem 30 in Fig. 1, and; The specification at 14: 21-23: "a complementary array of electronic communications equipment is located at the financial services facility 12 or central location. As seen in Fig. 1, this equipment includes a modem 30"	Figure 1 discloses Modem 30, and; The specification at 1:21-23 discloses: "... the invention is concerned with a system and means for facilitating transactions between central and remote facilities utilizing electronic communications devices..."
wherein said computerized central	The specification at 6:32 discloses: " a number of	The specification at 4:9 discloses: "... permit each

<sup>1</sup> Applicant notes that the above Table provides examples of support in the '309 and instant applications and should not be construed as limiting or excluding other supporting text. Applicant further notes that this presentation in no way limits Applicant from establishing support for any of the claims in any earlier priority application.

Claim	Support in the '309 Application	Support in the Instant Application
<p>communications facility is operable to be linked to a plurality of other computerized central communications facilities and to a plurality of computerized remote communications facilities; wherein said database of marketing and/or sales information relating to goods and/or services is accessible to a customer at one or more of said computerized remote communications facilities;</p> <p>wherein said communications device at said computerized central communications facility is operable to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to at least one of said computerized remote communications facilities;</p> <p>wherein said computerized central communications facility is operable to provide at least a portion of said marketing and/or sales information relating to said goods and/or services to one or more of said computerized remote communications facilities upon request;</p> <p>wherein at least one of said other computerized central communications facilities enables said customer at one or more of said computerized remote communications facilities to select and contact a computerized central communications facility of a different provider, and;</p>	<p>the remote locations may be concurrently linked with one or more central facilities"</p> <p>The specification at 16:3-7 discloses: " the customer may establish contact with the central facility's equipment ... where he may " databases of goods and services"</p> <p>The specification at 13:16-22 discloses: " an array of electronic communications equipment is provided ... for transmitting and/or receiving information ... about ... goods and services between the central financial services facility 12 and the customer at the remote facility 14"</p> <p>The specification at 10:25-30 discloses: " ... download a catalogue of desired or requested information to permit the customer to review leisurely ... "</p> <p>The specification at 9:32-10:7 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer may ... retrieve from a central facility a directory of goods and services available and thus permitting the customer to <u>select</u> another central facility from a displayed list or catalogue and <u>establish contact with it...</u>", and; The specification at 9:26-32 discloses: "It should be understood however that certain information may be stored at remote facilities such as directories of facilities for dialing purposes or a <u>data base of providers</u> of goods and services arranged by category of business or products offered such as in the Yellow Pages phone directory."</p>	<p>remote facility or location to communicate with an array of central facilities"</p> <p>The specification at 19:4-6 discloses: "...the customer can establish contact with the central facility's ... where he can browse through databases of goods and services."</p> <p>The specification at 16:15-19 discloses: "... an array of electronic communications equipment is provided ... for transmitting and/or receiving information ... about ... goods and services between the central financial services facility 12 and the customer at the remote facility 14."</p> <p>The specification at 12:32-33 discloses: "...download a catalogue of desired or requested information to permit the customer to review leisurely"</p> <p>The specification at 11_32-12:1 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer may ... retrieve from a central facility a directory of goods and services available and thus permitting the customer to <u>select</u> another central facility from a displayed list or catalogue and <u>establish contact with it...</u>", and; The specification at 11:28-31 discloses: "It should be understood however that certain information may be stored at remote facilities such as directories of facilities for dialing purposes or a <u>data base of providers</u> of goods and services arranged by category of business or products offered such as in the Yellow Pages phone directory."</p>



Claim	Support in the '309 Application	Support in the Instant Application
wherein said computerized central communications facility of a different provider is equipped with: a database of marketing and/or sales information relating to goods and/or services accessible to said customer at one or more of said computerized remote communications facilities, and; a communications device adapted to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to at least one of said computerized remote communications facilities, whereby said customer has access to information at multiple computerized central communications facilities of different providers.	See Figure 1, and; The specification at 13:16-22 discloses: " an array of electronic communications equipment is provided ... for transmitting and/or receiving information ... about ... goods and services between the central financial services facility 12 and the customer at the remote facility 14", and; The specification at 16:3-7 discloses: " the customer may establish contact with the central facility's equipment ... where he may browse through databases of goods and services", and; The specification at 10:3-6 discloses: "...permitting the customer to select another central facility from a displayed list or catalogue and establish contact with it and thus have access to numerous central facilities..."	See Figure 1, and; The specification at 16:15-19 discloses: "... an array of electronic communications equipment is provided ... for transmitting and/or receiving information ... about ... goods and services between the central financial services facility 12 and the customer at the remote facility 14.", and; The specification at 19:4-6 discloses: "...the customer can establish contact with the central facility's ... where he can browse through databases of goods and services.", and; The specification at 11:32-12:1 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer may ... retrieve from a central facility a directory of goods and services available and thus permitting the customer to select another central facility from a displayed list or catalogue and establish contact with it and thus have access to numerous central facilities..."
8. The apparatus of claim 7 adapted to display said goods and/or services information involuntarily based on said customer's use of said apparatus.	NA	The specification at 14:1-2 discloses: "...customer requests their product information or is shown it involuntarily based on a customer's profile", and; The specification at 7:18 discloses: "...builds a general customer profile based upon customer's requests for information"
9. The apparatus of claim 7 adapted to build a provider or corporate profile based on said customer's use of said apparatus.	NA	The specification at 14:20-23 discloses: " To determine its corporate customer profile each provider of goods can use the system. Profiles of those customers who specifically request product information can be used by those providers to build general profiles of those customers who might have an interest or need in their goods.", and; The specification at 7:18 discloses: "...builds a general customer profile based upon customer's requests for information"
10. The apparatus of claim 7 adapted to build a profile from a single customer's use.	NA	The specification at 7:18 discloses: "...builds a general customer profile based upon customer's requests for information"

Claim	Support in the '309 Application	Support in the Instant Application
11. The apparatus of claim 7 adapted to build a profile from multiple customers' use.	NA	The specification at 14:20-23 discloses: " To determine its corporate customer profile each provider of goods can use the system. Profiles of those customers who specifically request product information can be used by those providers to build general profiles of those customers who might have an interest or need in their goods."
12. The apparatus of claim 7 adapted to suggest goods and/or services based on at least one of said customers use of said apparatus.	NA	The specification at 16:32-35 discloses: "... information ... can include a list of suggested products or services...", and; 14:11-12 " Second, this selection by the customer could be used to build or update their customer profile"
13. The apparatus of claim 7 adapted to suggest goods and/or services to said customers.	The specification at 14:2-5 discloses: "...information with him for his later review which might comprise instructions for use, operation, or assembly and may include a list of suggested products or services"	The specification at 16:32-35 discloses: "... information ... can include a list of suggested products or services..."
14. The apparatus of claim 7 wherein a customer at one or more of said computerized remote communications facilities can access or browse said database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility and at one or more of said other computerized central communications facilities.	The specification at 9:33-10:6 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer may activate the system causing it to retrieve from a central facility a directory of goods and services available and thus permitting the customer to select another central facility from a displayed list or catalogue and establish contact with it and thus have access to numerous central facilities"	The specification at 11:32-12:1 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer can activate the system causing it to retrieve from a central facility a directory of goods and services available and thus permitting the customer to select another central facility from a displayed list or catalogue and establish contact with it and thus have access to numerous central facilities"
15. An apparatus for providing marketing and/or sales information relating to goods and/or services comprising:  a computerized central communications facility;	<p>The specification at 1:10-17 (page 1, lines 10-17) discloses: "The present invention generally relates to . . . system and method for facilitating transactions. . . .", and; the specification at page 8 lines 1-4 discloses: "The method by which the transactions are facilitated reduces the costs associated with creating, marketing, administering, and selling these products and services..."</p> <p>The specification at 1:10-14 discloses: "a system and method ...utilizing central and remote facilities"</p>	<p>The specification at 1:20-22 (page1, lines 20-22) discloses: "The present invention generally relates to . . . system and method for facilitating transactions. . . .", and; The specification at 10:2-4 discloses: "The method by which the transactions are facilitated reduces the costs associated with creating, marketing, administering, and selling these products and services..."</p> <p>The specification at 6: 6-8 discloses: " The system ... includes... a central computerized communications facility remote therefrom..."</p>

Claim	Support in the '309 Application	Support in the Instant Application
a database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility, and;	The specification at 16:13-7 discloses: "the customer may establish contact with the central facility's equipment ... where he may browse through databases of goods and services"	Figure 1 discloses Goods And Services Databases 37, and; 1:25-26 "Such systems will be used to market, sell, finance, and insure goods and/or services."
a communications device at said computerized central communications facility;	See modem 30 in Fig. 1, and; The specification at 14:21-23 discloses: "a complementary array of electronic communications equipment is located at the financial services facility 12 or central location. As seen in Fig. 1, this equipment includes a modem 30"	Figure 1 discloses Modem 30, and; The specification at 1:21-23 discloses: "... the invention is concerned with a system and means for facilitating transactions between central and remote facilities utilizing electronic communications devices..."
wherein said computerized central communications facility is operable to be linked to a plurality of other computerized central communications facilities and to a plurality of computerized remote communications facilities; wherein said database of marketing and/or sales information relating to goods and/or services is accessible to customers at one or more of said computerized remote communications facilities;	The specification at 6:32 discloses: " a number of the remote locations may be concurrently linked with one or more central facilities"	The specification at 4:9 discloses: "... permit each remote facility or location to communicate with an array of central facilities"
wherein said communications device at said computerized central communications facility is operable to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to said computerized remote communications facilities;	The specification at 16:3-7 discloses: " the customer may establish contact with the central facility's equipment ... where he may browse through databases of goods and services"	The specification at 19:4-6 discloses: "...the customer can establish contact with the central facility's ... where he can browse through databases of goods and services."
wherein said communications device at said computerized central communications facility is operable to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to said computerized remote communications facilities;	The specification at 13:16-22 discloses: " an array of electronic communications equipment is provided ... for transmitting and/or receiving information ... about ... goods and services between the central financial services facility 12 and the customer at the remote facility 14"	The specification at 16:15-19 discloses: "... an array of electronic communications equipment is provided ... for transmitting and/or receiving information ... about ... goods and services between the central financial services facility 12 and the customer at the remote facility 14."
wherein said computerized central communications facility is operable to provide at least a portion of said marketing and/or sales information relating to said goods and/or services to customers at one or more of said computerized remote communications facilities upon request; wherein at least one of said other computerized central communications facilities allows customers at one or more of said computerized remote	The specification at 10:25-30 discloses: " ... download a catalogue of desired or requested information to permit the customer to review leisurely ... "	The specification at 12:32-33 discloses: "...download a catalogue of desired or requested information to permit the customer to review leisurely"
	The specification at 9:32-10:7 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer may ... retrieve from a	The specification at 11:32-12:1 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer may ... retrieve from a

Claim	Support in the '309 Application	Support in the Instant Application
communications facilities to select and contact a computerized central communications facility of a different provider, and;  wherein said apparatus is operable to record a presentation stopping point for future use.	central facility a directory of goods and services available and thus permitting the customer to <u>select</u> another central facility from a displayed list or catalogue and <u>establish contact with it...</u> and; The specification at 9:26-32 discloses: "It should be understood however that certain information may be stored at remote facilities such as directories of facilities for dialing purposes or a <u>data base of providers</u> of goods and services arranged by category of business or products offered such as in the Yellow Pages phone directory." The specification at the sentence bridging pages 10 and 11 discloses: "To facilitate such a technique the remote or central location may record the stopping point of the customer's last on-line presentation so that when contact is resumed an appropriate presentation continuing point may be ascertained."	central facility a directory of goods and services available and thus permitting the customer to select another central facility from a displayed list or catalogue and establish contact with it...", and; The specification at 11:28-31 discloses: "It should be understood however that certain information may be stored at remote facilities such as directories of facilities for dialing purposes or a data base of providers of goods and services arranged by category of business or products offered such as in the Yellow Pages phone directory." The specification at 13:2-5 discloses: "To facilitate such a technique the remote or central location may record the stopping point of the customer's last on-line presentation so that when contact is resumed an appropriate presentation continuing point may be ascertained."
16. The apparatus of claim 15 wherein at least one of said other computerized central communications facilities is operable to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to at least one of said computerized remote communications facilities.	The specification at 9:33-10:6 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer may activate the system causing it to retrieve from a central facility a directory of goods and services available and thus permitting the customer to select another central facility from a displayed list or catalogue and establish contact with it and thus have access to numerous central facilities"	The specification at 11:32-12:1 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer can activate the system causing it to retrieve from a central facility a directory of goods and services available and thus permitting the customer to select another central facility from a displayed list or catalogue and establish contact with it and thus have access to numerous central facilities"
17. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of a game.	The specification at 18:2-3 discloses: "when purchasing or renting movies, music, or other forms of entertainment...", and; 22:21-23 "In the application of entertainment the possession may include the presentment of recorded performances or programming to the customer..."	The specification at 20:20-21 discloses: " movies, music, or other forms of entertainment...", and; The specification at 14:28-29 discloses: " One approach is to require that each customer watch a specified number of minutes of commercials for a given number of minutes of entertainment programming"
18. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming	The specification at 18:2-3 discloses: "when purchasing or renting movies, music, or other forms of entertainment...", and; 22:21-23 "In the application of entertainment the possession may	The specification at 20:20-21 discloses: " movies, music, or other forms of entertainment...", and; The specification at 14:28-29 discloses: " One approach is to require that each customer watch a

Claim	Support in the '309 Application	Support in the Instant Application
in the form of music.	include the presentment of recorded performances or programming to the customer..."	specified number of minutes of commercials for a given number of minutes of entertainment programming"
19. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of a movie.	The specification at 18:2-3 discloses: "when purchasing or renting movies, music, or other forms of entertainment...", and; 22:21-23 "In the application of entertainment the possession may include the presentment of recorded performances or programming to the customer..."	The specification at 20:20-21 discloses: " movies, music, or other forms of entertainment...", and; The specification at 14:28-29 discloses: " One approach is to require that each customer watch a specified number of minutes of commercials for a given number of minutes of entertainment programming"
20. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming including a commercial of a sponsor.	The specification at 18:2-3 discloses: "when purchasing or renting movies, music, or other forms of entertainment...", and; The specification at 17:26-18:1 discloses: "information might comprise ... commercials", and; 22:21-23 "In the application of entertainment the possession may include the presentment of recorded performances or programming to the customer..."	The specification at 20:20-21 discloses: " movies, music, or other forms of entertainment...", and; The specification at 14:28-29 discloses: " One approach is to require that each customer watch a specified number of minutes of commercials for a given number of minutes of entertainment programming", and; The specification at 15:2-3 discloses: " A list is then presented to the customer of the various sponsors and the customer could then choose which ones he wants to see a presentation on."
21. The apparatus of claim 15 wherein at least one of said computerized central communications facilities is adapted to display goods and/or services involuntarily.	NA	The specification at 14:1-2 discloses: "...customer requests their product information or is shown it involuntarily based on a customer's profile"
22. The apparatus of claim 15 wherein one or more of said computerized remote communications facilities is operable to access or browse said database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility and at one or more of said other computerized central communications facilities.	The specification at 9:33-10:6 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer may activate the system causing it to retrieve from a central facility a directory of goods and services available and thus permitting the customer to select another central facility from a displayed list or catalogue and establish contact with it and thus have access to numerous central facilities"	The specification at 11:32-12:1 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer can activate the system causing it to retrieve from a central facility a directory of goods and services available and thus permitting the customer to select another central facility from a displayed list or catalogue and establish contact with it and thus have access to numerous central facilities"
23. A method for electronically selling and/or marketing goods and/or services between a customer at one or more remote locations and a plurality of providers of goods and/or services	The specification at 1:10-17 (page 1, lines 10-17) discloses: "The present invention generally relates to . . . system and method for facilitating transactions utilizing central and remote	The specification at 1:20-23 discloses: "The present invention generally relates to . . . system and method for facilitating transactions utilizing central and remote facilities..."; the specification

Claim	Support in the '309 Application	Support in the Instant Application
<p>comprising:</p> <p>providing a first database associated with a first provider of goods and/or services and containing information relating to goods and/or services, which can be accessed by a customer at one or more of said remote locations from at least one other database associated with another provider of goods and/or services containing information relating to goods and/or services, enabling said customer to access said first and at least one of said other databases of another provider for information relating to goods and/or services.</p>	<p>facilities..."; the specification at page 8 lines 1-4 discloses: "The method by which the transactions are facilitated reduces the costs associated with creating, marketing, administering, and selling these products and services..."the specification at 4:1-3 discloses: "...information is centralized or stored centrally and thereafter transmitted to the customer at the remote location...", and; the specification at 9:29-30 discloses: "...a data base of providers of goods and services"</p> <p>The specification at 16:3-7 discloses: "the customer may establish contact with the central facility's equipment ... where he may browse through databases of goods and services"; The specification at 9:32-10:7 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer may ... retrieve from a central facility a directory of goods and services available and thus permitting the customer to select another central facility from a displayed list or catalogue and establish contact with it...", and ; The specification at 9:26-32 discloses: "It should be understood however that certain information may be stored at remote facilities such as directories of facilities for dialing purposes or a data base of providers of goods and services arranged by category of business or products offered such as in the Yellow Pages phone directory."</p>	<p>at 10:2-4 discloses: "The method by which the transactions are facilitated reduces the costs associated with creating, marketing, administering, and selling these products and services..."; the specification at 3:14-15 discloses: "...information is centralized or stored centrally and thereafter transmitted to the customer at the remote location...", and the specification at 4:14-15 " ...customers can use the remote facility devices to contact multiple providers of goods and services"</p> <p>The specification at 19:4-6 discloses: "the customer may establish contact with the central facility's equipment ... where he may browse through databases of goods and services"; The specification at 11:32-12:1 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer may ... retrieve from a central facility a directory of goods and services available and thus permitting the customer to select another central facility from a displayed list or catalogue and establish contact with it...", and ; The specification at 9:26-32 discloses: "It should be understood however that certain information may be stored at remote facilities such as directories of facilities for dialing purposes or a data base of providers of goods and services arranged by category of business or products offered such as in the Yellow Pages phone directory."</p>
<p>24. The method of claim 23 wherein said customer can submit a bid in an auction with one of said providers.</p>	<p>The specification at 7:8-11 discloses: "each customer may be provided his own personal input device permitting him to personally enter his bid during the joint auction session...", and; The specification at 7:6-7 " a customer in Saint Louis can participate and bid in an auction..."</p>	<p>The specification at 9:18-20 discloses: "each customer may be provided his own personal input device permitting him to personally enter his bid during the joint auction session...", and; The specification at 9:17-18 discloses: " a customer in Saint Louis can participate and bid in an auction..."</p>
<p>25. The method of claim 23 wherein a</p>	<p>The specification at the sentence bridging pages 10</p>	<p>The specification at 13:2-5 discloses: "To facilitate</p>

Claim	Support in the '309 Application	Support in the Instant Application
presentation stopping point can be recorded.	and 11 discloses: "To facilitate such a technique the remote or central location may record the stopping point of the customer's last on-line presentation so that when contact is resumed an appropriate presentation continuing point may be ascertained."	such a technique the remote or central location may record the stopping point of the customer's last on-line presentation so that when contact is resumed an appropriate presentation continuing point may be ascertained."
26. The method of claim 23 wherein said customer can use said information to select and contact another of said providers.	The specification at 9:32-10:7 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer may ... retrieve from a central facility a directory of goods and services available and thus permitting the customer to select another central facility from a displayed list or catalogue and establish contact with it...", and; The specification at 9:26-32 discloses: "It should be understood however that certain information may be stored at remote facilities such as directories of facilities for dialing purposes or a data base of providers of goods and services arranged by category of business or products offered such as in the Yellow Pages phone directory."	The specification at 11_32-12:1 discloses: "...upon pressing or utilizing the touch screen, keyboard or input device the customer may ... retrieve from a central facility a directory of goods and services available and thus permitting the customer to select another central facility from a displayed list or catalogue and establish contact with it...", and; The specification at 11:28-31 discloses: "It should be understood however that certain information may be stored at remote facilities such as directories of facilities for dialing purposes or a data base of providers of goods and services arranged by category of business or products offered such as in the Yellow Pages phone directory."

**(vi) Grounds Of Rejection To Be Reviewed On Appeal**

*(1) The issue is whether claims 23-26 are unpatentable under 35 U.S.C. 101 for being directed to non-statutory subject matter. [see final action pg 3]*

*(2) The issue is whether claims 8, 9-11, and 21 are unpatentable under 35 U.S.C. 112-first paragraph, for being unsupported by Applicant's disclosure. [see final action pg 4]*

*(3) The issue is whether claims 7-26 and 16-20 are unpatentable under 35 U. S. C. 112-second paragraph, for being indefinite. [see final action pg 5]*

*(4) The issue is whether claims 7-23 and 26 are unpatentable under 35 U. S. C. 102 for being anticipated by Bernard et al. (U.S. Patent No. 5,918,213). [see final action pg 6]*

*(5) The issue is whether Claim 24 is unpatentable under 35 U. S. C. 103(a) over Bernard et al. in view of Woolston (U.S. Patent No. 5,845,265). [see final action pg 11]*

*(6) The issue is whether Claim 25 is unpatentable under 35 U. S. C. 103(a) over Bernard et al. in view of Belknap (U.S. Patent No. 5,586,264). [see final action pg 11]*



### **(vii) Argument**

*(1). Issue 1, the rejection of claims 23-26 for being directed to non-statutory subject matter is unfounded.*

23. A method for electronically selling and/or marketing goods and/or services between a customer at one or more remote locations and a plurality of providers of goods and/or services comprising:

providing a first database associated with a first provider of goods and/or services and containing information relating to goods and/or services, which can be accessed by a customer at one or more of said remote locations from at least one other database associated with another provider of goods and/or services containing information relating to goods and/or services,

enabling said customer to access said first and at least one of said other databases of another provider for information relating to goods and/or services.

The Examiner states in his final action on page 4 that a process must be either "1) tied to another statutory class (such as an apparatus), or 2) transform underlying subject matter to a different state or thing". Accordingly, Claim 23 from which claims 24-26 depend, is tied to a database which is an article of manufacture, having been created or manufactured by a computer. Therefore, Claim 23 is tied to another statutory class as are its dependent claims and hence it and its dependent claims 24-26 are all allowable.

*(2). Issue 2, the rejection of claims 8, 9-11, and 21 for being unsupported by Applicant's disclosure is unfounded.*

#### Support in the instant application

8. The apparatus of claim 7 adapted to display said goods and/or services information involuntarily based on said customer's use of said apparatus.

*[The specification at 14:1-2 discloses: "...customer requests their product information or is shown it involuntarily based on a customer's profile", and; The specification at 7:18 discloses: "...builds a general customer profile based upon customer's requests for information"]*

9. The apparatus of claim 7 adapted to build a provider or corporate profile based on said customer's use of said apparatus.

*[The specification at 14:20-23 discloses: " To determine its corporate customer profile each provider of goods can use the system. Profiles of those customers who specifically request product information can be used by those providers to build general profiles of those customers who might have an interest or need in their goods.", and; The specification at 7:18 discloses: "...builds a general customer profile based upon customer's requests for information"]*

10. The apparatus of claim 7 adapted to build a profile from a single customer's use.

*[The specification at 7:18 discloses: "...builds a general customer profile based upon customer's requests for information"]*

11. The apparatus of claim 7 adapted to build a profile from multiple customers' use.

*[The specification at 14:20-23 discloses: " To determine its corporate customer profile each provider of goods can use the system. Profiles of those customers who specifically request product information can be used by those providers to build general profiles of those customers who might have an interest or need in their goods."]*

21. The apparatus of claim 15 wherein at least one of said computerized central communications facilities is adapted to display goods and/or services involuntarily.

*[The specification at 14:1-2 discloses: "...customer requests their product information or is shown it involuntarily based on a customer's profile"]*

Each claim is supported in Applicant's disclosure as can be seen above and in the chart in section v. Therefore, claims 8, 9-11, and 21 are allowable.

*(3). Issue 3, the rejection of claims 7-26 and 16-20 for being indefinite is unfounded.*

### **Claims 7-26: "and/or"**

According to the Encarta online dictionary at...

<http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?lextype=3&search=and%20or>

the definition of "and/or" is:

and/or [ and áwr ]

conj

Definition: **either or both:** a short way of saying that either or both of two options may be valid

Therefore, the meaning of the term is not indefinite. The Examiner's ability to readily discern its meaning confirms this. Further, use of this term by the Applicant in related cases (US issued patents 7,379,900, and 7,624,044) was previously accepted by the Examiner and by the Board. Therefore, the use of "and/or" does not make claims 7-26 indefinite and they are thus allowable.

**Claims 16-20: "said customer entertainment-based programming "**

First, the above phrase is only used in claims 17-20, not claim 16 as the action asserts. Therefore, this rejection for claim 16 is unfounded.

16. The apparatus of claim 15 wherein at least one of said other computerized central communications facilities is operable to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to at least one of said computerized remote communications facilities.

17. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of a game.

Further, as can be seen above, "customer" should not be read as part of "entertainment-based programming", but rather by itself. Therefore, the phrase "said customer" refers to the prior use of "customer" in claim 15 from which claim 17 and the others depend. Thus the use of "said customer" is proper and claims 16-20 are allowable.

*(4). Issue 4, the rejection of claims 7-23 and 26 for being anticipated by Bernard et al. (U.S. Patent No. 5,918,213) is unfounded.*

Claims 7, 15, and 23

As illustrated in the chart in section v, support for independent claims 7, 15, and 23 dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for each of the independent claims Bernard is not prior art and thus these claims are allowable.

#### Claim 8

8. The apparatus of claim 7 adapted to display said goods and/or services information involuntarily based on said customer's use of said apparatus.

From the cited passages of Bernard...

"In one embodiment promotional items are offered to a customer 182 based on his or her calling and purchasing history. For example, in one embodiment, the automated product purchasing system review calling and purchasing statistics maintained for a shopper 182. Statistics can be maintained by VRU 104, interactive transaction database 112, or even by reporting database 438. If these statistics indicate that the shopper is a particularly good customer of the automated product purchasing system, interface unit 104 may offer a promotional or special item to that shopper 182. For example, where shopper 182 is a frequent purchaser, interface unit 104 may inform him or her that upon the next purchase, he or she will receive a bonus CD.

As stated above, promotions can be offered to new customers. Promotions can also be established for customers who have established a membership profile but have not purchased, customers who have not ordered for a given period of time, customers located in a specific geographic area, customers accessing the service during a given time period, frequent customers, certain groups (e.g., group membership rates), customer classifications (such as telephone user, Internet user, etc.)."

There is nothing in the cited passages of Bernard to suggest that goods and/or services information is displayed "involuntarily". Rather, in the case of Bernard a free CD is offered if a customer meets a certain requirement such as being a frequent purchaser. The Examiner has modified the Bernard disclosure in light of Applicant's own teaching.

Further, Applicant has support no later than October 20, 1994 in his Inventors' Notebook which precedes the Bernard filing date by over 1 year. As disclosed therein:

"use demographics of customer as he calls to determine which commercials he is to view between queries and while waiting for attendant. specific info about the customer may be stored centrally or in remote devise for retrieval and may be updated by info requested of customer in sessions thereby keeping his personal profile current. use add slogan of "anything less is just a shot in the dark" to convince advertisers that system is a great advancement over alternative advertising mediums as advertisers will no longer use a shot gun approach in hawking their wares but will now only show their products to those customers most likely to be interested. customers will still be able to access info on all goods and services and the info gathered from those free agent enquiries can be used to help each advertiser to determine its matching customer profile and thus the customers who will automatically see their ads at designated points in their sessions such as between queries and while waiting for attendants."

Applicant therefore swears behind to remove this reference from consideration as regards claim 8 and has attached a declaration and copy of the page in question from his Inventor's Notebook in support as Appendix A.

Therefore, for at least those reasons claim 8 is allowable.

#### Claim 9

9. The apparatus of claim 7 adapted to build a provider or corporate profile based on said customer's use of said apparatus.

From the cited passages of Bernard...

"The automated product purchasing system is capable of supporting and offering various promotions to the customers according to a plurality of scenarios. Promotions can be run and directed toward first-time callers, frequent purchasers, purchasers from a given geographic area, new members, purchases within a given time-frame, and other like criteria. Additionally, electronic couponing can be offered, such that coupons can be used as a form of promotion. As such, coupons provided to the customers via radio and television advertisements, magazine advertisements, periodicals, mailings, and other media, may be used by customers when making their purchases. In one instance, these coupons are identified by a coupon number which is provided by the customer at the time the purchase is made. These coupons can target specific customers, specific types of customers, specific geographic areas, and other like attributes. These coupons can also be set to be valid for only given periods of time or particular types of purchases. This is all handled using data stored in the interactive transaction database.

Profiling information and cost statistics are also maintained by interactive transaction database 112. Profiling information can include profiles on individual callers 182 and profiles on callers in general, callers in particular music categories, or callers from a particular geographic area, and so on.

As stated above, promotions can be offered to new customers. Promotions can also be established for customers who have established a membership profile but have not purchased, customers who have not ordered for a given period of time, customers located in a specific geographic area, customers accessing the service during a given time period, frequent customers, certain groups (e.g., group membership rates), customer classifications (such as telephone user, Internet user, etc.)."

There is nothing in the cited passages of Bernard to suggest building "a provider or corporate profile based on said customer's use of said apparatus ". Therefore, claim 9 is for at least that reason allowable.

#### Claim 10

10. The apparatus of claim 7 adapted to build a profile from a single customer's use.

Whether or not Bernard has support for the invention as claimed, Applicant has support no later than September 30, 1994 in his Inventors' Notebook which precedes the Bernard filing date by over 1 year. As disclosed therein:

"use demographics of customer as he calls to determine which commercials he is to view between queries and while waiting for attendant. specific info about the customer may be stored centrally or in remote devise for retrieval and may be updated by info requested of customer in sessions thereby keeping his personal profile current. use add slogan of "anything less is just a shot in the dark" to

convince advertisers that system is a great advancement over alternative advertising mediums as advertisers will no longer use a shot gun approach in hawking their wares but will now only show their products to those customers most likely to be interested. customers will still be able to access info on all goods and services and the info gathered from those free agent enquiries can be used to help each advertiser to determine its matching customer profile and thus the customers who will automatically see their ads at designated points in their sessions such as between queries and while waiting for attendants."

Applicant therefore swears behind to remove this reference from consideration as regards claim 10 and has attached a declaration and copy of the page in question from his Inventor's Notebook in support as Appendix A.

Therefore, for at least that reason claim 10 is allowable.

#### Claim 11

11. The apparatus of claim 7 adapted to build a profile from multiple customers' use.

Whether or not Bernard teaches the invention as claimed, as noted and reproduced above in the claim 8 argument Applicant has support for the invention as claimed no later than September 30, 1994 in his Inventors' Notebook which precedes the Bernard filing date by over 1 year:

"use demographics of customer as he calls to determine which commercials he is to view between queries and while waiting for attendant. specific info about the customer may be stored centrally or in remote devise for retrieval and may be updated by info requested of customer in sessions thereby keeping his personal profile current. use add slogan of "anything less is just a shot in the dark" to convince advertisers that system is a great advancement over alternative advertising mediums as advertisers will no longer use a shot gun approach in hawking their wares but will now only show their products to those customers most likely to be interested. customers will still be able to access info on all goods and services and the info gathered from those free agent enquiries can be used to help each advertiser to determine its matching customer profile and thus the customers who will automatically see their ads at designated points in their sessions such as between queries and while waiting for attendants."

Applicant therefore swears behind to remove this reference from consideration as regards claim 11 and has attached a declaration and copy of the page in question from his Inventor's Notebook in support as Appendix A.

Therefore, claim 11 is for at least that reason allowable.

#### Claim 12

12. The apparatus of claim 7 adapted to suggest goods and/or services based on at least one of said customers use of said apparatus.

From the cited passages of Bernard...

Profiling information and cost statistics are also maintained by interactive transaction database 112. Profiling information can include profiles on individual callers 182 and profiles on callers in general, callers in particular music categories, or callers from a particular geographic area, and so on. Profiles can include statistical information such as preferred music styles, quantity and frequency of browses, quantity and frequency of purchases, types of purchases, responses to promotional offerings, whether purchases are from the Music Mall or from other categories such as top-hits list, featured artist, play list, etc. This profiling and statistical information can be used to enhance the system functionality, and can be used by marketing professionals to improve the marketability of the products offered by the automated product purchasing system.

There is nothing in the cited passages of Bernard to support "suggest goods and/or services based on at least one of said customers use of said apparatus ". Therefore, claim 12 is for at least that reason allowable.

#### Claim 13

13. The apparatus of claim 7 adapted to suggest goods and/or services to said customers.

As illustrated in the chart in section 5, support for claim 13 dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for claim 13 Bernard is not prior art and for at least that reason the claim is allowable.

#### Claim 14

14. The apparatus of claim 7 wherein a customer at one or more of said computerized remote communications facilities can access or browse said database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility and at one or more of said other computerized central communications facilities.

As illustrated in the chart in section 5, support for claim 14 dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for claim 14 Bernard is not prior art and for at least that reason the claim is allowable.

#### Claim 16

16. The apparatus of claim 15 wherein at least one of said other computerized central communications facilities is operable to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to at least one of said computerized remote communications facilities.

As illustrated in the chart in section 5, support for claim 16 dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for claim 16 Bernard is not prior art and for at least that reason the claim is allowable.

#### Claim 17

17. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of a game.

As illustrated in the chart in section 5, support for claim 17 dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for claim 17 Bernard is not prior art and for at least that reason the claim is allowable.

#### Claim 18

18. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of music.

As illustrated in the chart in section 5, support for claim 18 dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for claim 18 Bernard is not prior art and for at least that reason the claim is allowable.

#### Claim 19

19. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of a movie.

As illustrated in the chart in section 5, support for claim 19 dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for claim 19 Bernard is not prior art and for at least that reason the claim is allowable.

#### Claim 20

20. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming including a commercial of a sponsor.

As illustrated in the chart in section 5, support for claim 20 dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for claim 20 Bernard is not prior art and for at least that reason the claim is allowable.

#### Claim 21

21. The apparatus of claim 15 wherein at least one of said computerized central communications facilities is adapted to display goods and/or services involuntarily.

This claim is allowable on the same grounds as claim 8.



## Claim 22

22. The apparatus of claim 15 wherein one or more of said computerized remote communications facilities is operable to access or browse said database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility and at one or more of said other computerized central communications facilities.

As illustrated in the chart in section 5, support for claim 22 dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for claim 22 Bernard is not prior art and for at least that reason the claim is allowable.

## Claim 26

26. The method of claim 23 wherein said customer can use said information to select and contact another of said providers.

As illustrated in the chart in section 5, support for claim 26 dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for claim 26 Bernard is not prior art and for at least that reason the claim is allowable.

*(5) Issue 5, the rejection of Claim 24 for being unpatentable over Bernard et al. in view of Woolston (U.S. Patent No. 5,845,265) is unfounded.*

24. The method of claim 23 wherein said customer can submit a bid in an auction with one of said providers.

As illustrated in the chart in section 5, support for claim 24 dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for claim 24 Bernard is not prior art and for at least that reason the claim is allowable.

*(6) The issue is whether Claim 25 is unpatentable under 35 U. S. C. 103(a) over Bernard et al. in view of Belknap (U.S. Patent No. 5,586,264).*

25. The method of claim 23 wherein a presentation stopping point can be recorded.

As illustrated in the chart in section 5, support for claim 25 dates to at least June 29, 1994 from Applicant's parent application 08/268,309. Bernard was filed December 22, 1995. Therefore, for claim 25 Bernard is not prior art and for at least that reason the claim is allowable.

### **Summary**

Applicant respectfully requests allowance of all claims in response to the arguments presented herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen Wren". The signature is written in a cursive, flowing style.

Stephen Wren  
Applicant/Appellant

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**(viii) Claims appendix**

The following claims are pending and on appeal unless otherwise noted.

Claims 1-6 (Canceled)

7. An apparatus for providing marketing and/or sales information relating to goods and/or services comprising:

a computerized central communications facility;

a database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility, and;

a communications device at said computerized central communications facility;

wherein said computerized central communications facility is operable to be linked to a plurality of other computerized central communications facilities and to a plurality of computerized remote communications facilities;

wherein said database of marketing and/or sales information relating to goods and/or services is accessible to a customer at one or more of said computerized remote communications facilities;

wherein said communications device at said computerized central communications facility is operable to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to at least one of said computerized remote communications facilities;

wherein said computerized central communications facility is operable to provide at least a portion of said marketing and/or sales information relating to said goods and/or services to one or more of said computerized remote communications facilities upon request;

wherein at least one of said other computerized central communications facilities enables said customer at one or more of said computerized remote communications facilities to select and contact a computerized central communications facility of a different provider, and;

wherein said computerized central communications facility of a different provider is equipped with:

a database of marketing and/or sales information relating to goods and/or services accessible to said customer at one or more of said computerized remote communications facilities, and;

a communications device adapted to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to at least one of said computerized remote communications facilities, whereby said customer has access to information at multiple computerized central communications facilities of different providers.

8. The apparatus of claim 7 adapted to display said goods and/or services information involuntarily based on said customer's use of said apparatus.

9. The apparatus of claim 7 adapted to build a provider or corporate profile based on said customer's use of said apparatus.

10. The apparatus of claim 7 adapted to build a profile from a single customer's use.

11. The apparatus of claim 7 adapted to build a profile from multiple customers' use.

12. The apparatus of claim 7 adapted to suggest goods and/or services based on at least one of said customers use of said apparatus.

13. The apparatus of claim 7 adapted to suggest goods and/or services to said customers.

14. The apparatus of claim 7 wherein a customer at one or more of said computerized remote communications facilities can access or browse said database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility and at one or more of said other computerized central communications facilities.

15. An apparatus for providing marketing and/or sales information relating to goods and/or services comprising:

a computerized central communications facility;

a database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility, and;

a communications device at said computerized central communications facility;

wherein said computerized central communications facility is operable to be linked to a plurality of other computerized central communications facilities and to a plurality of computerized remote communications facilities;

wherein said database of marketing and/or sales information relating to goods and/or services is accessible to customers at one or more of said computerized remote communications facilities;

wherein said communications device at said computerized central communications facility is operable to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to said computerized remote communications facilities;

wherein said computerized central communications facility is operable to provide at least a portion of said marketing and/or sales information relating to said goods and/or services to customers at one or more of said computerized remote communications facilities upon request;

wherein at least one of said other computerized central communications facilities allows customers at one or more of said computerized remote communications facilities to select and contact a computerized central communications facility of a different provider, and;

wherein said apparatus is operable to record a presentation stopping point for future use.

16. The apparatus of claim 15 wherein at least one of said other computerized central communications facilities is operable to transmit at least a portion of said marketing and/or sales information relating to said goods and/or services to at least one of said computerized remote communications facilities.

17. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of a game.

18. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of music.

19. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming in the form of a movie.

20. The apparatus of claim 15, wherein at least one of said computerized central communications facilities is adapted to provide said customer entertainment-based programming including a commercial of a sponsor.

21. The apparatus of claim 15 wherein at least one of said computerized central communications facilities is adapted to display goods and/or services involuntarily.

22. The apparatus of claim 15 wherein one or more of said computerized remote communications facilities is operable to access or browse said database of marketing and/or sales information relating to goods and/or services at said computerized central communications facility and at one or more of said other computerized central communications facilities.

23. A method for electronically selling and/or marketing goods and/or services between a customer at one or more remote locations and a plurality of providers of goods and/or services comprising:

providing a first database associated with a first provider of goods and/or services and containing information relating to goods and/or services, which can be accessed by a customer at one or more of said remote locations from at least one other database associated with another provider of goods and/or services containing information relating to goods and/or services,

enabling said customer to access said first and at least one of said other databases of another provider for information relating to goods and/or services.

24. The method of claim 23 wherein said customer can submit a bid in an auction with one of said providers.

25. The method of claim 23 wherein a presentation stopping point can be recorded.

26. The method of claim 23 wherein said customer can use said information to select and contact another of said providers.

## **(ix) Evidence Appendix**

None.



**(x) Related Proceedings Appendix**

Appeals 2008-2765 and 2007-3066. Please see attached.

## **Appendix A**

Declaration and page from inventor's notebook. Please see attached.