

Commissioner's Decision # 1390
Décision de la Commissaire # 1390

TOPICS: O00, J60, J70, J80
SUJETS: O00, J60, J70, J80

Application No. : 2,387,179
Demande N^o : 2,387,179

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2,387,179, having been rejected under subsection 30(3) of the *Patent Rules* [SOR/96-423], has subsequently been reviewed in accordance with paragraph 30(6)(c) of the *Patent Rules*. The recommendation of the Board and the decision of the Commissioner follow:

Agent for the Applicant

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INTRODUCTION

- [1] This recommendation concerns a review of patent application no. 2,387,179, filed on May 22, 2002, claiming priority on a US application filed on February 11, 2002. The application is entitled “Advertising System.” The applicant is David E. Leb.
- [2] The present application relates to a removable display advertisement located on the back skin surface of a person and a method of advertising incorporating such an advertisement.

APPLICATION HISTORY

- [3] On March 6, 2014 the Examiner wrote a Final Action pursuant to subsection 30(4) of the *Patent Rules*. The Final Action states that the application is defective on the grounds that all of the claims on file (claims 1-15): do not comply with section 28.3 of the *Patent Act* for comprising subject matter that is obvious; and do not comply with section 2 of the *Patent Act* for comprising subject matter that is outside the definition of invention.
- [4] In a September 8, 2014 response to the Final Action, the Applicant presented arguments regarding the obviousness and non-statutory subject matter defects noted in the Final Action. The Applicant did not propose amendments to the application.
- [5] As the Examiner considered the application not to comply with *Patent Act*, pursuant to subsection 30(6) of the *Patent Rules* the application was forwarded to the Patent Appeal Board [“the Board”] for review on October 27, 2014, along with a Summary of Reasons [“SOR”] explaining why the application did not comply with the *Patent Act*. The SOR maintained the grounds set out in the Final Action.
- [6] In a letter from the Board dated October 31, 2014, the Applicant was forwarded a copy of the SOR and was provided an opportunity for a hearing and an opportunity to provide written submissions in response to the SOR. The Applicant did not respond to the

October 31, 2014 letter.

- [7] Following a review, this panel sent a letter dated December 24, 2015 to the Applicant, providing our preliminary views regarding claim construction and the defects relating to section 28.3 and section 2 of the *Patent Act*. The letter sets out our rationale as to why, based on the record before us, the claims on file do not comply with section 28.3 and section 2 of the *Patent Act*. In particular, the letter states that the claims would have been obvious to the person skilled in the art in view of the cited prior art, which discloses a message appearing in the form of a body marking located on the chest of a person during a live, televised event, and that the claims, which are directed to a removable display advertisement located on the back surface of a person and a method of advertising incorporating such an advertisement, do not constitute patentable arts falling within the definition of invention. The letter further provided the Applicant an opportunity for a hearing and an opportunity to provide written submissions.
- [8] In a letter dated January 22, 2016, the Applicant declined the offer of a hearing.
- [9] In a subsequent letter dated February 5, 2016, the Applicant advised the Board that no written submission will be made.

RECOMMENDATION OF THE PANEL

- [10] In view of the Applicant's letters of January 22, 2016 and February 5, 2016, we conclude that the claims on file do not comply with section 28.3 and section 2 of the *Patent Act*, and we recommend that the application be refused for the reasons provided in our December 24, 2015 letter.

Paul Fitzner

Mark Couture

Maxime Bazinet

Member

Member

Member

DECISION OF THE COMMISSIONER

- [11] I concur with the Patent Appeal Board's findings and its recommendation that the application be refused because the claims on file (claims 1-15): are obvious and thus do not comply with section 28.3 of the *Patent Act*; and comprise subject matter outside the definition of invention and thus do not comply with section 2 of the *Patent Act*.
- [12] 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.

Johanne Bélisle
Commissioner of Patents

Dated at Gatineau, Quebec,
this 23rd day of March, 2016