Citation: The Dun and Bradstreet Corporation (Re), 2022 CACP 6

Commissioner's Decision #1613

Décision du commissaire n^{o}1613

Date: 2022-02-14

TOPIC:	J00	Meaning of Art
	J10	Computer Programs
	O00	Obviousness
SUJET:	J00	Signification de la technique
	J10	Programmes d'ordinateur
	O00	Évidence

Application No. : 2,757,232

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2,757,232 having been rejected under subsection 30(3) of the *Patent Rules* (SOR/96-423) as they read immediately before October 30, 2019, 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:

MARKS & CLERK

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INTRODUCTION

[1] This recommendation concerns the review of rejected Canadian patent application number 2,757,232 (the instant application), which is entitled METHOD AND SYSTEM FOR DYNAMICALLY PRODUCING DETAILED TRADE PAYMENT EXPERIENCE FOR ENHANCING CREDIT EVALUATION" and is owned by The Dun and Bradstreet Corporation (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* (SOR/2019-251). As explained in more detail below, the Board's recommendation is that the Commissioner of Patents refuse the application.

BACKGROUND

The Application

[2] The application, based on a previously filed Patent Cooperation Treaty application, is considered to have been filed in Canada on March 26, 2010. The application was laid open to public inspection on September 30, 2010.

[3] The application relates generally to a computer-implemented method and system for providing a credit evaluation report based on trading experience. The application has nine claims on file, received by the Patent Office on August 9, 2016.

Prosecution History

[4] On February 20, 2018, a Final Action (FA) was written pursuant to subsection 30(4) of the *Patent Rules*, as they read immediately before October 30, 2019. The FA stated that the instant application is defective because all of the claims on file are directed to subject-matter outside of the definition of invention found at section 2 of the *Patent Act*. The FA also stated that all the claims are obvious and therefore non-compliant with section 28.3 of the *Patent Act*.

[5] In an August 20, 2018 response to the FA (RFA), the Applicant submitted arguments in favour of the patentability of the claims on file, as well as a set of proposed claims (proposed claim set-1) and corresponding proposed description amendments.

[6] As the Examiner still considered the application not to comply with section 2 and subsection 28.3 of the *Patent Act*, pursuant to paragraph 30(6)(c) of the *Patent Rules*, as they read immediately before October 30, 2019, the application was forwarded to the Board for review on April 17, 2019, along with an explanation outlined in a Summary of Reasons. The Summary of Reasons set out the position that the claims on file were still considered to be defective, and that proposed claim set-1 did not cure the defects.

[7] In a letter dated April 17, 2019, the Board forwarded to the Applicant a copy of the Summary of Reasons and requested that the Applicant confirm its continued interest in having the application reviewed. In a letter dated July 5, 2019, the Applicant confirmed their continued interest in having the application reviewed.

[8] We reviewed the application on behalf of the Board under paragraph 199(3)(c) of the *Patent Rules*. In a preliminary review letter (PR letter) dated November 23, 2021, we analysed the issues with respect to the claims on file and proposed claim set-1. We also provided the Applicant with an opportunity to make oral and/or written submissions.

[9] On January 10, 2022, the Applicant submitted a written response to the PR letter (the RPR) arguing for patentability. The Applicant also resubmitted proposed claim set-1 and corresponding proposed description amendments.

[10] A hearing was held on January 24, 2022. In response to a question from us on a passage in the cited prior art, the Applicant was invited to submit additional written comments. The Applicant provided a supplemental written submission on January 28, 2022, including another set of proposed claims (proposed claim set-2).

ISSUES

[11] These are the issues to be addressed by this review:

- are the claims on file directed to patentable subject-matter according to section 2 and subsection 27(8) of the *Patent Act*? and
- are the claims on file directed to non-obvious subject-matter according to section 28.3 of the *Patent Act*?

[12] We also consider the latest proposed amendments, proposed claim set-2, to see if they would constitute amendments necessary for compliance with the *Patent Act* and *Patent Rules*, pursuant to subsection 86(11) of the *Patent Rules*.

LEGAL PRINCIPLES AND OFFICE PRACTICE

Purposive Construction

[13] 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 both 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.

[14] "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

[15] 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.

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

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

[17] *PN2020-04* clarifies examination practice with respect to the Patent Office's

understanding of the legal principles applicable in determining whether the subject-matter defined by 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.

[18] These principles are derived, in part, from *Canada (Attorney General) v Amazon.com, Inc*, 2011 FCA 328 [*Amazon*] paragraphs 42 and 66-69.

[19] *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 processes 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.

[20] In *Schlumberger Canada Ltd v Commissioner of Patents*, [1982] 1 FC 845 (CA) [*Schlumberger*], the Court concluded that, although computers were necessary for the invention to be put into practice, the computer did not form part of "what has been discovered" and thus was not relevant in determining whether the claimed invention was patentable subject-matter; the computer was merely being used to make the kind of calculations it was invented to make.

Obviousness

[21] The *Patent Act* requires that the subject-matter of a claim not be obvious to a person skilled in the art. Section 28.3 of the *Patent Act* provides:

> **28.3** 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 before the one-year period immediately preceding the filing date or, if the claim date is before that period, before the claim 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.

[22] In *Apotex Inc v Sanofi-Synthelabo Canada Inc*, 2008 SCC 61 at paragraph 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 the 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

Purposive Construction

[23] The FA performed a purposive construction that resulted in a set of essential elements for certain claims according to a previous Patent Office practice, now superseded by *PN2020-04*. We undertake anew the identification of essential elements.

[24] The FA defined the person skilled in the art (the skilled person) as follows:

> The person skilled in the art is considered to be an individual or a team comprising one or more business auditors, accountants, computer scientists and IT professionals who have relevant education and experience in designing, programming and implementing a system for providing a credit evaluation report.

[25] The FA defined the skilled person's CGK as:

- knowledge of evaluating and analyzing a company's creditworthiness based on payment history, account information, size and age of the company, and payment index score
- database knowledge such as querying, updating and storing data, as well as classifying data by various metadata tags
- general statistical knowledge such as mean, median and benchmark statistics

[26] In the RFA, at pages 2-3, the Applicant disagreed, contending that classifying data by various meta-data tags would not be part of the CGK.

[27] To establish the CGK, in the PR letter we introduced the following references of interest:

D2:	US2007/0050290	Heitner et al	March 1, 2007
D3:	US2007/0055680	Statchuk	March 8, 2007
D4:	"Metadata", Wikipedia entry, June 28, 2007, archived at https://web.archive.org/web/20070628223225/http://en.wikipedia.org/wiki/Metadata		

[28] D2 in the art of automated trade negotiations notes that the use of keyword meta-data tags for searching data is well-known in the art [paragraph 0026].

[29] D3 in the art of business taxonomy notes in the background section the use of meta-data search tools that run against relational databases [paragraph 0003].

[30] D4, an article about meta-data in general, notes in section 4 (Use) its use for speeding up and enriching searching for resources (filtering).

[31] As we wrote in the PR letter, we consider that the skilled person would be familiar with classifying data in a business database using meta-data tags for the purpose of filtering.

[32] In the RPR, at the hearing and in the supplemental written submission, the Applicant did not discuss the definition of the skilled person and CGK. We adopt these definitions as we did in the PR letter.

[33] Independent claims 1 and 5 are directed to a computer-implemented method and a computer system respectively.

[34] Claim 1 is representative and reads:

> A computer-implemented method for causing a computer associated with a database to analyze data in the database, said method comprising:
>
> collecting from a source, data about an entity of interest, for storage in said database;
>
> linking said entity of interest to a related entity in a corporate family tree stored in said database;
>
> receiving a request for an enhanced credit evaluation report about said entity of interest;
>
> obtaining user-specified rules or criteria for evaluating credit of said entity of interest;
>
> dynamically selecting from a database of trade experiences stored in said database, based upon said user-specified rules or criteria, (a) trade experiences for said entity of

> interest and for said related entity, and (b) trade experiences for a peer group;
>
> classifying the trade experiences in said database by applying a meta-data tag to each of said trade experiences in said database to enable dynamic relevancy assignment of the trade experiences;
>
> dynamically assessing performance across said trade experiences for said entity of interest; and
>
> generating, using said computer, said enhanced credit evaluation report of said entity of interest based upon a comparative analysis and the dynamic relevancy assignment of said trade experiences for said entity of interest and for said related entity and said trade experiences for said peer group.

[35] Independent claim 5 and referencing claim 9 contain similar elements as independent claim 1.

[36] Claims 2 and 6 add the element of an enhancement of the report selected from a specific group of enhancements.

[37] Claims 3 and 7 add the element of creating archetypical reference data and performing benchmarking.

[38] Claims 4 and 8 add the element of performing benchmarking.

[39] According to *PN2020-04*, a purposive construction considers where the skilled person would have understood the applicant to have intended to place the fences around the monopoly being claimed.

[40] Considering the whole of the specification, the skilled person would understand that there is no use of language in claims 1, 3-5 and 7-9 indicating that any of the elements in the claims are optional or one of a list of alternatives. Therefore, as we wrote in the PR letter, in our view, all elements recited in these claims are considered to be essential, including the computer components.

[41] In claims 2 and 6, the enhancement is indicated to be at least one of a list of alternatives. Therefore, as we wrote in the PR letter, in these claims, at least

one of the list of alternatives is considered to be an essential element, as well as all other elements other than the remaining list of alternatives.

[42] In the RPR, at the hearing and in the supplemental written submission, the Applicant did not discuss the essential elements. We continue to consider the above as the essential elements, as we did in the PR letter.

[43] We also use purposive construction to determine the intended meaning of terms used in the claims. As we wrote in the PR letter, in our view, the qualifier "dynamic" as used in the claims with respect to "dynamically selecting", "dynamically assessing" and "dynamic relevancy" refers to the aspect of doing an analysis "on the fly" based on the user-specified criteria, as opposed to providing a pre-determined report. We rely on the description on file at paragraph 0056 for this interpretation.

[44] In the RPR, at the hearing and in the supplemental written submission, the Applicant did not disagree with our construction of "dynamic". We continue to rely on this meaning of the term as we did in the PR letter.

[45] We also construe the terms "user-specified rules or criteria" (recited in independent claims 1 and 5) and "custom user-specified rules or criteria" (cited in proposed claim set-2, claims 1 and 5). These terms are particularly important to the obviousness analysis.

[46] The instant description describes an ability for users to define their own criteria used to select relevant trade experiences to be included in the credit analysis (see for example paragraphs 0010, 0011, and 0053). The description further explains that "[s]tandard profiles will be established for users who have not customized their criteria" (paragraph 0053). Furthermore, users are enabled "to define their relevant peer groups for analysis, their custom criteria for risk assessment or to leverage profiles" (paragraph 0056). The last element presumably refers to the standard profiles defined in paragraph 0053.

[47] Based on these statements, in our view, the person skilled in the art would construe "user-specified rules or criteria" broadly as including any one of the use of relevant peer groups, custom criteria and standard profiles that defines the data set used in the credit analysis, as described in paragraph 0056. That is

to say, “user-specified rules or criteria” includes both pre-defined and customized criteria. The person skilled in the art would also construe “custom user-specified rules or criteria” as a subset that excludes, at least, the use of standardized profiles to define the data used in the credit analysis, supported by the description in paragraphs 0053 and 0056.

Patentable Subject Matter

[48] Given that our view of the essential elements differs from that of the FA, and in view of the updated Patent Office practice, we undertake anew the assessment of patentable subject-matter according to *PN2020-04*.

[49] As described above in the section "Legal Principles and Patent Office Practice" we assess for each claim whether the subject-matter it defines forms a single actual invention having physical existence or causing a discernible physical effect or change, and relates to the manual or productive arts.

[50] With respect to independent claims 1 and 5, the recited computerized elements:

- collect and store data;
- receive requests and rules;
- perform certain analyses of the data according to the rules;
- classify the data by meta-data tags; and
- generate a report.

[51] While the computerized elements are essential, the situation, in our view, is akin to that in *Schlumberger*, where the computer was merely acting in a well-known manner as it was normally designed to do. As we wrote in the PR letter, the actual invention is the collection, classification and analyzing of data and this constitutes only the operation of an abstract algorithm.

[52] The remaining claims add additional algorithmic elements, which are purely abstract.

[53] In the RFA (at page 3), at the hearing and in the RPR (at page 2), the Applicant

contended that the use of meta-data tags, in combination with user-specified rules or criteria, modifies the way in which the processor operates in such a way that the system perform faster, higher resolution analysis. We acknowledged in the PR letter that the instant description mentions rapid analysis [paragraph 0054].

[54] This brings us to the heart of the subject-matter issue. In our view, the use of meta-data tags to filter data is CGK, as discussed above. We acknowledge that a computer using an element that is CGK can sometimes be part of an actual invention. In this case, the processor is using meta-data tags to identify the most relevant data to be included for the analysis according to the user's criteria. While calculating statistics dynamically on a smaller subset of data *could* be faster than calculating on all of the data, it could also be slower. The specifying of which data to operate on via meta-data criteria could lead to including *more* data than some pre-defined analyses without meta-data. We find no evidence that applying meta-data in conjunction with user-specified or custom user-specified rules or criteria to filter data extracted from a database for subsequent dynamic analysis is invariably faster or higher resolution than conventional analysis.

[55] According to *PN2020-04*, although the recited computer elements are essential elements of the claims, they are not considered to be part of the actual invention. We find this akin to the situation in *Schlumberger*.

[56] Given that the computer-related elements and functions (the database content, the user-specified rules or criteria, the algorithms for operating on the database content according to the rules, and the presentation of output data) of representative claim 1 are generic in nature, and the lack of any evidence that the claimed steps invariably improve the functionality of the computer system, the actual invention is the collection, classification and analysing of data. This actual invention constitutes the operation of an abstract algorithm and information of intellectual significance only and are not directed to "something with physical existence, or something that manifests a discernible effect or change" (*Amazon* at paragraph 66). An abstract algorithm is subject-matter contrary to subsection 27(8) of the *Patent Act*.

[57] In the RFA, the Applicant argued that meta-data tags are physically stored on a computer-readable medium and occupy volume on such a medium requiring physical components for persistence. As we wrote in the PR letter, that a computer-readable medium is physical is not in dispute; however, when such a medium is used in the ordinary way in which a computer memory is intended to be used, it is not necessarily part of a single actual invention.

[58] We conclude that the claims on file neither comply with subsection 27(8) of the *Patent Act* nor define an invention according to the definition found at section 2 of the *Patent Act*.

Obviousness

(1) (a) Identify the notional "person skilled in the art";

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

[59] These initial steps were performed above.

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

[60] We consider the claim language to represent the inventive concept of the claims, subject to the construction of the terms "dynamic" and "user-specified rules or criteria" above.

(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

[61] The Final Action cited the following which we consider representative of the state of the art:

D1: US2005/0192891 Ferrera et al September 1, 2005

[62] With respect to independent claims 1 and 5 and referencing claim 9, D1 discloses:

> A computer-implemented method for causing a computer associated with a database to analyze data in the database [abstract], said method comprising:

- collecting from a source, data about an entity of interest, for storage in said database [Figure 3, elements 302, 310 and 312];
- linking said entity of interest to a related entity in a corporate family tree stored in said database [paragraph 0056];
- receiving a request for an enhanced credit evaluation report about said entity of interest [paragraph 0064 implies that this input must exist to trigger generation of an output report];
- selecting from a database of trade experiences stored in said database (a) trade experiences for said entity of interest and for said related entity, and (b) trade experiences for a peer group [paragraph 0018 and Figure 1, element 108; Figures 4C-4E];
- assessing performance across said trade experiences for said entity of interest [paragraph 0031]; and
- generating, using said computer, said enhanced credit evaluation report of said entity of interest [paragraphs 0012, 0040 and Figure 4A-4E].

[63] Regarding claims 2-4 and 6-8, D1 further discloses detecting changing trade experience and benchmarking [paragraph 0012 and Figure 4E, chart over time; Figure 4E, industry median].

[64] As we wrote in the PR letter, the elements of independent claims 1 and 5 that we do not find in D1 are:

- obtaining user-specified rules or criteria for evaluating credit of said entity of interest;
- *dynamically* selecting from the database based upon said user-specified rules or criteria;
- *dynamically* assessing performance; and
- classifying the trade experiences in said database by applying a meta-data tag to each of said trade

experiences in said database to enable *dynamic* relevancy assignment of the trade experiences.

(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?

[65] As we wrote in the PR letter, the differences having regard to D1 are with respect to obtaining user-specified rules and using these rules and meta-data tags to classify data and to perform dynamic analysis.

[66] With respect to the obtaining step, the FA considered user-specified criteria in requests to be found in D1 [paragraph 0012]. While we note that D1 paragraph 0012 recites refining based on quality criteria, it is not clear if such criteria are user-specified.

[67] In the PR letter, we cited the following:

D5: US2005/0240503 Parker et al October 27, 2005

[68] D5, cited in the instant application at paragraph 0005 and in the same art, recites generating multiple versions of a report based on an incoming request [paragraphs 0041 and 0043]. In our view, D5 discloses user-specified criteria for evaluating credit.

[69] In the RPR (at page 3), at the hearing, and in the supplemental written submission (at pages 1-4), the Applicant contended that the criteria mentioned in D5 are for specifying the formatting of the report to be presented, but that the criteria do not pertain to the *evaluating credit* step of generating a report. In the supplemental written submission (top of page 2) the Applicant writes, “D5 only teaches that the information to be displayed in the report can be selected once the credit has already been evaluated”. We equate the predefined rules of D5 with the “standard profiles” as construed above to be within the term “user-defined criteria or rules”. In our view, if a report is generated “on the fly”, (as D5 states at paragraph 0034, for example) then the “evaluating credit” step may be performed after the (predefined) criteria have been chosen by the user. That would still constitute evaluating credit based on user-specified rules or criteria.

[70] With respect to the classifying step of assigning meta-data tags to each trade experience and using these tags for dynamic analysis, the FA considered meta-data tags to be disclosed by D1 (at paragraph 0048; for example, supplier file type). In the RFA, the Applicant argued that even if the supplier file type is a meta-data tag, it is not used to classify the trade experience to enable dynamic relevancy assignment of the trade experience, as recited in claim 1.

[71] As we wrote in the PR letter, using meta-data to filter based on search criteria appears to be CGK. For example, in D2, meta-data is used to limit searching to relevant sales opportunities [paragraph 0026]. D5 recites “on the fly” (i.e. dynamic) analysis in response to a request [paragraph 0034], as acknowledged by the Applicant in the supplemental written submission (page 3, paragraph 6). Together with meta-data tags being CGK as we noted above, and user-specified criteria in D5 as noted above, in our view, the skilled person having the system of D1 would be motivated to consider the user-specified rules and dynamic analysis of D5 plus the CGK to use meta-data tags to dynamically select records from the database, dynamically assess performance, and classify trade experiences for dynamic relevancy assignment based on the user-specified criteria.

[72] Therefore, in our view, the claims on file are obvious having regard to D1 in view of D5 and the CGK and do not comply with section 28.3 of the *Patent Act*.

PROPOSED CLAIM SET-2

Purposive Construction

[73] In distinction from the claims on file, proposed independent claims 1 and 5 recite:

- in the preambles, that the method or system is for generating an enhanced credit report;
- processing the data through a series of change detection steps;
- aggregating data and applying a synthesis and relevancy process;
- that the meta-data tags are for enabling rapid comparative analysis; and

- the term “custom user-specified rules or criteria” replaces “user-specified rules or criteria”.

[74] We consider proposed independent claim 1 to be representative: Proposed claim 1 reads:

> A computer-implemented method for causing a computer associated with a database to provide an enhanced credit evaluation report of a business to a user, said method comprising:
>
> collecting from a source, data about an entity of interest, for storage in said database;
>
> processing the data through a series of change detection steps to identify level changes and trends in the data;
>
> applying a trade data aggregation process to the data;
>
> applying a synthesis and relevancy process to the data;
>
> linking said entity of interest to a related entity in a corporate family tree stored in said database;
>
> receiving a request for said enhanced credit evaluation report about said entity of interest;
>
> obtaining custom user-specified rules or criteria for evaluating credit of said entity of interest, the rules being based on a user profile that is updated based on ongoing trade experience;
>
> dynamically selecting from a database of trade experiences, based upon said custom user-specified rules or criteria, (a) trade experiences for said entity of interest and for said related entity, and (b) trade experiences for a peer group;
>
> classifying trade experiences in said database by applying a meta-data tag to each of said trade experiences to provide classified trade experiences and to enable rapid comparative analysis by relevant groups to assess trade performance of a business entity for credit evaluation;

> using the meta-data for enabling dynamic relevancy assignment of the trade experiences;
>
> dynamically assessing performance across said trade experiences for said entity of interest; and
>
> generating, using said computer, said enhanced credit evaluation report of said entity of interest based upon a comparative analysis and the relevancy assignment of said classified trade experiences for said entity of interest and for said related entity and said trade experiences for said peer group.

[75] Proposed independent claim 5 and referencing claim 9 contain similar elements to proposed claim 1.

[76] Proposed claims 2-4 and 6-8 remain similar to their on-file counterparts.

[77] We consider proposed claim 1 representative, and construe it similarly to our construction of claim 1 on file, noting significant impacts in the analysis below.

[78] As in the claims on file, all elements recited in proposed claims 1, 3-5 and 7-9 are considered to be essential, including the computer components. Similarly for proposed claims 2 and 6, at least one of the list of alternatives is considered to be an essential element, as well as all other elements other than the remaining list of alternatives.

Patentable subject-matter

[79] The preamble recites that the method is for generating an enhanced credit report. Since this was already recited in the closing phrase of claim 1 on file, this does not represent a significant change to our assessment of patentable subject-matter. The elements of processing the data through a series of change detection steps, aggregating data and applying a synthesis and relevancy process are algorithmic and similar to elements in claims 2-4 and 6-8 on file. Proposed claim 1 further recites that the meta-data tags are for enabling rapid comparative analysis. As we explained above, we consider the use of meta-data tags to be CGK, a routine operation of a computer and not an improvement to the speed and resolution of the computer analysis.

[80] As discussed under Purposive Construction above, in our view the skilled

person would construe “customer user-specified rules or criteria” more narrowly than “user-specified rules or criteria” to be restricted to user-specified rules or criteria that were not standard profiles. We do not consider this of significance in our assessment of patentable subject matter, as we saw no evidence that user-specified criteria, whether custom or predefined, would necessarily improve the functioning of the computer.

[81] In our view, therefore, proposed claim set-2 is directed to non-patentable subject-matter for substantially the same reasons as the claims on file.

Obviousness

[82] In the supplemental written submission, the Applicant argued that the user-specified rules disclosed in D5 were pre-defined and not customized. The Applicant also noted the differences between the predefined rules of D5 compared to the instant application, in particular, in the instant description at paragraph 0056. We find this argument persuasive, as we construed “custom user-specified rules or criteria” to exclude standard profiles, equivalent to the predefined rules disclosed in D5.

[83] We do not find custom user-specified rules or criteria in the prior art of record; neither do we find evidence that this element was CGK in the art.

[84] Therefore, in our view, the proposed claims would not be obvious and would comply with section 28.3 of the *Patent Act.*

[85] Proposed claim set-2, while curing the obviousness defect, does not cure the patentable subject-matter defect and therefore does not constitute “necessary amendments” according to subsection 86(11) of the *Patent Act.*

RECOMMENDATION OF THE BOARD

[86] 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-patentable subject-matter and are therefore non-compliant with section 2 of the *Patent Act* as well as prohibited according to subsection 27(8) of the *Patent Act*. The claims are also obvious and therefore non-compliant with section 28.3 of the *Patent Act*. Proposed claim set-2, while curing the obviousness defect, does

not cure the patentable subject-matter defect and therefore does not constitute "necessary amendments" according to subsection 86(11) of the *Patent Act*.

Howard Sandler	Vincent Pellerin	Lewis Robart
Member	Member	Member

DECISION OF THE COMMISSIONER

[87] I concur with the recommendation of the Board that the application be refused on the grounds that the claims on file are directed to non-patentable subject-matter and are therefore non-compliant with section 2 of the *Patent Act* as well as subsection 27(8) of the *Patent Act*, and the claims on file are obvious and therefore non-compliant with section 27.3 of the *Patent Act*.

[88] 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.

Virginie Ethier
Assistant Commissioner of Patents

Dated at Gatineau, Quebec

This 14th day of February 2022