

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GABRIEL N. ISSA

Appeal No. 2004-1283
Application No. 09/373,141

ON BRIEF

Before KRASS, JERRY SMITH and BARRETT, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-63.

The invention pertains to conducting on-line auctions for a specified category of items, the nature of which is apparent from a review of representative independent claim 1, reproduced as follows:

1. A method for conducting an online auction of a monetary amount for a specified category of items, the method comprising:

Appeal No. 2004-1283
Application No. 09/373,141

receiving at a computer site at least one bid having a discount rate for the specified category of items being auctioned from a plurality of sellers registered to participate in the auction;

receiving at the computer site a commitment to buy an undiscounted value amount of the item or within the specified category of items at a minimum discount rate from at least one buyer registered to participate in the auction; and

declaring at least one successful seller of the value amount for the specified category of items based on the bid from the successful seller or sellers having the greatest discount rate greater than or equal to the minimum discount rate and best meeting the buyer's individual conditions.

The examiner relies on the following reference:

Shkedy	6,260,024	Jul. 10, 2001 (filed Dec. 2, 1998)
--------	-----------	---------------------------------------

Claims 1-63 stand rejected under 35 U.S.C. § 102(e) as anticipated by Shkedy.

Reference is made to the brief and answer for the respective positions of appellant and the examiner.

OPINION

A rejection for anticipation under section 102 requires that the four corners of a single prior art document describe every element of the claimed invention, either expressly or inherently, such that a person of ordinary skill in the art could practice the invention without undue experimentation. See Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947

Appeal No. 2004-1283
Application No. 09/373,141

(Fed. Cir. 1999); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994).

With regard to independent claims 1 and 32, the examiner contends that Shkedy discloses the step of receiving at a computer site at least one bid having a discount rate for the specified item or category of items being auctioned from a plurality of sellers registered to participate in the auction, at column 7, lines 49-58, and column 8, lines 41-54.

The examiner further contends that Shkedy discloses the step of receiving at the computer site a commitment to buy an undiscounted value amount of the item or an undiscounted value amount within the specified category of items at a minimum discount rate from at least one buyer registered to participate in the auction, at column 7, lines 12-48, and column 8, lines 21-28.

The examiner also alleges that Shkedy discloses the step of declaring at least one successful seller of the value amount for the specified item or category of items based on the bid from the successful seller or sellers having the greatest discount rate greater than or equal to the minimum discount rate and best meeting the buyer's individual conditions, at column 7, lines 21-25, and column 9, lines 3-35.

Appeal No. 2004-1283
Application No. 09/373,141

Appellant contends that Shkedy discloses a global bilateral buyer-driven system where buyers select a particular item or service or a second or substitute item in addition to the primary item choice (referring to column 5, lines 10-11, and column 7, lines 59-61, as well as column 15, lines 42-57), so that "Shkedy is directed to a particular item or service or a substitute, not a specified category of items, and, in fact, teaches away from such an auction" (brief-page 6).

Further, appellant contends that in Shkedy, a seller is notified of a price he or she has to beat, not a discount rate, teaching away from the claimed step of declaring a successful seller based on a seller having the greatest discount rate greater than or equal to the minimum discount rate (brief-pages 6-7).

We REVERSE.

Each of independent claims 1 and 32 recites the receipt of a bid having a "discount rate," a commitment to buy "at a minimum discount rate," and declaring a successful seller based on the bid "having the greatest discount rate" greater than or equal to the minimum "discount rate . . ."

Independent claim 63 recites that buyers are willing to purchase items "selected from a pre-defined category at a

Appeal No. 2004-1283
Application No. 09/373,141

negotiated discount," that a buyer commits to spend a certain amount "and a requested discount field," that the auction system analyzes bid data in order to present information to sellers indicating the aggregate commitment amounts associated "with different requested discounts," along with other recitations of "discount offer field," "greatest discount," generation of a "discount record" and the "discount offered" by the selected seller.

Clearly, then, as disclosed and claimed, the instant invention is directed to buying/selling at the best "discount rate." Sellers compete for customers' business by offering various discount rates for specified categories of items and the seller offering the best, or greatest, discount rate is successful in the auction.

While Shkedy certainly deals with electronic commerce wherein buyers' purchase requirements are aggregated into a single collective purchase requirement and sellers are located willing to bid on the collective purchase requirement, we find no disclosure in Shkedy which deals with sellers competing by offering the best "discount rate," as claimed.

The examiner points to columns 7, 8 and 9 of Shkedy. In particular, the examiner points to column 7, lines 26-42, wherein

Appeal No. 2004-1283
Application No. 09/373,141

there is a mention of "discount," as in whereby the terms of a pre-negotiated contract specify that the selling company "would beat any published competitors price and provide an additional 5% discount to the collective buyer pool..." This appears to us a far cry from the instant claim language which requires that bids are received as discount rate bids wherein a successful seller is based on a bid having the greatest discount rate and, in claim 63, wherein buyers commit to spending a certain amount "and a requested discount field" and information indicating the aggregate commitment amounts associated with different requested discounts is presented to the sellers. The fact that a seller may offer to beat competitors' prices and offer an additional 5% discount to a collective buyer pool does not teach a system whereby the bids are the presentation of discount rates, with a commitment to buy at a minimum discount rate.

Thus, the examiner has not shown Shkedy to teach each and every claimed element/step. There may be a question as to the obviousness of bidding by discount rate, rather than price of an aggregate of specified items, but the rejection before us is based on anticipation under 35 U.S.C. § 102(e), not obviousness under 35 U.S.C. § 103, so we do not address this question.

Appeal No. 2004-1283
Application No. 09/373,141

The examiner's decision rejecting claims 1-63 under
35 U.S.C. § 102(e) is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
)	
)	
)	
)	
JERRY SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
)	
LEE E. BARRETT)	
Administrative Patent Judge)	

EAK:clm

Appeal No. 2004-1283
Application No. 09/373,141

Brooks Kushman P.C.
1000 Town Center
Twenty-Second Floor
Southfield, MI 48075