

Commissioner=s Decision # 1348

Décision du Commissaire # 1348

TOPIC: A -20, O - 00

SUJECT: A - 20, O - 00

Application No : 2,293,203

Demande no : 2,293,203

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2,293,203, having been rejected by the Examiner under subsection 30(3) of the *Patent Rules*, was reviewed by the Patent Appeal Board and by the Commissioner of Patents. The recommendation of the Board and the decision of the Commissioner follow.

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Introduction

[1] Application number 2,293,203 was filed on 23 December 1999 and is entitled "BILL PROCESSING SERVER AND METHOD FOR A DIGITAL DOCUMENT DELIVERY SYSTEM". The Applicant is PITNEY BOWES INC. and the inventor is Mark Bresnan.

[2] The application was rejected because the claimed invention was considered obvious and the claims overlapped with a related application also owned by the Applicant.

[3] Examination was requested on 23 December 1999 and 4 reports were issued beginning on 08 August 2003. The Examiner issued a Final Action on 05 February 2009. On 05 August 2009, new claims were submitted in response to the Final Action, and the Examiner forwarded the application to the Patent Appeal Board (PAB) along with a Summary of Reasons (SOR).

Invention

[4] The invention concerns a bill processing server (BPS) in a digital document delivery system which receives bill requests. An electronically viewable version of a primary document, such as a bill, can be presented to a requesting customer. We understand this to be the electronic equivalent of a customer receiving a physical mailpiece with a bill.

[5] The BPS receives bill requests containing bill data objects and updates a database containing customer account information. It instructs an interactive bill presentment server (IBPS) to generate an electronically viewable version of the primary document with one or more associated secondary documents (e.g. enclosure). It further instructs the IBPS to present the primary document to a requesting customer only when the primary and secondary documents are available for viewing.

Applicant=s concerns about the SOR

[6] We forwarded the SOR to the Applicant along with an invitation to a hearing and/or to make a written submission. The SOR supplied two additional references in light of the new claims and in response the Applicant raised concerns about the review process. The Applicant believed that they were denied an opportunity to respond and amend the application in view of the two new references and arguments presented in the SOR. The

Applicant proposed a return of the application to examination for further prosecution, or a withdrawal of the two additional references. In support for this the Applicant cited *Belzberg v. Canada (Commissioner of Patents)* 2009 FC 657 and *Bartley v. Canada (Commissioner of Patents)* 2011 FC 873.

[7] Responsive to the Applicant's concerns, the Patent Appeal Board clarified that a written submission could include a proposed set of claims, which if found to be allowable would be recommended for acceptance using the mechanism under paragraph 31(c) of the *Patent Rules*. In that letter, the Applicant was again invited to address the SOR and Final Action at a hearing and/or to make a written submission. This is consistent with the Office process for a review subsequent to a Final Action. Further, a return of the application to examination, as proposed by the Applicant, is not consistent with the Court's observations in *Belzberg*.

[8] The Applicant responded that no amendment would be made and later confirmed by email that no written submission would be made and that a hearing was not desired.

[9] Therefore, we consider that these concerns about the SOR and the review have been addressed.

Claims

[10] There are no disagreements in the prosecution as to claim interpretation. Claim 1 was amended in response to the Final Action, and is illustrative of the invention:

1. A bill processing server for use in a digital document delivery system having a router instruction processor (RIP) for controlling via an electronic inserter, the generation of an electronic print stream for presentation to an associated interactive bill presentment server (IBPS), with the IBPS responsible for generating the print stream data in an electronic form for viewing primary and secondary documents by a customer, the bill processing server for further communicating with a database containing customer account information; comprising:

means for receiving bill requests from the RIP, said bill request containing bill data objects regarding the nature of an electronic bill primary document to be sent electronically over a network for viewing by the customer;

means for updating the database based upon the received bill data objects;

means for instructing the IBPS to generate an electronically viewable version of the primary document with one or more associated secondary documents, the means for instructing also preventing the IBPS from presenting the primary document to a requesting customer until the primary and secondary documents are available for viewing; and

means for receipt of information from the

IBPS concerning any customer responses so as to update the database.

[11] The underlined text in claim 1 above was added in response to the Final Action.

[12] The meaning of the terms in claim 1 would be generally clear to the skilled person. We note that "available for viewing" requires that the link or means for requesting the secondary document by the customer must be a valid link or means. This is consistent with the description which explains that "the IBPS when it generates the web documents does so with links to the associated secondary document(s)." (page 5 - lines 12-14 of the instant application)

[13] Claim 10, the only other independent claim, is directed to the same general inventive concept. The underlined text was added in response to the Final Action:

10. A method of controlling an account database containing information concerning customers' account balances associated with the delivery of electronic bills to the customers, comprising the steps of:

a) receiving bill requests containing bill data objects representative of the nature of bills to be presented to customers;

b) based upon the bill data objects, updating the data stored in the account database for these customers;

c) in the event that bills and any secondary documents associated with the bills are available for viewing, generating links to the secondary documents that are associated with the bills and permitting presentation of the bills to the customers, and otherwise preventing customers from viewing bills and any secondary documents associated with the bills;
and

d) receiving customer response information concerning the electronic bills delivered to the customers and based upon this response information, updating the account database for those customers.

[14] Claims 2-9 are ultimately dependent upon claim 1, and add features such as:

- < notifying a customer of the existence of a primary document;
- < updating the database with information about when the customer had paid an amount;
- < presenting information about when the customer reviewed an associated bill;
- < acknowledging to the Router Instruction Processor (RIP) that successful receipt and storage of a bill data object has occurred;
- < generating account information for submission to a payment processing system;
- < maintaining status information about the digital document

delivery system and customer interaction with that system;
and

< generating information about links to one or more
secondary documents for positioning in the primary
document.

[15] Claims 11-13 which ultimately depend on claim 10,
introduce similar features, namely:

< generating periodic reports concerning the status of the
account database;
< notifying the customer of the existence of an electronic
document to be viewed; and
< generating the notification by electronic mail delivered
to an electronic mail box associated with the customer.

References Cited

[16] In the Final Action, the Examiner relied on the following
references:

Canadian Patent

2 293 764

29 June 2000

Bresnan et al.

European patent application

745 947

4 December 1996

Bednar et al.

United States patents

5 699 528	16 December 1997	<i>Hogan</i>
5 761 650	2 June 1998	<i>Munsil et al.</i>

Publications

"An Intelligent Approach to TransPromo" (Pitney Bowes, 2007)
[*TransPromo*]

"Open Financial Exchange Specification 1.5.1" (CheckFree, Intuit & Microsoft, 23 November 1998), archived web page online: Open Financial Exchange
<http://web.archive.org/web/20040213235823/http://www.ofx.netlofxlde_spec.asp> [*OFX*]

[17] The SOR introduced the following additional prior art:

PCT publication

98/15 925	16 April 1998	<i>Kolling et al.</i>
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Publication

Jakob Nielson, "*Fighting Linkrot*" (14 June 1998), online:
<<http://www.useit.com/alertbox1980614.html>>

[18] The Final Action and SOR do not rely upon *Munsil et al.* to establish obviousness. There are no significant disagreements on record as to the meaning of the prior art

teachings. Other relevant aspects of the prior art are discussed in step 3 of the four-step approach to assessing obviousness, below.

Rejection under Review - Issues

[19] As noted earlier, the grounds for rejecting this application set out in the SOR are non-compliance with section 28.3 of the *Patent Act* and subsection 36(1) of the *Patent Act*, which pertain to obviousness and double patenting respectively

Obviousness

[20] As to the issue of obviousness, the Applicant and the examiner disagree on whether or not the common general knowledge applied in the prosecution is appropriate, and whether or not it is inventive to prevent the presentation of a primary document to a requesting customer until the primary and secondary documents are available for viewing. Other details and facts as to the allegation of obviousness are set out in the SOR and Final Action, and will be addressed below where necessary.

Principles of law (obviousness)

[21] Section 28.3 of the *Patent Act* sets out the information against which a claim is assessed in an obviousness inquiry:

28.3 The subject-matter defined by a claim in an application for a patent in Canada must be

subject-matter that would not have been obvious on the claim date to a person skilled in the art or science to which it pertains, having regard to

(a) information disclosed more than one year before the filing date by the applicant, or by a person who obtained knowledge, directly or indirectly, from the applicant in such a manner that the information became available to the public in Canada or elsewhere; and

(b) information disclosed before the claim date by a person not mentioned in paragraph (a) in such a manner that the information became available to the public in Canada or elsewhere.

[22] A four-step approach for assessing obviousness is set out in *Sanofi-Synthelabo Canada Inc. v. Apotex Inc.*, 2008 SCC 61, [*Sanofi*], as follows:

- (1) (a) Identify the notional person skilled in the art;
- (b) Identify the relevant common general knowledge of that person;
- (2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;
- (3) Identify what, if any, differences exist between the matter cited as forming part of the state of the art and the inventive concept of the claim or the claim as construed;
- (4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention?

Analysis

Step 1: Notional "person skilled in the art" and the relevant common general knowledge of that person

[23] The SOR characterized the skilled person as follows:

The notional skilled worker in this case is likely a team of engineers or other technologists faced with developing or improving a digital document delivery system, especially the bill processing server of such a system. The skilled team also includes business professionals familiar with desirable bill processing functions as well as desirable characteristics for processes for presenting information to customers.

[24] The SOR further sets out the capabilities and the common general knowledge of that skilled team, as follows:

(a) . . . the skilled team is capable of

developing, implementing and operating bill presentment and payment systems, and the components of such systems.

(b) . . . the skilled team is also familiar with the common practice of including inserts or enclosures in the same envelopes as the bills or statements being mailed to customers.

(c) . . . the skilled team is also aware of the negative impact of broken hyperlinks on both the usability of the linked content and the reactions of readers of the content.

[25] During prosecution the Applicant disagreed with (b), stating there is no support for that common general knowledge. As to (c), the Final action stated that it was well known to create hyperlinks to other documents within web documents. Earlier in the prosecution, the Applicant stated that the argument that it was well known to create hyperlinks was based on hindsight, however, this argument was not maintained in the response to the Final Action.

[26] As to the other CGK statements, the Applicant's response to the Final Action does not reiterate disagreements with the CGK and focusses on the additional feature added in the amended claims. However, we will nevertheless assess each of points (a) to (c) below. As we noted earlier, the Applicant did not respond to the SOR.

(a) Is the skilled person a team which is capable of developing, implementing and operating bill presentment and payment systems, and

the components of such systems?

[27] We find that the characterization of the skilled person as a skilled team is correct. In support of the skilled team, the SOR references a lack of detail in the present description (pages 3 to 6) regarding the implementation of the invention, and the Office reports dealing with compliance under subsection 27(3) of the *Patent Act*. An Office report dated 13 May 2005 alleges lack of enablement for the "means for updating the database based upon the received bill data objects", "means for instructing the IBPS to generate an electronically viewable version of the primary document with one or more associated secondary documents", and means for updating the database based upon information received from the IBPS "concerning any customer responses". The Applicant's correspondence of 1 November 2005 (page 2, first paragraph to page 3, first paragraph), clarifies the nature of the invention, stating:

. . . Where a particular element is not complicated, simply instructions to carry out that element are appropriate.

. . . Unless there is further novelty in the implementation of the step itself, there is no need for an elaborate discussion. Thus, the Applicant distinguishes between the novelty of a step, and the novelty of the steps implementation details.

[28] Addressing the means statements, the Applicant noted for each that: "A person skilled in the art, i.e. a computer programmer could implement this step given the disclosure"; and

that: "The step is not complicated enough to require further detail."

[29] All subsequent Office letters dropped the objection to the description, proceeding on the basis that the implementation details are not novel, or in other words these details would have been well known before the claim date. Thus, the baseline common general knowledge of that skilled team set out in (a) above is correct in view of the Applicant=s statements.

(b) Was it common general knowledge to mail information or advertisement inserts along with bills?

[30] We find that it was common general knowledge before the claim date to mail information or advertisement inserts along with bills. The Applicant disagreed with this common general knowledge, stating, in part:

. . .the Examiner is not entitled to import the "common general knowledge" as a convenient catch-all. For example, there is no support for the proposition that it would have been common general knowledge that information or advertisement inserts were often mailed in the same envelope with the bill or account statement, as alleged by the Examiner. The Examiner is also using this catch-all to support his proposition that the URL to a website containing an HTML rendered version of a bill makes it obvious that the suggested document

could be any document. [see correspondence dated 19 April 2007]

[31] We consider that it would be commonly known before the claim date that businesses routinely include statement inserts with promotional or other messages in their billing materials. Some knowledge or CGK is so self-evident that it does not require extrinsic support or corroboration [see *AB Hassle v Apotex Inc.*, 2003 FCT 771, paragraph 57; *Janssen-Ortho Inc. v. Novopharm Ltd.*, 2006 FC 1234, paragraph 113 - point 3]. This CGK is also apparent from the description which states that secondary documents (or inserts) would normally be sent along with the bill if it were to be generated as hard copy (page 3, lines 20-22). The skilled person would be expected to know this as it was part of the general "climate" in this field at the time the invention was made [see *Johnson & Johnson Inc. v. Boston Scientific Ltd.*, 2008 FC 552, paragraph 344]. Therefore, we agree with the Examiner that long before the claim date, it was well known to include secondary documents along with billing statements.

[32] Furthermore, it was well known to the skilled team that one could decide to mail or not to mail a billing statement at a particular time, depending on a variety of factors. That is, the timing for mailing such billing statements would, if so desired, take into account the availability of the secondary documents, or any other business requirements considered pertinent at the time.

(c) Was the negative impact of broken hyperlinks a commonly known

problem?

[33] Before addressing this point we note that earlier in the prosecution the Applicant considered that it was hindsight for the Examiner to state that it was well known to create hyperlinks. The Applicant's response to the Final Action did not maintain this argument. We agree with the Examiner that it was well known in the art to create hyperlinks to other documents.

[34] The Examiner cited *Neilson* to illustrate the widespread recognition of broken hyperlinks as a problem.

[35] We can agree on the basis of common sense for anyone who has used the Internet before 1998, that the skilled team would be aware of hyperlinks as well as broken hyperlinks. We also agree, as the document suggests, that broken hyperlinks would naturally have a negative impact on a user's online experience.

[36] In conclusion, we find that the common general knowledge applied in the Final Action and SOR is reasonable and appropriate.

Step 2: Inventive concept

[37] Based on the record before us, we accept the inventive concept identified by the Examiner, and underlined in the following passage from the SOR, as follows:

Although the scopes of claims 1 to 13 vary, the

inventive concept of each appears generally to be the same. That is, a bill processing server or method involved with the generation of, for display via a customer's browser, a bill document with associated secondary documents. Furthermore, the bill document is not presented to a customer until any associated secondary documents are also available.

It is clear from the level of detail in the present description (pages 3 to 6) concerning implementation, and the arguments of the correspondence of 25 October 2004 (pages 2 to 3) and 1 November 2005 (pages 2 to page 3), that the inventive concept is limited to these two concepts rather than how they are implemented.

[38] There is no submission from the Applicant as to the inventive concept. The inventive concept identified by the Examiner is in agreement with the Applicant's contention in response to the Final Action that a distinguishing feature is that "the customer is prevented from viewing a primary document until all necessary secondary documents are available for viewing."

[39] This inventive concept applies to all of claims 1 to 13.

Step 3: Difference between the "state of the art" (*Kolling et al.*, *Bednar et al.*, or *Hogan*) and the inventive concept

[40] It is clear from the prosecution record that there is only

one difference that the Applicant purports will render the claims unobvious, namely: that a document with links to secondary documents would not be presented unless those secondary documents were also available for viewing. For completeness we will review Sanofi step 3 before addressing the question of inventive ingenuity in step 4.

[41] Taking the inventive concept as applying to all of claims 1 to 13, as explained below we agree with the Examiner's findings as to the differences and conclude that the difference in step 3 is "the customer is prevented from viewing a primary document until all necessary secondary documents are available for viewing". This difference is articulated in claim 1 as " the means for instructing also preventing the IBPS from presenting the primary document to a requesting customer until the primary and secondary documents are available for viewing"

State of the art from Kolling et al., Bednar et al., or Hogan

[42] The SOR acknowledges that neither *Bednar et al.* nor *Hogan* discuss the generation and presentation of associated secondary documents. It is stated that *Kolling et al.* generates statements for presentment including primary documents with hyperlinks to secondary documents.

[43] *Kolling et al.* appears to be the closest of the prior art references. It provides for an electronic statement presentment system which replaces the preparations and mailing of paper statements and invoices from a biller with electronic delivery. The examiner asserts on page 4 of the SOR that *Kolling et al.*

teach:

a bill invoicing system, a central switch, and a statement generation workstation (pages 11, 16, 17, 29 and 36); these are analogous to the BPS, the router instruction processor and the IBPS of the present claims. The electronic system generates statements for presentment including primary documents with hyperlinks to secondary documents (figures 14 to 16; pages 6,22 to 25, 29 and 40). Customers' responses to the statements are also received and processed (pages 37 to 38).

[44] In support of this, beginning on page 23 (line 32) of *Kolling et al.*, it is stated:

. . . For printed statements, enclosures are typically created as separate documents, and are rarely personalized. Automated mailing equipment is used to insert enclosures into envelopes, often right up to the postal weight limit. Sometimes, statements are batch processed in an order which allows different enclosures to be inserted in different batches.

Electronic invoices may also include enclosures. They are designed to give billers complete control over the look and feel of invoices. Billers are able to replicate almost

the exact look of their current printed invoices. As consumers become familiar with an ESP system, billers can make use of features unique to electronic media, such as Internet links, custom charts, radio buttons, drop-down lists, etc.

[45] Therefore, we conclude that the difference between the state of the art and the inventive concept is "the customer is prevented from viewing a primary document until all necessary secondary documents are available for viewing". This difference applies to the inventive concepts of independent claims 1 and 7.

[46] In its submissions, the Applicant did not argue any other distinguishing features or inventive concepts for the remaining dependant claims 2-9 and claims 11-13. We have considered the features in these claims and they are not significantly different from what appears in the state of the art. Further, there is nothing on the record to suggest that the Applicant considers any of these features to be inventive or particularly distinguishing over the state of the art. Therefore, claims 1 to 13 will stand or fall together. This is in line with the Examiner's assessment in the Final Action and the SOR.

Step 4 (claim 1): Would the difference "constitute steps which would have been obvious to the person skilled in the art", namely: that a document with links to secondary documents would not be presented unless those secondary documents were also available?

Examiner's contention as to obviousness in view of Kolling et al.

[47] The reasoning in the SOR as to why the difference is obvious in view of *Kolling et al.* is summarized below:

1. *Kolling et al.* teach the generation and presentation of linked primary and secondary documents;
2. It is considered common knowledge to include secondary documents - or inserts - with electronically present documents. Even if this were not common general knowledge, though, its physical counterpart - including secondary documents with physically mailed bills and statements - is well known;
3. The concept or idea of automating or computerizing a known administrative procedure in a generally known manner is obvious;
4. The application or correspondence do not suggest any difficulties in implementing this concept or idea that were inventively overcome, or any unexpected results from doing so;
5. One obvious way to present associated documents in a computerized bill presentation and payment system would be to provide hyperlinks from the primary document to the secondary documents. *Kolling et al.* (pages 23 to 25 and 40) teach this option; and
6. Obviously, a document with links to secondary documents would not be presented unless those secondary documents were also available. It would make no sense for a business to develop

advertisements or informational inserts as secondary documents to bills, yet present bills to customers before these secondary documents are ready. In fact, presenting bills or statements before their linked secondary documents are ready would not only waste the efforts of those developing the secondary documents, it would also alienate the customers. As indicated above, it is well known that broken hyperlinks on the Web not only reduce usability, but also irritate users and negatively influence their opinion of the credibility of the content's provider; such a reaction would be even stronger for a customer receiving his or her personal bill or statement from a service provider.

Applicant=s view as to why the difference is not obvious

[48] The response to the Final Action from the Applicant characterized the above difference as the distinguishing feature over the prior art for claims 1 and 10. We note the Applicant's lack of submission in response to the SOR and absence of further explanation as to why this difference is inventive. We take this lack of further reasoning to mean that the only argument from the Applicant is that in light of the fact that the difference is not found in the prior art, all of the claims must be inventive.

[49] We note that the response to the Final Action points out an advantage of this distinguishing feature in that "the customer is prevented from viewing only the primary document

(for example a bill) without viewing the secondary documents (such as inserts)". This advantage does not necessarily follow from claim 1 because while the claim requires that the secondary document must be available for viewing at the time that the primary document is presented, it is not a requirement in claim 1 that the customer must view the secondary document while viewing the primary document.

Does the difference constitute a step or steps which would have been obvious to the person skilled in the art?

[50] We agree that the difference is obvious, and generally with the reasoning set out by the Examiner.

[51] Figures 13, 14, and 15 (reference numerals below are from these drawings) of *Kolling et al.* show a sample invoice summary screen, a sample invoice detail screen, and a sample enclosure screen respectively. As explained on page 39 (lines 30-33) of *Kolling et al.*, summary invoice 882 is shown below a band of HTML 884 generated by the electronic banking server, and HTML 884 band includes a summary button, a detail button and an enclosures button. On page 40 (lines 3-14), it is explained that in Figure 14 the sample invoice detail screen is displayed when the customer clicks on the detail button within band 884 of FIG. 13. Likewise, the enclosure screen in Figure 15 is displayed when the customer clicks on the enclosures button in band 884. It explains that the enclosure displayed in Figure 15 is an advertisement from a retailer wishing to advertise in conjunction with an electronic invoice from Great Northern Bank shown in Figure 13. We find that it would be obvious to the

skilled person that the retailer would require this advertisement to be available for viewing when the customer requests to view the invoice from Great Northern Bank. If the enclosure were to be unavailable for viewing, the intent of the retailer in setting up such an advertisement would be unmet.

[52] *Kolling et al.* also explains:

Electronic statements (including invoices) are divided into mandatory and optional sections as defined by the biller. Mandatory sections are automatically presented to the customer, while optional sections are downloaded and presented only at the consumer request.

. . .

Exemplary electronic statement 406 includes a mandatory section 420 and two optional sections 422 and 424. Mandatory section 420 includes actual statement or invoice data and any legally required enclosures. (See *Kolling et al.*, page 24, lines 6-13, and Figure 5)

[53] From this we take it that in *Kolling et al.*, where a customer makes a request to view the electronic statement in Figure 13 and the electronic statement has legally required

enclosures, the link to this enclosure in the HTML 884 band must be such that the document is available for viewing. That is, it would logically follow to the skilled person that the legally required enclosure would have to be available at the time of presenting the other sections electronically, just as what would typically occur when mailing said documents.

[54] Additionally, we noted earlier under step 1 that it was well known to the skilled team that one could decide to mail or not to mail a billing statement at a particular time depending on business requirements, such as, for example, taking into account the availability of the secondary documents. We consider that the criteria involved in such decisions for physical mailings extend equally to the decisions involved in providing electronic statements. Therefore, to prevent the presentation of a primary document to a requesting customer until the primary and secondary documents are available for viewing would have been an option that the skilled person would have considered before the claim date.

[55] The Applicant acknowledged during the prosecution that there is no novelty in the implementation details of the claims. Likewise, we consider that there is no ingenuity in the implementation details.

[56] Thus, in claim 1, "the means for instructing also preventing the IBPS from presenting the primary document to a requesting customer until the primary and secondary documents are available for viewing", which is the feature corresponding to the difference between the inventive concept and *Kolling et*

al., lacks an inventive step in both idea and implementation (i.e. hyperlinks).

[57] We therefore conclude that the difference over the inventive concept identified in step 3 is obvious, and that claims 1-13 would have been obvious in view of *Kolling et al.* and the common general knowledge of the skilled person on the claim date.

Double Patenting

[58] The second question before us is whether or not claims 1-13 are unpatentable due to double patenting in view of the Applicant=s issued patent to *Bresnan et al.*

[59] In our opinion, no better reasons for refusal can be found in *Bresnan et al.* than those set out above in respect of obviousness under section 28.3. We therefore do not need to consider the question of obviousness double patenting, given our findings as to obviousness.

Recommendation

[60] The panel recommends that the rejection of the application be affirmed for non-compliance with section 28.3 of the *Patent*

Act, because claims 1 to 13 are obvious in view of the state of the art. We recommend that the application be refused in accordance with section 40 of the *Patent Act*.

Paul Sabharwal
Member

Ed MacLaurin
Member

Andrew Strong
Member

Decision

[61] I concur with the Patent Appeal Board's finding that the application does not comply with section 28.3 and its recommendation that the application be refused in accordance with section 40 of the *Patent Act*.

[62] 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.

Sylvain Laporte
Commissioner of Patents

Dated at Gatineau, Quebec,
this 11th day of July, 2013