

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TOAST INC.,

Petitioner,

v.

GRATUITY, LLC,

Patent Owner.

IPR2023-01408
U.S. Patent No. 9,741,050 B2

PATENT OWNER'S DEMONSTRATIVES

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Toast, Inc. v. Gratuity, LLC, IPR2023-01408

PATENT OWNER'S DEMONSTRATIVES

Oral Argument

January 10, 2025

U.S. Patent No. 9,741,050

The '050 Patent Discloses A Cloud-Based Gratuity Management System



US009741050B2

(12)	United States Patent Stepanovich	(10) Patent No.: US 9,741,050 B2
		(45) Date of Patent: Aug. 22, 2017
(54)	SYSTEM AND METHOD FOR MANAGING GRATUITIES	(56) References Cited
(71)	Applicant: GRATUITY, LLC , Naples, FL (US)	U.S. PATENT DOCUMENTS
(72)	Inventor: Aleksandar Stepanovich , Naples, FL (US)	4,819,162 A 4/1989 Webb, Jr. et al.
(73)	Assignee: Gratuity, LLC , Naples, FL (US)	6,078,899 A 6/2000 Francisco et al.
(*)	Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 295 days.	(Continued)
(21)	Appl. No.: 13/834,466	FOREIGN PATENT DOCUMENTS
(22)	Filed: Mar. 15, 2013	WO 2013063325 5/2013
(65)	Prior Publication Data US 2014/0067499 A1 Mar. 6, 2014	OTHER PUBLICATIONS
	Related U.S. Application Data	Dune Service, "Servers, what is your tip out policy for working in your restaurant?," Nov. 25, 2011.*
(60)	Provisional application No. 61/696,569, filed on Sep. 4, 2012.	(Continued)
(51)	Int. Cl. G06F 15/02 (2006.01) G06Q 30/02 (2012.01) (Continued)	<i>Primary Examiner</i> — Hunter Wilder (74) <i>Attorney, Agent, or Firm</i> — Hahn Loeser & Parks, LLP
(52)	U.S. Cl. CPC G06Q 30/0214 (2013.01); G06Q 10/105 (2013.01); G06Q 30/06 (2013.01); G06Q 40/10 (2013.01); G06Q 50/12 (2013.01)	ABSTRACT A computer-implemented method for allocating gratuities is disclosed that includes employing at least one processor configured to execute computer-executable instructions stored in memory to perform the following acts: receiving transaction information from a point of sale, wherein the transaction information comprises at least gratuity data for each of a plurality of transactions during an accounting period; receiving employee information from the point of sale, wherein the employee information comprises at least hours worked for each of a plurality of employees during the accounting period; receiving gratuity distribution rules for allocating gratuities among at least a portion of the employees; and determining a gratuity allocation for each applicable employee of the plurality of employees based on at least the received transaction information, the received employee information, and the received gratuity distribution rules. Also disclosed is a computer-implemented system for managing gratuity allocations.
(58)	Field of Classification Search CPC G06Q 40/10 (Continued)	13 Claims, 9 Drawing Sheets

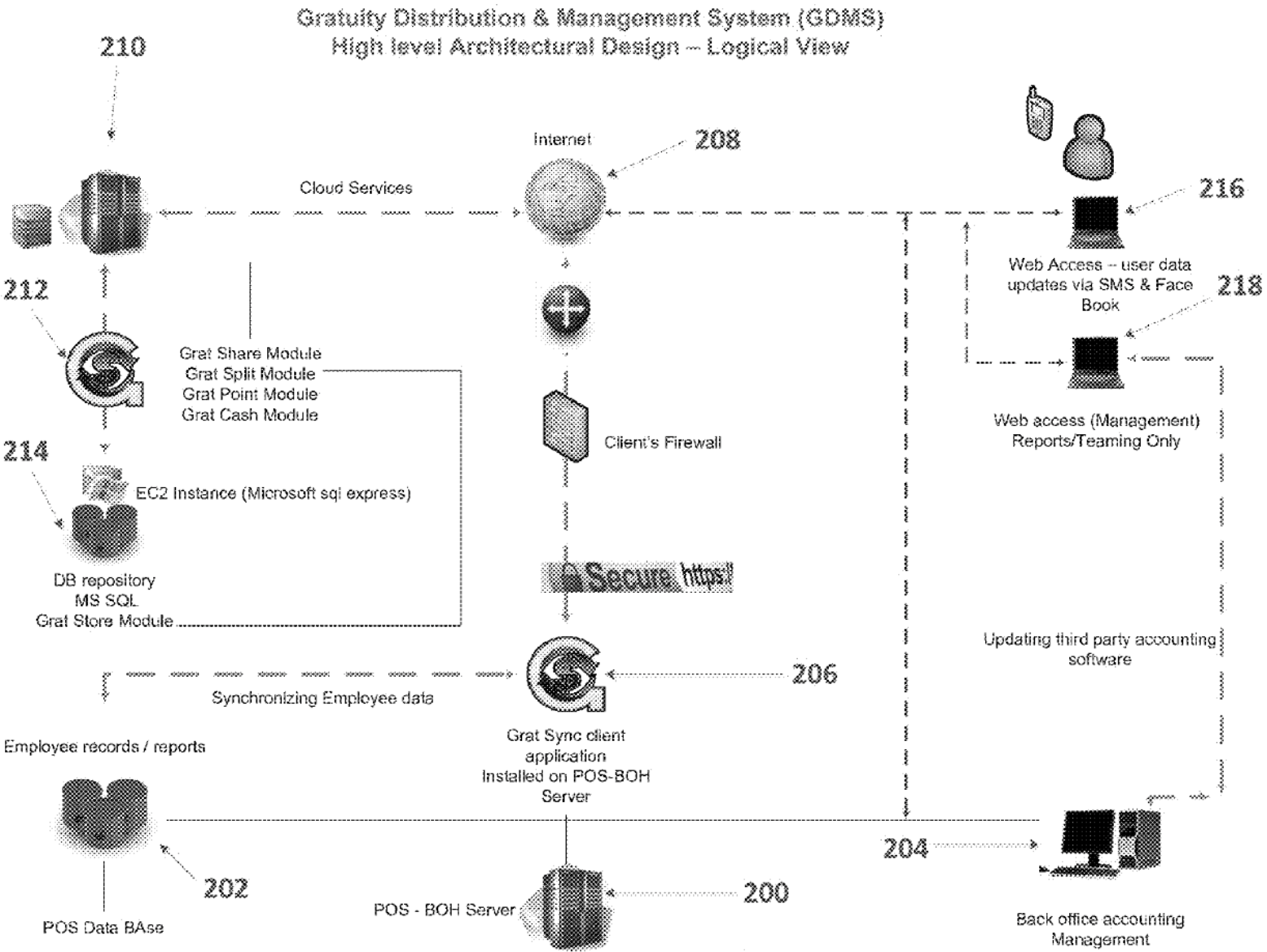
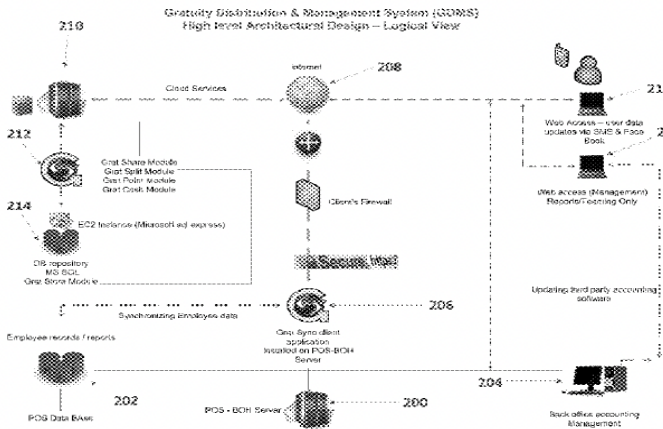
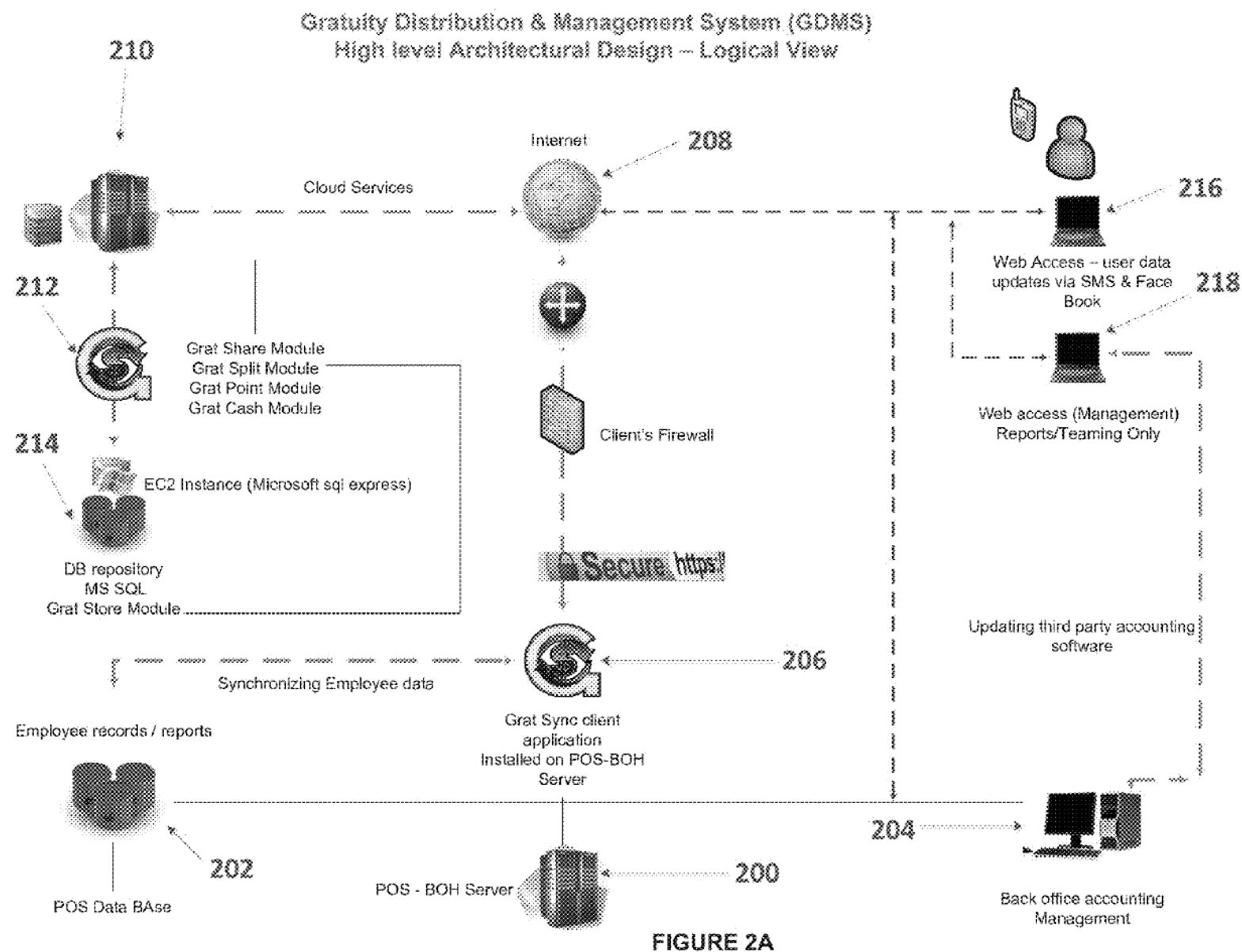


FIGURE 2A

Exhibit 1001

Key Aspects of '050 Patent Architecture



Referring now to FIG. 2A, a logical view of a gratuity management system is illustrated. A client, such as a restaurant, may have a server **200** and a database **202** for storing transaction information and employee information, as well as a back office accounting management system **204** that handles accounting and payroll functions. In embodiments, the gratuity management system includes an interface component **206** that integrates with the business's systems to extract the transaction information and employee information to be used in determining the gratuity allocations. The example of an interface component **206** in FIG. 2A is labeled "Grat Sync Client Application" and is indicated as being installed on server **200**.

In one embodiment, the processor **212** and the database **214** are provided in a cloud computing system **210** accessible over the Internet **208**. The processor **212** and/or the database **214** may accept incoming data from the interface component **206**. The incoming data may be preprocessed and/or stored in the database **214** for further subsequent use.

Ex. 1001, Fig 2A, 7:44-56; 8:23-27.

Claim 1 of '050 Patent

1. A system, comprising:
 - a. a gratuity management system, comprising
 1. a server coupled to a computer network and accessible by a plurality of clients, the server being configurable to independently execute gratuity distribution rules on a client-by-client basis; and
 2. a database, accessible by the server; and
 - b. a plurality of client business systems in electronic communication with the server of the gratuity management system, each of the client business systems corresponding to one of the plurality of clients, each client business system comprising:
 1. at least one point of sale server; and
 2. a gratuity sync client application installed on the respective client business system;
- wherein the gratuity sync client application on each client business system is configured to extract transaction information and employee information from the client business system and to initiate transfer of the extracted information to the gratuity management system;
- wherein the gratuity management system is a cloud computing system remote from the plurality of client business systems and configured to receive the extracted transaction information and employee information from the plurality of client business systems and to store the received extracted information in the database; and
- wherein the gratuity management system is further configured to execute, independently for each client, gratuity distribution rules for allocating gratuities among at least a portion of the employees and to determine a gratuity allocation based on at least the received extracted transaction information, the received extracted employee information, and the gratuity distribution rules and return the gratuity allocation to the gratuity sync client application of each respective client business system, without requiring the client business systems to execute the gratuity distribution rules.

Ex. 1001 at claim 1.

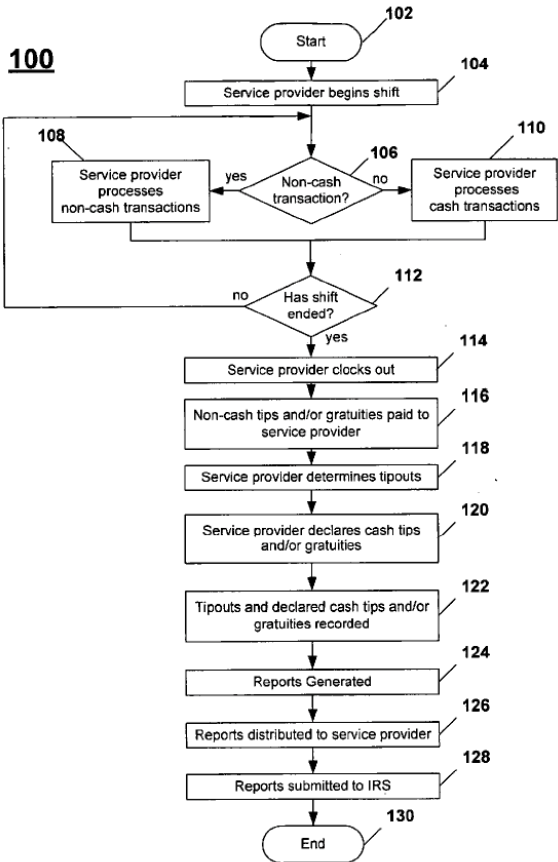
Marshall (U.S. Patent App. No. 2008/0065396)

Marshall Discloses Client-Based Processing of Gratuities

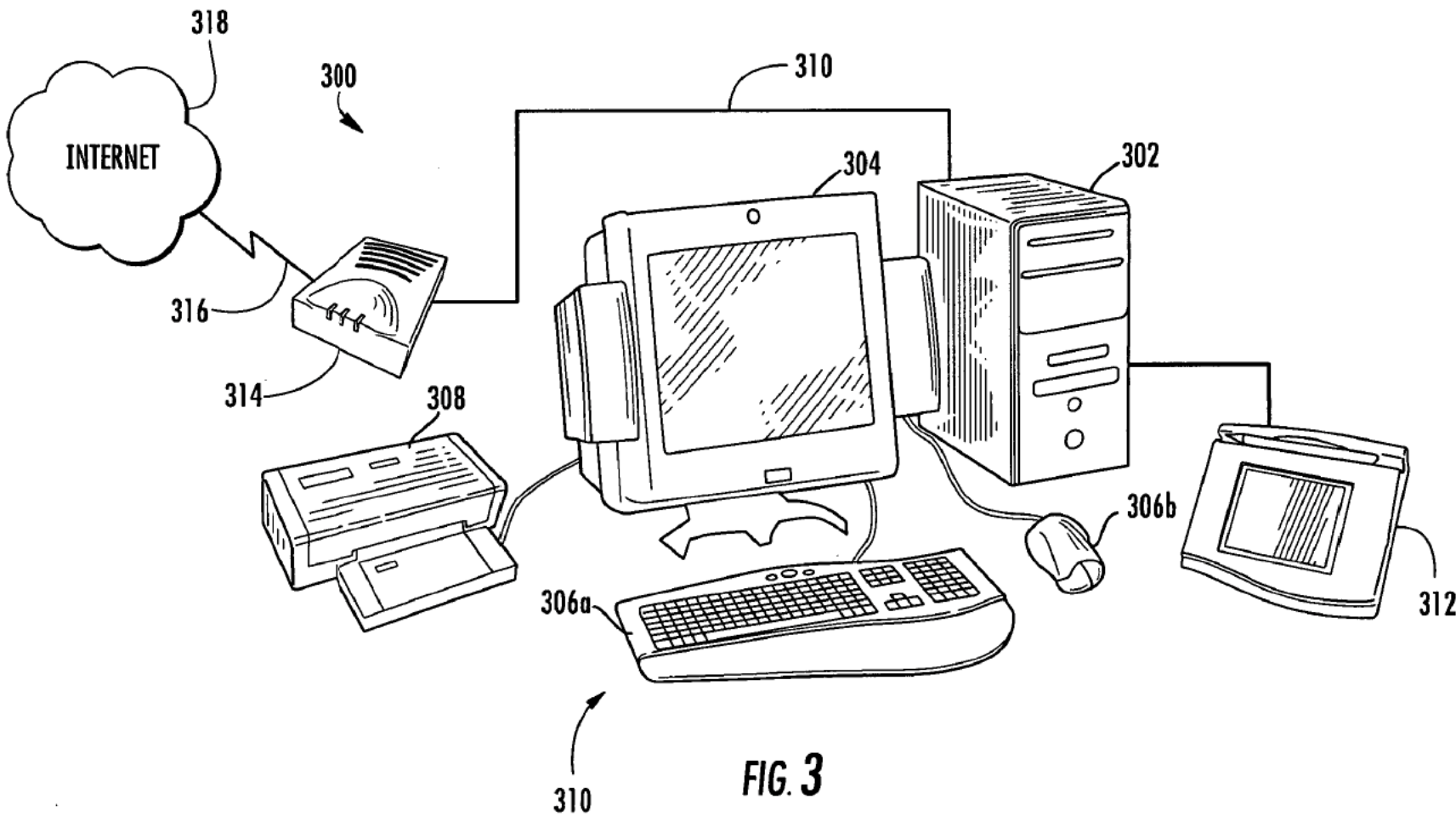


(19) **United States**
(12) **Patent Application Publication** (10) **Pub. No.: US 2008/0065396 A1**
Marshall (43) **Pub. Date: Mar. 13, 2008**

(54) **SYSTEMS AND METHODS FOR MANAGING TIPS AND GRATUITIES** (57) **ABSTRACT**
(76) Inventor: **John Steven Marshall**, Princeton, NJ (US)
Disclosed are systems and methods for recording, maintaining, and reporting tips and gratuities, optionally including details such as employee, task performed, and shift. In one aspect, inter-employee tip and gratuity transactions are tracked and verified. In another aspect, taxing authority forms and/or returns are automatically generated with substantially decreased administration time and cost, thereby facilitating a user's participation in voluntary taxing authority programs. Additionally, the training required by such programs is automatically monitored. In yet another aspect, tips and/or gratuities may be paid as wages. In another aspect of the present invention, employees are provided an opportunity to increase declared tips if the originally declared tips place employee in jeopardy of an audit. In another aspect, interfaces to third-party systems such as POS systems, payroll systems, and the like are provided to further minimize system administration time and data accuracy. In another aspect, Web-based systems are provided.
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(21) Appl. No.: **11/517,550**
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(51) Int. Cl. **G06Q 10/00** (2006.01)
(52) U.S. Cl. **705/1**

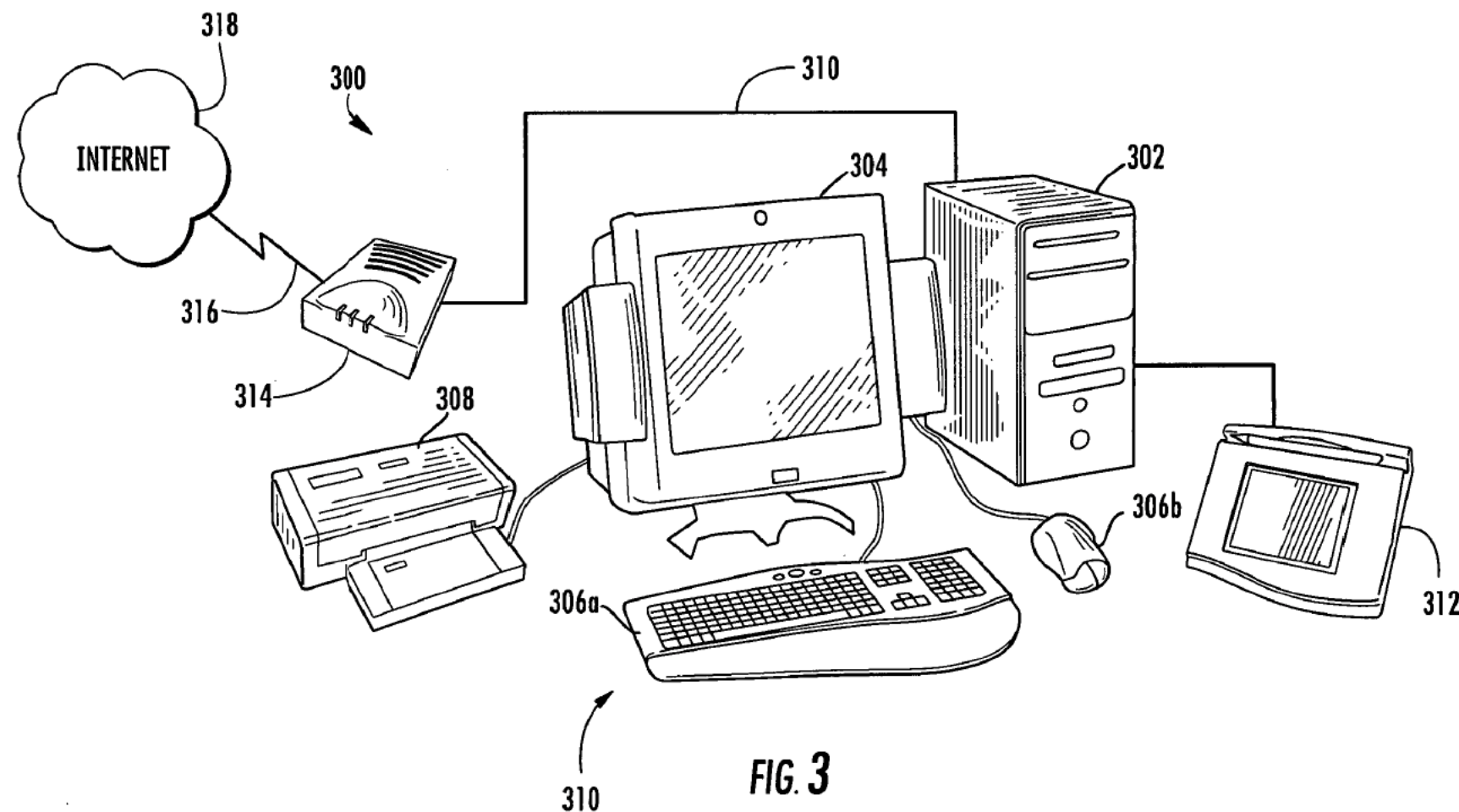


TOAST, INC. EXHIBIT 1004
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Ex. 1004 cover page and Fig. 3.

Marshall Discloses Client-Side Processing of Gratuities



[0097] Turning now to FIG. 3, an exemplary embodiment of a simplistic system for implementing the systems and methods of the present invention is depicted. System 300 includes processing unit 302, printing device 308, user interface 310 (i.e., monitor 304, first user interface device 306a, and second user interface device 306b), and signature device 312.

Ex. 1004 at Fig. 3; PO Response at 6.

Marshall's Embodiments All Relate To The System Disclosed In Figure 3

[0105] Turning next to FIGS. 4 through 25, depicted are processes and exemplary reports of one embodiment of the present invention. This exemplary embodiment will be referred to herein as Gratuity Reporting and Tip Allocation Software ("GrataSoft"). In this exemplary embodiment, the processes and reports depicted in FIGS. 4 through 25 are implemented as software and software generated reports, respectively, which operate on or are created by a system such as those discussed in greater detail above with respect to FIG. 3.

[0106] Referring to FIG. 4, depicted is process 400, which is an overview of the exemplary GrataSoft embodiment of the present invention. Process 400 begins at 402, wherein a user enables the system upon which the GrataSoft software is executed. For example, when GrataSoft is operated on a system such as those described in greater detail with respect to FIG. 3, such enabling may include energizing processing unit 302, monitor 304, and, optionally, printing device 306. In Web-based embodiments of the present invention, such enabling may include initiating a connection between a local processing unit or dumb terminal and the Web-based system

Ex. 1004 at paragraphs 105-106; PO Response at 6.

Marshall's "Web-Based" System Still Calculates Gratuities At The Client-Side

[0103] In some aspects of the present invention, the Web-based systems and methods of the present invention may be accessed via any Web browser in communication with the Internet regardless of whether such Web browser resides on a non-portable device (e.g., a desktop PC) or a portable device such as a laptop, PDA, Smartphone, cellular phone, or the like. This capability allows users with the required user rights to access the systems and methods of the present invention at the business establishment, from home, or on the go (i.e., via a portable device). This feature may allow users of an individualized system (i.e., systems intended for personal use by a single employee), as described in further detail below, to download information from an IS or a business establishment's tip and gratuity management system to his or her home computer. Also, in embodiments of the present invention in which electronic and/or digital signatures are captured, a Web-based system allows a signature to be requested via electronic mail. Furthermore, Web-based systems facilitate integration of the systems and methods of the present invention with all Web-based IS, thereby increasing the likelihood of data entry via download from an IS, which minimizes the need for manual data entry. Web-based systems further facilitate multi-site deployment, maintenance, support, upgrades, enhancements to, centralized administration of, storage, and backup of the systems of the present invention.

Ex. 1004 at paragraph 103; PO Sur-Reply at 4.

If Marshall Disclosed A Cloud-Based Gratuity Management System, There Would Be No Need For Uploading Calculated Tips From The Client or Downloading of Software Updates To The Client

[0104] Furthermore, web-based individualized systems facilitate upload of employee information such as declared tips, contributed and/or received tipouts, 4070 forms, 4070A forms, and the like to the employee's employer(s). Additionally, web-based systems facilitate downloading, purchasing, testing, and delivery of software patches, updates, upgrades, software enhancements and the like from the software provider. For example, software changes may be required to accommodate items including, but not limited to, changes and/or customizations of an IS and new taxing authority programs.

Ex. 1004 at paragraph 104; PO Response at 25.

Marshall Discloses Having To Download Updated Sales Information Before Gratuities Can Be Calculated By The Client-Side Processing Unit

[0107] At 404, process 400 determines whether the GrataSoft system is set to automatically load sales data. If no, process 400 proceeds to 408. If yes, process 400 proceeds to 406, at which the GrataSoft system will query its existing data set to determine whether it is up to date. If it is not, it will automatically download all missing data. Such data may include non-cash sales, cash sales, non-cash tips and gratuities, and the like, which may be downloaded or uploaded to a local processing unit such as processing unit 302 from an IS.

Ex. 1004 at paragraph 107; PO Response at 23.

Marshall Does Not Disclose A Cloud-Based Gratuity Management System That Calculates Gratuities For Multiple Clients Using A Cloud-Based Server That Is Separate And Distinct From The Client Business System/POS

[0109] When a POS or similar type of system is interfaced to a system or process of the present invention such as the exemplary GrataSoft embodiment, employee information may be loaded directly from .DBF or similar files into the present invention, which avoids the need for re-entering employee information that has already been entered in the POS system. Similarly, job codes may be loaded directly from such systems to identify data such as clock in time, clock out time, hourly wage, total hours worked, task worked, etc. Additionally, non-cash sales, cash sales, gratuities, etc. may be loaded directly from such systems to identify and calculate gross sales information. Such loading ensures that the same information is present on both systems. Although specific items of information have been identified for transfer from the Aloha POS system to the present invention, the systems and methods of the present invention may be programmed to load any information available in the IS, regardless of whether the IS is an Aloha POS system, another brand of POS system, or a non-POS system, without departing from the scope of the present invention. Similarly, information may be loaded from .DBF or other types of files using similar methods.

Ex. 1004 at paragraph 109; PO Response at 23.

Grounds 2-4

Webb Does Not Teach or Suggest A Cloud-Based Gratuity Management System

Directed to a “time clock” system.

No disclosure of cloud-based gratuity management system that calculates gratuities on a client-by-client basis using employee and transaction information extracted from individual client business systems to the remote gratuity management server to apply stored client-specific gratuity distribution rules to determine gratuity allocations for each client’s employees.

Institution Decision does not set forth analysis of how challenged claims would be obvious based on Marshall in view of Webb—that is, no explanation of what Webb discloses or why it would have been obvious to combine with Marshall.

Phillips Does Not Teach or Suggest A Cloud-Based Gratuity Management System

Directed to client-side tip calculations at a client's point-of-sale system.

No disclosure of cloud-based gratuity management system that calculates gratuities on a client-by-client basis using employee and transaction information extracted from individual client business systems and sent to a separate and distinct remote gratuity management server to apply stored client-specific gratuity distribution rules to determine gratuity allocations for each client's employees.

Institution Decision does not set forth analysis of how challenged claims would be obvious based on Phillips in view of Marshall — that is, no explanation of what Phillips discloses or why it would have been obvious to combine with Marshall.

PO Response at 42-44.

Neither Phillips Nor Webb Cure Any Of Marshall's Deficiencies

No disclosure of cloud-based gratuity management system that calculates gratuities on a client-by-client basis using employee and transaction information extracted from individual client business systems to the separate and distinct remote Gratuity management server to apply stored client-specific gratuity distribution rules to determine gratuity allocations for each client's employees.

Institution Decision does not set forth analysis of how challenged claims would be obvious—that is, no explanation of what Webb and Phillips disclose or why it would have been obvious to combine with Marshall.

PO Response at 44-45.

**The Original Examiner Considered All Art Of
Record And Correctly Found The Claims
Patentable In The Reasons for Allowance**

The Original Examiner Considered Marshall, Phillips, and Webb

The original Examiner considered and rejected claims over Marshall:

- discloses processors/servers as single system/multi-system/combination (Ex. 1008 at 215)
- teaches multiple employers having different tipping requirements (Ex. 1008 at 218)

The original Examiner also considered the “later introduced claims”:

- Examiner maintained rejections over Marshall and Phillips with respect to some claims but did not reject the “later introduced claims” 30-32 (*Compare* Ex. 1008 at 278 *with* Ex. 1008 at 285)

The original Examiner’s Reasons for Allowance indicates all “later introduced claims” were patentable over the prior art of record. (Ex. 1008 at 432)

PO Response at 14-16.

Dr. Russ Confuses “Consideration” of Prior Art with Application of Prior Art in a Rejection

Dr. Russ admitted his opinion, that the original Examiner did not “consider” the prior art, was based on his understanding that the Examiner did not **apply** that art in a rejection.

(Ex. 2007, Russ Tr. at 13:6-15:8; 17:4-19:13.)

Dr. Russ admitted that the Examiner could have considered the prior art, but ultimately allowed the claims over it.

(Ex. 2007, Russ Tr. at 17:4-15)

The Prosecution History demonstrates that the Examiner considered all the prior art, but found the combination of elements in the later-introduced claims to be patentable over the prior art of record in view of the Examiner’s Amendment and Reasons for Allowance.

(*Compare* Ex. 1008 at 278 *with* Ex. 1008 at 285; Ex. 1008 at 425, 427, 429-430, 432)

PO Response at 15-18.

The Federal Circuit Has Warned That Extrinsic Evidence That Is Contrary To The Intrinsic Record Is To Be Rejected

Dr. Russ' opinion that the original Examiner did not consider the prior art of record is contrary to the intrinsic record which demonstrates the original Examiner fully considered the prior art including Marshall, Philips, and Webb.

The Federal Circuit has cautioned against reliance on litigation-driven opinions that contradict the intrinsic evidence with respect to claim construction, including the prosecution history.

Under the correct claim construction, as applied by the original Examiner, the prior art does not render the claims unpatentable.

PO Response at 13-18.

End of Slides

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on January 8, 2025, the foregoing document is being served via electronic mail upon the following counsel of record for Petitioner:

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