

V. Opposition is filed against

— the patent as a whole

— claim(s) No(s).

VI. Grounds for opposition:

Opposition is based on the following grounds:

(a) the subject-matter of the European patent opposed is not patentable (Art. 100(a) EPC) because

— it is not new (Art. 52(1); 54 EPC)

— it does not involve an inventive step (Art.52(1); 56 EPC)

— patentability is excluded on other grounds, i.e.

Art. 52(2), 52(3) EPC

its subject-matter is not regarded as an invention within the meaning of Art. 52(1) EPC

(b) the patent opposed does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (Art. 100(b) EPC; see Art. 83 EPC).

(c) the subject-matter of the patent opposed extends beyond the content of the application/ of the earlier application as filed (Art. 100(c)EPC, see Art. 123(2) EPC).

VII. Facts and arguments

(Regel 55(c) EPC)

presented in support of the opposition are submitted herewith on a separate sheet (annex 1)

VIII. Other requests:

Auxiliary request: oral proceedings.

IX. Evidence presented		for EPO use only
Enclosed = <input type="checkbox"/> None will be filed at a later date = <input type="checkbox"/>		
A. Publications:		Publication date
1		
Particular relevance (page, column, line, fig.):		
2		
Particular relevance (page, column, line, fig.):		
3		
Particular relevance (page, column, line, fig.):		
4		
Particular relevance (page, column, line, fig.):		
5		
Particular relevance (page, column, line, fig.):		
6		
Particular relevance (page, column, line, fig.):		
7		
Particular relevance (page, column, line, fig.):		
Continued on additional sheet		<input type="checkbox"/>
B. Other evidence		
Continued on additional sheet		<input type="checkbox"/>

X. Payment of the opposition fee is made

as indicated in the enclosed voucher for payment of fees (EPO Form 1010) (debit from deposit account no. 28090021)

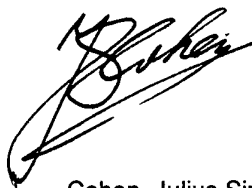
XI. List of documents:

Enclosure No.		No. of copies
0	<input checked="" type="checkbox"/> Form for notice of opposition	<input type="text" value="2"/> (min. 2)
1	<input checked="" type="checkbox"/> facts and arguments (see VII.)	<input type="text" value="2"/> (min. 2)
2	Copies of documents presented as evidence (see IX.)	
2a	<input type="checkbox"/> — Publications	<input type="text"/> (min. 2 of each)
2b	<input type="checkbox"/> — Other documents	<input type="text"/> (min. 2 of each)
3	<input type="checkbox"/> Signed authorisation(s) (see IV.)	<input type="text"/>
4	<input checked="" type="checkbox"/> Voucher of payment of fees and costs (see X.)	<input type="text" value="1"/>
5	<input type="checkbox"/> Cheque	<input type="text"/>
6	<input type="checkbox"/> Additional sheet(s)	<input type="text"/> (min. 2 of each)
7	<input type="checkbox"/> Other (please specify here):	<input type="text"/>

XII. Signature of opponent or representative

Place Eindhoven

Date January 29, 2002



Cohen, Julius Simon

Please type name under signature. In the case of legal persons, the position which the person signing holds within the company should also be typed.

Annex 1: Facts and arguments

The invention as claimed in the contested patent is not an invention in the sense of Article 52(1) EPC, because it is a method of doing business as such (article 52(2) and (3) EPC).

The Board of Appeals has consistently held that to be an invention in the sense of Article 52(1) EPC, an invention must have technical character (T 1173/97, Computer program product/IBM, OJ 1999, 609 and T 935/97, Computer program product II/IBM, not published in OJ). Such technical character can be found in, for example, a technical effect that is achieved by the invention (T 1173/97) or in technical considerations that are required to carry out the invention.

Technical considerations may lie either in the underlying problem solved by the claimed invention, in the means constituting the solution of the underlying problem, or in the (technical) effects achieved in the solution of the underlying problem. The need for such technical considerations implies the occurrence of an (at least implicit) technical problem to be solved and (at least implicit) technical features solving that technical problem (T 769/92, General purpose management system/SOHEI, OJ 1995, 525).

Claim 1

Claim 1 relates to a method of holding an auction. The act of holding an auction inherently is a method of doing business, and so a claim directed towards such an activity must be regarded as a method of doing business as such, if no technical considerations are involved and no technical effect is obtained by the method.

Claim 1 does not involve technical considerations

Claim 1 involves only economic concepts and business practices

The method of holding an auction as claimed in claim 1 involves only economic concepts and practices of doing business, including the common business practice of using a computer to automate parts of the method. All the features of claim 1 (opening the auction to allow bidders to prepare bid packages, checking the validity of bids

placed by the bidders, and finally awarding articles to bidders based on the bid packages) are administrative steps taken to hold an auction. These steps only process purely administrative and/or actuarial information regarding the auction. This means that the method of claim 1 is not an invention within the meaning of article 52(1) EPC (T 931/95 Improved Pension Benefits System/PBS Partnership, OJ 2001, 434).

Even though the method involves the use of a technical means, namely a computer, the technical means is used in claim 1 only to control the auction and process the bids, just like a human auctioneer would. Since controlling an auction and handling bids is not a technical activity and does not involve processing technical information, this technical means does not confer a technical character to claim 1 (T 931/95).

Claim 1 only functionally recites business steps

Claim 1 sets out a sequence of steps necessary to perform an auction in terms of functions or functional means to be realized with the aid of conventional computer hardware elements: the auction is “controlled by a central computer” (col. 5, line 50), “the actual auction [...] is performed by the central computer” (col. 6, lines 1-2), “bids have been processed in the central computer” (col. 6 lines 8), and a list of articles acquired by individual bidders is “prepared in the central computer” (col. 6 lines 9-10). Such mere setting out of business steps in terms of functional claim elements does not import any technical considerations (T 22/85, Document abstracting and retrieving/IBM, OJ 1990, 12).

The Board of Appeals has repeatedly held that statements that technical means are used to carry out a method are not alone sufficient to render that method an invention within the meaning of Article 52(1) EPC (see e.g. T 158/88, Character form/Siemens, OJ 1991, 566). This view was most recently confirmed in T 931/95, where the Board observes that the mere occurrence of technical features in a claim does not turn the subject matter of the claim into an invention within the meaning of Article 52(1) EPC. Such an approach would be too formalistic and would not take due account of the term “invention”.

Claim 1 does not address particulars of the implementation

Even though no mention is made of the fact in the contested patent explicitly, the skilled person directly infers that the invention is to be realized by means of one or more computer programs executed on the central computer. An invention comprising functional features implemented by software is not excluded from patentability if technical considerations are involved concerning the particulars of the solution of the problem which the invention solves (T 769/92). As set out above, claim 1 merely recites that several steps of the method are to be performed by the central computer, but does not specify how this computer is supposed to perform these steps. Such mere setting out cannot be regarded as addressing the particulars of the implementation at all.

Further, section VI of T 769/92 stipulates that the computerized solution of a problem should involve an implementation which is different from how a human being would solve the problem manually or mentally before technical considerations can be assumed. There is no indication at all in claim 1 that the central computer is doing anything different from how a human auctioneer would hold such an auction. Indeed, reciting steps and qualifying them as "being performed by a central computer" strongly suggests that what was intended was mere automation of a manual activity, rather than a particular implementation of such automation. Hence, claim 1 does not involve technical considerations concerning the particulars of the computer implementation of the business method.

Claim 1 does not produce a technical effect

No technical effect is achieved by the use of the method of claim 1. Column 1, lines 20-25 of the contested patent states that the method allows the auction to be conducted independently of geographical locations, and that the articles on sale need not be auctioned in a specific order. These effects are not technical but rather organizational in nature. Further, merely modifying business data, without producing any effects beyond information processing does not result in a technical effect (T 158/88).

Conclusion

Since claim 1 does not involve technical considerations or produce a technical effect, it must be regarded as a business method as such, and so the subject matter of claim 1 is not an invention in the sense of Article 52(1) EPC, according to Articles 52(2) and (3) EPC.

Claim 2

The measure of claim 2 merely recites the administrative step of preparing the bid packages using a catalogue. As explained above for claim 1, such mere setting out of business steps in functional terms does not import any technical considerations. Further, merely modifying the data itself, without producing any effects beyond information processing does not result in a technical effect (T 158/88). This means that claim 2 must be regarded as a business method as such as well.

Claim 3

The data processed by the central computer comprises information regarding bids placed by particular bidders. Such data is not physical data or operating parameters of the central computer, but rather business and administrative data. Processing business data does not confer a technical character to the method (T 790/92, Editing business charts/IBM, not published in OJ), nor does it produce a technical effect (T 158/88). This means that claim 3 must be regarded as a business method as such as well.

Claim 4

The measure of claim 4 merely recites the administrative step of verifying the correctness of the placed bids, to be performed by the central computer. As explained above, such mere setting out of business steps in functional terms does not import any technical considerations, nor does such administrative information processing result in a technical effect. This means that claim 4 must be regarded as a business method as such as well.

Claim 5

Claim 5 is concerned only with the contents of the business data contained in the bid packages. This data does not represent operating parameters of the central computer, nor does it affect the physical or technical functioning of the central computer, and so

it cannot confer a technical character to the method of claim 5 (T 790/92), nor is any technical effect obtained by the use of this particular contents of the business data (T 158/88). This means that claim 5 must be regarded as a business method as such as well.

Claim 6

Claim 6 is, like claim 5, concerned only with the contents of the business data contained in the bid packages. This data does not represent operating parameters of the central computer, nor does it affect the physical or technical functioning of the central computer, and so it cannot confer a technical character to the method of claim 6 (T 790/92), nor is any technical effect obtained by the use of this particular contents of the business data (T 158/88). This means that claim 6 must be regarded as a business method as such as well.

Claim 7

Claim 7 states that the steps of claim 3 are to be executed for each bid placed in a live auction. As claim 3 lacks a technical character, performing the method of claim 3 multiple times for multiple live bids also lacks a technical character. This means that claim 7 must be regarded as a business method as such as well.

Claim 8

In claim 8 a selection of a winning bid is made based on a comparison of times of placing of respective bids. No technical effect is obtained by selecting a bid in this fashion, and thus claim 8 lacks a technical character. This means that claim 8 must be regarded as a business method as such as well.

Claim 9

Claim 9 adds the measure that the auction articles are sold to the highest bidder at a price lower than his (highest) bid. Clearly the selling of an item is a business step. Since the previous claims are methods of doing business as such, adding a business step to such a method makes it no less a method of doing business as such, and so claim 9 must also be regarded as a method of doing business as such.

Claim 10

Claim 10 relates to the use of the method according to claims 1-9 for executing auctions in a computer network, such as the Internet. A “use” claim should be regarded as equivalent to a “process” claim (Guidelines C-III 4.9). As the methods of claims 1-9 are methods of doing business as such, then consequently also uses of the method must be regarded as methods of doing business as such. Using the method of claims 1-9 in a computer network does not have any technical effect nor does it require technical considerations regarding the particulars of the implementation.

Claim 11

Claim 11 relates to the use of the method according to claims 1-9 for automobile auctions. A “use” claim should be regarded as equivalent to a “process” claim (Guidelines C-III 4.9). As the methods of claims 1-9 are methods of doing business as such, then consequently also uses of the method must be regarded as methods of doing business as such. Using the method of claims 1-9 for automobile auctions does not have any technical effect nor does it require technical considerations regarding the particulars of the implementation.

Conclusion

Since none of the claims contain subject matter to be regarded as an invention in the sense of Article 52(1) EPC, revocation of the patent as a whole is requested. In case the Opposition Division does not wish to revoke the patent as requested, Oral Proceedings according to Article 116(1) EPC are requested.