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**Datasheet for the decision  
of 19 September 2007**

**Case Number:** T 0688/05 - 3.5.01

**Application Number:** 00908516.8

**Publication Number:** 1257941

**IPC:** G06F 17/60

**Language of the proceedings:** EN

**Title of invention:**

Computer controlled event ticket auctioning system

**Applicant:**

Ticketmaster LLC

**Opponent:**

-

**Headword:**

Ticket auctioning system/TICKETMASTER

**Relevant legal provisions:**

EPC Art. 23, 56, 111(1), 112

EPC R. 10, 45

**Keyword:**

"Inventive step: treatment on non-technical aspects"

"Remittal to the department of first instance for search and examination (no)"

"Declaration under Rule 45 EPC"

"Letter to the president of the Office - independence of the Board"

**Decisions cited:**

T 0967/97, T 0641/00, T 0764/02, T 0172/03, T 0258/03,  
T 0154/04, T 1242/04

**Catchword:**

The concept of "novelty" in Article 54(1) EPC is only defined for "inventions". It does not apply to the exceptions enumerated in Article 52(2) EPC. By analogy it could be held that claim features which do not contribute to the definition of an "invention" cannot be classified as new or not new in the sense of Article 54 EPC. Nevertheless they may well form the only logical link between technical features resulting from their implementation. They must therefore be taken into consideration for the examination as to inventive step while at the same time not being permitted to contribute to it (see point 4.5 of the reasons).



Case Number: T 0688/05 - 3.5.01

**D E C I S I O N**  
of the Technical Board of Appeal 3.5.01  
of 19 September 2007

**Appellant:** Ticketmaster LLC  
402 W. Kessler Blvd.  
Indianapolis, IN 46228 (US)

**Representative:** Lawrence, John  
Barker Brettell  
138 Hagley Road  
Edgbaston  
Birmingham B16 9PW (GB)

**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted 29 December 2004  
refusing European application No. 00908516.8  
pursuant to Article 97(1) EPC.

**Composition of the Board:**

**Chairman:** S. Steinbrener  
**Members:** S. Wibergh  
G. Weiss

## Summary of Facts and Submissions

- I. This appeal is against the decision of the examining division to refuse European patent application No. 00908516.8.
- II. According to the decision appealed, the invention as claimed in the main and four auxiliary requests *inter alia* did not involve an inventive step. A search not having been carried out (in reference to Rule 45 EPC), the relevant prior art was taken to be a conventional distributed information system not requiring written evidence.
- III. After having filed the grounds of appeal on 29 April 2005, the appellants requested with letter dated 22 August 2007 that a patent be granted, or the case be remitted, on the basis of newly filed claims according to a main request and three auxiliary requests.
- IV. In a following letter dated 24 August 2007 the appellants discussed the jurisprudence of the Boards of Appeal in the field of computer-implemented inventions, citing in particular the decisions T 641/00 - Two identities/COMVIK (OJ EPO 2003,352), T 258/03 - Auction method/HITACHI (OJ EPO 2004,575) and T 154/04 - Estimating sales activity/DUNS LICENSING ASSOCIATES (to be published in the OJ EPO). In the appellants' view, these cases broke with the traditional approach taken to assessing obviousness for the past one hundred years, including the first twenty years of the EPC. It was suggested that the chairman "and the rest of the Appeal Board discuss the issues with the new President of the EPO, and consider whether the best interests of the

public would not be served by appointing a chairman from the mechanical arts, or chemical arts, or biotech. Or indeed, by referring some questions to the Enlarged Board of Appeal after all and staying the prosecution of this application". A copy of this letter was sent to the president of the EPO.

V. Oral proceedings before the Board were held on 19 September 2007. In the course of the hearing the appellants filed a new first page of the sets of claims according to the main request and the first and second auxiliary requests.

VI. Claim 1 as filed in the oral proceedings (first page) and with the letter dated 22 August 2007 (second page) reads:

"1. An automated event ticket auctioning system, the automated event ticket auctioning system receiving and evaluating bid information records received from a plurality of remote terminals, said bid information records corresponding to bids for one or more seats within a venue and corresponding to at least one particular event, said venue having a plurality of seats, the automated event ticket auctioning system comprising:

(a) a memory storing a plurality of previously accepted bid information records each including identification information, quantity information, and bid price information, said memory also storing a seating database having a predetermined preferential rank for each seat in the venue;

(b) a central controlling computer operably connected to the memory and operable to

- (i) receive a message including a received bid information record from one of the plurality of remote terminals through a communication system, said received bid information record including received identification information, received quantity information, and received bid price information,
- (ii) determine a lowest minimum acceptable bid value corresponding to the received bid information using the previously accepted bid information records stored in the memory,
- (iii) store the received bid information record if a value represented by the received bid price information exceeds the lowest minimum acceptable bid value,
- (iv) associate one or more particular seats having a predetermined preferential rank with the stored received bid information record based on the bid price information and the predetermined preferential rank of the seats, and
- (v) determine a ticket price for each of the one or more particular seats associated with a stored received bid information record based on the bid price information in the stored received bid information record associated with the seat,
- (vi) monitor the rate of bidding activity;
- (vii) use the monitored rate of bidding activity to generate data comprising the bidding activity, said data further comprising a pre-determined low threshold value,
- (viii) output the generated data comprising the bidding activity to the plurality of remote terminals such that the data is displayed,
- (ix) close the auction to prevent the central computer from accepting bids when the rate of bidding activity

reaches a pre-determined low threshold following a minimum amount of time; and  
(x) terminate the receipt of bid records at the central computer".

VII. Claim 1 according to *auxiliary request 1*, filed in the oral proceedings (first page) and with the letter dated 22 August 2007 (second page), differs from the main request essentially in that the venue has a plurality of sections, each section having a plurality of seats, and that section identification is included in the bid information records.

VIII. Claim 1 according to *auxiliary request 2*, filed in the oral proceedings (first page) and with letter dated 22 August 2007 (second page), differs from the main request essentially in that a displayed standing bid price of one of a plurality of key seats is updated if changed as a result of the latest bid.

IX. Claim 1 of *auxiliary request 3*, filed with the letter dated 22 August 2007, reads:

"A method of reducing the volume of bid information records to be processed by an automated auction system arranged to process a number of bids for items of disparate quality, the method comprising:  
providing a plurality of participants with simultaneous access to the automated auction system to submit bids through a communication system for a user-specified quantity of tickets from a set of tickets in an auction, wherein the tickets include tickets of disparate quality;

providing updated bid information in real time to participants;  
storing, in a memory, rankings corresponding to tickets in the set of tickets, wherein the rankings reflect the disparate quality of the tickets;  
ranking the bids based at least in part on corresponding bid amount; and  
associating a selected bid with a selected ticket based on the rank of the selected bid and the rank of the selected ticket".

X. The appellants requested that the decision under appeal be set aside and that the Board

- grant a patent on the basis of the set of claims marked "Main request"; or
- remit the case to the department of first instance for search and examination on the basis of the claims of the "Main request"; or
- grant a patent on the basis of the set of claims marked "First auxiliary request"; or
- remit the case to the department of first instance for search and examination on the basis of the claims of the "First auxiliary request"; or
- grant a patent on the basis of the set of claims marked "Second auxiliary request"; or
- remit the case to the department of first instance for search and examination on the basis of the claims of the "Second auxiliary request"; or
- remit the case to the department of first instance for search and examination on the basis of the claims marked "Third auxiliary request".



XI. At the end of the oral proceedings the Board announced its decision.

### **Reasons for the Decision**

#### *The claims according to the Main request*

1. The appellants' first two requests are that a patent be granted on the basis of the set of claims marked "Main request" or that the case be remitted to the department of first instance for search and examination on the basis of these claims. The Board will start with the request for remittal.
2. The present application was not searched in first instance proceedings. Instead, the search division declared, referring to Rule 45 EPC, that it was not possible to carry out a meaningful search. The appellants have criticized this procedure and submitted that it would in fact have been practicable to carry out a search. In the appellants' view, only if the best prior art is found can a proper examination be carried out. The best prior art available in the present case was document US-A-5 794 219, found by the USPTO acting as International Searching Authority, and not the "notorious" prior art referred to by the examining division.
3. In decision T 1242/04 - Provision of product-specific data/MAN (OJ EPO 2007, 421), the present Board held that although a declaration under Rule 45 EPC may only be issued in exceptional cases, additional searches should not be carried out on purely formal grounds (cf

point 9.2). In the present case the Board is of the opinion that claim 1 of the main request contains only "notorious" technical features, namely those of a standard computer network, so that an additional search is not necessary. It is of course true that as long as no search has been carried out, the best prior art cannot be known. However, an invention can only be granted if it is not obvious to a person skilled in the art having regard to the state of the art (interpreted as "state of technology" in decision T 172/03 - Order management/RICOH, not published in OJ EPO), the state of the art being held to comprise *everything* made available to the public (cf Articles 56 and 54 EPC). It follows that *any* piece of prior art which renders an invention obvious is relevant, whether or not there might be an "even better" one. (The situation is of course different if a patent is granted, in which case the best available piece of prior art normally has to be identified; cf decision T 967/97 - Chipkarte/OVD KINEGRAM AG, not published in OJ EPO, point 3.2 of the reasons.) If an application has been refused because the invention to which it relates is held to be obvious, the subject of the appeal is the refusal, ie the issue of inventive step, and not the question of whether the examining division has cited the best prior art. Therefore, exercising its discretion pursuant to Article 111(1) EPC, the Board will not remit the case to be searched on the basis of the claims of the main request, as requested by the appellants, but will in the following examine whether "notorious" prior art renders the subject-matter of claim 1 obvious, as the examining division held.

4. Inventive step

4.1 The automated event ticket auctioning system of claim 1 consists on the one hand of features which the appellants accept to be known as such, including the hardware (terminals, memory, central computer, databases) and data transfers between these units, and on the other hand of storage of particular data and operations on the data which have not been shown to be known. These operations define the working principles of the auctioning system. The aim of the system, as stated in the description (paragraph bridging pages 6 and 7 of the application as published), "is to provide a computer controlled auctioning system, in which an unlimited number of participants may have simultaneous access to the desired event tickets". The system is "constructed to sell a large number of tickets in a very short time, each said ticket or group of tickets being sold for a value set by existing market forces. The system provides participants with simple, yet informative graphical standing bid information on the entire stock of tickets available, and allows them real-time bidding interaction. This system can achieve such sales even for events of extremely high public interest, without excluding any potential purchasers".

4.2 Noting that the features of claim 1 define an auction, the examining division formulated the technical problem as providing a technical implementation of the auction model. Particular emphasis was put on the features relating to the monitoring of the rate of the bidding activity (corresponding to features (vi) to (ix) of present claim 1; cf point VI *supra*), which were however not found to be based on an identifiable technical

teaching (decision, p.10). The feature that the auction is closed if the bidding rate drops below a specified value was regarded as a non-technical aspect of the auction model (decision, p.11). The system provided for the display of cognitive information in order to influence the behaviour of the bidders (minutes of the oral proceedings, point 14). Apart from their unspecified implementation, the features relating to monitoring the bidding activity rate therefore did not contribute to an inventive step.

- 4.3 In the oral proceedings before the Board, the appellants argued that it is not correct to leave out the auction features from the examination for inventive step, as the examining division did, and to incorporate them in the formulation of the technical problem in accordance with the "Comvik approach" (cf T 641/00, *supra*). This was hindsight. The skilled person was not merely a programmer but was also knowledgeable about auctions. The technical problem consisted in providing an automated auction system suitable for implementation of an auction of a relatively large number of similar but identifiable items (such as tickets) using a central controlling computer capable of handling a relatively low number of messages (bids) from the terminals (cf also the letter dated 22 August 2007, p.5). The solution to this problem comprised all the features of claim 1, including those based on auction rules. No known system achieved the same objects. In its decision, the examining division had mainly focussed on the features concerning the display of the bidding activity, but the features relating to the ranking of tickets and bids were at least as important. The technical effect of these features was in

particular that it was not necessary to register all bids for every seat since bids that were too low would be rejected by the system. This would limit the amount of traffic on the data channels and reduce the risk for spikes or congestions in the data flow that might exclude some bids.

4.4 The Board first observes that Article 52(2)(c),(3) EPC excludes rules for doing business as such from patentability. It is generally held that this exclusion encompasses (abstract) auction rules. Automatic auctions, however, involving a computer network, do have an undeniable technical character in that they make use of technical means. Therefore, pursuant to decision T 258/03 - Auction method/HITACHI (*supra*), a computer-implemented auction system is an "invention" in the sense of Article 52(1) EPC but only involves an inventive step if its technical features are non-obvious. Since the appellants' argumentation is to a great extent based on the understanding that the way inventive step is assessed according to the Comvik approach is wrong, the Board will in the following briefly discuss the principles of the examination of inventions comprising non-technical features as to inventive step.

4.5 A critical point in this kind of cases is to establish in how far a claim feature can be said to be technical (in the sense of contributing to the technical character of the claimed subject-matter). Experience shows that actual programming details seldom are claimed. Instead, as in the present case, the features are mixtures of technical and non-technical elements.

Features (vi) to (ix) of claim 1, for example, can be split up in two groups in the following way:

A.

monitor the rate of signals;  
use the monitored rate to generate data;  
output the generated data to the plurality of remote terminals such that the data is displayed;  
prevent the central computer from accepting the signals when the rate reaches a pre-determined low threshold following a minimum amount of time;

B.

the signal being representative of bids;  
the non-acceptance of bids being representative of the fact that the auction is closed.

The features in group A have technical character since they define the signal processing. The features in group B are non-technical since they are completely defined by the meaning attributed to signals. They have no technical consequences.

Rules 27(1)(c) and 29(1) EPC indicate that it must be possible to express an invention in terms of a solution having technical features to a technical problem. Although a non-technical feature may well serve to define the context in which a technical problem occurs, it cannot contribute to its solution since, by definition, it has no technical consequences.

The appellants regard the technical problem as providing an automated auction system suitable for implementation of an auction of a relatively large

number of similar but identifiable items. If this problem formulation were accepted, the features of group B as defined above would contribute to the solution of the problem since they define features of a new auction. It follows that the appellants' formulation cannot be the appropriate technical problem in the sense of Rule 27(1)(c) EPC.

The features of group A must all be taken into consideration when assessing the inventive step. It might be tempting to formulate a technical problem on the basis of these features alone, disregarding the features of group B. But such an approach would not work. The technical features above, all well known as such, have been combined in the way claimed only because of the fact that the signals represent bids. Thus, if the non-technical features of group B were completely ignored, there would only remain a circuit which processes electrical signals in a certain way. No problem could be formulated for it since its only disclosed purpose necessarily involves the non-technical features of group B.

The Comvik approach avoids this difficulty by permitting non-technical features to be taken into consideration when formulating the technical problem. In this way it is possible to assess whether a technical implementation required inventive skill. The appellants have reiterated the much-heard objection that this approach treats non-technical features as if they were known although they may in fact be part of the inventor's contribution. In the Board's view this is however the unavoidable consequence of the requirement in the EPC that the invention must relate

to a technical problem. It may be added that the concept of "novelty" in Article 54(1) EPC is only defined for "inventions". It does not apply to the exceptions enumerated in Article 52(2) EPC. By analogy it could be held that claim features which do not contribute to the definition of an "invention" cannot be classified as new or not new in the sense of Article 54 EPC. Nevertheless they may well form the only logical link between technical features resulting from their implementation, as noted above. They must therefore be taken into consideration for the examination as to inventive step while at the same time not being permitted to contribute to it. This double aim is achieved by the Comvik approach.

With regard to the appellants' contention that the Comvik approach was not EPO jurisprudence for the first twenty years of the EPC, reference is made to decision T 764/02 - Banking services/ONLINE RESOURCES (not published in the OJ EPO). In its point 11, where a number of early appeal cases are reviewed, it is pointed out that the Comvik principle preceded the Comvik decision by at least a decade. It had been used apparently independently by different boards, the earliest cases being in mechanics and not involving computer-implemented inventions.

- 4.6 In view of the foregoing observations the Board finds it appropriate to apply the Comvik approach also to the present case. The examining division did so with respect to the features concerning the bid activity, holding that their implementation solved a technical problem but was obvious (cf point 4.2 *supra*), and that the underlying auction rules did not contribute to an



inventive step. The Board agrees with this reasoning. In particular, the possibility the invention offers of avoiding data congestion by displaying the bidding activity is entirely dependent on the bidders' reaction to this information. It is a commercial - and not technical - idea to close the auction if bidding activity is too low, and it is a psychological - and not technical - insight that participants may be urged to bid if they are made aware of the bidding activity. The technical task of devising a system capable of presenting bidding activity data to the bidders is according to claim 1 trivially solved, since this data is merely stated to be generated and displayed.

- 4.7 The examining division regarded the other features of claim 1 in the version before it as obvious implementations of auction rules. In this connection the appellants have identified the ranking features as being of particular importance. According to claim 1, a memory stores a seating database having a predetermined preferential rank for each seat in a venue, and the central controlling computer associates one or more particular seats having a predetermined preferential rank with a stored received bid information record based on the bid price information and the predetermined preferential rank of the seats. In other words: the higher the bid, the better the seat. The Board however agrees with the examining division that these features are, from a strictly technical point of view, trivial. The starting point is the non-technical observation that most people regard certain seats in a venue, eg in the front row, as better than others and are therefore prepared to pay more for them. Associating high bids with good seats is a mental act

and a necessary part of the auction rules. The technical contribution starts only at the implementation stage and is largely limited to the idea that each bid should be stored in a memory to permit the computer to combine it with an appropriate seat in some (non-disclosed) way. This is clearly a trivial consideration.

The appellants have contended that the ranking of seats and bids and their association is superior to auctioning each seat separately. Even if this was true it only shows that some auction concepts are more efficient than others.

4.8 As to the remaining features of claim 1 the Board is of the opinion that they merely reflect auction rules whose implementation does not involve an inventive step.

4.9 Thus, the main request is refused (Article 56 EPC).

*The claims according to the First auxiliary request*

5. Claim 1 of the first auxiliary request differs from the main request in that the venue has a plurality of sections and that section identification information is stored in memory and included in the bids. The appellants have explained that these features assist in making the processing easier and serve to reduce the amount of calculation.

6. The Board notes however that venues are conventionally divided into sections and that selling tickets in such a venue cannot be done without taking the sections into

consideration. Any simplification of the system due to the sectioning can thus be regarded as a bonus effect. It is moreover noted that the description does not mention any particular advantages associated with this feature. Thus, this subject-matter does not involve an inventive step (Article 56 EPC).

7. The appellants have additionally requested that the case be remitted on the basis of these claims. However, the Board regards remittal to be inappropriate for the reasons indicated above (point 3).

*The claims according to the Second auxiliary request*

8. Claim 1 of the second auxiliary request differs from the main request in that a displayed standing bid price of one of a plurality of key seats is updated if changed as a result of the latest bid. The appellants have submitted that this feature enables bidders to see where their bids are in relation to others and assess whether they are likely to fall out. The feature also serves to avoid bid spikes since the bidders are better informed.
9. In the Board's view this feature is similar to the features concerning the bidding activity in that it serves to influence the bidders' behaviour. It is a commercial theory that a market functions efficiently only if its participants are well informed. Only the task of achieving this goal by technical means in an auction system has technical character. But since the solution claimed merely involves displaying the required information, it is obvious (Article 56 EPC).

10. The appellants have additionally requested that the case be remitted on the basis of these claims. However, the Board regards remittal to be inappropriate for the reasons indicated above (point 3).

*The claims according to the Third auxiliary request*

11. The appellants have requested that the case be remitted on the basis of the claims of the third auxiliary request. Claim 1 of this request is however broader than the main claims of the higher-ranking requests, something which the appellants do not deny. Therefore the subject-matter of claim 1 does not involve an inventive step, and there is no justification for remitting the claims for a search to be carried out. Thus, the request for remittal of the case to the department of first instance on the basis of these claims is refused.

*The appellants' suggestions in the letter dated 24 August 2007*

12. The appellants' suggestions in the letter dated 24 August 2007 concerning an intervention of the president of the Office in the present case, the replacement of the chairman of the Board and/or the referral of questions to the Enlarged Board of Appeal have not been formulated as requests and therefore need no further consideration. The Board would only like to add that these suggestions reflect misunderstandings of both the judicial nature of appeal proceedings as

enshrined in Article 23 and Rule 10 EPC and the requirements for a referral under Article 112 EPC.

**Order**

**For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:

T. Buschek

S. Steinbrener