

Commissioner's Decision No. 1476

Décision du commissaire n° 1476

TOPICS: J00 Meaning of Art
J50 Mere Plan
O00 Obviousness

SUJETS: J00 Signification de la technique
J50 Simple plan
O00 Évidence

Application No. 2 507 608

Demande n° 2 507 608

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2507608, 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 2507608, which is entitled “Template Completion for a Content Management System” and is owned by Accenture Global Services Limited. The issues to be addressed are whether the claimed subject matter is not patentable and obvious.
- [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.

BACKGROUND

The Application

- [3] Patent application 2507608 (the instant application), based on a previously filed Patent Cooperation Treaty application, is considered to have been filed in Canada on November 26, 2003 and was laid open to the public on June 10, 2004.
- [4] The instant application relates to methods and systems providing content management that determines the proper set of content templates required for completion based on the type of content to be added to the content management system.

Prosecution History

- [5] On June 1, 2016, 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 claims 1-8 on file encompass subject matter that lies outside the definition of “invention” and thus do not comply with section 2 of the *Patent Act* and that the claims 1-8 would have been obvious to a person skilled in the art and thus do not comply with section 28.3 of the *Patent Act*.

- [6] In a November 4, 2016 response to the FA (RFA), the Applicant submitted a set of proposed claims and submitted that this set of proposed claims was directed to a patentable category of invention and was inventive.
- [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 June 13, 2017, pursuant to subsection 30(6) of the *Patent Rules*, along with an explanation outlined in a Summary of Reasons (SOR) that maintained the rejection based on the defects identified in the FA.
- [8] With a letter dated June 22, 2017, the Board sent the Applicant a copy of the SOR and asked the Applicant to confirm its continued interest in having the application reviewed. In a response dated September 22, 2017, the Applicant confirmed its continued interest in having the application reviewed and submitted further comments with respect to the non-statutory subject matter defect.
- [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 Preliminary Review letter (PR letter) dated January 14, 2019, the Panel set out its preliminary analysis and rationale as to why, based on the written record, the claims on file and the set of proposed claims encompass statutory subject matter and thus comply with section 2 of the *Patent Act*. However, the Panel's preliminary analysis viewed that the claims on file and the set of proposed claims would have been obvious and thus do not comply with paragraph 28.3(b) of the *Patent Act*. The PR letter offered the Applicant the opportunities to attend an oral hearing and to make further submissions.
- [11] A response, dated January 31, 2019, confirmed that the Applicant does not wish an oral hearing and will await the Board's decision in due course based on the submissions to date. The Panel notes that the Applicant did not dispute any of the positions taken by the Panel as presented in the PR letter.

ISSUES

- [12] The issues to be considered by this review are whether the claims on file define subject matter falling outside the definition of “invention”, thus non-compliant with section 2 of the *Patent Act* and whether the claims on file would have been obvious, thus non-compliant with paragraph 28.3(b) of the *Patent Act*.
- [13] We will also analyze the set of proposed claims to consider whether they constitute amendments necessary for compliance with the Act and Rules.

LEGAL PRINCIPLES AND PATENT OFFICE PRACTICE

Purposive construction

- [14] 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*, revised June 2015 (CIPO) [MOPOP] 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.

Non-statutory subject matter

- [15] 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.
- [16] Following the Federal Court of Appeal decision in *Canada (Attorney General) v Amazon.com Inc*, 2011 FCA 328, the Office released an examination memo “Examination Practice Respecting Computer-Implemented Inventions” PN 2013-03

(CIPO, March 2013) [*PN 2013-03*] that clarified the Office's approach to determining if a computer-related invention is statutory subject matter.

[17] As stated in *PN 2013-03*, Patent 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, the fine arts, methods of medical treatment, mere ideas, schemes or rules, etc.), the claimed subject matter will not be compliant with section 2 of the *Patent Act*.

Obviousness

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

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.

[19] 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";
- (1)(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

Overview of the instant application

[20] Here is an overview of the instant application, as presented in the PR letter:

A Contact Center System includes both a Customer Relationship Management component, which manages the relationship between contact center representatives and customers, and a Content Management System component, which publishes content for use by the contact center representatives (instant application, page 13, lines 8-14).

Content publishing and management is well known in the art. In prior art systems, the author, manager or publisher manually chooses the proper set of templates to be used for a new content item. The description provides an example for content associated with a new product. In this example, several templates are needed: a characteristics template, a selling points template, a key features template and a photo template. If one or more templates are not generated, then the contact center representative is faced with missing or incomplete information about the new product (instant application, page 13, line 15 to page 14, line 7).

The instant application is directed to methods and systems providing a content management system. The present invention automatically determines the proper set of templates (or template grouping or template set) required based on the type of content to be added to the content management system. Individual templates may be updated and subsequent usage of that template by any template grouping that includes the updated template will use the updated version. When a new content type is added, its template grouping can be based, in whole or in part, on existing common templates.

Prior art systems also required the original user to contact team members and given them assignments to complete templates and to monitor their progress. The present invention automates these assignment tasks and tracks the work accomplished on the assigned templates. Multiple users can work as a team on each content item by assigning particular templates to particular users within the team (instant application, page 14, line 8 to page 15, line 11).

Prior art systems were also problematic at the point of publication. The publisher would have to manually check each content element before publishing the content to the content management system. The present invention automates this procedure and ensures the completeness of every content item, that is, every

template, before the template grouping is published (instant application, page 15, line 12 to page 15A, line 6).

[21] There are 8 claims on file. For the purposes of this review, we consider that independent claim 1 is representative of all the independent claims on file (method claim 1, system claims 3 and 5 and the computer readable medium claim 7), as they all recite subject matter generally similar to the subject matter recited in claim 1. Claim 1 reads as follows:

A method for requiring a predetermined level of template completeness when publishing information on products and services within a content management system (CMS), the method comprising:

causing at least one computer to store in a database a plurality of objects arranged in a content taxonomy, wherein the content taxonomy comprises a plurality of object groups, a plurality of object types, a plurality of objects, and a plurality of articles, wherein each object group comprises a plurality of object types sharing a first commonality, wherein each object type comprises a plurality of objects sharing a second commonality, and wherein each of the objects comprises a plurality of articles that together provide information about an associated object;

causing the at least one computer to provide a plurality of CMS templates wherein each template is associated with one of the plurality of articles and describes a format and layout thereof;

causing the at least one computer to define a CMS template set chosen from the plurality of CMS templates, the CMS template set used to describe information for a type of products or services wherein application of the templates for generating new articles provides each of the objects of the same object type with the same CMS template set as the other objects of the same object type, including the same set of articles with the same format and layout;

causing the at least one computer to create a new object in the content taxonomy, including causing the at least one computer to generate a record of the new object in the database, determine the object group and the object type of the new object, based on the determined object group and object type, identify the CMS template set associated therewith, the identified CMS template set defining the number and type of articles requiring completion for the new object, and automatically generate said number and type of articles;

causing the at least one computer to receive pieces of content for the articles in the identified CMS template set from multiple users, each of said articles being assigned to one of the multiple users for providing said content, including causing the at least one computer to create a task

identifier that links each of said articles to the associated user, control a workflow for article completion for the new object, and display an indicator representing an article requiring completion to the associated user;

causing the at least one computer to determine if the received pieces of content satisfy a predetermined criteria establishing CMS publication readiness;

causing the at least one computer to prohibit CMS publication until the predetermined criteria is satisfied;

causing the at least one computer to receive a publication request from the CMS publisher after the predetermined criteria is satisfied; and

causing the at least one computer to, after receiving the publication request, automatically publish the pieces of content and corresponding CMS templates to the CMS without further interaction from the CMS publisher.

[22] Dependent claims 2, 4, 6, 8 define further limitations on the received publication request element, specifically that the request is via a single click of a computer mouse.

Purposive construction

The person skilled in the art

[23] We characterized the person skilled in the art in the PR letter, citing the FA, as follows:

The skilled person or persons may consist of skilled persons in developing Customer Relationship Management (CRM) tools, content publishing and management, as well as computer scientists or other computer related technologists.

[24] The Applicant did not contest this characterization and we adopt it for the purposes of this review.

Common general knowledge

[25] We identified the CGK in the PR letter, citing the FA which referenced the instant application and two exemplary documents, as follows:

- knowledge of developing and integrating Customer Relationship Management tools with existing contact center tools;
- familiarity with client/server computer systems;
- knowledge of content publishing and management;
- knowledge of object oriented programming and its hierarchical concepts;
- familiarity with general purpose computer programming techniques; and
- recognition that advantages can be seized by using computers, modern communications infrastructure, modern electronics, etc. to automate or otherwise facilitate steps in administrative procedures.

[26] Again, the Applicant did not contest this identification of the CGK and we adopt it for the purposes of this review.

Problem and solution

[27] In the PR letter, we outlined the contrasting positions expressed in the FA and RFA regarding whether the problem and solution as seen by the person skilled in the art relates to specifying administrative procedures associated with content management (as expressed in the FA) or relates to improving the computer systems used in contact centers (as expressed in the RFA). We considered the specification as a whole describing the content management system as claimed, and we came to the following view of the problem and solution:

According to *MOPOP* §13.05.02*b*, the CGK provides a baseline of information such that the skilled person will read the specification in the expectation that it sets out something beyond the commonly known solutions to the commonly known problems. Given the CGK as identified above ..., the specification when read as a whole appears to show that prior art content management systems relied on manual processes to identify template sets for new content items, manual processes to assign and to monitor the completion of the identified template sets and manual processes to publish the template sets. What appears to be the solution, according to the specification, is not simply the creation of new processes, but rather the automation of processes to ensure that the proper template sets for new content is selected, assigned, monitored and published when complete.

In light of the above, the Panel's preliminary view is that the problem is to improve the existing manual processes for publishing content in a content management system. The solution is to automatically select, assign, monitor and

publish template sets for new content in a content management system.
(emphasis in the original)

[28] The Applicant did not contest this identification of the problem and solution.

[29] In light of the above, with respect to the claims on file, we view that the person skilled in the art would understand that the problem is a need to improve the existing manual processes for publishing content in a content management system. The solution is to automatically select, assign, monitor and publish template sets for new content in a content management system.

Essential elements

[30] In the absence of any comments from the Applicant and consistent with our preliminary view expressed in the PR letter, as the solution is to automatically select, assign, monitor and publish template sets for new content in a content management system, our view is that the person skilled in the art would understand that the claimed computer-related elements are essential. Without these elements, the advantages associated with automatically performing the steps in a content management system would be lost and the identified problem would not be solved.

Non-statutory subject matter

[31] Our preliminary view, as described in the PR letter, was that all claim elements of representative claim 1, including the computer-related elements, are among the essential elements of the claims. We also note that the Applicant did not contest our preliminary analysis of statutory subject matter.

[32] In light of the above, it is our view that claims 1-8 define statutory subject matter and comply with section 2 of the *Patent Act*.

Obviousness

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

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

[33] We adopt for this review the characterization of the person skilled in the art and the CGK as identified above at paras [23] and [25], respectively.

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

[34] Our obviousness analysis proceeds using the combination of all essential elements identified previously as the inventive concept.

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

[35] The FA cited the following prior art documents with D1 and D2 described as the “closest prior art”:

D1: US 6,308,188 B1	Bernardo et al.	October 23, 2001
D2: CA 2 416 889 A1	Gersting	January 31, 2002
D3: US 6,161,107	Stern	December 12, 2000

[36] We summarized in the PR letter the cited prior art documents as follows:

D1 discloses a software tool for simplifying the creation of web sites. The tool includes a plurality of pre-stored templates that correspond to different types of web pages and other features commonly found on or available to web sites. Each feature has various options. A web site creator selects the desired features and options and the tool then prompts the web site creator to supply data to populate fields of the templates corresponding to the selected features and options (D1, abstract).

D2 discloses a method for designing a coordinated content management and delivery system. Templates are used to capture content and contain business rules for data validation (D2, abstract; page 16, lines 9-28; Figure 6).

D3 discloses an information component management system in which information is packaged within an active information component object, which

can then be stored, retrieved and manipulated according to content rather than according to form (D3, column 1, lines 7-14).

[37] The FA submitted that the following claimed elements in independent claim 1 are disclosed by D1 and D2:

Regarding independent claim 1, D1 in combination with D2 discloses a method for requiring a predetermined level of template completeness when publishing information on products and services within a content management system (CMS) [D2: page 1, lines 13 to 18; page 8, lines 2 to 7] the method comprising:

- providing a plurality of CMS templates [D1: Fig. 3, 12 and 26], wherein each template is associated with one of the plurality of articles and describes a format and layout thereof [D1: column 3, lines 2 to 16 - Features and options; column 5, lines 48 to 65; column 6, lines 35 to 44];
- defining a CMS template set chosen from the plurality of CMS templates, the CMS template set used to describe information for a type of products or services wherein application of the templates for generating new articles provides each of the objects of the same object type with the same CMS template set as the other objects of the same object type, including the same set of articles with the same format and layout [D1: column 6, lines 35 to 55];
- creating a new object in the content taxonomy, including generating a record of the new object in the database, determining the object group and the object type of the new object [D1: column 7, lines 1 to 13];
- receiving pieces of content for the articles in the identified CMS template set from multiple users, each of said articles being assigned to one of the multiple users for providing said content, including creating a task identifier that links each of said articles to the associated user, controlling a workflow for article completion for the new object [D1: column 9, Section - Automated workflow];
- determining if the received pieces of content satisfy a predetermined criteria establishing CMS publication readiness; prohibiting CMS publication until the predetermined criteria is satisfied and receiving a publication request from the CMS publisher after the predetermined criteria is satisfied; and after receiving the publication request, automatically publishing the pieces of content and corresponding CMS templates to the CMS without further interaction from the CMS publisher [D1: column 10: Section - Approving Web Site Content].

[38] We analyzed the differences as identified by the FA. First, our analysis considered the claimed element “prohibiting CMS publication until the predetermined criteria is satisfied”. The FA appears to identify D1 (column 10 section on “Approving Web

Site Content”) and D2 (page 1, lines 13 to 18; page 8, lines 2 to 7) as disclosing this feature.

- [39] While we agree that D1 discloses an automated website creation and approvals process prior to publication, in our view, D1 does not explicitly disclose a “predetermined criteria” of template completeness to be met before publication. Similarly, neither D2 nor D3 disclose a “predetermined criteria” of template completeness to be met before publication.
- [40] Our view is that the claimed element of a “predetermined criteria” of template completeness to be met before publication is not disclosed by either D1, D2 or D3 and is a difference between the cited prior art and the claimed invention.
- [41] Second, our analysis considered each of the differences between the prior art and the claimed invention as identified in the FA and in the RFA. The FA identified at page 7 the following claimed elements to be the differences between D1 and D2 and independent claim 1:
- a) storing in a database a plurality of objects arranged in a content taxonomy, wherein the content taxonomy comprises a plurality of object groups, a plurality of object types, a plurality of objects, and a plurality of articles, wherein each object group comprises a plurality of object types sharing a first commonality, wherein each object type comprises a plurality of objects sharing a second commonality, and wherein each of the objects comprises a plurality of articles that together provide information about an associated object;
 - b) based on the determined object group and object type, identifying the CMS template set associated therewith, the identified CMS template set defining the number and type of articles requiring completion for the new object, and automatically generating said number and type of articles; and
 - c) displaying an indicator representing an article requiring completion to the associated user.
- [42] Similarly, the RFA submitted at pages 39-50 that the prior art cited does not disclose at least:
1. causing the at least one computer to receive pieces of content for the articles in the identified CMS template set from multiple users, each of said articles being assigned to one of the multiple users for providing said

content, including causing the at least one computer to create a task identifier that links each of said articles to the associated user, control a workflow for article completion for the new object, and display an indicator representing an article requiring completion to the associated user; and

2. causing the at least one computer to create a new object in the content taxonomy, including causing the at least one computer to generate a record of the new object in the database, determine the object group and the object type of the new object, based on the determined object group and object type; identify the CMS template set associated therewith, the identified CMS template set defining the number and type of articles requiring completion for the new object, and automatically generate said number and type of articles. (emphasis in the original)

[43] As explained in our PR letter, the differences between the claims as construed and the prior art are, in our view, as follows.

FA identified difference “a”: objects arranged in a content taxonomy

[44] With respect to the FA identified difference labelled “a”, the claimed element relates to a taxonomy as depicted pictorially in the instant application at page 19 (and also reproduced in the RFA at page 48, labeled “Exhibit A”). The taxonomy described is a hierarchical structure with the top level of the taxonomy comprising “object groups”. The subtending hierarchical structure successively define “object types”, “objects” and “articles” at the lowest level of the taxonomy.

[45] According to the disclosure in D1, websites comprise one or more information areas, each area containing related content (D1, column 18, lines 3-14):

A Web site according to the invention may comprise one or more information areas, each of which contains related content. For example, a Products/Services area might contain product descriptions, product reviews, and spec sheets. A Corporate Policies and Procedures area might contain policy guides, employee manuals, and benefits information. A site may comprise several of the following areas: Home Page, About the Company, Corporate Policies and Procedures, Discussion, Document Library, Feedback, Frequently Asked Questions, Job Postings, Products and Services, Registration, White Paper(s), Roles, and other areas.

[46] Content pages are created for each area (D1, column 15, line 1 to column 17, line 65) wherein each page type or template is defined using elements from a library (D1,

column 15, lines 4-7). The library of templates (e.g., text fields, HTML code and formulas) corresponds to features and options; one feature of a website may be a list of site areas (D1, column 5, line 51 to column 6, line 8).

[47] In our view, the organization of content as disclosed in D1 constitutes a content taxonomy: multiple websites comprise multiple areas, wherein each area is associated with a template stored in the library. This hierarchy generally corresponds to the “object group” (corresponding to D1 websites), “objects” and “object types” (corresponding to D1 areas) and “articles” (corresponding to D1 templates) as depicted pictorially in the instant application at page 19.

[48] In light of the above, our view is that the claimed element of objects arranged in a content taxonomy is disclosed by D1 and is not a difference between the cited prior art and the claimed invention.

FA identified difference “b)” and RFA identified difference “2”: identifying the CMS template set based on the determined object group and object type

[49] According to D1, a user creates a website by selecting options/features desired; the templates associated with the selected features/options are combined with the data input from the user to create the website (D1, column 6, line 25 to column 7, line 19). One feature may be a list of areas (D1, column 5, lines 60-61). And, as stated earlier, content pages – or templates – are created for each area (D1, column 15, lines 4-6).

[50] In our view, D1 discloses the claimed element of identifying a CMS template set (D1 template associated with an area) based on the object group and object type (D1 areas), the identified CMS template set defining the number and type of articles requiring completion for the new object (D1 content page for the area) and automatically generating said number and type of articles (D1, user enters data according to the template).

[51] In light of the above, our view is that the claimed element of identifying a CMS template set based on the object group and object type is disclosed by D1 and is not a difference between the cited prior art and the claimed invention.

FA identified difference “c)” and RFA identified difference “1”: indicator representing an article requiring completion

- [52] D1 discloses automated workflow features used in the creation and approval of websites (D1, column 9, lines 37-67) wherein users may be assigned privileges pertaining to Web site creating, editing, approving, posting, viewing and other similar functions (D1, column 10, lines 1-16).
- [53] D1 discloses that users are assigned tasks such as content creation: “When creating/editing content for a Web page the user may select options 104 that will automatically route the Web page to appropriate personnel for their input or approval.” (D1, column 10, lines 33-36).
- [54] D1 also discloses that the workflow features includes notification requirements, indicating, for example, Sales will be notified after Graphics has completed their task (D1, column 9, lines 56-57). Notifications may also be assigned to individual users: “The user can choose to have automatic status messages sent to content creators and approvers to facilitate notification and determination of the status of creation, edits, and reviews for particular content” (D1, column 10, lines 48-51).
- [55] In our view, D1 discloses the following claimed elements:
- receiving pieces of content for the articles in the identified CMS template set from multiple users (D1 automated workflow and approvals features), each of said articles being assigned to one of the multiple users for providing said content (D1, users are assigned tasks, including content creation);
 - controlling a workflow for article completion for the new object (D1 automated workflow and approvals features); and
 - displaying an indicator representing an article requiring completion to the associated user (D1 notification features).
- [56] However, there does not appear to be any disclosure in D1 of “causing the at least one computer to create a task identifier that links each of said articles to the associated user” as claimed. The element is also not disclosed in either D2 or D3.

[57] In light of the above, our view is that the claimed element of creating a task identifier that links each of said articles to the associated user for content creation is not disclosed by D1, D2 or D3 and is a difference between the cited prior art and the claimed invention.

[58] Finally, with respect to the dependent claims 2, 4, 6 and 8 that define further limitations on the received publication request element, specifically that the request is via a single click of a computer mouse, we note that the D1 process to construct a website denotes the ability to publish the website after approval (D1, figure 3, step 24). However, it is not explicit in D1 (or in D2 or D3) that this is accomplished through a single click of the mouse.

[59] The Applicant did not contest our analysis of the differences between the cited prior art and the claims as construed.

[60] In light of the above, and consistent with the PR letter, we summarize the differences between D1, D2 and D3 and the claims as construed as follows:

- creating a task identifier that links each of said articles to the associated user for content creation (independent claims 1, 3, 5 and 7),
- a “predetermined criteria” of template completeness to be met before publication (independent claims 1, 3, 5 and 7), and
- the received publication request is via a single click of a computer mouse (dependent claims 2, 4, 6 and 8).

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?

[61] Our view is that the differences between prior art documents D1, D2 and D3 and the claims as construed would have been obvious to the person skilled in the art and would not require any degree of invention.

[62] We note that all three differences relate to implementation details associated with automating previous manual administrative processes to develop and publish content

according to template sets. As stated in the CGK section above, it is known to the person skilled in the art to automate steps in administrative procedures. The Panel also notes that the instant application does not disclose the implementation details of any particular features to automate the manual processes and therefore such features rely entirely on the ordinary skills and the relevant CGK possessed by the person skilled in the art in that regard. Thus, our view is that these identified differences are within the CGK of the person skilled in the art. Nevertheless, our analysis considers each identified difference in more detail.

- [63] Regarding the first identified difference, namely, creating a task identifier that links each of said articles to the associated user for content creation, D1 discloses an automated workflow feature (D1, column 9, lines 37-67) that describes assigning tasks pertaining to the content creation/editing to various personnel (D1, column 9, lines 43-50). Assignments may include routing instructions: D1 discloses an example wherein an assignment is routed to Graphics, then Legal, then Sales, etc (D1, column 9, lines 53-54). When the tasks are completed, the content is consolidated and posted to the network (D1, column 9, lines 65-67).
- [64] Although not explicit in D1, the person skilled in the art of computer technologies would understand that a mechanism is required to link content with users assigned to create the content. One obvious design option for such a mechanism would be the use of identifiers linking content, tasks and users.
- [65] Regarding the second identified difference, namely, the use of a “predetermined criteria” of template completeness to be met before publication, it would be obvious to the person skilled in the art of content publishing and management to publish content when it has been completed to a certain level of completeness.
- [66] Finally, regarding the third identified difference, namely, the received publication request is via a single click of a computer mouse, again, this would be an obvious implementation to a person skilled in the art of computer technologies.
- [67] Our view was shared with the Applicant in the PR letter and the Applicant did not contest it.

[68] In light of the above, it is our view that claims 1-8 on file would have been obvious and do not comply with paragraph 28.3(b) of the *Patent Act*.

Proposed claims

[69] The Applicant submitted with the RFA a set of proposed claims 1-8 to overcome the defects identified in the FA. We considered the set of proposed claims.

[70] The amendments proposed makes explicit that the computer manifests a discernible effect to support the Applicant's submissions with respect to statutory subject matter.

[71] We view that such proposed amendments would not alter our view with respect to statutory subject matter.

[72] We also view that such proposed amendments to make the use of the computer more explicit in the claims would not alter our obviousness analysis. Our view is that the proposed claims would also be obvious to the person skilled in the art.

[73] As the proposed claims would not overcome the obviousness defect, it follows that the proposed claims are not considered a necessary specific amendment under subsection 30(6.3) of the *Patent Rules*.

[74] The Applicant did not contest our view that the set of proposed claims would not have impacted our analysis with respect to the non-statutory subject matter and obviousness defects.

[75] In light of the above, we view that set of proposed claims 1-8 do not overcome the obviousness defect for the claims on file and are therefore not "necessary" for compliance with the *Patent Act* and *Patent Rules* as required by subsection 30(6.3) of the *Patent Rules*.

CONCLUSIONS

[76] This review has determined that claims 1-8 on file define statutory subject matter, thus the claims on file are compliant with section 2 of the *Patent Act*. However, this review has also determined that the claims 1-8 on file would have been obvious and thus the claims are non-compliant with paragraph 28.3(b) of the *Patent Act*.

[77] In addition, we have determined that the set of proposed claims 1-8 do not overcome the obviousness defect and therefore the set of proposed claims do not constitute a specific amendment that is “necessary” pursuant to subsection 30(6.3) of the *Patent Rules*.

RECOMMENDATION OF THE BOARD

[78] In view of the above, the Panel recommends that the application be refused on the basis that claims 1-8 on file would have been obvious and thus non-compliant with paragraph 28.3(b) of the *Patent Act*.

[79] Further, the set of proposed claims does not overcome the obviousness defect and therefore the Panel declines to recommend the introduction of these claims since they do not constitute a specific amendment that is “necessary” pursuant to subsection 30(6.3) of the *Patent Rules*.

Lewis Robart
Member

Marcel Brisebois
Member

Leigh Matheson
Member

DECISION OF THE COMMISSIONER

[80] I concur with the findings and recommendation of the Board that the application should be refused because claims 1-8 on file would have been obvious, thus non-compliant with paragraph 28.3(b) of the *Patent Act*.

[81] 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 21st day of February, 2019.