TOPICS: B00 Ambiguity or Indefiniteness (incomplete)
J00 Meaning of Art
J50 Mere Plan
O00 Obviousness

SUJETS: B00 Caractère ambigu ou indéfini (incomplet)
J00 Signification de la technique
J50 Simple plan
O00 Évidence

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2507638, 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:

SMART & BIGGAR
Box 11115 Royal Centre
2300 – 1055 West Georgia Street
Vancouver, British Columbia
V6E 3P3

INTRODUCTION

[1]   This recommendation concerns the review of rejected patent application number 2507638, which is entitled "Information System for Contact Center Users" and is owned by Accenture Global Services Limited.

[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*. The issues to be considered are whether the claims are directed to non-statutory subject matter, whether the claims would have been obvious and whether certain claims are indefinite. As explained below, our recommendation is that the application be refused.

BACKGROUND

The Application

[3]   Patent application 2507638 (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 January 20, 2005.

[4]   The instant application is directed to methods and systems providing a dual information system for contact center users. Content items are designated either as online elements (or offline elements), relative to whether the user is intended to view them while online with a customer (or offline).

Prosecution History

[5]   On February 29, 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 1-33 on file encompass subject matter that lies outside the definition of "invention" and thus do not comply with section 2 of the *Patent Act*, that the claims 1-33 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* and that claims 1-11 on file are indefinite and thus do not comply with subsection 27(4) of the *Patent Act*.

[6] In an August 9, 2016 response to the FA (RFA), the Applicant submitted a first set of proposed claims and corresponding proposed description pages. The Applicant submitted that this first set of proposed claims is allowable.

[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 November 4, 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 defects identified in the FA.

[8] With a letter dated November 9, 2016, the Board sent the Applicant a copy of the SOR and asked the Applicant to confirm continued interest in having the application reviewed. In a response dated December 9, 2016, the Applicant confirmed its continued interest in having the application reviewed.

[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 first set of proposed claims encompass statutory subject matter and thus comply with section 2 of the *Patent Act*. However, the Panel's preliminary view was that the claims on file and the first set of proposed claims would have been obvious and thus do not comply with paragraph 28.3(*b*) of the *Patent Act* and viewed that claims 1-11 on file are indefinite and thus do not comply with subsection 27(4) of the *Patent Act*. The PR letter offered the Applicant the opportunities to attend an oral hearing and to make further submissions.

[11] In a response to the PR letter (RPR), dated March 1, 2019, the Applicant submitted a second set of proposed claims and argued that this second set of proposed claims is inventive.

[12] In an oral hearing held March 18, 2019, the Applicant further expanded upon the submissions in the RPR.

ISSUES

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

- whether the claims 1-33 on file define subject matter that falls outside the definition of "invention" and thus non-compliant with section 2 of the *Patent Act*;

- whether the claims 1-33 on file would have been obvious to a person skilled in the art and thus non-compliant with paragraph 28.3(*b*) of the *Patent Act*; and

- whether claims 1-11 on file are indefinite and thus non-compliant with subsection 27(4) of the *Patent Act*.

[14] We will also analyze the second set of proposed claims and consider whether they constitute amendments necessary for compliance with the Act and Rules.

LEGAL PRINCIPLES AND PATENT OFFICE PRACTICE

Purposive construction

[15] In accordance with *Free World Trust v Électro Santé*, 2000 SCC 66, essential elements are identified through a purposive construction of the claims done by considering the whole of the disclosure, including the specification and drawings (see also *Whirlpool v Camco*, 2000 SCC 67 at 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

[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 (AG) v Amazon.com,* 2011 FCA 328, the Patent Office released an examination memo "Examination Practice Respecting Computer-Implemented Inventions" PN 2013-03 (CIPO, March 2013) [*PN 2013-03*] that clarified the Patent Office's approach to determining if a computer-related invention is statutory subject matter.

[18]   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

[19]   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.

[20] 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?

Claim clarity / indefiniteness

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

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

[22] In *Minerals Separation North American Corp v Noranda Mines Ltd,* [1947] Ex CR 306 at 352, 12 CPR 99 at 146 [*Minerals Separation*]*,* the Court emphasized the obligation of an applicant to make clear in the claims the ambit of the monopoly sought and the requirement that the terms used in the claims be clear and precise:

By his claims the inventor puts fences around the fields of his monopoly and warns the public against trespassing on his property. His fences must be clearly placed in order to give the necessary warning and he must not fence in any property that is not his own. The terms of a claim must be free from avoidable ambiguity or obscurity and must not be flexible; they must be clear and precise so that the public will be able to know not only where it must not trespass but also where it may safely go.

ANALYSIS

Overview of the instant application

[23] Customer Relationship Management (CRM) is a business management philosophy that places value in building equity in a company's relationship with their customers. This value helps to increase the customer's attachment and loyalty to the company and to decrease the likelihood that the customer will switch to a competitor thereby improving the company's sales to that customer (instant application, page 1).

[24] To improve customer satisfaction and loyalty to a company, call center computer systems should maximize its ability to serve customers by offering sales, service and support functions through various communications channels including phone, fax, email, and interactive voice response systems. As labour costs make up the majority of a contact center's operating budget, it is economically important that contact center users are efficient in dealing with customers (instant application, page 1).

[25] According to the instant application, there is a need in the art to enhance the processes and computerized systems of a contact center to improve its users' service and efficiency to customers by integrating contact center tools to leverage software capabilities developed by third-party and in-house (instant application, page 1).

[26] The instant application is directed to methods and systems providing a dual information system for contact center users. Content items are designated either as online elements or offline elements, relative to whether the user is intended to view them while online with a customer or offline (instant application, pages 4 and 18).

[27] There are 33 claims on file. Method claims 1, 16 and 22, system claims 7, 12, 13, and 30, and computer readable medium claims 6, 19 and 26 are the independent claims. 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 computer-implemented method for providing a dual information system for a user of at least one computer in a contact center, the information being stored in a database, the method comprising:

causing the at least one computer to determine whether the user is online with a contact or is offline from contacts;

causing the at least one computer to read a first set of information from the database and to produce signals for causing at least one display to display the first set of information to the user through a first interface when the user is online with a contact, the first set of information being designated in the database as being associated with the user being online with a contact; and

causing the at least one computer to read a second set of information from the database and to produce signals for causing the at least one display to display the second set of information to the user through a second interface, which is integrated with the first interface, when the user is offline from contacts, the second set of information being designated in the database as being associated with the user being offline from contacts, wherein the second set of information includes information automatically directed to the user based on the user's online contact with the contact.

[28] Dependent claims 2-5, 8-11, 14-15, 17-18, 20-21, 23-25, 27-29 and 31-33 define further limitations on the independent claims, for example, refining the "first set of information" and the "second set of information".

Purposive construction

The person skilled in the art

[29] The PR letter at page 6, citing the FA, characterized the person skilled in the art as follows:

In view of page 1 of the description, the skilled person, who may be a team of people, is characterized as being skilled in the fields of contact centers (call centers) and general purpose computing technology.

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

Common general knowledge

[31] The PR letter at pages 6-7, citing the FA, identified the following CGK elements:

- contact centers having computerized tools for interaction with customers over various communication channels, including telephone, fax, email, internet, and interactive voice response (instant application, page 1);

- computer systems, databases, software and their use in contact centers;

- CRM systems implemented using networked computers and servers controlled by software;

- security techniques, including logon facilities using username and passwords (instant application, page 3);

- the use of tabs within webpages;

- CRM applications, including Siebel Call Center, Peoplesoft, SAP (instant application, pages 15-16); and

- mark-up languages used to describe data, including HTML and XML.

[32] The Applicant did not object to any of these CGK elements explicitly. However, the Applicant contested some of the Panel's preliminary views on CGK as related to the obvious analysis in the PR letter. We will consider these arguments in the obvious analysis below.

[33] The PR letter at page 7 and 18 also identified additional CGK elements, such as the "specifics of the user interface" (wherein "specifics" refer to the structuring of online and offline content and the display of selectable elements) based on a passage from the instant application at page 18:

> Technical Aspects for Dual Information System For Contact Center Users
>
> As one skilled in the art recognizes, the structuring of online and offline content is a design issue. The feature may be implemented in the web pages in the design of the portal web site. During the design, each content item may be designated as an online element or an offline element so that each element is assigned to the appropriate region of the dual information system.

[34] The Applicant argued in the RPR at page 9 that the Panel's preliminary views on CGK elements as interpreted from this passage go beyond what the person skilled in the art would have known:

> Clearly, this passage makes no mention of "specifics" of a user interface being a design issue. Structuring of online and offline content are noted, but there is not even a suggestion that other user interface features are within the CGK, known, and/or a design issue. It is submitted that "structuring" of content does not extend generally to all "specifics" of a user interface.

[35] We concede the Applicant's point that the passage's reference to "structuring" of content as a design issue – and thus known to the person skilled in the art – cannot be extended to the common general knowledge of the skilled person with respect to the "specifics" of a user interface, including the functionality enabled by a user interface.

[36] In light of the above, our view is that the CGK elements are those as identified in para [31] above with the additional element of "structuring of online and offline content" as identified in the instant application at page 18.

Problem and solution

[37] The PR letter at pages 8 and 9 identified the problem and solution as follows:

> 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 and in these passages, our preliminary view is that the use of computers in contact centers, the use of separate computer applications directed to providing the user with either online or offline information, and the use of webpages and tabs to convey information to users are all known to the person skilled in the art. What appears to be the solution, according to the specification, is the <u>integration of the online and offline functionality</u>, more specifically the navigation of online or offline information by a user via tabs in a single computer application (instant application, page 4, lines 9-16). That is to say, a single computer application provides the user with customer interaction information and reference information (via one tab) and also provides additional reference materials and role-based capability enhancement information (via other tabs). The integration of online and offline functionality through a single computer application also provides customization of offline information based on online actions (instant application, page 4, lines 21-28). When such integrated online and offline functionality is provided to the user of the contact center through a single computer application, the user is able to improve their service to customers.

In light of the above, the Panel's preliminary view of the problem is to improve customer service to customers delivered by users of a contact center. Although implementation details are not described (as discussed in the CGK section above), in our preliminary view, the person skilled in the art would view the solution as a single computer application for users of a contact centre providing online (customer and reference) information, offline (additional reference) information and customizing offline information based on online actions. [emphasis in the original]

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

[39] In light of the above, our view is that the problem as seen by the person skilled in the art is a need to improve customer service delivered by users of a contact center to customers. We view that the solution as seen by the skilled person is a single computer application for users of a contact centre providing online (customer and reference) information, offline (additional reference) information, and customizing offline information based on online actions.

Essential elements

[40] The PR letter at page 10 identified the essential elements as all claim elements of representative claim 1, including the computer elements, arguing the following:

Given that the invention improves customer service through the provision and integration of online and offline functionality via a single computer application, our preliminary view is that the person skilled in the art would understand that the computer elements as identified by the Applicant are essential to the solution of providing such functionality to users of a contact center.

The solution as identified above includes both the provision of online and offline information to the user and the customization of offline information based on online actions. The solution is not merely the presentation of information to a user, but is also directed to advantages afforded by the integration into a single computer application of previously separate applications. The example provided in the specification is the concept of providing customized offline information based on online actions. If the computer applications were not integrated into a single computer application then there would be no customization of offline information based on an online action. Our preliminary view is that, at least, the provision of a single computer application necessitates the use of a computer.

[41] The Applicant did not contest this identification of the essential elements and we adopt it for the purposes of this review.

Meaning of terms

[42] The PR letter at pages 10-11 considered the meaning of terms recited in the claims:

> The FA at page 4 construed both the terms "first set of information" and "second set of information":
>
> > Although not explicit from the claims, the first information has been understood as reference information and the second information has been understood as reference or capability enhancement information based on the description (page 2, lines 2 to 5).
>
> The Applicant did not contest the meaning of these terms as characterized in the FA.
>
> In addition to the FA characterization of these terms, we further clarify that the first set of information and the second set of information are construed according to the specification as described on page 4 of the instant application:
>
> > When online, the "online" tab is clicked by the user and he or she has access to the contact center screens as well as supporting reference material. When using the offline feature, the user clicks the "home" or "search" tab for additional reference materials or for role-based capability enhancement (such as training, reading notices, checking KPI statistics, etc.)
>
> Based on the above and in our preliminary view, the first set of information corresponds to the "online" information providing customer information and support reference material. The second set of information corresponds to the "offline" information providing additional reference materials or role-based capability enhancement materials (such as training, reading notices, checking KPI statistics, etc.).
>
> We also ascribe the following meanings to other phrases in claim 1:
> - "causing the at least one computer to determine whether the user is online with a contact or is offline from contacts": our preliminary view is that the "arrangement of tabs allows a user to navigate between online and offline information, depending on whether or not the user is working with a customer or contact" (instant application, page 4, lines 10-12). Thus it is the user that determines whether they are online or offline with a contact and the selection of the appropriate tab in the single computer application is indicative of this state. This phrase is the subject of the analysis below regarding the indefiniteness defect; and
> - "wherein the second set of information includes information automatically directed to the user based on the user's online contact with the contact": our preliminary view is that this phrase embodies the customization of offline information based on online actions, prefaced with the caveat that, as explained above, user that determines whether they are online or offline with a contact through the selection of the appropriate tab in the single computer application.

[43] Again, as the Applicant did not contest the meanings of these terms as construed in the PR letter, we adopt them for the purposes of this review.

Issue 1: Non-statutory subject matter

[44] The PR letter at page 12 preliminarily viewed that since the essential elements of the claims on file include physical embodiments using computer-implemented elements that provide users with online information, offline information, and by integrating the online and offline functionality, then the claims define statutory subject matter.

[45] The Applicant did not contest this preliminary view.

[46] In light of our analysis that the essential elements of the claims on file include physical embodiments using computer-implemented elements, our view is that claims 1-33 on file define statutory subject matter and comply with section 2 of the *Patent Act*.

Issue 2: Obviousness

Sanofi step (1)(a) Identify the notional "person skilled in the art" and
Sanofi step (1)(b) Identify relevant common general knowledge of that person

[47] The person skilled in the art and the CGK are identified above at paras [29] and [36] respectively. The above identification of the relevant CGK as of the publication date is also considered to be valid as of the claim date and thus applicable for the purpose of assessing obviousness.

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

[48] Our obviousness analysis proceeds using the combination of essential elements identified previously, namely, the combination of all elements of the claims, as an approach also taken by the Applicant in the RPR at page 4.

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

Differences between representative claim 1 on file and D1

[49]   The FA cited D1 as representing the "state of the art":

   D1: WO 01/65525 A2   Mcillwaine, et al.   September 7, 2001

[50]   The PR letter at pages 12-13 summarized D1 as follows:

   D1 discloses the assignment and delivery of individualized training or other information to an agent in a call center or other constituent contact environment. Agent interactions are monitored to produce an agent performance record and scored against predetermined performance criteria. Individualized training material is assigned to agents based on the agent's score in skill areas (Dl, abstract).

   D1 describes the operation of the call center. Customer calls are received by the call center via the public switched telephone network or other network. Customer calls, for example to purchase a catalog item, are distributed to call center agents via an Automatic Call Distribution component of the call center. Agents are equipped with a phone and computer terminal for accessing product information, customer information or other information through a database. Customer calls and relevant database information are integrally managed through a computer/telephony integration function within the Automatic Call Distribution component. This enables the call center to use information from the customer call to extract information from the database and to deliver that information to the agent (D1, Figure l; page 7, line 16 to page 8, line 20).

   D1 also describes that customer calls and interactions between customers and agents are monitored for quality control. A quality monitoring evaluation components enables the call center to evaluate an agent's performance during those interactions; for example, the agent's skill level in several areas can be assessed, such as product configuration knowledge, payment and shipping options, etc. Areas in which an agent's skill levels are below a predetermined performance threshold are identified. A training system can use this information to provide appropriate training materials to the agent corresponding to the agent's skill shortcomings. The training system delivers the training material to agents at times when the agents are available and when training will not adversely impact call center performance (Dl, Figure l; page 9, line 13 to page 12, line 12).

[51] The PR letter at pages 13-14 analyzed the differences between D1 and the inventive concept of representative claim 1 on file and at page 14 identified the following differences:

- D1 does not explicitly disclose the specifics of the user interface (for example, user interface formats) that provide online and offline information to the user; and
- D1 does not explicitly disclose that the second interface is integrated with the first interface.

[52] The RPR at pages 4-7 identified the differences between D1 and the second set of proposed claims:

1. displaying selectable elements and determining that the user is online (or offline) based on receiving signals representing selection of one of the selectable elements (proposed independent claim 1);

2. information being designated in the database as being associated with the user being online with a contact or offline from contacts (proposed independent claim 1);

3. the second interface is integrated with the first interface (proposed independent claim 1);

4. displaying within the same graphical user interface screen (proposed independent claim 22, also representative of proposed independent claims 26 and 30), and similarly displaying in one application window (proposed dependent claims 34 and 35); and

5. multiple regions of the first user interface or the graphical user interface screen that are dynamic and integrated such that they are context appropriate to one another (proposed dependent claims 36 and 37).

[53]   To the extent possible, we will consider these differences identified in the RPR as they relate to the claims on file.

RPR identified difference #1

[54]   This difference generally relates to determining whether a user is online or offline. In the PR letter at page 13, we preliminarily viewed that D1 discloses the claimed element "causing the at least one computer to determine whether the user is online with a contact or is offline from contacts". In support of this assertion, the PR letter cited D1, page 14, lines 9-20 that describes the scheduling of training by obtaining real time information from the Automatic Call Distribution component to determine when an agent is available for training and is not otherwise occupied with customer contact responsibilities. The Applicant made no submissions regarding our preliminary view on this element recited in claim 1 on file.

[55]   In the RPR, the Applicant proposed amendments to narrow these elements of the claims on file to recite additional features related to displaying a selectable online (offline) element to the user for selection by the user to indicate the user is online (offline) with a contact, selection of the online (offline) element by the user, receiving signals representing selection of online (offline) element by the user, and determining that the user is online (offline) with a contact based on the received signals.

[56]   Given that the proposed amendments are additional elements with respect to the representative claim 1 on file, our view is that this difference relates solely to the second set of proposed claims and thus we consider this difference under the "Proposed claims" analysis section below.

RPR identified difference #2

[57]   This difference generally relates to the designation of information in the database as associated with the user being online with (offline from) a contact. In the PR letter at page 13, we preliminarily viewed that D1 discloses the claimed element "causing the at least one computer to read a first set of information from the database and to

produce signals for causing at least one display to display the first set of information to the user through a first interface when the user is online with a contact, the first set of information being designated in the database as being associated with the user being online with a contact". In support of this assertion, the PR letter cited D1, page 8, lines 2-8 and the FA cited D1 page 8, lines 2-5 and 14-17 as disclosing this element as it relates to online information. The PR letter cited D1, page 11, lines 7-13 and the FA cited D1 page 10, lines 19-23 as disclosing this element as it relates to offline information.

[58] The RPR at page 6 acknowledged that the D1 references in both the FA and the PR letter relate to a terminal and a database but argued that the cited teachings do not mention any designation of information in the database.

[59] We agree with the Applicant that the referenced teachings of D1 do not explicitly disclose the designation of information in the database as associated with the user being online with or offline from a contact and thus we consider this element of representative claim 1 on file as a difference.

RPR identified difference #3

[60] The RPR at page 6 acknowledged that the Applicant and the Panel are in agreement that D1 does not explicitly disclose that the second interface is integrated with the first interface. We accept this element as a difference.

RPR identified difference #4

[61] The difference "displaying within the same graphical user interface screen" both the first and the second set of information as recited in independent claims 22, 26 and 30 on file was not explicitly considered in the PR letter or in the FA.

[62] In our view, this element is disclosed in D1, as the same terminal (D1, Figure 1, reference 44) displays to an agent both product or customer information (see for example D1, page 8, lines 2-8) and training materials (see for example, D1, page 15, lines 2-6), which correspond to the online and offline information of the instant application.

[63]   The further difference "displaying in one application window" selectable online elements and first and second sets of information relates solely to the newly proposed dependent claims 34 and 35 and thus we consider this difference under the "Proposed claims" analysis section below.

RPR identified difference #5

[64]   This difference relates solely to the newly proposed dependent claims 36 and 37 and thus we consider this difference under the "Proposed claims" section below.

Differences between dependent claims on file and D1

[65]   For completeness, the PR letter at page 15 analyzed the differences between D1 and the inventive concept of the dependent claims on file and identified at page 15 the following differences:

- D1 does not explicitly disclose that the online and offline navigation devices as tabs (dependent claims 24, 28 and 32 on file); and
- D1 does not explicitly disclose that the online and offline navigation devices as hyperlinks (dependent claims 25, 29 and 33 on file).

[66]   The Applicant made no submissions regarding our preliminary view on these differences. We view these elements as differences.

Overall summary of differences between the claims on file and D1

[67]   In light of the analysis above, we view the following as differences between document D1 and the claims on file:

- the designation of information in the database as associated with the user being online or offline with a contact (independent claim 1);
- the second interface is integrated with the first interface (independent claim 1);
- the online and offline navigation devices as tabs (dependent claims 24, 28 and 32 on file); and

- the online and offline navigation devices as hyperlinks (dependent claims 25, 29 and 33 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?

Difference: designation of information

[68] Regarding the difference "designation of information in the database as associated with the user being online or offline with a contact", the RPR at pages 10-11 argued that "although the referenced teachings in D1 refers to a database and different types of information being accessed, nothing along the lines of a designation of information as being associated with the user being online or offline appears to be even remotely suggested in D1".

[69] D1 discloses at least two types of information stored in a database (or databases). A first type of information includes product information and customer information and is accessed through an agent's terminal when interacting with a customer. An example is disclosed in which the agent's terminal could display information regarding a specific item of clothing when a customer expresses an interest in purchasing that item (D1, page 8, lines 2-8). D1 also discloses that the phone number of a calling customer may be use to extract customer information from the database and deliver that customer information to the agent's terminal (D1, page 8, lines 9-17).

[70] This first type of information is equivalent to the first set of information of the instant application: it falls within the meaning of terms construed above as information corresponding to the "online" information providing customer information and support reference material.

[71] A second type of information disclosed by D1 includes a database storing training course information. Records in the database identify an agent and their associated skills shortcomings. Skill areas are relevant to the particular call center; D1 discloses an example: the call center serving a catalog clothing merchant, wherein the skills

areas include product configuration knowledge, knowledge of shipping and payment options, knowledge of competitor differentiation and handling an irate customer. A quality monitoring evaluation component evaluates an agent's skill in each area based on the agent's interactions with the customer (D1, page 9, line 19 to page 10, line 23).

[72] This second type of information is equivalent to the second set of information of the instant application: it falls within the meaning of terms construed above as the "offline" information providing additional reference materials or role-based capability enhancement materials (such as training, reading notices, checking KPI statistics, etc.).

[73] We agree with the Applicant's assertion in the RPR that there is no explicit disclosure in D1 regarding the designation of information as associated with the user being online or offline with a contact. However, it is our view that a person skilled in the art would classify information by its use according to the teachings of D1 as either information used by an agent when online with a customer or information provided to the agent as training material. Such classifications – or designations – would be necessary to implement a system of D1 and thus the designation of information as associated with the user being online or offline with a contact would have been obvious to the skilled person based on the teachings of D1.

Difference: integration of interfaces

[74] Regarding the difference "the second interface is integrated with the first interface", the RPR at pages 12-13 argued that the PR letter analysis was incorrect as the PR letter referenced D1, figure 1 element 54 to illustrate this element. As argued by the Applicant, the referenced element refers to a communication network rather than a user interface as claimed.

[75] D1 discloses the integration of training system with the call center components at page 11, lines 5-13:

> The training system 20 according to one advantageous embodiment of the present invention is implemented in software and is installed in or associated

with the call center computer system 10. Under the control of call center management 31, the training system 20 can assign training material to agents 40 and deliver those training materials via communications network 54 to the agent. Integration with the [Workforce Management] component 48 and the [Automatic Call Distribution] 32 enables the training system 20 to deliver the training materials to agents at times when those agents are available and when training will not adversely impact call center performance. (emphasis added)

[76] In our view, the communications network of D1 (that is, D1, Figure 1 reference 54) integrates access to the agent's terminal for both the information used by the agent when interacting with a customer and the training information delivered to the agent (respectively, the first and second set of information as described and claimed in the instant application). D1 recognizes and teaches that there are advantages associated with such integration (see, for example, the last line quoted in the paragraph above).

[77] Given that the delivery of information from these multiple components is integrated in the communications network of D1, there are a finite number of ways to implement such a network using unified or discrete interface(s) known to the person skilled in the art. Thus, selection of a specific means to integrate the user interfaces to deliver both online and offline information by the skilled person is a mere design choice and does not require any degree of invention by the skilled person based on the teachings of D1.

Difference: online and offline navigation devices as tabs or as hyperlinks

[78] The PR letter at page 16 argued that the use of tabs within webpages is part of the CGK. This was not contested by the Applicant.

[79] We view that the use of tabs and similar means (such as hyperlinks) would have been obvious design options to the person skilled in the art to implement the navigation devices as claimed.

Summary on obviousness

[80] In light of our analysis above, it is our view that the claims 1-33 on file would have been obvious and thus do not comply with paragraph 28.3(*b*) of the *Patent Act*.

Issue 3: Claim clarity / indefiniteness

[81] The PR letter at page 17 preliminarily viewed that phrases used in claims 1, 6 and 7 on file (and similarly in their dependent claims) are unclear and imprecise such that the person skilled in the art will be unable to readily determine the limits of the recited steps of the claims, mindful of the guidance given in *Minerals Separation*. As identified in the FA, it was unclear whether it was the user or the computer that determines whether the user is online or offline from contacts.

[82] The Applicant proposed amendments in the second set of proposed claims accompanying the RPR to address the defect as identified in the PR letter. We consider the second set of proposed claims under the "Proposed claims" analysis section below.

[83] In light of the above, we view that the claims 1-11 on file are indefinite and therefore do not comply with subsection 27(4) of the *Patent Act.*

Second set of proposed claims

[84] A second set of proposed claims 1-37 was submitted by the Applicant with the RPR. In accordance with paragraph 30(6)(*b*) of the *Patent Rules*, they have not been entered as an amendment. However, in accordance with subsection 30(6.3) of the *Patent Rules*, if, after review of a rejected application, the Commissioner determines that an application does not comply with the *Patent Act* or the *Patent Rules*, but that specific amendments are necessary, the Commissioner shall notify the Applicant to make these amendments.

[85] As the second set of proposed claims could be considered for amendment if it is determined that it overcomes the obviousness and indefiniteness defects noted above and does not introduce any other defects, the Panel provides its views on the second set of proposed claims.

[86] As explained in the RPR at pages 2-3, the second set of proposed claims proposed amendments to the independent claims to provide clarity with respect to the first and second interfaces, the designation of first set of information and of the second set of

information and to provide consistency of wording between the independent claims. Newly proposed dependent claims 34-35 recite features relating to the display of the selectable elements and the first and second user interfaces or sets of information in one application window. Newly proposed dependent claims 36-37 recite features relating to regions that are dynamic and integrated such that they are context appropriate to one another.

[87] First, with respect to the indefiniteness defect, as the amendments in the second set of proposed claims are consistent with the previous amendments that addressed this defect, as acknowledged in the PR letter at page 18, we agree that the second set of proposed claims address the indefiniteness defect.

[88] Second, with respect to the obviousness defect, we will consider the second set of proposed claims amendments within the *Sanofi* obviousness analysis framework. Our identifications of the person skilled in the art and the CGK remain as above at paras [29] and [36] respectively.

[89] As previously described at para [52], the RPR at pages 4-7 analyzed the differences between D1 and the second set of proposed claims. We will now consider each of these differences within the *Sanofi* steps (3) and (4) analysis.

RPR identified difference #1

[90] The Applicant proposed amendments to narrow the claims on file elements to determine whether a user is online or offline with a contact by reciting additional features related to displaying a selectable online (offline) element to the user for selection by the user to indicate the user is online with (offline from) a contact, selection of the online (offline) element by the user, receiving signals representing selection of online (offline) element by the user, and determining that the user is online with (offline from) a contact based on the received signals.

[91] As discussed above under the heading "Meaning of terms", the instant application discloses that the "arrangement of tabs allows a user to navigate between online and offline information, depending on whether or not the user is working with a customer

or contact" (instant application, page 4, lines 10-12). Thus the person skilled in the art would view the "selectable online (offline) elements" as tabs that can be selected by the user when they are online (offline) with a contact. The remaining amendments relate to how the system would recognize whether the user is online (offline) based on the user selected tab.

[92] D1 does not explicitly disclose the use of tabs and the selection of such tabs to define the user state, that is, whether the user is online with a customer or offline. The RPR at page 10 stated that the existence of selectable elements would not be within the CGK or known.

[93] We view that D1 discloses a single terminal connected to a single communications network that is used to display both online and offline information to a user (see paras [68] to [77] above). Given that there are a finite number of ways to implement a configuration used to select between the two types of information and given that the use of tabs is part of the CGK, the implementation of such features in the second set of proposed claims to determine whether a user is online or offline with a contact is a mere design choice and would have been obvious to the skilled person based on the teachings of D1.

RPR identified difference #2

[94] Our analysis with respect to the difference related to the designation of information for the claims on file (see paras [68] to [73] above) applies equally to the second set of proposed claims. In light of our analysis above, we view that the designation of information as associated with the user being online or offline with a contact would have been obvious to the skilled person based on the teachings of D1.

RPR identified difference #3

[95] Our analysis with respect to the difference related to the integration of the first interface with the second interface for the claims on file (see paras [74] to [77] above) applies equally to the second set of proposed claims. In light of our analysis above, we view the skilled person's selection of a specific means to integrate the

user interfaces to deliver both online and offline information as a mere design choice that would have been obvious to the skilled person based on the teachings of D1.

RPR identified difference #4

[96]   As discussed above at para [61] and [62], we view the feature "displaying within the same graphical user interface screen" both the first and the second set of information as recited in independent claims 22, 26 and 30 on file is disclosed by D1, given that the same terminal (D1, Figure 1, reference 44) displays to an agent both product or customer information (see for example D1, page 8, lines 2-8) and training (see for example, D1, page 15, lines 2-6) which corresponds to the online and offline information of the instant application. This analysis applies equally to the second set of proposed claims.

[97]   With respect to the further RPR identified difference "displaying in one application window" selectable online elements and first and second sets of information as recited in the newly proposed dependent claims 34 and 35, we agree this feature is not disclosed by D1. However, as argued previously, D1 does disclose that the same terminal (D1, Figure 1, reference 44) is used to display to the user both online information (D1, page 8, lines 2-8) and offline information (D1, page 15, lines 2-6) and obvious means to select between the two types of information. Given that there is a finite number of ways to implement a display of such information, we view this difference as a mere design choice that would have been obvious to the skilled person based on the teachings of D1.

RPR identified difference #5

[98]   With respect to the RPR identified difference "multiple regions of the first user interface or graphical user interface screen that are dynamic and integrated such that they are context appropriate to one another" as recited in the newly proposed dependent claims 36 and 37, we agree this feature is not disclosed by D1.

[99] As discussed previously at paras [74] to [77], we view that D1 discloses the integration of the first and second user interfaces as disclosed by the integration between the training system (that is, the offline information components) with the call center components (that is, the online information components) (see for example, D1 at page 11, lines 5-13). Given that the integration of the interfaces would have been known, and given that the same terminal is used to display to the user both online information (D1, page 8, lines 2-8) and offline information (D1, page 15, lines 2-6), we view that the means to implement how the information is displayed and integrated on a graphical display is a mere design choice that would have been obvious to the skilled person based on the teachings of D1.

[100] In light of our analysis above, it is our view that the second set of proposed claims would have obvious to the person skilled in the art.

[101] Therefore, for the reasons set out above, we view that the second set of proposed claims address the indefiniteness defect. However, the second set of proposed claims would have been obvious to the person skilled in the art and thus are non-compliant with paragraph 28.3(*b*) of the *Patent Act*. As such, they do not remedy 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

[102] This review has determined that claims 1-33 on file would have been obvious, thus claims 1-33 on file are non-compliant with paragraph 28.3(*b*) of the *Patent Act* and that claims 1-11 on file are indefinite and thus do not comply with subsection 27(4) of the *Patent Act*.

[103] We have also determined that the second set of proposed claims 1-37 does not overcome the obviousness defect and therefore the second set of proposed claims does not constitute a specific amendment that is "necessary" pursuant to subsection 30(6.3) of the *Patent Rules*.

RECOMMENDATION OF THE BOARD

[104] In view of the above, the Panel recommends that the application be refused on the basis that claims 1-33 on file are non-compliant with paragraph 28.3(*b*) of the *Patent Act* and that claims 1-11 on file are indefinite and thus do not comply with subsection 27(4) of the *Patent Act*.

[105] Further, the second 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	Marcel Brisebois	Leigh Matheson
Member	Member	Member

DECISION OF THE COMMISSIONER

[106] I concur with the findings and recommendation of the Board that the application should be refused because claims 1-33 on file are obvious and thus do not comply with paragraph 28.3(*b*) of the *Patent Act* and that claims 1-11 on file are indefinite and thus do not comply with subsection 27(4) of the *Patent Act.*

[107] 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 15th day of October, 2019