

Commissioner's Decision No. 1446

Décision du commissaire n° 1446

TOPICS: B00 Ambiguity or Indefiniteness (incomplete)
O00 Obviousness

SUJETS: B00 Caractère ambigu ou indéfini (incomplet)
O00 Évidence

Application No. 2,604,196

Demande n° 2 604 196

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2,604,196, having been rejected under subsection 30(3) of the *Patent Rules*, has subsequently been reviewed in accordance with paragraph 30(6)(c) of the *Patent Rules*. The recommendation of the Patent Appeal Board and the decision of the Commissioner are to refuse the application.

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INTRODUCTION

- [1] This recommendation concerns the review of rejected patent application number 2,604,196, which is entitled “System and Method for Searching for Specific Types of People or Information on a Peer-To-Peer Network” and is owned by Kroll Information Assurance, LLC. The outstanding defects to be addressed are whether the claimed subject-matter would have been obvious and whether the claims are indefinite.
- [2] A review of the rejected application has been conducted by the Patent Appeal Board (the “Board”) pursuant to paragraph 30(6)(c) of the *Patent Rules*. As explained in more detail below, our recommendation is that the application be refused as it does not comply with paragraph 28.3(b) of the *Patent Act* because the subject-matter of claims 1-12 would have been obvious to the person skilled in the art.

BACKGROUND

The Application

- [3] Patent application 2,604,196 (the “instant application”), based on a previously filed Patent Cooperation Treaty application, is considered to have been filed in Canada on April 11, 2006 and laid open on October 19, 2006.
- [4] The instant application relates to systems, methods and apparatuses that use specific search terms as a means of profiling to find specific types of people or information in a peer-to-peer (“P2P”) network.

Prosecution History

- [5] On June 19, 2015, a Final Action (“FA”) was written pursuant to subsection 30(4) of the *Patent Rules*. The FA stated that the application was defective on the grounds that:

1. claims 1-12 at the time of the FA (the “claims on file”) would have been obvious to the person skilled in the art and do not comply with paragraph 28.3(b) of the *Patent Act*; and
2. claims 1, 8 and 11 on file are indefinite and do not comply with subsection 27(4) of the *Patent Act*.

- [6] In a December 18, 2015 response to the FA, the Applicant stated that it continued to “traverse these objections for substantially the same reasons as presented in the Applicant’s submission of January 3, 2014, which are hereby repeated.” The January 3, 2014 submission (“AppSub2014”) submitted that the claims are unobvious over the cited prior art and that the claims are definite.
- [7] As the Examiner considered the application not to comply with the *Patent Act* and *Patent Rules*, the application was forwarded to the Board for review on March 15, 2016, pursuant to subsection 30(6) of the *Patent Rules*, along with an explanation outlined in a Summary of Reasons (“SOR”) that maintained the defects as identified in the FA.
- [8] With a letter dated April 6, 2016, the Board sent the Applicant a copy of the SOR and offered the Applicant the opportunities to attend an oral hearing and to make further written submissions. The Applicant’s response on July 4, 2016 declined both the offer of an oral hearing and the offer to provide written submissions in response to the SOR.
- [9] A Panel was formed to review the application under paragraph 30(6)(c) of the *Patent Rules* and to make a recommendation to the Commissioner as to its disposition.
- [10] In a letter dated November 28, 2017 (the “Panel Letter”), the Panel set out a preliminary analysis and rationale as to why, based on the written record, claims 1, 8 and 11 on file are definite. However, it was our preliminary view that claims 1-12 on file would have been obvious and do not comply with paragraph 28.3(b) of the *Patent Act*.

[11] The Applicant's written response dated January 2, 2018 indicated that the Applicant would make no further submissions and requested that the Board undertake its final review and provide its recommendations to the Commissioner.

ISSUES

[12] The issues to be addressed by this review are:

1. Whether the subject-matter defined by claims 1-12 would have been obvious to a person skilled in the art, thus not complying with paragraph 28.3(b) of the *Patent Act*; and
2. Whether claims 1, 8 and 11 on file are indefinite, thus not complying with subsection 27(4) of the *Patent Act*.

LEGAL PRINCIPLES AND PATENT OFFICE PRACTICE

Purposive Construction

[13] In accordance with *Free World Trust v. Électro Santé*, 2000 SCC 66, essential elements are identified through a purposive construction of the claims done by considering the whole of the disclosure, including the specification and drawings (see also *Whirlpool v. Camco*, 2000 SCC 67 at paragraphs 49(f) and (g) and 52). In accordance with the *Manual of Patent Office Practice*, revised June 2015 (CIPO) at §13.05, the first step of purposive claim construction is to identify the person skilled in the art and his or her relevant common general knowledge ("CGK"). The next step is to identify the problem addressed by the inventor and the solution put forth in the application. Essential elements can then be identified as those required to achieve the disclosed solution as claimed.

Obviousness

[14] The *Patent Act* requires that the subject-matter of a claim not be obvious. Section 28.3 of the Act provides as follows:

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.

[15] In *Apotex Inc. v. Sanofi-Synthelabo Canada Inc.*, 2008 SCC 61 at para 67 [*Sanofi*], the Supreme Court of Canada stated that it is useful in an obviousness inquiry to follow the following four-step approach:

- (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?

Claim Clarity / Indefiniteness

[16] Subsection 27(4) of the *Patent Act* states:

27. (4) The specification must end with a claim or claims defining distinctly and in explicit terms the subject-matter of the invention for which an exclusive privilege or property is claimed.

[17] In *Minerals Separation North American Corp. v. Noranda Mines Ltd.*, [1947] Ex CR 306, 12 CPR 99 at 146 [*Minerals Separation*], the Court emphasized the obligation for an Applicant to make clear in the claims the ambit of the monopoly sought and the requirement for terms used in the claims to be clear and precise:

By his claims the inventor puts fences around the fields of his monopoly and warns the public against trespassing on his property. His fences must be clearly placed in order to give the necessary warning and he must not fence in any property that is not his own. The terms of a claim must be free from avoidable ambiguity or obscurity and must not be

flexible; they must be clear and precise so that the public will be able to know not only where it must not trespass but also where it may safely go.

ANALYSIS

[18] The Panel notes that the Applicant did not dispute any of the preliminary views taken by the Panel. Our recommendation below therefore provides an overview of our analysis and rationale presented in the Panel Letter.

Overview of the Instant Application

[19] The Panel Letter sets out an overview of the instant application:

Nodes in a peer-to-peer (“P2P”) network share files using a file server and client software to send/receive data to/from other nodes in the P2P network. Users identify to the client software a folder that is to be shared with other users. For whatever reason, shared folders may contain sensitive information that should not be shared. It is advantageous to locate people who are sharing sensitive information so that it can be removed from sharing.

The instant application is directed to systems, methods and apparatuses that use specific search terms as a means of profiling to find specific types of people or information in a P2P network.

There are 12 claims on file. In our view, the independent method claim 8 is representative of the independent system claim 1 and the independent apparatus claim 11:

A method of identifying at least one type of person by issuing searches on a Peer-to-Peer network, comprising:

- determining at least one type of person to be identified;
- connecting to the Peer-to-Peer network;
- issuing a Peer-to-Peer search on the Peer-to-Peer network, the Peer-to-Peer search including a group of predetermined search terms used as part of information being shared among computers connected to the Peer-to-Peer network, the group of predetermined search terms including a combination of at least two search terms selected from a list of terms, the combination of at least two search terms known to elicit a response from the at least one type of person to be identified and the computers in the Peer-to-Peer network each being associated with at least one user, and such users of the computers in the Peer-to-Peer network not being known, in advance of issuing the Peer-to-Peer search, to necessarily include the at least one type of person to be identified;
- receiving a response as a result of the Peer-to-Peer search on the Peer-to-Peer network including the group of predetermined search terms, the response being received from a responding computer connected to the Peer-to-Peer network, the response from the responding computer also including information related to the combination of at least two predetermined search terms, and the response from the responding computer also including information that is being shared without knowledge of a user associated with the responding computer;

- indicating, by a processor, that the responding computer has an associated user who is the at least one type of person to be identified: and
- determining, by the processor, a location of the associated user who is the at least one type of person to be identified from the response.

Dependent claims 2-7, 9-10 and 12 define additional limitations to the independent claims defining the “type of person”.

Purposive Construction

[20] Consistent with the position taken in the Panel Letter, this review does not undertake a determination as to which claimed elements are essential, since by taking into account all the elements of the claims, as we have done in our analysis below, it is possible to reach a conclusion regarding obviousness that would not be affected by the inclusion of any non-essential elements.

Meaning of Terms

[21] The Panel Letter undertook to purposively construe the term “type of person” as it is relevant to the claim clarity / indefiniteness issue:

As a preliminary matter, the Panel notes that the meaning of the term “type of person” recited in the independent claims is pertinent to the Claim Clarity/Indefiniteness issue discussed below and so we construe its meaning taking into account the specification as a whole.

The description, starting a page 5, line 13, describes a series of embodiments that relate specific search terms to specific people and/or information. For example, page 5, lines 13-16 relate search terms, such as MBNA, dispute, statement, etc. with people and/or information related to financial accounts. As another example, page 5, lines 17-19 relate search terms dispute, cover letter, resume, etc. with people and/or information related to identity theft and credit card disputes.

The Panel construes the term “type of person” to mean a person sharing sensitive or protected information of a certain type, where that type of information is of interest. Various embodiments presented in the description suggest the type of information of interest includes financial accounts, information related to identity theft and credit card disputes, etc.

[22] We adopt this construction for the purposes of this review.

Obviousness

Sanofi step (1)(a) – Identify the notional “person skilled in the art”

[23] The Panel Letter identified the person skilled in the art as “a computer engineer or computer scientist skilled in computer networking technologies and associated search techniques.”

[24] We adopt this characterization of the person skilled in the art for our review.

Sanofi step (1)(b) – Identify the relevant common general knowledge of that person

[25] The Panel Letter identified the CGK as follows:

As the CGK is best represented by the background of the instant application (instant application, pages 1-3 and figures 1-3), it is our preliminary view that the CGK includes:

- P2P networks to share files such as music, movies and software files using a file server and client software on each node;
- P2P network topologies; and
- searching of files on P2P networks.

[26] We adopt these characterizations of the CGK for our review.

Sanofi step (2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it

[27] For the purpose of assessing the obviousness of the claims, we have taken into account all the elements of the claims, as stated above with respect to claim construction.

Sanofi step (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

[28] The FA cited two prior documents:

D1: US 2003/0182428 Li et al. September 25, 2003

D2: United States House of Representatives, Committee On Government Reform – Staff Report, Prepared For Rep. Tom Davis And Rep. Henry A. Waxman, “*File-Sharing Programs and Peer-to-Peer Networks Privacy and Security Risks*”, May 2003

- [29] The Panel Letter identified document D2 as representing the “state of the art” in the *Sanofi* step (3) analysis.
- [30] D2 is a report of a congressional staff investigation summarizing the potential privacy and security risks associated with popular P2P file-sharing programs, such as KaZaA and Morpheus (D2, pages 2-3). The findings of D2 include, *inter alia*, that “[m]any users of file-sharing programs have inadvertently made highly personal information available to other users” (D2, pages 1 and 5-9).
- [31] The Panel Letter considered the Applicant’s AppSub2014 submissions with respect to D2 and identified the difference between D2 and independent claims 1, 8 and 11:

The AppSub2014 at page 13 asserts the following with respect to D2:

Thus, at best, D2 is concerned with determining if users are sharing personal information on the P2P network, and why the users are sharing the personal information on the P2P network. D2 is not concerned with locating a particular **type of person** and determining a location of the particular type of person in the manner recited in the independent claims of the current Application. That is, D2 make no mention of its system issuing a search for information (e.g., at least two search terms) on the P2P network **that is known to elicit a response from at least one type of person trying to be identified**, and then utilizing/analyzing the response from the at least one type of person **to determine a location of that at least one type of person.**

To determine if users are sharing personal information, D2 states that it simply utilizes keyword searches to find specific kinds of files being shared on the P2P network (e.g., Kazaa), wherein the specific files may be tax returns and medical files. See D2, page 5 and Fig. 1. Once a particular file has been located on a particular user's computer, D2 describes utilizing a Kazaa feature called ‘Find More from Same User’ that reveals all the files located on the particular user's computer. See D2, page 7. Thus, at best, D2 describes issuing a particular search request, finding a particular file on a particular computer based on that search, and then finding all the files that are located on the particular computer. D2 is not concerned with and does not describe a technique for locating a particular type of person, let alone determining a location of a particular type of person that is known to share a particular type of information as described in the claims of the current Application. More specifically, D2 make no mention of its system issuing a search for information (e.g., at least two search terms) on the P2P network **that is known to elicit a response from at least one type of person trying to be identified**, and then utilizing/analyzing the response from the at least one type of person to determine a location of that at least one type of person. (emphasis in the original)

Regarding the Applicant's submission that “D2 make no mention of its system issuing a search for information (e.g., at least two search terms) on the P2P network that is known to elicit a response from at least one type of person trying to be identified”, the Panel notes that D2 discloses the use of a keyword search at page 5: “[t]he Committee testing

was done using the Kazaa program. Consistently, personal information was easily found, often within the first set of results returned by simple keyword searches”. D2 is also explicit in the disclosure on page 5 that the keyword search includes at least one search term. D2 provides examples of the personal information found on P2P networks, such as tax returns, medical information, confidential legal documents, etc. (see further examples in D2 on pages 5-7 and in figure 1 and table 2). D2 also discloses the relationship between a particular user and shared personal information; for example, a search for a person associated with financial information results in the D2 figure 1 examples of completed tax forms and mappings to specific users in D2 table 2.

Based on this disclosure, the Panel’s preliminary view is that D2 discloses issuing a search using keywords for information that is known to elicit a response from a particular type of person.

We agree with the Applicant's further submission that “D2 is not concerned with ... determining a location of the particular type of person”.

Based on the above, in the Panel's preliminary view, D2 discloses at least one type of person to be identified (for example, people sharing information associated with financial information), connecting to a P2P network (using KaZaA), issuing a P2P search on the P2P network using search terms (for example, search term(s) associated with financial information), receiving a response as a result of the P2P search (for example, completed tax forms as shown on page 6, figure 1) and indicating an associated user who is the one type of person to be identified (for example, the personal information is mapped to a user as shown on page 7, table 2).

It follows, in our preliminary view, with respect to independent claims 1, 8 and 11 that D2 does not disclose determining a location of the associated user (emphasis added).

[32] We identify this difference, namely, determining a location of the associated user, as the only difference between the state of the art as represented by D2 and independent claims 1, 8 and 11.

[33] The Panel Letter considered the differences between D2 and dependent claims 2-7, 9-10 and 12:

Regarding dependent claims 2-3, 5, 7, 9 and 12, the Panel's preliminary view is that D2 discloses these claims' elements as well:

- dependent claims 2 and 12: the completed tax returns of users 1 and 6 (D2, page 7, table 2) disclose at least one person related to financial accounts;
- dependent claim 3: the internal business records and sensitive business correspondence, including memos on board of directors decision making of user 2 (D2, page 7, table 2) disclose at least one type of person related to corporate executives or corporate operations;
- dependent claim 5: the shipboard medical supply inventories for user 3 (D2, page 7, table 2) disclose at least one type of person related to corporate operations;

- dependent claim 7: “simple keyword searches” (D2, page 5) and the examples of personal information found (D2, figure 1) disclose a person sharing information related to another entity that is associated with the at least one search term; and
- dependent claim 9: the shared personal file for users 1 through 8 (D2, page 7, table 2) disclose the type of person to be identified is a person sharing information that should not be shared.

With respect to the remaining dependent claims 4, 6 and 10, in our preliminary view, D2 does not explicitly disclose at least one type of person is related to:

- corporate financials (dependent claim 4); and
- a person that should not be sharing information that is associated with the at least two search terms (dependent claims 6 and 10).

[34] In light of the above, we identify these elements, namely, the “at least one type of person is related to corporate financials” and the “at least one type of person that should not be sharing information is associated with at least two search terms” as the differences between the state of the art as represented by D2 and dependent claims 4, 6 and 10 for the purposes of this review.

[35] During the Panel’s preliminary review, we also identified an additional relevant document, United States General Accounting Office (GAO), Report to the Chairman and Ranking Minority Member, Committee on Government Reform, House of Representatives, “*File-Sharing Programs Peer-to-Peer Networks Provide Ready Access to Child Pornography*”, February 20, 2003 [GAO] (available at: <http://www.gao.gov/assets/240/237369.pdf>).

[36] With respect to the differences between *GAO* and independent claims 1, 8 and 11, the Panel Letter stated:

GAO found that child pornography is easily found, shared and downloaded from P2P networks. Keyword searches were used to find files associated with child pornography. In particular, 12 keywords were used for KaZaA searches, “[t]he 12 keywords provided by the Cybersmuggling Center as examples known to be associated with child pornography on the Internet” (*GAO*, pages 11-12, footnote 28). In addition, *GAO* on page 12 stated:

Using 3 of the 12 keywords that we used to document the availability of child pornography files, a CyberSmuggling Center analyst used KaZaA to search, identify, and download 305 files, including files containing multiple images and duplicates. The analyst was able to download 341 images from the 305 files identified through the KaZaA search.

The CyberSmuggling Center analysis of the 341 downloaded images showed that 149 (about 44 percent) of the downloaded images contained child pornography (see fig. 2). The center classified the remaining images as child erotica (13 percent), adult pornography (29 percent), or nonpornographic (14 percent).

GAO Appendix I provides a description of the objectives and scope of the work and the methodology used, including examples of the keywords used (*GAO*, pages 19-20). *GAO* Appendix II (pages 21-25) also provides a description of P2P networks; footnote 10 on page 24 makes clear that “[l]aw enforcement agents may identify users’ Internet addresses during the file-sharing process and obtain, under a court order, their identities from their Internet service providers”.

Based on these disclosures, the Panel’s preliminary view is that *GAO* also discloses at least one type of person to be identified (people sharing child pornography), connecting to a P2P network (using KaZaA), issuing a P2P search on the P2P network using search terms (for example, 3 keywords intended to identify pornographic images, Appendix I), receiving a response as a result of the P2P search (Appendix I) and identifying an associated user who is the one type of person to be identified (Appendix II, footnote 10) (emphasis added).

Similar to the identified difference above between independent claims 1, 8 and 11 and D2, in the Panel’s preliminary view *GAO* does not explicitly disclose determining a location of the associated user (emphasis added).

[37] Thus, we also identify this difference, namely, determining a location of the associated user, as the only difference between the state of the art as represented by *GAO* and independent claims 1, 8 and 11 for the purposes of this review.

[38] Regarding the differences between the state of the art represented by *GAO* and dependent claims 2-7, 9-10 and 12, in light of the analysis presented above in the Panel Letter, we are of the view that *GAO* also discloses the limitations of claims 6, 7, 9 and 10, that is, the type of person to be identified is a person sharing information that should not be shared and is associated with at least one or at least two search terms (see, for example, *GAO*, three keywords intended to identify pornographic images, Appendix I). However, in our view, *GAO* does not explicitly disclose the “at least one person is related to financial accounts” (claims 2 and 12), “at least one person is related to corporate executives or corporate operations” (claims 3 and 5), and the “at least one person is related to corporate financials” (claims 4).

Sanofi step (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?

[39] The Panel Letter assessed whether the identified differences constitute steps which would have been obvious to the person skilled in the art:

With respect to the independent claims 1, 8 and 11, the Panel is of the preliminary view that the difference of determining a user's location from the returned search results would have been obvious to the skilled person. D2 discloses the mapping of search results to a specific user (D2, page 5, table 2) and it would have been well known to the person in the art to associate that user with a location identifying information, for example, an Internet Protocol address. Similarly, GAO discloses identifying an associated user who is the one type of person to be identified using an Internet Protocol address (Appendix II, footnote 10). Starting with either D2 or GAO, it is well known to the person in the art to determine the user's location using an Internet Protocol address.

The Panel also notes that the instant application is devoid of any enabling disclosure of this particular feature of determining a user's location from the returned search. Thus, we assume that the implementation of this feature was within the CGK of the person skilled in the art.

With respect to the dependent claims 4, 6 and 10, the Panel is of the preliminary view that the person skilled in searching for files in a P2P network would have encountered no difficulty in devising a specific search term or multiple search terms associated with a particular type of person to be identified. For example, the D2 search for users associated with personal financial information disclosed no difficulty in determining the appropriate search terms. Furthermore, D2 discloses searching for files using simple keyword searches, which is also well within the CGK of the person skilled in the art.

Our preliminary view is that there are also no differences between claims 1-12 and GAO that constitute steps requiring any degree of invention, for similar reasons as given with respect to D2.

[40] Thus the difference between independent claims 1, 8 and 11 and either D2 or GAO, namely, determining a user's location from the returned search results, would have been obvious to the person skilled in the art as it was known to determine a user's location using location identifying information, such as an Internet Protocol address.

[41] Furthermore, with respect to the difference between the dependent claim 4 and D2 and dependent claims 2-5 and 12 and GAO, that is, the at least one type of person is related to financial accounts, corporate executives or corporate operations, and corporate financials, it was known to determine appropriate search terms to search for other specific types of persons and thus this difference would also have been obvious to the person skilled in the art.

[42] Regarding the difference between dependent claims 6 and 10 and D2, namely, the at least one type of person that should not be sharing information is associated with at least two search terms, this difference would also have been obvious to the person skilled in the art in view of the CGK.

[43] In light of the above, it is our view that the differences between the claims on file and the prior art cited in the Panel Letter constitute steps which would have been obvious to the person skilled in the art.

[44] Therefore we are of the view that the claims on file do not comply with paragraph 28.3(b) of the *Patent Act*.

Claim Clarity / Indefiniteness

[45] The Panel Letter stated:

The FA at page 4 asserted that:

Claims 1, 8 and 11 do not comply with subsection 27(4) of the *Patent Act*. These claims describe determining a location of at least one type of person identified from the response. This causes confusion and ambiguity as there is no support for how a search term leads to a “type of person”. It may be understood that the search terms lead to a file location, or a computer, not a person or a “type of person”, as suggested.

The Applicant responded that the description example at page 8 describes how search terms lead to a type of person (AppSub2014 at page 14).

According to the Panel’s construction above of the term “type of person”, the Panel is of the preliminary view that the person skilled in the art would have no difficulty in understanding the meaning of this term from the description. The Panel considers that the recited steps are framed in language that is clear and precise such that the person skilled in the art will be able to readily determine the limits of the recited steps and therefore the claim, mindful of the guidance given in *Minerals Separation*.

Accordingly, the Panel’s preliminary view is that claims 1, 8 and 11 are definite and comply with subsection 27(4) of the *Patent Act*.

[46] Thus, given our purposive construction of the term “type of person” as described above, we are of the view that claims 1, 8 and 11 on file are definite and therefore comply with subsection 27(4) of the *Patent Act*.

CONCLUSIONS

[47] This review has determined that:

1. the subject-matter defined by claims 1-12 on file would have been obvious to a person skilled in the art and thus does not comply with paragraph 28.3(b) of the *Patent Act*; and
2. claims 1, 8 and 11 on file are definite and thus comply with subsection 27(4) of the *Patent Act*.

RECOMMENDATION OF THE BOARD

[48] For the reasons set out above, the Panel recommends that the application be refused on the basis that the subject-matter of the claims on file, namely claims 1-12, would have been obvious to the skilled person and are therefore non-compliant with paragraph 28.3(b) of the *Patent Act*.

Lewis Robart
Member

Stephen MacNeil
Member

Leigh Matheson
Member

DECISION

[49] I concur with the conclusions and recommendation of the Board that the application be refused because the claims on file do not comply with paragraph 28.3(b) of the *Patent Act*.

[50] Therefore, in accordance with section 40 of the *Patent Act*, 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 6th day of March, 2018