

Commissioner's Decision No. 1506

Décision du commissaire n° 1506

TOPICS: J00 Meaning of Art  
J10 Computer Programs  
J40 Mental Steps  
O00 Obviousness

SUJETS: J00 Signification de la technique  
J10 Programmes d'ordinateur  
J40 Processus psychologique  
O00 Évidence

Application No. 2 441 516

Demande n° 2,441,516



IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2 441 516, having been rejected under subsection 30(3) of the *Patent Rules* (SOR/96-423) as they read immediately before October 30, 2019 [the *former Patent Rules*], has consequently been reviewed in accordance with paragraph 199(3)(c) of the *Patent Rules* (SOR/2019-251). 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 Canadian patent application number 2 441 516, which is entitled “System and Method for Evaluating Regulatory Compliance for a Company,” owned by Financial and Risk Organisation Limited. The applicant is Corporate Responsibility System Technologies Ltd. (the Applicant). A review of the rejected application has been conducted by the Patent Appeal Board (the Board) pursuant to paragraph 199(3)(c) of the *Patent Rules*.
- [2] As explained in more detail below, our recommendation is that the Commissioner of Patents refuse the application.

## BACKGROUND

### The Application

- [3] The application was filed in Canada on September 18, 2003 and was laid open to the public on March 18, 2005.
- [4] The application relates generally to methods and systems for tracking a company’s compliance with regulatory requirements.

### Prosecution History

- [5] On January 28, 2016, a Final Action (FA) was issued pursuant to subsection 30(4) of the *former Patent Rules*. The FA stated that the instant application was defective on the grounds that all of the claims on file were directed to subject matter outside of the definition of invention and therefore were not compliant with section 2 of the *Patent Act*, and that all of the claims on file were directed to obvious subject matter and therefore did not comply with section 28.3 of the *Patent Act*.

- [6] In a response to the FA (RFA) received on July 28, 2016, the Applicant submitted a set of 39 proposed claims (proposed claim set-1) along with arguments as to why proposed claim set-1 was allowable.
- [7] The Examiner considered the application not to comply with the *Patent Act* despite the arguments submitted with the RFA and proposed claim set-1. Therefore, pursuant to paragraph 30(6)(c) of the *former Patent Rules*, the application was forwarded to the Board for review along with an explanation outlined in a Summary of Reasons (SOR). The SOR set out the position that the claims on file were still considered to be defective. The SOR also set out the examiner's position that proposed claim set-1 did not overcome the non-statutory subject matter defect, but did overcome the obviousness defect.
- [8] In a letter dated April 12, 2017, the Board forwarded a copy of the SOR to the Applicant.
- [9] The present panel (the Panel) was formed to review the application under paragraph 30(6)(c) of the *former Patent Rules*. The Panel sent a Preliminary Review letter (the PR letter) to the Applicant on June 13, 2019 wherein we set out our preliminary analysis and rationale as to why, based on the record before us, the defects identified in the FA were present. We also set out our preliminary view that proposed claim set-1 did not overcome either defect.
- [10] The Applicant declined the opportunity for a hearing. On July 12, 2019, the Applicant provided written submissions in response to the PR letter (the RPR) arguing in favour of the claims being allowable and also submitted a proposed amended set of 39 claims (proposed claim set-2).

## ISSUES

- [11] The substantive issues to be addressed by the present review are whether the claims on file are directed to subject matter outside the definition of invention as found at section 2 of the *Patent Act* and whether the claims on file are directed to obvious subject matter according to section 28.3 of the *Patent Act*. We also consider proposed claim set-2.

## LEGAL PRINCIPLES AND OFFICE PRACTICE

### **Purposive construction**

[12] 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* (CIPO) at §12.02, revised June 2015 [*MOPOP*], the first step of purposive claim construction is to identify the person of ordinary skill in the art (the POSITA) and their relevant common general knowledge (CGK). The next step is to identify the problem addressed by the inventors and the solution put forth in the application. Essential elements can then be identified as those required to achieve the disclosed solution as claimed.

[13] In both the RFA and RPR, the Applicant disagreed with the problem-solution based approach to purposive construction. The Patent Office takes the position that our approach is consistent with the principles of *Free World Trust*. As explained in *MOPOP* at §12.02.02e, not every element having a material effect on the operation of a given practical embodiment is essential to the solution; some recited elements define the context or environment of the embodiment but do not actually change the nature of the solution. Accordingly, purposive construction must consider which elements are required for the solution—proposed by the specification and underlying the claimed embodiment—to achieve its result.

### **Statutory subject matter**

[14] 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.

- [15] “*Examination Practice Respecting Computer-Implemented Inventions*,” PN 2013–03 (CIPO, March 2013) [PN 2013–03] clarifies the Patent Office’s approach to determining if a computer-related invention is statutory subject matter.
- [16] As indicated in PN 2013–03, 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., the fine arts, mere ideas, schemes or rules), the claimed subject matter will not comply with section 2 of the *Patent Act*.

### **Obviousness**

- [17] Section 28.3 of the *Patent Act* requires claimed subject matter not to be obvious:

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.

- [18] In *Apotex Inc v Sanofi-Synthelabo Canada Inc*, 2008 SCC 61 [Sanofi] at para 67, 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”;
- (b) Identify the relevant common general knowledge of that person;
- (2) Identify the inventive concept of the claim in question or if that cannot readily be done, construe it;



- (3) Identify what, if any, differences exist between the matter cited as forming part of the “state of the art” and the inventive concept of the claim or the claim as construed;
- (4) Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention?

## ANALYSIS

[19] In our analysis, we construe the claims first, according to a purposive construction, and identify the essential elements. We then consider the question of non-statutory subject matter. The same purposive construction is then used to consider the question of obviousness. Finally, we consider these questions with respect to proposed claim set-2.

### **Claim Construction**

*The POSITA and the relevant CGK*

[20] In the FA (page 3), the POSITA was defined as follows:

The notional skilled worker or team is one or more business professionals from fields pertaining to the evaluation or reporting of a company’s compliance with regulatory requirements, as well as information technologists from fields involving the development of tools for such business professionals.

[21] In neither the RFA nor the RPR did the Applicant dispute this definition. Consistent with the PR letter we adopt it here.

[22] The FA cited the following references:

D1:	CA 2412526	Dewar	December 20, 2001
D2:	CA 2415597	Ware et al	December 13, 2001
D3:	CA 2417863	Scarborough et al	February 14, 2002
D4:	US 2001/0056398	Scheirer	December 27, 2001
D5:	US 2002/0184068	Krishnan et al	December 5, 2002
D6:	US 2003/0069894	Cotter et al	April 10, 2003
D7:	US 2003/0069983	Mukund	April 10, 2003

- [23] Citing passages in the instant application as well as passages in D2, D4, D5, D6 and D7, the FA stated that the POSITA's CGK would include familiarity with:

...the technologies, concepts and issues commonly involved in ensuring a company's compliance with regulatory requirements, automatically sorting regulatory and related information and making it available via computers, providing online interactive services, and providing computerized testing systems and computerized systems for presenting, via the Internet and Web, questions to persons, and recording and evaluating the responses.

- [24] In neither the RFA nor the RPR did the Applicant dispute this characterization of the CGK. Consistent with the PR letter we adopt it here.

*Problem and solution*

- [25] The FA expressed the problem and solution as follows:

The specification (e.g. title; pages 1 to 3 and 29) introduces the invention as a computerized method for evaluating the compliance of a company listed on a stock exchange to the regulatory requirements of the exchange. The specification explains that while it is increasingly difficult for a corporation (especially a large or diverse corporation) to ensure its compliance with the complex body of regulatory requirements mandated by an exchange, the penalties and resulting risks for not doing so are severe. As a solution, the specification proposes a method for tracking and evaluating a company's compliance with a set of regulatory requirements. First, a set of questions and default answers corresponding to the relevant regulatory requirements must be created and stored, along with overviews and extracts from the requirements (i.e. a "control document"). Next, the questions, default answers and accompanying information are grouped, and each group of questions and accompanying information is presented to the appropriate person. The person's answers to the questions are recorded. Finally, the company's overall compliance with the regulatory requirements can be evaluated and reported by comparing the received answers with the default answers for each group.

- [26] In the RPR, the Applicant did not disagree that the above problem expressed in the FA was one of the problems that could be addressed by the claimed invention; however the Applicant argued (with respect to proposed claim set-2), that the claims recite a specific data structure that provides for efficient management of a large amount of complex electronic data.

[27] As we noted in the PR letter (with respect to proposed claim set-1), we do not find in the originally-filed specification any indication that computer efficiency was a problem in prior art compliance records management. We also point out that Patent Office practice, as noted in *MOPOP* at §12.02.02e, is to focus on one solution to one problem. In our view, the POSITA would consider the invention to be primarily directed to solving the problem of how to ensure compliance with a complex set of regulatory requirements, and not directed to solving a computer efficiency problem. Therefore, in our view, the computerized system is not essential to the invention.

[28] Consistent with the PR letter, we therefore adopt the FA's characterization of the problem and solution.

#### *Essential elements*

[29] We analyze independent claim 1 as representative and then analyze the additional elements of the remaining claims. Claim 1 reads:

A method of evaluating compliance by a company to a set of regulatory requirements using a computerized system that communicates with at least one client computer, said method comprising:

at the computerized system, storing a set of company records relating to said company in a computer database;

at the computerized system, storing a set of questions related to requirements found in said set of regulatory requirements in said computer database;

at the computerized system, dividing the set of questions stored in said computer database into groups, each group of questions relating to a different company procedure;

at the computerized system, automatically assigning each group of questions to an individual of said company who is responsible for compliance requirements relating to the associated company procedure;

at the computerized system, associating a control document stored in said computer database with each group of questions, each control document comprising information that at least comprises extracts from regulatory provisions that govern the associated company procedure and an overview of the questions in the group and of the regulatory provisions;

at the computerized system, storing a set of default answers related to said set of questions in said computer database;

at the at least one client computer, for each individual, displaying the assigned group of questions and information of the associated control document and receiving answers to the questions of the group;

transmitting the received answers from the at least one client computer to the computerized system for storage in said computer database;

at the computerized system, accessing said computer database and extracting therefrom said received answers, said set of questions and said set of default answers;

at the computerized system, evaluating said received answers against said default answers and determining therefrom a compliance level to said set of regulatory requirements; and

generating an electronic report of regulatory compliance of said company based on said determined compliance levels, wherein said compliance level is selected from one of the following levels:

incomplete compliance when said received answers do not contain answers for all questions in said set of questions;

full compliance when said received answers are complete and said received answers match requirements of said default answers; and

non-compliance when said received answers are complete and said received answers do not match requirements of said default answers.

[30] Consistent with the PR letter, in our view, the essential elements of claim 1 which are required to implement the solution identified above are:

- storing a set of company records relating to a company in a database;
- storing a set of questions related to requirements found in a set of regulatory requirements in said database;
- dividing the questions into groups, each group relating to a different company procedure;
- assigning each group of questions to an individual of the company responsible for compliance relating to the associated company procedure;
- associating a control document, stored in said database, with each group of questions, each control document comprising information that at least comprises

extracts from regulatory provisions that govern the associated company procedure and an overview of the questions in the group and of the regulatory provisions;

- storing a set of default answers related to said set of questions in said database;
- for each individual, providing the assigned group of questions and information of the associated control document, receiving answers to the questions of the group and storing said received answers in said database;
- evaluating said received answers against said default answers and determining therefrom a compliance level to the set of regulatory requirements; and
- generating a report of regulatory compliance of the company based on said determined compliance levels wherein the compliance level is selected from one of the following levels:
  - incomplete when said received answers do not contain answers for all questions in said set of questions;
  - full compliance when said received answers are complete and said received answers match requirements of said default answers; and
  - non-compliance when said received answers are complete and said received answers do not match requirements of said default answers.

[31] In our view, the POSITA would not construe the computerized system and client computer as essential elements, as the identified problem did not lie in how to store, transmit or manipulate the records. The CGK indicates that computers were already well known for performing such tasks and there was no problem in their use. Although computerized elements are recited, they are part of the environment or context in which the invention operates, but are not essential to the solution to the identified problem. The solution consists of providing and storing various data, evaluating the data, and providing a report.

[32] In the RFA and the RPR, the Applicant contended that it was the inventor's intent that the computer system be essential. We note that a presumption of essentiality in claim language may be challenged by, for example, relevant knowledge concerning the substitutability of the elements (see *Free World Trust* at paras 31 and 51 to 57). Without

the foundation of such relevant knowledge, a presumption of essentiality may not be well informed (see *Canada (Attorney General) v Amazon.com Inc*, 2011 FCA 328 [Amazon.com] at paras 73-74). In our view, the POSITA would not consider the computer or processor essential to the solution of providing and evaluating certain information to determine compliance.

- [33] In the RPR, the Applicant cited several Commissioner's Decisions in support of its position that inventions involving computerization and networking may be directed to statutory subject matter.
  
- [34] We note that each case depends on its own particular facts. The determination of the essential elements in a given case depends on whether those elements contribute to the particular solution identified in that case. Therefore a determination that certain elements in one case are essential is not determinative of a different case where the identified solution is different.
  
- [35] Independent claim 22 is directed to a system with the same essential elements as claim 1. Independent claim 14 is similar but adds the element of there being a plurality of companies' information in the system. Independent claims 34 and 37, directed to a method and system, respectively, omit the control document element. None of these claims add an essential element that is statutory subject matter.
  
- [36] Dependent claims 2-3, 27-28 and 31-32 add the element of templates for individuals responsible for various groups of questions, and templates with filing deadlines. These elements constitute mere presentation of information.
  
- [37] Dependent claims 4, 29 and 33 add detail concerning the content of the control document. This element is of intellectual significance only.
  
- [38] Dependent claims 5, 10, 15, 18-20 and 23 add computerized elements, such as user selectable links to the records and a super user role. As noted above, the computerized elements are not construed to be essential to the solution to the problem.

- [39] Dependent claims 6, 11, 16, 24, 36 and 39 add the element of tracking and reporting changes to the compliance level. This element does not require a computer and is merely data manipulation.
- [40] Dependent claims 7, 13, 17 and 25 add the element of generating a calendar of events for a timeframe associated with a set of regulatory requirements. This element does not require a computer and is merely data manipulation.
- [41] Dependent claims 8, 21, 26 and 30 identify specific company procedures or regulatory requirements. This element does not require a computer and is merely data manipulation.
- [42] Dependent claim 9 adds the element of assigning questions to individuals based on the title of the individual. This element does not require a computer and is merely data manipulation.
- [43] Dependent claim 12 adds the element of the company records, sets of questions and control documents being organized in a hierarchical arrangement. This element is a data structure for storage of information and does not necessitate a computer implementation. Further, this element is not considered to be essential to the solution of comparing questions, answers and default answers to determine compliance, but is merely one particular data structure. The instant description notes at page 24, line 22 – page 25, line 2 that any data structure would suffice.
- [44] Dependent claims 35 and 38 add the element of assigning groups of questions to two users. This element does not require a computer and is merely data manipulation.

### **Statutory Subject Matter**

- [45] As construed above, the essential elements of the claims on file correspond to storage of certain information, a set of manipulations of data, along with the presentation of information of merely intellectual significance. A computer is not among the essential elements. Using the language of *Amazon.com* (at para 66) the essential elements are not

“something with physical existence”, and are not “something that manifests a discernible effect or change”. Such matter is outside the categories of invention in section 2 of the *Patent Act*.

[46] Therefore, in our view, the claims on file are not directed to statutory subject matter and thus do not comply with section 2 of the *Patent Act*.

### **Obviousness**

[47] We first analyze independent claim 14 as representative of the independent claims: 1, 14, 22, 34 and 37.

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

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

[48] The POSITA and CGK have already been identified above at paras 20-24.

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

[49] For this case, we take the set of essential elements as construed above as representing the inventive concept.

(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*

[50] We consider D6 to be the closest prior art. We compare the essential elements of independent claim 14 to D6 and identify differences. D6 discloses the following elements:

- storing a set of company records relating to a company in a database [D6, para 0010];



- storing a set of questions related to requirements found in a set of regulatory requirements in said database [D6, paras 0009, 0025, 0038];
- assigning each group of questions to an individual of the company responsible for compliance relating to the associated company procedure [D6, para 0037];
- associating a control document, stored in said database, with each group of questions, each control document comprising information that at least comprises extracts from regulatory provisions that govern the associated company procedure and an overview of the questions in the group and of the regulatory provisions [D6, para 0025];
- storing a set of default answers related to said set of questions in said database [D6, para 0008] (Although not explicitly recited, it is clear that to determine compliance there must exist in the system of D6 a set of default answers to which the answers are compared, even if such default answers are as simple as “yes, this element complies”);
- for each individual, providing the assigned group of questions and information of the associated control document, receiving answers to the questions of the group and storing said received answers in said database [D6, para 0013];
- evaluating said received answers against said default answers and determining therefrom a compliance level to the set of regulatory requirements [D6, para 0016]; and
- generating a report of regulatory compliance of the company [D6, para 0013] based on said determined compliance levels.

[51] The essential elements of claim 14 not found in D6 are:

- dividing the questions into groups, each group relating to a different company procedure;
- the compliance level is selected from one of the following levels:
  - incomplete when said received answers do not contain answers for all questions in said set of questions;
  - full compliance when said received answers are complete and said received answers match requirements of said default answers; and

- non-compliance when said received answers are complete and said received answers do not match requirements of said default answers.

(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?*

[52] The CGK includes the automatic sorting of information. Therefore, in our view, the element of dividing questions into groups, each group relating to a different company procedure is CGK.

[53] D7, in the same art, discloses determining whether recorded tasks are compliant, non-compliant or past due [D7, para 0068]. This corresponds to the element of compliance levels in claim 1.

[54] In our view, the POSITA, faced with the case where answers are incomplete, would be motivated to consider three compliance levels, such as in D7, in a system such as D6. Therefore, in our view, claim 14 would have been obvious having regard to D6 in view of D7 and CGK.

[55] Independent claims 1 and 22 are broader than independent claim 14 in that they omit the element of there being a plurality of companies. Independent claims 34 and 37, directed to a method and system, respectively, are broader than independent claims 1 and 14 in that they omit the control document element. Therefore, claims 1, 22, 34 and 37 are also obvious having regard to D6 in view of D7 and CGK.

[56] Regarding claims 2-3, 27-28 and 31-32, D7 further discloses templates for individuals responsible for various groups of questions, and templates with filing deadlines [D7, para 0055]. The POSITA faced with the question as to whom to assign questions would be motivated to adopt these in a system such as D6.

- [57] Regarding claims 4, 29 and 33, the content of the control document is merely of intellectual significance and cannot lend patentability to an otherwise obvious combination.
- [58] Regarding claims 5, 10, 15, 18-20 and 23, the additional computerized features are not, in our view, essential elements, as noted above with respect to the purposive construction analysis. Therefore, these cannot be inventive features.
- [59] Regarding claims 6, 11, 16, 24, 36 and 39, D6 further discloses the element of tracking and reporting changes to the compliance level [D6, abstract and claim 25].
- [60] Regarding claims 7, 13, 17 and 25, D7 further discloses the element of generating a calendar of events for a timeframe associated with a set of regulatory requirements [D7, para 0068]. The POSITA would find it advantageous to adopt this in a system such as D6.
- [61] Regarding claims 8, 21, 26 and 30, specific company procedures or regulatory requirements are merely of intellectual significance and cannot lend patentability to an otherwise obvious combination.
- [62] Regarding claim 9, the element of assigning questions to individuals based on the title of the individual is considered to be CGK.
- [63] Regarding claim 12, the element of the company records, sets of questions and control documents being organized in a hierarchical arrangement is not, in our view, an essential element, as noted above with respect to the purposive construction analysis. Therefore, this cannot be an inventive feature of the claim.
- [64] Regarding claims 35 and 38, the element of assigning groups of questions to two users is considered to be CGK.

[65] In summary, claims 1-39 are obvious having regard to D6 in view of D7 and CGK and thus do not comply with subsection 28.3 of the *Patent Act*.

[66] The Applicant's remarks in the RPR concerning obviousness all relate to proposed claim set-2, which we consider below.

## **PROPOSED CLAIM SET-2**

[67] In the RPR, the Applicant proposed claim set-2. In summary, the proposed amendments recite the additional elements of:

- there is at least one company (implying there may be a plurality of companies);
- the client computer is in a network and the compliance report is transmitted via the network;
- the database is a relational database;
- associating a level in the control document comprising a set of levels with each group of questions and with one or more answers of the set of default answers, and storing a master record comprising a nested set of records wherein each nested record is associated with a subset of data and is linked with one level from the set of levels for each control document, each nested record linked with a nested record in a higher nested layer and a nested record in a lower nested layer in the set of nested records; and
- continuously monitoring the status of regulatory requirements for the at least one company to identify and control compliance actions.

[68] We analyze first the impact of the proposed amendments on the question of statutory subject matter. In the RPR, the Applicant argued that the recited nested data structure improves the functioning of a computer by providing for efficient management of a large amount of complex electronic data. As we noted above, we do not find in the originally-

filed specification any indication that computer efficiency was a problem in prior art compliance records management. In our view, the POSITA would not consider the recited nested data structure essential to the solution offered by the invention. As noted above, this is merely one data structure, and the instant description notes that any data structure would suffice. Even if the data structure were to be essential, it would not necessarily require a computerized implementation.

[69] Regarding the other elements introduced by proposed claim set-2, in our view, the network is not an essential element of the solution, analogous to the computer merely being the normal implementation environment. While a database is an essential element, it is a collection of information and need not be implemented by computer. We also note that the qualifier “relational” was not present in the originally-filed specification. We therefore construe the qualifier “relational” as not restricting the definition of an ordinary database, which can be electronic or otherwise. Finally, continuous monitoring of the status of regulatory requirements does not require a computer and is merely data manipulation. In summary, the proposed claim set adds no additional essential elements. Our assessment of subject matter therefore remains unchanged.

[70] We now consider the impact of the proposed amendments on the question of obviousness. As noted above, the additional features are not construed to be essential elements and therefore cannot be relied on to render the solution non-obvious.

[71] In our view, therefore, proposed claim set-2 would overcome neither the subject matter nor the obviousness defects.

## **RECOMMENDATION OF THE BOARD**

[72] For the reasons set out above, we recommend that the Commissioner of Patents refuse this application as the claims on file are directed to non-statutory subject matter and are therefore non-compliant with section 2 of the *Patent Act*, and the claims on file are directed to obvious subject matter and are therefore non-compliant with section 28.3 of the *Patent Act*.

[73] Further, for the reasons set out above, we do not consider proposed claim 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 199(5) of the *Patent Rules* that said proposed claims are necessary.

Howard Sandler  
Member

Paul Fitzner  
Member

Ana Szpaizer  
Member

**DECISION**

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

[75] 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 18<sup>th</sup> day of December, 2019