

EXHIBIT 2

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Foreign Priority claimed <input type="checkbox"/> yes <input checked="" type="checkbox"/> no 35 USC 119 (a-d) conditions met <input type="checkbox"/> yes <input checked="" type="checkbox"/> no <input type="checkbox"/> Met after Allowance Verified and Acknowledged	Examiner's Signature 	Initials _____	STATE OR COUNTRY CA	SHEETS DRAWING 2	TOTAL CLAIMS 21	INDEPENDENT CLAIMS 3
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ABSTRACT

A business model / process is described for conducting business transactions over the Internet, allowing buyers to reduce the price of the selected product / service based on the buyer's performance during a collateral activity. Sellers offer the product / service

5 within a specified price range, and buyers accept the offer, in exchange for the opportunity to close the transaction at the lowest price offered by achieving a high score during the collateral activity. The ultimate price is within the agreed upon range, but is determined based upon the buyer's performance during the collateral activity. The activity may be a video game, electronic board game, sports bet, card game, or any other activity,

10 and may be performed against the seller, a pre-programmed software opponent, a computer opponent, another buyer competing for the same or a different product, a player participating as a player only and not as a buyer, or anyone or anything else.

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**SYSTEMS AND METHODS FOR TRANSACTING BUSINESS OVER A
GLOBAL COMMUNICATIONS NETWORK SUCH AS THE INTERNET**

FIELD OF THE INVENTION

The present invention relates generally to systems and methods of doing business
5 over a global communications network such as the Internet, and more particularly to
systems and methods wherein various forms of competition and/or entertainment are used
to determine transaction prices between buyers and sellers.

BACKGROUND

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10 Many businesses have recently begun expanding into e-commerce in an effort to
attract some of the seemingly endless source of potential buyers. In fact, many new
businesses actually offer their products and services solely via e-commerce. Some e-
commerce businesses provide traditional transaction methods, wherein the seller offers a
specified product at a specified price, and the buyer "buys" the product by performing a
required set of tasks acknowledging the formation of a binding buy-sell contract. This
15 occurs at Amazon.com, e.g., which began as an on-line book seller, but has recently
expanded into other fields such as music and videos.

Various other business models have also emerged, apparently in an effort to
attract a greater portion of the on-line market. For example, Priceline.com uses a model
which allows the *buyer* to present a bid or offer price they wish to pay for a product or
20 service, and a *seller* then accepts the buyer's offer to enter into a binding contract,
typically as the result of a reverse auction process. See, e.g., U.S. Patent No. 5,794,207,
the contents of which are hereby incorporated herein by reference. VerticalNet.com uses

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a model which allows businesses to find information regarding manufacturers of specific products, after which time the business (buyer) then contacts the manufacturer directly to purchase the products. Onsale.com and eBay.com use auction models allowing sellers to submit their products to an electronic auction, which buyers then bid on electronically.

- 5 Onsale.com has also announced an "at-cost" program, claiming to sell various computer and other electronic products at wholesale cost. Other e-commerce companies simply use their websites as an advertising activity to promote their products.

These various e-commerce business models all have certain advantages and disadvantages, but as a fundamental principle of a free market economy such as in the United States, their common goal likely is to attract as many customers as possible, to ultimately lead to more transactions and hence more profit for the companies employing the models. As such, they all seem to focus in one way or another on factors typically considered important by potential buyers - namely price and convenience. None of them, however, allow a potential buyer to engage in a competitive / entertaining collateral price-determining activity (PDA) which ultimately determines the price of the product or service to be secured, depending on the buyer's performance during the collateral activity.

Off-line sweepstakes systems are also known, which allow a game player to win cash or other prizes or credits depending on the player's performance of a specified set of tasks. A simple example involves a player scratching off one of a number of covered areas on a card, to reveal a prize. However, such systems typically do not bind the player to a contract, but merely provide an offer to the player / buyer to enter into a contract on the specified terms.

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Systems and methods are thus desirable to allow a potential buyer to engage in competitive / entertaining activities wherein the activities ultimately determine the price of the product or service to be bought, depending on the buyer's performance while participating in the PDA. Such systems and methods using a global communications network such as the Internet would provide buyers and sellers an alternative method of conducting e-commerce.

SUMMARY OF THE INVENTION

The present invention comprises a business model used to determine the price of goods and/or services to be provided from a seller or sellers to a buyer or buyers. Various forms of electronic competition and/or entertainment are used as intermediary activities between said buyers and sellers to ultimately determine a contract price. Sellers offer a product or service within a specified price range, and buyers enter into a contract to buy the product or service within that price range. The ultimate price (within the range) is determined based upon the buyer's performance rating, or score, which the buyer receives from participating in a collateral activity. Thus, if a buyer performs poorly at the activity, the price will be higher, whereas if the buyer does well, the price will be lower. The activity may be a video game (including audio / visual games), electronic board game, crossword puzzle or other word game, sports bet, card game, or any other activity or combination of activities, and may be performed against the seller, a pre-programmed software opponent, a computer opponent, another buyer competing for the same or a different product, a player participating as a player only and not as a buyer, or anyone or anything else. The actual range may be a scaled set of prices (e.g., \$1000.00, \$1100.00, \$1200.00, etc.), or it may be simply a single price, such as a discounted price, for which

the buyer will either "win" the contract or "lose", and not be entitled to the product at the specified price, or it may even include a lower boundary of \$0.00, such that the product or service might be attainable for free if the buyer can achieve a certain performance level while participating in the PDA.

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5 Sellers are able to attract buyers using the marketing incentive that buyers can reduce the price of the offered product or service by performing well at the specified activity. Sellers are willing to put forth the initial offer of a certain price range, in hopes that the average price of the product over time will be a profitable price within the range, based upon the average performance of potential buyers that is expected to occur.

10 Buyers, on the other hand, are willing to accept the possibility of paying the highest price within the range, in exchange for the opportunity to pay the lowest price (or any lower price) within the range if they can achieve a certain level of performance at the specified activity. Buyers also receive a side benefit of the entertainment value of the activity, during which they are attempting to lower the price of a product or service.

15 Thus, one aspect of the present invention involves a method of doing business over a global communications network comprising the steps of: 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
20 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.

Another aspect of the present invention involves a method of determining a price of a product using a global communications network, comprising the steps:

- 5 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
- 10 communicated over the global communications network; determining the performance of the buyer; and assigning a price to the product, said price being dependent upon the performance of the buyer.

- Another aspect of the present invention involves a system for conducting e-commerce over a global communications network, comprising: a computer server having
- 15 access to the global communications network, and being programmed to communicate to a buyer via the global communications network, data representing a plurality of products, said plurality of products including a first product; and to 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-
- 20 Determining-Activity (PDA), said acknowledgement being communicated over the global communications network; and to determine the performance of the buyer based upon data received over the global communications network; and to assign a price to the product, said price being dependent upon the performance of the buyer.

Methods are thus described wherein buyers participate in selected activities, the outcomes of which are used to determine the ultimate price the buyer is to pay for a selected product or service. Other objects and advantages of the present invention will be apparent from the detailed description which follows, when read in conjunction with the associated drawings.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a flow-chart illustrating the steps involved in a typical transaction performed in accordance with the concepts of the present invention.

FIG. 2 is a block diagram showing an embodiment of an operation controller as used in accordance with the present invention.

FIG. 3 is a block diagram showing one embodiment of a buyer or seller interface in accordance with the present invention.

DETAILED DESCRIPTION OF THE INVENTION

The present invention describes business systems and business models / processes for conducting business transactions wherein the buyer and seller agree to a price range at which a transaction will take place. Sellers offer their product / service within a specified price range, and buyers accept the offer, in exchange for the opportunity to close the transaction at the lowest price offered by achieving a high score during a collateral activity. The ultimate price is within the agreed upon range, but is determined based upon the buyer's performance during the collateral PDA. The activity may be a video game, electronic board game, sports bet, card game, or any other activity, and may be performed

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reverse auction price, which discount may be greater if the buyer performs well at the PDA, and not so great if the buyer performs poorly. The offerings of various products and services, and the associated PDAs, may be presented via a seller's website, or a host website acting as a front end to systems embodying the concepts described herein.

5 At step 120, the buyer selects a PDA from a set of those available. The available set of PDAs may be pre-set by the seller or seller's agent, and may be a subset of the actual set of activities in a PDA database. The PDAs available may vary depending upon many factors, such as the product / service being offered, the price range being offered, the quantity of products available, the demand for the product, etc. For example, a seller
10 may allow a buyer to choose from any PDA in the PDA database, for a particular item that the seller wants to offload as a promotional item, and for which the seller is unconcerned as to the probabilities of receiving a specified average price over time for the product. On the other hand, for a popular product that is capable of commanding a full market price, the seller may wish to only allow certain PDAs to be associated with
15 the product, where those PDAs will typically result in a higher sale price than other PDAs. The association of a particular PDA with any given product or service, any given seller, any given buyer or class of buyers, any given time period, any given source of entry to the website implementing the present invention, or to any other database, database entry, event, or other factor, or to any combination of the aforementioned, may
20 be managed and controlled using well-known database management software.

 After the buyer selects a PDA, the buyer may provide payment information, as seen at step 130. The information may be input and processed using well-known e-commerce financial software, taking advantage of integrated or independent encryption

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technology. Alternatively, the buyer may provide financial information via phone, regular mail, e-mail, or any other means, and may gain access to the seller's offers via a password or other secure identification method already associated with the buyer's financial information. This step, of course, may occur at any stage in the process, but preferably
5 occurs prior to allowing the buyer to participate in the PDA.

Once the buyer selects the PDA at step 120 (and preferably after the buyer provides payment info at step 130), the PDA may begin, as seen at step 140. Actual start of the PDA may require additional input from the buyer, indicating he or she is ready to begin, and/or that he or she agrees to and understands that by beginning the PDA, he or
10 she has entered into a binding contract. The PDA may be a video game, electronic board game, gambling game, sports bet, or any other activity, and may be single-player or multi-player, and may comprise computer-executable code sent to the buyer over a global communications network such as the Internet. Various PDAs are described in more detail herein.

15 When the PDA is complete as to the buyer (step 150) the actual price of the product or service at issue is determined (step 160), and if the contract is binding, the transaction may then be completed. If the contract is not binding, because e.g., the buyer was given the opportunity of engaging the PDA on a "no commitment basis", then at this point the buyer is asked if he or she wants to close the transaction at the determined price.

20 The following example will illustrate in more detail a buyer-seller transaction occurring using the flow-chart of FIG. 1. Buyer Bobby accesses the Internet using a typical PC with browser software. Bobby sends a request through his browser to link to a

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website implementing the concepts described in FIG. 1. For this example, we will call the website www.pdaportal.com (No such website is known to exist at this time). Bobby navigates the website, and finds that he can buy a Mark McGwire rookie card in mint condition, if he is willing to pay anywhere between \$500.00 to \$\$575.00. He decides to
5 check it out, and clicks on the Mark McGwire image to proceed (step 110).

He is then presented with a pull-down menu of five different "games" (PDAs) to choose from, along with price determination rules explaining how each PDA will be used to determine the ultimate price of the McGwire card. The "games" are: 1) a bridge game where he would be dealer and North, and would be playing with three other individuals
10 who have selected bridge as their PDA for other products offered by www.pdaportal.com; 2) a Mark McGwire trivia quiz of ten questions; 3) an offer to predict which major league baseball player will be the first to reach fifty home-runs this season; 4) a game of keno; and 5 a classic PacMan video arcade game. After browsing through each option, and learning what type of performance would be necessary from
15 him to achieve a buying price of \$500.00, he decides to go for the trivia quiz. (step 120), in which he is informed that he only needs to answer 9 of 10 multiple choice questions correctly within a fifteen minute period to achieve the \$500.00 price. Even if he only gets 5 out of 10 correct, he will get the card for \$560.00, and he figures that isn't so bad.

He then sends his VISA card information to the pdaportal.com server (step 130),
20 and is informed that he may begin the "game" by selecting "START", or by returning within 48 hours to pdaportal.com and entering code "MC9915432" into the "Active request?" field. He decides to go for it now, and clicks on the "START" button. The game begins (step 140). Bobby gets through the first 8 questions, and has them all right so far,

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but realizes he has only nine seconds remaining. He has no time to read the next two questions, so he simply guesses "b" for both of them. The clock runs out, and the game is over (step 150). Bobby is informed that the answer to number 9 was "c", but the answer to number 10 was "b". He gets 9 answers correct, and according to the predetermined
5 algorithm as presented to him at the start of the game, his performance locks in the price at \$500.00! (Step 160). The shipping, customer service, and other e-commerce details are handled by the www.pdaportal.com software, which is well-known in the art.

As previously mentioned, the transactions may be handled by a master operation controller or content server for efficient processing and marketability. FIG. 2 is a block
10 diagram showing one embodiment of an operation controller 206 as used in accordance with the present invention. The operation controller may be a computer server which provides content to and manages a website implementing the concepts described herein. The buyer and seller interfaces (202 and 204 respectively) may comprise a PC 216 (see
15 FIG. 3) connected to the master operation controller 206, and may each have browser software installed. The connection may be via an electronic network interface 207 and connection 208 to a modem or other communication device 210, which in turn is connected to the content server 206 via any Internet connection 212 such as phone lines, cable lines, ISDN, T-1, etc. The network interface 208 and connection 207 is shown for
20 simplicity to be the same for the buyer and seller interfaces 202 and 204, but this is not required, and in most instances would not be the case. Connection to the master operation controller 206 may be directly via an Internet connection 212, and may occur via a hyperlink from another website acting as a front-end to the master operation controller.

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The content server 206 has access to a database 214, which may be one physical database, or multiple physical databases, as is well-known in the art. Various physical or logical databases may include the following: a goods offered database 214a, a seller database 214b, a buyer database 214c, a payment info database 214d, a price acceptance database 214e, a PDA database 214f (containing data regarding the available PDAs), a price decisions database 214g, a seller account database 214h, a buyer account database 214i, a buyer history database 214j, and many others. The relationships between the various databases 214 may be programmed using well-known programming techniques. For example, relationships may be set up as previously described to associate specified PDAs with specified products offered by specified sellers during specified time periods. The databases may be organized and partitioned in any convenient manner, and the format shown in FIG. 2 is merely an example.

Turning now to FIG. 3, a sample configuration of the Buyer Interface is shown. (The same configuration may be used for a Seller Interface). As can be seen, the buyer interface 202 may comprise a PC 216 connected to the master operation controller 206, and may have browser software installed. The connection may be via an electronic network connection 207 to a modem or other communication device 210, which in turn is connected to the content server 206 via any Internet connection 212 such as phone lines, cable lines, ISDN, T-1, etc. Connection to the master operation controller 206 may be directly via an Internet connection 212, and may occur via a hyperlink from another hosting website acting as a front-end to the master operation controller content. A monitor 218 or other output display device may be attached to the buyer's PC, as is well-known in the art. In an exemplary embodiment, a buyer interface 202 simply needs to

have Internet access and browser software installed, to allow a buyer to navigate the Internet and access a website hosting content which implements the methods described herein. FIG. 3 is merely a simple example of such a configuration.

Turning now to the Price Determining Activities, or PDAs, the present invention
5 contemplates a wide variety of PDAs to be used as described herein. It is to be understood, therefore, that various PDAs available, along with price determination rules explaining how the PDAs are used to determine the ultimate price of a specified product or service, may be pre-programmed and/or programmable, as needed. Thus, upon
10 execution of a PDA in one case, a score of 100,000 may entitle the buyer to a \$500.00 price, whereas the same PDA may entitle a different buyer to a price of only \$525.00 for the same product.

PDAs may be added, modified, and/or deleted. The availability of any given PDA may also change and be set based upon any combination of the associated product or service offered, the identity of the seller, the time of the offer from the seller, the source
15 of entry into the PDA's host website (e.g., special promotions may be offered to buyers accessing the PDA website through a Yahoo! link), the skill level of the buyer participant, the number of players involved in the PDA, the changing popularity of the PDA, and many other external factors. It is preferred that the price determination rules explaining how a particular PDA is used to determine the price of a given product or
20 service, are communicated to the buyer prior to the buyer engaging the PDA. This will likely facilitate the creation of a binding contract upon the buyer.

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A classic example of a PDA is a video game, wherein at the end of the game, the player has earned a certain point total or score. The score is then used to determine the price of the product or service at issue, in accordance with a mapping algorithm. Using the Mark McGwire card example described earlier, a score of less than 100,000 points may correspond to the \$575.00 price; 100,000 to 199,999 may correspond to a \$550.00 price; 200,000 to 299,999 may correspond to a \$525.00 price; and a score of 300,000 or more may correlate to the lowest price available, \$500.00. The various score ranges and corresponding resulting prices may of course be adjusted by the seller or seller's agent as needed.

10 Another example of a PDA involves a simulated investment in a stock market. A buyer may submit his or her prediction on the value of a certain stock, mutual fund, sample portfolio, index fund, either U.S. or foreign, at the close of a specified trading day. Or a buyer may be given a set amount of simulated "money" to "invest" in various public markets, his final portfolio value being compared to a raw score or the score of
15 other players and/or buyers to determine the price he is entitled to pay for the specified product or service. The difference (either in percentage or raw points) between the buyer's prediction, and the actual closing price or value, may then be used to determine the price of the specified product or service.

20 Another example of a PDA involves sports wagering. A buyer may submit his or her wager or prediction on the outcome of a sporting event, or a combination of sporting events, or individual or team achievements during the course of a sporting event. "Odds" may be posted which correspond to the price the buyer will be entitled to depending on the accuracy of his or her wager.

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Other PDAs include electronic card games, such as bridge, cribbage, black jack, poker, or other card games, craps, roulette, and electronic board games such as chess, backgammon, checkers, or a proprietary game such as Trivial Pursuit, Monopoly, or other game. It is to be understood that a price determining algorithm associated with a PDA may involve considerations of the number of players or buyers involved, and the skill level of those players.

For example, a particular seller may have nine widgets available for sale, for which he desires to get an average of \$100.00 each. He therefore configures his offer to extend to the first nine buyers interested in the widget, with a single PDA of a simulated horse race being the only PDA available. He configures the horse racing PDA to post "odds" such that three horses with the best times will receive the widget for only \$75.00; numbers 4-6 will pay \$100.00, and numbers 7-9 will pay \$125.00, thus securing an average price of \$100.00 per product for the seller.

In the horse race example, as in any multi-player situation, the simulated horse race may occur with all participants simultaneously, or it may occur at various times depending on when each buyer is available to participate. In the former case, participants may be notified by e-mail, audio or visual indicator, or any other way as to the specific start time of the multi-player PDA. For example, a player may sign-up for the race, and await at his terminal for the trumpet noise, which he would then acknowledge. The server might actually sign-up twenty or more players, and send the trumpet noise to each one until nine players have acknowledged. Once the server has received nine acknowledgements, the ten second countdown could begin and the PDA would then occur. As for the other players who did not get the trumpet call, they could remain on the

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trumpet call wait list until the next trumpet call. Various algorithms may be employed to remove a player from a wait list after a predetermined amount of time has elapsed. In the case of asynchronous racing, each player may engage the PDA which will be programmed to have that player's designated horse compete against the remaining horses
5 which would be electronic opponents, as opposed to actual players.

Another application of the present invention involves a scenario wherein a buyer may participate multiple times in the same or various PDAs, in an effort to accumulate points that correspond to various price levels. For example, a Gateway 2000 computer costs may retail for \$3000.00. For each certain level or accumulation of certain amounts
10 of points, the buyer would be entitled to reduce the price of the computer. The decrease in price can be in dollar amount or percentage points, and may or may not have a bottom limit. The actual transaction price between a buyer and a seller would be determined by the buyer, when he or she decides a price has been reached to his or her acceptable level.

The actual opponents of a buyer in a multi-player PDA may even be buyers for
15 other products or services, offered by other sellers. Or the opponent may be a pre-programmed software opponent, as in the previous asynchronous horse racing example. The opponent may even be an independent computer, as in the case when a human buyer competes against a computer opponent in a chess game. The opponent or opponents may even be people who are not buyers, but are merely players, participating in the PDA
20 merely for the inherent entertainment value thereof.

The players and/or buyers may be required to pay a fee based on their participation in the PDA. The fee may be based upon pay-per-play, or on a predetermined

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time-basis such as quarterly, annual, lifetime, etc. Trial participation may be available, allowing a buyer or player / non-buyer to try the PDA for free, up to a specified number of times. Similarly, sellers may be required to pay a fee to list their products and services for sale, or they may pay a percentage of their gross or net sales, or an amount based upon number of participants, etc.

While certain embodiments are illustrated in the drawings and are described herein, including preferred embodiments, it will be apparent to those skilled in the art that the specific embodiments described herein may be modified without departing from the inventive concepts described. For example, well-known e-commerce software for order processing, order fulfillment, shipping, billing, customer service, security, general ledger, and other applications may be integrated into an overall e-commerce application package to provide a complete e-commerce solution for a business desiring to capitalize on the concepts described herein. Additionally, software implementing the concepts and methods described herein may generally be programmed to allow escape or exit at any stage, so long as the appropriate request is provided by the buyer. Also, use of the word "product" in the appended claims is intended to include both products and services. Accordingly, the invention is not to be restricted except by the claims which follow.

What is claimed is:

*uh
to 1*

~~1. A method of doing business over a global communications network comprising the steps:~~
~~communicating to a buyer via the global communications network, a description~~
~~5 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-~~
~~10 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.~~

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15 2. The method of claim 1, further comprising the step of accepting payment information from the buyer over the global communications network.

3. The method of claim 1, further comprising the step of presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from
20 the buyer.

4. The method of claim 3, further comprising the step of presenting price determination rules to the buyer over the global communications network, said price determination rules being associated with the plurality of PDAs.

5. The method of claim 4, wherein the PDA is a video game.

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~~6. 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.~~

7. The method of claim 1, further comprising the step of sending price data to the buyer via the global communications network, said price data representing the
10 price.

8. The method of claim 1, further comprising the step of accepting offer data from the seller representing an offer from the seller to sell the product within the price range.

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~~9. The method of claim 1, wherein the selected PDA requires participation of at least one person in addition to the buyer.~~

~~10.~~ ¹² The method of claim 1, wherein the steps of accepting the first request from the buyer, accepting the second request from the buyer, and receiving the performance data from the buyer, are performed by a master controller.

~~11.~~ ¹³ The method of claim 1, wherein the price is determined at least partially
20 upon participation of the buyer in an auction.

~~12.~~ ¹⁴ The method of claim 1, wherein the global communications network is the Internet.

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~~13.~~ A method of determining a price of a product using a global communications network, comprising the steps:
5 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
10 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 the performance of the buyer.

15 ~~14.~~ ¹⁹ The method of claim ~~13~~ ¹⁸, further comprising the step of receiving data over the global communications network representing an election of the buyer to select the PDA.

~~15.~~ ²⁰ The method of claim ~~13~~ ¹⁸, further comprising the step of accepting payment information from the buyer over the global communications network.

16. The method of claim 13, wherein the price to be determined is within a price range, and further comprising the step of communicating the price range to the buyer over the global communications network.

17. The method of claim 16, wherein the PDA includes participation of a second buyer, and further comprising the step of communicating to the buyer and to the second buyer over the global communications network, price determination rules.

18. 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. 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

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

~~20.~~ ³¹ The system of claim ~~19~~ ³⁰, wherein the PDA comprises computer-executable code sent to the buyer over the global communications network.

5 ~~21.~~ ³² The system of claim ~~20~~ ³¹, wherein the server is further programmed to process payment information of the buyer communicated over the global communications network.

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**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/342,866	06/29/99	LIN	W 244/031

023410
 NEAL M COHEN
 2424 SE BRISTOL STREET
 SUITE 300
 NEWPORT BEACH CA 92660

TM02/0212

EXAMINER

THOMPSON JR, F

ART UNIT	PAPER NUMBER
2165	1)

2165

DATE MAILED: 02/12/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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1-File Copy

Office Action Summary

Application No. 09/342,888	Applicant(s) LIN
Examiner Forest Thompson Jr.	Group Art Unit 2165

- Responsive to communication(s) filed on 2/22/00
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

- Claim(s) 1-27 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- Claim(s) _____ is/are allowed.
- Claim(s) 1-27 is/are rejected.
- Claim(s) _____ is/are objected to.
- Claims _____ are subject to restriction or election requirement.

Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The drawing(s) filed on _____ is/are objected to by the Examiner.
- The proposed drawing correction, filed on _____ is approved disapproved.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All Some* None of the CERTIFIED copies of the priority documents have been
- received.
- received in Application No. (Series Code/Serial Number) _____
- received in this national stage application from the International Bureau (PCT Rule 17 2(e))
- *Certified copies not received: _____
- Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- Notice of References Cited, PTO-892
- Information Disclosure Statement(s), PTO-1449, Paper No(s) 2, 7
- Interview Summary, PTO-413
- Notice of Draftsperson's Patent Drawing Review, PTO-948
- Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

1. Claims 1-27 have been examined.

Drawings

3. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed because of the reasons set forth on the PTO-948 Form enclosed.

Claim Rejections - 35 USC § 112

2. Claims 1, 13, and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 13 are directed to a method and state desired results, but fail to provide information on the specific structure included to achieve them. Claims 1 and 13 state "based upon a performance of the buyer while participating in a price-Determinating-Activity (PDA)," in lines 7-9. Correction is required.

Claim 19 is directed to a system and states desired results, but fails to provide information on the specific structure included to achieve them. Claim 19 states "dependent on a performance of the buyer while participating in a price-Determinating-Activity (PDA)," in lines 7-9. Correction is required.

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Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 11-16, 18-19, and 25-26 are rejected under 35 U.S.C. 102(b) as being anticipated by **Goldhaber et al.** (U.S. Patent 5,855,008).

As per claims 1, 13 and 19, **Goldhaber et al.** discloses:

- a computer server having access to the global communications network (col. 4 lines 18-24; col. 8 lines 26-30; col. 9 lines 32-35);
- communicating to a buyer to buy the product for a price to be determined within a price range (col. 9 lines 32-40; col. 10 lines 9-38; fig. 2 [50,52]);
- accepting a first request from the buyer to buy the product for a price to be determined within a price range (col. 10 lines 9-38; fig. 2 [50,52]);
- accepting a second request from the buyer to allow the price to be determined based on a performance of the buyer while participating in a Price-Determining-Activity (PDA) selected by the buyer (col. 10 lines 39-57; fig. 3 [56, 58, 60]);
- receiving from the buyer over the global communications network, said data representing the performance of the buyer during the selected PDA (col. 10 lines 46-57);

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- determining the price of the product based at least partially upon the data received, said price being within the price range (col. 10 line 53 - col. 11 line 31);

As per claims 2 and 15, **Goldhaber et al.** discloses the step of accepting payment information from the buyer over the global communications network (col. 38 lines 11-12).

As per claim 11, **Goldhaber et al.** discloses the price is determined at least partially upon participation of the buyer in an auction (col. 4 lines 63-64).

As per claim 12, **Goldhaber et al.** discloses the global communication network is the Internet (col. 4 lines 18-24).

As per claim 14, **Goldhaber et al.** discloses the step of receiving data over the global communications network representing an election of the buyer to select the PDA (col. 10 lines 39-57; fig. 3 [56, 58, 60]).

As per claim 16, **Goldhaber et al.** discloses:

- the price to be determined is within a price range (col. 10 line 53 - col. 11 line 31); and
- communicating the price range to the buyer over the global communications network (col. 9 lines 32-40; col. 10 lines 9-38; fig. 2).

As per claim 18, **Goldhaber et al.** discloses:

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- the price is dependent at least partially upon a bid selected by the buyer (col. 9 lines 32-40; col. 10 lines 9-67; col. 11 lines 1-31); and
- received over the global communications network (col. 4 lines 18-24; col. 9 lines 32-40; col. 10 lines 9-67; col. 11 lines 1-31).

As per claim 25, **Goldhaber et al.** discloses the price is determined at least partially upon participation of the buyer in an auction (col. 4 lines 63-64).

As per claim 26, **Goldhaber et al.** discloses the prices is determined at least partially upon an offer received from the buyer (col. 10 line 46 - col. 11 line 31).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

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evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 3-10, 17 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Rossides** (U.S. Patent No. 5,269,521).

As per claim 3, **Goldhaber et al.** does not disclose presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer. However, **Rossides** discloses presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer (col. 15 line 63 - col. 16 line 11). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.** and **Rossides** to disclose presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer, because this provides the user an obvious incentive to participate in the activity.

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As per claim 4, **Goldhaber et al.** does not specifically disclose presenting price determination rules to the buyer over the global communications network, said price determination rules being associated with the plurality of PDAs. However, **Rossides** discloses presenting price determination rules to the buyer over the global communications network, said price determination rules being associated with the plurality of PDAs (Abstract; col. 3 lines 36-47). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.** and **Rossides** to disclose presenting price determination rules to the buyer over the global communications network, said price determination rules being associated with the plurality of PDAs, because this encourages the buyer to buy products.

As per claim 5, neither **Goldhaber et al.** nor **Rossides** disclose the PDA is a video game. However, Official Notice is taken that it was old and well known in the art at the time the invention was made that games, including video games, are used to encourage users (in this case, buyers) to participate in selected activities to increase user participation and make selected activities more appealing to users. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine old and well known art, **Goldhaber et al.** and **Rossides** to disclose the PDA is a video game, because of the popularity of on-line video games.

As per claim 6, **Goldhaber et al.** does not specifically disclose associating the selected PDA with the product based at least partially upon a number of participants required for

Art Unit: 2165

execution of the selected PDA. However, **Rossides** discloses associating the selected PDA with the product based at least partially upon a number of participants required for execution of the selected PDA (col. 24 lines 1-18). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al. and Rossides** to disclose associating the selected PDA with the product based at least partially upon a number of participants required for execution of the selected PDA, because this increases the probability that sufficient buyers will participate in the price-determining activity to achieve satisfactory results in the activity and make a sale.

As per claim 7, **Goldhaber et al.** does not specifically disclose sending the price data to the buyer via the global communications network, said price data representing the price. However, **Rossides** discloses sending the price data to the buyer via the global communications network, said price data representing the price (col. 16 lines 53-67). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al. and Rossides** to disclose sending the price data to the buyer via the global communications network, said price data representing the price, because this informs buyers of product prices which buyers will require before finalizing the sale.

As per claim 8, **Goldhaber et al.** does not specifically disclose accepting offer data from the seller representing an offer from the seller to sell the product within the price range.

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However, **Rossides** discloses accepting offer data from the seller representing an offer from the seller to sell the product within the price range (col. 42 lines 53 - col. 43 line 9). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.** and **Rossides** to disclose accepting offer data from the seller representing an offer from the seller to sell the product within the price range, because this information is desired by buyers to finalize the sale.

As per claim 9, **Goldhaber et al.** does not specifically disclose the selected PDA requires participation of at least one person in addition to the buyer. However, **Rossides** discloses the selected PDA requires participation of at least one person in addition to the buyer (col. 24 lines 1-18; col. 42 lines 39-51). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.** and **Rossides** to disclose the selected PDA requires participation of at least one person in addition to the buyer, because this informs the buyer of requirements for making a purchase at reduced selling prices.

As per claim 10, **Goldhaber et al.** discloses the steps of:

- accepting the first request from the buyer (col. 9 lines 32-40; col. 10 lines 9-38; fig. 2);
- accepting the second request from the buyer (col. 10 lines 39-57; fig. 3); and
- receiving the performance data from the buyer (col. 10 lines 46-57).

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Goldhaber et al. does not specifically disclose the above actions in claim 10 are performed by a master controller. However, **Rossides** disclose the above actions in claim 10 are performed by a master controller (col. 16 lines 55-63), using a host computer. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.** and **Rossides** to disclose the above actions in claim 10 are performed by a master controller, because this provides necessary functionality to the system.

As per claim 17, **Goldhaber et al.** does not specifically disclose the PDA includes participation of a second buyer, nor the step of communicating to the buyer and to a second buyer over the global communications network price determination rules. However, **Rossides** discloses:

- the PDA includes participation of a second buyer (col. 24 lines 1-18); and
- the step of communicating to the buyer and to a second buyer over the global communications network price determination rules (Abstract; col. 3 lines 36-47; col. 24 lines 1-18; col. 42 lines 39-51).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.** and **Rossides** to disclose the PDA includes participation of a second buyer, and the step of communicating to the buyer and to a second buyer over the global communications network price determination rules, because these are obvious enhancements that would increase the utility of the invention.

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As per claim 22, **Goldhaber et al.** Does not disclose the price is determined at least partially upon an offer received from the buyer, nor determining the price based at least partially upon a competition between the buyer and the at least one person using the selected PDA.

However, **Rossides** discloses:

- the price is determined at least partially upon an offer received from the buyer

(ABSTRACT).

- determining the price based at least partially upon a competition between the buyer and the at least one person using the selected PDA (col. 3 lines 35-60).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.** and **Rossides** to disclose the price is determined at least partially upon an offer received from the buyer, and determining the price based at least partially upon a competition between the buyer and the at least one person using the selected PDA, because these are obvious characteristics/capabilities that provide desired functionality to the invention.

8. Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008).

As per claim 20, **Goldhaber et al.** does not specifically disclose the PDA comprises computer-executable code sent to the buyer over the global communications network. Official

Art Unit: 2165

Notice is taken that it was old and well known in the art at the time the invention was made that computer executable code (e.g., game software) could be downloaded, uploaded, or executed on a system remote from the user operating it. It would have been obvious to one skilled in the art at the time the invention was made to combine old and well known art with **Goldhaber et al.** and **Rossides** to disclose the PDA comprises computer-executable code sent to the buyer over the global communications network, since this is one way that the user may be provided access to the PDA software in order to participate in the PDA activity.

As per claim 21, **Goldhaber et al.** discloses the step of accepting payment information from the buyer over the global communications network (col. 38 lines 11-12).

9. Claims 24 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Kelly et al.** (U.S. Patent No. 5,816,918).

As per claim 24, **Goldhaber et al.** does not specifically disclose the at least one person is a second buyer; accepting a second request from the second buy to buy the product for a second price to be determined within the price range; nor determining said second price based at least partially upon the competition. However, **Kelly et al.** discloses:

- the at least one person is a second buyer (col. 3 lines 30-46);

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- accepting a second request from the second buy to buy the product for a second price to be determined within the price range (col. 3 lines 30-46); and
- determining said second price based at least partially upon the competition (col. 3 lines 30-46).

It would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.** and **Kelly et al.** to disclose the at least one person is a second buyer, accepting a second request from the second buy 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, because this increases the functionality of the invention.

As per claim 27, **Kelly et al.** discloses determining the price based at least partially upon a competition between the buyer and the second buyer using the selected PDA (col. 3 lines 30-46).

As per claim 27, **Goldhaber et al.** does not specifically disclose determining the price based at least partially upon a competition between the buyer and the second buyer using the selected PDA. However, **Kelly et al.** discloses determining the price based at least partially upon a competition between the buyer and the second buyer using the selected PDA (col. 3 lines 30-46). It would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.** and **Kelly et al.** to disclose determining the price based at least partially upon a competition between the buyer and the second buyer using the selected PDA, because this increases the functionality and desirability to customers of the invention.

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Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure includes:
- **Walker et al.** (U.S. Patent No. 5,794,207) discloses a method and apparatus for effectuating bilateral buyer-driven commerce;
 - **Sheldon** (WO 00/24484) discloses a method of playing a game and for providing information services together with advertising interactively on a communications network;
 - **Zuiff et al.** (WO 00/05668) discloses a method and apparatus for obtaining consumer data in exchange for consumer incentives at a point-of-sale;
 - **Kuntz, Mary**; "Point, click--and here's the price: Yoyodyne uses prizes to get you to read those online ads;" *Business Week*, pg. ENT8, number 3564, 09 February 1998.
 - "Alottafun! To develop extensive Internet site;" *PR Newswire*; 03 December 1998.
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Forest Thompson whose telephone number is (703) 306-5449. The examiner can normally be reached Monday-Friday from 7:30 AM to 4:00 PM.
- If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allen MacDonald, can be reached at (703) 305-9708.
- The fax number for Formal or Official faxes to Technology Center 2700 is (703) 308-9051 or 9052. Draft or Informal faxes for this Art Unit can be submitted to (703) 308-5357.

Application/Control Number: 09/342,866

Page 15

Art Unit: 2165

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

February 8, 2001 /FOT



VINCENT MILLIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

P 00091

FORM PTO-892		U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE		SERIAL NO. 09/342,866	GROUP ART UNIT 2165	ATTACHMENT TO PAPER NO. 11
NOTICE OF REFERENCES CITED				APPLICANT(S) LIN		
U.S. PATENT DOCUMENTS						
*		DOCUMENT NO.	DATE	NAME	CLASS	FILING DATE
	A					
	B					
	C					
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FOREIGN PATENT DOCUMENTS						
*		DOCUMENT NO.	DATE	COUNTRY	NAME	CLASS SUB- CLASS
	L	0005668	02/03/00	WPO	ZUIFF et al.	
	M	0024484	05/04/00	WPO	GOLDBERG	
	N					
	O					
	P					
	Q					
OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)						
	R					
	S					
	T					
	U					
EXAMINER Forest Thompson Jr.			DATE February 8, 2001		Form 892ccs2106b	
* A copy of this reference is not being furnished with this office action. (See Manual of Patent Examining Procedure, section 707.05(a).)						



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

12/18
Patent
244/0315/23/0

RECEIVED
MAY 17 2001
Technology Center 2100

In re Application of: Wayne W. Lin
Serial No.: 09/342,866
Filed: June 29, 1999
For: **SYSTEMS AND METHODS FOR
TRANSACTIONING BUSINESS OVER A
GLOBAL COMMUNICATIONS
NETWORK SUCH AS THE INTERNET**

Group Art Unit: 2165
Examiner: Forest Thompson Jr.

COPY

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~~ ¹⁸ wherein the PDA is selected by the buyer.
 - 31. ²⁵ The method of Claim ~~13~~ ¹⁸, wherein the PDA is a video game.
- ns cont*

²⁶32. The method of Claim ¹⁸31, 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.

²⁹35. The method of Claim ²⁶32, wherein the PDA is a video game.

³³34. The system of Claim ²⁰19, 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.

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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.

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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.

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.

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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.

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.

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.

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.

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.

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:

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

Claims 29, 31, 33, and 37: Page 3, lines 16-18.

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

Claim 35: 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.

Claims 38 and 39: Page 7, line 18, to page 8, line 2.

Claim 40: Page 3, line 22, through page 4, line 4.

Claims 41-44: 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,



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

Dated: April 2, 2001

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[Amended Claims follow]



U.S. Patent Application Serial No. 09/342,866
Amended Claims: Version Without Markings

(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;

1 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.

2 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.

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

4 out 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;

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

4
incl 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. ²⁷(Amended) The method of claim ~~32~~²⁶, wherein the PDA is adapted to accommodate
participation of a second participant.

18. ²¹(Amended) The method of claim ~~15~~¹⁸ wherein the price is dependent at least partially
upon a bid selected by the buyer.

19. ³⁰(Amended) A system for conducting e-commerce over a global communications
network, comprising:

5
out 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.

¹⁰
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.

26
¹¹
24. (Amended) The method as in claim ¹⁰23, 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.

¹⁷
²⁸
27. (Amended) The method as in claim ²¹24, 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.



U.S. Patent Application Serial No. 09/342,866

Amended Claims: Version With Markings To Show Changes Made

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:

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

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] scaled to 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] participant using the [selected] PDA.

24. (Amended) The method as in claim 23, wherein the at least one [person] 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 [buyer] participant using the [selected] PDA.



Patent: 244/031
HGO-02-PUSA

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Wayne W. Lin
Serial No.: 09/342,866
Filed: June 29, 1999
For: **SYSTEMS AND METHODS FOR
TRANSACTIONING BUSINESS OVER A
GLOBAL COMMUNICATIONS
NETWORK SUCH AS THE INTERNET**

Group Art Unit: 2165
Examiner: Forest Thompson, Jr.

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AMENDMENT AND RESPONSE TRANSMITTAL

BOX FEE AMENDMENT
Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Enclosed please find Applicant's Amendment and Response to the Office Action mailed February 12, 2001, for the patent application referenced above.

Applicant also hereby authorizes all fees required based on this Amendment and Response, including fees for extension of time, and fees for extra claims, to be charged to Deposit Account 50-1105 of Applicant's undersigned representative.

Applicant believes the total extension fees due are ZERO. Applicant believes the total extra claim fees due are \$183.00 (See next page). Applicant believes there are no other fees due. However, the Commissioner is authorized to charge any additional required fees, and to credit any overpayment of fees, to Deposit Account 50-1105.

Respectfully submitted,

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

Dated: April 2, 2001

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CERTIFICATE OF MAILING (37 C.F.R. 11.8(a))

I hereby certify that this paper (along with any referred to as being attached or enclosed) is mailed to: Box FEE AMENDMENT, Assistant Commissioner for Patents, Washington, D.C. 20231, on the date shown below.

April 2, 2001
Date of Mail

Neal M. Cohen



Patent: 247031
HGO-02-PUSA

#2165

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Wayne W. Lin
Serial No.: 09/342,866
Filed: June 29, 1999
For: **SYSTEMS AND METHODS FOR
TRANSACTIONING BUSINESS OVER A
GLOBAL COMMUNICATIONS
NETWORK SUCH AS THE INTERNET**

Group Art Unit: 2165
Examiner: Forest Thompson, Jr.

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Technology Center 2100

TRANSMITTAL FOR DUPLICATE AMENDMENT AND RESPONSE

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Enclosed please find the following documents for the above-referenced matter:

Copy of AMENDMENT AND RESPONSE TRANSMITTAL previously mailed to the PTO on April 2, 2001;

Copy of AMENDMENT AND RESPONSE previously mailed to the PTO on April 2, 2001; and

Copy of Postcard with the Patent Office's stamp indicating receipt of the above documents on April 6, 2001.

These copies of the documents submitted on April 2, 2001, are being submitted again today because the PAIR system as of today still does not indicate receipt of the documents submitted on April 2, 2001.

Respectfully submitted,

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

Dated: May 10, 2001

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CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

May 10, 2001
Date of Deposit

Neal M. Cohen



Patent: 244/031
HGO-02-PUSA

Calculation Of Extra Claim Fees Due

Claims already paid for:	27				
Current number of claims:	43				
Total number of claims not yet paid for:	16	*	\$9	=	\$144

Independent claims already paid for:	3				
Current number of independent claims:	4				
Total number of independent Claims not yet paid for:	1	*	\$39	=	\$39

\$183

Please acknowledge receipt of the following by affixing hereon the Patent and Trademark Office date stamp and returning this card to our office.

Inventor: Wayne Wei Yuan Lin
Serial No.: 09/342,866 Filed: June 29, 1999
For: **SYSTEMS AND METHODS FOR TRANSACTING BUSINESS OVER A GLOBAL COMMUNICATIONS NETWORK SUCH AS THE INTERNET**

COPY



AMENDMENT AND RESPONSE

Attorney(s): Neal M. Cohen
Docket No.: HGO-02-PUSA (244/031)
Date of Deposit: April 2, 2001
Enclosure(s): Transmittal (2pgs), including 37 CFR §1.8 Certificate of Mailing dated 4/2/01; Amendment and Response (15 pgs); Postcard.

W



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Washington, D.C. 20231

6

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/342,866 06/29/99 LIN

W 244/031

023410
NEAL M COHEN
2424 SE BRISTOL STREET
SUITE 300
NEWPORT BEACH CA 92660

TM02/0726

EXAMINER

THOMPSON JR, F	
ART UNIT	PAPER NUMBER

2165
DATE MAILED:

07/26/01

B

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

L

Office Action Summary

Application No. 09/342,866	Inventor(s) LIN
Examiner Forest Thompson Jr.	Art Unit 2165

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 5/14/01
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15 and 17-44 is/are pending in the application
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-15 and 17-44 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims _____ are subject to restriction and/or election requirements

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - a) All b) Some* c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) Notice of References Cited (PTO-892)
- 16) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 18) Interview Summary (PTO-413) Paper No(s). _____
- 19) Notice of Informal Patent Application (PTO-152)
- 20) Other _____

Art Unit: 2165

DETAILED ACTION

Response to Amendment

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action (*See* Serial No. 09/342,866, Paper #11). The text of those sections of Title 35, U.S. Code not otherwise provided in a prior Office action will be included in this action where appropriate.
2. This action is responsive to the amendment filed 05/14/2001 (*see* Paper #12).
3. Claims 1, 6, 9, 13, 17-19, 23-24, and 27 have been amended and claim 16 has been deleted by applicant in Paper #12. Claims 28-44 have been added by applicant in Paper #12. **Claims 1-15 and 17-44 are pending.**
4. Claims 1-15 and 17-44 have been examined.

Drawings

5. The corrected or substitute drawings were received on 12/08/00. These drawings are considered acceptable by examiner.

Claim Rejections - 35 USC § 112

Art Unit: 2165

6. Claims 1, 13, and 19 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention in Paper #11. Based on applicant's arguments, examiner withdraws the rejection.

Claim Rejections - 35 USC § 103

7. Claims 1-2, 11-15, 18-19, 25-26, 28, 30, 35-36, 39, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldhaber et al. (U.S. Patent 5,855,008), and further in view of Walker et al. (U.S. Patent No. 6,216,111 B1).

As per claims 1, 13 and 19, Goldhaber et al. discloses:

- a computer server having access to the global communications network (col. 4 lines 18-24; col. 8 lines 26-30; col. 9 lines 32-35);
- communicating to a buyer a description of a product (col. 9 lines 32-40; col. 10 lines 9-38; fig. 2 [50,52]);
- accepting a first request from the buyer to buy the product for a price to be determined within a price range (col. 10 lines 9-38; fig. 2 [50,52]);
- accepting a second request from the buyer to allow the price to be determined based on a performance of the buyer while participating in a Price-Determining-Activity (PDA) (col. 10 lines 39-57; fig. 3 [56, 58, 60]);

Art Unit: 2165

- receiving from the buyer over the global communications network, said data representing the performance of the buyer during the PDA (col. 10 lines 46-57).

Goldhaber et al. does not specifically disclose 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. However, **Walker et al.** discloses the program is further adapted to initiate a transfer of the value to the consumer in response to the consumer receiving the sales presentation (col. 3 lines 6-8); and an automated sales presentation begins which informs the customer that he will receive \$2 for each question he answers correctly (col. 7 lines 21-23). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.** and **Walker et al.** to disclose 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, because this provides incentive to the buyer to participate.

As per claims 2 and 15, **Goldhaber et al.** discloses the step of accepting payment information from the buyer over the global communications network (col. 38 lines 11-12).

As per claim 11, **Goldhaber et al.** discloses the price is determined at least partially upon participation of the buyer in an auction (col. 4 lines 63-64).

As per claim 12, **Goldhaber et al.** discloses the global communication network is the Internet (col. 4 lines 18-24).

Art Unit: 2165

As per claim 14, **Goldhaber et al.** discloses the step of receiving data over the global communications network representing an election of the buyer to select the PDA (col. 10 lines 39-57; fig. 3 [56, 58, 60]).

As per claim 18, **Goldhaber et al.** discloses the price is dependent at least partially upon a bid selected by the buyer (col. 9 lines 32-40; col. 10 lines 9-67; col. 11 lines 1-31).

As per claim 25, **Goldhaber et al.** discloses the price is determined at least partially upon participation of the buyer in an auction (col. 4 lines 63-64).

As per claim 26, **Goldhaber et al.** discloses the prices is determined at least partially upon an offer received from the buyer (col. 10 line 46 - col. 11 line 31).

As per claim 28, **Goldhaber et al.** discloses the PDA is selected by the buyer.

As per claim 30, **Goldhaber et al.** discloses the PDA is selected by the buyer.

As per claim 35, discloses:

- determining a performance of a buyer during a Price Determining Activity (PDA) (col. 10 lines 39-57); and
- assigning a price to the product, said price being scaled to the performance of the buyer (col. 10 lines 39-57), through providing a payment in the form of digital cash and/or a credit on the consumer's credit card.

Art Unit: 2165

As per claim 36, **Goldhaber et al.** nor **Walker et al.** disclose the step of determining a price range prior to determining the performance of the buyer. However, Official Notice is taken that it was old and well known in the art at the time the invention was made that sellers are in business to be profitable and that pricing for goods is such that profitability is projected to occur by the sellers. To accomplish this, sellers determine price ranges based on quantity and price for an item for sell. It would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.** and **Walker et al.** with old and well known art to disclose the step of determining a price range prior to determining the performance of the buyer, because the seller ultimately must make a profit based on selling price and expenses in order to remain in business.

Claim 39 is written as a method and contains the same limitation as claim 11; therefore, the same rejection is applied.

As per claim 41, **Goldhaber et al.** discloses 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 (col. 10 lines 9-38; fig. 2 [50, 52])

8. Claims 3-10, 20-23, 29, 31, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Walker et al.** (U.S. Patent No. 6,216,111 B1) and **Rossides** (U.S. Patent No. 5,269,521).

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As per claim 3, **Goldhaber et al.** does not disclose presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer. However, **Rossides** discloses presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer (col. 15 line 63 - col. 16 line 11). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer, because this provides the user an obvious incentive to participate in the activity.

As per claim 4, **Goldhaber et al.** does not specifically disclose presenting price determination rules to the buyer over the global communications network, said price determination rules being associated with the plurality of PDAs. However, **Rossides** discloses presenting price determination rules to the buyer over the global communications network, said price determination rules being associated with the plurality of PDAs (Abstract; col. 3 lines 36-47). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose presenting price determination rules to the buyer over the global communications network, said price

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determination rules being associated with the plurality of PDAs, because this encourages the buyer to buy products.

As per claim 5, neither **Goldhaber et al.** nor **Rossides** disclose the PDA is a video game. However, Official Notice is taken that it was old and well known in the art at the time the invention was made that games, including video games, are used to encourage users (in this case, buyers) to participate in selected activities to increase user participation and make selected activities more appealing to users. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine old and well known art, **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose the PDA is a video game, because of the popularity with game players of on-line video games.

As per claim 6, **Goldhaber et al.** does not specifically disclose associating the PDA with the product based at least partially upon a number of participants required for execution of the PDA. However, **Rossides** discloses associating the selected PDA with the product based at least partially upon a number of participants required for execution of the PDA (col. 24 lines 1-18). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose associating the PDA with the product based at least partially upon a number of participants required for execution of

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the PDA, because this increases the probability that sufficient buyers will participate in the price-determining activity to achieve satisfactory results in the activity and make a sale.

As per claim 7, **Goldhaber et al.** does not specifically disclose sending the price data to the buyer via the global communications network, said price data representing the price. However, **Rossides** discloses sending the price data to the buyer via the global communications network, said price data representing the price (col. 16 lines 53-67). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.** and **Rossides** to disclose sending the price data to the buyer via the global communications network, said price data representing the price, because this informs buyers of product prices which buyers will require before finalizing the sale.

As per claim 8, **Goldhaber et al.** does not specifically disclose accepting offer data from the seller representing an offer from the seller to sell the product within the price range. However, **Rossides** discloses accepting offer data from the seller representing an offer from the seller to sell the product within the price range (col. 42 lines 53 - col. 43 line 9). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose accepting offer data from the seller representing an offer from the seller to sell the product within the price range, because this information is desired by buyers to finalize the sale.

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As per claim 9, **Goldhaber et al.** nor **Walker et al.** specifically disclose the PDA requires participation of at least one participant in addition to the buyer. However, **Rossides** discloses the selected PDA requires participation of at least one participant in addition to the buyer (col. 24 lines 1-18; col. 42 lines 39-51). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose the PDA requires participation of at least one participant in addition to the buyer, because this informs the buyer of requirements for making a purchase at reduced selling prices.

As per claim 10, **Goldhaber et al.** discloses the steps of:

- accepting the first request from the buyer (col. 9 lines 32-40; col. 10 lines 9-38; fig. 2);
- accepting the second request from the buyer (col. 10 lines 39-57; fig. 3); and
- receiving the performance data from the buyer (col. 10 lines 46-57).

Goldhaber et al. does not specifically disclose the above actions in claim 10 are performed by a master controller. However, **Rossides** disclose the above actions in claim 10 are performed by a master controller (col. 16 lines 55-63), using a host computer. Also, **Walker et al.** discloses the customer places a call ... to the central controller and answers questions, being instantly rewarded (col. 8 lines 58-60). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and

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Rossides to disclose the above actions in claim 10 are performed by a master controller, because this provides necessary functionality, as well as customer satisfaction, for the system.

As per claim 20, **Goldhaber et al.**, **Walker et al.** nor **Rossides** specifically disclose the PDA comprises computer-executable code sent to the buyer over the global communications network. Official Notice is taken that it was old and well known in the art at the time the invention was made that computer executable code (e.g., game software) could be downloaded, uploaded, or executed on a system remote from the user operating it. It would have been obvious to one skilled in the art at the time the invention was made to combine old and well known art with **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose the PDA comprises computer-executable code sent to the buyer over the global communications network, since this is one way that the user may be provided access to the PDA software in order to participate in the PDA activity.

As per claim 21, **Goldhaber et al.** discloses the step of accepting payment information from the buyer over the global communications network (col. 38 lines 11-12).

As per claims 22 and 23, **Goldhaber et al.** does not disclose the price is determined at least partially upon an offer received from the buyer, nor determining the price based at least

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partially upon a competition between the buyer and the at least one person using the selected PDA. However, **Rossides** discloses:

- the price is determined at least partially upon an offer received from the buyer
(ABSTRACT).
- determining the price based at least partially upon a competition between the buyer and the at least one participant using the selected PDA (col. 3 lines 35-60).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Rossides** to disclose the price is determined at least partially upon an offer received from the buyer, and determining the price based at least partially upon a competition between the buyer and the at least one person using the selected PDA, because these are obvious characteristics/capabilities that provide desired functionality to the invention.

Claim 29 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

Claim 31 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

Claim 37 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

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9. Claims 32, 34, 38, and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Walker et al.** (U.S. Patent No. 6,216,111 B1) and **Kelly et al.** (U.S. Patent No. 5,816,918).

As per claim 32, **Goldhaber et al.** nor **Walker et al.** disclose the step of determining a price range prior to determining the performance of the buyer. However, **Kelly et al.** discloses the step of determining a price range prior to determining the performance of the buyer (col. 36 lines 22-55). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Kelly et al.** to disclose the step of determining a price range prior to determining the performance of the buyer, because this information is necessary for the user of the invention to determine profitability when using the invention and evaluating buyer performance.

Claim 34 is written as a method and contains the same limitation as claim 32; therefore, the same rejection is applied.

As per claim 38, **Goldhaber et al.** nor **Walker et al.** disclose the step of setting a difficulty level of the PDA based in part on an average target price for the product. However, **Kelly et al.** disclose *Once the required revenue R is determined for a particular prize, then the average number of prize credits or tickets T that are known to be awarded per game is determined (average ticket payout). It is possible for the game's manufacturer to adjust game*

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difficulty so that, on average, a predetermined number of prize credits will be awarded for each game played (col. 36 lines 35-41). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Kelly et al.** to disclose the step of setting a difficulty level of the PDA based in part on an average target price for the product, because this enhances/affects the profitability of the invention.

As per claim 42, **Goldhaber et al.** nor **Walker et al.** disclose the step of selecting the PDA based at least in part on a minimum price associated with the product. **Kelly et al.** discloses *provides a prize redemption system and method for use with one or more game apparatuses. Players may win "prize credits" by playing the game apparatus, and may then select a prize from a prize menu offered on the game apparatus. The selected prizes and specific prizes may be redeemed using specific prize tickets or coupons (col. 2 line 62 - col. 3 line 1).* It would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Kelly et al.** to disclose the step of selecting the PDA based at least in part on a minimum price associated with the product, because this assists the user in having the desired profitability when implementing the invention.

As per claim 43, **Walker et al.** discloses the step of selecting the PDA based at least in part on a skill level of the buyer (col. 5 line 29 - col. 6 line 3; col. 8 lines 57-61).

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Claim 44 is written as a method and contains the same limitation as claim 38; therefore, the same rejection is applied.

10. Claims 24, 27, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Walker et al.** (U.S. Patent No. 6,216,111 B1), **Rossides** (U.S. Patent No. 5,269,521), and **Kelly et al.** (U.S. Patent No. 5,816,918).

As per claim 24, neither **Goldhaber et al.** nor **Walker et al.** specifically disclose the at least one participant is a second buyer; accepting a second request from the second buy to buy the product for a second price to be determined within the price range; nor determining said second price based at least partially upon the competition. However, **Kelly et al.** discloses:

- the at least one person is a second buyer (col. 3 lines 30-46);
- accepting a second request from the second buy to buy the product for a second price to be determined within the price range (col. 3 lines 30-46); and
- determining said second price based at least partially upon the competition (col. 3 lines 30-46).

It would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.** and **Kelly et al.** to disclose the at least one person is a second buyer, accepting a second request from the second buy to buy the product for a second

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price to be determined within the price range, and determining said second price based at least partially upon the competition, because this increases the functionality of the invention.

As per claim 27, neither Goldhaber et al. nor Walker et al. specifically disclose determining the price based at least partially upon a competition between the buyer and the second participant using the PDA. However, Kelly et al. discloses determining the price based at least partially upon a competition between the buyer and the second participant using the PDA (col. 3 lines 30-46). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine Goldhaber et al., Walker et al. and Kelly et al. to disclose determining the price based at least partially upon a competition between the buyer and the second participant using the PDA, because this provides an obvious and desirable feature to the invention encourages buyer participation.

Claim 33 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

11. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over as applied to claim 35 above, and further in view of Goldhaber et al. (U.S. Patent No. 5,855,008), and further in view of Walker et al. (U.S. Patent No. 6,216,111 B1), and Rockoff, Todd E.; Groves, Michael; "Design of an Internet-based system for remote Dutch auctions;" Internet Research:

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Electronic Networking Applications and Policy; vol. 5; n4; pp. 10-16; 1995 (hereafter referred to as **Rockoff**).

As per claim 40, **Goldhaber et al.** nor **Walker et al.** disclose the auction is a reverse auction. However, **Rockoff** discloses *the auctioneer begins at a high price and then descends by steps until a bidder indicates his intention to buy at the price level reached ... the auction continues in this fashion until either the current lot is exhausted or its reserve price has been reached* (pg. 11, 1st col.). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine **Goldhaber et al.**, **Walker et al.**, **Kelly et al.**, and **Rockoff** to disclose the auction is a reverse auction, because this is a well known auction format for selling goods.

12. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Walker et al.** (U.S. Patent No. 6,216,111 B1), **Kelly et al.** (U.S. Patent No. 5,816,918), and **Rossides** (U.S. Patent No. 5,269,521).

As per claim 17, **Goldhaber et al.**, **Kelly et al.**, and **Walker et al.** do not specifically disclose the PDA includes participation of a second buyer, nor the step of communicating to the buyer and to a second buyer over the global communications network price determination rules. However, **Rossides** discloses the PDA is adapted to accommodate participation of a second participant (col. 24 lines 1-18); and

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Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine Goldhaber et al., Kelly et al., Walker et al., and Rossides to disclose the PDA includes participation of a second participant, because this is an obvious enhancement that would increase the utility of the invention.

Response to Arguments

13. Applicant's arguments with respect to claims 1-15 and 17-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Forest Thompson whose telephone number is (703) 306-5449. The examiner can normally be reached Monday-Friday from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins, can be reached at (703) 308-1344.

The fax number for faxes to Technology Center 2700 is (703) 308-9051 or 9052.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

July 24, 2001 /FOY 


WYNN COGGINS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

FORM PTO-892		U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE		SERIAL NO. 09/342,866	GROUP ART. UNIT 2165	ATTACHMENT TO PAPER NO.	13
NOTICE OF REFERENCES CITED				APPLICANT(S) LIN			
U.S. PATENT DOCUMENTS							
*		DOCUMENT NO.	DATE	NAME	CLASS	SUB- CLASS	FILING DATE
	A	6,216,111	4/2001	Walker et al.	705	14	
	B	5,816,918	10/1998	Kelly et al	463	16	
	C						
	D						
	E						
	F						
	G						
	H						
	I						
	J						
	K						
FOREIGN PATENT DOCUMENTS							
*		DOCUMENT NO.	DATE	COUNTRY	NAME	CLASS	SUB- CLASS
	L						
	M						
	N						
	O						
	P						
	Q						
OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)							
	R	Rockoff, Todd E.; Groves, Michael; "Design of an Internet-based system for remote Dutch auctions;" Internet Research: Electronic Networking Applications and Policy; vol. 5; n4; pp. 10-16; 1995.					
	S						
	T						
	U						
EXAMINER Forest Thompson Jr.			DATE July 24, 2001		Form892ccs2106b		
* A copy of this reference is not being furnished with this office action. (See Manual of Patent Examining Procedure, section 707.05(a).)							



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/342,866	06/29/1999	WAYNE W. LIN	244/031	7207

23410 7590 03/01/2002

NEAL M COHEN
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SUITE 300
NEWPORT BEACH, CA 92660

EXAMINER

THOMPSON JR, FOREST

ART UNIT PAPER NUMBER

2145

DATE MAILED: 03/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

NA

Office Action Summary	Application No. 09/342,888	Applicant(s) LIN, WAYNE W.	
	Examiner Forest O. Thompson Jr.	Art Unit 2165	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 14 December 2001.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15 and 17-44 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-15 and 17-44 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

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DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action (*See* Serial No. 09/342,866, Paper #11). The text of those sections of Title 35, U.S. Code not otherwise provided in a prior Office action will be included in this action where appropriate.

2. In view of the appeal brief filed on 12/14/2001, PROSECUTION IS HEREBY REOPENED. New grounds for rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (a) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (b) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

3. Claims 1-15 and 17-44 are pending. **Claims 1-15 and 17-44 have been examined.**

Response to Amendment

Claim Rejections - 35 USC § 103

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4. Claims 1-2, 11-15, 18-19, 25-26, 28, 30, 35-36, 39, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent 5,855,008), and further in view of **Marino et al.** (U.S. Patent No. 4,850,007).

As per claims 1, 13 and 19, **Goldhaber et al.** discloses:

- a computer server having access to the global communications network (col. 4 lines 18-24; col. 8 lines 26-30; col. 9 lines 32-35);
- communicating to a buyer a description of a product (col. 9 lines 32-40; col. 10 lines 9-38; fig. 2 [50,52]);
- accepting a first request from the buyer to buy the product for a price to be determined within a price range (col. 10 lines 9-38; fig. 2 [50,52]);
- accepting a second request from the buyer to allow the price to be determined based on a performance of the buyer while participating in a Price-Determining-Activity (PDA) (col. 10 lines 39-57; fig. 3 [56, 58, 60]);
- receiving from the buyer over the global communications network, said data representing the performance of the buyer during the PDA (col. 10 lines 46-57).

Goldhaber et al. does not specifically disclose 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. However, **Marino et al.** discloses:

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- after the caller's options are determined and typically before signaling for the call is commenced, a recorded-announcement of an aural or visual nature, or both, is connected to the subscriber's line, the announcement consisting of at least one advertisement (col. 1 lines 44-49);
- after the advertising announcement is completed, the toll call and/or directory assistance call is processed as usual but at a reduced rate of charge or with automatic credit being given to the customer's account (col. 1 lines 54-58)
- billing may be a rate reduction per call or a monthly credit towards some toll service. It is also possible that coupons good for the purchase of merchandise or services could be the form, in whole or in part, in which the caller receives value for his cooperation (col. 2 lines 36-40);
- the local telephone station 11 is used by a local telephone customer, indicated schematically, to whom the billing will be returned which shows his reduced telephone toll charge rate or, alternatively, the lump sum credits he is receiving for listening to, or watching, advertising messages from advertising message system 13 (col. 2 lines 62-67);
- particularly at the end of each advertisement, one might expect that the customer could be asked to press, for example, the number 9 on his telephone keypad. Also, content in the ad may be arranged hierarchically so that customer can press a button to hear more details of the ad for which more credit can be given (col. 2 lines 22-29)
- if the subscriber test in advertising message system 13 determines that the calling party is one who wishes a reduced rate of calling or credit in return for auditing or otherwise receiving advertising, then an appropriate message is generated by the appropriate equipment in system 13

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and routed via one of the message trunks through switching systems 14 and 12 to local telephone station 11 (col. 3 lines 61-67);

- also at the conclusion of the message, the appropriate billing item is generated by the billing portion of the advertising message system 13, and this reduced rate billing and/or credit is accumulated and is sent with the customer's monthly bill to his home (col. 4 lines 16-20);

- The local central office, recognizing that the caller is interested in the subject service, will play a recorded message as follows: "Choose one, two or three minutes of advertisement by pressing keys 1, 2 or 3 on your telephone pad". Once the caller presses the key, a recorded voice announcement and/or television display will be sent to the calling party. A set of advertisements is chosen to occupy the chosen announcement time period since most individual advertisements will be much shorter than a minutes (col. 4 lines 50-60).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify Goldhaber to disclose 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, as disclosed by Marino et al., because this enhances the invention by providing reduced connection charges (i.e., costs) to the customer for telephone usage.

As per claims 2 and 15, Goldhaber et al. discloses the step of accepting payment information from the buyer over the global communications network (col. 38 lines 11-12).

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As per claim 11, **Goldhaber et al.** discloses the price is determined at least partially upon participation of the buyer in an auction (col. 4 lines 63-64).

As per claim 12, **Goldhaber et al.** discloses the global communication network is the Internet (col. 4 lines 18-24).

As per claim 14, **Goldhaber et al.** discloses the step of receiving data over the global communications network representing an election of the buyer to select the PDA (col. 10 lines 39-57; fig. 3 [56, 58, 60]).

As per claim 18, **Goldhaber et al.** discloses the price is dependent at least partially upon a bid selected by the buyer (col. 9 lines 32-40; col. 10 lines 9-67; col. 11 lines 1-31).

As per claim 25, **Goldhaber et al.** discloses the price is determined at least partially upon participation of the buyer in an auction (col. 4 lines 63-64).

As per claim 26, **Goldhaber et al.** discloses the prices is determined at least partially upon an offer received from the buyer (col. 10 line 46 - col. 11 line 31).

As per claim 28, **Goldhaber et al.** discloses the PDA is selected by the buyer.

As per claim 30, **Goldhaber et al.** discloses the PDA is selected by the buyer.

As per claim 35, **Goldhaber et al.** discloses:

- determining a performance of a buyer during a Price Determining Activity (PDA) (col. 10 lines 39-57); and

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- assigning a price to the product, said price being scaled to the performance of the buyer (col. 10 lines 39-57), through providing a payment in the form of digital cash and/or a credit on the consumer's credit card.

As per claim 36, **Goldhaber et al.** does not disclose the step of determining a price range prior to determining the performance of the buyer. However, **Marino et al.** discloses *The above-described problems are solved according to the invention by providing an economical telephone toll service in which a telephone subscriber selects the economical service by, for example, sending an appropriate signal, and then dials his directory assistance call or other telephone toll call. After the caller's options are determined and typically before signaling for the call is commenced, a recorded-announcement of an aural or visual nature, or both, is connected to the subscriber's line, the announcement consisting of at least one advertisement. The advertisements are selected from a databank according to some predetermined technique of selection, which may include any number of factors or features to make the service attractive to subscribers and of a nature to make the service also sufficiently rewarding to advertisers. After the advertising announcement is completed, the toll call and/or directory assistance call is processed as usual but at a reduced rate of charge or with automatic credit being given to the customer's account* (col. 1 lines 39-58). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify **Goldhaber et al.** to disclose the step of determining a price range prior to determining the performance of the buyer, as disclosed by **Marino et al.**, because this enhances the invention to users by reducing operating costs.

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Claim 39 is written as a method and contains the same limitation as claim 11; therefore, the same rejection is applied.

As per claim 41, **Goldhaber et al.** discloses 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 (col. 10 lines 9-38; fig. 2 [50, 52])

5. Claims 3-4, 6-10, 20-23, 29, 31, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Marino et al.** (U.S. Patent No. 4,850,007) and **Rossides** (U.S. Patent No. 5,269,521).

As per claim 3, neither **Goldhaber et al.** nor **Marino et al.** specifically disclose presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer. However, **Marino et al.** discloses *After the caller's options are determined and typically before signaling for the call is commenced, a recorded-announcement of an aural or visual nature, or both, is connected to the subscriber's line, the announcement consisting of at least one advertisement. The advertisements are selected from a databank according to some predetermined technique of selection, which may include any number of factors or features to make the service attractive to subscribers and of a nature to make the service also sufficiently rewarding to advertisers. After the advertising announcement is completed, the toll call and/or directory assistance call is processed as usual but at a reduced rate of charge or with automatic*

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credit being given to the customer's account (col. 1 lines 44-58). Additionally, **Rossides** discloses presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer (col. 15 line 63 - col. 16 line 11). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of **Goldhaber et al.** and **Marino et al.** to disclose presenting to the buyer over the global communications network, a plurality of PDAs to choose from, said presentation of the plurality of PDAs occurring before accepting the second request from the buyer, as disclosed by **Rossides**, because this provides the user an obvious incentive to participate in the activity.

As per claim 4, **Goldhaber et al.** nor **Marino et al.** specifically disclose presenting price determination rules to the buyer over the global communications network, said price determination rules being associated with the plurality of PDAs. However, **Rossides** discloses presenting price determination rules to the buyer over the global communications network, said price determination rules being associated with the plurality of PDAs (Abstract; col. 3 lines 36-47). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of **Goldhaber et al.** and **Marino et al.** to disclose presenting price determination rules to the buyer over the global communications network, said price determination rules being associated with the plurality of PDAs, as disclosed by **Rossides**, because this encourages the buyer to buy products.

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As per claim 6, **Goldhaber et al.** does not specifically disclose associating the PDA with the product based at least partially upon a number of participants required for execution of the PDA. However, **Rossides** discloses associating the selected PDA with the product based at least partially upon a number of participants required for execution of the PDA (col. 24 lines 1-18). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of **Goldhaber et al.** and **Marino et al.** to disclose associating the PDA with the product based at least partially upon a number of participants required for execution of the PDA, as disclosed by **Rossides**, because this increases the probability that sufficient buyers will participate in the price-determining activity to achieve satisfactory results in the activity and make a sale.

As per claim 7, **Goldhaber et al.** nor **Marino et al.** specifically disclose sending the price data to the buyer via the global communications network, said price data representing the price. However, **Rossides** discloses sending the price data to the buyer via the global communications network, said price data representing the price (col. 16 lines 53-67). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of **Goldhaber et al.** and **Marino et al.** to disclose sending the price data to the buyer via the global communications network, said price data representing the price, as disclosed by **Rossides**, because this informs buyers of product prices which buyers will require before finalizing the sale.

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As per claim 8, **Goldhaber et al.** does not specifically disclose accepting offer data from the seller representing an offer from the seller to sell the product within the price range.

However, **Marino et al.** discloses accepting offer data from the seller representing an offer from the seller to sell the product within the price range (col. 1 lines 39-59). Additionally, **Rossides** discloses accepting offer data from the seller representing an offer from the seller to sell the product within the price range (col. 42 lines 53 - col. 43 line 9). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of **Goldhaber et al.** and **Marino et al.** to disclose accepting offer data from the seller representing an offer from the seller to sell the product within the price range, as disclosed by **Rossides**, because this information is desired by buyers to finalize the sale.

As per claim 9, **Goldhaber et al.** nor **Marino et al.** specifically disclose the PDA requires participation of at least one participant in addition to the buyer. However, **Rossides** discloses the selected PDA requires participation of at least one participant in addition to the buyer (col. 24 lines 1-18; col. 42 lines 39-51). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of **Goldhaber et al.** and **Marino et al.** to disclose the PDA requires participation of at least one participant in addition to the buyer, as disclosed by **Rossides**, because this informs the buyer of requirements for making a purchase at reduced selling prices.

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As per claim 10, **Goldhaber et al.** discloses the steps of:

- accepting the first request from the buyer (col. 9 lines 32-40; col. 10 lines 9-38; fig. 2);
- accepting the second request from the buyer (col. 10 lines 39-57; fig. 3); and
- receiving the performance data from the buyer (col. 10 lines 46-57).

Neither **Goldhaber et al.** nor **Marino et al.** specifically disclose the above actions in claim 10 are performed by a master controller. However, **Marino et al** discloses *The above-described problems are solved according to the invention by providing an economical telephone toll service in which a telephone subscriber selects the economical service by, for example, sending an appropriate signal, and then dials his directory assistance call or other telephone toll call. After the caller's options are determined and typically before signaling for the call is commenced, a recorded-announcement of an aural or visual nature, or both, is connected to the subscriber's line, the announcement consisting of at least one advertisement. The advertisements are selected from a databank according to some predetermined technique of selection, which may include any number of factors or features to make the service attractive to subscribers and of a nature to make the service also sufficiently rewarding to advertisers. After the advertising announcement is completed, the toll call and/or directory assistance call is processed as usual but at a reduced rate of charge or with*

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automatic credit being given to the customer's account (col. 1 lines 39-58), which infers a master controller. Additionally, **Rossides** discloses the above actions in claim 10 are performed by a master controller (col. 16 lines 55-63), using a host computer. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of **Goldhaber et al.** and **Marino et al.** to disclose the above actions in claim 10 are performed by a master controller, as disclosed by **Rossides**, because this provides desirable functionality, as well as customer satisfaction, for the system.

As per claim 20, **Goldhaber et al.**, **Marino et al.** nor **Rossides** specifically disclose the PDA comprises computer-executable code sent to the buyer over the global communications network. Official Notice is taken that it was old and well known in the art at the time the invention was made that computer executable code (e.g., game software) could be downloaded, uploaded, or executed on a system remote from the user operating it. Downloading executable software from the Internet (e.g., software distributors) is old and well known in the computer arts. Users of commercial software typically receive updates to their software from software vendors/distributors. The use of the Internet is not limited to any specific type of file transfer activity. Also, connection to vendor/merchant sites on the Internet has typically included the transfer of data files because of the Internet's availability and cheap connectivity costs. It would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of **Goldhaber et al.**, **Marino et al.** and **Rossides** to disclose the PDA comprises

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computer-executable code sent to the buyer over the global communications network, as disclosed by old and well known art, since this is an obvious and easy way that the user may be provided access to the PDA software in order to participate in the PDA activity.

As per claim 21, **Goldhaber et al.** discloses the step of accepting payment information from the buyer over the global communications network (col. 38 lines 11-12).

As per claims 22 and 23, neither **Goldhaber et al.** nor **Marino et al.** specifically disclose the price is determined at least partially upon an offer received from the buyer, nor determining the price based at least partially upon a competition between the buyer and the at least one person using the selected PDA. However, **Rossides** discloses:

- the price is determined at least partially upon an offer received from the buyer

(ABSTRACT).

- determining the price based at least partially upon a competition between the buyer and the at least one participant using the selected PDA (col. 3 lines 35-60).

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of **Goldhaber et al.** and **Marino et al.** to disclose the price is determined at least partially upon an offer received from the buyer, and determining the price based at least partially upon a competition between the buyer and the at least one person using the

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selected PDA, as disclosed by **Rossides**, because these are obvious characteristics/capabilities that provide desired functionality to the invention.

Claim 29 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

Claim 31 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

Claim 37 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Marino et al.** (U.S. Patent No. 4,850,007), **Rossides** (U.S. Patent No. 5,269,521), and "Allotafun! To Develop Extensive Toy Internet Site;" PR Newswire ; 03 December 1998 (hereafter referred to as **Alottafun**).

As per claim 5, **Goldhaber et al.**, **Marino et al.**, nor **Rossides** disclose the PDA is a video game. However, **Goldhaber et al.** discloses *This use of a consumer interface button—the "CyberCoin"—though reminiscent of the prior art "gems" in video game adventures, is innovative and unique in that it transfers real value* (col. 5 lines 38-40). Also, **Alottafun** discloses *children and adults of all ages visiting the "fun" site will have the opportunity to play*

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various games and enter contests that will combine product promotion with product purchase (pg. 1). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify **Goldhaber et al.**, **Marino et al.** and **Rossides** to disclose the PDA is a video game, as disclosed in **Allotafun**, because of the popularity with game players of on-line games.

7. Claims 24, 27, 32-34, 38, and 42-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008)), and further in view of **Marino et al.** (U.S. Patent No. 4,850,007), and **Kelly et al.** (U.S. Patent No. 5,816,918).

As per claim 24, neither **Goldhaber et al.** nor **Marino et al.** specifically disclose the at least one participant is a second buyer; accepting a second request from the second buy to buy the product for a second price to be determined within the price range; nor determining said second price based at least partially upon the competition. However, **Kelly et al.** discloses:

- the at least one person is a second buyer (col. 3 lines 30-46);
- accepting a second request from the second buy to buy the product for a second price to be determined within the price range (col. 3 lines 30-46); and
- determining said second price based at least partially upon the competition (col. 3 lines 30-46).

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It would have been obvious to one skilled in the art at the time the invention was made to modify the invention of **Goldhaber et al.** and **Marino et al.** to disclose the at least one person is a second buyer, accepting a second request from the second buy 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, as disclosed by **Kelly et al.**, because this increases the desirable functionality of the invention to the user.

As per claim 27, neither **Goldhaber et al.** nor **Marino et al.** specifically disclose determining the price based at least partially upon a competition between the buyer and the second participant using the PDA. However, **Kelly et al.** discloses determining the price based at least partially upon a competition between the buyer and the second participant using the PDA (col. 3 lines 30-46). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of **Goldhaber et al.** and **Marino et al.** to disclose determining the price based at least partially upon a competition between the buyer and the second participant using the PDA, as disclosed by **Kelly et al.**, because this provides an obvious and desirable feature to the invention encourages buyer participation.

As per claim 32, **Goldhaber et al.** nor **Marino et al.** disclose specifically the step of determining a price range prior to determining the performance of the buyer. However, **Kelly et al.** discloses the step of determining a price range prior to determining the performance of the

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buyer (col. 36 lines 22-55). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of **Goldhaber et al.** and **Marino et al.** to disclose the step of determining a price range prior to determining the performance of the buyer, as disclosed by **Kelly et al.**, because this information is necessary for the user of the invention to determine profitability when using the invention and evaluating buyer performance.

Claim 33 is written as a method and contains the same limitation as claim 5; therefore, the same rejection is applied.

Claim 34 is written as a method and contains the same limitation as claim 32; therefore, the same rejection is applied.

As per claim 38, **Goldhaber et al.** nor **Marino et al.** disclose the step of setting a difficulty level of the PDA based in part on an average target price for the product. However, **Kelly et al.** disclose *Once the required revenue R is determined for a particular prize, then the average number of prize credits or tickets T that are known to be awarded per game is determined (average ticket payout). It is possible for the game's manufacturer to adjust game difficulty so that, on average, a predetermined number of prize credits will be awarded for each game played* (col. 36 lines 35-41). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of **Goldhaber et al.** and **Marino et al.** to disclose the step of setting a difficulty level of the PDA based in part on an average target price for the product, as disclosed by **Kelly et al.**, because this desirably enhances/affects the profitability of the invention.

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As per claim 42, **Goldhaber et al.** nor **Marino et al.** disclose the step of selecting the PDA based at least in part on a minimum price associated with the product. **Kelly et al.** discloses *provides a prize redemption system and method for use with one or more game apparatuses. Players may win "prize credits" by playing the game apparatus, and may then select a prize from a prize menu offered on the game apparatus. The selected prizes and specific prizes may be redeemed using specific prize tickets or coupons* (col. 2 line 62 - col. 3 line 1). It would have been obvious to one skilled in the art at the time the invention was made to modify the inventions of **Goldhaber et al.** and **Marino et al.** to disclose the step of selecting the PDA based at least in part on a minimum price associated with the product, as disclosed by **Kelly et al.**, because this assists the user in having the desired profitability when implementing the invention.

As per claim 43, **Goldhaber et al.** discloses the step of selecting the PDA based at least in part on a skill level of the buyer (col. 12 lines 15-38).

Claim 44 is written as a method and contains the same limitation as claim 38; therefore, the same rejection is applied.

8. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over as applied to claim 35 above, and further in view of **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Marino et al.** (U.S. Patent No. 4,850,007), and **Rockoff, Todd E.; Groves, Michael;**

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"Design of an Internet-based system for remote Dutch auctions;" Internet Research: Electronic Networking Applications and Policy; vol. 5; n4; pp. 10-16; 1995 (hereafter referred to as **Rockoff**).

As per claim 40, **Goldhaber et al.** nor **Marino et al.** disclose the auction is a reverse auction. However, **Rockoff** discloses *the auctioneer begins at a high price and then descends by steps until a bidder indicates his intention to buy at the price level reached ... the auction continues in this fashion until either the current lot is exhausted or its reserve price has been reached* (pg. 11, 1st col.). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the disclosures of **Goldhaber et al.** and **Marino et al.** to disclose the auction is a reverse auction, as disclosed by **Rockoff**, because this is a well known auction format for selling goods.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Goldhaber et al.** (U.S. Patent No. 5,855,008), and further in view of **Marino et al.** (U.S. Patent No. 4,850,007 B1), **Kelly et al.** (U.S. Patent No. 5,816,918), and **Rossides** (U.S. Patent No. 5,269,521).

As per claim 17, **Goldhaber et al.**, **Kelly et al.**, and **Marino et al.** do not specifically disclose the PDA includes participation of a second buyer, nor the step of communicating to the buyer and to a second buyer over the global communications network price determination rules. However, **Rossides** discloses the PDA is adapted to accommodate participation of a second participant (col. 24 lines 1-18); and

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Therefore, it would have been obvious to one skilled in the art at the time the invention was made to modify the invention of Goldhaber et al., Kelly et al., and Marino et al. to disclose the PDA includes participation of a second participant, as disclosed by Rossides, because this is an obvious and desirable enhancement that would increase the utility of the invention to the user.

Response to Arguments

10. Applicant's arguments with respect to claims 1-15 and 17-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure includes:

- Shavit et al. (U.S. Patent No. 4,799,156) discloses a system for interactive on-line electronic communications and processing of business transactions between a plurality of different types of independent users including at least a plurality of sellers, and a plurality of buyers, as well as financial institutions, and freight service providers;
- Eggleston et al. (U.S. Patent No. 6,061,660) discloses a method and system for providing incentive programs over a computer network which is provided in which a host may provide sponsoring companies with the capability to buy prepackaged or self-built incentive programs, offer such incentive programs to consumers, provide sponsoring companies and retailers with the capability to associate prizes with incentive programs, provide sponsoring companies, retailers

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and consumers with convenient fulfillment of prizes, and store and manipulate databases regarding all of the foregoing;

- **Von Kohorn** (U.S. Patent No. 5,916,024) discloses a system and method for evaluating responses to broadcast programs, such as television programs, which includes an instructional signal modulated onto a signal transmitted concurrently with the television program, or time-multiplexed with television signals.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Forest Thompson whose telephone number is (703) 306-5449. The examiner can normally be reached Monday-Friday from 7:00 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins, can be reached at (703) 308-1344.

The fax numbers for the organization are as follows:

After Final: (703) 746-7238

Official: (703) 746-7239

Non-Official/Draft: (703) 746-7240

Application/Control Number: 09/342,866

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Any inquiry of a general nature or relating to the application or processing should be directed to the receptionist whose telephone number is (703) 305-3900.

February 25, 2002 /FOT


P 00222


Application/Control Number: 09/342,866

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Any inquiry of a general nature or relating to the application or processing should be directed to the receptionist whose telephone number is (703) 305-3900.


February 22, 2002 /FOT


WYNN COGGIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100

P 00223

Notice of References Cited	Application/Control No. 09/342,866	Applicant(s)/Patent Under Reexamination LIN, WAYNE W.	
	Examiner Forest O. Thompson Jr.	Art Unit 2165	Page 1 of 1

U.S. PATENT DOCUMENTS

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
A	US-4,850,007	07-1989	Marino et al.	379/114.01
B	US-6,061,660	05-2000	Eggleston et al.	705/14
C	US-4,799,156	01-1989	Shavit et al.	705/26
D	US-5,916,024	06-1999	Von Kohorn, Henry	463/40
E	US-			
F	US-			
G	US-			
H	US-			
I	US-			
J	US-			
K	US-			
L	US-			
M	US-			

FOREIGN PATENT DOCUMENTS

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
N					
O					
P					
Q					
R					
S					
T					

NON-PATENT DOCUMENTS

*	Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
U	
V	
W	
X	

*A copy of this reference is not being furnished with this Office action. (See MPBP § 707.05(e).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/342,866	06/29/1999	WAYNE W. LIN	244/031	7207

23410 7590 05/07/2002

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EXAMINER

THOMPSON JR, FOREST

ART UNIT PAPER NUMBER

3625

DATE MAILED: 05/07/2002

23

Please find below and/or attached an Office communication concerning this application or proceeding.

Interview Summary	Application No. 09/342,866	Applicant(s) LIN, WAYNE W.	
	Examiner Forest O. Thompson Jr.	Art Unit 3625	

All participants (applicant, applicant's representative, PTO personnel):

(1) Forest O. Thompson Jr. (3) _____

(2) Neal Cohen (949-724-1849) (4) _____

Date of Interview: 25 April 2002.

Type: a) Telephonic b) Video Conference
c) Personal [copy given to: 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No.
If Yes, brief description: Applicant's specification and examiner's last Office Action (sent 03/01.2002) were discussed relevant to coverage of prior art over applicant's independent claim 1.

Claim(s) discussed: 1.

Identification of prior art discussed: 6,216,111 and 4,850,007.

Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.


Substance of interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: See Continuation Sheet.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i) It is not necessary for applicant to provide a separate record of the substance of the interview (if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP Section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached sheet.

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.


Examiner's signature, if required

Summary of Record of Interview Requirements

Manual of Patent Examining Procedure (MPEP), Section 713.04, Substance of Interview Must be Made of Record
A complete written statement as to the substance of any face-to-face, video conference, or telephone interview with regard to an application must be made of record in the application whether or not an agreement with the examiner was reached at the interview.

Title 37 Code of Federal Regulations (CFR) § 1.133 Interviews

Paragraph (b)

In every instance where reconsideration is requested in view of an interview with an examiner, a complete written statement of the reasons presented at the interview as warranting favorable action must be filed by the applicant. An interview does not remove the necessity for reply to Office action as specified in §§ 1.111, 1.135. (35 U.S.C. 132)

37 CFR §1.2 Business to be transacted in writing.

All business with the Patent or Trademark Office should be transacted in writing. The personal attendance of applicants or their attorneys or agents at the Patent and Trademark Office is unnecessary. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt.

The action of the Patent and Trademark Office cannot be based exclusively on the written record in the Office if that record is itself incomplete through the failure to record the substance of interviews.

It is the responsibility of the applicant or the attorney or agent to make the substance of an interview of record in the application file, unless the examiner indicates he or she will do so. It is the examiner's responsibility to see that such a record is made and to correct material inaccuracies which bear directly on the question of patentability.

Examiners must complete an Interview Summary Form for each interview held where a matter of substance has been discussed during the interview by checking the appropriate boxes and filling in the blanks. Discussions regarding only procedural matters, directed solely to restriction requirements for which interview recordation is otherwise provided for in Section 812.01 of the Manual of Patent Examining Procedure, or pointing out typographical errors or unreadable script in Office actions or the like, are excluded from the interview recordation procedures below. Where the substance of an interview is completely recorded in an Examiners Amendment, no separate Interview Summary Record is required.

The Interview Summary Form shall be given an appropriate Paper No., placed in the right hand portion of the file, and listed on the "Contents" section of the file wrapper. In a personal interview, a duplicate of the Form is given to the applicant (or attorney or agent) at the conclusion of the interview. In the case of a telephone or video-conference interview, the copy is mailed to the applicant's correspondence address either with or prior to the next official communication. If additional correspondence from the examiner is not likely before an allowance or if other circumstances dictate, the Form should be mailed promptly after the interview rather than with the next official communication.

The Form provides for recordation of the following information:

- Application Number (Series Code and Serial Number)
- Name of applicant
- Name of examiner
- Date of interview
- Type of interview (telephonic, video-conference, or personal)
- Name of participant(s) (applicant, attorney or agent, examiner, other PTO personnel, etc.)
- An indication whether or not an exhibit was shown or a demonstration conducted
- An identification of the specific prior art discussed
- An indication whether an agreement was reached and if so, a description of the general nature of the agreement (may be by attachment of a copy of amendments or claims agreed as being allowable). Note: Agreement as to allowability is tentative and does not restrict further action by the examiner to the contrary.
- The signature of the examiner who conducted the interview (if Form is not an attachment to a signed Office action)

It is desirable that the examiner orally remind the applicant of his or her obligation to record the substance of the interview of each case unless both applicant and examiner agree that the examiner will record same. Where the examiner agrees to record the substance of the interview, or when it is adequately recorded on the Form or in an attachment to the Form, the examiner should check the appropriate box at the bottom of the Form which informs the applicant that the submission of a separate record of the substance of the interview as a supplement to the Form is not required.

It should be noted, however, that the Interview Summary Form will not normally be considered a complete and proper recordation of the interview unless it includes, or is supplemented by the applicant or the examiner to include, all of the applicable items required below concerning the substance of the interview.

A complete and proper recordation of the substance of any interview should include at least the following applicable items:

- 1) A brief description of the nature of any exhibit shown or any demonstration conducted,
- 2) an identification of the claims discussed,
- 3) an identification of the specific prior art discussed,
- 4) an identification of the principal proposed amendments of a substantive nature discussed, unless these are already described on the Interview Summary Form completed by the Examiner,
- 5) a brief identification of the general thrust of the principal arguments presented to the examiner,
(The identification of arguments need not be lengthy or elaborate. A verbatim or highly detailed description of the arguments is not required. The identification of the arguments is sufficient if the general nature or thrust of the principal arguments made to the examiner can be understood in the context of the application file. Of course, the applicant may desire to emphasize and fully describe those arguments which he or she feels were or might be persuasive to the examiner.)
- 6) a general indication of any other pertinent matters discussed, and
- 7) if appropriate, the general results or outcome of the interview unless already described in the Interview Summary Form completed by the examiner.

Examiners are expected to carefully review the applicant's record of the substance of an interview. If the record is not complete and accurate, the examiner will give the applicant an extendable one month time period to correct the record.

Examiner to Check for Accuracy

If the claims are allowable for other reasons of record, the examiner should send a letter setting forth the examiner's version of the statement attributed to him or her. If the record is complete and accurate, the examiner should place the indication, "Interview Record OK" on the paper recording the substance of the interview along with the date and the examiner's initials.

Continuation of Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments: Mr Cohen and examiner disagreed on the relevance of U.S. Patent #4,850,007 (Marino et al.) in rejecting claim 1, specifically, the aspect of "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)." Mr Cohen believes the activity excludes the buyer simply listening to advertisements to earn credit or value towards purchase, but rather requires active participation by the buyer, e.g. as in an on-line game, as presented, Mr. Cohen says, in applicant's specification in the description of the PDA.. Examiner included relevant portions of Marino in the last Office Action. Examiner will look at applicant's specification in the next few days and get back to Mr. Cohen with a decision of relevance as examiner sees it. Mr. Cohen identified the following options open to him: if we do not come to agreement (1): 1 = create a written record of why allowed: allowed because not cover aspect of Marino, if we can work out a situation where we agree on this; or, if we do not come to agreement (2 or 3): 2 = amend claims to exclude Marino, possibly including language that teaches "competitive" aspects not disclosed in Marino; or 3 = Continue prosecution, possibly with supplemental Appeal Brief. Mr. Cohen and examiner will discuss this further in the next week or 2, as stated above.



#24
A1
Suppl
Brief
8/27/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Wayne W. Lin ✓) Group Art Unit: 3625
Serial No.: 09/342,866 ✓)
Filed: June 29, 1999)
For: Systems And Methods For Transacting)
Business Over A Global Communications Network)
Such As The Internet)

APPELLANT'S REQUEST FOR REINSTATEMENT OF APPEAL

Assistant Commissioner for Patents
Washington, D.C. 20231

5 Dear Sir:

This Request is made in response to the Examiner's Office Action, dated March 1, 2002, wherein prosecution was re-opened in response to Appellant's original Appeal Brief. This Request is for an appeal of all pending claims (Claims 1-15 and 17-44), in view of the Examiner's new grounds for rejection. Appellant's Supplemental Brief is enclosed herewith and filed in triplicate, pursuant to 37 C.F.R. § 1.192.

Appellant hereby also petitions for a two-month extension of time to respond, in accordance with 37 C.F.R. §1.136. Appellant believes the fees due are \$200.00. However, Appellant hereby authorizes all fees due based on this Response, including fees for extension of time if any, to be charged to Deposit Account 50-1105 of Appellant's undersigned representative.

GROUP 3600
AUG 08 2002

Respectfully submitted,

DATE: July 31, 2002

By

Neal M. Cohen
Attorney for Appellant

08/07/2002 AMONDAF1 00000167 501105 09342866

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200.00 CH

req 216 fee granted (2mas)

CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

Date of Deposit 7/31/2002

Neal M. Cohen



HGO-02-PUSA
244/031

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Wayne W. Lin)	Group Art Unit: 3625
Serial No.: 09/342,866)	Examiner: Forest Thompson, Jr.
Filed: June 29, 1999)	
For: SYSTEMS AND METHODS FOR)	
TRANSACTIONING BUSINESS OVER A)	
GLOBAL COMMUNICATIONS NETWORK)	
SUCH AS THE INTERNET)	

APPELLANT'S SUPPLEMENTAL APPEAL BRIEF IN ACCORDANCE WITH
37 C.F.R. §1.193(b)(2)(ii)

5

Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

10

Appellant hereby submits the attached Supplemental Appeal Brief in accordance with 37 C.F.R. §1.193(b)(2)(ii), in support of Appellant's Request For Reinstatement of Appeal.

RECEIVED
AUG 08 2002
GROUP 3600

CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as First Class Mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231.

7/31/2002
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Neal M. Cohen

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I. REAL PARTY IN INTEREST

The party named in the caption of the brief is the real party in interest.

II. RELATED APPEALS AND INTERFERENCES

Appellant filed an Appeal Brief in the above-captioned matter on December 14, 2001.

5 (Appellant's Appeal Brief was originally filed on November 15, 2001, and a duplicate was filed on December 14, 2001). The present Appeal Brief is a Supplemental Appeal Brief in response to the Office Action mailed March 1, 2002.

III. STATUS OF CLAIMS

10 Claim 16 has been cancelled. Claims 1-15 and 17-44 are pending. Appellant hereby appeals from the rejection of all pending claims (1-15 and 17-44). Said claims are set forth in the Appendix pursuant to 37 C.F.R. §1.192(c)(9).

IV. STATUS OF AMENDMENTS

There have been no amendments filed subsequent to final rejection.

V. SUMMARY OF INVENTION

15 A buyer's performance during a Price Determining Activity (PDA) is used to determine the price of the product being purchased. (See, e.g., Original Specification at page 5, lines 3-12; Abstract lines 1-3.) Specifically, the price of the product is scaled to the performance of the buyer during the PDA. (See, e.g., Original Specification at page 3, line 22; page 14, lines 1-9.) Typically, the better the buyer performs during the PDA, the lower the price will be of the product being
20 purchased. (See, e.g., Original Specification at page 3, lines 13-16.)

Each of the pending independent claims (1, 13, 19, and 35) recites that the price of the product is "scaled to the performance of the buyer", either "while participating in" (Claims 1, 13, and 19) or "during" (Claim 35) a Price-Determining-Activity (PDA).

VI. ISSUES

A. Whether the Examiner properly relied on U.S. Patent No. 5,855,008 (Goldhaber et al) and U.S. Patent No. 4,850,007 (Marino et al) as teaching certain limitations of Appellant's independent Claim 1, namely "determining the price of [a] product [...] said price being [...] scaled to the performance of [a] buyer [...] while participating in a Price-Determining-Activity (PDA)", and then for subsequently rejecting Claim 1 and all claims dependent thereon?

B. Whether the Examiner properly relied on U.S. Patent No. 5,855,008 (Goldhaber et al) and U.S. Patent No. 4,850,007 (Marino et al) as teaching certain limitations of Appellant's independent Claim 13, namely "assigning a price to [a] product, said price being scaled to the performance of [a] buyer [...] while participating in a Price-Determining-Activity (PDA)", and then for subsequently rejecting Claim 13 and all claims dependent thereon?

C. Whether the Examiner properly relied on U.S. Patent No. 5,855,008 (Goldhaber et al) and U.S. Patent No. 4,850,007 (Marino et al) as teaching certain limitations of Appellant's independent Claim 19, namely a computer server programmed to "assign a price to [a] product, said price being scaled to the performance of [a] buyer [...] while participating in a Price-Determining-Activity (PDA)", and then for subsequently rejecting Claim 19 and all claims dependent thereon?

D. Whether the Examiner properly relied on U.S. Patent No. 5,855,008 (Goldhaber et al) and U.S. Patent No. 4,850,007 (Marino et al) as teaching certain limitations of Appellant's independent Claim 35, namely "assigning a price to [a] product, said price being scaled to the performance of [a] buyer [...] during a Price Determining Activity (PDA)", and then for subsequently rejecting Claim 35 and all claims dependent thereon?

E. Whether claims which recite use of an auction to partially determine the price of a product are separately patentable from the claims from which they depend?

F. Whether claims which recite use of a video game as the Price-Determining Activity (PDA) are separately patentable from the claims from which they depend?

5 **VII. GROUPING OF CLAIMS**

For purposes of this appeal, and without making any admissions, Appellant submits that the claims in each group of two or more claims which are rejected on a particular grounds stand or fall together as set forth below, in reference to the particular new grounds for rejection set forth in the Office Action mailed March 1, 2002 (herein the "Office Action"). In accordance with 37 C.F.R. §1.192(c)(7), Appellant has set forth the reasons for these groupings in Appellant's Argument section below.

Rejections in paragraph 4 of the Office Action:

Claims 1-2, 12-15, 18-19, 26, 28, 30, 35-36, and 41 stand or fall together, independent of Claims 11, 25, and 39.

15 Claims 11, 25, and 39 stand or fall together, independent of Claims 1-2, 12-15, 18-19, 26, 28, 30, 35-36, and 41.

Rejections in paragraph 5 of the Office Action:

Claims 3-4, 6-10, and 20-23 stand or fall together, independent of Claims 29, 31, and 37.

Claims 29, 31, and 37 stand or fall together, independent of Claims 3-4, 6-10, and 20-23.

20 **Rejections in paragraph 7 of the Office Action:**

Claims 24, 27, 32, 34, 38, and 42-44 stand or fall together, independent of Claim 33.

Claim 33 stands or falls independent of Claims 24, 27, 32, 34, 38, and 42-44.

VIII. ARGUMENT

5 A. The Examiner improperly relied on U.S. Patent No. 5,855,008 (Goldhaber et al) and U.S. Patent No. 4,850,007 (Marino et al) as teaching certain limitations of Appellant's independent Claim 1, namely "determining the price of [a] product [...] said price being [...] scaled to the performance of [a] buyer [...] while participating in a Price-Determining-Activity (PDA)", and then for subsequently rejecting Claim 1 and all claims dependent thereon.

10 In the Office Action, the Examiner rejected independent Claim 1, and each claim dependent thereon, as follows: Claims 1, 2, 11, 12, and 28 were rejected as unpatentable over Goldhaber et al, and further in view of Marino et al (Office Action, ¶4); Claims 3-4, 6-10, 22-23, and 29 were rejected over Goldhaber et al, and further in view of Marino et al and U.S. Patent No. 5,269,521 (Rossides) (Office Action, ¶5); Claim 5 was rejected over Goldhaber et al, and further in view of Marino et al, Rossides, and "Allotafun! To Develop Extensive Toy Internet Site;" PR Newswire; 03 December 1998 (hereafter referred to as Alottafun) (Office Action ¶6); Claim 24 was rejected as unpatentable over Goldhaber et al in
15 view of Marino et al, and U.S. Patent No. 5,816,918 (Kelly et al) (Office Action, ¶7).

20 Of the aforementioned claims, only Claim 1 is independent, and the others are dependent thereon. Claim 1 recites "determining the price of [a] product [...] said price being [...] scaled to the performance of [a] buyer [...] while participating in a Price-Determining-Activity (PDA)." (See Appendix, Claim 1.)

25 The Examiner has relied on Marino et al as teaching or suggesting these limitations (Office Action, ¶4), and based on that reliance the Examiner then rejected Claim 1 and all claims dependent thereon as stated above. Appellant respectfully disagrees with the Examiner, because: 1) Marino et al is a non-analogous reference for the purpose of determining the obviousness of Appellant's claims; and 2) Marino et al does not teach or

suggest "determining the price of [a] product [...] said price being [...] scaled to the performance of [a] buyer [...] while participating in a Price-Determining-Activity (PDA)."

1. MARINO IS A NON-ANALOGOUS REFERENCE

"USPTO policy is to follow *Graham v. John Deere* in the consideration and
5 determination of obviousness under 35 U.S.C. 103." (MPEP 2141) The *Graham* standard of
patentability to be applied in obviousness type rejections includes determining the scope and
content of the prior art. In making the determination of the scope of the prior art, "The
Examiner must determine what is analogous prior art for the purpose of analyzing the
obviousness of the subject matter at issue. In order to rely on a reference as a basis for
10 rejection of an applicant's invention, the reference must either be [a] in the field of
applicant's [appellant's] endeavor or, if not, then be [b] reasonably pertinent to the particular
problem with which the inventor was concerned." (MPEP 2141.01(a) [case citations, and
internal quotes omitted].) Furthermore, [c] the USPTO classification is some evidence of
"non-analogy" or "analogy" of references and cross-references. (MPEP 2141.01(a).)

(a) MARINO IS NOT IN THE SAME FIELD AS APPELLANT'S ENDEAVOR

15 Although there is no clear-cut formula in determining the same field part of the
analogous prior art inquiry, the determination may be made by answering the question, "Is
the Marino et al reference in the *field of the appellant's endeavor*?" The answer is no.
Simply stated, the Marino et al reference is in the field of advertising, e.g., attention
20 brokerage, and the Appellant / inventor's endeavor is in the field of a competitive or
entertainment-based price determining business model.

An advertisement is used to tell about or praise a product and/or service publicly. In
Marino et al an "*announcement consisting of at least one advertisement*" (Col. 1, lines 48-

49) is generated. Marino et al does not teach or suggest a competitive or entertainment-based price determining business model. Rather, Marino et al is concerned with generating advertisements, and making the advertisement accessible for customers to receive. The following portions of Marino et al, with emphasis added, clearly illustrate this point:

5 “Nevertheless, he can be very interested ... if the advertisement selection technique is adapted to pick *advertisements suited to his general interest.*” (Col. 2, lines 9-12); “*Among the various bases for determining what advertising message will be connected ... foremost are various types of demographic information ...*” (Col. 4, lines 21-24); “In order that the advertisements may be more focused to the interests of the caller ... a caller ... may let the
10 telephone company know ... *which of several different categories of subjects he is interested in ...*” (Col. 5, lines 67-68 and Col. 6, lines 1-5).

Marino et al thus teaches generating advertisements and providing that information to telephone service users. The information may be regarding a wide variety of subject matter, including: 1) the general interest of the caller, 2) the demographic location of the
15 caller, or 3) the location that the caller is attempting to reach. In essence, information, in the form of an advertisement, is used to tell about or praise a product and/or service. There is absolutely no teaching or suggestion of a competitive or entertaining price determining activity in Marino et al.

Furthermore, Marino et al teaches that it is beneficial that the caller is attentive to the
20 advertisement. That's the whole idea behind the Attention Brokerage industry. The following portions of Marino et al, with emphasis added, clearly illustrate this point: “The announcement period can be interactive *so that the advertiser can be assured that the calling party actually listens to his ad ...*” (Col. 2, lines 13-15); “One way of *verifying that*

the caller is actually listening ..." (Col. 2, lines 18-19). In exchange for their attentiveness, while receiving information, i.e., advertising, a customer is provided a form of payment.

The term attention brokerage implies that payment is made in exchange for a customer's attention. Marino et al uses a form of payment, e.g., "*reduced rate billing and/or credit*," (Col. 4, lines 18-19) to a customer in exchange for "*listening to, or watching, advertising messages from advertising system.*" (Col. 3, lines 12-14) Marino et al does not teach or suggest a competitive or entertainment-based price determining business model.

Rather, Marino et al is directed to the field of attention brokerage – that is, paying a customer for the customer's attention. The following portions of Marino et al, with emphasis added, clearly illustrate this point: "*After the advertisement is announcement is completed ...[a] call is processed ... at a reduced rate of charge or with automatic credit being given the customer's account.*" (Col. 1, lines 54-58); "It is also possible that coupons good for the purchase of merchandise or services could be in the form, in whole or in part, in which the *caller receives value for his cooperation.*" (Col. 2, line 38-41); "In general ... the billing will be returned which shows his *reduced telephone toll charge rate or, alternatively, the lump sum credits he is receiving for listening to, or watching, advertising messages ...*" (Col. 2, lines 62-68); "Request for either of these services may be an occasion to *offer a subscriber a reduced rate or a credit in return for listening to, watching, advertising messages ...*" (Col. 3, lines 12-15); "Also at the conclusion of the message, the appropriate billing item is generated ... *this reduced rate billing and/or credit is accumulated ...*" (Col. 4, lines 16-19). Therefore, Marino et al teaches a payment to a subscriber for the subscriber's attention, i.e., attention brokerage.

Appellant teaches a *competitive or entertainment-based* price determining activity. (See, e.g., original application, page 1, lines 6-7; page 2, lines 14-16; page 3, lines 2-4; page 3, lines 10-11; page 4, lines 13-14) Thus, the price of the product is determined during a competitive or entertainment-based PDA. That is, the buyer also receives a side benefit of the entertainment value of the activity or even motor skill enhancement via video game play or similar activities. The Appellant's invention does not pay the user for the user's attention to an advertisement. Appellant's invention uses PDAs such as a video game, electronic board game, gambling game, sports bet, etc. to encourage customers to engage in the activity of buying products (see, e.g., original specification, page 9, lines 10-13). The PDA (activity) is directly connected to the price of the product.

On the other hand, Marino et al offers a discounted phone service. Such a service is generally associated with other utilities including gas, water, and electric in which the price for such service is non-negotiable. Marino et al states, "*This new telephone toll service differs from telephone shopping services in that the caller is not looking for the specific information contained in the advertisement – indeed, he is looking for other information or seeking to place a personal long-distance call.*" (Col. 2, lines 4-8 [emphasis added]) Therefore, if Marino et al differs from telephone shopping services it surely differs from Appellant's interactive PDA-based shopping services.

Marino et al is in the field of attention brokerage, and Appellant's invention is in the field of a competitive or entertainment-based price determining model. No matter how Marino et al is viewed, it simply does not disclose or suggest a scaling the price of a product to a performance of the buyer during a PDA.

Linking the price of a product to a performance during a PDA (Appellant's Claims) is completely different from paying someone for their attention (Marino et al). In the former, the price of the product is not fixed, and the seller hopes to close the sale by allowing the buyer to lower the price based upon the buyer's performance while participating in a PDA. In the latter, the price of the product is fixed, and the seller hopes to close the deal by ensuring the buyer listens to the seller's sales presentation, which is why the seller pays the buyer for the buyer's attention.

(b) MARINO IS NOT REASONABLY PERTINENT TO THE INVENTOR'S PARTICULAR PROBLEM

Under the two-step test for determining whether a prior art reference is non-analogous, if the reference is not within the field of the inventor's endeavor it must be determined whether the reference is "reasonably pertinent to the particular problem with which the inventor was involved." (MPEP 2141.01(a) citing *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986).) "If a reference disclosure has the same purpose as the claimed invention, the reference relates to the same problem ... [I]f it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it." (*In re Clay*, 966 F.2d 656, 23 USPQ 2d 1058, 1060-61 (Fed. Cir. 1992).)

Marino et al seeks to solve the problem of how to recover sufficient revenues to cover the cost of directory assistance calling, other information services, and long-distance service, when faced with a demand to lower such costs (Col. 1, lines 11-25). Hence, in an era of increasing deregulation, the phone companies seek a system that would enable the phone companies to continue to make selected service available. "The above-described problems are solved according to the invention by providing ... *at least one advertisement* ... After

the advertising announcement is completed the toll call and/or directory assistance call is processed as usual but at a reduced rate of charge or with automatic credit being given to the customer's account." (Col. 1, lines 39- 58) In other words, Marino et al solves the problem of telephone service deregulation by selling advertising space to an advertiser at a higher rate than the phone company discounts the telephone service.

On the other hand, Appellant seeks to create an alternative e-commerce system and method that encourages customers to engage in the buying of products. Appellant solves the problem by providing systems and methods that "allow a potential buyer to engage in competitive/entertaining activities wherein the activities ultimately determine the price of the product or service to be bought, depending on the buyer's performance while participating in the PDA." (Page 3, lines 1-6). Appellant uses PDAs such as a video game, electronic board game, gambling game, sports bet, etc. to encourage customers to engage in the activity of buying products (Page 9, lines 10-13).

Marino et al simply does seek to solve a problem reasonably pertinent to the particular problem with which the Appellant was involved.

(c) USPTO CLASSIFICATION IS EVIDENCE THAT MARINO IS A NON-ANALOGOUS REFERENCE

The USPTO classification system is some evidence of "non-analogy" or "analogy" of references and cross-references. A cross reference in the official PTO search notes is some evidence of analogy, particularly when "nearly identical classification of the application and references ... are the result of the close similarity in structure and function of the invention and the prior art." (*In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986).)

Marino et al is classified by the USPTO in U.S. class 379 (telephonic communications) and subclasses 67 (audio message storage, retrieval, or synthesis), 112 (call traffic recording by computer or control processor), and 84 (at switching facility). On the other hand, classification of Appellant's application is listed under 705 (data processing: financial, business practice, management, or cost/price determination). Class and subclass terminology used in classifying Marino et al cannot be found anywhere within Appellant's application. Terminology such as telephone communications, audio messages storage, call traffic recoding, and switching facility are completely foreign to the systems and methods of the Appellant's invention. As evidenced by the USPTO's own classification system, Marino et al is a non-analogous reference for the purpose of determining the obviousness of Appellant's claims.

Based on the arguments set forth herein, Appellant submits that Marino et al is clearly a non-analogous reference, and therefore cannot be used to reject Appellant's claims. (Furthermore, the Goldhaber reference which the Examiner also used to reject Appellant's claims, is also non-analogous, for the same reasons Marino et al is non-analogous. That is, Goldhaber, too, is clearly directed to the field of Attention Brokerage (see, e.g., the title of Goldhaber is "Attention Brokerage".) Based on these arguments alone, Appellant submits that the Examiner's rejections should be withdrawn.

2. MARINO et al DOES NOT TEACH OR SUGGEST "DETERMINING THE PRICE OF [A] PRODUCT [...] SAID PRICE BEING [...] SCALED TO THE PERFORMANCE OF [A] BUYER [...] WHILE PARTICIPATING IN A PRICE-DETERMINING-ACTIVITY (PDA)."

5 The Examiner's rejections should further be withdrawn, because even if Marino et al was not a non-analogous reference, it nonetheless does not teach or suggest the limitations of Appellant's Claim 1, which requires "determining the price of [a] product [...] said price being [...] scaled to the performance of [a] buyer [...] while participating in a price-determining-activity (PDA).

10 A PDA is described in detail in Appellant's original specification as an activity which is performed and which performance thereof is used to determine the price of the product. (See, e.g., page 2, lines 13-16; page 3, lines 1-4; page 6, lines 19-22; page 9, lines 15-19; Example on page 9, line 20, through page 11, line 7; and page 13, line 4, through page 17, line 5.) Thus, the price of the product is determined based upon the performance of the buyer
15 during the PDA. That is, the performance has a direct effect on the determination of the price of the product. Furthermore, the price is scaled to the performance of the buyer during the PDA, such that the better the buyer performs during the PDA, the lower the price will typically be of the product being purchased. (See, e.g., Original Specification at page 3, lines 13-22; page 14, lines 1-9.)

20 Marino et al does not teach or suggest such a connection between a PDA, a performance during a PDA, and the price of the product. Rather, Marino et al is directed to the field of attention brokerage - that is, paying a customer for the customer's attention.

 Appellant's Claim 1, on the other hand, recites a *direct link* between a Price-Determining-Activity (PDA) and the price of the product, namely "determining the price of

[a] product [...] said price being [...] scaled to the performance of [a] buyer [...] while participating in a Price-Determining-Activity (PDA)."

Appellant's arguments as set forth in paragraph VIII.A of Appellant's Brief filed December 14, 2001 are hereby incorporated by reference and apply to Marino et al. In addition to the aforementioned arguments, Marino et al lacks, i.e., does not teach, significant inherent characteristics found in Appellant's recitation of the use of a PDA, in Claim 1, including: 1) uncertainty of actual final cost of the product or service; 2) enhanced cognitive reasoning; 3) high motor skill participation of the user; and 4) competition and/or entertainment qualities.

10 **(a) MARINO DOES NOT TEACH UNCERTAINTY OF THE ACTUAL FINAL COST OF A PRODUCT OR SERVICE**

15 The final cost of an item is inherently uncertain in the Appellant's recitation of the use of a PDA, in Claim 1. The following portions of Appellant's application, with emphasis added, clearly illustrate this point: "*Thus, if a buyer performs poorly at the activity, the price will be higher, whereas if the buyer does well, the price will be lower.*" (Page 3, lines 13-16); "*The actual range may be a scaled set of prices ... for which the buyer will either "win" the contract or "lose" ... or ... the product or service might be attainable for free ...*" (Page 3, lines 22-23 and Page 4, line 1-4); "*Buyers, on the other hand, are willing to accept the possibility of paying the highest price ... in exchange for the opportunity to pay the lower price ...*" (Page 4, lines 10-13); "*Sellers offer their product/service ... buyers accept the offer, in exchange for the opportunity to close the transaction at the lowest price offered ...*" (Page 6, lines 16-19); "*For example, ... the buyer may be entitled to a*

20

further discount ... *which discount may be greater ... or not so great ...*" (Page 7, lines 22-23 and Page 8, lines 1-2).

5 The Appellant's recitation of the use of a PDA, in Claim 1, thus teaches that the final cost of an item is inherently uncertain. Buyers are willing to accept the possibility of paying a price within an agreed upon range. The willingness of the buyer to engage in an activity where the buyer faces an uncertainty in the final product price is inherent in PDAs as described in Appellant's application.

10 Marino et al, on the other hand, does not teach such inherent uncertainty in the final price a customer will pay for a service. A customer, wanting to access telephone service, knows exactly the predetermined fees for such service. The customer makes a definite and certain choice, pressing a key, for the pricing fee they desire to obtain. The only uncertainty associated with Marino et al is in the generation of an advertisement. The following portions of Marino et al, with emphasis added, clearly illustrate this point: "The advertisements are selected from *some predetermined technique ...*" (Col. 1, lines 49-53); "These
15 announcement could also have been *chosen on a random basis ...*" (Col. 4, lines 61-64); "Further, ... *a round-robin type of sequencing* of appropriate advertisements ..." (Col. 5, lines 10-22).

20 Thus, Marino et al does not teach such inherent uncertainty in the final price a customer will pay for a service, and this too is a distinction between the attention brokerage teachings of Marino, versus the e-commerce business model of Appellant's claims.

(b) MARINO DOES NOT TEACH ENHANCED COGNITIVE REASONING

Enhanced cognitive reasoning is inherent in the Appellant's recitation of the use of a PDA, in Claim 1. The following portions of Appellant's application, with emphasis added,

clearly illustrate this point: "The "games" are: ... 2) a ... *trivia quiz of ten questions*; 3) an offer to predict ..." (Page 10, lines 8-13); "He has no time to read the next two questions ..." (Page 11, lines 1-2); "A buyer may submit his or her *prediction* ..." (Page 14, lines 10-11); "A buyer may submit his or her wager or *prediction* ..." (Page 14, lines 19-21); "Other PDAs include ... electronic board games such as *chess, backgammon, checkers* ..." (Page 15, lines 1-6).

The Appellant's recitation of the use of a PDA, in Claim 1, thus teaches that enhanced cognitive reasoning is inherent. In a typical application, the use of a PDA requires a buyer to answer questions that involve memory access and retrieval. Furthermore, games such as chess or backgammon require a certain level of pre-learned skills coupled with strategic game play. In addition, the ability to make predictions involves comparisons and an understanding and use of the laws of probability.

Alternatively, Marino et al does not teach such inherent enhanced cognitive reasoning such as that found in a PDA. The following portions of Marino et al, with emphasis added, clearly illustrate this point: "In general ... for *listening to, or watching, advertising messages* ..." (Col. 2, lines 62-68); "In point of fact, this *message may be either an aural or visual nature* ..." (Col. 4, lines 1-4); "The local central office ... will play a recorded message as follows: *Choose one, two, or three minutes of advertisement* by pressing keys 1, 2, or 3 on your telephone pad." (Col. 4, lines 50-54).

In Marino et al customers mindlessly listen or watch advertising messages. The activity of simply listening or watching an advertisement is so devoid of any cognitive reasoning that customers are asked to press a keypad button in order to alleviate boredom and assure that the caller is actually listening. The caller could actually place down the

phone, walk away, and return at the appropriate time to press a keypad button in order to receive the requested service fee.

Therefore, Marino et al does not teach such inherent enhanced cognitive reasoning such as that found in a PDA, and this too is a distinction between the attention brokerage teachings of Marino, versus the e-commerce business model of Appellant's claims.

(c) MARINO DOES NOT TEACH GREATER MOTOR SKILL

PARTICIPATION OF THE USER

High-level motor skill participation of the user is inherent in the Appellant's recitation of the use of a PDA, in Claim 1. The following portions of Appellant's application, with emphasis added, clearly illustrate this point: "The "games" are: 5) a classic PacMan *video arcade game*." (Page 10, lines 8-13); "A classic example of a PDA is a *video game ...*" (Page 14, lines 1-2).

The Appellant's recitation of the use of a PDA, in Claim 1, thus teaches that high motor skill participation of the user is inherent. Typically, video game play involves keen hand/eye coordination. Players must scan the field of play, anticipate future actions, and make split second movements in order to successively complete the required game tasks. More often than not a video game player is required to manipulate numerous controls having varied functions in order to effectively score well.

On the other hand, Marino et al teaches no such inherent motor skill participation of the user such as those found in a PDA. The following portions of Marino et al, with emphasis added, clearly illustrate this point: "The announcement period can be interactive... assuring that the calling party actually *listens* to his ad ... One way to verify that the caller is actually *listening* is for him to be *ask to send an alpha-numeric signal or a voice signal ...*

the customer could be asked to *press the number 9 on his telephone keypad*" (Col. 2, lines 13-29); "The local central office ... will play a recorded message as follows: Choose one, two, or three minutes of advertisement by *pressing keys 1, 2, or 3 on your telephone pad.*" (Col. 4, lines 50-54).

5 In Marino et al telephone users, at most, are required to press keys on the telephone pad. The aforementioned key pressing activity, coupled with the ability to pick-up and dial a phone, and listen or watch an advertisement, does not remotely amount to what might be considered a high level of motor skill activity. Keen hand/eye coordination and split second movements are not needed to successively complete the required phone tasks.

10 Therefore, Marino et al teaches no inherent motor skill participation of the user such as those found in a PDA, and this too is a distinction between the attention brokerage teachings of Marino, versus the e-commerce business model of Appellant's claims..

**(d) MARINO DOES NOT TEACH COMPETITION AND/OR
ENTERTAINMENT QUALITIES**

15 Competition and/or entertainment qualities are inherent in the Appellant's recitation of the use of a PDA, in Claim 1. The following portions of Appellant's application, with emphasis added, clearly illustrate this point: "The activity may be a *video game ... electronic board game, crossword puzzle or other word game, sports bet, card game ...*" (Page 3, lines 16-18); "Buyer also *receive a side benefit of the entertainment value of the activity ...*" (Page 4, lines 13-14); "The activity may be a *video game, electronic board game, sports bet, card game ...*" (Page 6, lines 20-21); "The PDA may be a *video game, electronic board game, gambling game, sports bet ...*" (Page 9, lines 10-13); "The "games" are: 1) *a bridge game ...* 2) *a ... trivia quiz* of ten questions; 3) *an offer to predict ...* 4) *a*

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game of keno ... and 5) a ... video game." (Page 10, lines 8-13); "A classic example of a PDA is a *video game ...*" (Page 14, lines 1-2); "Other PDAs include *electronic card games, such as bridge, cribbage, black jack, poker, or other card games, craps, roulette, and electronic board games such as chess, backgammon, checkers, or a proprietary game such as Trivial Pursuit, Monopoly, or other game.*" (Page 15, lines 1-6).

The Appellant's recitation of the use of a PDA, in Claim 1, thus teaches that competition and/or entertainment qualities are inherent. Nearly every game has some competitive and/or entertainment quality associated with it. Webster's New World College Dictionary, 3rd ed., defines game [with emphasis added] as, "any specific contest, engagement, *amusement*, computer simulation, or sport involving physical or mental *competition* under specific rules, as football, *chess*, or war game."

Marino et al, however, does not teach such inherent competition and/or entertainment qualities. The following portion of Marino et al, with emphasis added, clearly illustrate this point: "The local central office ... will play a recorded message as follows: Choose one, two, or three minutes of advertisement by *pressing keys 1, 2, or 3 on your telephone pad.*" (Col. 4, lines 50-54).

Simply stated, pressing keys 1,2, or 3, on a telephone pad cannot be considered to involve a competitive or entertaining quality. No matter how Marino is viewed, it simply does not teach, disclose or suggest any level of competitive and/or entertainment qualities, and this too is a distinction between the attention brokerage teachings of Marino, versus the e-commerce business model of Appellant's claims.

Based on the arguments set forth herein, and particularly in this Section, Appellant respectfully submits that Marino et al does not teach or suggest "determining the price of [a] product [...] said price being [...] scaled to the performance of [a] buyer [...] while participating in a Price-Determining-Activity (PDA)." Thus, Appellant's independent Claim 1, and all claims dependent thereon, are patentable over the cited art, and the Examiner's rejections should be withdrawn

- 5
- B. The Examiner improperly relied on U.S. Patent No. 5,855,008 (Goldhaber et al) and U.S. Patent No. 4,850,007 (Marino et al) as teaching certain limitations of Appellant's independent Claim 13, namely "assigning a price to [a] product, said price being scaled to the performance of [a] buyer [...] while participating in a Price-Determining-Activity (PDA)", and then for subsequently rejecting Claim 13 and all claims dependent thereon.
- 10

In the Office Action, the Examiner rejected independent Claim 13, and each claim dependent thereon, as follows: Claims 13-15, 18, 25-26, and 30 were rejected as unpatentable over Goldhaber et al, and further in view of Marino et al (Office Action, ¶4); Claim 31 was rejected over Goldhaber et al, and further in view of Marino et al and U.S. Patent No. 5,269,521 Rossides (Office Action, ¶5); Claims 27, and 32-33 were rejected over Goldhaber et al, and further in view of Marino et al and U.S. Patent No. 5,816,918 Kelly et al (Office Action, ¶7); Claim 17 was rejected as unpatentable over Goldhaber et al, and further in view of Marino et al, Kelly et al, and Rossides (Office Action, ¶9).

15

Of the aforementioned claims, only Claim 13 is independent, and the others are dependent thereon. Claim 13 recites "assigning a price to [a] product, said price being scaled to the performance of [a] buyer [...] while participating in a Price-Determining-Activity (PDA)". (Appendix, Claim 13.)

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The Examiner has relied on Marino et al as teaching or suggesting these limitations (Office Action, ¶4), and based on that reliance the Examiner then rejected Claim 13 and all

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claims dependent thereon as stated above. Appellant respectfully disagrees with the Examiner, because Marino et al does not teach or suggest "assigning a price to [a] product, said price being scaled to the performance of [a] buyer [...] while participating in a Price-Determining-Activity (PDA)".

5 Appellant's arguments are set forth herein in paragraph VIII.A, and Appellant hereby incorporates the arguments herein by reference.

Based on the arguments set forth herein, Appellant respectfully submits that independent Claim 13, and all claims dependent thereon, are patentable over the cited art, and the Examiner's rejections should be withdrawn.

10 C. The Examiner improperly relied on U.S. Patent No. 5,855,008 (Goldhaber et al) and U.S. Patent No. 4,850,007 (Marino et al) as teaching certain limitations of Appellant's independent Claim 19, namely a computer server programmed to "assign a price to [a] product, said price being scaled to the performance of [a] buyer [...] while participating in a Price-Determining-Activity (PDA)", and then for subsequently rejecting Claim 19 and
15 all claims dependent thereon.

In the Office Action, the Examiner rejected independent Claim 19, and each claim dependent thereon, as follows: Claim 19 was rejected over Goldhaber et al, and further in view of Marino et al (Office Action, ¶4); Claims 20 and 21 were rejected over Goldhaber et al, and further in view of Marino et al and U.S. Patent No. 5,269,521 Rossides (Office
20 Action, ¶5); Claim 34 was rejected over Goldhaber et al, and further in view of Marino et al and U.S. Patent No. 5,816,918 Kelly et al (Office Action, ¶7).

Of the aforementioned claims, only Claim 19 is independent, and the others are dependent thereon. Claim 19 recites a computer server programmed to "assign a price to [a] product, said price being scaled to the performance of [a] buyer [...] while participating in a
25 Price-Determining-Activity (PDA)." (Appendix, Claim 19.)

The Examiner has relied on Marino et al as teaching or suggesting these limitations (Office Action, ¶4), and based on that reliance the Examiner then rejected Claim 19 and all claims dependent thereon as stated above. Appellant respectfully disagrees with the Examiner, because Marino et al does not teach or suggest a computer server programmed to "assign a price to [a] product, said price being scaled to the performance of [a] buyer [...] while participating in a Price-Determining-Activity (PDA)."

Appellant's arguments are set forth herein in paragraph VIII.A, and Appellant hereby incorporates the arguments herein by reference.

Based on the arguments set forth herein, Appellant respectfully submits that independent Claim 19, and all claims dependent thereon, are patentable over the cited art, and the Examiner's rejections should be withdrawn.

D. The Examiner improperly relied on U.S. Patent No. 5,855,008 (Goldhaber et al) and U.S. Patent No. 4,850,007 (Marino et al) as teaching certain limitations of Appellant's independent Claim 35, namely "assigning a price to [a] product, said price being scaled to the performance of [a] buyer [...] during a Price Determining Activity (PDA)", and then for subsequently rejecting Claim 35 and all claims dependent thereon.

In the Office Action, the Examiner rejected independent Claim 35, and each claim dependent thereon, as follows: Claims 35-36, 39, and 41 were rejected over Goldhaber et al, and further in view of Marino et al (Office Action, ¶4); Claim 37 was rejected over Goldhaber et al, and further in view of Marino et al and U.S. Patent No. 5,269,521 Rossides (Office Action, ¶5); Claims 38, and 42-44 were rejected over Goldhaber et al, and further in view of Marino et al and U.S. Patent No. 5,816,918 Kelly et al (Office Action, ¶7); Claim 40 was rejected over as applied to Claim 35, and further in view of Goldhaber et al, and further in view of Marino et al, and Rockoff: Design of an Internet-based system for remote Dutch Auctions" (Office Action, ¶8).

Of the aforementioned claims, only Claim 35 is independent, and the others are dependent thereon. Claim 35 recites "assigning a price to [a] product, said price being scaled to the performance of [a] buyer [...] during a Price Determining Activity (PDA)". (Appendix, Claim 35.)

5 The Examiner has relied on Marino et al as teaching or suggesting these limitations (Office Action, ¶4), and based on that reliance the Examiner then rejected Claim 35 and all claims dependent thereon as stated above. Appellant respectfully disagrees with the Examiner, because Marino et al does not teach or suggest "assigning a price to [a] product, said price being scaled to the performance of [a] buyer [...] during a Price Determining
10 Activity (PDA)."

Appellant's arguments are set forth herein in paragraph VIII.A, and Appellant hereby incorporates the arguments herein by reference.

Based on the arguments set forth herein, Appellant respectfully submits that independent Claim 35, and all claims dependent thereon, are patentable over the cited art,
15 and the Examiner's rejections should be withdrawn.

E. Claims which recite use of an auction to partially determine the price of a product are separately patentable from the claims from which they depend.

As set forth in Paragraph VII herein, Appellant submits that of the claims rejected in ¶4 of the Office Action, Claims 11, 25, and 39 are separately patentable from the others
20 because Claims 11, 25, and 39 each recite that the price is determined at least partially upon either "participation of the buyer in" (Claims 11 and 39) or "results of" (Claim 25) "an auction." Based on these limitations, Claims 11, 25, and 39 are separately patentable, as is Claim 40 which depends from Claim 39.

Using an auction as an additional factor in determining the price of a product is not obvious over the cited art, because though auctions were known in the art, auctions were not used in combination with a PDA in which the price of a product was scaled to the performance of a buyer while participating in the PDA. The portion of Goldhaber et al relied on by the Examiner in the Office Action to reject these claims (Goldhaber, Col. 4, lines 63-64) merely discloses an auction in the context of attention brokerage, not in the context as set forth in Appellant's claims. As stated herein previously, attention brokerage and price reduction represent two completely different fields.

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10 F. Claims which recite use of a video game as the Price-Determining Activity (PDA) are separately patentable from the claims from which they depend.

As set forth in Paragraph VII herein, Appellant submits that of the claims rejected in ¶5 of the Office Action, Claims 29, 31, and 37 are separately patentable from the others. Similarly, Claim 5 (rejected in ¶6 of the Office Action), and Claim 33 (rejected in ¶7 of the Office Action), are separately patentable from the others. Claims 5, 29, 31, 33, and 37 each recite that "the PDA is a video game". Based on these limitations, Claims 5, 29, 31, 33, and 37 are separately patentable.

Using a video game as a Price-Determining Activity is not obvious over the cited art, because though video games were known in the art, video games were not used to determine the price of a product by scaling the price to a performance while participating in the video game. Use of video games as a PDA is not obvious merely because video games are popular.

20 Furthermore, Claims 29, 31, and 37 were rejected in ¶5 of the Office Action over the Goldhaber, Marino, and Rossides references, in which the Examiner stated that Claims 29, 31, and 37 "contain the same limitation as Claim 5; therefore, the same rejection is applied".

However, the Examiner's only rejection of Claim 5 is in ¶6 of the Office Action, in which an additional reference is required to reject Claim 5 - namely the Allotafun reference. Thus, the Examiner's rejections of Claims 29, 31, and 37 are further inappropriate for this reason.

Likewise, Claim 33 was rejected in ¶7 of the Office Action over the Goldhaber, Marino, and Kelly references, in which the Examiner stated that Claim 33 "contains the same limitation as Claim 5; therefore, the same rejection is applied". However, as stated above, the Examiner's only rejection of Claim 5 is in ¶6 of the Office Action, in which an additional reference is required to reject Claim 5 - namely the Allotafun reference. Thus, the Examiner's rejection of Claim 33 is further inappropriate for this reason.


10 **IX. CONCLUSION**

For the foregoing reasons, Appellant submits that the Examiner's rejections of Claims 1-15 and 17-44 were erroneous, and reversal of the rejections is hereby requested.

Respectfully submitted,

15 DATE: July 31, 2002

By _____


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X. APPENDIX - CLAIMS ON APPEAL

1. 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
5 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);
10 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.
2. The method of claim 1, further comprising the step of accepting payment information
15 from the buyer over the global communications network.
3. The method of claim 1, further comprising the step of presenting to the buyer over the
global communications network, a plurality of PDAs to choose from, said presentation of the
plurality of PDAs occurring before accepting the second request from the buyer.
4. The method of claim 3, further comprising the step of presenting price determination
20 rules to the buyer over the global communications network, said price determination rules being
associated with the plurality of PDAs.
5. The method of claim 4, wherein the PDA is a video game.

6. 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.
7. The method of claim 1, further comprising the step of sending price data to the buyer via the global communications network, said price data representing the price.
- 5 8. The method of claim 1, further comprising the step of accepting offer data from the seller representing an offer from the seller to sell the product within the price range.
9. The method of claim 1, wherein the PDA requires participation of at least one participant in addition to the buyer.
- 10 10. The method of claim 1, wherein the steps of accepting the first request from the buyer, accepting the second request from the buyer, and receiving the performance data from the buyer, are performed by a master controller.
11. The method of claim 1, wherein the price is determined at least partially upon participation of the buyer in an auction.
12. The method of claim 1, wherein the global communications network is the Internet.
- 15 13. 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;
- accepting acknowledgement from the buyer representing an intent of the buyer to buy the
- 20 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.

14. The method of claim 13, further comprising the step of receiving data over the global communications network representing an election of the buyer to select the PDA.

15. The method of claim 13, further comprising the step of accepting payment information
5 from the buyer over the global communications network.

17. The method of claim 32, wherein the PDA is adapted to accommodate participation of a second participant.

18. The method of claim 13 wherein the price is dependent at least partially upon a bid selected by the buyer.

10 19. 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:

15 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;

20 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.

20. The system of claim 19, wherein the PDA comprises computer-executable code sent to the buyer over the global communications network.

21. The system of claim 20, wherein the server is further programmed to process payment information of the buyer communicated over the global communications network.

5 22. The method as in claim 1, wherein the price is determined at least partially upon an offer received from the buyer.

23. 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.

10 24. 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.

25. The method as in claim 13, wherein the price is determined at least partially upon results of an auction.

15 26. The method as in claim 13, wherein the price is determined at least partially upon an offer received from the buyer.

27. 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.

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

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

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

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

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.

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

34. The system of Claim 19, 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.

10 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
15 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.

20 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.

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
5 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.

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

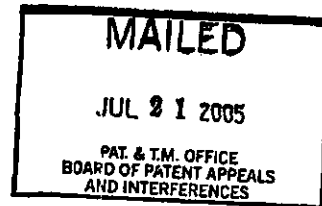
UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte WAYNE W. LIN

Appeal No. 2005-0956
Application No. 09/342,866

ON BRIEF



Before HAIRSTON, DIXON, and MACDONALD, *Administrative Patent Judges*.
MACDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-15 and 17-44. Claim 16 has been canceled.

Invention

Appellant's invention relates to a method and system for determining the price of goods and/or services to be provided from a seller or sellers to a buyer or buyers. Various forms of electronic competition and/or entertainment are used as intermediary activities between said buyers and sellers to ultimately determine a contract price. Sellers offer a product or service within a specified price range, and buyers enter into a contract to buy the product or service within

that price range. The ultimate price (within the range) is determined based upon the buyer's performance rating, or score, which the buyer receives from participating in a collateral activity. Thus, if a buyer performs poorly at the activity, the price will be higher, whereas if the buyer does well, the price will be lower. The activity may be a video game (including audio/visual games), electronic board game, crossword puzzle or other word game, sports bet, card game, or any other activity or combination of activities, and may be performed against the seller, a pre-programmed software opponent, a computer opponent, another buyer competing for the same or a different product, a player participating as a player only and not as a buyer, or anyone or anything else. The actual range may be a scaled set of prices (e.g., \$1000.00, \$1100.00, \$1200.00, etc.), or it may be simply a single price, such as a discounted price, for which the buyer will either "win" the contract or "lose", and not be entitled to the product at the specified price, or it may even include a lower boundary of \$0.00, such that the product or service might be attainable for free if the buyer can achieve a certain performance level while participating in the PDA. Appellant's specification at page 3, line 8, through page 4, line 4.

Claim 1 is representative of the claimed invention and is reproduced as follows:

1. 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.

References

The references relied on by the Examiner are as follows:

Marino et al. (Marino)	4,850,007	Jul. 18, 1989
Rossides	5,269,521	Dec. 14, 1993
Kelly et al. (Kelly)	5,816,918	Oct. 6, 1998
Goldhaber et al. (Goldhaber)	5,855,008	Dec. 29, 1998

"Allotafun To Develop Extensive Toy Internet Site"; PR Newswire; December 3, 1998; pp 1-2. (Allotafun)

Rockoff et al. (Rockoff); "Design of an Internet-based System for Remote Dutch Auctions"; Internet Research: Electronic Networking Applications and Policy; vol. 5, no. 4; 1995; pp. 10-16.

Rejections At Issue

Claims 1-2, 11-15, 18-19, 25-26, 28, 30, 35-36, 39, and 41 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Goldhaber and Marino.

Claims 3-4, 6-10, 20-23, 29, 31, and 37 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Goldhaber and Marino and Rossides.

Claim 5 stands rejected under 35 U.S.C. § 103 as being obvious over the combination of Goldhaber and Marino and Rossides and Allotafun.

Claims 24, 27, 32-34, 38, and 42-44 stand rejected under 35 U.S.C. § 103 as being obvious over the combination of Goldhaber and Marino and Kelly.

Claim 40 stands rejected under 35 U.S.C. § 103 as being obvious over the combination of Goldhaber and Marino and Rockoff.

Claim 17 stands rejected under 35 U.S.C. § 103 as being obvious over the combination of Goldhaber and Marino and Kelly and Rossides.

Throughout our opinion, we make references to the Appellant's briefs, and to the Examiner's Answer for the respective details thereof.¹

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and the arguments of the Appellant and the Examiner, for the reasons stated *infra*, we reverse the Examiner's rejection of claims 1-15 and 17-44 under 35 U.S.C. § 103.

Only those arguments actually made by Appellant have been considered in this decision. Arguments that Appellant could have made but chose not to

make in the brief have not been considered. We deem such arguments to be waived by Appellant [see 37 CFR § 41.37(c)(1)(vii) effective September 13, 2004 replacing 37 CFR § 1.192(a)].

Appellant has indicated that for purposes of this appeal, the claims stand or fall together in six groupings:

Claims 1-2, 12-15, 18-19, 26, 28, 30, 35-36, and 41, as Group I;

Claims 11, 25 and 39, as Group II;

Claims 3-4, 6-10, and 20-23, as Group III;

Claims 29, 31, and 37, as Group IV;

Claims 24, 27, 32, 34, 38, and 42-44 as Group V; and

Claim 33 as Group VI.

See page 5 of the brief. Appellant has fully met the requirements of 37 CFR § 1.192 (c)(7) (July 1, 2002) as amended at 62 Fed. Reg. 53169 (October 10, 1997), which was controlling at the time of Appellant's filing of the brief. 37 CFR § 1.192 (c)(7) states:

Grouping of claims. For each ground of rejection which appellant contests and which applies to a group of two or more claims, the Board shall select a single claim from the group and shall decide the appeal as to the ground of rejection on the basis of that claim alone unless a statement is included that the claims of the group do not stand or fall together and, in the argument under paragraph (c)(8) of this section, appellant explains why the claims of the

¹ Appellant filed a supplemental appeal brief ("the brief" hereinafter) on August 5, 2002, fully replacing the appeal brief filed on January 17, 2002. The Examiner mailed an Examiner's Answer on October 1, 2002.

group are believed to be separately patentable. Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable.

We will, thereby, consider Appellant's claims as standing or falling together in the six groups noted above, and we will treat:

- Claim 1 as a representative claim of Group I;
- Claim 11 as a representative claim of Group II;
- Claim 3 as a representative claim of Group III;
- Claim 29 as a representative claim of Group IV;
- Claim 24 as a representative claim of Group V; and
- Claim 33 as a representative claim of Group VI.

Additionally, based on the separate rejections thereof, we will treat:

- Claim 17 as a separate Group VII;
- Claim 5 as a separate Group VIII; and
- Claim 40 as a separate Group IX.

If the brief fails to meet either requirement, the Board is free to select a single claim from each group and to decide the appeal of that rejection based solely on the selected representative claim. *In re McDaniel*, 293 F.3d 1379, 1383, 63 USPQ2d 1462, 1465 (Fed. Cir. 2002). *See also In re Watts*, 354 F.3d 1362, 1368, 69 USPQ2d 1453, 1457 (Fed. Cir. 2004).

I. Whether the Rejection of Claims 1-2, 12-15, 18-19, 26, 28, 30, 35-36, and 41 Under 35 U.S.C. § 103 is proper?

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claims 1-2, 12-15, 18-19, 26, 28, 30, 35-36, and 41. Accordingly, we reverse.

In rejecting claims under 35 U.S.C. § 103, the Examiner bears the initial burden of establishing a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984). The Examiner can satisfy this burden by showing that some objective teaching in the prior art or knowledge generally available to one of ordinary skill in the art suggests the claimed subject matter. *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the Appellant. *Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444. *See also Piasecki*, 745 F.2d at 1472, 223 USPQ at 788.

An obviousness analysis commences with a review and consideration of all the pertinent evidence and arguments. "In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." *Oetiker*, 977 F.2d at 1445, 24 USPQ2d at 1444. "[T]he Board must not only assure that the requisite findings are made, based on evidence of

record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion." *In re Lee*, 277 F.3d 1338, 1344, 61 USPQ2d 1430, 1434 (Fed. Cir. 2002).

With respect to independent claim 1, Appellant argues at pages 7-13 of the brief, that Marino is a non-analogous reference. We find this argument unpersuasive. Our review of the Goldhaber and Marino references finds that both are directed to the same field of goods or service price determination based on collateral activity. This is the same field addressed by Appellant.

Appellant argues that his field of invention is the specific field of price determination based on the collateral activity of "competitive or entertainment-based" activity, while Marino is directed to only the very specific field of price determination is based on the collateral activity of "subscriber's attention" (particularly to advertisements). We find this argument without merit. We find nothing in claim 1 that limits the claim to only "competitive or entertainment-based" activity. Rather, the claim merely recites "a Price-Determining-Activity (PDA)." Nothing in the claim requires that the PDA be read as competitive or entertainment-based. Further, Appellant's specification recites at page 3, lines 18-19, that the collateral activity may be "any other activity or combination of activities." We find that Marino's collateral activity of listening to advertisements meets the language of claim 1.

Also at pages 14-20 of the brief, Appellant argues that Marino does not teach numerous features required by or inherent to claim 1. These features comprise:

- 1) A direct link between performance of a PDA and the price of the product;
- 2) An uncertain final cost of an item;
- 3) Enhanced cognitive reasoning;
- 4) High-level motor skill participation of the user; and
- 5) Competition and/or entertainment qualities.

Features 2-5 are argued by Appellant to be inherent features of claim 1.

As to the features 2-5, we find Appellant's arguments unpersuasive. "In determining whether the invention as a whole would have been obvious under 35 U.S.C. § 103, we must first delineate the invention as a whole. In delineating the invention as a whole, we look not only to the subject matter which is literally recited in the claim in question . . . but also to those properties of the subject matter which are inherent in the subject matter and are disclosed in the specification . . . Just as we look to a chemical and its properties when we examine the obviousness of a composition of matter claim, it is this invention as a whole, and not some part of it, which must be obvious under 35 U.S.C. § 103." *In re Antonie*, 559 F.2d 618, 620, 195 USPQ 6,8 (CCPA 1977) (citations omitted).

Appellant points to no language in claim 1, nor do we find language in claim 1, that requires features 2-5 to be inherently included in the claimed invention. Contrast this to *In re Antonia*, where specific claim language was the basis for including the inherent feature or property. Specifically, the claimed wastewater treatment device had a tank volume to contractor area of 0.12 gal./sq. ft. The court found the invention, as a whole, was the ratio of 0.12 and its inherent property that the claimed devices maximized treatment capacity regardless of other variables in the devices. The prior art did not recognize that treatment capacity was a function of the tank volume to contractor ratio, and therefore the parameter optimized was not recognized in the art to be a result-effective variable.

Finally, we address feature 1) above, Appellant argues that Marino fails to teach "a direct link between performance of a PDA and the price of the product." Claim 1, requires that the "said price [be] scaled to the performance of the buyer." Despite our repeated reviews of the Marino patent, we do not find scaling of the price. Marino teaches that there is a reduced rate for a call (col. 3, line 63) and that the reduced rate may be accumulated over a monthly bill (col. 4, lines 19-20), which we read as a reduced rate for plural calls. However, to meet the "scaled price" limitation of claim 1, the system of Marino would need to teach plural reduced rates for a single call, for example, accumulating separate credits for each advertisement in a set of advertisements (col. 4, lines 53-60)

and applying all the credits to reducing the rate of the same call. We find that Marino, without more, does not teach such a scaling feature.

Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 103.

ii. *Whether the Rejection of Claims 11, 25, and 39 Under 35 U.S.C. § 103 is proper?*

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claims 11, 25, and 39. Accordingly, we reverse.

With respect to dependent claims 11, 25, and 39, we note that the Examiner has relied on the Goldhaber reference to teach "wherein the price is determined at least partially upon participation of the buyer in an auction." [See the Final rejection at page 6]. Appellant argues this is in error at pages 24-25 of the brief. We find Appellant's argument unpersuasive. Claim 11 is not restricted as to the type of buyer participation in the claimed auction. In Goldhaber, the buyer (viewer) participates by electing to have advertisers bid for their attention (col. 4, lines 65-66). We find that this disclosure of Goldhaber meets the limitation of determining price based on buyer participation in an auction as recited in claim 11.

We note however, Goldhaber fails to cure the deficiencies of Marino noted above with respect to claim 1. Therefore, we will not sustain the

Examiner's rejection under 35 U.S.C. § 103 for the same reasons as set forth above.

III. *Whether the Rejection of Claims 3-4, 6-10, and 20-23 Under 35 U.S.C. § 103 is proper?*

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claims 3-4, 6-10, and 20-23. Accordingly, we reverse.

With respect to dependent claims 3-4, 6-10, and 20-23, Appellant refers back to the arguments presented above for claim 1. Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 103 for the same reasons as set forth above.

IV. *Whether the Rejection of Claims 29, 31, and 37 Under 35 U.S.C. § 103 is proper?*

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claims 29, 31, and 37. Accordingly, we reverse.

With respect to dependent claims 29, 31, and 37, we note that the Examiner has relied on the Allotafun reference to teach the use of video games as part of a promotion/marketing. [See the Final rejection at page 16]. Appellant argues at pages 25-26 of the brief that the rejection fails to show scaling the

price to a performance while participating in a video game. We find Appellant's argument unpersuasive. Claim 29 is not restricted as to "the performance" being the performance (or score) in the video game. Rather, claim 29 merely requires that "the PDA is a video game." The Examiner has shown that it is known to provide a price discount based on the performance of attention to advertising, and Allotafun teaches it is beneficial to do advertising in the form of a video game. We find that this disclosure of Allotafun meets the limitation of the PDA is a video game as recited in claim 29.

We note, however, that Allotafun fails to cure the deficiencies of Marino noted above with respect to claim 1. Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 103 for the same reasons as set forth above.

V. *Whether the Rejection of Claims 24, 27, 32, 34, 38, and 42-44 Under 35 U.S.C. § 103 is proper?*

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claims 24, 27, 32, 34, 38, and 42-44. Accordingly, we reverse.

With respect to dependent claims 24, 27, 32, 34, 38, and 42-44, Appellant does not present separate arguments and merely refers back to the arguments presented above for claim 1. Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 103 for the same reasons as set forth above.

VI. *Whether the Rejection of Claim 33 Under 35 U.S.C. § 103 is proper?*

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claim 33. Accordingly, we reverse.

With respect to dependent claim 33, Appellant does not present separate arguments and merely refers back to the arguments presented above for claim 1. Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 103 for the same reasons as set forth above.

VII. *Whether the Rejection of Claim 17 Under 35 U.S.C. § 103 is proper?*

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claim 17. Accordingly, we reverse.

With respect to dependent claim 17, Appellant does not present separate arguments and merely refers back to the arguments presented above for claim 1. Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 103 for the same reasons as set forth above.

VIII. Whether the Rejection of Claim 5 Under 35 U.S.C. § 103 is proper?

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claim 5. Accordingly, we reverse.

With respect to dependent claim 5, Appellant does not present separate arguments and merely refers back to the arguments presented above for claim 1. Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 103 for the same reasons as set forth above.

IX. Whether the Rejection of Claim 40 Under 35 U.S.C. § 103 is proper?

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the invention as set forth in claim 40. Accordingly, we reverse.

With respect to dependent claim 40, Appellant does not present separate arguments and merely refers back to the arguments presented above for claim 1. Therefore, we will not sustain the Examiner's rejection under 35 U.S.C. § 103 for the same reasons as set forth above.

Appeal No. 2005-0006
Application No. 09/342,866

Page 17

WAYNE LIN
43 SOLSTICE
IRVINE, CA 90602

Examiner-Initiated Interview Summary	Application No. 09/342,866	Applicant(s) LIN, WAYNE W.	
	Examiner Jeffrey A. Smith	Art Unit 3625	

All Participants:

(1) Jeffrey A. Smith

(2) Wayne W. Lin

Date of Interview: 15 September 2005

Status of Application: _____

(3) _____

(4) _____

Time: _____

Type of Interview:

Telephonic

Video Conference

Personal (Copy given to: Applicant Applicant's representative)

Exhibit Shown or Demonstrated: Yes No

If Yes, provide a brief description:

Part I.

Rejection(s) discussed:

Claims discussed:
35-44

Prior art documents discussed:
Williams (US Pat. No. 4,869,500)

Part II.

SUBSTANCE OF INTERVIEW DESCRIBING THE GENERAL NATURE OF WHAT WAS DISCUSSED:
See Continuation Sheet

Part III.

It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview directly resulted in the allowance of the application. The examiner will provide a written summary of the substance of the interview in the Notice of Allowability.

It is not necessary for applicant to provide a separate record of the substance of the interview, since the interview did not result in resolution of all issues. A brief summary by the examiner appears in Part II above.

(Examiner/SPE Signature) _____ (Applicant/Applicant's Representative Signature – if appropriate)

Continuation of Substance of Interview including description of the general nature of what was discussed:

The Examiner indicated that claims 35-44 were anticipated and/or obvious in view of newly discovered prior art to Williams. The Examiner identified Mr. Lin's options as having prosecution on these claims reopened or authorizing an Examiner's amendment in order to avoid rejections based on Williams. Mr. Lin authorized the cancellation of claims 35-44. The Examiner identified Mr. Lin's option to file a continuation during the pendency of this application in order to continue prosecution of claims 35-44.

Notice of Allowability	Application No.	Applicant(s)	
	09/342,866	LIN, WAYNE W.	
	Examiner	Art Unit	
	Jeffrey A. Smith	3825	

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address-

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS. This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. This communication is responsive to Examiner's Amendment of 9/15/05.
2. The allowed claim(s) is/are 1-15 and 17-34.
3. The drawings filed on 04 December 2000 are accepted by the Examiner.
4. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some* c) None of the:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

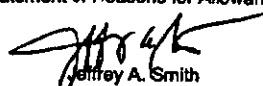
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) hereto or 2) to Paper No./Mail Date _____.
 - (b) including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____ |


 Jeffrey A. Smith
 Primary Examiner
 Art Unit: 3825

Application/Control Number: 09/342,866
Art Unit: 3625

Ex. Amt 35/1
Page 2
L. Ellis

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Wayne W. Lin on September 15, 2005..

The application has been amended as follows:

In the Claims

Claims 35-44 have been cancelled.

REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

Regarding claim 1

The prior art of record neither anticipates a method of doing business over a global communications network comprising, *inter alia*, the steps: receiving data from the buyer over a global communications network, said data representing the performance of said buyer during a Price-Determining-Activity (PDA); and determining the price of a product based at least partially upon the data received, said price being within a price range and scaled to the performance of the buyer.

Regarding claim 13

The prior art of record neither anticipates a method of determining a price of a product using a global communications network, comprising, *inter alia*, the steps: 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; and

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

Regarding claim 19

Claim 9 is a system claim (parallel in subject matter to claim 13) which recites a computer server having access to a global communications network, and being programmed to, *inter alia*: accept 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; and assign a price to the product, said price being scaled to the performance of the buyer.

As recognized by the Board of Appeals in its Decision on Appeal mailed July 21, 2005, Marino, or any other prior art of record, does not teach a scaling feature as recited in claims 1, 13, and 19. Such scaling feature is directed to determining or assigning a price to a product based, at least in part, upon a buyer's performance in a Price-Determining-Activity.

The Examiner also notes newly cited prior art to Williams (U.S. Patent No. 4,869,500). Williams teaches a method of

Art Unit: 3625


assigning a price to a product comprising the steps:
determining a performance of a buyer during a Price-Determining-
Activity; and assigning a price to the product, said price being
scaled to the performance of the buyer. See col. 2, lines 40-
54. The Examiner notes, however, that the Williams invention is
embodied in a stand-alone vending machine (col. 1, lines 5-9)
which is not networked in any manner. Accordingly, there is no
teaching or suggestion in Williams, or any other prior art of
record, that would provide motivation to one of ordinary skill
in the art to include the transmission or receipt of data over a
global communications network.

Any comments considered necessary by applicant must be
submitted no later than the payment of the issue fee and, to
avoid processing delays, should preferably accompany the issue
fee. Such submissions should be clearly labeled "Comments on
Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Smith whose telephone number is (571) 272-6763. The examiner can normally be reached on M-F 6:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on (571) 272-7159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jeffrey A. Smith
Primary Examiner
Art Unit 3625

jas

Notice of References Cited	Application/Control No. 09/342,866	Applicant(s)/Patent Under Reexamination LIN, WAYNE W.	
	Examiner Jeffrey A. Smith	Art Unit 3625	Page 1 of 1

U.S. PATENT DOCUMENTS

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	Classification
A	US-4,869,500	09-1989	Williams, Geoffrey A.	463/2
B	US-			
C	US-			
D	US-			
E	US-			
F	US-			
G	US-			
H	US-			
I	US-			
J	US-			
K	US-			
L	US-			
M	US-			

FOREIGN PATENT DOCUMENTS

*	Document Number Country Code-Number-Kind Code	Date MM-YYYY	Country	Name	Classification
N					
O					
P					
Q					
R					
S					
T					

NON-PATENT DOCUMENTS

*	Include as applicable: Author, Title Date, Publisher, Edition or Volume, Pertinent Pages)
U	
V	
W	
X	

*A copy of this reference is not being furnished with this Office action. (See MPEP § 707.06(e).)
Dates in MM-YYYY format are publication dates. Classifications may be US or foreign.