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**Datasheet for the decision
of 14 September 2006**

Case Number: T 0872/04 - 3.5.01

Application Number: 01111712.4

Publication Number: 1122669

IPC: G06F 17/60

Language of the proceedings: EN

Title of invention:

Method and system for conducting electronic auctions

Applicant:

Ariba, Inc.

Opponent:

-

Headword:

Electronic auctions/ARIBA

Relevant legal provisions:

EPC Art. 52(2), 56

Keyword:

"Inventive step (no)"

Decisions cited:

T 0641/00, T 0258/03

Catchword:

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Case Number: T 0872/04 - 3.5.01

D E C I S I O N
of the Technical Board of Appeal 3.5.01
of 14 September 2006

Appellant: Ariba, Inc.
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Representative: Schmidt, Steffen J.
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Decision under appeal: Decision of the Examining Division of the
European Patent Office posted 27 February 2004
refusing European application No. 01111712.4
pursuant to Article 97(1) EPC.

Composition of the Board:

Chairman: S. Steinbrener
Members: R. Wibergh
P. Schmitz

Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division to refuse European patent application No. 01 111 712.4.
- II. According to the decision appealed, the invention as defined in claim 1 of the main request and of the sole auxiliary request did not involve an inventive step.
- III. Claim 1 of the main request, filed during the oral proceedings before the examining division on 22 October 2003, read (excluding the reference signs):

A method of controlling a computer network in the form of an electronic auction system in response to a technical disruption, comprising:

- (a) setting a lot having at least one product;
- (b) setting and monitoring a closing time for said lot before which electronic bids for said lot are to be submitted;
- (c) setting a first status for said lot, said first status indicating that electronic bids for said lot are accepted;

characterized by

- (d) setting a time interval;
- (e) upon closing of said lot, automatically
 - (i) changing said first status to a second status and displaying said second status, said second status indicating that

electronic bids for said lot are not accepted but that said second status may be subsequently changed to said first status; and

(ii) starting a clock running for said time interval and monitoring during said time interval whether the first status has been re-set in response to a technical disruption prior to said closing of said lot;

(f) if said first status has not been re-set during said time interval, automatically setting and displaying a third status indicating that electronic bids are no longer accepted.

IV. Claim 1 of the auxiliary request, filed on 22 October 2003, read (excluding the reference signs):

A method of operating a computer network for executing an electronic auction software application, the method comprising the step of:

(a) setting a status of a lot to a first status and displaying information that said first lot status is set, said lot having at least one product, said first lot status being one in which electronic bids for said lot are accepted;

characterized by the steps of:

(b) providing a first parameter for specifying a time interval;

- (c) providing a second parameter for specifying whether or not said lot is to be closed automatically after expiration of said time interval as specified by said first parameter;
- (d) upon expiration of a predefined closing time for said lot, starting a clock to run for said time interval as specified by said first parameter, setting said lot status to a second status and displaying information that said second lot status is set, said second lot status being one in which electronic bids for said lot are not accepted, but bidding on said lot may subsequently be resumed;
- (e) dynamically altering said closing time to meet the time period required to resolve any technical disruptions by monitoring for a re-setting of said first status to occur while said time interval is running;
- (f) if said re-setting occurs before expiration of said time interval, re-setting said closing time and displaying information that said first status is set;
- (g) if said re-setting does not occur before expiration of said time interval and if said second parameter is set to a first value, setting said lot status to a third status and displaying information that said third lot status is set, said third lot status being one in which electronic bids are no longer accepted and bidding on said lot is closed; and
- (h) if said second parameter is set to a second value, maintaining said second status for said lot.

- V. In the notice of appeal, dated 23 April 2004, the appellants requested that the decision of the examining division be set aside and a patent be granted on the application documents on file. The grounds of appeal, dated 7 June 2004, and a subsequent letter dated 18 August 2006 and filed in reply to the Board's summons to oral proceedings contained reasons in support of the requests.
- VI. Oral proceedings were held on 14 September 2006. The appellants requested that the decision under appeal be set aside and that a patent be granted on the basis of the main request or the auxiliary request, both requests as filed during the oral proceedings before the examining division on 22 October 2003.
- VII. At the end of the oral proceedings the Board announced its decision.

Reasons for the Decision

The main request

1. *The invention*

Electronic auctions are known which run for a predetermined time and are then terminated. It may however happen that, due to technical disturbances, some bidders are prevented from participating fully. In general terms, the invention overcomes this problem by introducing a pending status immediately after the auction is closed. Bidding is no longer permitted but during a certain pending interval technical

disturbances may be reported. If necessary the auction is re-opened, otherwise it is finally closed (cf the description, paragraphs [0051]-[0054] and [0062]).

2. *The prior art*

The auction according to the preamble of claim 1, known for example from document WO-A-97/37315, simply runs for a predetermined time before being terminated.

3. *Exclusion from patentability (Article 52(2) EPC)*

The claimed method comprises steps of setting parameters and time intervals within a computer network, displaying data, and starting a clock. These are all technical activities since they necessarily involve the tools mentioned. The Board therefore agrees with the examining division that the subject-matter of claim 1 is an invention within the meaning of Article 52(2) EPC.

4. *Novelty (Article 54 EPC)*

The invention comprises technical features not known from the prior art referred to above, such as starting a clock to set the pending interval. This is sufficient to establish novelty.

5. *Inventive step (Article 56 EPC)*

5.1 The examining division found that the invention was merely an administrative scheme depending on a human intervention to respond more flexibly to the time period required to resolve reported technical disruptions. Only the implementation of the scheme was

a technical task, but since it was straight forward the invention did not involve an inventive step (cf the decision under appeal, point 11).

- 5.2 The appellants have argued that although the invention certainly has economic advantages, commercial aspects should be ignored when assessing it with respect to the requirement of inventive step. The invention was about collaborative messaging, not auction rules. In this it was different from the case T 258/03 - Auction method/HITACHI (OJ EPO 2004,575) where the auction rules were crucial. Technical character had in particular the features concerning the error-reporting period with automated termination (referred to as "second status" in claim 1) and the control of acceptance of messages. The effect of the invention could be compared to that of a traffic light in that it controlled the message traffic between participants.

The prior art did not suggest an auction computer displaying three statuses (auction open, pending, closed), including one (auction pending) for indicating that the auction might be resumed. Other arrangements could be imagined to address the problem of technical disturbances. If for example the whole auction were repeated there would be no need for introducing a pending status.

The "Comvik approach" (cf T 641/00 - Two identities/COMVIK - OJ EPO 2003,352) had to be applied with caution. The skilled person was a programmer. If, in accordance with this approach, he was regarded as receiving instructions from a business man about the scheme to be implemented, the business man must in fact

be assumed to have the technical understanding needed to grasp the technical problem and conceive of the error-reporting period and the "traffic light principle" according to the invention. Such an assumption was however inadmissible.

- 5.3 The Board first notes that, compared with the prior art accepted as known by the appellants, the invention provides the advantage that auction participants who are prevented from bidding because of technical disturbances can contact the auction coordinator even after the auction has closed and ask for the auction to be continued.

The drawback of the prior system was easily identifiable. A purely technical solution could for example consist in improving the system so that technical disturbances were eliminated, but this is not the way the appellants have chosen. Instead, a pending period is introduced during which bids are not accepted but the auction may still be re-opened.

The Board is convinced that proposing an auction which can be re-opened on demand requires only non-technical considerations. Any auction, also of a kind involving no technical equipment at all, could profit from such a pending period. Allowing an auction to be re-opened can justly be termed an auction rule since it takes the form of an agreement between the participants (human beings), and its effect is limited to the validity of bids, which is also matter of agreement.

Thus in the Board's view the person responsible for setting the auction rules (here termed a "business man") did not need to be technically skilled in order to propose a pending period. Even in the case of electronic auctions this person only had to realize that there are such things as technical disturbances. He was concerned with their effect on an auction but not with their nature, what causes them or how they can be eliminated.

Given the idea to introduce a pending period, a technical phase is entered when an electronic auction system should be equipped with it. According to the "Comvik approach" (cf point 5.2 above), this is where the technical problem occurs. The technical problem is thus, as the examining division correctly concluded, the electronic implementation of an auction having a pending period.

It follows from the very idea of a pending period that it should start when the ordinary auction time has expired, last for a predetermined period, and end with the auction being either re-opened or closed. During the pending period the system should block any bids. The participants would have to be informed about the status of the auction, which means that this information should be displayed. These requirements are reflected in the following claim features:

- setting a time interval,
- upon closing of a lot, automatically changing the first status to a second status (the pending period) and displaying said second status, said second status indicating that electronic bids for said lot are not

accepted but that said second status may be subsequently changed to said first status,

- starting a clock running for said time interval,
- monitoring during said time interval whether the first status has been reset,
- if said first status has not been reset during said time interval, automatically setting and displaying a third status (closure) indicating that electronic bids are no longer accepted.

It can thus be seen that the claimed technical implementation is limited to setting and measuring the pending period and displaying the auction status to the participants. The use of conventional means such as a (software) clock and a display for these purposes does not involve an inventive step.

5.4 It follows that the main request is refused.

The auxiliary request

6. *Inventive step (Article 56 EPC)*

6.1 Claim 1 contains, in addition to the features of claim 1 in accordance with the main request, a "second parameter" for specifying whether or not the auction is to be closed automatically after expiration of the pending interval which may be dynamically altered to meet the time period required to resolve any technical disruptions. Furthermore, the claim makes it explicit that the auction may be re-opened and that it is only closed if the second parameter is appropriately set. As explained in the description (cf paragraphs [119] to [123]), the "second parameter" (termed "Auto_close") allows the auction to either terminate or go on indefinitely to give the auction coordinator sufficient time to decide on a request by a participant to re-open the auction.

6.2 The appellants see in the additional features a technical link between a communication disruption and the time required by the coordinator to respond to it in an appropriate way.

6.3 In the Board's view, the auction coordinator's need for time to consider a request for re-opening of the auction is a further example of a non-technical constraint which a skilled person would simply have to take for granted when designing the electronic auction system. Quite possibly a complex situation might require the coordinator to postpone his decision for a relatively long period. On the other hand, adding a long pending period to every auction could be deemed

unacceptable for commercial reasons, in particular if technical disruptions are rare. It could therefore be convenient to leave it to the coordinator to judge how much time he needs in each particular case. This means that the duration of the pending status should be variable.

These considerations are all non-technical and a matter for a business man. The skilled person (programmer) would only be asked to implement a pending status period of variable duration in an electronic auction system. This is a technical task.

The proposed solution according to claim 1 involves standard programming techniques, involving setting parameters and providing loops and branching points. The appellants have not argued that the program details are inventive and indeed they appear to be within reach of a programmer of ordinary skill, who must be assumed to be capable of designing a flow diagram representing a computer program performing predetermined functions (cf figure 13 of the application). Thus the subject-matter of claim 1, setting out a solution to the technical problem of designing a method of operating a computer network according to principles found desirable for commercial reasons, does not involve an inventive step.

- 6.4 For these reasons also the appellants' auxiliary request must be refused.

Order

For these reasons it is decided that:

The appeal is dismissed.

The Registrar:

The Chairman:

P. Guidi

S. Steinbrener