

Commissioner's Decision No. 1488  
Décision du commissaire n° 1488

TOPICS: J-00 Meaning of Art  
J-50 Mere Plan

SUJETS: J-00 Signification de la technique  
J-50 Simple plan

Application No. 2,625,632  
Demande n° 2 625 632



IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2,625,632, 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.

Agent for the Applicant:

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## INTRODUCTION

- [1] This recommendation concerns the review of rejected patent application number 2,625,632, which is entitled “Pick Up Notice and Method of Using Same.” The patent application is owned by United Parcel Service of America, Inc. The Patent Appeal Board (the “Board”) has reviewed the rejected application pursuant to paragraph 30(6)(c) of the *Patent Rules*. The outstanding defect to be addressed in this review is whether or not the claims define statutory subject-matter. As explained below, our recommendation is to refuse the application.

## BACKGROUND

### The application

- [2] Canadian patent application number 2,625,632 is based on a previously filed Patent Cooperation Treaty application and is considered to have a filing date of August 17, 2006. It was made available to the public May 18, 2007.
- [3] The application pertains to the management of information related to a pick-up of items so that shippers can easily obtain the status of their items. One or more indicia on a pick-up notice are used to link information related to the pick-up attempt with information about the items involved.

## PROSECUTION HISTORY

- [4] On December 1, 2015, a Final Action (“FA”) was written pursuant to subsection 30(4) of the *Patent Rules*. The FA explained that the application is defective on the ground that claims 1-8 (“claims on file”) define non-statutory subject-matter and do not comply with section 2 of the *Patent Act*.
- [5] In a June 1, 2016 response to the FA (“RFA”), the Applicant submitted arguments for the allowance of the claims on file. As the Examiner considered the application still did not comply with the Act and Rules, the application was forwarded to the Board for review pursuant to subsection 30(6) of the *Patent Rules*, along with a Summary of Reasons (“SOR”) maintaining the rejection of the application. A copy of the SOR was provided to the Applicant in a Board letter dated October 11, 2016.
- [6] In a letter dated January 5, 2017, the Applicant acknowledged receipt of the Board letter, indicated it wished to attend an oral hearing before the Board, and indicated that it would provide a response to the SOR.

- [7] In its response to the SOR (“RSOR”) of July 20, 2017, the Applicant provided further submissions as to why the application should be allowed and also provided a first set of proposed claims (“proposed claims set-1”) for consideration by the Board.
- [8] The present 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. In a Preliminary Review (“PR”) letter dated June 29, 2018, we presented our analysis and rationale as to why, based on the record before us, the subject-matter of the claims on file did not comply with section 2 of the *Patent Act*. With respect to proposed claims set-1, we stated that our preliminary view would not have changed if the proposed claims had been adopted.
- [9] In an email dated July 13, 2018, the Applicant indicated that it no longer desired an oral hearing, but that it intended to provide a response to the Panel’s PR letter. The Applicant’s response letter (“RPR”) was received on August 16, 2018 and provided further arguments as to why the application conforms to the Act and Rules. A second set of proposed claims (“proposed claims set-2”) was also provided for consideration by the Panel.

## **ISSUE**

- [10] The only issue to be addressed by this review is whether the subject-matter of claims 1-8 on file defines statutory subject-matter according to section 2 of the *Patent Act*.

## **LEGAL PRINCIPLES AND PATENT OFFICE PRACTICE**

### **Purposive construction**

- [11] 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 paragraphs 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 skilled person and his or her 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.

- [12] In its RFA and RSOR, the Applicant raised concerns with the Office approach to purposive construction in view of Canadian jurisprudence and indicated that the intent of the inventor as stated in the claim language is a fundamental consideration in claim construction.
- [13] In our PR letter, we clarified that the guidance of *MOPOP* at §13.05.02*b* and 13.05.02*c* outlines the Office’s interpretation of Canadian patent law in respect of purposive construction as it particularly relates to the examination of a patent application: a properly informed purposive construction must consider the application as a whole including the problem addressed by the application and its solution. The solution to that problem informs the identification of the essential elements: not every element that has a material effect on the operation of a given embodiment is necessarily essential to the solution. The mere presence of an element in the claim language chosen by the inventor cannot override all other considerations during purposive construction of the claims.
- [14] In its RPR, the Applicant did not comment further on the Panel’s clarification of Office practice regarding purposive construction. However, the Applicant did comment on the use of a “contribution approach” in purposive construction:
- It follows that purposive construction should not be an exercise in determining what is already known to the person skilled in the art, identifying the contribution made by the applicant over those elements, and evaluating whether there is patentable-eligible subject-matter on the basis of that contribution alone.
- [15] The Panel agrees with this statement; if the PR letter led the Applicant to believe that a contribution-style approach was being used to remove CGK features from the construed claims, this was neither the intent nor the basis of the Panel’s preliminary analysis. The Office practice regarding the identification of essential elements is not based on an assessment of which claimed features provide a contribution above and beyond what was commonly known. On the contrary, following Office practice, commonly known features may be determined to be essential elements of a claim. However, purposive construction identifies as essential only those elements that solve the problem, whether they are commonly known or not. Some claim features, although providing context or defining the working environment, may nevertheless not be considered essential because the skilled person would understand that they are not part of the solution to the problem.

## 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] Following the Federal Court of Appeal decision in *Canada (A.G.) v Amazon.com*, 2011 FCA 328 [*Amazon.com*], the Office released an examination memo (PN2013-03 “*Examination Practice Respecting Computer-Implemented Inventions*”, (CIPO, March 2013) [PN2013-03] that clarified examination practice with respect to the Office’s approach to computer-implemented inventions.
- [18] As stated in PN2013-03, 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 (e.g., a mere idea, scheme, plan or rules, etc.), the claim will not be compliant with section 2 of the *Patent Act*.
- [19] In both the RFA and RSOR the Applicant provided submissions relating to the definition of “art” and the requirements of statutory subject-matter in Canada, as well as submissions relating to the patentability of so-called “business methods” in Canada. The PR letter addressed both of these concerns by indicating that Office practice regarding statutory subject-matter follows the principles set out in *Amazon.com* and other relevant Canadian jurisprudence and further clarifying that there is no legal prohibition on the patentability of so-called “business methods.”
- [20] In the RPR, the Applicant provided no further comments on the Office practice or jurisprudence regarding statutory subject-matter.

## ANALYSIS

### Claim Construction

#### *The skilled person*

- [21] The PR letter identified the person skilled in the art as a team including “...parcel delivery service experts in cooperation with Information Technology experts, with expertise in computerized package delivery data processing systems.”

- [22] In its RPR, the Applicant submitted that the skilled person would be a “delivery system technician.” The Applicant stated that “parcel delivery service experts” and “information technology experts” may suggest a level of expertise that goes beyond that of the average skilled person. As the parcel delivery service field is not a highly technical field, the Applicant argued it would be inappropriate to impute expert status (i.e., similar to a Ph.D in a research field) to the skilled person or team.
- [23] The Panel agrees with the statements by the Applicant that the skilled person in this case would not necessarily require expertise at the level of a Ph.D in a research intensive field. Therefore, the term “technician” would be reasonable in this case. Furthermore, we note that the definitions of the skilled person by the Panel and the Applicant appear to be very similar; however, based on a reading of the whole specification, the Panel maintains that it is reasonable to include a person with an information technology background, given the nature of the conventional electronic delivery systems involved in parcel delivery and pick-up.
- [24] We would therefore characterize the skilled person as a team including parcel delivery service technicians and information technology technicians.

*The CGK*

- [25] As was identified in the PR letter, the knowledge belonging to the CGK of the skilled person includes:
- pick-up and delivery of parcels and other items from a shipper for delivery to the location of intended recipients, including the use of delivery notices;
  - linking of delivery notice identifiers to items;
  - package tracking and visibility systems;
  - manually tracking pick-up information;
  - providing pick-up status information through communication networks verbally; and
  - computer components, devices, networks and computer applications, as well as their design, implementation, operation and maintenance, including but not limited to:
    - general purpose computers, special purpose computers, computing devices, processors and user interfaces;
    - electronic hand-held data acquisition and display devices, PDAs and portable electronic devices;



- computer memory components;
- computer networks, data communications and internetworking technologies and protocols;
- distributed communication and processing architectures; and
- barcodes and other machine-readable identifiers, including RFID tags.

[26] In its RPR letter, the Applicant did not explicitly object to the above list of CGK, but instead suggested that the skilled person "...would have knowledge of commonly available systems for managing parcel delivery" such as "...knowledge of existing computerized systems for managing electronic information and data used in parcel delivery."

[27] The Panel agrees with the clarification by the Applicant: the above list of CGK would include knowledge of systems for managing parcel delivery systems including computerized systems for managing delivery information and data.

*The problem and solution*

[28] Based on the CGK of the skilled person and a fair reading of the application and having considered the Applicant's arguments presented in both the RFA and RSOR, the PR letter set out what the skilled person would have considered to be the problem and solution addressed by the application:

According to the application (pages 1-2), it is well known that when a parcel or item is undeliverable from a delivery service to a recipient, a "delivery notice" is left at the particular location for the recipient, who may later contact the delivery service to ascertain why the items were undelivered, or make arrangements for their delivery. However, no parallel service exists for items that are to be picked-up by the delivery service from a shipper location, when such a pick-up is prevented or impeded. Furthermore, once items are picked up, a shipper has no means to identify the status of all the items picked-up; while each item may have a package tracking number, there is no means to link the pick-up with each individual item. The application (page 2) states it is labour intensive to gather the required information regarding both the pick-up and the items.

The solution as described in the application provides a means to link the pick-up information, such as found in a pick-up notice, with information about the items, including those picked-up and those not picked-up. A shipper may use the information on such a pick-up notice to contact the delivery/pick-up service and more easily obtain the related information regarding the status of all items for that pick-up.

[29] In the RPR letter, the Applicant suggests that the problem should be reframed as "within the field of pick-up and delivery of items, there does not exist a system for

items that are to be picked up by the delivery service but such pick-up is prevented or impeded in some manner.”

[30] The Panel does not fully agree with this restatement of the problem. As the description clearly indicates (page 1) that “[t]he pick-up of parcels and other items from a shipper and delivery of the parcels ... is known in the art.” Systems and methods exist in the art for the pick-up of parcels and delivery of parcels, including the use of notifications. This is included in the CGK of the skilled person listed above; therefore this is not the problem being addressed. Furthermore, inherent in the known systems and methods for the delivery and pick-up of parcels is the fact that sometimes such pick-ups or deliveries of parcels can be impeded, delayed, cancelled, or incomplete. Instead, the skilled person would recognize that within these known problems, there is a problem in obtaining information or status of their shipment, including why certain parcels may not have been picked up. Although possible by using individual tracking numbers, it is difficult and labour intensive.

[31] In the RPR letter, the Applicant stated that the practical problem includes the following aspects from the description:

- If a shipper has left unattended items to be picked-up by a delivery service and such items are not picked up, the shipper may have no means for knowing the reason the items were not retrieved by the delivery service or even whether the delivery service attempted pick-up;
- Once items have been picked up, there is no mechanism that identifies all the items picked up at a location;
- If a shipper has left unattended items for shipment at a location and such items are found later to be missing, there is no assurance that the items have been properly retrieved by the delivery service;
- A shipper may have to contact the carrier to determine if all the packages have been picked up or individually contact each intended recipient to find out if they received their parcel(s). Such activities are labor intensive.

[32] The Panel notes that the analysis in the PR letter was based on a purposive reading of the entire application from the view of the skilled person and their CGK. However, in the Panel’s view, the skilled reader would understand that the application addresses a more specific problem than the four general points above: the need for information that would allow a shipper to understand the status of the shipped items, and importantly, why the pick-up may have been impeded. Since a pick-up attempt of parcels is CGK and the use of tracking information for each parcel is CGK (wherein a shipper can obtain status of each individual parcel), we

consider that the problem is not in providing information on the pick-up itself, but rather the problem is the lack of a link between the identified parcels and the pick-up attempt such that a shipper may easily obtain the status of the pick-up and any issues such as missed or impeded parcels.

[33] The RPR also stated that the nature of the problem addresses practical considerations:

- The nature of the problem involves physical objects and physical locations:
  - o Physical objects: The problem arises because actual physical items (ex: delivery packages) need to be physically picked up by a real-life delivery agent;
  - o Physical locations: the physical items are to be picked by the delivery agent from a plurality of different physical locations and the items can be left unattended at a given location by the shipper for pick-up;

[34] The Panel agrees that the above practical considerations are related to the “nature of the problem” in the present case, and as such, they inform the skilled person as to the context and environment within which the problem exists. We would agree that the problem arises because of such practical considerations; however, features such as physical objects and physical locations are not the actual problem being addressed by the instant application.

[35] Therefore, as we discussed in the PR letter, we consider that the problem the skilled person would understand to have been addressed by the application is that a shipper has no means to identify the status of items picked up or why some items may not have been picked up. Unlike the item tracking number on each item, there is no means to link the pick-up attempt with each individual item or parcel. It is labour intensive to gather the required information regarding each individual item.

[36] The solution to the above problem, as we discussed in the PR letter, is a method and system to link pick-up attempt information with information about the items, so that the status of the items may be obtained regardless of whether the items were successfully picked up or not.

[37] In the RPR letter, the Applicant provided arguments regarding the above solution in relation to the essential elements identified by the Panel in the PR letter; we address those arguments below.

*The essential elements*

[38] Independent claims 1 and 5 define the invention in terms of a system and method respectively. Claim 1 is considered representative:

1. A system for picking up one or more unique items from a shipper each item having a unique identity and each having a different machine-readable item code readable therefrom, said system comprising:

A) a plurality of pick up notices, each of said pick up notices including a machine-readable first pick up notice code and a human-readable second pick up notice code thereon, each of said machine-readable first pick up notice codes being unique within said plurality of pick up notices;

B) a code-reading device configured to (1) read the machine-readable first pick up notice code from one of said pick up notices and (2) read a machine-readable item code from an item;

C) a code storing device, configured to store said machine-readable first pick up notice code and said machine-readable item code;

D) a linking device, comprising one or more processors, the one or more processors configured to provide a link between said machine readable first pick up notice code and said machine readable item code; and

E) a reporting device, comprising the one or more processors, the one or more processors configured to report information regarding said item in response to receipt of said human-readable second pick up notice code, said information including (1) the number of unique items that were in the pick up when the pick up was made, (2) whether any unique items were refused, and (3) a status that indicates whether any of the unique items were left behind or picked up.

[39] The meaning of the terms in the claims was not at issue and we consider that they would be easily understood by the person skilled in the art.

[40] In the PR letter, the Panel set out its preliminary analysis to identify the essential elements of the claims that provide the solution to the problem. We determined that the physical components of the claims, primarily computer-related features, were not essential:

Regarding the claimed physical computer features in the instant application, despite the claims' inclusion of computer components, the Panel's preliminary view is that, based on the CGK and on the problem and solution identified, the skilled person would understand these physical computer components to be outside the concern of the solution. The application proposes to solve the problem of making it less difficult to access certain information by linking or associating certain (parcel) information with other (pick-up) information. The application does not propose to solve a problem of reading bar codes from parcels or notices, of storing or associating data in

a database, or of communicating information from one computer to another in real time, for example, over the Internet; in any case, these problems have been solved, and their solutions are part of the CGK. Such physical computer components are part of the context or conventional working environment of a parcel delivery system infrastructure used in the claimed invention, but are not essential elements of the invention itself. Accordingly, we consider that the skilled person would not understand the computer components of the claims to be essential elements of the solution.

- [41] In its RPR, the Applicant maintained that the computer components in the claims are essential for the solution, in part, as they must integrate with the existing parcel delivery system:

It will be appreciated that existing methods for notifying when a parcel is undeliverable would use an electronic parcel delivery management system, which allows the user to contact the delivery service via telephone or the Internet using an automated system. Accordingly, integrating the claimed solution within an electronic parcel delivery management system would provide a solution that represents a parallel with existing methods for notifying when a parcel is undeliverable. Furthermore, the electronic parcel delivery management system would allow the shipper to avoid the labour intensive exercise of having to “contact the carrier” or to individually “contact each intended recipient”. Accordingly, the computer system and computer network for enabling the electronic parcel delivery management system is inherently essential to provide a full solution to the practical problem. [emphasis in original]

- [42] Despite the claims’ recitation of computer components, the Panel’s view is that based on the CGK and on the problem and solution identified above, the skilled person would understand these computer components to be outside the scope of the problem and solution. Such physical elements may be part of the context or working environment of the claimed invention but are not essential elements of the claimed invention itself. In the instant application, the solution provides the method to link the information regarding a pick-up with information regarding shipped parcels in order to avoid the labour intensive alternatives. There is no “problem” requiring that the solution integrates to the existing delivery management system; that system is the context for the present solution and therefore does not constitute an element that is essential in providing the disclosed solution. Accordingly, we consider that the skilled person would not construe the computer components to be essential elements in the solution.
- [43] The RPR also set out the Applicant’s contention that all of the claim features of independent claims 1 and 5 are essential for the solution to the problem. The Applicant maintains that because the claims address real life practical considerations, then the physical features such as the pick-up notice, the pick-up

location, the parcels, and even reading the machine-readable notice all are essential to the claims.

[44] The Panel has considered these arguments but, in light of Office practice, does not agree that the skilled person would consider these real life physical features to be essential features of the solution to link the pick-up information, such as found in a pick-up notice, with information about the items, including those picked up and those not picked up. A shipper may use the information on such a pick-up notice to contact the delivery/pick-up service and more easily obtain the related information regarding the status of all items for that pick-up. The explicit recitation in a claim of a physical feature does not render that feature essential: such features may define the context and the working environment that are known in the field for the operation of an invention, but are not essential elements that provide the specific solution disclosed.

[45] In the RPR, the Applicant further argues that:

Furthermore, a critical aspect of the problem is how to actually gather the required information given that items to be shipped must be i) physically picked up, ii) by a real-life delivery agent, iii) at a physical location that is remote of where the information will be treated, and iv) that the shipper must be provided with something that allows them to be notified and to access the information about the physical items that were picked up. Generating the appropriate information, such as identifying each instance of a pick up attempt at a pick up location, identifying the items picked up or refused and notifying the shipper while also providing access to pick up information is a non-trivial problem. [emphasis in original]

[46] The Panel does not agree that the skilled person would consider generating or gathering the required information to be a critical or non-trivial problem. The Panel considers that the problem and solution of obtaining parcel information in a delivery management system is CGK: the use of such things as bar codes, bar code readers, data storage and unique identifiers is well known in the field. It is our view that the skilled person would not have any difficulty obtaining additional equivalent information for other types of delivery that are called “pick-ups.” Programming databases, using barcode identifiers and gathering information on physical parcels is, in the Panel’s opinion, a trivial problem for the skilled person in light of the CGK. Accordingly, such features, although relevant for the context and environment in which of the invention operates, are not essential elements to solve the identified problem.

[47] Accordingly, based on the totality of arguments and evidence presented to us, the Panel considers that claims 1-8 on file share the same set of essential elements for the identified solution as set out in the PR letter, namely:

- for a plurality of pick-up notices, providing a first pick-up notice code and a second pick-up notice code, each first pick-up notice code being unique within the plurality of pick-up notices;
- recording the first pick-up notice code from one of said pick-up notices;
- recording an item code for each item in a pick-up;
- linking data associated with the said first pick-up notice code with the said item code; and
- providing information regarding said item in response to receipt of the second pick-up notice code, said information including (1) the number of unique items that were in the pick-up when the pick-up was made, (2) whether any unique items were refused, and (3) a status that indicates whether any of the unique items were left behind or picked up.

#### **Statutory subject-matter**

[48] The PR letter set out the Panel’s preliminary view that the essential elements of claims 1-8 on file define the steps and rules to link parcel and pick-up information to allow shippers to more easily retrieve information regarding their shipped items. The claims were considered to be outside the definition of invention in the *Patent Act*.

[49] In the RPR, the Applicant maintained its earlier arguments (from the RFA and RSOR) with respect to statutory subject-matter. According to the construction proposed by the Applicant, the essential elements include those with a physical existence and/or manifest a discernible effect or change. The Applicant also suggested that the features produce a commercially useful result.

[50] However, under “Claim construction” above, the Panel expressed the view that the identified essential elements of the solution of the present application do not comprise physical features. Additionally, we consider that the essential elements do not comprise matter that manifests a discernible effect or change. Rather, the skilled person would consider that the essential elements of the claims on file define the steps and rules to link item information with pick-up notice information so that shippers can more easily retrieve information regarding their shipped items. These elements are considered to be intangible administrative rules defining the

association and use of particular shipping information, characterized by the intellectual significance of said information. Rules, plans and information having only intellectual meaning are considered outside the definition of invention under section 2 of the *Patent Act*. Similarly, carrying out a plan or theory of action without the production of any physical results proceeding directly from the operation of the theory or plan itself is outside the definition of invention under section 2 of the *Patent Act*.

[51] The Applicant has referred to the US Supreme Court case *Mayo Collaborative Services v. Prometheus Labs, Inc.* (132 S. Ct. 1289, 1293-94 (2012)) in reference to the issue of identifying essential elements for the purpose of assessing statutory subject-matter. While the ideas espoused by the US Court in that case may be relevant to the topic of statutory subject-matter in that jurisdiction, we do not consider it to be applicable for our analysis of the present application currently under review in Canada. Instead, our analysis of statutory subject-matter is based on the Office interpretation of Canadian jurisprudence, embodied in the practice guidance set out in *MOPOP* and *PN2013-03* cited above.

[52] Therefore, we consider that claims 1-8 on file do not define statutory subject-matter and thus do not comply with section 2 of the *Patent Act*.

### **Proposed claims set-2**

[53] As stated above, the Applicant submitted a proposed claim set-2 with its RPR. Proposed claim set-2 differs from the claims on file primarily in that the independent claims 1 and 5 are amended to include additional terms that modify existing features with physical location limitations:

- "... at a physical pick up location of a given one of the unique items...";
- "...being located remotely at the physical pick up location of a given one of the unique items ...";
- "...a scanning device at a physical pick up location of a given one of the unique items..."; and
- "...within a server located remotely of the physical pick up location."

[54] We consider that the presence of these additional features would not alter the identifications of the person skilled in the art, their CGK, or the problem and the solution being addressed by the application that we have provided in our analysis of the claims on file.



- [55] Regarding the added terms, it is our view that these features would be considered by the skilled person to be part of the context for the parcel delivery electronic systems that are part of the CGK. These limitations only serve to define the physical locations and operating environment of the claimed system and method; they would not change the nature of the solution to the problem of linking parcel and pick-up information. In our view, the skilled person would consider that the claims of proposed claim set-2 would have the same essential elements as those identified for the claims on file.
- [56] As the proposed claims have been similarly construed, we consider that they also fail to comply with section 2 of the *Patent Act*.
- [57] We note that on construing the claims in proposed claim set-2, claim 2 introduces avoidable ambiguity in that the term “the server” has no antecedent. However, this defect is moot considering our determination on statutory subject-matter of the proposed claims.
- [58] Given that it is the Panel’s view that the proposed claims would not remedy the defects of the claims on file, it follows that the claims submitted in proposed claims set-2 are not considered a necessary specific amendment under subsection 30(6.3) of the *Patent Rules*.

## **RECOMMENDATION OF THE BOARD**

- [59] In view of the above, the Panel recommends that the application be refused on the basis that the claims on file define subject-matter that is non-statutory and thus does not comply with section 2 of the *Patent Act*.
- [60] We do not consider the claims provided in proposed claims set-2 to constitute specific amendments necessary to comply with the *Patent Act* and *Patent Rules*. Accordingly, we decline to recommend that the Applicant be notified under subsection 30(6.3) of the *Patent Rules* that said proposed claims are necessary.

Andrew Strong  
Member

Marcel Brisebois  
Member

Ed MacLaurin  
Member

## **DECISION OF THE COMMISSIONER**

- [61] I concur with the findings of the Board and its recommendation to refuse the application on the basis that the claims on file define subject-matter that is non-statutory and thus does not comply with section 2 of the *Patent Act*.
- [62] Accordingly, I refuse to grant a patent for this application. Under section 41 of the *Patent Act*, the Applicant has six months to appeal my decision to the Federal Court of Canada.

Johanne Bélisle  
Commissioner of Patents  
Dated at Gatineau, Quebec,  
this 5<sup>th</sup> day of July, 2019