

Exhibit 5
Part 38
To Third Declaration of
Joseph N. Hosteny

- (a) Claim 32 is obvious under 35 U.S.C. § 103(a) over GB 2086732 in view of Wood, Sr. et al. or Berall, in further view of Levin because providing a CMOS camera to acquire an image of the patient's airway and an LED to illuminate the patient's airway would facilitate the intubation process by giving the medical professional an improved view of the airway. Accordingly, providing a CMOS camera and an LED in the laryngoscope of GB 2086732 as shown in Wood, Sr. et al. (col. 3, ll. 53-57) or Berall (col. 5, ll. 46-48) and Levin (col. 3, ll. 44-46; col. 5, ll. 6-12) would have been obvious to a person having ordinary skill in the art of laryngoscope design at the time the alleged invention of the '447 patent was made. In addition, the feature of providing a smooth surface is at least inherently disclosed in GB 2086732 or Berall or obvious in further view of Wood, Sr. et al. as described above in connection with claim 1.
- (b) Claim 32 is obvious under 35 U.S.C. § 103(a) over Wood, Sr. et al. or Berall in view of GB 2086732 in further view of Levin as to the LED and for the same reasons as those described above in connection with the obviousness of claim 31.

33. Claim 33

Claim 33 reads:

33. The intubation instrument of claim 31, wherein said light is a Light Emitting Diode.

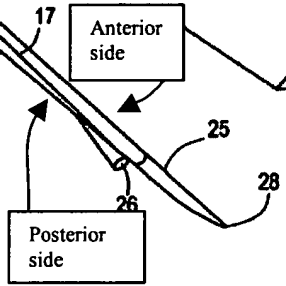
Claim 33 is a duplicate of claim 32 (and therefore improper; *see, e.g.*, 37 C.F.R. § 1.75(b)), so the analysis of claim 32 applies to claim 33 as well.

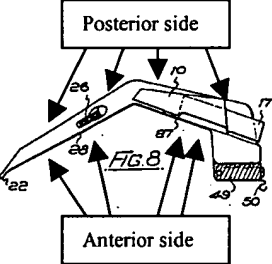
34. Claim 34⁶

- (a) Claim 34 is fully anticipated under 35 U.S.C. § 102 by GB 2086732 as described in the following claim chart:

⁶ The feature of the elongate lifter portion being about as long as the elongate base portion is not disclosed in the earlier applications 09/060,891; 60/074,355; and 60/067,205 all to which the '447 patent improperly claims priority.
Inter Partes Reexamination Request (28-Jul-06)
U.S. Pat. No. 6,543,447
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Claim 34	GB 2086732	US 5,800,344	US 5,827,178
34. An intubation instrument, a portion of which is for insertion into a patient through the patient's mouth, comprising:	GB 2086732, p. 1, ll. 5-27, discloses a laryngoscope that is used in intubation procedures. A portion of the laryngoscope is inserted through the patient's mouth as shown in Figs. 9 and 17.	US 5,800,344, col. 1, ll. 1-21 discloses a laryngoscope that is used in intubation procedures. A portion of the laryngoscope is inserted through the patient's mouth.	US 5,827,178, col. 1, ll. 5-10; col. 4, ll. 8-12 disclose a laryngoscope that is used in intubation procedures. A portion of the laryngoscope is inserted through the patient's mouth.
a body having a handle attached thereto;	GB 2086732, Fig. 15 discloses a laryngoscope body. A handle 43 is attached to the body and is shown more clearly in Fig. 10. The handle 43 may be integral or releasably attached to the remainder of the laryngoscope body (p. 3, ll. 100-104).	US 5,800,344, col. 2, ll. 47-54 and Figs. 1 and 4 disclose a laryngoscope body and a handle 20 attached to the body.	US 5,827,178, col. 5, ll. 13-15; Fig. 2 disclose a laryngoscope body and a handle 21 attached to the body.
an elongate arm having an elongate base portion attached to the body and an elongate lifter portion extending from said elongate base portion, said elongate base portion having a first defined length, said elongate lifter portion having a second defined length and a smooth surface for engaging the patient's epiglottis and a distal end for insertion distal-end	GB 2086732, Figs. 7, 8, and 17 disclose an elongate arm (the laryngoscope blade 21). The laryngoscope blade 21 has an elongate base portion (the straight portion 27) that is attached to the remainder of the laryngoscope body using, for example, the notch 46 and clip 50 at the lower depending portion 49 of the lower part 47 (p. 3, ll. 14-16; p. 3, ll. 94-106; Figs. 7, 8, and 10). The laryngoscope blade	US 5,800,344, col. 2, ll. 47-54 and Figs. 1 and 4 disclose an elongate arm (the body 12, known conventionally as a "blade"). The blade has an elongate base portion (the region between the proximal end 16 and a point located distally of the proximal end 16) that has a defined length and is attached to the remainder of the laryngoscope body (col. 1, ll. 52-53; col. 2, ll. 64-67; Fig. 2). The blade has an elongate lifter portion	US 5,827,178, col. 5, ll. 13-18, 43; Fig. 4 disclose an elongate arm (the laryngoscope blade 17). The laryngoscope blade 17 has an elongate base portion (the proximal end 24) that has a defined length and is attached to the remainder of the laryngoscope body. The laryngoscope blade 17 has an elongate lifter portion (the region located proximally of the tip 28 of the distal end 25) that extends from

Claim 34	GB 2086732	US 5,800,344	US 5,827,178
<p>first through a patient's mouth, said elongate arm defining an anterior side positioned toward said handle and an opposite posterior side;</p>	<p>21 has an elongate lifter portion (the straight portion 28) that extends from the elongate base portion (the straight portion 27) (p. 2, ll. 27-31 and Fig. 8). The elongate base portion (the straight portion 27) is comprised of a forming component 24A, which has a defined length of between 40 mm and 120 mm, and preferably between 60 mm and 85 mm (p. 3, ll. 10-16; p. 3, l. 129 – p. 4, l. 2). The elongate lifter portion (the straight portion 28) is comprised of a forming component 24B, which has a defined length of between 50 mm and 90 mm, and preferably between 60 mm and 75 mm (p. 3, ll. 10-16; p. 4, ll. 3-5). The elongate lifter portion (the straight portion 28) has a distal end (tip 22) that is inserted distal-end first through a patient's mouth and, as part of the laryngoscope blade 21, engages the patient's epiglottis to expose the patient's larynx (p. 1, ll. 57-64).</p>	<p>(the region between the distal end 14 and a point located proximally of the distal end 14) that extends from the elongate base portion (col. 2, ll. 47-54 and Fig. 1). The elongate lifter portion (the region between the distal end 14 and a point located proximally of the distal end 14) has a defined length and a smooth surface (smooth tip 18) and is inserted into the patient's mouth and through a patient's pharynx, larynx, and trachea to open the patient's airway passage (col. 1, ll. 10-21, 50-52; col. 2, ll. 49-51; Figs. 1-4). Accordingly, the elongate lifter portion (the region between the distal end 14 and a point located proximally of the distal end 14) opens the airway by engaging the epiglottis of the patient. The elongate arm (blade) has an anterior side (concave surface 32) positioned toward said handle and an opposite posterior side (convex surface</p>	<p>the elongate base portion (the proximal end 24). The elongate lifter portion (the region located proximally of the tip 28 of the distal end 25) has a defined length and a distal end (25) that is inserted, distal-end first, into the patient's mouth during intubation, which involves engaging ("manipulation of") the patient's epiglottis. The elongate arm (the laryngoscope blade 17) has an anterior side positioned toward the handle (21) and an opposite posterior side (Fig. 4, excerpted below).</p>  <p>The diagram shows a perspective view of a laryngoscope blade. It is a long, thin, slightly curved instrument. The top edge is labeled 'Anterior side' and the bottom edge is labeled 'Posterior side'. A box labeled '17' points to the main body of the blade. A box labeled '25' points to the distal tip. A box labeled '26' points to a small notch or feature near the tip. A box labeled '28' points to the straight portion of the blade.</p>

Claim 34	GB 2086732	US 5,800,344	US 5,827,178
	<p data-bbox="483 279 764 785">GB 2086732, Fig. 8 shows that the elongate arm (the laryngoscope blade 21) has an anterior side that is bounded by the straight portions 27 and 28 that meet at an included angle and is positioned toward the handle and an opposite posterior side, as shown:</p>  <p data-bbox="483 1230 764 1881">GB 2086732, Fig. 8 shows that the elongate lifter portion (the straight portion 28) has a smooth surface. Further, since the elongate lifter portion 28 of the laryngoscope blade 21 is inserted between the tongue and tonsil (p. 3, ll. 86-88), it needs to have a smooth surface to avoid injuring the sensitive tissue comprising the patient's airway.</p>	<p data-bbox="792 237 1029 310">30) (col. 3, ll. 1-5; Fig. 1).</p>	

Claim 34	GB 2086732	US 5,800,344	US 5,827,178
	<p>Accordingly, the smooth portion of the elongate lifter portion (the straight portion 28 shown in Fig. 8) is at least inherently disclosed.</p> <p>Note that GB 2086732, Figs. 9 and 17 show the tip 22 of the elongate lifter portion (the straight portion 28) partially obstructed by the patient's epiglottis, denoted with diagonal marking in the excerpt shown in the analysis of claim 1, above.</p>		
<p>said second defined length being about as long as said first defined length; and,</p>	<p>GB 2086732 discloses that the elongate base portion (the straight portion 27) is comprised of a forming component 24A, which has a length of between 40 mm and 120 mm, and preferably between 60 mm and 85 mm (p. 3, ll. 10-16; p. 3, l. 129 – p. 4, l. 2). Also disclosed is that the elongate lifter portion (the straight portion 28) is comprised of a forming component 24B, which has a length of between 50 mm and 90 mm, and preferably between 60 mm and 75 mm (p. 3, ll. 10-16; p. 4,</p>	<p>(See below with respect to 35 U.S.C. § 103(a))</p>	<p>(See below with respect to 35 U.S.C. § 103(a))</p>

Claim 34	GB 2086732	US 5,800,344	US 5,827,178
	<p>ll. 3-5). Accordingly, at 60 mm, for example, the elongate lifter portion (the straight portion 28) and the elongate base portion (the straight portion 27) are about the same length.</p>		
<p>a viewer operably secured to said posterior side of said arm substantially where said elongate base portion meets said elongate lifter portion, said viewer directed toward the distal end of said elongate lifter portion.</p>	<p>GB 2086732, p. 2, l. 129 – p. 3, l. 9; p.3, ll. 35-53 and Figs. 8 and 9 disclose a viewer (prism 10) operably secured to the posterior side of the elongate arm (the laryngoscope blade 21), substantially near the area where the elongate base portion (the straight portion 27) meets the elongate lifter portion (the straight portion 28). The prism is directed toward the distal end of the straight portion 28 to provide a view of the patient's anatomy.</p>	<p>US 5,800,344, col. 1, ll. 60-62; col. 3, ll. 22-37; Fig. 3 disclose a viewer (image sensor 42) operably secured to the posterior side of the elongate arm (blade), positioned substantially near the area where elongate base portion (the region between the proximal end 16 and a point located distally of the proximal end 16) meets the elongate lifter portion (the region between the distal end 14 and a point located proximally of the distal end 14). The image sensor 42 is directed toward the distal end 14 to provide a view of the patient's anatomy.</p>	<p>US 5,827,178, col. 1, ll. 58-60; col. 5, ll. 19-20, 28-31; Fig. 4 disclose a viewer (camera 26) operably secured to the posterior side of the elongate arm (the laryngoscope blade 17) and located substantially near the area where the elongate base portion (the proximal end 24) meets the elongate lifter portion (the region located proximally of the tip 28 of the distal end 25). The camera 26 is directed toward the distal end 25 to provide a view of the patient's anatomy.</p>

- (b) Claim 34 is obvious under 35 U.S.C. § 103(a) over Wood, Sr. et al. or Berall in view of GB 2086732 because providing an elongate lifter portion about as long as the elongate base portion would improve the shape of the laryngoscope and facilitate the intubation process. (The remaining

features of claim 34 are disclosed in Wood, Sr. et al. and Berall as shown in the preceding claim chart.) Accordingly, providing the length in the laryngoscopes of Wood, Sr. et al. or Berall as shown in GB 2086732 would have been obvious to a person having ordinary skill in the art of laryngoscope design at the time the alleged invention of the '447 patent was made. In addition, the feature of providing a smooth surface is at least inherently disclosed in GB 2086732 or Berall or obvious in further view of Wood, Sr. et al. as described above in connection with claim 1.

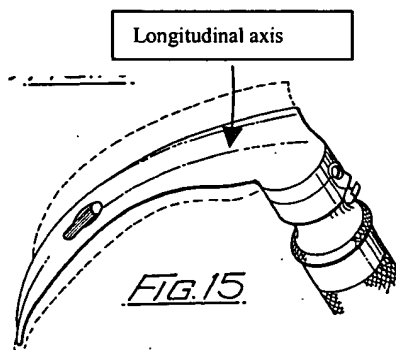
35. Claim 35

Claim 35 reads:

35. The intubation instrument of claim 34, wherein the portion of the intubation instrument for insertion into a patient through the patient's mouth is elongate and has a longitudinal center, and said base portion meets said lifter portion substantially near said longitudinal center.

- (a) Claim 35 is fully anticipated under 35 U.S.C. § 102 by GB 2086732 because GB 2086732, p. 2, ll. 27-31 and Fig. 8, shows that the elongate base portion (the straight portion 27) and elongate lifter portion (the straight portion 28) meet substantially near the center of the elongate arm (the laryngoscope blade 21). The elongate base portion (the straight portion 27) is comprised of a forming component 24A, which has a length of between 40 mm and 120 mm, and preferably between 60 mm and 85 mm (p. 3, ll. 10-16; p. 3, l. 129 – p. 4, l. 2). The elongate lifter portion (the straight portion 28) is comprised of a forming component 24B, which has a length of between 50 mm and 90 mm, and preferably between 60 mm and 75 mm (p. 3, ll. 10-16; p. 4, ll. 3-5). Accordingly, for example, when both the elongate lifter portion (the straight portion 28) and the elongate base portion (the straight portion 27) are each 60 mm long and joined together to create a 120 mm long elongate arm (the laryngoscope blade 21), these portions meet at the longitudinal center (i.e., at the center

along a longitudinal axis) of the elongate arm (the laryngoscope blade 21), i.e., at the 60 mm point. The longitudinal axis of the laryngoscope blade 21 is shown in, for example, Fig. 15:



- (b) Claim 35 is obvious under 35 U.S.C. § 103(a) over Wood, Sr. et al. or Berall in view of GB 2086732 because providing an elongate lifter portion about as long as the elongate base portion and that meet substantially near the center of the elongate arm would improve the shape of the laryngoscope and facilitate the intubation process. (The remaining features of claim 35 are disclosed in Wood, Sr. et al. and Berall as shown in the chart for claim 34.) Accordingly, providing this configuration for the elongate base and lifter portions in the laryngoscopes of Wood, Sr. et al. or Berall as shown in GB 2086732 would have been obvious to a person having ordinary skill in the art of laryngoscope design at the time the alleged invention of the '447 patent was made. In addition, the feature of providing a smooth surface is at least inherently disclosed in GB 2086732 or Berall or obvious in further view of Wood, Sr. et al. as described above in connection with claim 1.

36. Claim 36

Claim 36 reads:

36. The intubation instrument of claim 34, wherein said viewer is a Complementary Metal Oxide Semiconductor camera.

- (a) Claim 36 is obvious under 35 U.S.C. § 103(a) over GB 2086732 in view of Wood, Sr. et al. or Berall because providing a CMOS camera to acquire an image of the patient's airway would facilitate the intubation process by giving the medical professional an improved view of the airway. Accordingly, providing a CMOS camera in the laryngoscope of GB 2086732 as shown in Wood, Sr. et al. (col. 3, ll. 53-57) or Berall (col. 5, ll. 46-48) would have been obvious to a person having ordinary skill in the art of laryngoscope design at the time the alleged invention of the '447 patent was made. In addition, the feature of providing a smooth surface is at least inherently disclosed in GB 2086732 or Berall or obvious in further view of Wood, Sr. et al. as described above in connection with claim 1.
- (b) Claim 36 is obvious under 35 U.S.C. § 103(a) over Wood, Sr. et al. or Berall in view of GB 2086732 for the reasons as described above in connection with the obviousness of claim 34. (The remaining features of claim 36 are disclosed in Wood, Sr. et al. (col. 3, ll. 53-57) and Berall (col. 5, ll. 46-48).)

37. Claim 37

Claim 37 reads:

37. The intubation instrument of claim 36, further including a display operably secured to said camera.

- (a) Claim 37 is obvious under 35 U.S.C. § 103(a) over GB 2086732 in view of Wood, Sr. et al. or Berall or Kantor because providing a display to view an image of the patient's airway would facilitate the intubation process by giving the medical professional an improved observation of the airway. Accordingly, providing a display operably secured to the camera in the laryngoscope of GB 2086732 as shown in Wood, Sr. et al. (col. 3, ll. 57-

61) or Berall (col. 5, ll. 34-36; Fig. 4) or Kantor (p. 7, ll. 6-15; p. 10, ll. 12-23) would have been obvious to a person having ordinary skill in the art of laryngoscope design at the time the alleged invention of the '447 patent was made. In addition, the feature of providing a smooth surface is at least inherently disclosed in GB 2086732 or Berall or obvious in further view of Wood, Sr. et al. as described above in connection with claim 1.

- (b) Claim 37 is obvious under 35 U.S.C. § 103(a) over Wood, Sr. et al. or Berall in view of GB 2086732 for the reasons as described above in connection with the obviousness of claim 36. (The remaining features of claim 37 are disclosed in Wood, Sr. et al. (col. 3, ll. 57-61) and Berall (col. 5, ll. 34-36; Fig. 4).)

38. Claim 38

Claim 38 reads:

38. The intubation instrument of claim 34, wherein said lifter portion is pivotally secured to said base portion.

- (a) Claim 38 is obvious under 35 U.S.C. § 103(a) over GB 2086732 in view of Bauman or Mentzelopoulous (prior art as described above in connection with claim 17). Bauman, col. 3, ll. 13-24, 54-57; Figs. 5, 6, discloses a laryngoscope having a lifter portion (flexible tip 35) pivotally secured to the base portion (12) of the laryngoscope blade at a pivot point (near blade section 42). Mentzelopoulous, p. 13, ll. 16-17; p. 16, ll. 16-19; p. 18, l. 26 – p. 19, l. 1; p. 21, ll. 19-23; Figs. I-III, discloses a laryngoscope having a lifter portion (“distal two thirds”) pivotally secured to the base portion (length “L/3”) at a pivot point (joint 1 (Figs. II and III); joint 6 (Fig. II); joint 12 (Fig. I)). Accordingly, providing a lifter portion pivotally secured to the base portion in the laryngoscope of GB 2086732 to increase flexibility of the laryngoscope and facilitate the intubation process as shown in Bauman (col. 3, ll. 13-24, 54-57; Figs. 5, 6) or Mentzelopoulous (p. 13, ll. 16-17; p. 16, ll. 16-19; p. 18, l. 26 – p. 19, l. 1; p. 21, ll. 19-23;

Figs. I-III) would have been obvious to a person having ordinary skill in the art of laryngoscope design at the time the alleged invention of the '447 patent was made. In addition, the feature of providing a smooth surface is at least inherently disclosed in GB 2086732 or Berall or obvious in further view of Wood, Sr. et al. as described above in connection with claim 1.

- (b) Claim 38 is obvious under 35 U.S.C. § 103(a) over Wood, Sr. et al. or Berall in view of GB 2086732, in further view of Bauman or Mentzelopoulous as to the pivot feature, and for the reasons as described above in connection with the obviousness of claim 34.

39. Claim 39

Claim 39 reads:

39. The intubation instrument of claim 38, further including a Light Emitting Diode operably secured to said lifter portion.

- (a) Claim 39 is obvious under 35 U.S.C. § 103(a) over GB 2086732 in view of Bauman or Mentzelopoulous (prior art as described above in connection with claim 17), in further view of Levin for the reasons as described above in connection with claim 38 and because providing an LED to illuminate the patient's airway would facilitate the intubation process. Accordingly, providing an LED and pivot feature in the laryngoscope of GB 2086732 to illuminate the patient's airway during intubation and to increase flexibility of the laryngoscope and facilitate the intubation process as shown in Levin (col. 3, ll. 44-46; col. 5, ll. 6-12) and in Bauman (col. 3, ll. 13-24, 54-57; Figs. 5, 6) or Mentzelopoulous (p. 13, ll. 16-17; p. 16, ll. 16-19; p. 18, l. 26 – p. 19, l. 1; p. 21, ll. 19-23; Figs. I-III) would have been obvious to a person having ordinary skill in the art of laryngoscope design at the time the alleged invention of the '447 patent was made. In addition, the feature of providing a smooth surface is at least inherently disclosed in GB 2086732 or Berall or obvious in further view of Wood, Sr. et al. as described above in connection with claim 1.

- (b) Claim 39 is obvious under 35 U.S.C. § 103(a) over Wood, Sr. et al. or Berall in view of GB 2086732 in further view of Bauman or Mentzelopoulos as to the pivot feature for the reasons as described above in connection with the obviousness of claim 38 and Levin as to the LED as described in the preceding paragraph.

40. Claim 40⁷

- (a) Claim 40 is fully anticipated under 35 U.S.C. § 102 by GB 2086732 as described in the following claim chart:

Claim 40	GB 2086732	US 5,800,344	US 5,827,178
40. An intubation instrument a portion of which is for insertion into a patient through the patient's mouth, comprising;	GB 2086732, p. 1, ll. 5-27, discloses a laryngoscope that is used in intubation procedures. A portion of the laryngoscope is inserted through the patient's mouth as shown in Figs. 9 and 17.	US 5,800,344, col. 1, ll. 1-21 discloses a laryngoscope that is used in intubation procedures. A portion of the laryngoscope is inserted through the patient's mouth.	US 5,827,178, col. 1, ll. 5-10; col. 4, ll. 8-12 discloses a laryngoscope that is used in intubation procedures. A portion of the laryngoscope is inserted through the patient's mouth.
a body having a handle attached thereto;	GB 2086732, Fig. 15 discloses a laryngoscope body. A handle 43 is attached to the body and is shown more clearly in Fig. 10. The handle 43 may be integral or releasably attached to the remainder of the laryngoscope body (p. 3, ll. 100-104).	US 5,800,344, col. 2, ll. 47-54 and Figs. 1 and 4 disclose a laryngoscope body and a handle 20 attached to the body.	US 5,827,178, col. 5, ll. 13-15; Fig. 2 disclose a laryngoscope body and a handle 21 attached to the body.
an elongate arm having an elongate base portion attached to the body	GB 2086732, Figs. 7, 8, and 17 disclose an elongate arm (the laryngoscope blade	US 5,800,344, col. 2, ll. 47-54 and Figs. 1 and 4 disclose an elongate arm (the	US 5,827,178, col. 5, ll. 13-18, 43; Fig. 4 disclose an elongate arm (the

⁷ The feature of the elongate lifter portion and the elongate base portion meeting substantially near the center is not disclosed in the earlier applications 09/060,891; 60/074,355; and 60/067,205 all to which the '447 patent improperly claims priority.

Claim 40	GB 2086732	US 5,800,344	US 5,827,178
<p>and an elongate lifter portion having a smooth surface for engaging the patient's epiglottis, said elongate lifter portion having a distal end portion for insertion distal end portion first through a patient's mouth, said elongate arm defining an anterior side positioned toward said handle and an opposite posterior side;</p>	<p>21). The laryngoscope blade 21 has an elongate base portion (the straight portion 27) that is attached to the remainder of the laryngoscope body using, for example, the notch 46 and clip 50 at the lower depending portion 49 of the lower part 47 (p. 3, ll. 14-16; p. 3, ll. 94-106; Figs. 7, 8, and 10). The laryngoscope blade 21 has an elongate lifter portion (the straight portion 28) that has a distal end (tip 22) that is inserted distal-end first through a patient's mouth and, as part of the laryngoscope blade 21, engages the patient's epiglottis to expose the patient's larynx (p. 1, ll. 57-64). Fig. 8 shows that the elongate arm (the laryngoscope blade 21) has an anterior side that is bounded by the straight portions 27 and 28 that meet at an included angle and is positioned toward the handle and an opposite posterior side.</p>	<p>body 12, known conventionally as a "blade"). The blade has an elongate base portion (the region between the proximal end 16 and a point located distally of the proximal end 16) that is attached to the remainder of the laryngoscope body (col. 1, ll. 52-53; col. 2, ll. 64-67; Fig. 2). The blade has an elongate lifter portion (the region between the distal end 14 and a point located proximally of the distal end 14) that has a smooth surface (smooth tip 18) and is inserted into the patient's mouth and through a patient's pharynx, larynx, and trachea to open the patient's airway passage (col. 1, ll. 10-21, 50-52; col. 2, ll. 49-51; Figs. 1-4). Accordingly, the elongate lifter portion (the region between the distal end 14 and a point located proximally of the distal end 14) opens the airway by engaging the epiglottis of the patient. The elongate arm (blade) has an anterior side (concave</p>	<p>laryngoscope blade 17). The laryngoscope blade 17 has an elongate base portion (the proximal end 24) that is attached to the remainder of the laryngoscope body. The laryngoscope blade 17 has an elongate lifter portion (the region located proximally of the tip 28 of the distal end 25) that has a distal end (25) that is inserted, distal-end first, into the patient's mouth during intubation, which involves engaging ("manipulation of") the patient's epiglottis. The elongate arm (the laryngoscope blade 17) has an anterior side positioned toward the handle (21) and an opposite posterior side (Fig. 4, excerpted above regarding claim 34).</p>

Claim 40	GB 2086732	US 5,800,344	US 5,827,178
	<p>GB 2086732, Fig. 8 shows that the elongate lifter portion (the straight portion 28) has a smooth surface. Further, since the elongate lifter portion 28 of the laryngoscope blade 21 is inserted between the tongue and tonsil (p. 3, ll. 86-88), it needs to have a smooth surface to avoid injuring the sensitive tissue comprising the patient's airway. Accordingly, the smooth portion of the elongate lifter portion (the straight portion 28 shown in Fig. 8) is at least inherently disclosed.</p> <p>Note that GB 2086732, Figs. 9 and 17 show the tip 22 of the elongate lifter portion (the straight portion 28) partially obstructed by the patient's epiglottis, denoted with diagonal marking in the excerpt shown in the analysis of claim 1, above.</p>	<p>surface 32) positioned toward said handle and an opposite posterior side (convex surface 30) (col. 3, ll. 1-5; Fig. 1).</p>	
<p>a viewer operably secured to said posterior side of said elongate arm substantially near where said elongate</p>	<p>GB 2086732, p. 2, l. 129 – p. 3, l. 9; p.3, ll. 35-53 and Figs. 8 and 9 disclose a viewer (prism 10) positioned on the</p>	<p>US 5,800,344, col. 1, ll. 60-62; col. 3, ll. 22-37; Fig. 3 disclose a viewer (image sensor 42) operably secured to the</p>	<p>US 5,827,178, col. 1, ll. 58-60; col. 5, ll. 19-20, 28-31; Fig. 4 disclose a viewer (camera 26) operably secured to the</p>

Claim 40	GB 2086732	US 5,800,344	US 5,827,178
<p>base portion meets said elongate lifter portion, said viewer directed toward the distal end portion of said elongate lifter portion; and,</p>	<p>posterior side of the elongate arm (the laryngoscope blade 21), substantially near the area where the elongate base portion (the straight portion 27) meets the elongate lifter portion (the straight portion 28). The prism is directed toward the distal end of the straight portion 28 to provide a view of the patient's anatomy.</p>	<p>posterior side of the elongate arm (blade), positioned substantially near the area where elongate base portion (the region between the proximal end 16 and a point located distally of the proximal end 16) meets the elongate lifter portion (the region between the distal end 14 and a point located proximally of the distal end 14). The image sensor 42 is directed toward the distal end 14 to provide a view of the patient's anatomy.</p>	<p>posterior side of the elongate arm (the laryngoscope blade 17) and located substantially near the area where the elongate base portion (the proximal end 24) meets the elongate lifter portion (the region located proximally of the tip 28 of the distal end 25). The camera 26 is directed toward the distal end 25 to provide a view of the patient's anatomy.</p>
<p>said elongate arm having a center, and said elongate base portion meets said elongate lifter portion substantially near said center.</p>	<p>GB 2086732, p. 2, ll. 27-31 and Fig. 8, which show that the elongate base portion (the straight portion 27) and elongate lifter portion (the straight portion 28) meet substantially near the center of the elongate arm (the laryngoscope blade 21). The elongate base portion (the straight portion 27) is comprised of a forming component 24A, which has a length of between 40 mm and 120 mm, and preferably between 60 mm and 85 mm</p>	<p>(See below with respect to 35 U.S.C. § 103(a))</p>	<p>(See below with respect to 35 U.S.C. § 103(a))</p>

Claim 40	GB 2086732	US 5,800,344	US 5,827,178
	<p>(p. 3, ll. 10-16; p. 3, l. 129 – p. 4, l. 2). The elongate lifter portion (the straight portion 28) is comprised of a forming component 24B, which has a length of between 50 mm and 90 mm, and preferably between 60 mm and 75 mm (p. 3, ll. 10-16; p. 4, ll. 3-5). Accordingly, for example, when both the elongate lifter portion (the straight portion 28) and the elongate base portion (the straight portion 27) are each 60 mm long and joined together to create a 120 mm long elongate arm (the laryngoscope blade 21), these portions meet at the center of the elongate arm (the laryngoscope blade 21), i.e., at the 60 mm point.</p>		

- (b) Claim 40 is obvious under 35 U.S.C. § 103(a) over Wood, Sr. et al. or Berall in view of GB 2086732 because providing elongate base and lifter portions that meet substantially near the center of the elongate arm (the laryngoscope blade) would improve the shape of the laryngoscope and facilitate the intubation process. (The remaining features of claim 40 are disclosed in Wood, Sr. et al. and Berall as shown in the preceding claim chart.) Accordingly, providing this configuration of the elongate base and lifter portions in the laryngoscopes of Wood, Sr. et al. or Berall as shown

in GB 2086732 would have been obvious to a person having ordinary skill in the art of laryngoscope design at the time the alleged invention of the '447 patent was made. In addition, the feature of providing a smooth surface is at least inherently disclosed in GB 2086732 or Berall or obvious in further view of Wood, Sr. et al. as described above in connection with claim 1.

41. Claim 41

Claim 41 reads:

41. The intubation instrument of claim 40, wherein said viewer is a Complementary Metal Oxide Semiconductor camera.

- (a) Claim 41 is obvious under 35 U.S.C. § 103(a) over GB 2086732 in view of Wood, Sr. et al. or Berall because providing a CMOS camera to acquire an image of the patient's airway would facilitate the intubation process by giving the medical professional an improved view of the airway. Accordingly, providing a CMOS camera in the laryngoscope of GB 2086732 as shown in Wood, Sr. et al. (col. 3, ll. 53-57) or Berall (col. 5, ll. 46-48) would have been obvious to a person having ordinary skill in the art of laryngoscope design at the time the alleged invention of the '447 patent was made. In addition, the feature of providing a smooth surface is at least inherently disclosed in GB 2086732 or Berall or obvious in further view of Wood, Sr. et al. as described above in connection with claim 1.
- (b) Claim 41 is obvious under 35 U.S.C. § 103(a) over Wood, Sr. et al. or Berall in view of GB 2086732 for the reasons as described above in connection with the obviousness of claim 40. (The remaining features of claim 41 are disclosed in Wood, Sr. et al. (col. 3, ll. 53-57) and Berall (col. 5, ll. 46-48).)

42. Claim 42

Claim 42 reads:

42. The intubation instrument of claim 41, further including a display operably secured to said Complementary Metal Oxide Semiconductor camera.

- (a) Claim 42 is obvious under 35 U.S.C. § 103(a) over GB 2086732 in view of Wood, Sr. et al. or Berall or Kantor because providing a display to view an image of the patient's airway would facilitate the intubation process by giving the medical professional an improved observation of the airway. Accordingly, providing a display operably secured to the camera in the laryngoscope of GB 2086732 as shown in Wood, Sr. et al. (col. 3, ll. 57-61) or Berall (col. 5, ll. 34-36; Fig. 4) or Kantor (p. 7, ll. 6-15; p. 10, ll. 12-23) would have been obvious to a person having ordinary skill in the art of laryngoscope design at the time the alleged invention of the '447 patent was made. In addition, the feature of providing a smooth surface is at least inherently disclosed in GB 2086732 or Berall or obvious in further view of Wood, Sr. et al. as described above in connection with claim 1.
- (b) Claim 42 is obvious under 35 U.S.C. § 103(a) over Wood, Sr. et al. or Berall in view of GB 2086732 for the reasons as described above in connection with the obviousness of claim 41. (The remaining features of claim 42 are disclosed in Wood, Sr. et al. (col. 3, ll. 57-61) and Berall (col. 5, ll. 34-36; Fig. 4).)

43. Claim 43

Claim 43 reads:

43. The intubation instrument of claim 40, wherein said elongate lifter portion is pivotally secured to said elongate base portion.

- (a) Claim 43 is obvious under 35 U.S.C. § 103(a) over GB 2086732 in view of Bauman or Mentzelopoulous (prior art as described above in connection with claim 17). Bauman, col. 3, ll. 13-24, 54-57; Figs. 5, 6, discloses a laryngoscope having a lifter portion (flexible tip 35) pivotally secured to

the base portion (12) of the laryngoscope blade at a pivot point (near blade section 42). Mentzelopoulous, p. 13, ll. 16-17; p. 16, ll. 16-19; p. 18, l. 26 – p. 19, l. 1; p. 21, ll. 19-23; Figs. I-III, discloses a laryngoscope having a lifter portion (“distal two thirds”) pivotally secured to the base portion (length “L/3”) at a pivot point (joint 1 (Figs. II and III); joint 6 (Fig. II); joint 12 (Fig. I)). Accordingly, providing a pivot point in the laryngoscope of GB 2086732 to increase flexibility of the laryngoscope and facilitate the intubation process as shown in Bauman (col. 3, ll. 13-24, 54-57; Figs. 5, 6) or Mentzelopoulous (p. 13, ll. 16-17; p. 16, ll. 16-19; p. 18, l. 26 – p. 19, l. 1; p. 21, ll. 19-23; Figs. I-III) would have been obvious to a person having ordinary skill in the art of laryngoscope design at the time the alleged invention of the ‘447 patent was made. In addition, the feature of providing a smooth surface is at least inherently disclosed in GB 2086732 or Berall or obvious in further view of Wood, Sr. et al. as described above in connection with claim 1.

- (b) Claim 43 is obvious under 35 U.S.C. § 103(a) over Wood, Sr. et al. or Berall in view of GB 2086732, in further view of Bauman or Mentzelopoulous as to the pivot feature, and for the reasons described above in connection with claim 40.

44. Claim 44

Claim 44 reads:

44. The intubation instrument of claim 43, further including a Light Emitting Diode operably secured to said elongate lifter portion.

- (a) Claim 44 is obvious under 35 U.S.C. § 103(a) over GB 2086732 in view of Bauman or Mentzelopoulous (prior art as described above in connection with claim 17), in further view of Levin for the reasons as described above in connection with claim 43 and because providing an LED to illuminate the patient’s airway would facilitate the intubation process. Accordingly,

providing an LED operably secured to the elongate lifter portion and pivot feature in the laryngoscope of GB 2086732 to illuminate the patient's airway during intubation and to increase flexibility of the laryngoscope and facilitate the intubation process as shown in Levin (col. 3, ll. 44-46; col. 5, ll. 6-12) and in Bauman (col. 3, ll. 13-24, 54-57; Figs. 5, 6) or Mentzelopoulos (p. 13, ll. 16-17; p. 16, ll. 16-19; p. 18, l. 26 – p. 19, l. 1; p. 21, ll. 19-23; Figs. I-III) would have been obvious to a person having ordinary skill in the art of laryngoscope design at the time the alleged invention of the '447 patent was made. In addition, the feature of providing a smooth surface is at least inherently disclosed in GB 2086732 or Berall or obvious in further view of Wood, Sr. et al. as described above in connection with claim 1.

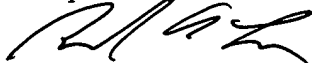
- (b) Claim 44 is obvious under 35 U.S.C. § 103(a) over Wood, Sr. et al. or Berall in view of GB 2086732 in further view of Bauman or Mentzelopoulos as to the pivot feature for the reasons as described above in connection with the obviousness of claim 43 and Levin as to the LED as described in the preceding paragraph.

C. Statement pointing out substantial new question of patentability.

The GB 2086732, Mentzelopoulos, and Kantor prior art documents referred to above were not of record during prosecution of the '447 patent. Since claims 1-44 of the '447 patent are not patentable over these prior art documents alone or in combination with other prior art documents as described above, and because the defective priority claim described above was not raised during prosecution of the '447 patent, a substantial new question of patentability is raised.

Date: July 28, 2006

Respectfully submitted,



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BOS2_553453.1



US006988138B1

(12) **United States Patent**
Alcorn et al.

(10) **Patent No.:** US 6,988,138 B1
(45) **Date of Patent:** Jan. 17, 2006

(54) **INTERNET-BASED EDUCATION SUPPORT SYSTEM AND METHODS**

(56) **References Cited**

U.S. PATENT DOCUMENTS

(75) Inventors: **Robert L. Alcorn**, Arlington, VA (US); **Daniel E. Cane**, Washington, DC (US); **Michael L. Chasen**, Washington, DC (US); **Timothy R. Chi**, Fairfax, VA (US); **Stephen R. Gilfus**, Woodbridge, VA (US); **Scott Perian**, Washington, DC (US); **Matthew L. Pittinsky**, Washington, DC (US)

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(73) Assignee: **Blackboard Inc.**, Washington, DC (US)

(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 754 days.

* cited by examiner

Primary Examiner—Bunjob Jaroenchonwanit

Assistant Examiner—Thanh T Nguyen

(74) *Attorney, Agent, or Firm*—Wilmer Cutler Pickering Hale and Dorr LLP

(21) Appl. No.: **09/608,208**

(22) Filed: **Jun. 30, 2000**

Related U.S. Application Data

(60) Provisional application No. 60/141,283, filed on Jun. 30, 1999, provisional application No. 60/141,864, filed on Jul. 1, 1999, provisional application No. 60/187,890, filed on Mar. 8, 2000.

(51) **Int. Cl.**
G06F 15/173 (2006.01)

(52) **U.S. Cl.** **709/225**; 709/203; 709/218; 709/217; 709/204; 343/350; 343/204

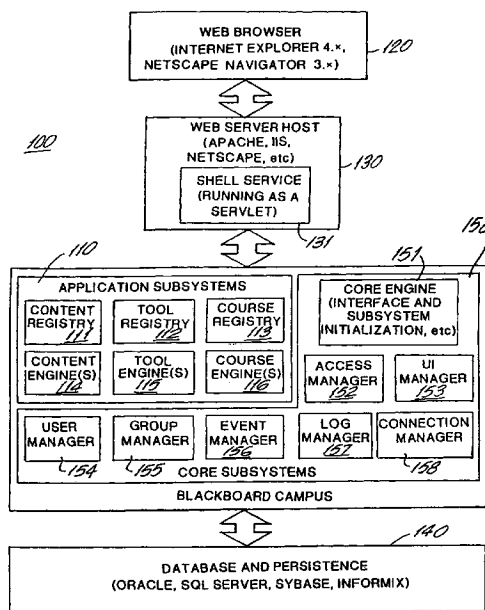
(58) **Field of Classification Search** 709/225, 709/203, 218, 217, 204, 205; 343/350, 204, 343/336

(57) **ABSTRACT**

A system and methods for implementing education online by providing institutions with the means for allowing the creation of courses to be taken by students online, the courses including assignments, announcements, course materials, chat and whiteboard facilities, and the like, all of which are available to the students over a network such as the Internet. Various levels of functionality are provided through a three-tiered licensing program that suits the needs of the institution offering the program. In addition, an open platform system is provided such that anyone with access to the Internet can create, manage, and offer a course to anyone else with access to the Internet without the need for an affiliation with an institution, thus enabling the virtual classroom to extend worldwide.

See application file for complete search history.

44 Claims, 41 Drawing Sheets



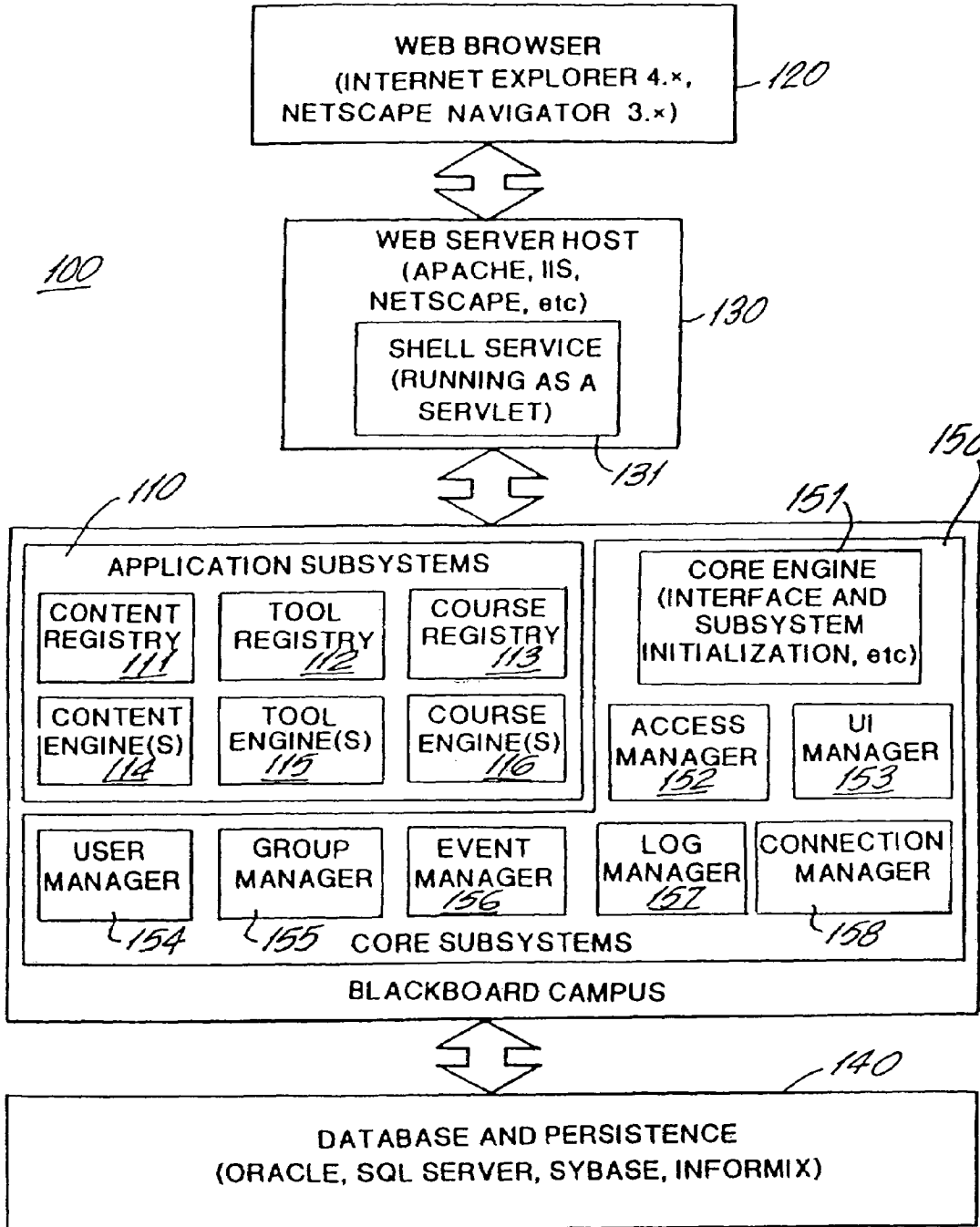


FIG. 1

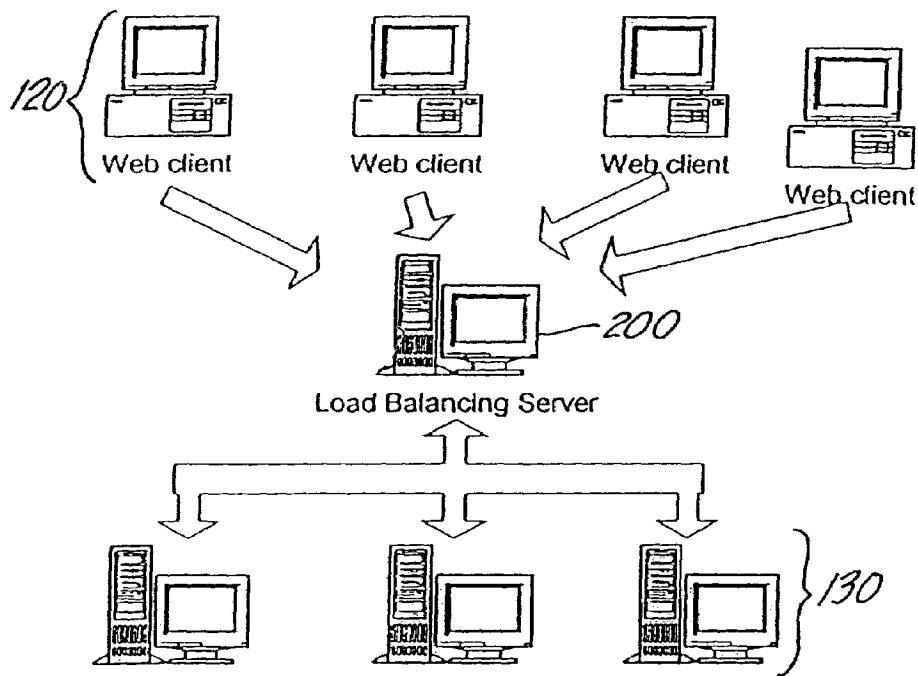


FIG.2

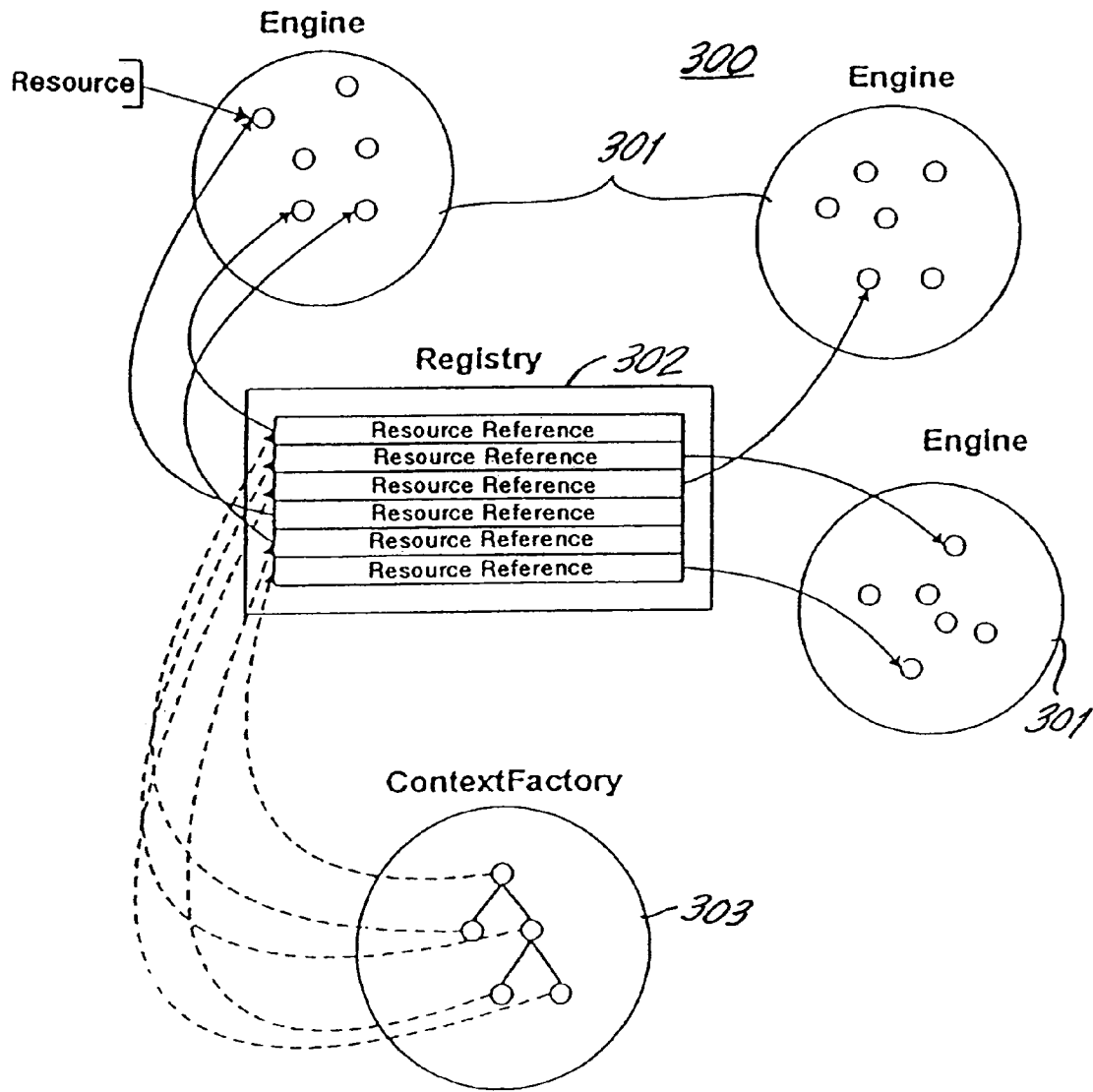


FIG.3

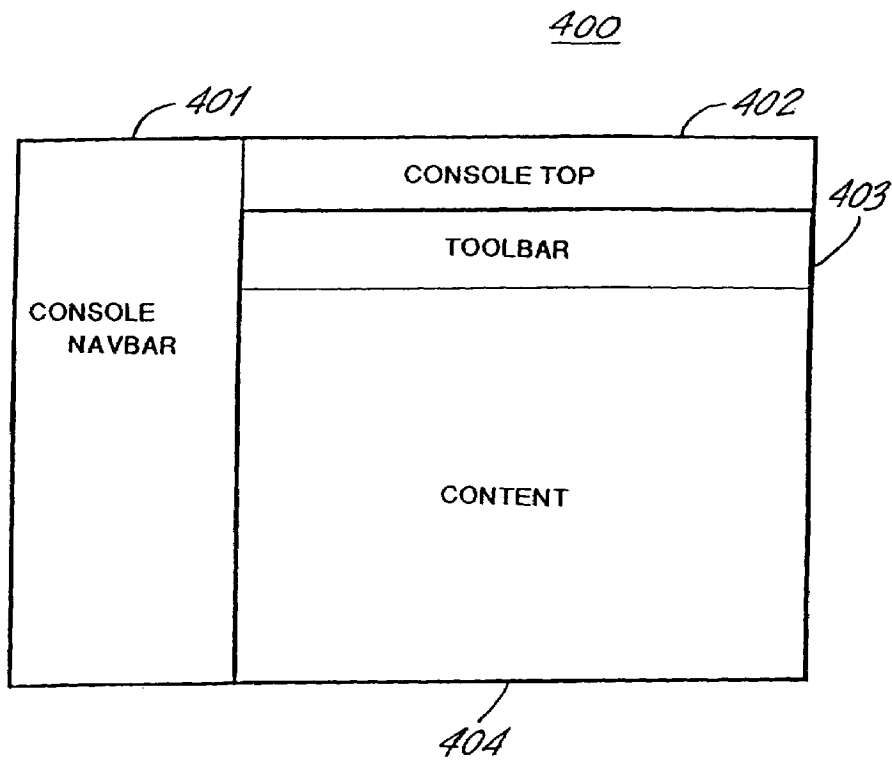


FIG.4

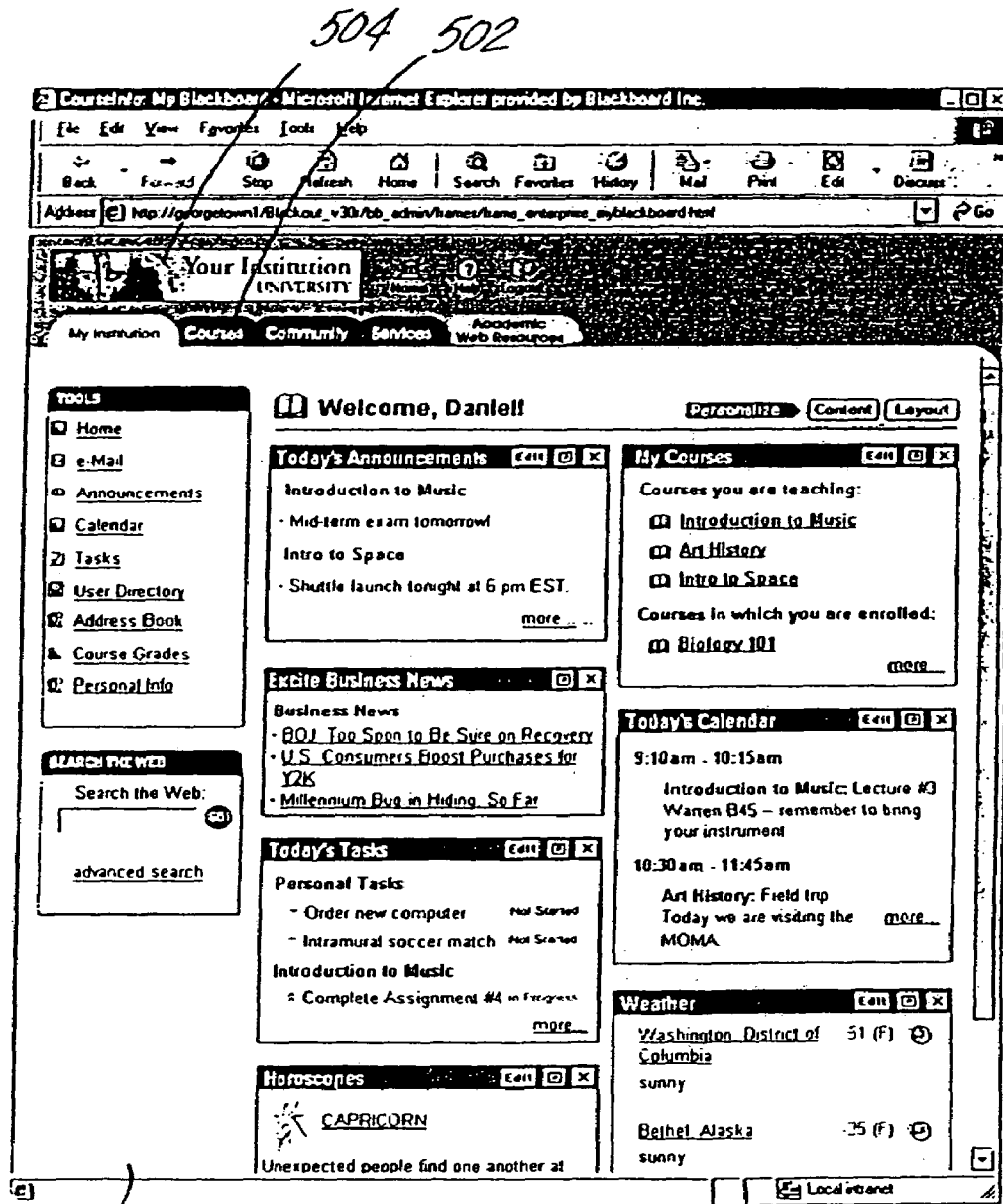
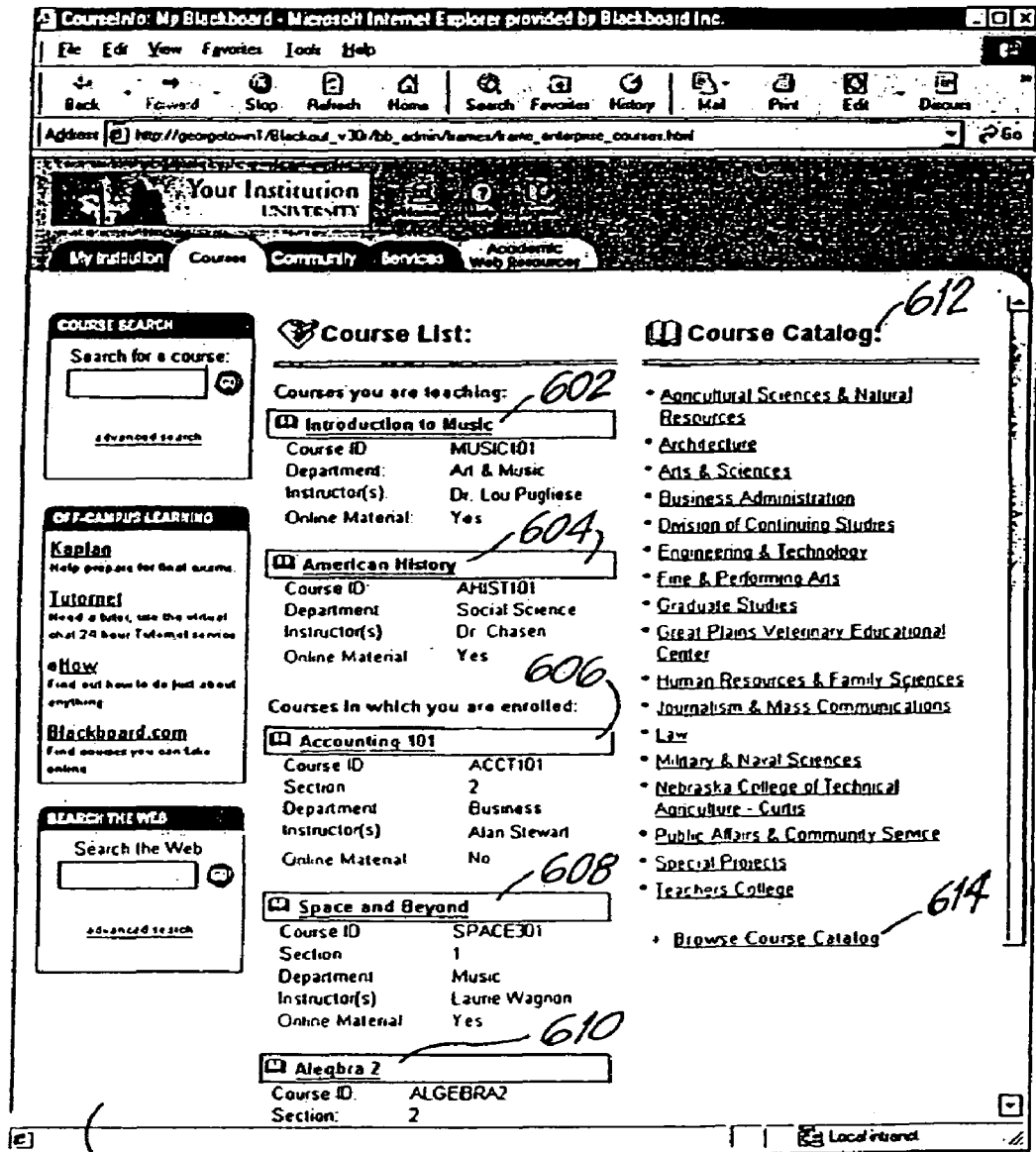


FIG.5



600

FIG.6

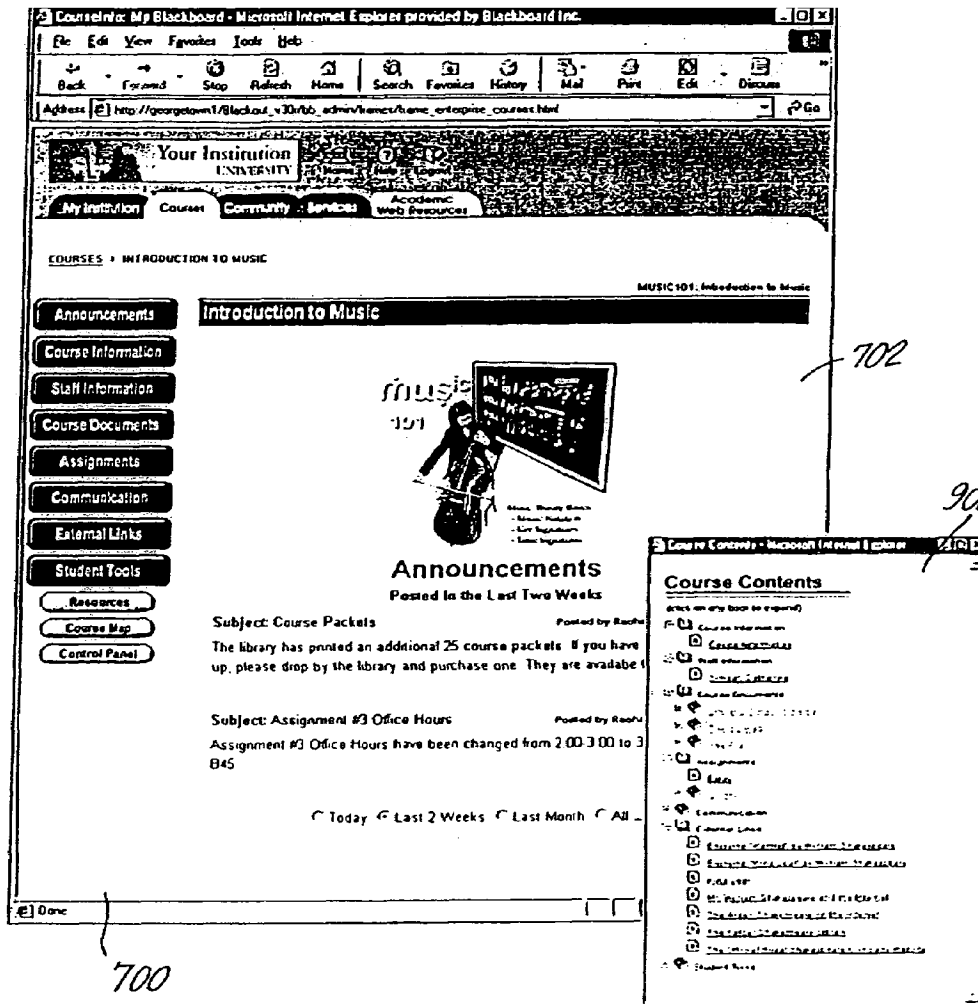


FIG. 7

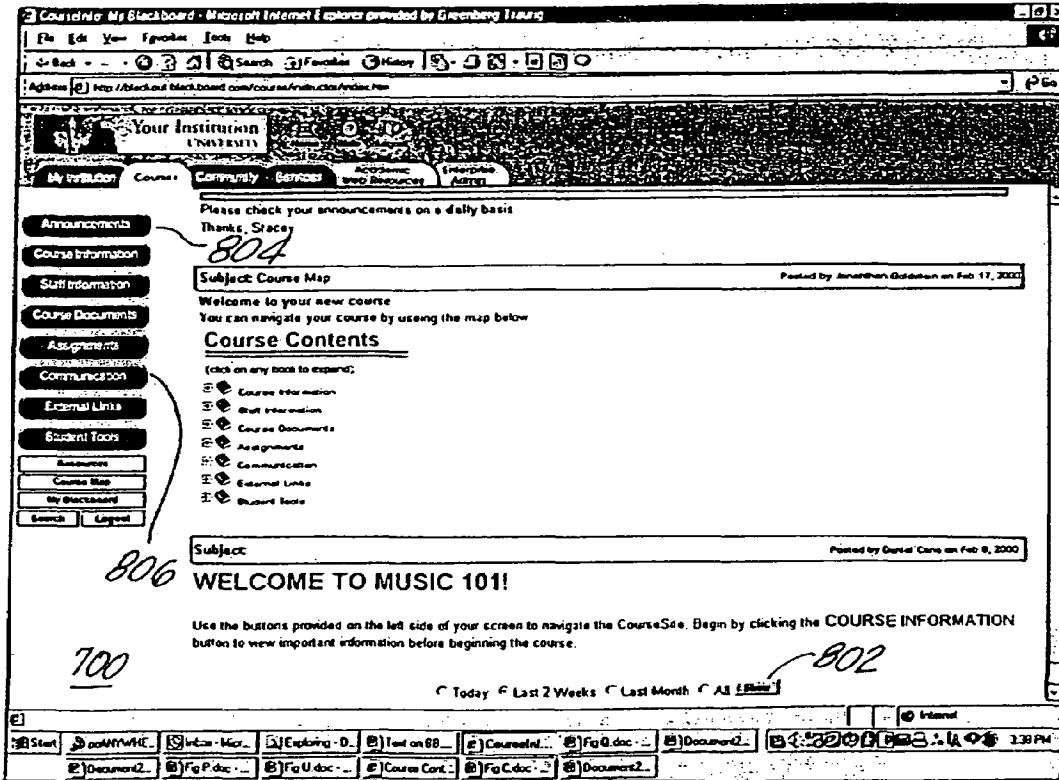
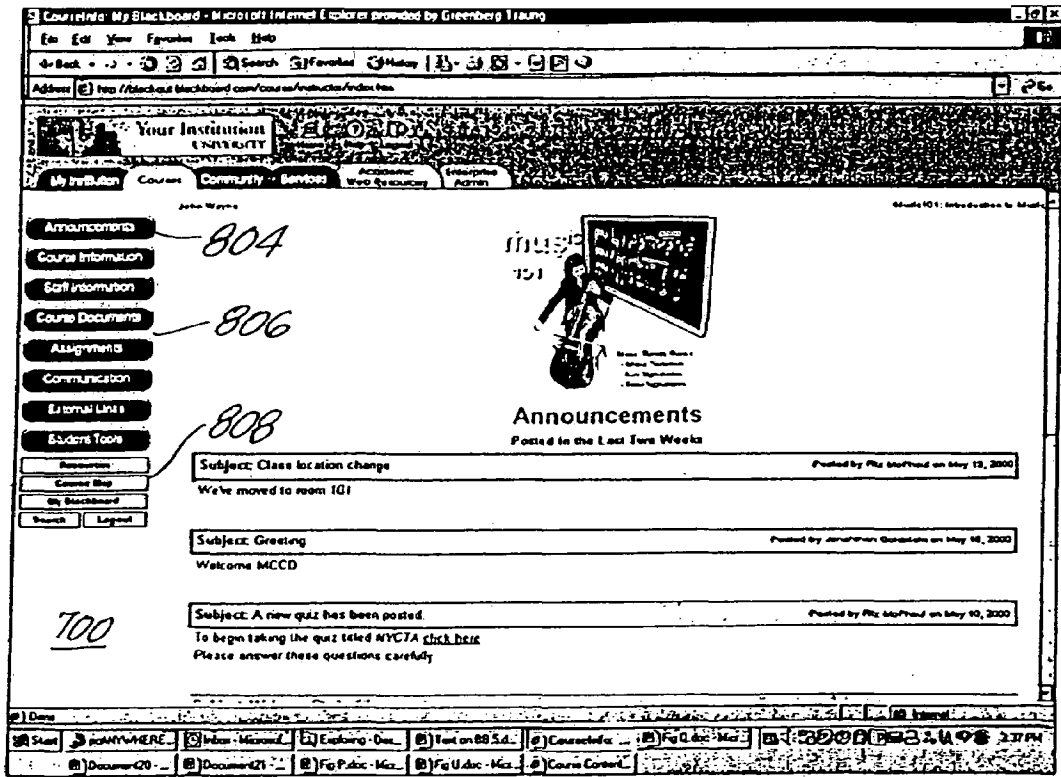


FIG. 8

900

Course Contents

(Click on any book to expand)

- 1. Course Overview
- 2. Course Overview
- 3. Course Overview
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- 100. Course Overview

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FIG.9

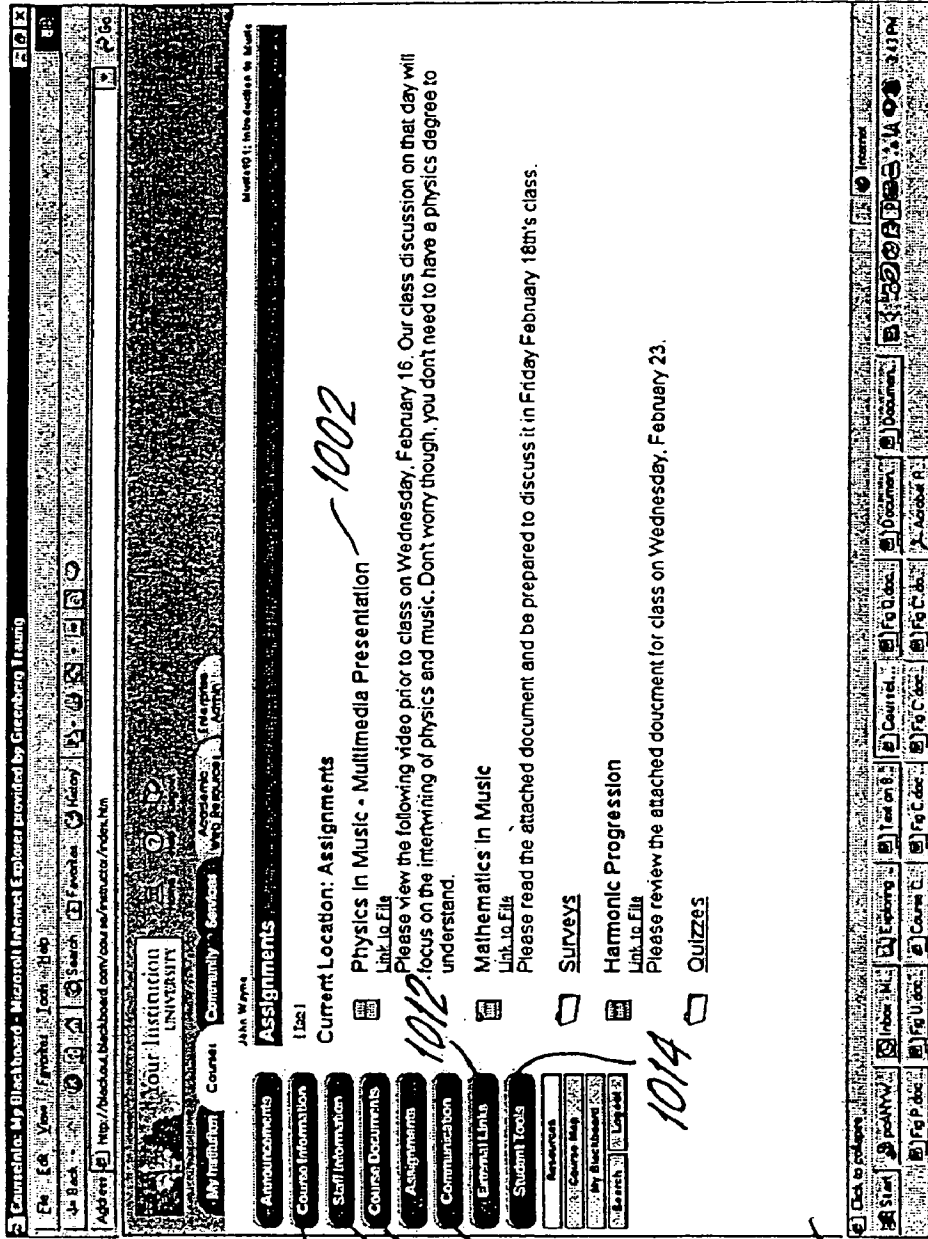
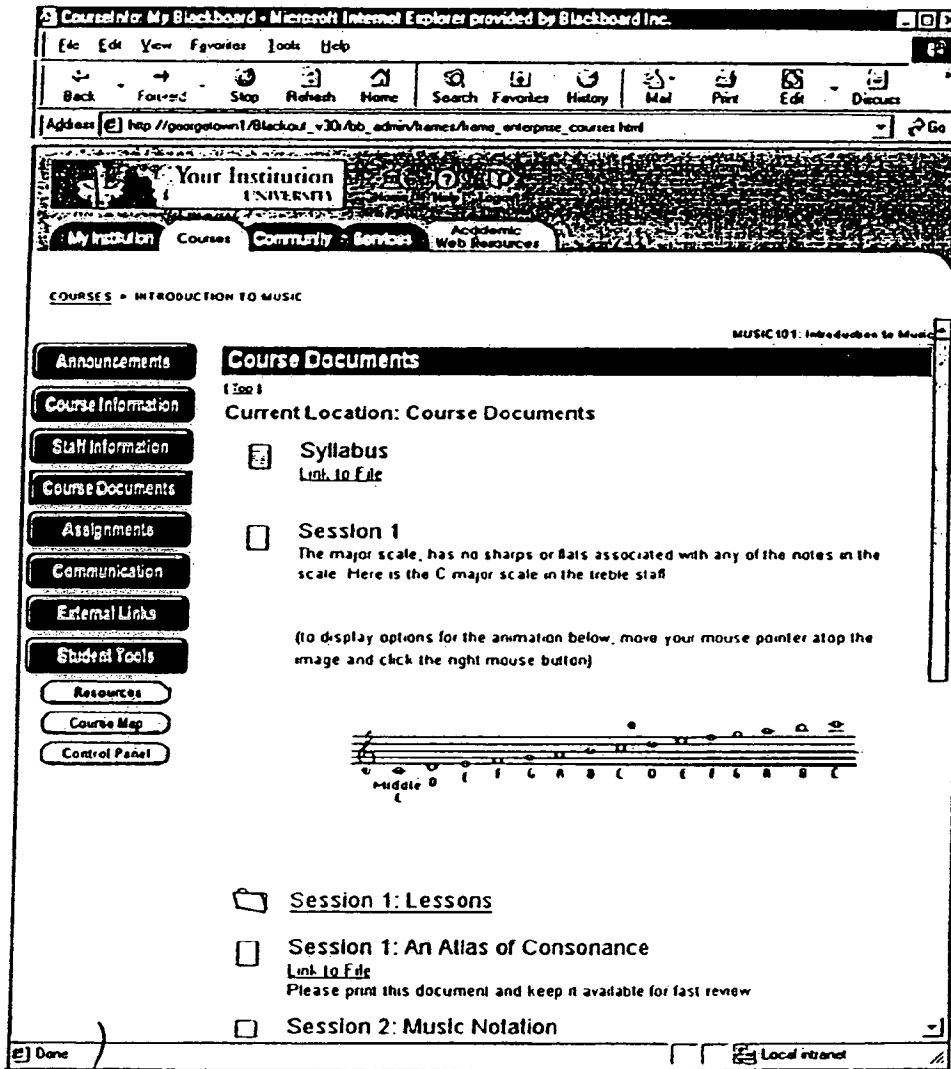


FIG. 10



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FIG. 11

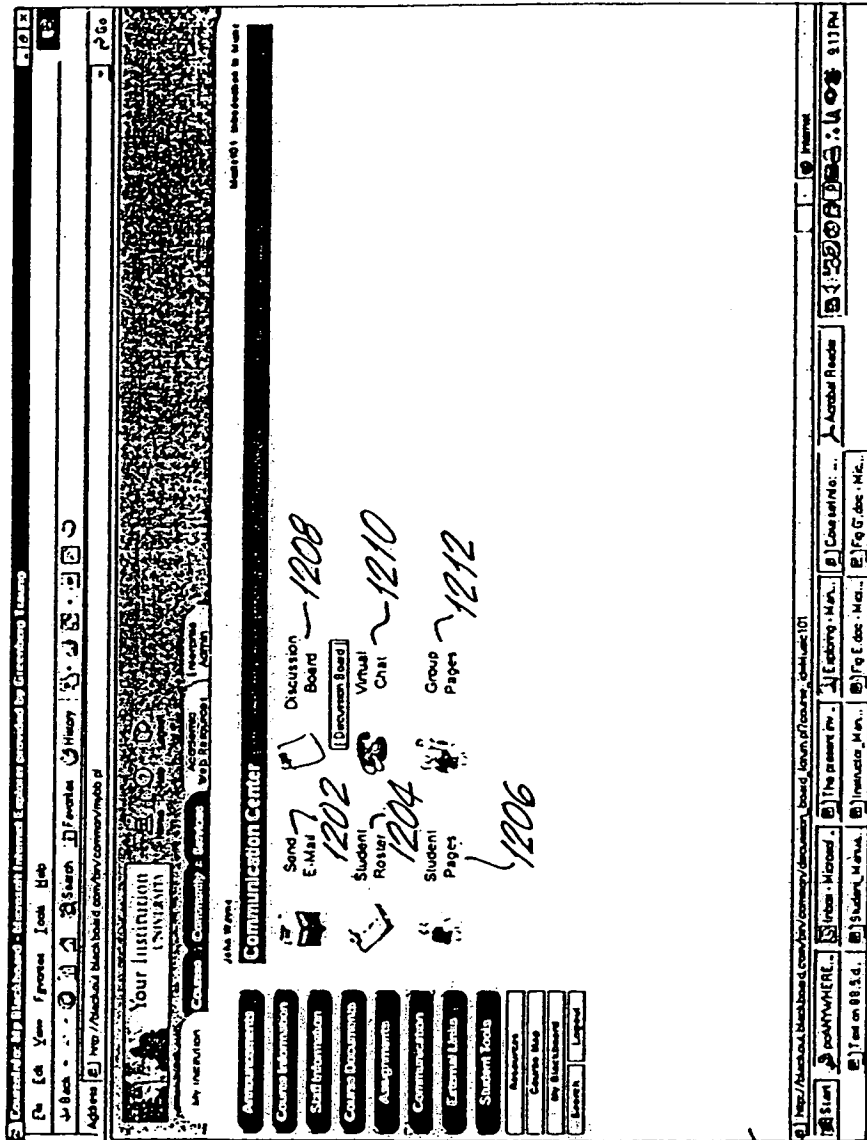
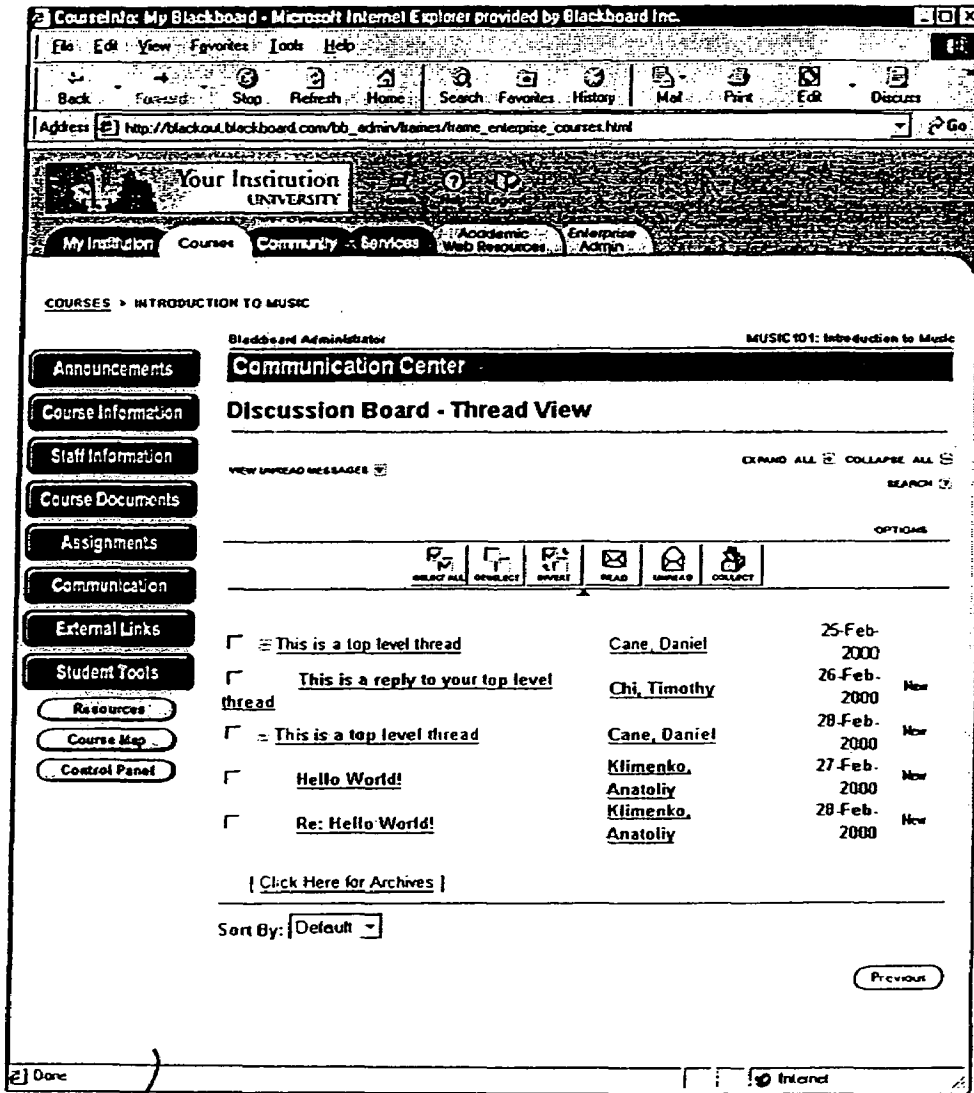


FIG. 12

1200



1300

FIG. 13

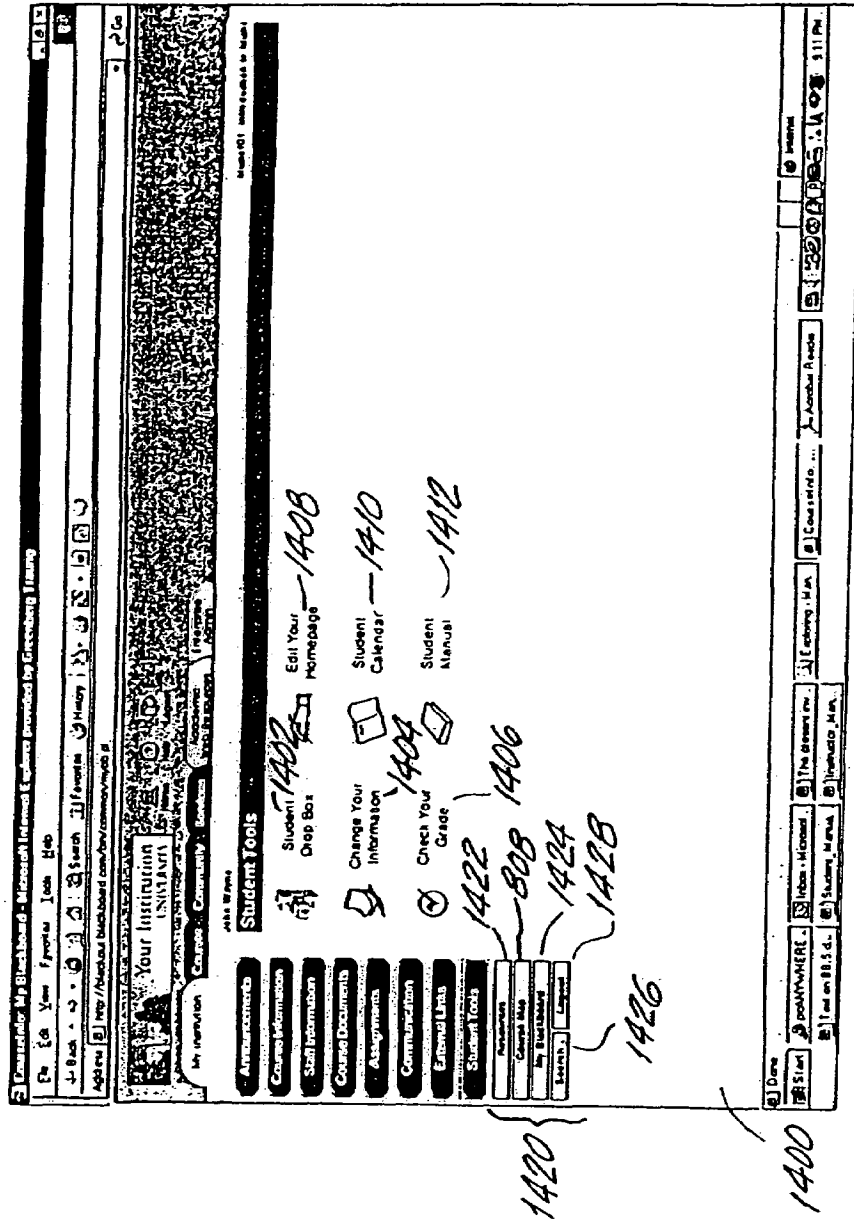


FIG. 14

John Wayne

Student Tools

Student DropBox

Use your student drop box to submit files to your instructor. Also, your instructor can return your files to you with comments attached.



Current Files in your DropBox

1508

Note: If you want to save a file, right click on the Link Name and choose Save Link As

File Name	Link Name	File Size	Status
none	none	none	none

{ Remove Files }

1510



Add File to DropBox

Click the Browse button to select the file to attach from your computer. Be sure to specify a linkname for your file.

File to Upload:

Browse...

1502

1504

Name of Link to File:

(Example: Homework One, Assignment One)

1506

← Back

1500

FIG.15

COURSES • INTRODUCTION TO MUSIC • CONTROL PANEL • ANNOUNCEMENTS

Announcements : View Today

1702 Permanent Final Exam has moved!!!!
Due to the leaky roof in Warren B45, we have moved the exam to Hollister B14. The exam still begins promptly at 7pm.

1704 Permanent Final Exam has moved!!!!
Due to the leaky roof in Warren B45, we have moved the exam to Hollister B14. The exam still begins promptly at 7pm.

1706 Wednesday, Mar 15, 2000 : New Floods Threaten Mozambique
Two days of heavy rain have disrupted the distribution of food to flooded communities in central Mozambique. The main road from the port of Beira to the small town of Save has again been cut. Helicopters were called in on Tuesday to rescue 30 people and sacks of food from vehicles trapped on the road by flood water.

1700 Wednesday, Mar 15, 2000 : NCAA: Michigan St. Arizona in First-Only Action
Big Ten Conference champion Michigan State, a First Four team last season, and Pac-10 winner Arizona are the leading seeds in action when the NCAA Tournament - and March Madness - begins Thursday. Michigan State (25-7) is the top team in the Midwest, a region which features Big 12 champion Iowa State, Atlantic Coast Conference runner-up Maryland, Big East regular season co-champion Syracuse, and traditional powers Kentucky and UCLA. Arizona (28-6) earned the top seed in the West region after completing a sweep of Pac-10 co-champion Stanford last week. Big East tournament winner St. John's, Oklahoma, Louisiana State, Texas and Purdue are the top teams in the region. Michigan State, seeking its first national championship since Magic Johnson led the team to a title in 1979, faces 16th-seeded Valparaiso (19-17) Thursday night in Cleveland. The Spartans met in Duke in last year's Final Four.

FIG.17

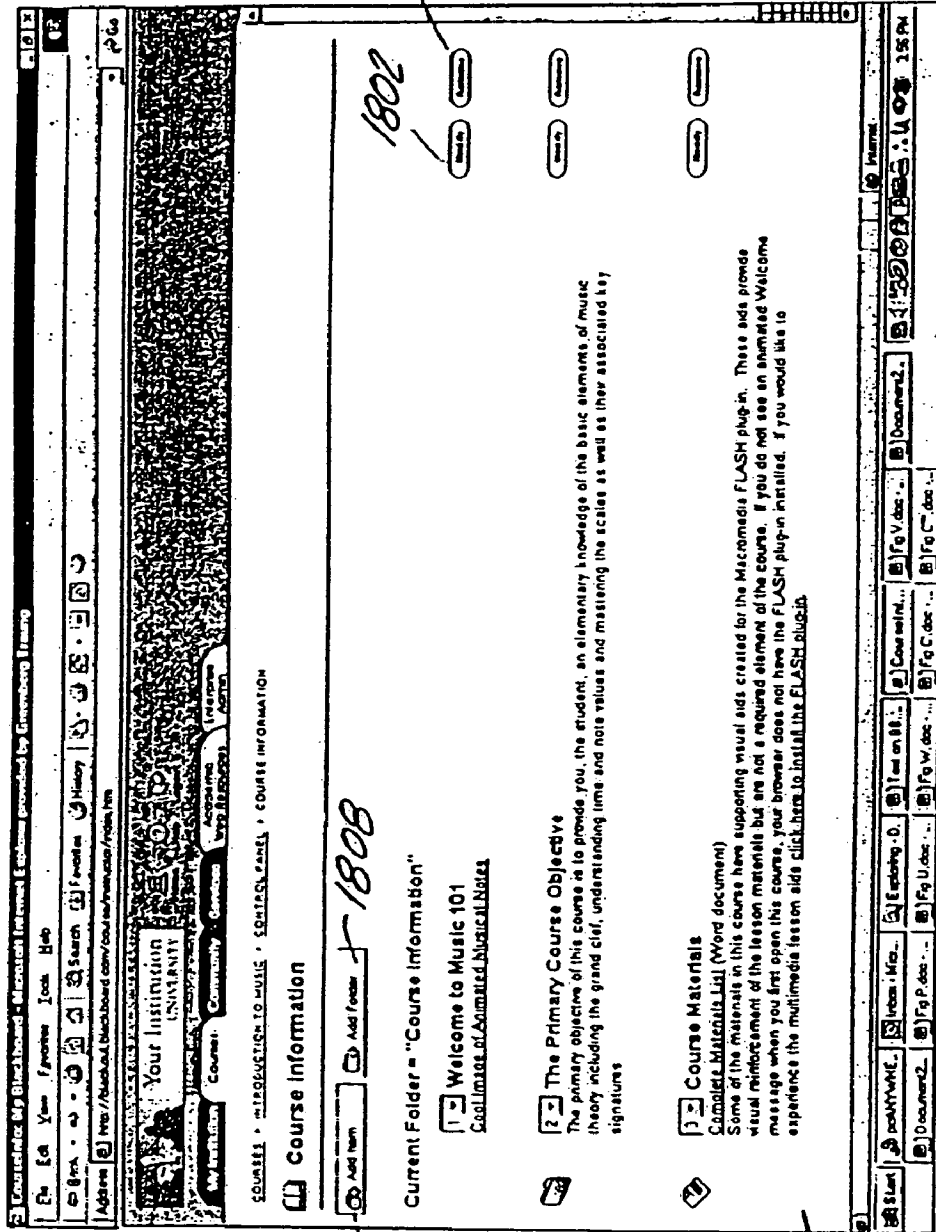


FIG. 18