

Commissioner's Decision #1470

Décision du commissaire #1470

TOPICS: J00 Meaning of Art  
J60 Printed Matter  
O00 Obviousness

SUJETS: J00 Signification de la technique  
J60 Imprimés  
O00 Évidence

Application No: 2,685,815

Demande no: 2 685 815

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2,685,815, having been rejected under subsection 30(3) of the *Patent Rules* (SOR/96-423), has consequently been reviewed in accordance with paragraph 30(6)(c) of the *Patent Rules*. The recommendation of the Board and the decision of the Commissioner are to refuse the application.

Agent for the Applicant

**PIASETZKI NENNIGER KVAS LLP**

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## **INTRODUCTION**

- [1] This recommendation concerns the review of rejected Canadian patent application number 2,685,815 (“the instant application”), which is entitled “AUTOMATED COLOR SELECTION METHOD AND APPARATUS” and is owned by BEHR PROCESS CORPORATION (“the Applicant”). 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 Commissioner of Patents refuse the application.
- [2] This recommendation and Commissioner’s Decision are being released concurrently with the recommendation and Commissioner’s Decision for co-pending Canadian patent application number 2,686,074, owned by the same Applicant.

## **BACKGROUND**

### **The Application**

- [3] The instant application was filed in Canada on November 18, 2009 and was laid open to public inspection on January 22, 2011.
- [4] The instant application relates to a paint color selection system and method for displaying paint colors for selection by a user. An array of paint color families is displayed on a website in a plurality of rows and columns with paint color strip cards being selectable by a user. Upon selection of a color strip card, the particular selected color family is enlarged and moved to a central position, with the former array being reduced in size and moved into a thumbnail navigation frame. A link is provided in the frame to return the array to its former position. Further selection of a particular color chip within the color family causes the color chip to move to a central position and enlarge as well.

## Prosecution History

- [5] On August 5, 2015, a Final Action (“FA”) was written pursuant to subsection 30(4) of the *Patent Rules*. The FA stated that the instant application is defective on the grounds that all of the claims 1-64 on file at the time of the FA (“claims on file”) encompass non-statutory subject-matter and therefore do not comply with section 2 of the *Patent Act* and that the claims on file would have been obvious and therefore do not comply with section 28.3 of the *Patent Act*. The FA also set out a defect in relation to the breadth of the claims in relation to the description under subsection 27(3) of the *Patent Act*.
- [6] In a February 5, 2016 response to the FA (“R-FA”), the Applicant did not propose amendments to the claims on file. An amendment to the description was proposed to address the defect under subsection 27(3) of the *Patent Act*. Arguments in favor of the patentability of the claims on file were submitted as well.
- [7] As the Examiner considered the application not to comply with the *Patent Act* and *Patent Rules*, pursuant to paragraph 30(6)(c) of the *Patent Rules*, the application was forwarded to the Board for review on June 27, 2016 along with an explanation outlined in a Summary of Reasons (“SOR”). The SOR set out the position that the claims on file were still considered to be defective due to non-statutory subject-matter and obviousness. The SOR indicated that the defect in relation to subsection 27(3) of the *Patent Act* would be overcome by the amendment proposed in the R-FA to the description.
- [8] In a letter dated July 13, 2016, the Board forwarded to the Applicant a copy of the SOR and offered the Applicant an opportunity to make further submissions and/or attend an oral hearing.
- [9] In a response to the SOR (“R-SOR”) dated November 2, 2017, the Applicant provided further written submissions in favor of the patentability of the claims on file.

- [10] The present panel (“the Panel”) was formed to review the instant application under paragraph 30(6)(c) of the *Patent Rules*.
- [11] In a preliminary review letter (“PR letter”) dated February 23, 2018, the Panel set out its preliminary analysis of the statutory subject-matter and obviousness issues with respect to the claims on file.
- [12] The Applicant provided written submissions in response to the PR letter (“R-PR”) on March 29, 2018.
- [13] An oral hearing was held on April 12, 2018 at which time the Applicant made oral submissions in relation to both the instant application and co-pending application no. 2,686,074.

## **ISSUES**

- [14] The issues to be addressed by the present review are whether:

- claims 1-64 on file are directed to statutory subject-matter; and
- claims 1-64 on file would have been obvious.

## **LEGAL PRINCIPLES AND OFFICE PRACTICE**

### **Claim Construction**

- [15] In accordance with *Free World Trust v Électro Santé Inc*, 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 Corp v Camco Inc*, 2000 SCC 67 at paras 49(f) and (g) and 52). In accordance with the *Manual of Patent Office Practice*, §13.05 (revised June 2015), the first step of purposive claim construction is to identify the person skilled in the art and their relevant common general

knowledge (“CGK”). The next step is to identify the problem addressed by the inventors and the solution put forth in the application. Essential elements can then be identified as those required to achieve the disclosed solution as claimed.

### **Statutory Subject-Matter**

[16] The definition of invention is set out in section 2 of the *Patent Act*:

“invention” means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter.

[17] The Office examination memo PN 2013-03 entitled “*Examination Practice Respecting Computer-Implemented Inventions*” (“PN 2013-03”) clarifies examination practice with respect to the Office’s approach to computer implemented inventions.

[18] As stated in *PN 2013-03*, Office practice considers that where a computer is found to be an essential element of a construed claim, the claimed subject-matter will generally be statutory. Where, on the other hand, it is determined that the essential elements of a construed claim are limited to matter excluded from the definition of invention (for example, fine arts, methods of medical treatment, features lacking in physicality, or claims where the subject-matter is a mere idea, scheme, rule or set of rules), the claim will not be compliant with section 2 of the *Patent Act*.

### **Obviousness**

[19] The *Patent Act* requires that the subject-matter of a claim not be obvious to a person skilled in the art. Section 28.3 of the *Patent Act* states:

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.

[20] In *Apotex Inc v Sanofi-Synthelabo Canada Inc*, 2008 SCC 61 at paragraph 67 [*Sanofi*], the Supreme Court of Canada stated that it is useful in an obviousness inquiry to use 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?

## ANALYSIS

### Claim Construction

[21] In the R-PR, the Applicant contends, as in the R-SOR, that the Panel applied the wrong principles in performing a construction of the claims. These points have already been addressed in the PR letter, in which the Panel explained that we have followed the claim construction approach set out in *MOPOP* §13.05.01.

*The person skilled in the art*

[22] In the PR letter, the person skilled in the art was characterized as:

a team of persons comprising a color expert and computer programmers. These persons have a web design and multimedia programming background and have knowledge of computer programs, networks and servers, and of digital color management and of display of information. The team also includes marketing and paint sales professionals.

[23] The above characterization was not disputed by the Applicant in the R-PR. We apply it in our analysis below.

*The relevant common general knowledge*

[24] In the PR letter, the relevant CGK was set out as including:

- Color display systems to assist consumers in selecting paint colors and automated computer or web-based color selection, coordination and/or purchase systems;
- The use of servers and networks, the display of webpages including the general use of pull-down menus and animation (such as the revolving hourglass known from Microsoft Windows 3.1, popular in the 1990s, and attention-drawing animation elements used in toddlers' computer games);
- Printed, hard-copy brochures displaying color family groups and images of interior designs used for decades to promote the sales of paint, and color chip in-store displays; and
- The selection of a particular color amongst a group or family of displayed colors and links to navigate between, at least, the color selection system and the purchase functions;
- The provision of color selection, coordination and purchase systems to consumers over the internet; and



- The presentation of webpages that allow for the presentation of text, graphics, audio and video media and other formats of data. Such webpages can also support “active content” that provides enhanced interaction with the delivered content in comparison with static content (text, graphics, audio or video).

[25] The Applicant did not dispute any of the points above in the R-PR and we consider them in our analysis below.

*The problem to be solved*

[26] In the PR letter, after considering the Applicant’s submissions in the R-SOR, the Panel characterized the problem to be solved as one that:

relates to the desire to produce a more attractive product information webpage, one which will attract users and cause them to seek out further product information.

[27] In the R-PR, the Applicant characterizes the problem as being “directed to providing computer display features that improve upon previous computer displays, by providing practical benefits, including the user’s attention being more effectively drawn to facilitate better colour selection, and the user being able to see colour sheen better to facilitate better sheen selection.” Although the second part of this statement relating to color sheen concerns the claimed subject matter of the co-pending Canadian patent application number 2,686,074, the first part is generally applicable to the instant application.

[28] At the hearing, the Applicant focused on the same general points noted above.

[29] The Applicant contends in the R-PR that “the invention improves on less efficient systems for choosing colours.”

[30] However, in the PR letter, we set out our preliminary view that the application “describes the use of generic computer network system components in implementing the invention, such as multiple remote computers, load balancers, web servers, as well as known software elements for implementing the animation portion of the invention, such as an swf application that controls flash player animation on a user’s display” and that “the lack of detail regarding the implementation of the animated features disclosed is taken to mean that the technical details necessary for implementation of such a feature is part of the relevant CGK of the skilled person. Otherwise, the specification of the instant application would be lacking sufficient information to enable the invention claimed and would be non-compliant with subsection 27(3) of the *Patent Act*.” In our view, based on the CGK and the lack of technical details relating to the animation features, the underlying functionality to provide for the animated features was already well-known.

[31] At the hearing the Applicant submitted that the invention provides a functionally superior display that allows for more efficient navigation and color selection. However, in our view, a person skilled in the art, aware of the animation functionality, would also have been aware of its inherent display enhancing properties. Therefore, we see no problem to be solved relating to the underlying functionality of the color family display and selection tool.

[32] In light of the above, it is our view that the problem to be solved by the proposed invention is as set out in the PR letter, noted above.

#### *The solution*

[33] In the PR letter, the solution provided by the instant application was characterized as the provision of:

a more attractive webpage layout, one which will be more effective in catching the consumer’s attention and cause them to further explore the website content.

- [34] In the R-PR, the Applicant contends that the “technical solution to a technical problem” includes the computer display features that provide for more effectively drawing a user’s attention and provide for better color selection. However, in light of our view of the problem to be solved, the computer display features would not form part of the solution.
- [35] At the hearing, the Applicant pointed to the inclusion of a link in the second display that is generated when a user selects a particular color family, the link enabling a user to return to the first display of color families. In the Applicant’s view, this pointed to the invention including a practical application as part of the solution. However, in light of the above identification of the problem to be solved and the well-known use of webpage links to provide for navigation between pages, which would have been part of the skilled person’s CGK relating to general webpage design, there was no problem associated with providing webpage links for navigating between display pages and therefore such links do not form part of the solution.
- [36] In light of the above, in our view, the solution of the proposed invention is as set out in the PR letter, noted above.

### *Essential Elements*

- [37] Claim 1 on file of the instant application is representative of the claims and is reproduced below:

1. An automated method for providing color selection capability to a user comprising:
 

employing one or more computers to perform a plurality of operations in conjunction with a tangible computer readable medium or media and a computer controlled display apparatus, the operations comprising:

generating a first display on said display apparatus comprising an array of color families displayed in a plurality of rows and a plurality of columns, each color family comprising a plurality of rows, each row comprising a plurality of color stripe cards, said first display enabling selection of a particular color family for display on said display apparatus;

generating a second display on said display apparatus comprising an enlarged display of a particular selected color family in response to selection of the particular color family for display; and

wherein, as said second display is generated, said array of color families dissolves while the particular selected color family moves into a central enlarged position, and wherein a miniature version of said array of color families is displayed in a thumbnail navigation frame in the second display, said second display further comprising a link enabling return to the first display.

- [38] In the PR letter, after reviewing the FA and subsequent prosecution, including the R-SOR, the Panel set out its preliminary view as to the essential elements of the claims on file:

In the preliminary analysis above, the Panel has followed the approach set out in *MOPOP §13.05.01* and has determined that neither the computer-related components nor the basic functionality itself, which provides for the claimed attention-drawing animation features, are part of the solution.

As such, similar to the case for the co-pending Canadian Patent Application no. 2,686,074, it is our preliminary view that the essential elements of the independent claims on file comprise the particular arrangement and display of information presented by the more attractive webpage, including the arrangement of colors and images whereby color families are displayed in a plurality of rows and columns of color stripe cards.

It is also our preliminary view that the features of the dependent claims on file do not add any further essential features to those of the independent claims on file. Again, the computer components and functionality necessary to provide for the particular webpage display and content do not form part of the solution and therefore elements relating to these cannot be considered essential. As such, the further features of the dependent claims also relate to the particular information displayed and its arrangement.

- [39] In the R-PR, the Applicant maintained, as was the case in the R-SOR, that the computer-related features of the claims are essential. The Applicant contends that because the problem and solution relate to the provision of a webpage, a computer must be an essential element of the claims. Otherwise the claims would be inoperable.

- [40] However, the solution identified above focuses on the layout of a webpage and arrangement of its content, rather than on the fact that such content is displayed on a webpage. There were no problems to be solved in generating animated features such as

reduction in size and movement of one part of a display and enlargement and movement of another part. As such, while a computer and the well-known functionality associated with it may define the context or the environment of the invention claimed, they do not change the nature of the solution to the problem (*MOPOP* §13.05.02c).

- [41] In light of the above, in our view the essential elements of the claims on file are those set out in the PR letter, namely “the particular arrangement and display of information presented by the more attractive webpage, including the arrangement of colors and images whereby color families are displayed in a plurality of rows and columns of color stripe cards.”

### **Statutory Subject-Matter**

- [42] In the PR letter, after reviewing the FA and the Applicant’s submissions in the R-SOR, which related to the criteria for patentability set out in *Canada (Attorney General) v Amazon.com Inc*, 2011 FCA 328, we stated that:

While we agree with the legal principles the Applicant has pointed to above, we note that in assessing an invention for statutory subject-matter, or any criteria of patentability, it is first necessary to perform a purposive construction of the claims (*Whirlpool* at paragraph 43). After having performed a claim construction above, in accordance with the office practice set out in *MOPOP* §13.05, the Panel has arrived at the preliminary view that the claims on file are directed to the particular arrangement and display of information presented by the more attractive webpage, including the arrangement of colors and images whereby color families are displayed in a plurality of rows and columns of color stripe cards. Therefore the claims on file as construed contain no essential computer-related components or, in our view, anything that would manifest a discernable effect or change of character or condition in a physical object.

In our preliminary view, as is the case for the co-pending Canadian Patent Application no. 2,686,074, the claims on file as construed are therefore directed to the information on the webpage itself, which would only have some intellectual meaning and in that sense would be considered abstract.

- [43] In the R-PR, the Applicant submitted that “[c]reating any visible content – as the claimed apparatus does, even according to the Panel – produces a discernable effect. The effect is

discernable visually, and also electronically, since a webpage is by definition electronically generated within a computer. This is true even if the computer is inessential to the claims, as the Panel asserts.”

[44] At the hearing, the Applicant asserted, as noted above in relation to the solution, that the inclusion of a link enabling navigation between first and second displays provides for a practical application of the invention that makes it not abstract. However, as set out above, such a link does not form part of the solution or the essential elements and therefore is not considered in assessing the statutory nature of the subject-matter.

[45] As set out in our analysis of the essential elements of the claims above, the claims on file as construed in accordance with the approach set out in *MOPOP* §13.05.01, are directed to the information on the webpage itself, not the underlying functionality that may cause a discernable effect or change of character or condition in a physical object. The information itself has only intellectual meaning and is considered to be abstract.

[46] In light of the above, it is our view that claims 1-64 on file are directed to non-statutory subject-matter and therefore non-compliant with section 2 of the *Patent Act*.

## **Obviousness**

*(1)(a) Identify the notional “person skilled in the art”*

[47] The person skilled in the art has been set out above under Claim Construction at paragraph [22].

*(1)(b) Identify the relevant common general knowledge of that person*

[48] The relevant CGK has also been identified above under Claim Construction at paragraph [24].

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

[49] In the PR letter, the Panel considered the essential elements of the claims identified under Claim Construction to be representative of the inventive concept of the claims as well:

In light of our identification of the essential elements of the claims above, we take this to be representative of the inventive concept of the claims as well.

To clarify, the inventive concept then becomes the particular arrangement and display of information presented by the more attractive webpage, including the arrangement of colors and images whereby color families are displayed in a plurality of rows and columns of color stripe cards.

[50] In the R-PR, the Applicant did not directly dispute the inventive concept identified in the PR letter, except in so far as the essential elements of the claims on file were disputed. The Panel applies below the inventive concept as identified in the PR letter.

*(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*

[51] In the PR letter, with respect to the state of the art, we stated that:

In the FA two pieces of prior art were applied, as set out below:

D3:	US 6572377	Masters	June 3, 2003
D4:	US 5737553	Bartok	April 7, 1998

After review of the prosecution, it is the Panel’s preliminary view that a more relevant piece of prior art than D3 is one discussed in the instant application itself at paragraph [0072], namely:

D5:	US 2006/0195369A1	Webb et al.	August 31, 2006
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Below we discuss the teachings of D4 and D5.

D4 discloses an apparatus and method for mapping hotspot objects of arbitrary shape and size to selected portions of an image presentable on a display connected to a computer. Each pixel of a display is mapped to a color and each color to a definition of a functional object such as an application or executable statement. Hotspot objects (or “hotspots” as used in the instant application) may

be created by a user and linked with a function to be performed upon selection of the hotspot object. A user may click or double-click a mouse button while a cursor is positioned over a hotspot object to launch a functional object mapped to a color which is within the hotspot object (D4 at col. 3, lines 27-35). After opening an object associated with a hotspot the user may be presented with an expansion object 94 that may represent further detail in relation to the hotspot object. An additional expansion object level may be further provided by double clicking on an expansion object 94 (D4 at col. 7, lines 16-23). The hotspot objects may be buttons, icons, boxes or the like. Examples of such hotspot objects are shown in Figure 2 of D4.

D5 discloses a color selection, coordination, purchase and delivery system for paints and decorative materials. The system comprises a webpage which may display a room scene as well as information related to color selection, item purchase, and information related to events or promotions. The webpage includes various tabs providing optional content such as “My Workbook”, “Explore Color”, “eStore”, “Inspiration”, “Expert Advice” and “Products” (D5 at paragraphs [0047]-[0048]). A user can select a specific color by name or browse through a selection of colors and choose matching colors. Users may click on a displayed image which produces an enlarged view of that image as well as an associated color palette (D5 at paragraph [0068]). Users may also click on buttons such as “view sample” and be provided with flash video content on using certain website functions (D5 at paragraph [0069]). Color sample order pages may include color sheen options as part of a “project type” option (D5 at paragraph [0074]). Navigating through color palettes is provided by a series of buttons allowing a user to move between colors and shades (D5 at paragraphs [0120]-[0126]). Screen changes may be accomplished by using animation. For example, color chips may slide to the bottom of a screen and reduce in size by activation of a Browse function (see e.g., D5 at paragraphs [0121], [0130], [0135], [0138] and [0147]).

[52] Given the inventive concept of the claims identified above, we expressed our preliminary view in the PR letter that the difference between the “state of the art”, as best represented by D5, and the inventive concept was the inventive concept itself.

[53] In the PR letter, we noted the additional differences asserted by the Applicant in the R-SOR that we considered for completeness at *Sanofi* step 4:

Upon review of the Applicant’s submissions in the R-SOR, particularly at paragraphs 98-100 and 108, in our preliminary view, the Applicant asserts the following differences between the state of the art and the inventive concept of the claims on file:

- An array of color families displayed in a first display as a plurality of rows and a plurality of column[s], wherein each color family itself comprises “a



plurality of rows”, and the selection of a particular color family from the array of rows and columns;

- The generation of a second display comprising an enlarged display of a particular color family in response to selection of the particular color family;
- The animated dissolving of an array of color families while a particular selected color family gradually moves into a central enlarged position with a miniature version of the array of color families displayed in a thumbnail navigation frame, a link also being present for returning to the first display; and
- The generation of a third display where a color chip selected from the second display moves to a central position and enlarges.

[54] In the R-PR, the Applicant did not dispute the above points. We consider them below at step 4.

*(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?*

[55] In the PR letter, with respect to the difference identified by the Panel, we expressed our preliminary view that this difference would have been obvious to the person skilled in the art:

It is our preliminary view that variation in the particular arrangement and display of information on a webpage would have been obvious in view of D4 and D5 taken together. In our view, the arrangement and display of such information will naturally vary with the particular layout chosen by any given website designer. While the particular layout may involve some creativity on the part of the webpage designer, this is more akin to the creativity required to produce an industrial design rather than a change that would require the inventive ingenuity necessary to support a patent. Displaying certain colors in a certain arrangement depends on the precise implementation chosen by the designer, and many such options would have been self-evident to such a person, with the effects of any such choice self-evident as well.

[56] With respect to the differences identified by the Applicant in the R-SOR, we stated:

With respect to the differences identified by the Applicant in the R-SOR, prior art document D5 discloses the presentation of a color family array (D5 at Figure 25, paragraph [0120]) from which a user may select a color family, where upon selecting a particular family, a further screen is presented through an animation, in which the family selected is moved to the center and the others fade to the bottom and reduce in size (D5 at Figure 26 and 33). In our view, the addition of further levels of selection and corresponding animation would have been obvious to the skilled person in that it is merely a case of a particular choice of product displays for a website, from among many obvious possibilities, with the functionality needed for such a display already known in the art.

[57] In the R-PR, the Applicant contended that the invention produces practical benefits, not merely aesthetic or visual ones, which are not mere design choices and are real improvements. The Applicant also contended that the invention has a utilitarian function. At the hearing, the Applicant reiterated the same points.

[58] However, the underlying functionality of the color selection tool providing for animated movement and size changes was already known in the prior art. Therefore, even assuming as the Applicant contends that there were practical benefits to such animation, they were inherent in the previously known functionality, which, as noted in the PR letter and set out above, was already associated with paint selection webpages. To the skilled person, there was nothing unobvious about the use of such functionality or its benefits in the context of a paint selection webpage.

#### *Conclusion on Obviousness of Claims on File*

[59] Having considered the record before us, including the Applicant's submissions in the R-PR and at the hearing, we conclude that claims 1-64 on file would have been obvious and therefore non-compliant with section 28.3 of the *Patent Act*.

#### **Proposed Claims**

[60] The Applicant did not propose any amendments to the claims in the R-FA, R-SOR or the R-PR.

## CONCLUSIONS

[61] We have determined that claims 1-64 on file are directed to non-statutory subject matter and are therefore non-compliant with section 2 of the *Patent Act* and that claims 1-64 on file would have been obvious and therefore non-compliant with section 28.3 of the *Patent Act*.

## RECOMMENDATION OF THE BOARD

[62] In view of the above, the Panel recommends that the application be refused on the grounds that the claims on file are directed to non-statutory subject-matter and are therefore non-compliant with section 2 of the *Patent Act* and that the claims on file would have been obvious and are therefore non-compliant with section 28.3 of the *Patent Act*.

Stephen MacNeil  
Member

Paul Fitzner  
Member

Leigh Matheson  
Member

**DECISION**

[63] I concur with the conclusions and recommendation of the Board that the application be refused on the grounds that the claims on file are directed to non-statutory subject-matter and are therefore non-compliant with section 2 of the *Patent Act* and that the claims on file would have been obvious and therefore non-compliant with section 28.3 of the *Patent Act*.

[64] 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 20<sup>th</sup> day of December, 2018.