

Patent på datorrelaterade upppfinningar

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Osäkert rättsläge

- Europaparlamentet röstade ner förslaget till direktiv om patent på datorrelaterade uppfinningar år 2005 (648 mot 14).
- I praxis från EPO:s besvärskamrar har utvecklingen gått mot att inte avslå ansökningar beroende på att uppfinningen består av ett datorprogram utan att istället, vid prövningen av uppfinningshöjd, bara se till sådan problemlösning som en tekniker typiskt sett utför.

EPO T 258/03 of 21 April 2004

Hitachi, Ltd., Auction method

Claim 1 reads:

"An automatic auction method executed in a server computer comprising the steps of:

- a) transmitting information on a product to be auctioned to a plurality of client computers via a network, each client computer belonging to a bidder;
- b) receiving a plurality of auction ordering information pieces, each including a desired price and a maximum price in competitive state, for purchase of said product, from the plurality of client computers via the network;
- c) storing the received auction ordering information pieces in the server computer for respective bidders;
- d) setting an auction price;
- e) determining whether there is any bidder who proposes a desired price equal to or higher than the auction price using the auction ordering information pieces stored in the server computer;
- f) if there is no bidder in the step e), lowering the auction price, and repeating the step e);
- g) if there is more than one bidder at step e), judging whether there is more than one bidder for whom the auction price is less than or equal to the desired price such that a competitive state occurs using the auction ordering information pieces stored in the server computer;
- h) if the competitive state occurs, increasing the auction price by a predetermined value;
- i) excluding the bidder who proposes acceptable a price lower than the increased auction price and specifying the other bidder or bidders using the auction ordering information;
- j) judging whether the competitive state occurs among the bidder or bidders specified in the step i);
- k) repeating the steps h), i) and j) and determining the remaining bidder as a successful bidder when there is no competitive state at step j; and
- l) if no competitive state occurs in the step g), determining the remaining bidder as a successful bidder."

Uppfinningen

- “The invention according to claim 1 is an ‘automatic auction method executed in a server computer’. The auction starts with preliminary steps of data exchange between the client computers and the server computer in order to collect bids from the participants. Each bid comprises two prices, a ‘desired price’ and a ‘maximum price in competitive state’. After this initial phase the auction is automatic and does not require that the bidders follow the auction on-line. An auction price is set and successively lowered (which is typical for so-called Dutch auctions) until it reaches the level of the highest bid or bids as determined by the ‘desired price’. In case of several identical bids the price is increased until only the bidder having offered the highest ‘maximum price’ is left. He is declared successful.”

Uppfinningbegreppet -- datorprogram

- “[I]n more recent decisions of the boards any comparison with the prior art was found to be inappropriate for examining the presence of an invention”
- “[T]he Board holds that the [subject-matter of the application] is an invention within the meaning of Article 52(1) EPC since it comprises clearly technical features such as a ‘server computer’, ‘client computers’ and a ‘network’.

Förskjutningen

- “The Board is aware that its comparatively broad interpretation of the term ‘invention’ in Article 52(1) EPC will include activities which are so familiar that their technical character tends to be overlooked, such as the act of writing using pen and paper. Needless to say, however, this does not imply that all methods involving the use of technical means are patentable. They still have to be new, represent a non-obvious technical solution to a technical problem, and be susceptible of industrial application.”

Uppfinningshöjd

- “D6 discloses an auctioning system comprising an auctioneer's operator station connected with operation stations for bidders. The auction is of the Dutch type, according to which the auction price, as monitored on an auction ‘clock’, sinks with time. The bidders are required to follow the auction at their operator stations. A bidder may stop the clock remotely using a pushbutton on his desk. The first bidder to stop the clock is successful. Since the realtime behaviour is of great importance at Dutch auctions, time information is transmitted with the messages to determine the order of stop commands.”

Skillnad teknik och affärsmetod

- “The appellant has argued that the technical effect resides in overcoming the problem in the prior art of delays in propagation of information. Online, these delays will influence the outcome of the auction. The solution consists of adapting the known auction method such that it can be performed automatically. In the Board's view, however, this solution does not contribute to a technical character and cannot therefore be taken into account for assessing inventive step since it concerns the rules of the auction, i.e. it is not a technical solution to the delay problem described, but a solution entirely based on modifications to the auction method. Method steps consisting of modifications to a business scheme and aimed at circumventing a technical problem rather than solving it by technical means cannot contribute to the technical character of the subject-matter claimed.”

“Uppfinningshöjd i sådant som en människa inte skulle göra”

- “Nevertheless, if a step of a method has been designed in such a way as to be particularly suitable for being performed on a computer, it has arguably a technical character. The invention under examination may contain such a feature which does not correspond to what a human being would do if performing the auction without computer support. This is the step of raising the auction price successively in order to determine the highest maximum price offered by bidders having proposed the same desired price (step (h)). An auctioneer would presumably do this simply by looking at the bids. Still, the Board is convinced that this way of ranking the bids is a routine programming measure well within the reach of the skilled person. Thus, this feature, even if possibly constituting a technical solution to a problem, would have been obvious to the person skilled in the art of data processing.”

Slutsatser

- Att det ingår en mikroprocessor i en traditionell produkt som fungerar på ett nytt sätt, även när det nya i produkten styrs av processorn, är inget problem. Ex. Stockholms tingsrätts mål T 18248-04 (2006-11-30) - Mjölkningsrobot.
- Osäkert rättsläge när effekten bara uppkommer i dator, nätverk av datorer eller annan mikroelektronisk utrustning. Oklar definition av teknisk problemlösning.
- Tvillingkortet NJA 2000 s. 497 (NIR 2001 s. 290).