EXHIBIT 3

12/R
Patent
244/031 5/23/0.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Wayne W. Lin	Group Art Unit: 2165
Serial No.: 09/342,866	Examiner: Forest Thompson Jr.
Filed: June 29, 1999	
For: **SYSTEMS AND METHODS FOR TRANSACTING BUSINESS OVER A GLOBAL COMMUNICATIONS NETWORK SUCH AS THE INTERNET**	

AMENDMENT AND RESPONSE

Box **FEE AMENDMENT**
Assistant Commissioner for Patents
Washington, DC 20231

Sir:

This communication is in response to the Office Action mailed February 12, 2001. Please

amend the above-captioned application as follows.

IN THE CLAIMS:

A. Please cancel Claim 16 without prejudice.

B. Please replace Claims 1, 6, 9, 13, 17, 18, 19, 23, 24, and 27 with the corresponding

Claims attached hereto. A Marked-up Version of these Claims is also attached hereto.

C. Please add the following new claims.

28. 16 The method of Claim 1, wherein the PDA is selected by the buyer.

29. 17 The method of Claim 1, wherein the PDA is a video game.

30. 24 The method of Claim 13 wherein the PDA is selected by the buyer.

31. 25 The method of Claim 13, wherein the PDA is a video game.

P 00093

32. The method of Claim 13, further comprising the step of determining a price range prior to determining the performance of the buyer, said price range having a lower limit associated with a best performance, and an upper limit associated with a worst performance, and wherein the price assigned to the product is within the price range.

33. The method of Claim 32, wherein the PDA is a video game.

34. The system of Claim 16, wherein the server is further programmed to determine a price range prior to determining the performance of the buyer, said price range having a lower limit associated with a best performance, and an upper limit associated with a worst performance, and wherein the server is further programmed to assign the price to the product within the price range.

35. A method of assigning a price to a product comprising the steps:

determining a performance of a buyer during a Price Determining Activity (PDA); and

assigning a price to the product, said price being scaled to the performance of the buyer.

36. The method of Claim 35, further comprising the step of determining a price range prior to determining the performance of the buyer; said price range having a lower limit associated with a best performance, and an upper limit associated with a worst performance, and wherein the price is within the price range.

37. The method of Claim 36, wherein the PDA is a video game.

38. The method of Claim 36, further comprising the step of setting a difficulty level of the PDA based at least in part on an average target price for the product.

39. The method of Claim 36, wherein the price is determined at least partially based upon participation of the buyer in an auction.

40. The method of Claim 39, wherein the auction is a reverse auction.

2

41. The method of Claim 35, further comprising the step of determining a target price prior to determining the performance of the buyer, said target price being selected by the buyer, and wherein the price is not greater than the target price.

42. The method of Claim 35, further comprising the step of selecting the PDA based at least in part on a minimum price associated with the product.

43. The method of Claim 35, further comprising the step of selecting the PDA based at least in part on a skill level of the buyer.

44. The method of Claim 35, further comprising the step of setting a difficulty level of the PDA based at least in part on an average target price for the product.

REMARKS

Claims 1-27 were previously presented. In the present amendment, claims 1, 6, 9, 13, 17, 18, 19, 23, 24, and 27 have been amended. Claim 16 has been cancelled. Claims 28-44 have been added. Thus, after entry of the present amendment, claims 1-15, and 17-44 will be pending.

Turning to the Office Action, the paragraph numbers below correspond directly to the paragraph numbers set forth in the Office Action.

3. Applicant filed formal drawings on November 30, 2000, and respectfully requests the Examiner to confirm the formal drawings have been received.

2. Applicant respectfully disagrees with the Examiner's rejections. Regarding Claims 1 and 13, Applicant submits that 35 USC §112 does not require a method claim to affirmatively set forth structure. Regarding Claim 19, Applicant has set forth the required structure ("a computer server ... programmed to"), and submits that such structure satisfies the requirements of 35 USC §112. Accordingly, Applicant respectfully requests the rejections be withdrawn.

3

4.   The Examiner has rejected Claims 1, 13, and 19, the only original independent

claims, over U.S. Patent No. 5,855,008 (Goldhaber). Applicant respectfully disagrees with the

Examiner's rejections, because Goldhaber does not disclose determining a price which is scaled

to a buyer's performance during a PDA.

Applicant submits that original Claim 1, which recited that the price was determined

"based at least partially upon the data" (representing the performance of the buyer), when read in

light of the specification, required that the price to be determined was "scaled to the performance

of the buyer". (See Applicant's original specification at, e.g., page 3, line 22; and page 14, lines 1-

9.) Applicant submits that original Claim 13, which recited that the price assigned to the product

was "dependent upon the performance of the buyer", when read in light of the specification,

required that the price assigned was "scaled to the performance of the buyer". (See Applicant's

original specification at, e.g., page 3, line 22; and page 14, lines 1-9.) Applicant submits that

original Claim 19, which recited that the server was programmed to assign a price to the product,

the price being "dependent upon the performance of the buyer", when read in light of the

specification, required that the server was programmed to assign a price to the product, the price

being "scaled to the performance of the buyer". (See Applicant's original specification at, e.g.,

page 3, line 22; and page 14, lines 1-9.)

Applicant has amended Claims 1, 13, and 19 to more clearly set forth this feature of

Applicant's invention, and Applicant does not intend these amendments to affect the scope of the

claims. Applicant submits that the amended claims, as clarified, remain patentable over the cited

references, because none of the references disclose determining a price scaled to a buyer's

performance during a PDA. Applicant thus respectfully requests the rejections be withdrawn.

4

Regarding Claims 2, 11, 12, 14-16, 18, and 25-26, Claim 16 has been cancelled. Each of the other of these claims is directly or indirectly dependent on one of the aforementioned independent Claims 1, 13, or 19. Based on the arguments set forth for independent Claims 1, 13, and 19, Applicant therefore requests the rejections be withdrawn.

6.   Applicant respectfully requests the Examiner confirm that the application names only a single inventor.

7.   Regarding Claims 3-10, 17, and 22-23, each of these claims is directly or indirectly dependent on one of the aforementioned independent Claims 1, 13, or 19. Based on the arguments regarding independent Claims 1, 13, and 19, as set forth in paragraph 4 of the Remarks Section herein, Applicant submits that Goldhaber, either alone or in combination with U.S. Patent No. 5,269,521 (Rossides), does not disclose Applicant's claimed invention, and therefore requests the rejections be withdrawn.

8.   Regarding Claims 20-21, each of these claims is directly or indirectly dependent on independent Claim 19. Based on the arguments regarding independent Claim 19, as set forth in paragraph 4 of the Remarks Section herein, Applicant therefore requests the rejections be withdrawn.

9.   Regarding Claims 24 and 27, each of these claims is directly or indirectly dependent on one of the aforementioned independent Claims 1 or 13. Based on the arguments regarding independent Claims 1 and 13, as set forth in paragraph 4 of the Remarks Section herein, Applicant submits that Goldhaber, either alone or in combination with U.S. Patent No. 5,816,918 (Kelly), does not disclose Applicant's claimed invention, and therefore requests the rejections be withdrawn.

5

Reasons For Amendments

Claim 1

The amendment removing the phrase "selected by the buyer" was not made for a reason related to patentability. The amendment was made to eliminate the requirement that the PDA is selected by the buyer.

The amendment removing the phrase "selected" was made to conform to the above amendment.

The amendment adding "and scaled to the performance of the buyer" was made to clarify that the price is determined as set forth in Applicant's original specification, at, e.g., the locations specified in paragraph 4 of the Remarks Section herein.

Claim 6

The amendments to Claim 6 were made to conform to the removal of the word "selected" from Claim 1.

Claim 9

The amendment removing the phrase "selected" was made to conform to the removal of the word "selected" from Claim 1.

The amendment changing "person" to "participant" was made to include a situation in which the second participant is not a person. Support for this amendment is in Applicant's original specification at, e.g., page 16, lines 15-18. The amendment was not made for a reason related to patentability.

6

Claim 13

The amendment changing "dependent upon" to "scaled to" was made to clarify that the price is assigned to the product as set forth in Applicant's original specification, at, e.g., the locations specified in paragraph 4 of the Remarks Section herein.

Claim 17

Claim 17 was amended to depend from new Claim 32, which depends from Claim 13, because Claim 16 has been cancelled.

The amendment changing "includes" to "is adapted to accommodate" was made to clarify the scope of the claim, was not for a reason related to patentability.

The amendment changing "buyer" to "participant" was made to include a situation in which the second participant is not a person. Support for this amendment is in Applicant's original specification at, e.g., page 16, lines 15-18. The amendment was not made for a reason related to patentability.

The amendment deleting the latter portion of the claim was not for a reason related to patentability.

Claim 18

The amendment to Claim 18 was not for a reason related to patentability.

Claim 19

The amendment changing "dependent upon" to "scaled to" was made to clarify that the server is programmed to assign the price to the product as set forth in Applicant's original specification, at, e.g., the locations specified in paragraph 4 of the Remarks Section herein.

7

Claim 23

The amendment changing "person" to "participant" was made to include a situation in which the second participant is not a person. Support for this amendment is in Applicant's original specification at, e.g., page 16, lines 15-18. The amendment was not made for a reason related to patentability.

The amendment removing the phrase "selected" was made to conform to the amendment made to Claim 1 which also removed "selected".

Claim 24

The amendment changing "person" to "participant" was made to include a situation in which the second participant is not a person. Support for this amendment is in Applicant's original specification at, e.g., page 16, lines 15-18. The amendment was not made for a reason related to patentability.

Claim 27

The amendment changing "buyer" to "participant" was made to include a situation in which the second participant is not a person. Support for this amendment is in Applicant's original specification at, e.g., page 16, lines 15-18. The amendment was not made for a reason related to patentability.

The amendment removing the phrase "selected" was made to conform to the claims form which Claim 27 depends.

New Claims

No new matter has been added by these amendments. New Claims 28-44 are supported in the original specification at, e.g., the following locations:

<u>Claims 28 and 30</u>: Page 4, lines 15-22; and original Claim 1.

<u>Claims 29, 31, 33, and 37</u>: Page 3, lines 16-18.

<u>Claims 32, 34, and 36</u>: Page 3, lines 11-16; page 3, line 22, to page 4, line 13; and original Claim 16.

<u>Claim 35</u>: Claim 35 is the only new independent Claim. Applicant has added Claim 35 to capture what Applicant submits is a specific point of novelty in Applicant's invention. The Claim is supported at, e.g., page 3, line 22; and page 14, lines 1-9.

<u>Claims 38 and 39</u>: Page 7, line 18, to page 8, line 2.

<u>Claim 40</u>: Page 3, line 22, through page 4, line 4.

<u>Claims 41-44</u>: Page 13, lines 4-21; page 15, lines 7-13.

If the Examiner has any questions regarding the foregoing, or if the Examiner would like to discuss any minor defects regarding this application, the Examiner is invited to contact the undersigned representative of Applicant at (949) 724-1849.

Respectfully submitted,

Dated: April 2, 2001

Neal M. Cohen
Reg. No. 41,683
Attorney for Applicant

2424 S.E. Bristol Street, Suite 300
Newport Beach, CA 92660-0757
TEL: (949) 724-1849
FAX: (949) 724-8806

[Amended Claims follow]

9

1. (Amended) A method of doing business over a global communications network

comprising the steps:

communicating to a buyer via the global communications network, a description of a

product;

accepting a first request from the buyer to buy the product for a price to be determined

within a price range;

accepting a second request from the buyer to allow the price to be determined based upon

a performance of the buyer while participating in a Price-Determining-Activity (PDA);

receiving data from the buyer over the global communications network, said data

representing the performance of the buyer during the PDA; and

determining the price of the product based at least partially upon the data received, said

price being within the price range and scaled to the performance of the buyer.

6. (Amended) The method of claim 1, further comprising the step of associating the PDA

with the product based at least partially upon a number of participants required for execution of

the PDA.

9. (Amended) The method of claim 1, wherein the PDA requires participation of at least

one participant in addition to the buyer.

13. (Amended) A method of determining a price of a product using a global

communications network, comprising the steps:

communicating to a buyer via the global communications network, data representing a

plurality of products available, said plurality of products including a first product;

10

accepting acknowledgement from the buyer representing an intent of the buyer to buy the

first product at a price to be determined based upon a performance of the buyer while

participating in a Price-Determining-Activity (PDA), said acknowledgement being

communicated over the global communications network;

determining the performance of the buyer; and

assigning a price to the product, said price being scaled to the performance of the buyer.

17. (Amended) The method of claim 32, wherein the PDA is adapted to accommodate

participation of a second participant.

18. (Amended) The method of claim 15 wherein the price is dependent at least partially

upon a bid selected by the buyer.

19. (Amended) A system for conducting e-commerce over a global communications

network, comprising:

a computer server having access to the global communications network, and being

programmed to:

a) communicate to a buyer via the global communications network, data representing a

plurality of products, said plurality of products including a first product;

b) accept acknowledgement from the buyer representing an intent of the buyer to buy the

first product at a price to be determined dependent on a performance of the buyer while

participating in a Price-Determining-Activity (PDA), said acknowledgement being

communicated over the global communications network;

c) determine the performance of the buyer based upon data received over the global

communications network; and

d) assign a price to the product, said price being scaled to the performance of the buyer.

11

23. (Amended) The method as in claim 9, further comprising the step of determining the price based at least partially upon a competition between the buyer and the at least one participant using the PDA.

24. (Amended) The method as in claim 23, wherein the at least one participant is a second buyer, and further comprising the steps of accepting a second request from the second buyer to buy the product for a second price to be determined within the price range, and determining said second price based at least partially upon the competition.

27. (Amended) The method as in claim 17, further comprising the step of determining the price based at least partially upon a competition between the buyer and the second participant using the PDA.

12

P 00104

1. (Amended) A method of doing business over a global communications network comprising the steps:

communicating to a buyer via the global communications network, a description of a product;

accepting a first request from the buyer to buy the product for a price to be determined within a price range;

accepting a second request from the buyer to allow the price to be determined based upon a performance of the buyer while participating in a Price-Determining-Activity (PDA) [selected by the buyer];

receiving data from the buyer over the global communications network, said data representing the performance of the buyer during the [selected] PDA; and

determining the price of the product based at least partially upon the data received, said price being within the price range and scaled to the performance of the buyer.

6. (Amended) The method of claim 1, further comprising the step of associating the [selected] PDA with the product based at least partially upon a number of participants required for execution of the [selected] PDA.

9. (Amended) The method of claim 1, wherein the [selected] PDA requires participation of at least one [person] participant in addition to the buyer.

13. (Amended) A method of determining a price of a product using a global communications network, comprising the steps:

13

communicating to a buyer via the global communications network, data representing a
plurality of products available, said plurality of products including a first product;

accepting acknowledgement from the buyer representing an intent of the buyer to buy the
first product at a price to be determined based upon a performance of the buyer while
participating in a Price-Determining-Activity (PDA), said acknowledgement being
communicated over the global communications network;

determining the performance of the buyer; and

assigning a price to the product, said price being [dependent upon] scaled to the
performance of the buyer.

17. (Amended) The method of claim [16] 32, wherein the PDA [includes] is adapted to
accommodate participation of a second [buyer] participant, [and further comprising the step of
communicating to the buyer and to the second buyer over the global communications network,
price determination rules].

18. (Amended) The method of claim 13 wherein the price is dependent at least partially
upon a bid selected by the buyer [and received over the global communications network].

19. (Amended) A system for conducting e-commerce over a global communications
network, comprising:

a computer server having access to the global communications network, and being
programmed to:

a) communicate to a buyer via the global communications network, data representing a
plurality of products, said plurality of products including a first product;

b) accept acknowledgement from the buyer representing an intent of the buyer to buy the
first product at a price to be determined dependent on a performance of the buyer while

14

participating in a Price-Determining-Activity (PDA), said acknowledgement being communicated over the global communications network;

     c) determine the performance of the buyer based upon data received over the global communications network; and

     d) assign a price to the product, said price being [dependent upon] <u>scaled to</u> the performance of the buyer.

     23. (Amended) The method as in claim 9, further comprising the step of determining the price based at least partially upon a competition between the buyer and the at least one [person] <u>participant</u> using the [selected] PDA.

     24. (Amended) The method as in claim 23, wherein the at least one [person] <u>participant</u> is a second buyer, and further comprising the steps of accepting a second request from the second buyer to buy the product for a second price to be determined within the price range, and determining said second price based at least partially upon the competition.

     27. (Amended) The method as in claim 17, further comprising the step of determining the price based at least partially upon a competition between the buyer and the second [buyer] <u>participant</u> using the [selected] PDA.

15