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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

UNIFIED PATENTS INC.
Petitioner

v.

ROTHSCHILD CONNECTED DEVICES INNOVATIONS, LLC
Patent Owner

IPR2016-00535
Patent 8,788,090

**PETITION FOR *INTER PARTES* REVIEW OF
U.S. PATENT NO. 8,788,090
CHALLENGING CLAIMS 1 - 9, 11-12
UNDER 35 U.S.C. § 312 AND 37 C.F.R. § 42.104**

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LIST OF EXHIBITS

Exhibit	Description
EX1001	U.S. Patent No. 8,788,090 (priority to June 20, 2006) (“the ’090 Patent”)
EX1002	Unified Patents LLC Voluntary Interrogatories
EX1003	Assignment Details of 8,788,090 to Rothschild Connected Device Innovations, LLC (retrieved Jan. 28, 2016), <i>available at</i> http://assignment.uspto.gov/
EX1004	File History of the ’090 Patent
EX1005	Declaration of Dr. Charles Eldering, Ph.D.
EX1006	U.S. Patent No. 6,759,072 (“ <i>Gutwein</i> ”)
EX1007	U.S. Pub. 20030055530 to Dodson (“ <i>Dodson</i> ”)
EX1008	US Pat. 4920871 to Anson (“ <i>Anson</i> ”)
EX1009	U.S. Patent 7,933,968 to Zimmerman (“ <i>Zimmerman</i> ”)
EX1010	U.S. Patent 6,751,525 to Crisp, III, (“ <i>Crisp</i> ”)
EX1011	“E–Customization,” Asim Ansari & Carl Mela, <i>Journal of Marketing Research</i> , Vol. XL (May 2003), 131–145 (“ <i>Ansari & Mela</i> ”)
EX1012	U.S. Patent No. 7,617,850 to Dorney (“ <i>Dorney</i> ”)
EX1013	Rothschild v. ADS Complaint
EX1014	“The 4 worst patents of 2015,” Larry Downs, <i>Washington Post</i> (Dec. 14, 2015) (“ <i>WashPost</i> ”)
EX1015	“Stupid Patent of the Month: A Drink Mixer Attacks the Internet of Things,” Daniel Nazer, <i>Electronic Frontier Foundation</i> (Aug. 31, 2015) (“ <i>EFF</i> ”)
EX1016	Lahteenmaki Pub. WO 03/056493 (“ <i>Lahteenmaki</i> ”)

I. INTRODUCTION

Claiming priority to 2006, U.S. Patent 8,788,090 (“the ’090 patent”) describes customizing a product by sending preferences over a network from a server, and using those preferences to configure the product. The challenged independent claims 1 and 9 do not indicate what type of network, product, or server are used. The embodiments describe mixing beverages and shampoos. Since February 6, 2015, patent owner Rothschild Connected Devices Innovations, LLC (“Rothschild” or “Patent Owner”) has sued nearly 60 companies, many who have settled quickly, ostensibly for licensing settlement agreements that would be less expensive than fighting the validity of the patent in district court or in parallel proceedings. The accused products include, for example, home automation “alarm systems, lighting controllers, door locks, mobile apps, thermostats, and wireless security cameras.” *Rothschild v. ADS* (EX1013), at 3.

The ’090 Patent is already notorious. In late 2015, the Washington Post included the ’090 Patent as one of its four “Worst Patents of 2015.” *WashPost* (EX1014), at 1. The Electronic Frontier Foundation (EFF), which publishes a “stupid patent of the month,” featured the ’090 Patent in August 2015, and described it as follows:

Even in 2006, this was a spectacularly mundane idea.
The application did not disclose any new networking

technology. Nor did it reveal any new beverage-making technology. It just connects a product mixer to the Internet.

EFF (EX1016), at 1. Indeed, a wealth of prior art suggests the claims are obvious. This petition details two distinct obviousness combinations over claims 1–9 and 11–12 based on publicly available prior art, demonstrating that the patent claims are more likely than not unpatentable. Please institute this *inter partes* review and cancel these claims.

II. MANDATORY NOTICES

A. Real Party-in-Interest

Under 37 C.F.R. § 42.8(b)(1), Unified Patents Inc. (“Unified” or “Petitioner”) certified that Unified is the real party-in-interest, and further certifies that no other party exercised control or could exercise control over Unified’s participation in this proceeding or the filing of this petition. In this regard, Unified has submitted voluntary discovery. *See* Petitioner’s Voluntary Interrogatory Responses (EX1002).

B. Related Matters

The ’090 Patent is owned by Rothschild, and is a continuation of U.S. Patent 7,899,713 and U.S. Patent 8,417,377. Continuation Application Serial Number 14/337,186 is pending.

On February 6, 2015, Rothschild began filing dozens of sprawling lawsuits against operating companies in the Eastern District of Texas, claiming that diverse examples of these companies' many products and/or services infringe the '090 Patent. Rothschild has continued to add companies, having to date filed at least 57 lawsuits, many of which name multiple parties. All of those lawsuits were filed before the Federal pleading standards for patent cases changed on December 1, 2015.

Those companies are as diverse as General Electric Company, alarm device companies, automotive companies like the Ford Motor Company, telephone companies like AT&T, and beverage companies like the Coca-Cola Company. Many of these cases settled or were terminated relatively quickly, some as quickly as one day later. *See, e.g., Rothschild Connected Devices Innovations, LLC v. United States Cellular Corporation d/b/a US Cellular*, Case No. 2-15-cv-01644 (E.D. Tex., filed Oct. 8, 2015) (terminated Oct. 9, 2015).

All told, *Rothschild* has sued Mazda Motor of North America, Fiat USA, BMW of North America, Mercedes-Benz USA, Ford Motor Company, American Honda Motor Co., Hyundai Motor America, Volvo Cars of North America, Subaru of America, Coca-Cola Company, Carrier Corporation, Sprint Communications Company, AT&T, Verizon Communications, Ting, United States Cellular d/b/a US Cellular, T-Mobile USA, Rheem Manufacturing Co., Smartlabs, d/b/a Insteon, Nexia Intelligence, Technical Consumer Products, AFA Protective Systems,

Guardian Alarm Company, Slomin's, Icon Security Systems, Alarm Security Group, Central Security Group – Nationwide, Monitronics International, Protect America, ADS Security, FrontPoint Security Solutions, Guardian Protection Services, Guardian of Georgia, d/b/a Ackerman Security Systems, Q-See a/k/a Digital Peripheral Solutions, Summer Infant, Logitech, D-Link Systems, Leviton Manufacturing Co., Legrand North America, d/b/a Legrand, Phillips Electronics North America Corporation, Tyco Integrated Security, Vivint, Uniden America Corporation, Westec Intelligent Surveillance, Cisco Systems, General Electric Company, BrickHouse Electronics, TRANE U.S., Belkin International, Sharp Electronics Corporation, Honeywell International, Rain Bird Corporation, Netgear, CPI Security, Panasonic Corporation of North America, Toshiba America Electronic Components, Philips Electronics North Am. Corp., OnStar, and ADT.

Additionally, a petition for *inter partes* review of claims 1–8 of the patent was filed by RPX Corporation on January 11, 2016, asserting those claims are invalid over various combinations of prior art.

C. Counsel

Jonathan Stroud (Registration No. 72,518) will act as lead counsel; Paul Haughey (Registration No. 31,836) and Scott Kolassa (Registration No. 55,337) will act as back-up counsel.

D. Service Information

Unifed consents to electronic service at jonathan@unifiedpatents.com and phaughey@kilpatricktownsend.com, provided both are copied and served. Petitioner can be reached at Unified Patents Inc., 1875 Connecticut Ave. NW, Floor 10, Washington, D.C., 20009, and by telephone at (650) 999-0899 (Jonathan), or at Eighth Floor, Two Embarcadero Center, San Francisco, CA, 94111, USA, and by telephone at (415) 273-4787 (Paul).

E. Fee Payment

The required fees are submitted under 37 C.F.R. §§ 42.103(a) and 42.15(a). If any additional fees are due during this proceeding, the Office may charge such fees to Deposit Account No. 20-1430.

III. CERTIFICATION OF GROUNDS FOR STANDING

Petitioner certifies under Rule 42.104(a) that the patent for which review is sought is available for *inter partes* review, that (1) the petitioner is not the owner of the '090 patent; (2) the petitioner is not barred or estopped from requesting IPR; and (3) this Petition is being filed less than a year after anyone has been served with a complaint alleging infringement of the '090 patent.

IV. OVERVIEW OF CHALLENGE AND RELIEF REQUESTED

Pursuant to Rules 42.22(a)(1) and 42.104(b)(1)–(2), Petitioner challenges claims 1–9 and 11–12 of the '090 patent.

A. Prior Art Patents and Printed Publications

The following references are pertinent to the grounds of unpatentability explained below:¹

1. U.S. Patent No. 6,759,072 to Gutwein (filed on Aug. 14, 2000; issued July 6, 2004) (“*Gutwein*,” EX1006), which is prior art under 35 U.S.C. § 102(b).
2. U.S. Pub. 20030055530 to Dodson, filed June 4, 2002, published March 20, 2003 (“*Dodson*,” EX1007), which is prior art under 35 U.S.C. § 102(b).
3. US Pat. 4,920,871 to Anson, filed June 1, 1989, issued May 1, 1990 (“*Anson*,” EX1008), which is prior art under 35 U.S.C. § 102(b).
4. U.S. Patent 7,933,968 to Zimmerman filed June 20, 2000, issued April 26, 2011 (“*Zimmerman*,” EX1009), which is prior art under 35 U.S.C. § 102(e).
5. U.S. Patent 6,751,525 to Crisp, III, filed June 8, 2000, issued June 15, 2004 (“*Crisp*,” EX1010), which is prior art under 35 U.S.C. § 102(b).
6. Pub. WO 03/056493 to Lahteenmaki, priority Dec. 28, 2001, published July 10, 2003 (“*Lahteenmaki*,” EX1016), which is prior art under 35 U.S.C. § 102(b).

¹ The '090 Patent issued from a patent application filed prior to enactment of the America Invents Act (“AIA”). Accordingly, pre-AIA statutory framework applies.

B. Grounds for Challenge

Petitioner requests cancellation of claims 1–9 and 11–12 of the ’090 Patent as unpatentable under 35 U.S.C. § 103. This Petition, supported by the accompanying declaration of Dr. Charles Eldering (“Dr. Eldering”) (“Eldering Decl.” (EX1005)), demonstrates that there is a reasonable likelihood that Petitioner will prevail with respect to challenged claims 1–9 and 11–12. *See* 35 U.S.C. § 314(a).

Ground	Proposed Statutory Rejections for the ’090 Patent	Exhibit No.
1	Claims 1–7 are obvious under 35 U.S.C. § 103(a) over <i>Gutwein</i> (EX1008) in view of <i>Lahteenmaki</i> (EX1016)	EX1008 EX1016
2	Claim 8 is obvious under 35 U.S.C. § 103(a) over <i>Gutwein</i> (EX1006) in view of <i>Lahteenmaki</i> (EX1016) and <i>Dodson</i> (EX1007).	EX1006 EX1007 EX1016
3	Claims 9, and 11–12 are obvious under 35 U.S.C. § 103(a) over <i>Gutwein</i> (EX1006) in view of <i>Lahteenmaki</i> (EX1016) and <i>Anson</i> (EX1008).	EX1006 EX1008 EX1016
4	Claims 1–7, 9 and 11–12 are obvious under 35 U.S.C. § 103(a) over <i>Zimmerman</i> (EX1009) in view of <i>Crisp</i> (EX1010).	EX1009 EX1010
5	Claim 8 is obvious under 35 U.S.C. § 103(a) over <i>Zimmerman</i> (EX1009) in view of <i>Crisp</i> (EX1010), <i>further in view of Dodson</i> (EX1007).	EX1009 EX1007 EX1010

V. TECHNOLOGY BACKGROUND

A. Networks and network storage

A network is a series of connected systems able to communicate. Network protocols such as the TCP/IP Internet protocol have existed for decades, and make

it possible for information to be stored remotely and routed from one system to another, using packets, dedicated streams, or other forms of communication between the systems, or “nodes,” of the network.

Networks involving remote storage have been the subject of substantial technological interest since at least the 1970s, and numerous solutions have been developed and implemented in the years since to remotely share stored data, including the so-called public Internet, Intranets, LANs, peer-to-peer communications, Video Dialtone, and other forms of content delivery. *Gutwein* and *Zimmerman* are among these solutions concerning remotely stored data. Elderling Decl. ¶¶ 12–13 (EX1005).

B. Products in network communication

Many consumer electronic devices, in the late 1990s were capable of programming, personalization, and modification. Since at least the early 2000s, it was known to connect such devices to wireless transponders or other forms of communication devices, which were capable of relaying or receiving data from remotely stored components, processors, and storage devices. *See Dorney* (EX1012). *See also* Elderling Decl. ¶ 15 (EX1005).

C. Personalized consumer products

Customized personal products are as old as commerce itself. The modern need for customized personal products arises primarily from the mass production

available and dominant during the late industrial revolution into the twentieth century. In the late 20th century, companies such as Gateway, Inc., Apple Inc., Starbucks Coffee Company, and the Coca-Cola Company moved toward creating automatically customizable and manufacturable products based on user preferences. Food and beverage corporations like Burger King began touting such slogans as “Have it your way” (1974) and encouraged and marketed specialized orders tailored to consumer preferences. *See* Eldering Decl. ¶ 16 (EX1005).

D. E-customization

With the rise of the Internet and the ability to store and access large amounts of data, by the turn of the century researchers had coined a new term, “e-Customization,” heralding the next great idea—marrying stored user preferences to automated or customized manufacturing processes to produce customized consumer goods cheaply and quickly. The concept of customized products followed on the heels of customized content and targeted advertising, which was already well developed by the turn of the century. *See generally Ansari & Mela* (EX1011) (discussing E-customization at length in 2003). Using stored user preferences, manufacturers could and did begin to assemble, mix, or otherwise generate personalized goods based on prefabricated choices and established user preferences. *See* Eldering Decl. ¶ 17 (EX1005).

VI. OVERVIEW OF THE '090 PATENT

A. Summary of the Alleged Invention

The '090 patent (EX1001) describes:

A system and method for creating a personalized consumer product enables a user, e.g., a consumer, to customize products containing solids and/or fluids by allowing a server communicating over ...the Internet, to provide product preferences of a user to a product or a mixing device, e.g., a product or beverage dispenser.

“The system 100 includes a terminal 102, e.g., a user computer, for accessing a server 104 over a communications network 106, e.g., the Internet.” *Id.* at 2:60–62.

The terminal is used to “access the server 104 to enable a user to enter product preferences for a specific product which will be store[d] in database 108 for future use.” *Id.* at 2:67–3:2. After identifying the user, “[t]he server 104 will formulate the proper mix of elements, e.g., ingredients, for the product according to the user's product preferences. The server 104 will transmit the proper formulation to the terminal 102 which will communicate the formulation to the product 110.” *Id.* at 3:2–7. Figure 1:

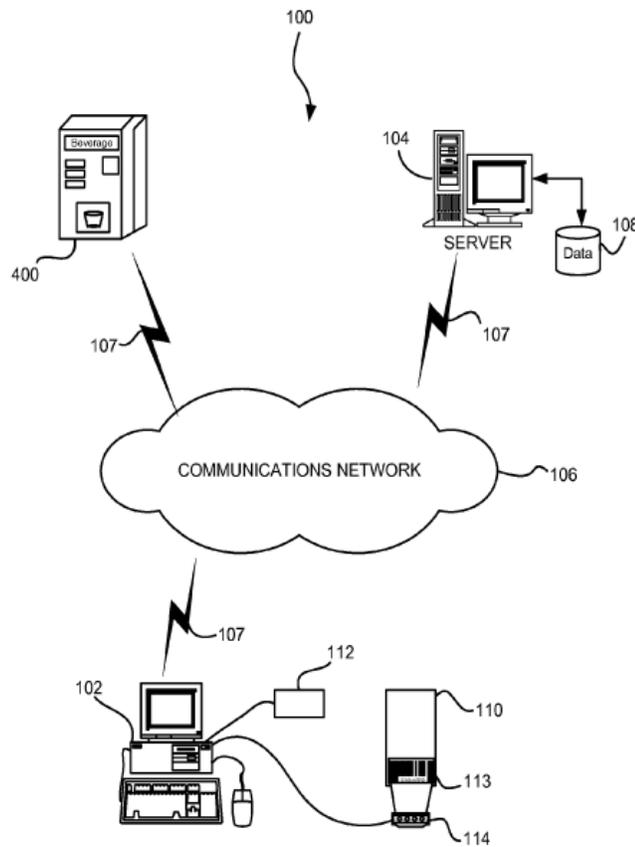


FIG. 1

Id. at Fig. 1. A user may be identified to the system by different mechanisms, including a code embedded in an RFID card, *id.* at 6:7–14, or an Internet cookie stored on a terminal, *id.* at 5:24–29. According to certain embodiments, a beverage dispenser may communicate with the server to receive the user preferences and mix a beverage according to those preferences. *Id.* at 7:17–8:49 & Fig. 5. The preferences may be determined by the user filling out a questionnaire, software processing the responses to identify preferences, and storing the preferences in a database based on the user's responses to the questions. *Id.* at 8:10–24.

B. Exemplary claims 1 and 9

Claims 1 and 9 are the independent claims challenged in this petition.

Claims 2–8 depend from claim 1, and claims 11–12 depend from claim 9:

A system for customizing a product according to a user's preferences comprising:

a remote server including a database configured to store a product preference of a

predetermined product for at least one user; and

a first communication module within the product and in communication with the remote server;

wherein the remote server is configured to receive the identity of the predetermined product and the identity of the at least one user, retrieve the product preference from the database based on the identity of the predetermined product and the identity of the least one user and transmit the product preference to the first communication module.

Id. at 8:66–9:11. Claim 9:

9. A product to be consumed by a user comprising:

a housing containing at least one element to produce a final product;

a controller disposed with the housing and configured to control an amount of the at least one element disposed within the housing;

a communication module disposed within the housing and configured to transmit an identifier of the product to a server over a network, receive product preferences of the user from the server based

on the identifier and communicate to the controller the received product preferences of the user for formulating the final product; and
an exit port disposed on the housing for dispensing the final product to the end user.

C. Level of Ordinary Skill in the Art

A person of ordinary skill in the art (POSA) for the '090 Patent would have an undergraduate degree in electrical engineering, computer science or a related subject, or at least two years of experience working with networked systems, or the equivalent. Eldering Decl. ¶ 22 (EX1005).

D. Prosecution History

The '090 Patent is a continuation of application serial number 12/854,451, filed August 11, 2010, now Patent 8,417,377 (the “ '377 Patent”), which is a continuation patent application serial number 11/471,323, filed June 20, 2006, now U.S. Patent 7,899,713 (the “ '713 Patent”).

The claims of the application for the '713 Patent were rejected as obvious over Pre-Grant Publication 2007/0148293 to Lindsay in view in view of Pre-Grant Publication 2007/0294129 to Froseth. Applicant attempted to distinguish *Lindsay* by arguing that “*Lindsay* does not even remotely suggest sending any information to a product over a network.” They also argued *Lindsay* shows a communication module within the product, i.e., not having a communication module receive

product preferences. No argument was made against *Froseth*. The claims were then allowed based on applicant's arguments.

The '377 Patent was rejected as anticipated by *Lahteenmaki* U.S. Patent 7,295,889, and for claims with the controller and valve, in view of Patent 6,206,022 to Tsai. *Lahteenmaki* shows a medicine and nutrition dispenser which has a user interface for sending a user ID and other user information to a remote server, and receiving back a personified dose of nutrition and/or medication. A modem or network card 308 is shown in nutrition dispenser 100 for communicating with the remote server. However, no product identifier is sent to the server. After argument and amendment, a final rejection was issued over *Lahteenmaki* in view of U.S. Patent 7,099,740 to Bartholomew. *Bartholomew* shows a nail polish dispenses with different colors. A computer, locally or over the internet, is used by the user to select color choices, and those are transmitted to the dispenser. A user profile can be established and accessed with a password. No product identifier is sent to the computer. The claims were amended to require transmission of an identifier of the product to a server and allowed.

The '090 Patent application was rejected as anticipated by *Bartholomew*. The claims were amended to add that the communication module was "within the product" in claim 9 (issued claim 1), and "within the housing" in claim 17 (issued

claim 9), and the controller was said to be “within the housing.” The claims were then allowed based on the applicant’s arguments.

VII. CLAIM CONSTRUCTION

Claim terms of an expired patent in *inter partes* review are normally given the “broadest reasonable construction in light of the specification.” *See* 37 C.F.R. § 42.100(b); *see also In re Cuozzo Speed Techs., LLC*, 778 F.3d 1271, 1279–81 (Fed. Cir. 2015), *cert. granted*, US No. 15–446, 1/15/2016.

The following discussion proposes constructions and support for those constructions. Any claim terms not included in the following discussion should be given their ordinary meaning in light of the specification, as commonly understood by those of ordinary skill in the art. The broadest reasonable interpretation of a claim term may be the same as or broader than the construction under the *Phillips* standard, but it may not be narrower. *See Facebook, Inc. v. Pramatus AV LLC*, 2014 U.S. App. LEXIS 17678, *11 (Fed. Cir. 2014). The constructions proposed below should be applied regardless of whether the terms are interpreted under the *Phillips* standard or the “broadest reasonable interpretation” standard.

A. “within the product”

Claim 1 recites “a first communication module within the product.” The communication module is shown as both 112 in Figure 1 and 214 in Figure 2. Patent ’090 (EX1001) at Figs. 1, 2. The term “product” is shown as 110 in Figures

1 and 2. The term product is also used to refer to the beverage or other liquid product mixed by the product device. *See, e.g., id.* at 1:21–34. The term “within” clearly refers to the former. Figures 2 and 4 show the communication module (214, 414) inside a housing (202, 402) for a “product” 110 or “beverage dispenser 400.” Since Fig. 1 shows the “communication module 112 outside of product 110, but connected to it at the same location on the Internet (network 106), it is clear that “within the product” means within the consumer system for customizing the product. At the very least, Patent Owner has shown in figure 1 that it is equivalent or obvious to place the communication module outside, but connected to, the actual mixing device. *Id.* at 110, 113, 114 in Fig. 1.

Accordingly, Petitioner submits that the construction of “within the product” is *within the consumer system for customizing the product*. The proposed construction is consistent with the specification and the ordinary use of the term “within the product.” *See* Eldering Decl. ¶¶23–27 (EX1005).

B. “communication module”

This term is described in claim 9 as “configured to” with functional language:

configured to transmit an identifier of the product to a server over a network, receive product preferences of the user from the server based on the identifier and

communicate to the controller the received product preferences of the user for formulating the final product.

'090 Patent (EX1001) at Cl. 9. In the event this is considered “means plus function” language, the corresponding structure in the '090 patent is communication module 112 in Fig. 1 as described in 3:7–11 and 5:12–18, 56–62, communication module 214 in Fig. 2 as described in 4:40–5:24 and 5:63–67, communication module 414 in Fig. 4 as described in 6:59–7:12 and 7:58–8:56. *See* Eldering Decl. ¶¶ 28–31 (EX1005).

VIII. SPECIFIC GROUNDS FOR PETITION

Pursuant to Rule 42.104(b)(4)-(5), the following sections (as confirmed in the Eldering Decl. ¶¶ 32–52 (EX1005)) demonstrate in detail how the prior art discloses, teaches, and/or suggests each and every limitation of claims 1–9 and 11–12 of the '090 Patent, and how these claims were therefore anticipated and/or obvious in view of the prior art.

A. Ground 1: Claim 1–7 obvious over *Gutwein* (EX1006) in view of *Lahteenmaki* (EX1016)

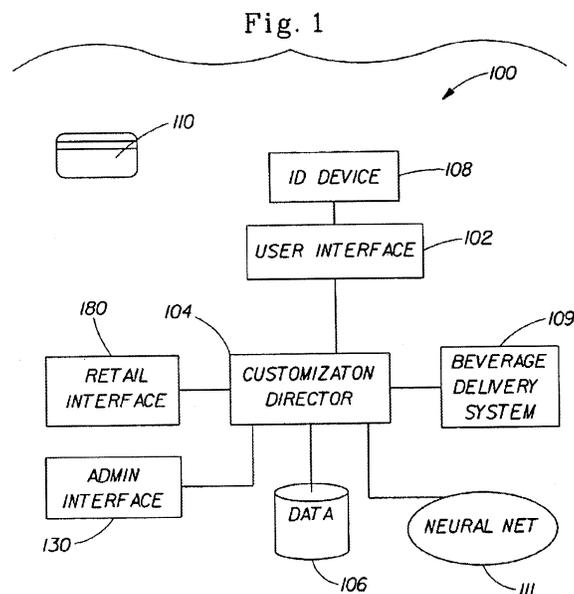
1. *Gutwein*

Gutwein (EX1006) discloses:

System for making and delivering a customized beverage product to a consumer including the steps of obtaining consumer preference data; determining a consumer beverage formulation corresponding to the

consumer preference data; and providing the consumer a customized beverage corresponding to the customized beverage formulation . . .

Id. at Abstract. Referring to Fig. 1, copied below, a user interface 102 receives a user ID from a user ID device 108, such as from an RFID card. *Id.* at 22:18–32. The ID is communicated to a customization director 104, which stores user preferences associated with the ID, and presents them to the user interface. *Id.* at 27:18–49. The user selects a preference, and the customization director provides commands to a beverage delivery system 109 to mix the drink. *Id.* The customization director is described as either being local, or being accessed over the Internet. *Id.* at 16:11–16. The user preferences are established by answering questions. *Id.* at 22:18–32.



2. *Lahteenmaki*

Lahteenmaki (EX1016) is the PCT equivalent of the *Lahteenmaki* U.S. patent that was cited in the file history, though the PCT was not cited in the file history as having been considered. *Lahteenmaki* shows a medicine and nutrition dispenser which has a user interface for sending a user ID and other user information to a remote server, and receiving back a “personified dose of nutrition and/or medication.” *Id.* at 20:1–2. Figure 3 shows a communication module in the form of a modem or network card 308, which is shown within nutrition dispenser 100, for communicating with the remote server information system 302. *Id.* at 20:4–6. Figure 3 is copied below:

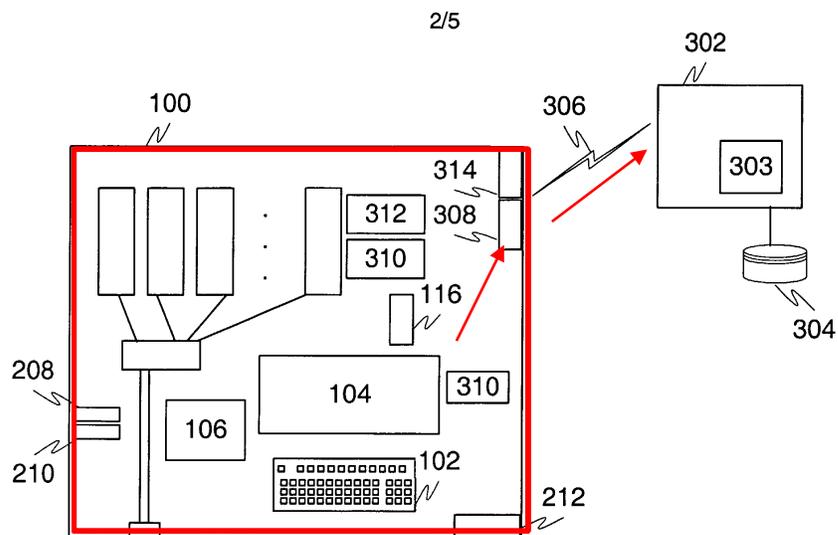


FIG. 3

3. Obviousness Rationale

Gutwein (EX1006) discloses that the beverage delivery system 109 is “in communication with the customization director 104.” *Id.* at 15:61–62. For details of how to implement the communication, one of skill in the art would look to *Lahteenmaki* (EX1016), the equivalent of which was cited against the '090 Patent. *Lahteenmaki* describes a dispenser which sends a user ID over the Internet and receives back custom information on what to dispense, and is thus similar to *Gutwein*. Even if the details of where precisely to locate a communication module are arguably not explicit in *Gutwein*, there is motivation to look for similar product descriptions such as *Lahteenmaki*, which clarify where they may be efficiently located. See Eldering Decl. ¶¶ 32–36 (EX1005). Thus, it would have been obvious to one of ordinary skill in the art to combine *Gutwein* (EX1006) with *Lahteenmaki* (EX1016) to fully describe and implement an efficient communication module.

4. Detailed claim charts of citations to *Gutwein* and *Lahteenmaki*

a) Limitation 1.1—remote server with database storing end user product preference.

Gutwein (EX1006) discloses a customization director 104 that can be located at a remote server, and stores a user profile that includes user product references in a database 106.

b) Limitation 1.2—communication module within product to communicate with remote server.

The term “module” is commonly used to describe a portion of an apparatus or a portion of code, and nothing in the ’090 Patent gives any other description of “module.” The only non-functional descriptions are “communication module (e.g., a WiFiTM access point, BluetoothTM module, infrared port, RFID reader, etc.)” *Id.* at 2:42–44, and “The communication module 112 may include a hardware or wireless interface to interface with the product 110, as will be described in more detail below.” *Id.* at 3:9–11. The ’090 Patent describes the communication module as (1) communicating with the remote server, (2) with the user’s RFID or other card, and (3) with the controller that controls the valves for the product mix. Only function (1) is set forth in claim 1.

Gutwein discloses that the beverage delivery system 109 is “in communication with the customization director 104.” *Id.* at 15:61–62. To be sure, the word “module” is not used in *Gutwein*, but one of skill in the art would recognize that “communication” means there must be a device or set of devices—a module—in the beverage delivery system to handle the described communications. *Gutwein* describes communication with an RFID card. *Id.* at 13:60–65. Thus, a communications module is inherent or obvious from the disclosure of *Gutwein*. But even if such inherency or obviousness were lacking, it would be obvious to

look to *Lahteenmaki* (EX1016) to include an effective communication module. *Lahteenmaki* shows a communication module in the form of a modem or network card 308, which is shown within nutrition dispenser 100, for communicating with the remote server information system *Id.* at 302. *Id.* at 20:4–6. Thus, it would be obvious, for the reasons outlined above and to effect the communications disclosed in *Gutwein*, to use the teachings of *Lahteenmaki* to form a modem or network card within the product for communicating with a remote server information system.

c) *Limitation 1.3—remote server receives product and user identities, retrieves and transmits product preference.*

Gutwein (EX1006) discloses that the customization director receives a user identification number and product selection. *Id.* at 27:18–49. The customization director retrieves the user profile, and determines the product characteristics in the selection. *Id.* Those characteristics are used to generate commands for mixing the product, which are transmitted by the customization director back to the beverage delivery system. *Id.* See Eldering Decl. ¶¶ 37–40 (EX1005).

Claim 1	<i>Gutwein</i> (EX1006) and <i>Lahteenmaki</i> (EX1016) (emphases added)
[1.preamble] A system for customizing a product according to a user's preferences comprising:	<i>Gutwein</i> : “Method for delivering a customized beverage product to an individual including the steps of obtaining consumer preference data; ...” <i>Id.</i> at Abstract.
[1.1] a remote	“The customization director 104 may be integrated into a

<p>server including a database configured to store a product preference of a predetermined product for at last one user; and</p>	<p>beverage dispensing device, or in an alternatively embodiment might be hosted or housed on a remote device. Remote devices may include other consumer appliances, a personal computer, or an external server located somewhere on the Internet.” <i>Id.</i> at 16:11–16.</p> <p>“The customization director 104 is also connected to the data input device 512, data display device 510, the beverage delivery system 109 and the data storage device 106. ...The data storage device 106 may contain data of beverage formulations, user identification, user preferences, and the like.” <i>Id.</i> at 5:58–65.</p> <p>“In such systems, for example, network 507 could employ a single data storage device 106 that may, or may not, be located in physical proximity to the system component at which the user is currently located.” <i>Id.</i> at 6:14–18.</p>
<p>[1.2] a first communication module within the product and in communication with the remote server;</p>	<p>“beverage delivery system 109 [product] in communication with the customization director 104 [remote server].” <i>Id.</i> at 15:61–62</p> <p>“Suitable ways of identifying the consumer include, but are not limited to, personal identification number (PIN) either communicated to the system via keypad, touchscreen, matrix card, retinal scanner, thumbprint reader, or radio frequency identification tags (RFID).” <i>Id.</i> at 13:60–65.</p> <p><i>Lahteenmaki</i>: “For realizing the telecommunications connection 306, the nutrition dispenser 100 can be provided with appropriate equipment 308 [communication module] known for one skilled in the art, such as a modem or network card and appropriate software.” <i>Id.</i> at 20:4–6.</p>
<p>[1.3] wherein the remote server is configured to receive the identity of the predetermined product and the</p>	<p><i>Gutwein</i>: “In this example, The consumer, Frank, approaches the user interface and slides his beverage card through the card reader which is part of the user interface. ...Frank's beverage card contains a unique identification number [identity of user] that is utilized by the customization director to retrieve Frank's profile. ...The customization director transmits the identification number</p>

<p>identity of the at least one user, retrieve the product preference from the database based on the identity of the predetermined product and the identity of the least one user and transmit the product preference to the first communication module.</p>	<p>and password to the data store to determine if they matched an existing record. Finding a match, the customization director retrieves Franks customization profile and analyzes the profile to determine the beverage options to display to Frank. The customization director displays numerous customization options to Frank such as coffee been type, temperature, strength, finishing options as well as a few express options such as your last coffee purchase, store's special pick and beverage of the month. Frank then inputs the selection [identity of product] of the special of the month. The customization director receives Frank's selection and determines the corresponding commands to send [transmit product preference] to the beverage delivery system [includes communication module].” <i>Id.</i> at 27:18–49.</p> <p>“Consumer establishes a personal profile over the Internet or at the system and answers a few simple questions around beverage and related preferences. These questions help deliver the product with the right profile, and may allow the system to make suggestion and/or formulation modifications appropriate for the user during the instant or future transaction. The profile is maintained in a central database accessed by the system via wireless, local area network (LAN) or telephony communication devices wherever the consumer is. The consumer is recognized via a personal identification number (PIN) stored in radio frequency identification tags RFID, matrix cards, or their credit card. Consumer can get their own designed drink or choose from a variety of drinks that are close to their prescribed beverage in personal acceptance.” <i>Id.</i> at 22:18–32.</p>
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Claim 2. Claim 2 further sets forth that the transmitted preference is a “formulation” which includes “a predetermined amount” of an element. *Gutwein* (EX1006) discloses in the quotes below transmitting beverage “formulations” that

specify the “quantity” and “ratio” of different elements (types of coffee, water, etc.).

Dependent Claim 2	<i>Gutwein</i> (EX1006) and <i>Lahteenmaki</i> (EX1016) (emphases added)
<p>2. The system as in claim 1, wherein the transmitted product preference is a formulation including a predetermined amount of at least one element.</p>	<p><i>See</i> Claim 1, <i>supra</i>.</p> <p><i>Gutwein</i>: “Alternatively, the predetermined beverage selection icons and labels 708 may correspond to beverage formulations saved by the current user, The saved beverage formulation may be located on and accessed from the user identification card, may be stored in a local data storage device, or may be located on a remote data storage device that is accessed [transmitted] by system 100.” <i>Id.</i> at 7:21–28.</p> <p>“More particularly, the present invention is directed to a system in which information is collected from a consumer regarding certain type, quantity [predetermined amount], taste and strength preferences of the consumer.” <i>Id.</i> at 1:20–23.</p> <p>“The ratio of water to extract [amount] controls the resultant strength of the brew.” <i>Id.</i> at 26:67–27:1.</p>

Claim 3. Claim 3 further sets forth that the “element” is a fluid, solid or combination. *Gutwein* (EX 1006) describes all of these, a combination of coffee (solid) with water and cream (liquids), as shown in the below quotes.

Dependent Claim 3	<i>Gutwein</i> (EX1006) and <i>Lahteenmaki</i> (EX1016) (emphases added)
<p>3. The system as in claim 2, wherein the at least one element is a fluid, a solid or any combination thereof.</p>	<p><i>See</i> Claim 2, <i>supra</i>.</p> <p><i>Gutwein</i>: “Customization options include but are not limited to strength, flavor, type of bean (coffee) [solid], temperature, and finishing options (cream, milk, [fluid])</p>

	etc.).” <i>Id.</i> at 20:54–56.
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Claim 4. Claim 4 further sets forth that the server presents a question about the product to the user at the terminal, and determines the formulation based on the response. *Gutwein* (EX1006) uses user questions to develop a user profile, then uses that profile to determine the formulation, as shown in the quotes below.

Dependent Claim 4	<i>Gutwein</i> (EX1006) and <i>Lahteenmaki</i> (EX1016) (emphases added)
4. The system as in claim 2, wherein the server is configured to communicate at least one question to a terminal of the at least one user for prompting the user with the at least one question relating to the predetermined product and the server is further configured for determining the formulation based on at least one response of the user.	<p><i>See</i> Claim 2, <i>supra</i>.</p> <p><i>Gutwein</i>: “Consumer establishes a personal profile over the Internet or at the system and answers a few simple questions around beverage and related preferences. These questions help deliver the product with the right profile, ...” 2 <i>Id.</i> at 2:18–21.</p> <p>“The response to these questions are analyzed by the customization director to formulate and deliver the product with the right profile.” <i>Id.</i> at 22:42–44.</p> <p>“In the illustrated embodiment, the user interface 104 might comprise a computer [terminal] connected to the Internet through a communication link 120 ...” <i>Id.</i> at 16:32–34.</p>

Claim 5. Claim 5 further sets forth that a user identity code is cross-referenced to the formulation. *Gutwein* (EX1006) associates a user record, which includes formulations, to a user identification, as evidenced by the quotes below.

Dependent Claim 5	<i>Gutwein</i> (EX1006) and <i>Lahteenmaki</i> (EX1016) (emphases added)
5. The system as in	<i>See</i> Claim 4, <i>supra</i> .

<p>claim 4, wherein the server is further configured for issuing an identity code for the user and cross-referencing the identity code to the formulation.</p>	<p><i>Gutwein</i>: “The registration option contains various input areas for the consumer to enter his/her preference data. The customization director then creates a new record for the consumer in the data store and associates [cross-referencing] the record [formulation] with a new user identification (number, password, and the like). This new identification is then displayed to the user and preferably is sent to the user through an additional means. In this example, Alice chooses the formulation options and is asked to select the type of bean.” <i>Id.</i> at 27:65–28:6.</p>
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Claim 6. Claim 6 further sets forth that the server stores the identity code and formulation. *Gutwein* shows that the customization director, which can be at a remote server, stores customization options (formulations) in a data store which include the user identifier. The record includes the formulations. See quoted sections below.

Dependent Claim 6	<i>Gutwein</i> (EX1006) and <i>Lahteenmaki</i> (EX1016) (emphases added)
<p>6. The system as in claim 5, wherein the server is configured for storing the identity code and cross-referenced formulation in the database.</p>	<p><i>See</i> Claim 5, <i>supra</i>.</p> <p><i>Gutwein</i>: “In addition, the customization director preferably stores the selected customization options [formulation] in the data store [storing] in a record corresponding to [cross-referenced] the consumer identifier [identity code]. <i>Id.</i> at 20:66–21:2.</p> <p>“In one embodiment, the consumer can manually create and save customization options as express formulations to save time and reduce formulation errors for future beverage deliveries.” <i>Id.</i> at 20:60–63.</p>

Claim 7. Claim 7 further sets forth that the terminal transmits the identity code to the server. *Gutwein* (EX1006) describes a card reader which obtains the user identification number and communicates it to the system. Since the “system” includes the customization module which can be at a remote server, transmission to the server is inherent or obvious, since there is no other way for the identification to get from the card reader to the customization module as described. *See* Eldering Decl. ¶ 46 (EX1005).

Dependent Claim 7	<i>Gutwein</i> (EX1006) and <i>Lahteenmaki</i> (EX1016) (emphases added)
<p>7. The system as in claim 6, wherein the terminal is configured to transmit the identity code to the server.</p>	<p><i>See</i> Claim 6, <i>supra</i>.</p> <p><i>Gutwein</i>: “The consumer, Frank, approaches the user interface and slides his beverage card through the card reader which is part of the user interface. ...Frank's beverage card contains a unique identification number [identity of user] that is utilized [transmission is inherent] by the customization director to retrieve Frank's profile.” <i>Id.</i> at 27:18–27.</p> <p>“Suitable ways of identifying the applicable consumer preferences include, but are not limited to, personal identification number (PIN), username, pass code, and the like which can be communicated [transmit] to the system via an input device or process, such as a keypad, touch screen, matrix card, retinal scanner, thumbprint reader, magnetic card readers, bar codes, or radio frequency identification tags (RFID), and the like.” <i>Id.</i> at 14:4–11.</p>

B. Ground 2: Claim 8 is obvious over *Gutwein* in view of *Lahteenmaki* and *Dodson*

Claim 8 depends on claim 7 and further sets forth that the identity code is stored as an Internet cookie on the terminal. The use of cookies to identify users was well known at the priority date of the '090 Patent. *Gutwein* (EX1006) does not describe a cookie, but *Dodson* (EX1007) describes a cookie storing a unique identification number of a user at a remote facility connected to a fuel dispensing station. A direct connection is described between the fuel dispenser and the remote facility, but it would be obvious to have the cookie at the fuel dispenser if the client computer were located there. It would be obvious to combine *Gutwein* and *Dodson* because both relate to identifying customers to a remote server, and both deal with dispensing liquids. One of skill in the art looking would understand that an identification read from an RFID card could be stored locally, and would look to examples like *Dodson*. Since the ID content of the RFID card of *Gutwein* and the ID content of the *Dodson* cookie are used for the same purpose, it would be obvious to look to *Dodson* for an alternative. *Dodson*, like *Gutwein*, shows sending the ID to a remote website to find a corresponding user profile. See Eldering Decl. ¶ 47 (EX1005).

Claim 8	<i>Gutwein</i> (EX1006), <i>Lahteenmaki</i> (EX1016), and <i>Dodson</i> (EX1007) (emphases added)
8. The system as in claim 7, wherein the identity	<i>See</i> Claim 1, <i>supra</i> . <i>Dodson</i> at Abstract (“Regarding a customer at one of the fuel dispenser locations, a user identification such as credit card account information is sent to the remote facility. The remote facility then

<p>code is stored as an Internet cookie on the terminal.</p>	<p>establishes an access connection with a network node such as a server, on behalf of the customer. The network communications follow a client–server session format and are correlated to the user ID. The remote facility [terminal] sends a cookie element to the server that was previously set by the server during an initial Web site visit. The cookie contains state information such as a unique identification number [identity code] generated by the server. The remote facility associates the unique identification number with the relevant user ID. The server uses the received cookie element to identify the corresponding user profile record maintained at the server side. The server generates customized content from the retrieved user profile record and sends it to the customer.”).</p>
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C. Ground 3: Claims 9 and 11–12 are obvious over *Gutwein* in view of *Lahteenmaki* and *Anson*

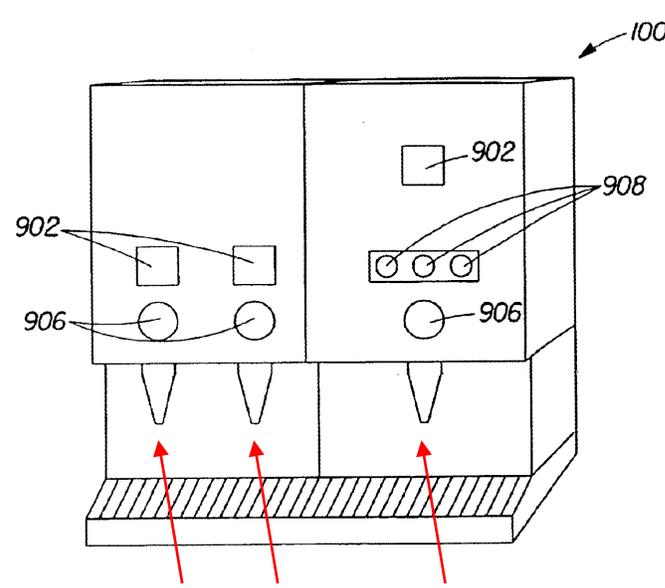
Claim 9 is similar to claim 1, except it is a product claim instead of a system claim, and additionally sets forth a housing, a controller for dispensing the element (liquid), and an exit port for the element. *Gutwein* (EX1006) describes a housing for beverage system 100. System 100 in Fig. 1 includes the customization module, but as pointed out above, *Gutwein* says the customization module could be located on a remote server.

Gutwein does not expressly recite, but rather assumes a controller for controlling an amount of coffee or liquid. *Anson* (EX1008) specifically describes such a controller. It would be obvious to combine *Anson* with *Gutwein* and *Lahteenmaki* (EX1016) because *Anson* also relates to coffee makers, like *Gutwein*, and describes a controller and valve to implement the recited variations in

Gutwein. Also, *Anson* is cited in *Gutwein* (EX1006) and specifically referenced: “For examples of representative instantaneous hot water beverage brewing apparatus, see ... U.S. Pat. No. 4,920,871 to *Anson*” *Id.* at 3:20–23. The logical, obvious place for the controller would be in the housing for beverage system 100. See Eldering Decl. ¶ 48–50 (EX1005).

The exit ports are shown, although unlabeled, in Fig. 9 of *Gutwein* (below).

Claim 9	<i>Gutwein</i> (EX1006), <i>Lahteenmaki</i> (EX1016), and <i>Anson</i> (EX1008) (emphases added)
[1.preamble] 9. A product to be consumed by a user comprising:	<i>Gutwein</i> : “Method for delivering a customized beverage product to an individual including the steps of obtaining consumer preference data ; ...” <i>Id.</i> at Abstract
[1.1] a housing containing at least one element to produce a final product;	“The customizable beverage system 100 is contained within housing 608 .” <i>Id.</i> at 6:22–24.
[1.2] a controller disposed with the housing and configured to control an amount of the at least one element disposed within the housing;	<i>Anson</i> : “ control means [controller] operatively associated with said valve means for allowing batches of cold water of predetermined size [amount] to be introduced into said basin.” <i>Anson</i> claim 7.
[1.3] a communication module disposed within the housing and configured to transmit an identifier of the	<i>Gutwein</i> : “beverage delivery system 109 [product] in communication with the customization director 104 [remote server].” <i>Id.</i> at 15:61–62 “The customization director 104 may be integrated into a beverage dispensing device, or in an alternatively embodiment might be hosted or housed on a remote device .”

<p>product to a server over a network, receive product preferences of the user from the server based on the identifier and communicate to the controller the received product preferences of the user for formulating the final product; and</p>	<p>Remote devices may include other consumer appliances, a personal computer, or an external server located somewhere on the Internet.” <i>Id.</i> at 16:11–16.</p> <p>“Frank then inputs the selection [identifier of the product] of the special of the month. The customization director receives Frank's selection and determines the corresponding commands to send [receive product preference] to the beverage delivery system [includes communication module and amount controller].” <i>Id.</i> at 27:18–49.</p>
<p>[1.4] an exit port disposed on the housing for dispensing the final product to the end user.</p>	<p><i>Gutwein:</i> The unlabeled 3 triangular shapes of Fig. 9 are exit ports:</p>  <p style="text-align: center;">Fig. 9</p>

Claim 11. Claim 11 depends from claim 9 and further sets forth that the element is a fluid. This is clearly shown by *Gutwein* as described under claim 3 above and in the chart below.

Dependent Claim 11	<i>Gutwein</i> (EX1006) (emphasis added).
11. The product as in claim 9, wherein the at least one element is a fluid , a solid or any combination thereof.	<i>Gutwein</i> : “Method for delivering a customized beverage [fluid] product to an individual ...” <i>Id.</i> at Abstract.

Claim 12. Claim 12 depends from claim 9 and further sets forth that the communication module receives the preferences from the server. This is the counterpart to claim 1 element 1.3 discussed above, where the server transmits the preferences to the communication module. The transmission inherently discloses the reception, and is shown as set forth with respect to claim 1 above. Also, the reception is clearly set forth in the quoted sections of *Gutwein* below. The communication via “hardwired or wired” covers every type of communication and is not a limitation.

Dependent Claim 12	<i>Gutwein</i> (EX1006)
12. The product as in claim 9, wherein the communication module is configured to receive the product preferences of the user via	<p><i>Gutwein</i>: “Consumer establishes a personal profile over the Internet or at the system and answers a few simple questions around preference.” <i>Id.</i> at 25:61–63.</p> <p>“The customization director receives Frank's selection and determines the corresponding commands to send [transmit product preference] to the beverage delivery system [includes communication module].” <i>Id.</i> at 27:43–49.</p> <p>“The beverage delivery system receives the commands [product</p>

hardwired or wireless communications from the server over the network.	preferences] and delivers the selected beverage to Frank.” <i>Id.</i> at 27:46–48. “As shown here, a server node 302 is interconnected with a plurality of client nodes 314 using a connection 316 such as a token ring, Ethernet, telephone modem connection, radio or microwave connection, parallel cables, serial cables, telephone lines, universal serial bus "USB", Firewire, Bluetooth, fiber optics, infrared "IR", radio frequency "RF", or other wireless communications, and the like, or combinations thereof.” <i>Id.</i> at 20:16–23.
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D. Ground 4: Claims 1–7, 9, 11 and 12 are Obvious over *Zimmerman* in view of *Crisp*

1. *Zimmerman*

U.S. Patent No. 7,993,968 to *Zimmerman* (EX1009), a patent filed for and then assigned to the company Koninklijke Philips Electronics N.V., is titled “Token-based Personalization of Smart Appliance.” *Id.* at 1. Filed in June of 2000, it discloses a system for personalizing a consumer appliance by using a local electronic pointer to link a remote electronic profile from over a network back to a customizable home appliance. *Id.* at Abstract. While *Zimmerman* discloses using physical Radio Frequency Identification Device (RFID) tokens associated with users, it also repeatedly discloses various embodiments that do not require a physical token, and allow for an electronic pointer or “relay URL” that is either entered into or embedded within the appliances.

It discloses the appliances can be any customizable devices, such as home entertainment appliances with personalized menus, but can also be kitchen appliances, telephones, televisions, computers, kitchen appliances, PDAs, movie boxes in hotel rooms, VCRs, “**or any device that can be customized.**” *Id.* at 8:10–14.

2. *Crisp*

U.S. Patent 6,751,525 to Crisp, III (*Crisp*) (EX1010), a patent filed for and then assigned to the company Beverage Works, Inc., is titled “Beverage Distribution and Dispensing System and Method.” Filed in 2000 and granted in June 2004, it discloses “[A] beverage distribution and dispensing system and method for distributing drinks such as soda, juice and punch, to a home or business.” *Id.* at Abstract. *Crisp* teaches a complete system for beverage dispensing in the home that communicates via modem or dial-up connection with

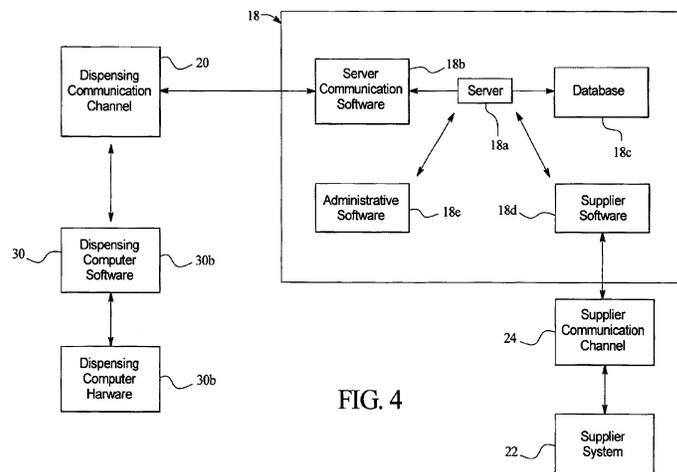


FIG. 4

a remote central server containing a database of user information. *See, e.g.*, Fig 4; 9:14–17.

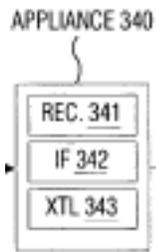
Crisp discloses a dispensing unit in a home smart appliance, containing a modem (dispensing communication channel 20, which can be many types of modular modems), which mixes and dispenses drinks, *see* Fig. 2, according to information provided by a server 18a with a database 18c, as shown in Fig. 4. *Crisp* discloses entering, keeping, and maintaining user registration data remotely, such as pre-selected drink requirements, such as CO₂, syrup, or concentrate.

3. Obviousness Rationale

Zimmerman (EX1009) is arguably imprecise in describing the communication module as within the product, though *Zimmerman* includes Figure 3, and teaches a product that “communicates” with a “remote” profile “server.” *Id.* at 2:47–49, 3:18–19, 7:28–37. 9:41–65. *Zimmerman* describes a process that requires a communications module associated with the product, such as in Figure 4, where the “appliance requests profile url from relay server” in the S15 step.

To the extent that it can be argued that the evidence is insufficient to show that *Zimmerman*’s communications module is “within the product,” a person of ordinary skill in the art would have found such a configuration was an obvious design choice, as Fig. 3 of *Zimmerman* teaches an appliance 340 able to communicate with and interrogate remote servers and send tokens and receive

profile data, Fig. 2 and Fig. 3 show such devices connected directly to the Internet or other public network and communicating therewith, and *Zimmerman*'s Figure 3



shows three internal systems in appliance 340 identified by commonly used short abbreviations for communications modules, as REC 341 [i.e., receiver], IF 342 [i.e., interface], and XTL 343 [i.e., transmitter] elements. *See* *Eldering* Dec. ¶ 58 (EX1005).

As *Zimmerman* teaches the product **communicates** with a **remote** profile server using a “profile URL.” *Id.* at at 2:47–49, 3:18–19, 7:28–37, 9:41–65). And as *Zimmerman* describes a process in Fig. 4, where the “appliance requests profile URL from relay server” in the S15 step, this strongly suggests *Zimmerman* itself expected an internal receiver/transmitter within the appliance. Thus, it would have been obvious to one of ordinary skill that such communications modules as disclosed in *Zimmerman* would be internal to the appliances and accomplish such functions.

To the extent that it is argued that it would not have been obvious to one of ordinary skill in the art to configure the communication module as within the appliance, *Crisp* (EX1010) teaches such smart appliances including communications modules within the devices.

Zimmerman (EX1009) is generally directed to customizing a generic product or home appliance, and states the appliance can be any customizable device, such

as home entertainment appliances with personalized menus, but can also be kitchen appliances, telephones, televisions, computers, kitchen appliances, PDAs, movie boxes in hotel rooms, VCRs, “**or any device that can be customized.**” *Id.* at 8:10–14 (emphasis added). *Crisp* (EX1010) discloses just such a customizable smart appliance for mixing and distributing drinks within the home or a business. *Id.* at Abstract. It would have been obvious to apply the remote profile customization to the customizable smart appliance of *Crisp*. See Eldering Decl. ¶¶ 53–62 (EX1005).

4. Detailed claim charts of citations to *Zimmerman* and *Crisp*

The claim charts below further demonstrate and supplement how each claim limitation of claims 1–8, 9 and 11–12 are met by U.S. Patent No. 7,993,968 to *Zimmerman* (EX1009), further in view of U.S. Patent 6,986,263 to *Crisp*, III (*Crisp*) (EX1010). See Eldering Decl. ¶¶ 53–86 (EX1005).

a. Preamble

Zimmerman (EX1009) is directed to “Token-based personalization [customizing] of smart appliances.” *Id.* at Title. *Zimmerman* describes “Information about the user's preferences and other data can be uploaded into the computer 240 via removable media such as a memory card or disk 220.” *Id.* at 6:29–32. *Crisp* (EX1010) describes “A system for customizing a product according to a user's preferences.” *id.* at Abstract, that “is adapted to dispense at

least one, and preferably a plurality of beverages pre-selected by the user.” *Id.* at 4:14–15.

b. Limitation 1.1—remote server with database storing end user product preference

Zimmerman (EX1009) describes a “a remote server” (a “profile server”), “including a database,” (i.e., “The invention contemplates a private profile database,” *Id.* at 11:15, and describes that database is “configured to store a product preference of a predetermined product for at last one user.” *Id.* at 12:10–20. *Crisp* (EX1010) has a similar disclosure as set forth in the claim chart.

c. Limitation 1.2—communication module within product to communicate with remote server.

Zimmerman (EX1009) discloses in Fig. 3, appliance 340, which shows REC 341 [i.e., receiver], IF 342 [i.e., interface], and XTL 343 [i.e., transmitter] elements. This is a communications module. Also, *Crisp* (EX1010) discloses communications channel 20, *id.* at 16:6–17 with “a modem (not shown) which enables the dispensing computer 30 to exchange data or directly communicate with the order processing system 20 via communication channel 20.”

d. Limitation 1.3—remote server receives product and user identities, retrieves and transmits product preference.

As set forth in further detail in the claim chart, *Zimmerman* (EX1010) discloses the remote server receiving the product ID: *See id.* at 7:37 (“the appliance

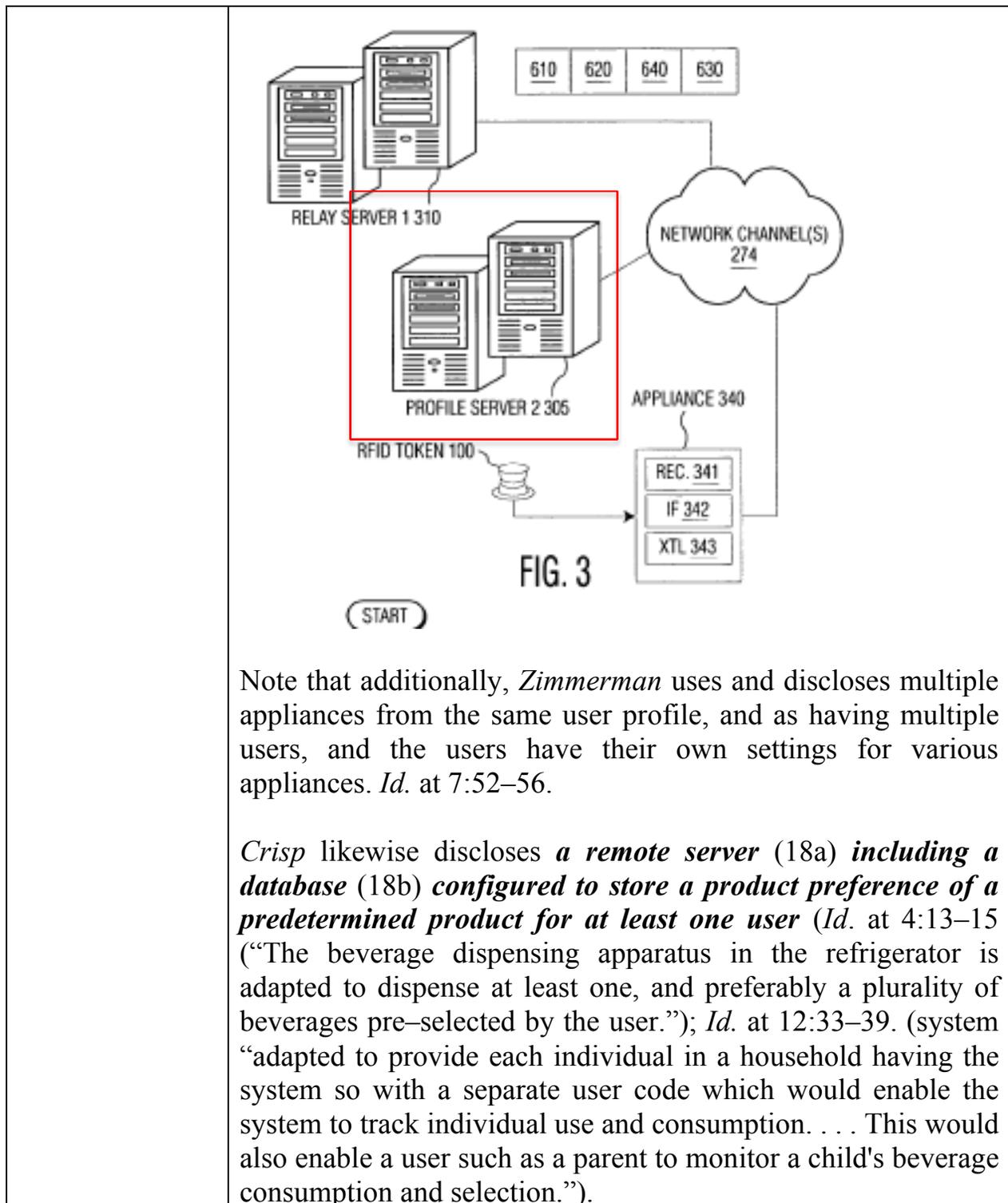
340 may indicate to the profile server 305 the type of data required or the nature of the appliance [product ID], and the profile server 305 will transmit the relevant data.”). *Zimmerman* also sets forth the remote server receiving the user identity, *Id.* at 9:63–10:2 (“A profile server process could use this information to transmit only the relevant data for the type of appliance. In addition, the user(s) may be prompted to enter a PIN number [user identity] or some other authentication device to allow the profile to be used. The user may enter the authentication information on the appliance or via the RFID device itself.”).

Crisp (EX1010) likewise discloses a remote server configured to receive the identity of the predetermined product and the identity of the at least one user as set forth in the claim chart.

Zimmerman (EX1009) and *Crisp* (EX1010) disclose the server retrieving the product preference from the database based on the product and user identity as set forth in the claim chart. *Zimmerman* (EX1009) discloses a server configured to “transmit the product preference to the first communication module.” *See id.* at 7:37–43 (“the profile data is returned” and “the profile server 305 will transmit the relevant data”). *Crisp* also discloses this as set forth in the claim chart.

Claim 1	<i>Zimmerman</i> (EX1009) and <i>Crisp</i> (EX1010) (emphases added)
[1.preamble] A system for customizing a product	<i>Zimmerman</i> describes a “ system for customizing a product ,” in that <i>Zimmerman</i> teaches a product, e.g., a smart appliance 340 (<i>see also</i> system of Fig. 3), which is customized “ according to a user’s stored preferences ” (stored in a profile server 305),

<p>according to a user's preferences comprising:</p>	<p>through use of marker such as a “relay URL,” <i>Id.</i> at 12:7–10, (e.g., “http ://123.123.123.123/tokens/<token ID>”), <i>Id.</i> at 9:50, or other remote location data marker, (<i>Id.</i> at 7:48–52 (“Note that instead of URLs, the location data can be provided in the form of IP addresses or any other suitable addressing mechanism permitting the location of data or processes on a network”) (emphasis added)), which can be stored in a “radio frequency identification (RFID) token” or stored locally or manually entered, and can comprise, for instance, a pointer URL, that is “used with appliances to access profile data to personalize the appliance.” <i>Id.</i> at 2:25–27. The pointer, e.g., a URL, is used to authenticate a user’s profile on a server. <i>Id.</i> at 27–29. “[T]he profile data is transmitted to and received by, respectively, the appliance.” <i>Id.</i> at 9:46–48.</p> <p><i>Crisp</i> likewise describes “<i>A system for customizing a product according to a user's preferences</i>” in that is describe “A beverage distribution and dispensing system and method for distributing drinks such as soda, juice and punch, to a home or business,” <i>id.</i> at Abstract, that “is adapted to dispense at least one, and preferably a plurality of beverages pre-selected by the user.” <i>Id.</i> at 4:14–15.</p>
<p>[1.1] a remote server including a database configured to store a product preference of a predetermined product for at last one user; and</p>	<p><i>Zimmerman</i> describes a “a remote server” (a “profile server”), “including a database,” (i.e., “The invention contemplates a private profile database,” <i>Id.</i> at 11:15, the profile server stores a user’s profile data for appliances in this private database, <i>Id.</i> at 2:25–29, 51–53, 7:32–37, 9:33–39. 60–65, where “[t]he data can be stored . . . remotely,” <i>Id.</i> at 6:55–56, cl. 1 (“first” and “second” “remote device,”) and describes that database is “configured to store a product preference of a predetermined product for at last one user,” (in that “[t]his data includes “variegated preference data that includes data relating to various appliance and contexts.” <i>Id.</i> at 12:10–20); further, <i>Zimmerman</i> describes “transmit[ting] only the relevant data for [the identified] type of appliance.” <i>Id.</i> at 9:60–65. Thus, that relevant data for the identified type of appliance is data for a “predetermined product.”</p>



Note that additionally, *Zimmerman* uses and discloses multiple appliances from the same user profile, and as having multiple users, and the users have their own settings for various appliances. *Id.* at 7:52–56.

Crisp likewise discloses **a remote server (18a) including a database (18b) configured to store a product preference of a predetermined product for at least one user** (*Id.* at 4:13–15 (“The beverage dispensing apparatus in the refrigerator is adapted to dispense at least one, and preferably a plurality of beverages pre-selected by the user.”); *Id.* at 12:33–39. (system “adapted to provide each individual in a household having the system so with a separate user code which would enable the system to track individual use and consumption. . . . This would also enable a user such as a parent to monitor a child's beverage consumption and selection.”)).

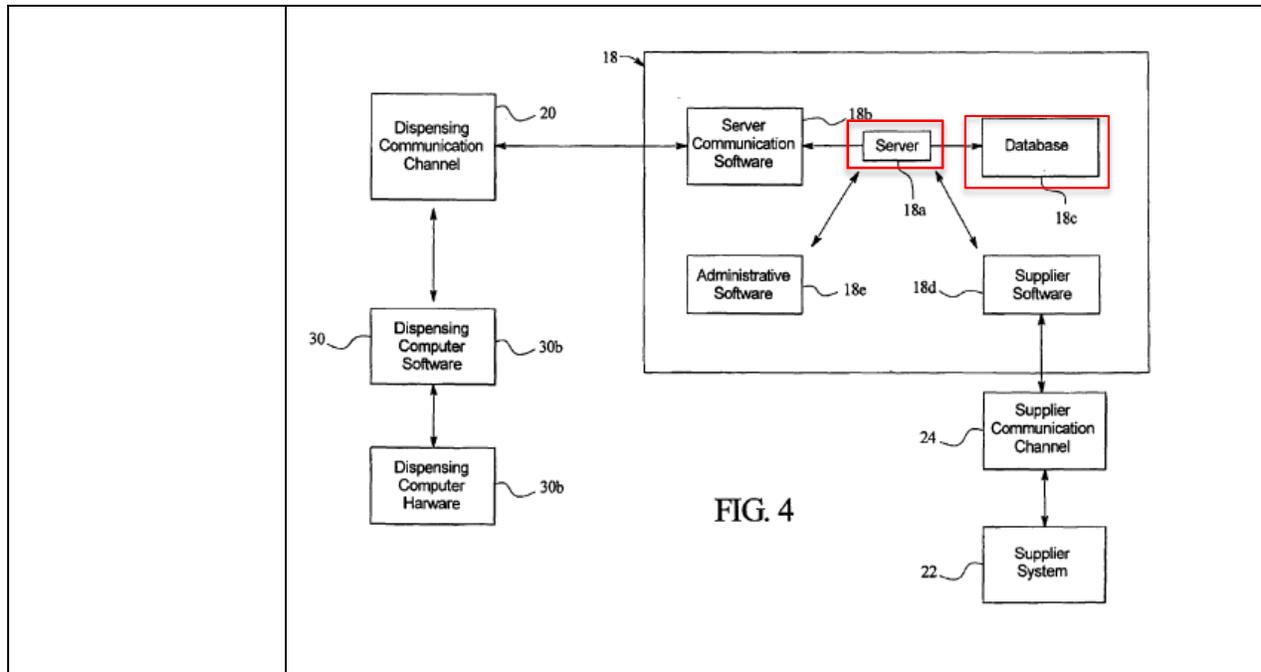
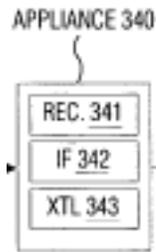


FIG. 4

[1.2] a **first communication module** within the product and **in communication with** the remote server;

Zimmerman discloses “a **first communication module within the product and in communication with the remote server**” (See, e.g., Fig. 3, appliance 340, which shows REC 341 [i.e., receiver], IF 342 [i.e., interface], and XTL 343 [i.e., transmitter] elements:



Zimmerman teaches a product that **communicates** with a **remote** profile server using a “profile URL.” *Id.* at 2:47–49, 3:18–19, 7:28–37, 9:41–65). *Zimmerman* describes a process in Fig. 4, where the “appliance requests profile url from relay server” in the S15 step.

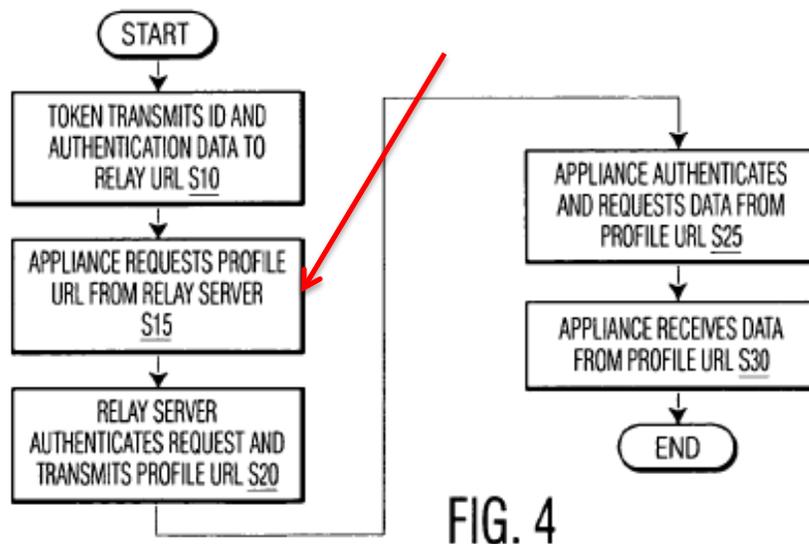


FIG. 4

Crisp likewise discloses “a **first communication module within the product and in communication with the remote server,**” disclosing communications channel 20, *Id.* at 16:6–17 (“the dispensing computer may communicate directly over the communication channel via a server dial-in, telephone line connection . . . the dispensing computer 30 would preferably **include a modem** (not shown) which enables the dispensing computer 30 to exchange data or **directly communicate** with the order processing system 20 via communication channel 20. . . . Preferably, **the modem would be modular and replaceable.**” (emphases added); *see also* Fig. 4:

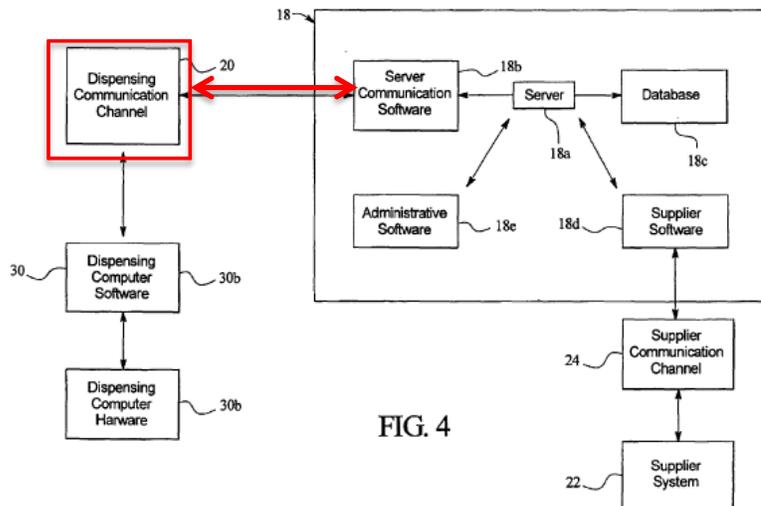


FIG. 4

<p>[1.3] wherein the remote server is [1.3.1] configured to receive the identity of the predetermined product and the identity of the at least one user, [1.3.2] retrieve the product preference from the database based on the identity of the predetermined product and the identity of the least one user and [1.3.3] transmit the product preference to the first communication module.</p>	<p>[1.3.1] <i>Zimmerman</i> discloses a “remote server [] configured to receive the identity of the predetermined product and the identity of the at least one user,” for instance, in step 30, where the remote server returns profile data, <i>Id.</i> at 7:37, where “the appliance 340 may indicate to the profile server 305 the type of data required or the nature of the appliance, and the profile server 305 will transmit the relevant data.” <i>Id.</i> at 7:38–43. <i>Zimmerman</i>’s profile server runs a “profile server process” using “data identifying the type of appliance” to “transmit only the relevant data from the type of appliance” to the appliance. <i>Id.</i> at 9:60–65.</p> <p><i>Crisp</i> likewise discloses a remote server configured to receive the identity of the predetermined product and the identity of the at least one user,” <i>Id.</i> at 16:51–52 (“the server 18a, database software (not shown) for accessing and storing information on database 18c”); <i>Id.</i> at 16:60–62 (“The relational database 18c is adapted to collect and store data regarding consumers usage and consumption of beverages.”); <i>Id.</i> at 16:67–17:2 (“Order processing system 18 receives the orders from the dispensing computer, stores various categories of useful data related to users”); <i>Id.</i> at 17:35–37 (“The supplier system 22 obtains orders and obtains the relevant user data necessary to deliver the supplies or services to the users.”); <i>Id.</i> at 23:66–67 (“As further illustrated in FIG. 6, database 18c preferably stores several types of data 213 including user data 214”).</p> <p>[1.3.2] <i>Zimmerman</i> discloses a server configured to “retrieve the product preference from the database based on the identity of the predetermined product and the identity of the least one user,” as in the <i>Zimmerman</i> system, the user chooses a particular appliance by associating his token, number, or URL with the appliance, and if authorized by a relay server, “the profiledata [URL (i.e., location)] is transmitted to and received by the appliance.” <i>Id.</i> at 9:47–48. The URL includes a “secret directory name which acts as a password so that it cannot be accessed idly.” <i>Id.</i> at 9:57–59. As noted in <i>Zimmerman</i>, this is the point of the personalized profile data—customization of the</p>
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products. *See id.* at 11:15–25 (“The prior art contains various descriptions of systems that adapt to user preferences by observing user–interaction with the appliance. For example by observing a user’s programming choices over time, an EPG set top box can derive rules and use these to personalize the EPG in the future. This profile data may be uploaded by the appliance to the user’s personal profile server.”).

Crisp discloses a server that will “**retrieve the product preference from the database based on the identity of the predetermined product and the identity of the least one user**”, *Id.* at 20:33–35 (“During the initialization process or the registration process, the user will order a plurality of drinks” that the user prefers); and at any time thereafter, *Id.* at 21:9–11 (“The user may initiate a communication with the order processing system 18 to . . . change the type of drink the user desires”); *Id.* 17:35–37 (“The supplier system 22 obtains orders and obtains the relevant user data necessary to deliver the supplies or services to the users.”); *id.* at 17:13–14 (“Administrative computer operators determine the particular products or services needed by a user”);

[1.3.3] *Zimmerman* discloses a server configured to “**transmit the product preference to the first communication module.**” *Zimmerman* “transmit[s] the product preference to the first communication module,” i.e., discloses that following the retrieval of relevant profile data from the database, the data is transmitted to the appliance. *Id.* at 7:37–43 (“the profile data is returned” and “the profile server 305 will **transmit** the relevant data”) (emphasis added).

Crisp discloses that the server will transmit the product preferences back to the communication module in the data to customize or adapt advertisements or samples based on their user preferences. *Id.* at 12:27–32 (“Based on knowing the beverage consumption in a home, the system could be adapted to provide information or free beverage samples to consumers to influence their future purchasing. The system could also be used to provide information regarding other products or

	services to the user.”).
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Claim 2. Claim 2 further sets forth that the transmitted preference is a “formulation” which includes “a predetermined amount” of an element. *Zimmerman* (EX1009) discloses that “any device that can be customized” can use the disclosed system, and that preferences can include those for “kitchen appliances” including “recipes,” *Id.* at 8:10–13, 12:10–20. Recipes are formulations including predetermined amounts of elements. *See* Eldering Decl. ¶¶ 69–71 (EX1005).

Similarly, *Crisp* (EX1010) discloses transmitting beverage formulations that specify the “quantity” and “ratio” of different elements (i.e., the formulae for mixing beverages from syrup, concentrate, powder, or whole).

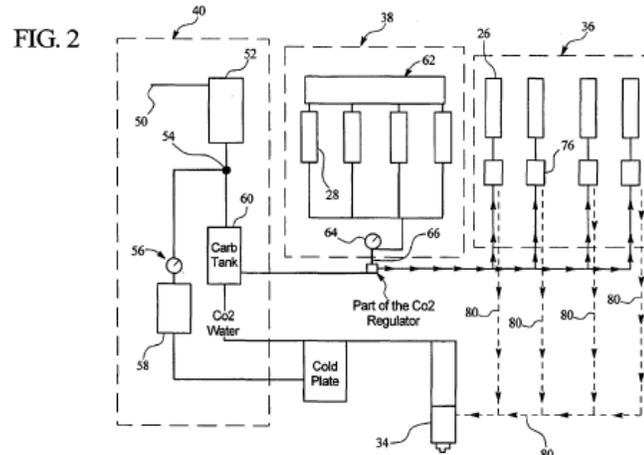
Zimmerman (EX1009) expressly states that the system can be used with “any device that can be customized.” *Id.* at 8:12–13. *Crisp* discloses customized user preferences for drink mixing machines for use in the home or the office. Thus, it would have been obvious to one of ordinary skill in the art to use the generic smart appliance processes described in *Zimmerman* with the smart kitchen appliance disclosed in *Crisp* (EX1010).

Dependent Claim 2	<i>Zimmerman</i> (EX1009) and <i>Crisp</i> (EX1010) (emphases added)
2. The system as in claim 1, wherein the	<i>See</i> Claim 1, <i>supra</i> . <i>Zimmerman</i> expressly states that the system can be used with

transmitted product preference is a **formulation** including a **predetermined amount** of at least one element.

“any device that can be customized.” *Id.* at 8:12–13.

Crisp discloses a **system** that mixes drinks based on preestablished ratios of syrups, concentrates, and waters, from various containers, to mix a particular selected drink, *see* Fig. 2:



Id. at 15:21–28 (“A one-liter drink supply bottle will produce approximately two hundred and eighty-eight ounces of soft drinks (based on a five water to one syrup ratio) which is roughly equal to a case of or twenty-four twelve ounce cans of soft drink. For other drinks such as juices where the ratio of juice to water is higher (i.e., three to one), a one-liter drink supply will produce approximately one hundred and seventy-two ounces.”). *Id.* at 25:55–60 (“**A specific carbonated water supply to drink supply ratio** or brix must be met in order for the drink to provide the proper flavor and pleasure. For soft drinks, the preferred brix of carbonated water supply to drink supply is five to one. For juices, the preferred brix of carbonated water supply to drink supply is three to one.”) (emphasis added); *see also id.* at 2:46 (describing background prior art as tracking things such as “mixture ratios, total syrup and water volumes.”).

Claim 3. Claim 3 further sets forth that is a fluid, solid or combination.

Crisp (EX1010) describes all of these, a combination of powders, syrups, and liquids, with water and carbonation, as well as other liquids, as shown below.

Dependent Claim 3 <i>Zimmerman</i> (EX1009) and <i>Crisp</i> (EX1010) (emphases added)	
3. The system as in claim 2, wherein the at least one element is a fluid, a solid or any combination thereof.	<p><i>See</i> Claim 2, <i>supra</i>.</p> <p><i>Zimmerman</i> teaches recipes, as noted above, which are combinations of fluids or solids in predetermined amounts, and are comprised of “the at least one element is a fluid, a solid or any combination thereof.”</p> <p><i>Crisp</i> discloses syrups, powders, concentrates, milk, and other liquids. <i>Id.</i> at 26:10–12 (“the system could be adapted to dispense non–concentrated, ready–to–drink or pre–mixed beverages such as milk, beer, wine and juices”); <i>id.</i> at 4:20 (“a drink, concentrate or syrup supply mechanism or apparatus”); <i>Id.</i> at 26:12–14 (“As mentioned above, it should be appreciated that the beverage distribution and dispensing system could be adapted for a powder or solid drink supply.”) (emphasis added).</p>

Claim 4. Claim 4 further sets forth that server presents a question about the product to the user at the terminal, and determines the formulation based on the response.

While *Zimmerman’s* appliances are configured according to user preferences, *Zimmerman* (EX1009) does not teach that those preferences are determined based on questions supplied to “a terminal of the at least one user for prompting the user with the at least one question relating to the predetermined product and the server is further configured for determining the formulation based on at least one response of the user.” The ’090 patent (EX1001) at 9:7–22.

Crisp (EX1010) discusses a registration phase of installation where the user enters information and preselects drink choices, as shown below. The choices are clearly questions. Based on these teachings, it would have been obvious to modify the “profile server” disclosed by *Zimmerman* (EX1009) such that questions are posed to a user to establish or enhance a user profile for an appliance, such as *Crisp*’s drink maker. *See supra* § “Claim 1.” Thus, claim 4 of the ’090 patent would have been obvious.

Dependent Claim 4	<i>Zimmerman</i> (EX1009) and <i>Crisp</i> (EX1010) (emphases added)
4. The system as in claim 2, wherein the server is configured to communicate at least one question to a terminal of the at least one user for prompting the user with the at least one question relating to the predetermined product and the server is further configured for determining the formulation based on at least one response of the user	<p><i>See</i> Claim 2, <i>supra</i>.</p> <p>Claim 4 depends from claim 2, which in turn depends from claim 1. Claim 2 is invalid for the reasons set forth <i>supra</i> § “Dependent Claim 2.”</p> <p><i>Crisp</i> (EX1010) at 4:13–15 (“The beverage dispensing apparatus in the refrigerator is adapted to dispense at least one, and preferably a plurality of beverages pre–selected by the user.”).</p>

Claim 5. Claim 5 further sets forth that a user identity code is cross–referenced to the formulation. *Zimmerman* (EX1009) describes a “secret directory name which acts as a password” to allow access to a user’s profile data. *See, e.g., Id.* at 9:55–59. *Zimmerman* does not disclose that the server issues “an identity code and cross–referencing the identity code to a formulation,” or “storing the

identity code and cross-referenced formulation in the database,” as required by claims 5 and 6.

These features would have been obvious, however, in light of the teachings of *Crisp* (EX1010), which associates user records, which includes formulations, to a user identification, as evidenced by the citations below.

Dependent Claim 5 <i>Zimmerman</i> (EX1009) and <i>Crisp</i> (EX1010) (emphases added)	
5. The system as in claim 4, wherein the server is further configured for issuing an identity code for the user and cross-referencing the identity code to the formulation.	<p><i>See</i> Claim 4, <i>supra</i>.</p> <p><i>Crisp</i> (EX1010), at 12:33–40 (“It should be appreciated that the system could be adapted to provide each individual in a household having the system 35 with a separate user code which would enable the system to track individual use and consumption. The individual would enter this code each time the user obtained a drink from the dispenser. This would also enable a user such as a parent to monitor a child's beverage consumption and selection.”).</p> <p><i>Id.</i> at 12:28–33 (“Based on knowing the beverage consumption in a home, the system could be adapted to provide information or free beverage samples to consumers to influence their future purchasing. The system could also be used to provide information regarding other products or services to the user.”).</p>

Claim 6. Claim 6 further sets forth that server stores the identity code and formulation.

Zimmerman (EX1010) does not disclose that the server issues “an identity code and cross-referencing the identity code to a formulation,” or “storing the

identity code and cross-referenced formulation in the database,” as required by Claim 6.

Crisp (EX1010) shows the server, which can be at a remote server, stores user data 216, customization options, pre-selected formulations, user codes, and user data in a data store. The records are primarily useful for filling supply orders, which by their nature require the formulations for the drinks. *See* citations below.

Dependent Claim 6 <i>Zimmerman</i> (EX1009) and <i>Crisp</i> (EX1010) (emphases added)	
6. The system as in claim 5, wherein the server is configured for storing the identity code and cross-referenced formulation in the database.	<p><i>See</i> Claim 5, <i>supra</i>.</p> <p><i>Crisp</i> at 5:34–42 (“The order processing system generally includes a server [with] . . . a data storage device for storing historic order and consumption information as well as beverage and other information.”).</p>

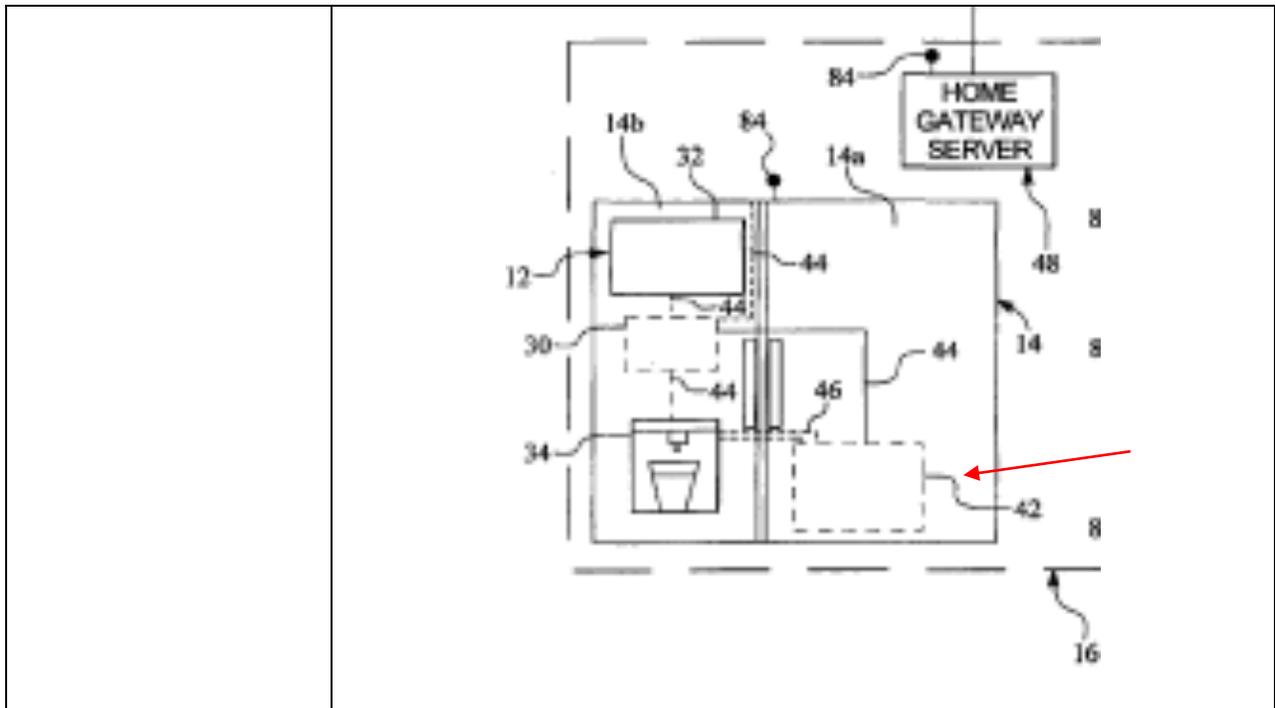
Claim 7. Claim 7 further sets forth that the terminal transmits the identity code to the server. *Crisp* (EX1010) teaches “a separate user code” for tracking individual use and consumption. *See* Eldering Decl. ¶ 81 (EX1005).

Dependent Claim 7 <i>Zimmerman</i> (EX1009) and <i>Crisp</i> (EX1010) (emphases added)	
7. The system as in claim 6, wherein the terminal is configured to transmit the identity code to the server.	<p><i>See</i> Claim 6, <i>supra</i>.</p> <p>As noted above, <i>Crisp</i> (EX1010), at 12:33–40 teaches the “system 35” includes for each user “a separate user code which would enable the system to track individual use and consumption,” and which would “enable a user such as a parent to monitor a child's beverage consumption and selection.,” and then, <i>Id.</i> at 12:28–33 (“Based on knowing the beverage consumption . . . the system could be adapted to</p>

	provide information or free beverage samples to consumers to influence their future purchasing. The system could also be used to provide information regarding other products or services to the user. ”) (emphasis added).
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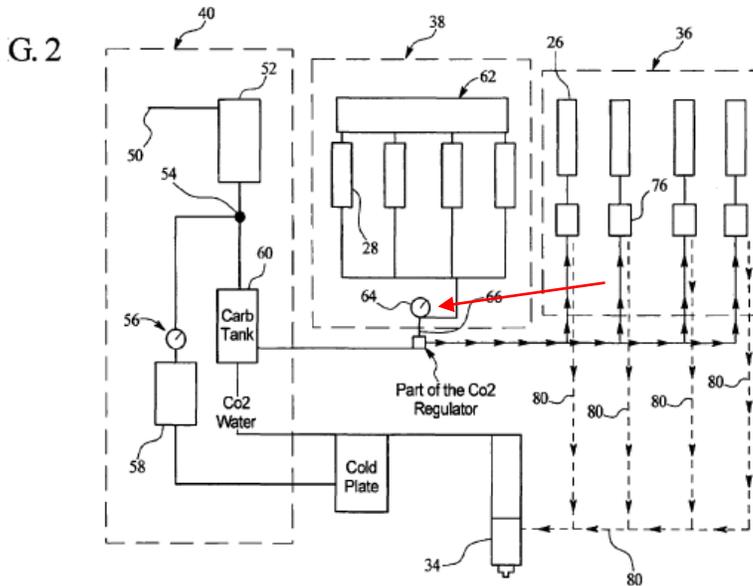
Claim 9. Claim 9 is similar to claim 1, except it is a product claim instead of a system claim, and sets forth a housing, a controller for dispensing the element (liquid), and an exit port for the element. *Crisp* (EX1010) teaches a housing, a controller for dispensing the element, and an exit port for that element, as shown in the claim chart below. *See* Eldering Decl. ¶ 82 (EX1005).

Claim 9 <i>Zimmerman</i> (EX1009) and <i>Crisp</i> (EX1010) (emphases added)	
[1.preamble] 9. A product to be consumed by a user comprising:	<i>Zimmerman</i> and <i>Crisp</i> disclose everything as explained above in claim 1, and also the following:
[1.1] a housing containing at least one element to produce a final product;	<i>Crisp</i> discloses housing 42 contains system shown in Fig. 1 (cut-out relevant section shown below) contains at least one element, <i>Id.</i> 12:50–60 (“CO ₂ ... water ... tanks”) to produce the final element.



[1.2] a **controller** disposed within the housing and configured to **control an amount** of the at least one element disposed within the housing;

A CO₂ Regulator 64 is configured to control the amount of one element disposed within the housing. Likewise, nozzle 34 controls the amount of element disposed.



[1.3] a communication module disposed

Zimmerman discloses “a *first communication module within the product and in communication with the remote server*” (See, e.g., Fig. 3, appliance 340, which shows REC

within the housing and configured to transmit an identifier of the product to a server over a network, receive product preferences of the user from the server based on the identifier and communicate to the controller the received product preferences of the user for formulating the final product; and

341 [i.e., receiver], IF 342 [i.e., interrogator], and XTL 343 [i.e., transmitter] elements:



Zimmerman teaches a product that **communicates** with a **remote** profile server using a “profile URL.” *Id.* at 2:47–49, 3:18–19, 7:28–37, 9:41–65). *Zimmerman* describes a process in Fig. 4, where the “appliance requests profile url from relay server” in the S15 step.

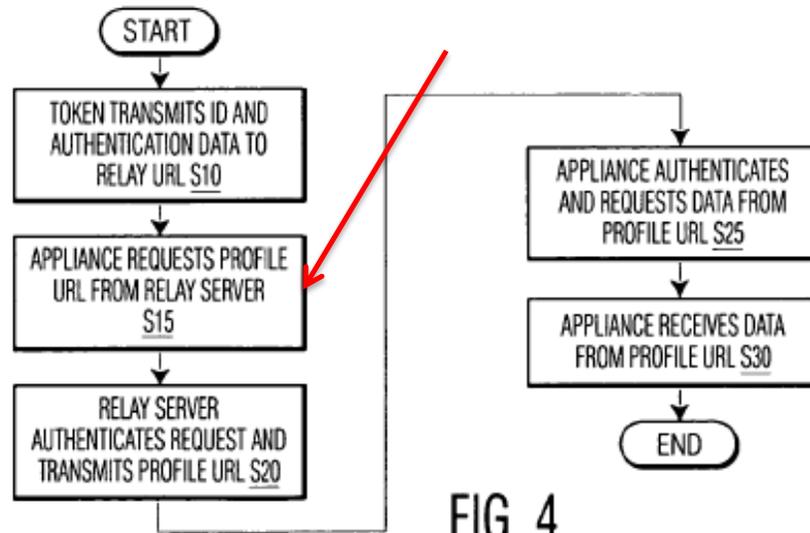
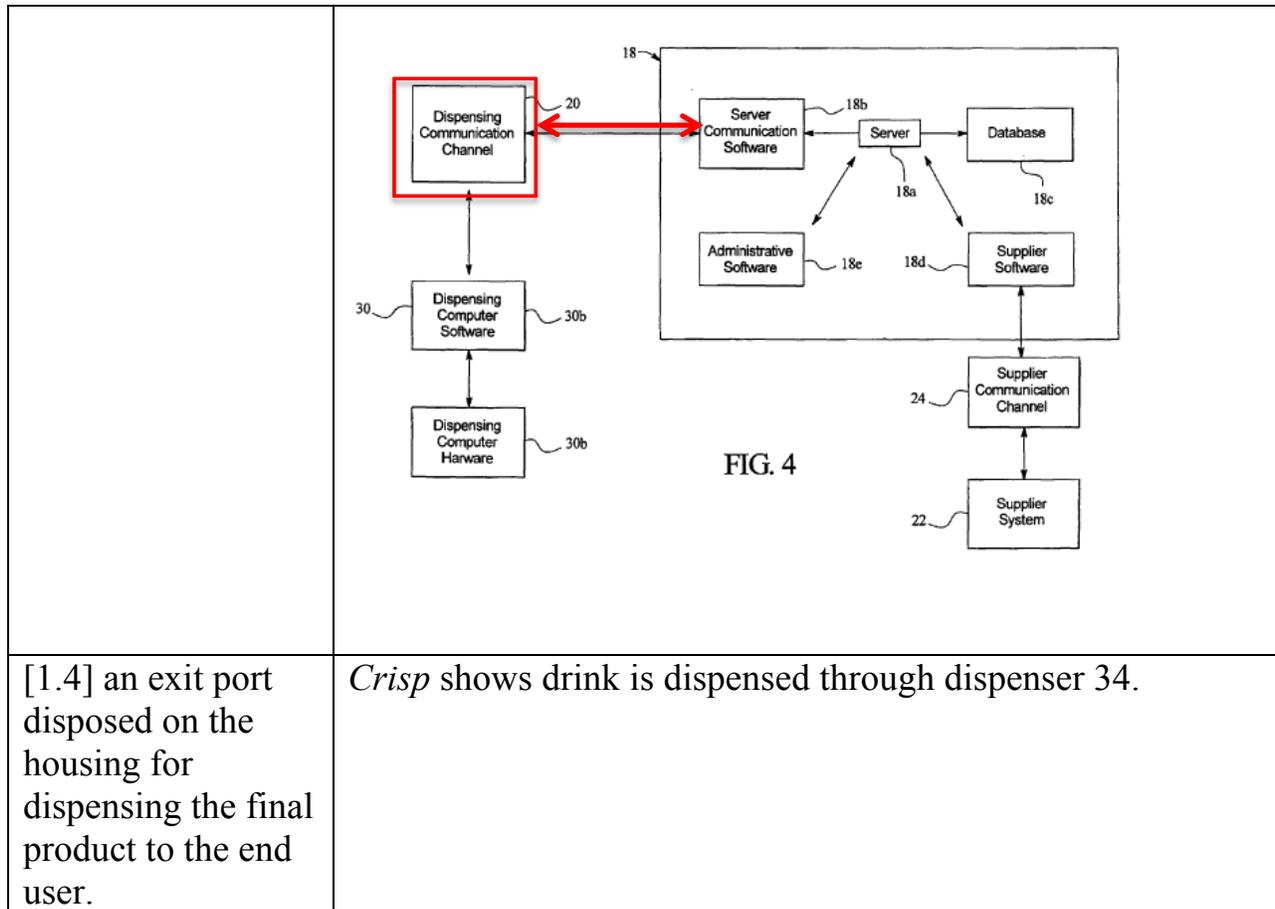


FIG. 4

Crisp likewise discloses “*a first communication module within the product and in communication with the remote server,*” disclosing communications channel 20, *Id.* at 16:6–17 (“the dispensing computer may communicate directly over the communication channel via a server dial-in, telephone line connection . . . the dispensing computer 30 would preferably **include a modem** (not shown) which enables the dispensing computer 30 to exchange data or **directly communicate** with the order processing system 20 via communication channel 20. . . . Preferably, **the modem would be modular and replaceable.**” (emphases added); *see also* Fig. 4:



[1.4] an exit port disposed on the housing for dispensing the final product to the end user.

Crisp shows drink is dispensed through dispenser 34.

Claim 11. Claim 11 sets forth that the “element” is a fluid or solid. This was shown in claim 4 as discussed above.

Dependent Claim 11	<i>Zimmerman</i> (EX1009) and <i>Crisp</i> (EX1010)
11. The product as in claim 9, wherein the at least one element is a fluid, a solid or any combination thereof.	<i>See</i> Claim 4, above.

Claim 12. Claim 12 depends from claim 9 and further sets forth that the communication module receives the preferences from the server. This is the counterpart to claim 1 element 1.3 discussed above, where the server transmits the

preferences to the communication module. The transmission inherently discloses the reception, and shown in claim 1 above. Also, the reception is clearly set forth in the quoted sections of *Crisp* below.

Dependent Claim 12	<i>Zimmerman</i> (EX1009) and <i>Crisp</i> (EX1010) (emphases added)
12. The product as in claim 9, wherein the communication module is configured to receive the product preferences of the user via hardwired or wireless communications from the server over the network.	<i>Crisp</i> discloses “ a first communication module within the product and in communication with the remote server, ” disclosing communications channel 20, <i>id.</i> at 16:6–17 (“the dispensing computer may communicate directly over the communication channel via a server dial–in, telephone line connection . . . the dispensing computer 30 would preferably include a modem (not shown) which enables the dispensing computer 30 to exchange data or directly communicate with the order processing system 20 via communication channel 20. . . . Preferably, the modem would be modular and replaceable. ” (emphases added); <i>see also</i> Fig. 4.

E. Ground 5: Claim 8 is obvious over *Zimmerman* in view of *Crisp*, further in view of *Dodson*

Claim 8 depends on claim 7 and further sets forth that the identity code is stored as an Internet cookie on a terminal. The use of cookies to identify users was well known at the priority date of the ’090 Patent.

Neither *Zimmerman* (EX1009) nor *Crisp* (EX1010) describe using an Internet cookie, but *Dodson* (EX1007) describes using an Internet cookie storing a unique identification number of a user at a remote facility connected to a fuel dispensing station. A direct connection is described between the dispenser and the remote facility, but it would be obvious to have the cookie at the fuel dispenser, as

the client computer is located there. *See* Eldering Decl. ¶ 85–86 (EX1005). Cookies were well-known and useful expedients to Internet processing and interfacing to one of skill in the art at the time. It would have been obvious to combine *Zimmerman* in view of *Crisp*, as explained above and for all the reasons outlined above, and further in view of *Dodson*, at least because all three relate to identifying customers to a remote server, all deal with dispensing liquids, and doing so would increase the ease and speed of the processing by retaining a record of the user’s previous activity.

Claim 8	<i>Dodson</i> (EX1007) (emphases added)
8. The system as in claim 7, wherein the identity code is stored as an Internet cookie on the terminal .	<p><i>See</i> Claim 1, <i>supra</i>.</p> <p><i>Dodson</i> at Abstract (“Regarding a customer at one of the fuel dispenser locations, a user identification such as credit card account information is sent to the remote facility. The remote facility then establishes an access connection with a network node such as a server, on behalf of the customer. The network communications follow a client–server session format and are correlated to the user ID. The remote facility [terminal] sends a cookie element to the server that was previously set by the server during an initial Web site visit. The cookie contains state information such as a unique identification number [identity code] generated by the server. The remote facility associates the unique identification number with the relevant user ID. The server uses the received cookie element to identify the corresponding user profile record maintained at the server side. The server generates customized content from the retrieved user profile record and sends it to the customer.”).</p>

IX. CONCLUSION

Based on the foregoing, the challenged claim of the '090 Patent recites subject matter that is unpatentable. The Petitioner requests institution of an *inter partes* review to cancel these claims.

Respectfully Submitted,

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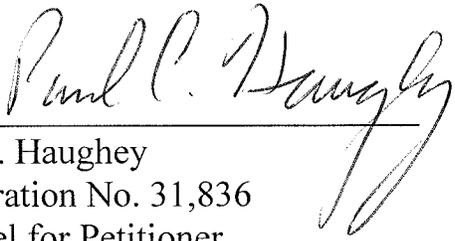
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Power of Attorney for Petitioner Unified Patents Inc. was served on February 3, 2016, by Overnight Express Mail at the following address of record for the subject patent.

GREER, BURNS & CRAIN, LTD
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Respectfully

Dated: February 3, 2016

By: 
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