

Ariba Lawsuit Delivers a Moderate Blow to Emptoris

Debbie Wilson

Ariba has successfully prevailed against Emptoris for infringement of two reverse-auction patents. Emptoris on-premises Sourcing customers and all prospects must take action to protect their interests.

NEWS ANALYSIS

Event

On 16 December 2008, a court ordered Emptoris, a sourcing and contract management application vendor, to pay an enhanced damages award of \$1.4 million for willful infringement in connection with Emptoris' infringement of the following two reverse auction-patents held by a competitor, Ariba:

- U.S. Patent No. 6,499,018 covers the setting of individual bid ceilings for suppliers prior to an auction. Buyers employ this feature when they use bids received in a request for proposal, without suppliers' permission, as individual bids in a subsequent reverse auction.
- U.S. Patent No. 6,216,114 allows a reverse auction to be automatically extended past the original close time under certain, preset conditions, such as receipt of a new bid from a top-three vendor.

On 29 October 2008, a jury awarded Ariba \$5 million in damages, bringing the imminently due, expected total fine to approximately \$7 million. The judge is expected to issue an injunction (a court order to permanently stop doing something) against Emptoris by mid-January 2009.

Analysis

Given the upper limit of \$5.8 million in treble damages that were possible in this case, a penalty of \$1.4 million is modest. Nevertheless, \$7 million is a significant penalty for Emptoris, a vendor that earned approximately \$50 million in revenue for 2008. In other Gartner reports, we have expressed some concern regarding Emptoris' financial health; this event increases that concern. Emptoris elected not to provide financial information to Gartner; however Emptoris indicated that on 19 December it gained access to new capital to cover the fines. Emptoris may appeal this ruling; if it does, it must post an appeal bond (an escrow account for court-ordered awards) for 120% of the full amount.

The pending injunction is likely to prohibit Emptoris from selling the infringing software; it may also prohibit it from servicing infringing software. Emptoris claims to have created and delivered a patch to remove the infringing features. This change does not significantly impact the overall functionality of its Sourcing solution. By 12 December 2008, Emptoris had installed this patch on behalf of its approximately 150 hosted and software-as-a-service customers, and it shipped the patch to its approximately 30 on-premises customers. Emptoris vetted the change with internal and external patent attorneys for compliance. Ariba must accept or refute the patch by the first week of January 2009; if Ariba refutes the patch, the court will determine whether further changes are required.

We do not expect the damages Ariba is slated to receive to significantly exceed Ariba's legal expenses; however, Ariba may still consider its expense to be money well-spent as the suit has created a distraction for a significant competitor.

RECOMMENDATIONS

- **Emptoris on-premises customers:** Implement the patch immediately to avoid issues with service or upgrades.

- **Emptoris prospects:** Do not overlook financial performance due diligence prior to investing in Emptoris solutions.
- **All customers and prospects:** Monitor the situation until legal proceedings have concluded.

RECOMMENDED READING

- "MarketScope for Enterprise Contract Management" — The ECM market grew 23% in 2007 and is projected to gain 16% more in 2008, as companies recognize the value of enabling the creation, storage and management of legal agreements of all types. **By Debbie Wilson**
- "Vendor Rating: Emptoris" — Emptoris has established itself as a general-purpose, premium sourcing and contract management applications vendor. **By Debbie Wilson**

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