Commissioner's Decision #1264

Décision du Commissaire #1264

TOPIC: H00, H20, O

SUJECT: H00, H20, O

Application No : 2,286,794

Demand no : 2,286,794

COMMISSIONER'S DECISION SUMMARY

C.D.1264 App'n 2,286,794

Obviousness, aggregation, exhaustive combination

The examiner rejected this application on the basis that the invention claimed was obvious at the claim date, over cited prior art consisting of the Canadian patent, a United States patent and a French patent. The Examiner also rejected the claimed invention as being directed to an aggregation and as being an exhaustive combination. The Board found that the applicant was claiming an invention which was obvious but that the combination of elements was not an aggregation and was not an exhaustive combination.

The application was refused by the Commissioner of Patents.

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2,286,794 having been rejected under Subsection 30(3) of the Patent Rules, the Applicant asked that the Final Action of the Examiner be reviewed. The rejection has been considered by the Patent Appeal Board and by the Commissioner of Patents. The findings of the Board and the decision of the Commissioner are as follows:

Agent for the Applicant

Ridout & Maybee LLP

150 Metcalfe Street, 19th Floor

Ottawa, Ontario

K2P 1P1

This decision deals with a request that the Commissioner of Patents review the Examiner's Final Action on patent application number 2,286,794 which was filed on May 6, 1998 and is entitled "SUBWAY TV MEDIA SYSTEM". The Applicant and inventor is Scott Blair. The Examiner in charge issued a Final Action on October 21, 2002 rejecting claims 1 to 16 in view of US patent 5,606,154 to Doigan et al. and common knowledge in the art as illustrated by French Patent 2,652,701 to Comerzan-Sorin and Canadian Patent 1,316,253 to Tagawa et al. Claims 9-16 were also rejected as being directed to a mere aggregation of elements and an exhaustive combination.

At the Applicant's request, the Patent Appeal Board conducted a hearing via teleconference on November 24, 2004, at which time the Applicant was represented by Mr. Randy Mitchell of the firm of Ridout & Maybee LLP. The Inventor and Applicant Mr. Scott Blair was present with Mr. Mitchell as well. The Patent Office was represented by Mr. Terry Cartile, the Examiner in charge of the application, and his Section Head, Mr. André Gelinas.

The invention relates to the incorporation of a video display system in a subway car. The subway car includes multiple video terminals mounted near the ceiling to be used as a television public service message display, and entertainment and advertising system. The system displays televisual entertainment and advertising features of a duration suitable for a typical relatively brief subway ride to the subway riders. Figure 2 illustrates the disclosed invention.

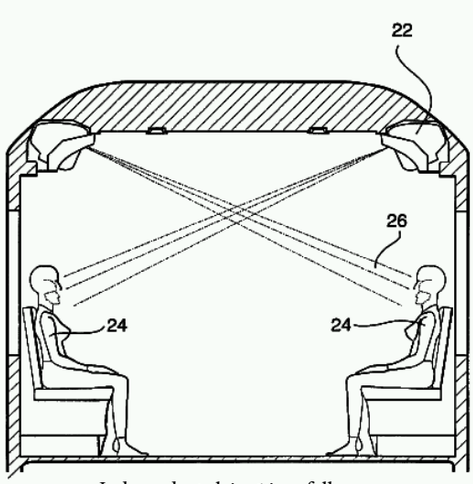

FIG.2

Independent claim 1 is as follows:

1. A subway car for mass transportation including longitudinal opposed sidewalls, a ceiling adjoining the sidewalls,

> a video display system comprising a plurality of video display monitors each having a video screen, and a video signal source unit operatively connected to said monitors, said monitors being spaced along the length of the car on opposed sides thereof, each of said monitor being mounted at the junction of the sidewall and ceiling, with the screen of the monitor substantially flush with the adjacent wall surface structure of the car, and directed obliquely downwardly toward the car seats, so that each video screen is readily visible to passengers in the subway car.

In his Final Action, the Examiner refused the claims of the application in view of US patent 5,606,154 to Doigan et al. and common knowledge in the art as illustrated by French Patent 2,652,701 to Comerzan-Sorin and Canadian Patent 1,316,253 to Tagawa et al., stating in part that:

> Subway cars for mass transportation have been disclosed by *Doigan et al.*, namely *light rail horizontal people movers having cars*. All three references describe a video signal source connected to the monitor. In view of the common use of video screens in bar rooms, it is obvious that monitors are mounted at the intersection of the wall with the ceiling, and are directed to the viewing audience.
>
> The dependent claims do not add any patentable subject matter, and claims 1-16 therefore do not comply with Section 28.3 of the Patent Act, because the subject matter of these claims would have been obvious on the claim date, in view of *Doigan et al.*, and common knowledge of multiple monitors in passenger transport compartments, as taught by *Comerzan-Sorin* or *Tagawa et al.*

The Examiner also refused claims 9-16 as being directed to a mere aggregation of elements and an exhaustive combination, stating in part that:

> The subway car and the video monitors each perform its own proper function independently of one another. The specification does not teach some working inter-relationship between these known integers. Unlike the applied reference of *Doigan et al.*, which teaches methods for synchronizing video display playing times with the opening and closing of doors of the car, no working interrelationship is taught here. The immediate co-operating environment for the advertising and entertainment programs is the video system rather than the subway car. The subway car functions quite independently from the video monitor display in the car providing entertainment and advertising features (page 2, line 22).
> .....
> In addition, claims 9-16 are also directed to an exhaustive combination, as stated in the examiner's report of June 5th, 2000.

The report of June 5, 2000 stated in part that:

> The invention may be used in a subway car, but the subway car is not the invention, as presently claimed.

In the reply of April 17, 2003, the Applicant cancelled claims 1-16 and substituted claims 1-11 therefor, claims 1-6 relating to the subway car/video display system combination, and claims 7-11 relating to the video display system for displaying televised material to passengers in a subway car.

In the reply the Applicant stated, in part, that:

> Attention is particularly drawn to a feature of claim 1 which specifies that "the screen of the monitor substantially flush with the adjacent wall surface structure of the car", a feature not to be found in any of the cited references, and an inventive, unobvious feature specifically adapted for subway rail car use of the video systems, where space is at a premium, and mounting of the video screens needs to be not only in locations where they are readily visible to all passengers (a feature also included in the claims) but also clear of windows, doors and exits and blending in with the general overall appearance of the subway car interior.
>
> A further inventive feature is incorporated into claim 5 (which is itself dependent on claim 1 and therefore contains all the features of claim 1), namely a rigid transparent unit overlying the screen of each monitor and shaped to coincide with the shape of the internal wall of the subway car. No such feature is to be found in any of the cited references. Its significance is discussed in the disclosure of the application, page 7 lines 17-30. It enables the viewing unit to be concavely curved so as to blend as a continuum with the subway car walls, as further specified in claim 6. Applicant respectfully disagrees to the Examiner's holding that the Doigan et al. reference, U.S. patent 5,606,154, discloses subway cars. The phrase pointed out by the Examiner, "light rail horizontal people movers having cars" does not mean subway cars. Light rail horizontal people movers are above ground

> operations. If Doigan et al. had thought of subway cars for installations, they would clearly have said so. Doigan envisages shuttles moved by ropes, linear induction motors or otherwise, at the relevant passage at column 2, line 55-66, and had Doigan et al. been intending to apply his invention to subway cars, he would surely have said so in this passage, and refer clearly to subway cars. Light rail horizontal people movers are of the type which run above ground on elevated trackways. Totally different considerations apply to subway cars.
>
> .....
>
> Thus, not only is there nothing in the cited prior art evidencing that the incorporation of t.v. video system in subway cars has ever been contemplated before, but also the claims are clearly restricted to special features which overcome structural and installation problems encountered with subway car systems. The inventor has not only had the novel idea of incorporating such systems into subways, but has also solved technical and aesthetic problems associated with such installations, in non-obvious manner.
>
> With respect to the examiner's rejection to the previous claims 9-16 on the grounds of aggregation, it is respectfully submitted that newly presented claims 1-6 defining a subway car are not open to such an objection. The inclusion of the feature that the monitors are mounted at the junction of the sidewall and ceiling, with the screen substantially flush with the adjacent wall surface structure of the car, defines a cooperating environment and interrelationship of the subway car structure and the video system, properly defining a unitary invention which operates as a whole.
>
> Also on the issue of obviousness, the Examiner is respectfully reminded of the expert opinion in the form of affidavits/declarations which were presented during the international prosecution phase, and are of record in the file. The assembled expert opinion is that the invention disclosed is herein not obvious.

At the teleconference, the Applicant indicated that claims 7-11 submitted on April 17, 2003 in response to the Final Action were to be dropped from consideration. Consequently the Board is left to consider claims 1-6, which are similar to former claims 9-16, referred to in the Final Action.

During the teleconference, the Applicant highlighted two aspects which he wished to be considered in determining the inventive nature of the claims.

1) Was it obvious to incorporate TV entertainment and advertising systems into subway cars?

2) Was the precise manner in which this was accomplished obvious?

In assessing the question of the obviousness of a claimed invention, the Board must look to the appropriate tests which have been outlined by the Courts, in particular in Beecham Canada Ltd. v. Proctor and Gamble Co. (1981), 56 C.P.R. (2d) 214 (F.C.T.D.), aff'd (1982), 61 C.P.R. (2d) 1 (F.C.A.), leave to appeal refused (1982), 63 C.P.R. (2d) 260 (S.C.C.), it was stated that:

> The question to be answered is whether at the date of invention ... an unimaginative skilled technician, in light of his general knowledge and the literature and information on the subject available to him on that date, would have been led directly and without difficultly to [the] invention.

This question was further refined in Beloit Canada Ltd. v. Valmet Oy (1984), 78 C.P.R. (2d) 1 (F.C.T.D.), rev'd (1986), 8 C.P.R. (3d) 289 (F.C.A.):

> The test for obviousness is not to ask what competent inventors did or would have done to solve the problem. Inventors are by definition inventive. The classical touchstone for obviousness is the technician skilled in the art but having no scintilla of inventiveness or imagination; a paragon of deduction and dexterity, wholly devoid of intuition; a triumph of the left hemisphere over the right. The question to be asked is whether this mythical creature (the man in the Clapham omnibus of patent law) would, in light of the state of the art and of common general knowledge as at the claimed date of the invention, have come directly and without difficulty to the solution taught by the patent. It is a very difficult test to satisfy.

In considering the importance of the conception of the invention and its implementation, the following observation from MacLean J. in Canadian Gypsum Co. Ltd. v. Gypsum, Lime & Alabastine, Canada, Ltd., (1931) Ex.C.R. 180, seems relevant to the present situation:

> [the] inventive ingenuity necessary to support a valid patent may be found in the underlying idea, or in the practical application of that idea, or both. It may happen that the idea or conception is a meritorious one, but that once suggested, its application is very simple. Again, it may be that the idea is an obvious one, but that ingenuity is required to put it into practise. Or, again, the idea itself may have merit and the method of carrying it into practise also require inventive ingenuity.

In view of these decisions, the following questions posed by the Applicant seem appropriate in determining whether or not the invention was obvious, namely:

1) Was it obvious to a person skilled in the art to incorporate TV entertainment and advertising systems into subway cars?

2) Was the precise manner in which this was accomplished obvious to such a person?

In answering these questions, the prior art applied by the examiner must be analysed and its cumulative effect considered.

Looking to the prior art , in particular to US Patent 5,606,154 to Doigan et al., this patent discloses a system for playing one or more ads in an elevator, or other shuttle car, the ads having a playing time less than the time it takes to reach the next scheduled stop. The ads are arranged in groups of ranges of playing times or are selected by the system, in series until the time is exhausted. The patent is particularly concerned with a system for selecting an appropriate message based on input from the passenger, such as initiating a call for a shuttle car by pressing a button. As disclosed, "messages" in this case may mean:

> dynamic, audible and/or visual messages, but not print or invariant graphics, but may include a constant video image played contemporaneously with accompanying audio.

It is stated that the invention,

> is predicated on the facts that within the car of a shuttle, such as an elevator, the duration for a message is limited to the amount of time required to travel from a given landing to the next landing.

As further specified at col. 2, lines 48-52:

> the invention is also applicable to other types of shuttle transports, such as those used as people movers in airports and universities, in which a car traverses a predetermined path, providing access at predetermined points along the path.

The meaning of the term "shuttle" is further specified at col. 2, lines 58-59 to also mean:

> light rail horizontal people movers having cars moved by ropes, linear induction motors or otherwise.

It is stated at col.3, lines 6-7 that:

> The invention may be used in the cars of the system or at the landings of the system or both

and at col. 3, lines 34-39,

> the term "ad" may be used to indicate both advertisements and non-commercial messages of any sort. The messages may be audio only or audio-visual, from a variety of media, including tape cassettes and compact disc read only memories.

At col. 15, it is stated that:

> The particular messages to be played may be all stored in a central place and transmitted when selected to the place where the message is to be played
> .....
> The messages might be stored as HDTV (high density television) format and transmitted over wide band-width medium to the places where they are to be played, or transmitted over telephone-type lines using an MPEG compression decompression standard. On the other hand, analog signals may be utilized, similar to cable TV.

> Analog messages may be each stored on its own videotape, and selected by enabling a corresponding player, or they may be selected in any other suitable fashion, with appropriate transmission and playing accommodations.

Based on the information present in Doigan et al., it is evident that it was clearly envisaged to incorporate TV type entertainment and advertising systems, in the form of ads, or other video messages, in a rail car type environment. Applicant has argued that "light rail horizontal people movers" does not include subway cars and that these are of the type which run above ground on elevated trackways. However the Board cannot agree with this interpretation. Subway systems are indeed a form of "light rail" and it is common for them to run both above and below ground while traversing their assigned lines. Therefore the answer to the first question posed must be that it was obvious to incorporate TV entertainment and entertainment systems into subway cars.

Turning to the second question, whether the precise manner in which the incorporation was accomplished would have been obvious, the Board will first look to the Doigan et al. reference. The Doigan et al. reference leaves the particular installation of the video display system to the abilities of the skilled person. This person, it seems, is to determine the exact nature of the system and where and how it is to be mounted in the "shuttle". Some guidance is provided, for example at col. 1, lines 53-55,

> According to the present invention, a message is selected ... and is played within the perception of passengers (i.e. in the car or at the landing).

Therefore, it seems that the skilled person is expected to make any minor adaptations as are necessary to ensure the proper operation of the video display system in a particular venue (i.e. mounting system, placement, wiring, etc.). It would seem that this would be the case in any media system which must be installed in a particular location by a technician. It would not seem to involve invention for the technician to determine the most appropriate mounting location for the components (speakers, monitors, etc.), or to determine an appropriate routing for wiring. Such decisions would be based on the technicians common knowledge and good judgement.

Looking to the Comerzan-Sorin reference, this document discloses an international cable video network, controlled by computer, made up of several TV monitor units which are to be installed aboard planes, trains, cars, boats, etc. The monitors are to display closed circuit information relative to each locale and to display entertainment programs in the form of films, commercials, weather information, etc. The programs are to be received from satellites, or alternatively from pre-recorded video cassettes or video discs. The TV monitors may be, for example, cathode ray tube-type monitors or liquid crystal systems. This invention aims to provide each passenger with an individually controllable monitor and to provide a central large screen monitor for general viewing. For the individual monitors, various locations are specified around the passengers, including mounting on the armrest, on a floor pedestal, or on the back of the seats. Again in this reference the particular mounting of the monitor and system installation is left to the capable hands of the skilled person, as the use of such distributed video systems is known per se. The system would have to be adapted to each transport system (trains, planes, cars, boats, etc.).

Looking now to the Tagawa et al. reference, this document discloses an apparatus for transmitting a plurality of video and audio signals in parallel to each of a plurality of remote terminal units which may be located at or near a passenger seat of a passenger vehicle such as an aircraft, train, bus, or the like. This reference is similar to the Comerzan-Sorin reference in that it seeks to provide a TV unit at each passenger location with a central video and audio signal supply. In this case, the invention is concerned more with longer distance travel, and in the case of aircraft, the terminals are preferably mounted on the back of a plurality of passenger seats. The terminal may comprise a flat cathode ray tube or an LCD, or the like, and the user is provided with the ability to select the information which they wish to view. This reference is particularly concerned with the transmission system and the components involved in the user selectivity of the programs. Again some guidance is provided as to the particular mounting locations, but it is generally left to the skilled person to determine their exact nature.

From the above references, it becomes clear that the authors do not deem it important to their inventive concepts to indicate an exact mounting system for the display terminals of their systems. This is left to the skilled person to determine. The Doigan et al. reference does

not make any particular statement about mounting, merely that it be placed "within the perception of passengers". Comerzan-Sorin and Tagawa et al. are both more concerned with longer travel times than Doigan et al. and focus on situations where passengers all have prearranged seating so that each may have individual screens, and some ability to control the display, although they do mention several modes of transportation, which may require further adaptation. In these two references though, it is, as in Doigan et al., left to the skilled person to determine the exact nature of the mounting of the monitors and the placement of the signal supply and transmission means.

The Board must now look to the claims 1-6 to determine if the precise mounting arrangement claimed by the applicant involves an inventive step in view of the discussed state of the art and common general knowledge of the skilled person. Looking to claim 1, aside from the known characteristics of the subway car, it is claimed that the monitors are mounted,

> at the junction of the sidewall and ceiling, with the screen of the monitor substantially flush with the adjacent wall surface structure of the car, and directed obliquely downwardly toward the car seats, so that each video screen is readily visible to passengers in the subway car.

As discussed above, it was suggested by Doigan et al. to place video display systems in shuttles such as light rail cars. In implementing such an embodiment, the skilled person would necessarily have to determine the appropriate mounting location. Looking at the first characteristic, namely "at the junction of the sidewall and ceiling", as anyone who has traveled on a subway or transit bus will attest, the conventional location for advertisements is, in fact, at the junction of the ceiling and sidewall, as also attested to by the applicant at p. 10, lines 19-21 of the subject application. Therefore this is the logical location, indeed perhaps the only available location, for the skilled person to place the video screen. Looking to the second characteristic, "with the screen of the monitor substantially flush with the adjacent wall surface structure of the car", this appears to be a characteristic which provides an aesthetic feature. Looking to the final characteristic, that the screens are "directed obliquely downwardly toward the car seats, so that each video screen is readily visible to passengers in the subway car", this idea follows from that of mounting the screens at the junction of the sidewall and ceiling, and from the Doigan et al. principle of mounting the screens, "within the perception of passengers". Therefore, the Board concludes that there is no invention in the combination of features of claim 1, and the skilled person would not have to overcome any significant difficulties in putting the idea of placing video screens in subway cars into practice. Rather, he would only have used his common knowledge and the general guidance provided by the state of the art.

Looking to claims 2 and 3, these merely specify the particular video display system components, which are, as applicant has disclosed, conventional. These are further illustrated by the references applied.

Looking to claim 4, "a self contained wiring cabling system" would seem to be part of any such video display system in view of the prior art.

Looking to claims 5 and 6, here it is claimed that a rigid transparent unit overlies the screens and is shaped to coincide with the internal wall of the subway car, which is then specified in claim 6 as concavely curved. Firstly, a rigid transparent unit overlying the screen appears to be nothing more than a protective shield. The Board believes that placing a protective shield over a video screen in a subway, bus, or the like is a prudent measure which the skilled person would be forced to consider, given the obvious potential for damage to the screen by the persons frequenting the subway system. It is difficult to imagine such a delicate piece of equipment being placed in such an environment without some sort of protective cover.

It is also noted that applicant has submitted several affidavits from experts in the field of mass transportation to support his arguments. These statements are not persuasive and merely seem to indicate that these experts are not aware of such a system as that of the claims at issue. However, the issue of novelty has not been raised by the examiner. The issue is, rather, whether or not the claimed invention would have been obvious to the skilled person given his common general knowledge and the state of the art.

As a result of the above, the Board is of the opinion that it was obvious at the claim date to incorporate TV entertainment and advertising systems into subway cars and the precise manner in which it was accomplished would have been obvious to the unimaginative skilled technician.

Although it has been determined that the claims do not comply with Section 28.3 of the Patent Act, the other issues raised by the examiner will now be discussed:

The second issue which was raised by the examiner in the Final Action was that the claims are directed to a mere aggregation and that the "subway car and the video monitors each perform their own proper function independently of one another". It is first to be noted that this objection was only raised in the Final Action, and such a rejection would not be proper under Section 30 of the Patent Rules. However, for the sake of completeness, this issue will be explored.

The question of what is an aggregation has been considered by the Courts on numerous occasions. In Lester v. Commissioner of Patents (1946) 6 C.P.R. 2, which related to a toy pistol within which was formed a whistle it was stated (underlining added):

> The authorities are quite clear that a combination is not patentable where each part performs its function independently of the other and the parts are not combined to produce some common result.
>
> This was expressed by Lord Tomlin in British Celanese Ltd. v. Courtaulds Ltd. [1935], 52 R.P.C. 171 at p. 193, as follows:
>
> "it is accepted as sound law that a mere placing side by side of old integers so that each performs its own proper function independently of any of the others is not a patentable combination, but that where the old integers when placed together have some working inter-relation producing a new or improved result then there is patentable subject matter in the idea of the working inter-relation brought about by the collocation of the integers."

In Williams v. Nye, 7 R.P.C. 37 at 40, it was stated (underling added):

> To my mind all that the patentee has done, is to do that which I should say any man who had given his attention to these things would do without the slightest difficultly; finding the two machines he has put the two together without adding anything at all. To my mind, there is nothing here worthy of the name of invention. I think that he has carefully described what he says he has invented, and I do not think he has described anything which can be properly, in a legal sense, be said to be invention. He has tacked two things together without any intervening element at all. He says two old things combined, that is to say, added to one another in the simplest possible manner, make a new thing. That is not, I think, good law.

In The King v. American Optical Co. (1950) 13 C.P.R. 87 at 98, Thorson P. stated:

> It is essential to the validity of a patent for a combination invention, apart from the consideration of novelty and inventive ingenuity that the combination should lead to a unitary result rather than a succession of results, that such result should be different from the sum of the results of the elements and that it should be simple and not complex. The elements may interact with one another provided they combine for a unitary and simple result that is not attributable to any of the elements but flows from the combination itself and would not be possible without it.

It is evident from these statements that in a proper combination, the elements (or integers) must be combined so as to produce a unitary or single common result, and not a result which is the sum of the results of the individual elements. In producing the result, the elements must cooperate or have some "working inter-relation".

Looking to Applicant's claim 1, it is noted that the components, namely the subway car and the video display system are not new, nor does applicant propose that they are. However, as stated in claim 1, the video screen is so mounted as to be "substantially flush with the adjacent wall surface structure of the car". Such a characteristic, as is clear from the description and drawings, requires that the existing subway car structure be modified to accommodate the video screen, that its structure is adapted in some way. Such a feature would indicate that the

elements are not merely placed “side by side”, or “tacked” together, but that they have been integrated in some “working inter-relation” to produce a unitary and common result, namely providing a subway car with a TV type entertainment system. While this working inter-relation may not be as apparent as it would be if the combination were directed to some machine with moving parts, a combination of static elements may just as well properly “interact” with one another to form a proper combination. For these reasons, the Board does not agree that the claims are directed to a mere aggregation.

The last issue raised by the examiner was that claims 9-16 (similar to present claims 1-6) are directed to an exhaustive combination. It is noted that this issue was raised in the examiner’s report of June 5th 2000, not raised in the examiner’s report of November 13, 2001, and then reintroduced in the Final Action. Again for the sake of completeness, the issue of exhaustive combination will also be explored.

In Re Application No. 132,421 (1976) 52 C.P.R. (2d) 220 at 224, affirmed (1977) 52 C.P.R. (2d) 229, it was stated:

> Claims must define the invention itself, and not go beyond it. Section 36(2) of the Patent Act (now Subsection 27(4)), R.S.C. 1970, c. P-4, is statutory authority for that statement.
>
> It requires that the inventor distinctly claim the part which is the invention. What we must decide is how far an applicant may go in achieving the goal of protecting his invention fully without overstepping the limits of the invention by claiming what is not rightfully his. For to paraphrase what was said by the Supreme Court in B.V.D. Co. v. Canadian Celanese Ltd., [1937] 2 D.L.R. 481, [1937] S.C.R. 221 [application for rehearing refused [1937] 3 D.L.R. 449, [1937] S.C.R. 441; varied [1939] 2 D.L.R. 289], if the claims in fact go beyond the invention, the patent is invalid. In the B.V.D. case (which was confirmed by the Privy Council, 56 R.P.C. 122), the Court was of course considering claims which encompassed anticipatory matters, and caution must be exercised in adopting the broad reasoning adopted under those circumstances to another situation.

It is well accepted that an applicant may claim the invention and its immediate cooperating environment without going beyond the invention. In the present case, the applicant has claimed a video display system in combination with a subway car. It is the objective of the invention to provide such a combination and a manner of implementing it. Therefore it seems unlikely that the claimed subway car in combination with the video display system goes beyond the alleged invention. This is precisely the combination which represents the alleged inventive concept. The subway car is clearly part of the immediate cooperating environment of the video display system.

Notwithstanding the above comments regarding the issues of aggregation and exhaustive combination, the Board has found that the claims would have been obvious to a person skilled in the art in view of their common general knowledge and the prior art applied by the examiner.

As a result, the Board concludes that claims 1 to 6 would have been obvious at the claim date and fail to comply with Section 28.3 of the Patent Act. Therefore, it is recommended that the decision in the Final Action to reject the application based on Section 28.3 be affirmed.

M. Wilson J. Cavar S. MacNeil
Member Member Member

I concur with the findings and recommendation of the Patent Appeal Board. Accordingly, I refuse to grant a patent on this application. Under Section 41 of the Patent Act, the applicant has six months within which to appeal my decision to the Federal Court of Canada.

David Tobin

Commissioner of Patents

Dated at Gatineau, Quebec,

this 13th day of January, 2006