Citation: Ticketmaster, LLC (Re), 2021 CACP 27
Commissioner's Decision #1580
Décision du commissaire nº1580
Date: 2021-06-09

TOPIC:	C–00	Adequacy or Deficiency of Description
	J–00	Meaning of Art
	J–50	Mere Plan
	O–00	Obviousness

SUJET:	C–00	Caractère adéquat ou inadéquat de la description
	J–00	Signification de la technique
	J–50	Simple plan
	O–00	Évidence

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2399155, having been rejected under subsection 30(3) of the *Patent Rules* (SOR/96–423) as they read immediately before October 30, 2019, has subsequently 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 patent application number 2399155, which is entitled "Computer controlled event ticket auctioning system" and is owned by Ticketmaster, LLC. The defects indicated by the Final Action (FA) are that the claims define non-statutory and obvious subject matter, and that the description does not fully describe the invention. The Patent Appeal Board (the Board) has reviewed the rejected application pursuant to paragraph 199(3)(c) of the *Patent Rules* (SOR/2019–251). As explained below, our recommendation is to refuse the application.

BACKGROUND

The application

[2] Canadian patent application 2399155, based on a previously filed Patent Cooperation Treaty application, is considered to have a filing date of February 7, 2000 and has been open to public inspection since August 16, 2001.

[3] The invention relates to a system comprising a networked central computer conducting a real-time auction of event tickets for remote participants.

Prosecution history

[4] On February 14, 2018, an FA was issued pursuant to subsection 30(4) of the *Patent Rules* (SOR/96–423) as they read immediately before October 30, 2019 (the former *Rules*). The FA indicated the application to be defective on three grounds:

- claims 1 to 22 (i.e. all claims on file) encompass subject matter outside the definition of invention in section 2 of the *Patent Act*;
- claims 1 to 22 define obvious subject matter, failing to comply with section 28.3 of the *Patent Act*; and
- the description does not correctly and fully describe the invention, failing to comply with subsection 27(3) of the *Patent Act*.

[5] In its August 14, 2018 response to the FA (RFA), the Applicant proposed an amended specification (the proposed specification) including a set of 21 claims and corresponding amendments to the description, and submitted arguments for allowance. As indicated in the Summary of Reasons, although lack of enablement was no longer identified as a defect, the Examiner did not consider the amendments to remedy the defects related to subject matter and obviousness.

[6] Therefore, pursuant to subsection 30(6) of the former *Rules*, the application was forwarded to the Board for review on behalf of the Commissioner of Patents. On November 27, 2018, the Board forwarded to the Applicant a copy of the Examiner's Summary of Reasons along with a letter acknowledging the rejection.

[7] A Panel was formed to review the application; following our preliminary review, we sent a letter on March 29, 2021 (the PR letter) presenting our analysis and rationale as to why, based on the record before us, we considered the claims on file to define subject matter falling outside section 2 of the *Patent Act* (and prohibited by subsection 27(8) of the *Patent Act*), but subject matter that is non-obvious, thus complying with section 28.3 of the *Patent Act*, and the description on file to comply with subsection 27(3) of the *Patent Act*. In accordance with subsection 86(9) of the *Patent Rules*, the PR letter also explained why we considered the description to contravene subsection 50(1) of the *Patent Rules*; this defect was observed during the preliminary review. In addition, the PR letter explained why we considered the claims of the proposed specification to also define unpatentable but non-obvious subject matter, and the description of the proposed specification to comply with the Act and Rules.

[8] The PR letter invited the Applicant to make written submissions and to participate in a hearing, but we received no response. Accordingly, we undertook our final review based on the written record. As nothing has changed in the record since the mailing of the PR letter, we have maintained the rationale provided in that letter.

ISSUES

[9] This review addresses the issues of whether:

- the claims on file define subject matter falling outside the definition of invention in section 2 of the *Patent Act* and prohibited by subsection 27(8) of the *Patent Act*;

- the claims on file define subject matter that would have been obvious, contravening section 28.3 of the *Patent Act*;
- the description on file insufficiently describes the invention, contravening subsection 27(3) of the *Patent Act*; and
- the description on file contravenes subsection 50(1) of the *Patent Rules*.

[10] The review then addresses whether the proposed specification would constitute a necessary amendment under subsection 86(11) of the *Patent Rules*.

LEGAL PRINCIPLES AND PATENT OFFICE PRACTICE

Purposive construction

[11] In accordance with *Free World Trust v Électro Santé Inc*, 2000 SCC 66 and *Whirlpool Corp v Camco Inc*, 2000 SCC 67, purposive construction is performed from the point of view of the person skilled in the art in light of the relevant common general knowledge (CGK), considering the whole of the disclosure including the specification and drawings. In addition to interpreting the meaning of the terms of a claim, purposive construction distinguishes the essential elements of the claim from the non-essential elements. Whether or not an element is essential depends on the intent expressed in or inferred from the claim, and on whether it would have been obvious to the skilled person that a variant has a material effect upon the way the invention works.

[12] "Patentable Subject-Matter under the *Patent Act*" (CIPO, November 2020) [*PN2020–04*] also discusses the application of these principles, pointing out that all elements set out in a claim are presumed essential unless it is established otherwise or such presumption is contrary to the claim language.

Patentable subject matter

[13] 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.

[14] Subsection 27(8) of the *Patent Act* also prescribes that:

> No patent shall be granted for any mere scientific principle or abstract theorem.

[15] In *Canada (Attorney General) v Amazon.com Inc*, 2011 FCA 328 at paras 61–63, 69 [*Amazon.com*], the Federal Court of Appeal explained that simply realizing an abstract business method by programming it into a computer does not make it patentable subject matter.

[16] *PN2020–04* describes the Patent Office's approach to determining if a claim is patentable subject matter:

> To be both patentable subject-matter and not be prohibited under subsection 27(8) of the *Patent Act*, the subject-matter defined by a claim must be limited to or narrower than an actual invention that either has physical existence or manifests a discernible physical effect or change and that relates to the manual or productive arts, meaning those arts involving or concerned with applied and industrial sciences as distinguished in particular from the fine arts or works of art that are inventive only in an artistic or aesthetic sense.

[17] *PN2020–04* further describes the Patent Office's approach to determining if a computer-related invention is patentable subject matter. For example, the mere fact that a computer is among the essential elements of the claimed invention does not necessarily mean that the claimed invention is patentable subject matter. An algorithm itself is abstract and unpatentable subject matter. A computer programmed to merely process the algorithm in a well-known manner without solving any problem in the functioning of the computer will not make it patentable subject matter because the computer and the algorithm do not form part of a single actual invention that solves a problem related to the manual or productive arts. On the other hand, if processing the algorithm improves the functionality of the computer, then the computer and the algorithm would together form a single actual invention that solves a problem related to the manual or productive arts and the subject matter defined by the claim would be patentable.

Obviousness

[18] Section 28.3 of the *Patent Act* requires claimed subject matter to not 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.

[19] In *Apotex Inc v Sanofi–Synthelabo Canada Inc*, 2008 SCC 61 at para 67, the Supreme Court of Canada stated that it is useful in an obviousness inquiry to use 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?

Sufficient and enabling description

[20] Subsection 27(3) of the *Patent Act* requires, among other things, a specification to correctly and fully describe an invention, and to enable its practice:

> The specification of an invention must
>
> > (a) correctly and fully describe the invention and its operation or use as contemplated by the inventor;

> (b) set out clearly the various steps in a process, or the method of constructing, making, compounding or using a machine, manufacture or composition of matter, in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which it pertains, or with which it is most closely connected, to make, construct, compound or use it;
>
> …

[21] The courts (see e.g. *Teva Canada Ltd v Novartis AG*, 2013 FC 141 at paras 336–44, 357, 378, citing *Teva Canada Ltd v Pfizer Canada Inc*, 2012 SCC 60) have shown that this means a specification must:

- tell the skilled person what is the invention;
- tell the skilled person how the invention works; and
- enable the skilled person, using only its instructions, to produce the invention.

[22] Assessing each of these requirements is a fact-specific determination.

Format

[23] Subsection 50(1) of the *Patent Rules* requires the pages of a specification to be numbered consecutively. Section 193 of the *Patent Rules* provides an exception: where an application was filed between October 1, 1996 and October 30, 2019, the Applicant may meet the requirements of subsection 73(1) of the *Patent Rules* (SOR/96–423) as they read immediately before October 30, 2019 instead of subsection 50(1) of the current *Patent Rules*. Nonetheless, this alternative would still require the pages of the description and claims to be numbered consecutively.

ANALYSIS

Purposive construction

The skilled person and the relevant CGK

[24] The PR letter cited four references—the first three of which had been cited in the FA—as relevant to the determination of the CGK and to the assessment of obviousness:

- D1: US 5794219 August 11, 1998 Brown
- D2: WO 00/04473 January 27, 2000 Gebb
- D3: US 6012045 January 4, 2000 Barzilai et al.
- D6: "An exploration of dynamic documents" (Netscape Communications, December 6, 1998), archived online: An Exploration of Dynamic Documents <https://web.archive.org/web/19981206205802/http://home.netscape.com/assist/net_sites/pushpull.html>.

[25] When Netscape Navigator 1.1 was released in 1995, it introduced two extensions to the HTTP protocol, "server push" and "client pull;" their functionality is described in D6.

[26] The FA did not characterize the skilled person beyond identifying the CGK they possess, and the Applicant did not dispute that identification:

> The person skilled in the art would be familiar with computer/software engineering. In particular the skilled person would be knowledgeable with e-commerce and auction software.

[27] As explained in the PR letter:

> The skilled person is the addressee of a patent application, and is expected to practise the disclosed and claimed invention. In this case then, we would preliminarily characterize the skilled person as a team comprising one or more business professionals experienced with the sale of event tickets and the running of auctions, as well as programmers and other technologists experienced with developing and providing the software, tools and infrastructure conventionally used to support such professionals.

[28] Based on the above identification of the skilled person, and supported by what the present application (pages 1 to 6, 8 and 21), D1 (columns 1 to 3 and 8), D2 (pages 1 to 2), D3 (column 1) and D6 describe as generally known or conventionally done in the field, the PR letter identified the relevant CGK as including:

- conventional techniques and strategies for selling event tickets, as well as the limitations and desirable features of these techniques and strategies;

- the use of computer systems to sell event tickets over the Web (although not via auctions);
- the use of computer systems to provide real-time auctions via the Web (although not of event tickets); and
- the design, implementation, operation and maintenance of computer systems, networks and software, including:
    - general purpose and special purpose computers, computing devices, processors and user interfaces;
    - computer network and internet technologies and protocols; and
    - techniques for dynamically updating information displayed in a user's web browser.

The essential elements

[29] Independent claims 1 and 2 on file are directed to automated event ticket auctioning systems, independent claim 16 on file to a method of conducting an automated ticket auction, and independent claim 22 on file to a method of conducting an auction. Independent claims 2 and 22 on file are included below as representative of the invention:

> Claim 2. An automated event ticket auctioning system, the automated event ticket auctioning system receiving and evaluating bid information records received from a plurality of remote terminals, said bid information records corresponding to bids for one or more seats within a venue and corresponding to at least one particular event, said venue having a plurality of seats, the automated event ticket auctioning system comprising:
>
> (a) a communication system, including one or more networks, to facilitate communication between the plurality of remote terminals and a central controlling computer;
>
> (b) a database storing a plurality of previously accepted bid information records, said previously accepted bid information records each including identification information, quantity information, and bid price information, said database also storing seat data that corresponds to a seat rank for each seat of a set of seats in the venue, the plurality of seats including the set of seats, the seat rank being predefined;

(c) the central controlling computer, including one or more processing devices, operably connected to the database and operable to:

(i) receive a message including a received bid information record from one of the plurality of remote terminals through the communication system, said received bid information record including received identification information, received seat-location preference, received quantity information, and received bid price information, the received seat-location preference identifying one or more sections, one or more rows, and/or one or more aisle proximities;

(ii) extract the received seat-location preference from the received message;

(iii) generate a query for the database to retrieve a lowest minimum acceptable bid value corresponding to the received seat-location preference, the lowest minimum acceptable bid value being identified at the database based on the previously accepted bid information records stored in the database, transmit the query to the database, and receive the lowest minimum acceptable bid value from the database;

(iv) store the received bid information record if a value represented by the received bid price information exceeds the lowest minimum acceptable bid value;

(v) identify a bid rank corresponding to the received bid information record based at least in part on the bid price information, the bid rank being a rank of the received bid information as compared to other received bids;

(vi) access the seat rank, from the database, for each seat of the set of seats within the venue;

(vii) select one or more particular seats from amongst the set of seats, the selection based on:

the bid rank;

at least some of the seat ranks for the set of seats; and the quantity information, wherein the one or more particular seats are selected so as to comply with the received seat-location preference; and

(viii) pair the identification information with the one or more particular seats.

Claim 22. A method of conducting an auction by receiving bids from auction participants located at a plurality of remote terminals, the method comprising the steps of:

(a) providing a communication system, including one or more networks, to facilitate communication between the plurality of remote terminals and a central computer;

(b) providing the central computer for receiving bid records;

(c) opening the auction for a minimum amount of time to allow the central computer to accept bid records from the plurality of remote terminals, each of the accepted bid records including information concerning bidder identification, seat-location preference and bid amount, the seat-location preference identifying one or more sections, one or more rows, and/or one or more aisle proximities;

(d) extracting the seat-location preference from each accepted bid record;

(e) monitoring a rate of bidding activity and outputting for display on at least one terminal bidding rate information;

(i) closing the auction to prevent the central computer from accepting bid records when the rate of bidding activity reaches a pre-determined low threshold following the minimum amount of time;

(g) assigning, based on the bid amount, a bid rank to each acceptable bid record of bid records received via the auction prior to the closing of the auction;

(h) generating a query for a database to retrieve a highest bid amount, the highest bid amount based on the bid ranks, transmitting the query to the database and receiving the highest bid amount from the database;

(i) outputting for display on one or more of the plurality of remote terminals real-time bid status information;

(j) retrieving, from a seating database, a seat ranking for each seat of a set of seats;

> (k) selecting one or more particular seats from amongst the set of seats for a bid record corresponding to the highest bid amount, the selecting based on:
>
> the bid rank of the bid record, and
>
> the seat rankings of the set of seats;
>
> (l) causing one or more tickets corresponding to the one or more particular seats to be delivered to one or more bidders associated with the highest bid rank, wherein the one or more particular seats are selected so as to comply with the seat-location preference; and
>
> (m) pairing the bidder identification information associated with the highest bid rank with the one or more particular seats.

[30] Claim 1 is slightly narrower than claim 2: its "seat-location preference" information is limited to that of seat section or sections. Claim 16 effectively describes the method of operation of the system of claim 2 with an additional detail: a ticket for each of the selected seats is caused to be delivered to the remote terminal.

[31] Dependent claims 3, 17 and 18 on file add further details concerning the receipt of subsequent bids and the rules for their processing, dependent claims 4, 9 and 20 on file further describe the information provided to the bidders via their remote terminals, dependent claims 5, 10 to 13 and 21 on file specify further details concerning seat locations and their selection, dependent claims 6 to 8 on file add details concerning how the information on the remote terminals is updated, and dependent claims 14, 15 and 19 on file specify further details concerning the information stored in the bid records.

[32] Following the Office practice at the time, the FA identified the essential elements of the claims as those needed to solve the problem of setting prices for auctioned event tickets so as to achieve a better return and, accordingly, did not consider any computer use to be essential to the invention.

[33] The Applicant disagreed in the RFA, submitting that the problem was instead a technical one, and related to the efficient transmission of real-time status updates without overloading servers or networks, particularly in the environment of large scale online event ticketing. Accordingly, submitted the Applicant, the computer components are essential elements of the claimed invention.

[34] As stated in the PR letter, we see nothing in the claim language or on the record before us leading to a determination of any claimed elements being non-essential.

Patentable subject matter

[35] It was submitted in the FA that the essential elements of the claims on file are directed to rules or a scheme for business or performing an auction, and thus are not patentable subject matter. The Applicant disagreed, submitting in the RFA that since the claimed computer components are essential elements, the claims comply with section 2 of the *Patent Act*. The Applicant characterized the invention as providing a hardware-based improvement in efficiency within the environment of large scale online event ticketing:

> Maintaining, as an open connection, each HTTP connection of the plurality of HTTP connections between the database and the corresponding remote terminal of the plurality of remote terminals, wherein maintaining the plurality of HTTP connections as open enables multiple communications to be exchanged over a single HTTP connection without needing to reopen an HTTP connection, ensures that the central controlling computer is not excessively burden or overloaded. This provides a novel and inventive automated event ticket auctioning system since, prior to the filing date of Applicant's invention as claimed, HTTP connections were closed after each communication, and a new communication would need a new HTTP to be opened, which is burdensome to the central controlling computer.

[36] The application (pages 6 to 7) explains that online auction systems are known, but not ones that can practically or feasibly be applied to the auctioning of a large volume of event tickets. Accordingly, the application proposes a computer controlled auctioning system, granting an unlimited number of participants simultaneous access to event tickets by graphically providing standing bid information on the entire stock of available tickets and allowing real-time bidding interaction. Each event ticket corresponds to a seat in a particular location of a particular section of seats at a given venue.

[37] As noted in the PR letter (and above), though, the CGK includes the use of computer systems to provide real-time auctions via the Web. It is thus not clear how the adaptation of such systems to auction event tickets, as has been done with the presently claimed inventions, represents anything more than a computer processing an algorithm or abstract business method in a well-established manner, without solving any problem in the functioning of the computer.

[38] Noting that the application (pages 4 to 5) indicated it is well known for such systems to graphically display information, the PR letter also remarked:

> that it would be logical to presume graphical representation of bid standing information may be needed to efficiently convey such information when there was a large amount of it. This data output, when it appears in the present claims as a means or a step, represents the computer behaving as expected.

[39] The application (pages 2, 3, 5, 8, 9 and 21) suggests that one of the needs fulfilled by the claimed inventions is the automatic update and communication of standing bid information to all participants via their browsers. Of the claims on file, only dependent claims 6 to 8 refer to means for accomplishing this. In addition, as explained in the PR letter, techniques for dynamically updating information displayed in a user's web browser are part of the CGK. Two such CGK techniques ("recently available," according to the description), one a "client pull" type and the other a "server push" type, are described in D6. The latter technique is the same as what the Applicant described as leaving open an HTTP connection.

[40] As the PR letter explained:

> The application (page 5) refers to a need for the system to apply logic ensuring that the seats within a multiple-ticket bid adjoin. This would require a database configuration unlike any in the prior art, states the application. Of the claims on file, only dependent claims 5 and 21 recite the involvement of programming for ensuring contiguous seating for multiple-ticket bids. The application (pages 12, 13 and 18 to 20; figure 12) does not appear to explicitly disclose a unique database configuration, beyond its references to a collection of information. It explains that there is a collection of information organized in such a way that the central computer can quickly select and store desired data within it, and that the central computer performs sorting and indexing operations necessary to keep the information current and correctly ordered. The extent of the disclosure of this configuration appears to be that information is stored permitting the computer to determine if seats are contiguous. Storing this information for use as an input to the algorithm does not appear to amount to more than the computer processing an algorithm in a well-established manner.
>
> Accordingly, in representative claims 2 and 22, the computer programmed to realize the abstract idea for auctioning event tickets is merely a computer programmed to process this abstract algorithm or abstract business method in a well-established

> manner, without solving any problem in the functioning of the computerized equipment.
>
> As shown above, in the discussion of *Amazon.com* and *PN2020–04*, such a claimed invention is unpatentable subject matter and prohibited by subsection 27(8) of the *Patent Act*. The inclusion of a computer or computerized step among the essential elements does not change this.
>
> We see no differences in the essential elements of claims 1, 3 to 21 and 22 that would affect the above reasoning. For example, although dependent claims 6 to 8 recite further details concerning how the system automatically updates bid price information on remote participants' terminals, this functionality is CGK in this context. And although claim 16 (like claim 22) recites a step of "causing a ticket … to be delivered to the remote terminal," this output step is considered to be well within the conventional operation of the computer systems in this context. Both cases still reflect a computer system processing an abstract algorithm or method in a well-established manner.

[41] Therefore, our view is that claims 1 to 22 on file define unpatentable subject matter, falling outside section 2 of the *Patent Act* and prohibited by subsection 27(8) of the *Patent Act*.

Obviousness

Identify the notional person skilled in the art and the relevant CGK

[42] As noted in the PR letter, we consider the above identifications of the notional skilled person and relevant CGK to be applicable for the purpose of assessing obviousness.

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

[43] Above, we construed claims 2 and 22; we take the above identified essential elements of claims 2 and 22 for the purpose of assessing obviousness.

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

[44] As noted in the PR letter, our view is that D1 and D3 are the most relevant references:

> D1 (abstract; columns 4, 6 and 8; figures 1 and 5) discloses an online auction system where remote bidders participate via their browsers, and the central computer uses a database to store accepted bid information records. Regarding claim 22, D1 also discloses monitoring bidding activity and concluding an auction when bidding activity slows beyond a certain threshold.
>
> D1 does not disclose the auctioning of a set of event tickets, or the characterization and organization of the various seats corresponding to the tickets according to their locations and presumed preferability. Regarding claim 2, D1 does not disclose the need for a bid to exceed a minimum value to be accepted.
>
> D3 (abstract; columns 2 and 4 to 6) also discloses an online auction system permitting remote bidders to participate via the Web, and using a database to store accepted bid information records. Regarding claim 2, D3 also discloses the use of minimum opening bid values.
>
> D3 (column 18) refers, in passing, to event tickets as an example of an auction item but does not disclose the organization of the various seats corresponding to the tickets according to their locations and presumed preferability. Regarding claim 22, D3 also does not disclose the monitoring of bidding activity to determine if it has slowed beyond a certain threshold.

Viewed without any knowledge of the alleged invention as claimed, do those differences constitute steps which would have been obvious to the person skilled in the art or do they require any degree of invention

[45] As explained above, neither D1 nor D3 suggests the organization and differentiation of auctioned tickets according to the location and desirability of seats at an event. Of the cited references, D2 comes the closest to filling this gap.

[46] As described in the PR letter:

> D2 (abstract; pages 7 and 10 to 12) discloses a method for redistributing, buying and selling tickets on the secondary market. The tickets are for specific seats at an event; a ticket server stores information about each ticket (including the specific location of the seat), and remote buyers may participate in an auction, bidding on desired tickets via the Web. D2 does not disclose, however, that seats are assigned “ranks” according to their presumed desirability, or that received bids are also assigned “ranks.” D2 does not discuss how the bidding process plays out.

[47] Accordingly, our view is that the differences between either D1 or D3 and the particular arrangements of essential elements in claims 2 and 22 would not have been obvious to the skilled person. Since the remaining claims on file are narrower, they similarly would not have been obvious.

Conclusion on obviousness

[48] As explained in the PR letter, we consider that the subject matter of the claims on file would not have been obvious to the skilled person in view of D1, D2, D3 and the CGK. Therefore, these claims comply with section 28.3 of the *Patent Act*.

Sufficient and enabling description

[49] It was submitted in the FA that the specification does not enable the skilled person to practise the invention. Specifically, that it does not disclose how to make the software which achieves the desired results, or even how to implement the functionality of assigning bid ranks, and using them to associate seats with bid information:

> The claims on file disclose the idea for operating an online or electronic auction. Presumably the claimed method and system is implemented by abstract software components which perform some desired results. These abstract software components somehow "determine", "assign", "associate" and "cause" certain abstract processes. The claims amount to a series of desired result statements for an idea for software which somehow achieves the desired result of the invention, which is to auction event tickets for certain prices.
>
> …
>
> If the implementation of the entire system is not known to a skilled technician in the art, then the originally filed description must provide specific details on how to implement the allegedly novel and inventive features of the claims. Since there are no implementation details, the "common general knowledge" must be the entire implementation of the allegedly novel and inventive features. Clarification is required.

[50] The Applicant disagreed in the RFA, submitting that the specification on file does comply with subsection 27(3) of the *Patent Act*, but without making any supporting explanations.

[51] As we explained in the PR letter:

> the specification and drawings (e.g. pages 11 to 27; figures 1 to 16) discuss the desired results for the auction, describe (conceptually, in part) much of the operation or algorithm by which the auction proceeds, and provide some detail concerning the software and hardware for implementing the auction.
>
> Nonetheless, as discussed above, the CGK includes the selling of event tickets (including via the Web), the implementation of real-time auctions via the Web, and, more generally, the use and adaptation of computer systems to implement desired tasks and procedures. Nothing in the application suggests technical challenges in the computer implementation of the disclosed event-ticket-auction algorithm or method requiring more from the skilled person than their CGK would provide.

[52] Therefore, we see the specification on file as complying with subsection 27(3) of the *Patent Act*.

Format

[53] As observed in the PR letter, the pages of the description on file at the time of the FA (as submitted by the Applicant on February 17, 2017) are numbered from 1 to 8 and 10 to 27, with seven unnumbered pages between the two sets of numbered pages.

[54] Therefore, the description on file does not comply with subsection 50(1) of the *Patent Rules*, or with subsection 73(1) of the *Patent Rules* as they read immediately before October 30, 2019.

Proposed specification

[55] As stated above, the Applicant proposed an amended set of 21 claims with the RFA. The amendments consist of the removal of claim 22, minor wording changes to the remaining independent claims surrounding the assignment of ranks to the bid information records and, more substantially, the addition to each of the independent claims of details concerning the automatic provision of updates to the remote terminals. An amendment to the description to include corresponding text was additionally proposed; this amendment would also remedy the contravention of subsection 50(1) of the *Patent Rules*.

[56] The PR letter explained that the proposed amendments would not affect the above identifications of the skilled person and their relevant CGK. Nor would the wording

changes affect the claimed essential elements in a way that would alter the outcomes of the above reasoning concerning subject matter and obviousness.

[57] It follows that the proposed specification is not considered a necessary amendment under subsection 86(11) of the *Patent Rules*.

RECOMMENDATION OF THE BOARD

[58] In view of the above, we recommend that the application be refused on the basis that:

- claims 1 to 22 on file define unpatentable subject matter, falling outside section 2 of the *Patent Act* and prohibited by subsection 27(8) of the *Patent Act*; and
- the description on file contravenes subsection 50(1) of the *Patent Rules*.

Leigh Matheson	Blair Kendall	Lewis Robart
Member	Member	Member

DECISION OF THE COMMISSIONER

[59] I concur with the findings of the Board and its recommendation to refuse the application on the basis that:

- the claims on file define unpatentable subject matter, falling outside section 2 of the *Patent Act* and prohibited by subsection 27(8) of the *Patent Act*; and
- the description on file contravenes subsection 50(1) of the *Patent Rules*.

[60] 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.

Virginie Ethier

Assistant Commissioner of Patents
Dated at Gatineau, Quebec
this 9th day of June, 2021