Commissioner’s Decision No. 1483

Décision du commissaire n^{o} 1483

TOPICS: O00 Obviousness

SUJETS: O00 Évidence

Application No. 2 488 734

Demande n° 2 488 734

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2488734, 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 require the Applicant to make a specific amendment to the description, failing which the application would be refused.

Agent for the Applicant:

NORTON ROSE FULBRIGHT CANADA LLP/S.E.N.C.R.L., S.R.L.
1 Place Ville Marie, Suite 2500
MONTREAL Quebec
H3B 1R1

INTRODUCTION

[1] This recommendation concerns the review of rejected patent application number 2488734, which is entitled "Tinted Contact Lenses" and is owned by Johnson & Johnson Vision Care, Inc. The primary issue to be addressed is whether the claimed subject matter would have been 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*.

[3] As explained in more detail below, our recommendation is that the Applicant be notified that the description page 9 as proposed in the letter of February 25, 2015 is a "necessary" amendment under subsection 30(6.3) of the *Patent Rules* for compliance with the *Patent Act* and *Patent Rules*.

BACKGROUND

The Application

[4] Patent application 2488734 (the instant application), based on a previously filed Patent Cooperation Treaty application, is considered to have been filed in Canada on May 9, 2003 and was laid open to the public on December 18, 2003.

[5] The instant application relates to tinted contacts lenses that bear a mark indicating the lenses are diagnostic lenses.

Prosecution History

[6] On September 9, 2014, 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 ground that claims 1-29 on file would have been obvious to a person skilled in the art and thus do not comply with section 28.3 of the *Patent Act*. The FA also identified a statement in the description that incorporates by reference other documents and thus does not comply with subsection 81(1) of the *Patent Rules*.

[7] In a February 25, 2015 response to the FA (RFA), the Applicant submitted that the claims on file are inventive. The Applicant also proposed a new description page 9 to remove the statement in the description that incorporates by reference other documents.

[8] As the Examiner still considered the application not to comply with the *Patent Act* and *Patent Rules*, the application was forwarded to the Board for review on December 13, 2016, 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 obviousness defect identified in the FA.

[9] With a letter dated December 23, 2016, 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 January 23, 2017, the Applicant confirmed its continued interest in having the application reviewed.

[10] 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.

[11] Based on our review of the instant application and the record as it presently stands, a preliminary review letter and an oral hearing were not required.

ISSUES

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

- whether the claims on file would have been obvious and are thus non-compliant with paragraph 28.3(*b*) of the *Patent Act*, and
- whether the description incorporates by reference another document and is thus non-compliant with subsection 81(1) of the *Patent Rules*.

LEGAL PRINCIPLES AND PATENT OFFICE PRACTICE

Purposive construction

[13] 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.

Obviousness

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

[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";

(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?

Incorporation-by-reference

[16] Subsection 81(1) of the *Patent Rules* specifies that "[t]he description shall not incorporate by reference another document."

ANALYSIS

Overview of the instant application

[17] Tinted or colored contact lenses used to alter the natural color of the iris are known. Diagnostic lenses are used by eye care practitioners to assess the on-eye fit of the lens and permit the wearer to assess the on-eye appearance of the lens before a final lens is prescribed (instant application, page 1, lines 9-15).

[18] Diagnostic lenses are not intended for regular use or sale. However, diagnostic lenses may be diverted from eye care practitioners and sold outside normal channels of commerce or the wearer may wear the lenses beyond the initial assessment period. To address these concerns, a mark (a letter or a word) is placed on the diagnostic tinted lenses. A prior art solution placed the mark in a position that may interfere with the wearer's ability to assess the lenses on-eye appearance and was incompatible with certain manufacturing processes. Therefore, according to the instant application, there is a need for a mark on a diagnostic lens that overcomes such disadvantages (instant application, page 1, lines 16-28).

[19] The instant application is directed to tinted contact lenses that bear a mark indicating the lenses are diagnostic lenses (instant application, page 1, lines 5-7). The discovery embodied in the instant application is that such a mark can be provided on the lens

without interfering with the wearer's ability to assess the on-eye appearance of the lens. The mark may be provided on the lens using pad printing technology (instant application, page 2, lines 8-13).

[20] There are 29 claims on file. Independent claims 1, 6, 13, 14, 15, 16 and 17 are directed to contact lens embodiments and independent claims 22, 23, 24, 25 and 26 are directed to the corresponding methods of manufacturing. In our view, independent claim 1 is representative of all the independent claims on file, as they all recite subject matter generally similar to the subject matter recited in claim 1:

> A contact lens comprising a color zone that overlays and substantially corresponds to a wearer's iris when the lens is worn, and at least one mark within a colorless area within the color zone, the mark being located in an area substantially near a periphery of the color zone.

[21] Dependent claims 2-5, 7-12, 18-21 and 27-29 define further limitations on the placement of the mark and on the printing technology.

Purposive construction

[22] All the claim terms appear to have commonly understood meanings. All the claim elements are considered essential for the purposes of this review.

Obviousness

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

[23] The FA characterized the person skilled in the art as:

> The notional skilled worker in this case is a team of contact lens designers comprising people skilled in the design and manufacturing of cosmetic or decorative colored contact lens.

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

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

[25] The FA at page 2 identified three prior art references:

D1	US 5 059 018	Kanome et al.	October 22, 1991
D2	US 5 936 705	Ocampo et al.	August 10, 1999
D3	EP 1 162 493	Atkins et al.	December 12, 2001

[26] The FA, at page 2, identified the CGK citing the instant application and documents D2 and D3 as exemplifying the CGK:

- the use of tinted or colored contact lenses to alter the natural color of the iris (instant application, page 1, lines 10-28; D2);
- the use of diagnostic lenses, or lenses used for fit and cosmetic appearance evaluation purposes (instant application, page 1, lines 10-28); and
- the use of a mark (usually a letter or a word) on a diagnostic lenses, the mark identifying them as diagnostic lenses (instant application, page 1, lines 22-23; D3, wherein a mark is located outside the colored iris patter of the lens).

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

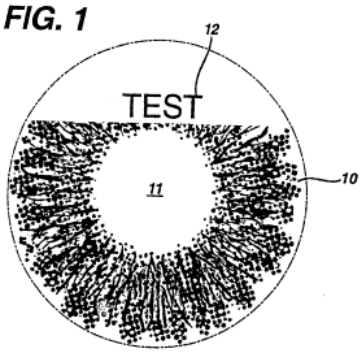
Sanofi step (2) – Identify the inventive concept of the claim in question or if that cannot readily be done, construe it

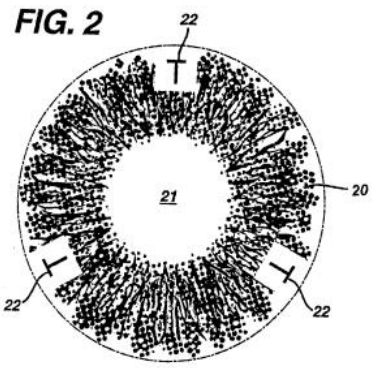
[28] The FA, at page 3, identified the inventive concept as follows:

> The present invention is directed toward a colored contact lens where a mark is placed within a colorless area of the color zone covering the iris, the mark being located in an area near a periphery of the color zone.

[29] The Applicant did not contest the identification of the inventive concept and we adopt it for the purposes of this review as representative of the inventive concept for all the claims on file.

[30] Figures 1 and 2 from the instant application are illustrative of the inventive concept and are reproduced here:





[31] Figure 1 depicts a color zone 10, a clear central zone or area 11 and mark 12 in an area of color zone 10 from which all of the color and shapes have been either removed or omitted. Figure 2 depicts an alternative embodiment in which there is a color zone 20, a clear central zone 21, and multiple marks 22 within the color zone.

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

[32] The FA, at page 3, referenced document D1 as the basis on which to identify the differences between the cited prior art and the inventive concept of the claims:

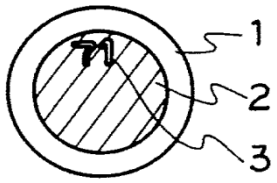
> As previously discussed in various office actions and the Applicant's correspondences, the difference between the state of the art (shown by document D1) and the inventive concept resides in the position of the mark itself in relation to the color zone. The inventive concept of the present application places the mark over the wearer's iris, within a colorless area of the color zone and at the periphery of the color zone. Previous colored contact lenses bearing marks had the mark overlay the color zone by using a deeper or different color from the color zone, or by masking the contact lens before applying the color of the color zone (see document D1: abstract and figure 5). Document D1 did disclose, however, that the mark may be placed at the periphery of the color zone (see document D1: col. 2, lines 60 to 65).

[33] The RFA submitted that none of the prior art, including D2 and D3, disclose "the placing the mark on a colorless portion of the color zone as recited in the claims".

[34] We consider each of the cited documents. D1 discloses a contact lens having a circular colored area at the center of the lens and a mark arranged in the colored area (D1, abstract). The mark allows the user to distinguish between the right lens and the

left lens or between the front and the rear face of the lens. The placement of the mark on the colored area of the lens makes the mark less noticeable to another person, an advantage over prior art lenses (D1, column 1, lines 29-31; column 4, lines 56-66). Figure 5, cited by the FA, is illustrative of one of the embodiments as disclosed by D1, wherein contact lens 1 has a circular area 2 at the center of the lens and a mark 3:

FIG. 5



[35] We agree with the FA that Figure 5 of D1 is the closest embodiment to the claimed features. We also agree with both the FA and the RFA that the inventive concept of the claims on file is not disclosed by D1.

[36] D2 discloses a color modifying contact lens having an iris pattern of color elements, comprising three annular regions, surrounding a non-opaque pupil section. The inner and outer regions each comprise color elements effective to enhance or modify the wearer's eye color as observed by the ordinary viewer. The color elements in the intermediate region form an array of substantially radial macro-striations that alternate between those having color elements and those without color elements (D2, abstract). D2 discloses that a contact lens with these color elements enhances or modifies a wearer's eye color, adds depth and texture to the perceived eye appearance, and does not cost significantly more to produce than current colored contact lenses (D2, column 1, lines 59-63).

[37] We note that D2 is not directed to diagnostic lenses and does not disclose a "mark" on the contact lens beyond the iris pattern color elements. We agree with the RFA that D2 does not disclose the inventive concept of the claims on file.

[38] D3 discloses contact lenses with sample indicator marks (D3, abstract). D3 discloses the difficulties in controlling the distribution of samples and known solutions to this problem. D3 recognizes a need for discouraging the widespread unauthorized distribution and use of samples while still allowing the samples to function as intended, that is, to allow the customer to sample the lenses (D3, paras [0003]-[0005]).

[39] D3 discloses a sample lens in which a sample indicator is imprinted such that the sample lens is fully functional except for ordinary daily wear, as the sample indicator is conspicuous to another person viewing the eyes of the wearer of the sample lens (D3, paras [0006]-[0007]).

[40] Figure 4 is illustrative of the sample indicator as disclosed by D3:

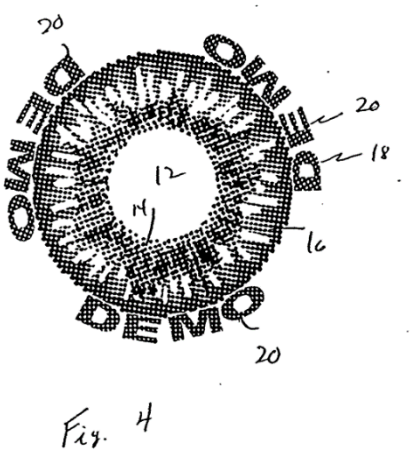


Fig. 4

[41] Figure 4 of D3 illustrates a sample indicator 20 imprinted on the peripheral area 18 of the lens in conjunction with a coloring pattern imprinted in the iris areas 14, 16 of the lens. The imprinting of the sample indicator does not interfere with the pupil area 12 of the lens at the center, nor does it interfere with the coloring pattern 14, 16 (D3, para [0012]).

[42] In our view, D3 is the closest prior art document to the instant application. D3 addresses the same problem as identified by the instant application. Both D3 and the instant application propose the use of a mark to identify a diagnostic (or sample) lens.

[43] We view that the difference between D3 and the instant application is the placement of the mark on the lens. The instant application places the mark within a colorless area of the color zone covering the iris, the mark being located in an area near a periphery of the color zone as shown in Figures 1 and 2 reproduced at para [30] above. Whereas in D3, the mark is placed outside the coloring pattern imprinted in the iris areas, as shown in Figure 4 reproduced at para [40] above.

[44] In light of the above, we agree with the RFA that none of the cited prior art documents D1, D2 or D3 disclose the inventive concept of the claims on file.

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?

[45] The FA, at pages 3-4, argued that the difference between the inventive concept and the cited prior art – the placement of the mark – is a design choice that relates to the aesthetic of the lens and is therefore not a patentable difference:

> The difference between the inventive concept and the state of the art is the design choice of the placement of the mark, and cannot be considered a patentable difference. Pattern designs are not technical by nature, they only provide information or a cosmetic appeal. However informative or "prettier" the mark may make the colored contact lens, it is simply a pattern applied to the lens, which also constitute a design choice made by the person skilled in the art. The Applicant explains in great details in the correspondence dated January 31, 2013 how practical this particular design is, by making the mark interfere less with the wearer's ability to assess the on eye appearance of the lens, and discouraging the lens long term wear, but this practicality is simply obtained from the pattern itself, not by any technical feature of the lenses.
>
> When the lens rotates in a position that allows visibility of the mark, it may make wearing the lens undesirable in a purely cosmetic sense to some wearers, but nothing else discourages the wearer from wearing the lens. Even if the lens' appearance may be undesirable, the functionality of the lens is still maintained. The person may not even be discouraged by a simple "mark", deciding that the mark is not that noticeable, or actually even possibly liking the mark itself. It is simply a cosmetic choice, making the inventive concept of this application a

> design choice by the person skilled in the art, a simple cosmetic modification to previously disclosed lenses with marks on them and a pure display of information (the mark indicates that it is a demo, for example). The mark and its location can have benefits over a different design choice, but cannot be considered to be a technical feature. The lens and its mark may have a functional purpose by making the lens "look" undesirable, but it is not a technical feature that would be considered patentable.
>
> To locate a mark within the color zone and at a periphery of the color zone of the contact lens was already done by D1 (see figure 5 and col. 1, lines 42 to 45 and col. 2, lines 60 to 65). Also shown by D1 is having the mark itself being the "void" in the color by masking the lens when the color of the color zone is applied (see col. 1, lines 50 to and 62 to 66; and col. 3, lines 14 to 17). To remove a portion of the color zone to make the mark more visible is considered a design choice made by the person skilled in the art, and as such, would be obvious to the person skilled in the art. (emphasis added)

[46] The FA's conclusion appears to have been based on *MOPOP's* guidance regarding "features of solely intellectual or aesthetic significance" and "printed matter". The current guidance at *MOPOP* §12.03.05 and §12.03.06 (revised November 2017) states:

> 12.03.05 Features of solely intellectual or aesthetic significance
>
> Features of an invention that have a purely intellectual or aesthetic significance are considered, in a practical sense, not to affect the functioning of the invention. Such features cannot change the manner in which the practical form of an invention operates to solve the problem for which it is the solution.
>
> Where a claim appears to be directed to subject-matter having solely intellectual or aesthetic significance, the claim is defective under section 2 of the *Patent Act*.[86]
>
> Where an invention requires a practical problem to be solved in order to enable a result or effect having solely intellectual or aesthetic significance, the patentability of the invention is not impacted by the fact its purpose is to produce a non-statutory result or effect.[87] In such cases, the practical form of the invention does not lie solely in its intellectual or aesthetic significance as the solution to the practical problem gives rise to a new functionality.

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[86] *Re Application No. 44,282 of Leubs* (1971) C.D. 80 (relating to wood panels wherein the novelty lay in particular inscribed designs); *Re Application No. 245,995* for a Townhouse building design [(1979) C.D. 605, 53 C.P.R. (2nd), 211 (P.A.B.)] (relating to architectural plans or designs); *Re Application 040,799 of Cowan* (1971) C.D. 79.; *Lawson v. Commissioner of Patents* [(1970), 62 C.P.R. (1st), 101 (Ex. Ct.)]

[87] *Re Application No. 565,417 of Pilot Ink Co.* [(1997) C.D. 1224, 86 C.P.R. (3rd), 66 (P.A.B.)]

> 12.03.06 Printed matter
>
> Printed matter that has purely intellectual or aesthetic significance, such as a literary work, is excluded from patentability for the reasons outlined in 12.03.05. However, where printed matter provides a new functionality to the substrate on which it is printed, a claim to this subject-matter may be considered statutory. For the printed matter and the substrate to be considered to be a practical form of an invention, they must solve a practical problem related to the use of the printed matter in general, and not be based solely on the intellectual or aesthetic content of the printed matter itself.
>
> By way of example, each of the following has been found by the Commissioner of Patents as being patentable: a textile material bearing markings to enable greater precision during a manufacturing procedure,[88] a newspaper layout in which white space is left to facilitate reading when the paper is folded, a layout of text on a series of pages to facilitate a bookbinding process, and a layout of text on a ticket which permits the ticket to be divided either horizontally or vertically while ensuring all information will appear on both halves.[89]
>
> In each of the foregoing the printed matter provided a new mechanical functionality to the combination; the actual content of the printed matter was not the basis of the invention. Where printed matter has only intellectual or aesthetic significance, it may conveniently be referred to as "non-functional descriptive matter".

[47] The first question we consider in the instant application is whether the mark serves some new functional limitation in a combination with the underlying contact lens, as opposed to the intellectual, literary or artistic connotations of the mark itself.

[48] As outlined previously, the position taken in the FA is that the placement of the mark is a design choice that relates to the aesthetic of the lens and is therefore not a patentable difference.

[49] The Applicant argued in correspondence that the claims address a technical problem (Applicant's response to Office action, dated January 31, 2013):

> The present claims address the technical problem of how to introduce a mark on a contact lens that is visible enough to discourage prolonged wear, and at the same time that does not interfere with the wearer's short-term ability to assess the on-eye appearance of the lens.

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[88] *Re Application No. 996,098 of Boussac* (1973) C.D. 143

[89] *Re Dixon Application No. 159, 204* [(1978 C.D. 493, 60 C.P.R. (2nd), 105 (P.A.B.)], the Commissioner cited with approval the conclusions reached in the UK cases *Cooper's Application* [(1902) 19 R.P.C. 53] and *Fishburn's Application* [(1940) 57 R.P.C. 245]

[50] In addition, the Applicant argued in the RFA at page 3 that the mark is a technical feature:

> The Examiner argues that the appearance of the mark on the lens is not a technical feature. Applicant disagrees. The Examiner concedes the wearer can more easily identify that the lens is a diagnostic or "test" lens. This advantage, effected by a physical arrangement on a lens, is a technical feature resulting in a practical advantage. Respectfully, whether any given person would, in fact, act on having identified the lens as a test lens (on which the Examiner appears to place weight), is irrelevant. The technical advantage of easy identification is achieved nonetheless.

[51] In our view, the mark serves a new functional limitation on the contact lens, that is, the mark is visible enough to discourage prolonged wear, but does not interfere with the wearer's ability to assess the on-eye appearance of the lens. This is useful in a practical way, as opposed to merely the intellectual, literary or artistic connotations of the mark itself.

[52] The second question we consider in the instant application is whether the difference between the prior art and the inventive concept of the claims constitutes a step that would have been obvious.

[53] The RFA, at page 3, argued that documents D1 and D3 teach away from the claimed invention:

> D1 (at column 2, lines 64-65 and column 4, lines 63-66) clearly states that it is desirable for the mark on the lens to be provided in the center color portion of the lens, so that "another person cannot easily find also the marks." This very clearly teaches against the very purpose and technical function of the present claims, which is to make the mark noticeable to others after a short period of wear.
>
> D3 describes the placement of marks in a portion of the lens that covers the sclera. In paragraph [0006], D3 states: "most colored contact lenses are colored in the area of the lens superimposed on the iris of the wearer's eye. The sample indicator is therefore most conspicuous when it is imprinted in the lens periphery, that is, the area between the outer edge of the lens and the area superimposed on the iris of the wearer's eye". D3 clearly intends to place the mark outside of the colored region, in order to increase the conspicuousness of the "demo" mark even upon initial wear.

> Again, this teaches against the purpose and technical function of the present claims, which is to avoid interfering with the wearer's ability to assess the on-eye appearance of the lens at least initially.

[54] We agree with Applicant's submissions in the RFA with respect to D1, as the document makes explicit the goal to make the mark unnoticeable. This is clearly evident in the Figure 5 of D1 as reproduced above. This directly teaches away from the inventive concept of the instant claimed subject matter.

[55] With respect to the Applicant's submissions concerning D3, we noted above that D3 addresses the same problem as identified by the instant application and teaches the person skilled in the art to place the mark outside the color zone. Therefore, we consider that it would not have been obvious to the person skilled in the art to place the mark within a colorless area of the color zone covering the iris.

[56] Finally, we view that the CGK would not bridge the gap between the inventive concept of the claims on file and the cited prior art documents. Our *Sanofi* step 3 analysis above viewed that none of the prior art documents disclose the inventive concept of the claims on file. The CGK identified earlier at para [26] shows, at best, that it was known to the person skilled in the art to place a mark on a diagnostic lens outside the iris colored pattern.

[57] In light of the above, it is our view that claims 1-29 on file would not have been obvious and thus the claims on file comply with paragraph 28.3(*b*) of the *Patent Act.*

Incorporation-by-reference

[58] The FA, at page 4, identified that the description contains a statement that incorporates by reference other documents (instant application, page 9, line 20) and thus does not comply with subsection 81(1) of the *Patent Rules*. We agree.

[59] The RFA submitted a proposed page 9 of the description to address this defect. We agree that the proposed description page 9 addresses this defect.

[60] In light of the above, we view that the proposed description page 9 as submitted in correspondence dated February 25, 2015 overcomes the incorporation-by-reference

defect and is therefore "necessary" for compliance with the *Patent Act* and *Patent Rules* as required by subsection 30(6.3) of the *Patent Rules*.

CONCLUSIONS

[61] This review has determined that claims 1-29 on file would not have been obvious and thus the claims on file are compliant with paragraph 28.3(*b*) of the *Patent Act.*

[62] In addition, we have determined that the description on file incorporates by reference another document and thus the description is non-compliant with subsection 81(1) of the *Patent Rules*.

[63] We also determined that the proposed description page 9 as submitted in correspondence dated February 25, 2015 overcomes the incorporation-by-reference defect and constitutes a specific amendment that is "necessary" pursuant to subsection 30(6.3) of the *Patent Rules*.

RECOMMENDATION OF THE BOARD

[64] In view of the above, we recommend that the Applicant be notified, in accordance with subsection 30(6.3) of the *Patent Rules*, that the deletion of page 9 of the description on file and the insertion of the proposed description page 9 as presented in the correspondence of February 25, 2015 is "necessary" for compliance of the application with the *Patent Act* and *Patent Rules*.

Lewis Robart Member	Marcel Brisebois Member	Paul Fitzner Member

DECISION OF THE COMMISSIONER

[65] I concur with the findings and recommendation of the Panel. In accordance with subsection 30(6.3) of the *Patent Rules*, I hereby notify the Applicant that the following amendment and only the following amendment must be made in accordance with paragraph 31(*b*) of the *Patent Rules* within three (3) months of the date of this decision, failing which I intend to refuse the application:

- delete the description page 9 on file and insert the description page 9 as proposed in the correspondence of February 25, 2015.

Johanne Bélisle
Commissioner of Patents
Dated at Gatineau, Quebec,
this 25th day of April, 2019.