

Citation: Collective Bias, Inc. (Re), 2023 CACP 1  
Commissioner's Decision #1634  
Décision du Commissaire n°1634  
Date: 2023-01-12

TOPIC: O00 Obviousness

SUJET: O00 Évidence

Application No. : 2,825,570

Demande n° 2 825 570

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2,825,570, having been rejected under subsection 199(1) of the *Patent Rules*, consequently has been reviewed in accordance with paragraph 86(7)(c) of the *Patent Rules*. The recommendation of the Patent Appeal Board and the decision of the Commissioner are to refuse the application.

Agent for the Applicant:

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## **INTRODUCTION**

[1] This recommendation concerns the review of rejected patent application number 2,825,570, which is entitled “System and Method for Online Collection and Distribution of Retail and Shopping Related Information.” The patent application is owned by Collective Bias, Inc (the Applicant). The Patent Appeal Board (the Board) has reviewed the rejected application pursuant to paragraph 86(7)(c) of the *Patent Rules*. The outstanding issue to be addressed in this review is whether the claims are obvious. As explained below, our recommendation is to refuse the application.

## **BACKGROUND**

### **The Application**

- [2] The instant application was filed in Canada on August 30, 2013 and was laid open to the public on April 17, 2014.
- [3] The application relates to an online flyer for retail products. More specifically, it relates to a method for generating a retail circular web page displaying retail product data as well as related user content.

### **Prosecution History**

- [4] On March 13, 2020, a Final Action (FA) was written pursuant to subsection 86(5) of the *Patent Rules*. The FA explained that the application was defective on the ground that claims 1-14 (claims on file) were obvious and therefore do not comply with section 28.3 of the *Patent Act*.
- [5] In a September 11, 2020 response to the FA (RFA), the Applicant submitted arguments for the allowance of the claims on file.
- [6] As the Examiner considered the application still did not comply with the *Patent Act* and *Patent Rules*, the application was forwarded to the Board for review pursuant to subsection 86(7) of the *Patent Rules*, along with an explanation outlined in a Summary of Reasons for maintaining the rejection of the application.
- [7] In a letter dated March 19, 2021, the Board forwarded a copy of the Summary of

Reasons to the Applicant. On May 28, 2021, in response to the Summary of Reasons, the Applicant indicated a continued interest in having the Board review the application.

- [8] The undersigned were assigned to review the application under paragraph 86(7)(c) of the *Patent Rules* and to make a recommendation to the Commissioner as to its disposition. In a Preliminary Review Letter (PR Letter) dated October 26, 2022, a preliminary analysis and rationale was set out as to why, based on the written record, the claims on file are obvious and prohibited by section 28.3 of the *Patent Act*. The PR Letter offered the Applicant the opportunities to attend an oral hearing and to make further submissions.
- [9] The Applicant did not respond to the PR Letter.

## **ISSUE**

- [10] The issue is whether the claims on file are non-obvious and therefore comply with section 28.3 of the *Patent Act*.
- [11] We note that since the Applicant did not respond to the PR Letter, the preliminary views presented in the PR Letter are considered to not be disputed. The recommendation below therefore provides an overview of the analysis and rationale presented in the PR Letter.

## **PURPOSIVE CONSTRUCTION**

### **Legal Background**

- [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). Purposive construction is performed from the point of view of the person skilled in the art in light of the relevant common general knowledge.

### **Analysis of the Current Application**

*The skilled person and the relevant common general knowledge (CGK)*

[13] In relation to the skilled person, the PR Letter stated:

The Final Action at page 2 characterized the skilled person or team as:

The skilled person, which may be a team of people, is skilled in the fields of computer and software engineering as well as online advertising and e-commerce technologies.

This characterization was not disputed by the Applicant in the Response to the Final Action and we preliminarily adopt this characterization.

[14] As for the identification of the CGK, the PR Letter it stated:

The Final Action at page 2 characterized the common general knowledge as follows:

The skilled person is familiar with different types of ideas for displaying e-commerce webpages for retailers that have an online and brick and mortar presence. The skilled person is aware of different methods for facilitating, for a customer, the procurement of retailer's goods and services both online and in-store through their web portal, such as providing circular or flyer information, product availability information for any particular store location, user reviews for particular products they may carry etc. The skilled person is also aware that specific web portal information may be stored across a plurality of computers/servers depending on the retailers specific needs and preferences and what a skilled person deems technically appropriate given the particular web portal application.

This characterization was not disputed by the Applicant in the Response to the Final Action and we preliminarily adopt this characterization.

[15] We adopt these characterizations in this review.

### *The Essential Elements and Claim Terms*

[16] In the PR Letter, all the elements of each claim were considered to be essential:

The Final Action did not present an analysis of the purposive construction of the claims on file. However, given that the person skilled in the art would understand that there is no use of language in any of the claims indicating that the elements in each claim are optional, alternatives or a preferred embodiment, in our preliminary view, all the elements of the claims on file are considered to be essential and are taken into account in our analysis below.

[17] As stated in the PR Letter, the claim terms of "cross-linking" were disputed in the FA and RFA:

The Final Action submitted that

... The applicant submits a definition from the internet of what is meant by "cross linking". Technically, "cross-linking" may be considered a link between two webpages, so any "link" to another webpage can be construed as such. The definition submitted by the applicant on page 5 of their response of May 29, 2019 recites:

"Cross linking refers to the process of linking between two sites"

"Linking between two sites" means a (hyper)link (to another webpage/site), thus affirming that "cross linking", in terms of actual technical functionality presented to a user/viewer of website, amounts to a hyperlink. The applicant further contends that "cross linking" is "more than linking as will be understood by those skilled in the art.", but does not specify exactly what "more" is addressed by the present "cross linking" of the present claims. The submitted definition states that the links may be to webpages with "similar" content or content of "further interest" to a user, which is highly subjective and could encompass almost any content, such as the content referenced by the (cross) links in the cited prior art. Moreover the intellectual connotation of the content presented on the (cross) linked webpages wouldn't patentably distinguish the claims either.

In the Response to the Final Action, the Applicant stated:

Applicant has concerns that the Final Office Action is applying a definition of "crosslinking" that is out of context and misleading. It appears that the Final Office Action has distilled down the definition of "cross-linking" by ignoring all but the first sentence of Applicant's provided definition thereof. As provided previously:

"Cross linking refers to the process of linking between two sites. Whether or not they are owned by the same person, cross linking is the process on which the internet is built. It allows users to reference sites with content similar to that which they are already viewing, and may be of further interest to them."

"Cross linking also serves an interesting purpose in terms of search engine optimization. Link popularity is one of the main factors involved in how search engines determine the value, importance and relevance of sites on a given topic. This calculation is then reflected in the site's search ranking."

"As a result, cross linking between sites is a very popular method of search engine marketing. Both reciprocal links and inbound links can be valuable SEO tools, provided you use cross linking effectively, especially if you are the owner of both web sites. Below are some guidelines to remember when cross linking between two sites that you own."

Cross-linking is not merely providing a link to another website as distilled by the Examiner. A cross-link is more than a simple link in that each site or web page links to the other, for example, A links to B, and B links to A. ... Elaboration of this concept is provided in the second definition provided below:

"In the world of SEO (Search Engine Optimization), Cross-linking, in simple words, can be defined as linking between two sites. Both the sites that are linked do not need to be owned by the same person. Cross-linking, in a way, helps both (or all the sites that are cross-linked) the sites in rising up the search engine ranks.

When a person visits a website, and there are other links available related to the content an individual is looking for, then the person would naturally visit the link present expecting more information regarding their search word/phrase. By utilizing this method, both the websites would be able to get recognition because of the right keywords, and it will help their search engine rankings."

Accordingly, Applicant respectfully submits that cross-linking is not merely providing a link to another website, as proposed by the Examiner. Paragraph [0055] of the specification supports the above second definition:

[0055] By cross-linking content between the micro-publisher generated content pages and the retail circular content pages, the relative importance of the pages, as determined or estimated by various search engine algorithms, may be increased. In this way, the system 600 may facilitate a search engine optimization (SEO) benefit for system participants, including, for example, retailers and micropublishers.

We agree with the Applicant. In our preliminary view, cross-linking is the linking of two websites in a reciprocal manner, as described above in both of the quotes provided by the Applicant in the Response to the Final Action.

[18] We maintain this identification of the essential elements as all features of the claims. We also maintain, in this recommendation, that the claim term of cross-linking is, as viewed by the Applicant, as the linking of two websites in a reciprocal manner.

### **ARE THE CLAIMS ON FILE OBVIOUS?**

[19] In our view, the claims on file are obvious based on the following analysis.

## Legal Background

[20] 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 follow a 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 of the Current Application

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

[21] The person skilled in the art has been identified above under Purposive Construction. We apply the same characterization here.

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

[22] The relevant CGK has also been identified under the Purposive Construction analysis. In our view, the same CGK applies for the purpose of the assessment of obviousness.

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

[23] The PR Letter stated:

As submitted in the Final Action, we will consider the independent claims 1 and 8 first as they are determinative of our obviousness analysis. These claims recite very similar elements; therefore we may consider claim 1 as representative of the independent claims, and it is presented here:

1. A method comprising:
  - receiving, with a circular data server, retail product data from a retail server associated with a retailer, the retail product data corresponding to at least



one retail product offered for sale by the retailer, and the retail product data including text data corresponding to a description of the at least one retail product, price data corresponding to a price of the at least one retail product, and image data corresponding to a graphical image of the at least one retail product;

- storing, with the circular data server, the retail product data;
- receiving, with the circular data server, a plurality of links to a plurality of content web pages stored on at least one content server, the content web pages each including content generated by at least one content-generating user;
- comparing, with the circular data server, the retail product data for the at least one retail product with the content of each content web page of the plurality of content web pages;
- identifying, with the circular data server, at least one content web page that includes content associated with the at least one retail product offered for sale by the retailer based on the comparing;
- generating, with the circular data server, a retail circular web page that displays the retail product data, including the text data, the price data, and the image data for the at least one retail product offered for sale by the retailer and that displays at least one link to the identified at least one content web page;
- cross-linking the generated retail circular web page with the identified at least one content web page by inserting, with the circular data server, a circular data display section into the identified at least one content web page through communication with the at least one content server storing the identified at least one content web page, the circular data display section including a link to the generated retail circular web page;
- receiving, with the circular data server, a location of a content-viewing user;
- identifying, with the circular data server, a particular retail location from the plurality of retail locations based on the received location of the content-viewing user; and
- identifying, with the circular data server, location specific retail product data associated with at least one retail product offered for sale at the particular retail location;
- wherein identifying the at least one content web page includes identifying at least one content web page that includes content associated with the at least one retail product offered for sale at the particular retail location; and
- wherein generating the retail circular web page includes generating the retail circular web page to display the location specific retail product data and to display at least one link that corresponds to the identified at least one content web page that includes content associated with the at least one retail product offered for sale at the particular retail location.

We consider all the claim elements to be essential and to form the inventive concept.

[24] We maintain the view that we consider all the claim elements to be essential and to form 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*

[25] As stated in the PR Letter:

The Final Action cited the following prior art:

D1: CA 2,763,808                      March 20, 2012                      Gonsalves et al.

D2: Amazon.com,  
<http://web.archive.org/web/20120502124019/http://www.amazon.com/Dr-McDougalls-Right-Foods-3-4-Ounce/dp/BOOOFFIEL2>, May 2, 2012

D3: Amazon.com,  
<http://web.archive.org/web/20120530000611/http://www.amazon.com/Dr-McDougalls-Right-Foods-3-4-Ounce/product-reviews/BOOOFFIEL2>, May 30, 2012

In addition to the above prior art, we add D4 and D5 to the prior art. In our preliminary view, D5 is the closest prior art.

D4: CA 2,597,960                      August 24, 2006                      Ourega

D5: US 2001/0029465                      October 11, 2001                      Strisower

D4 discloses cross-linking websites as well as providing content between pages. D5 describes a digital flyer system which is capable of providing electronic flyer content.

With respect to the representative claim 1, in our preliminary view, D5 discloses the following:

receiving, with a circular data server, retail product data from a retail server associated with a retailer, the retail product data corresponding to at least one retail product offered for sale by the retailer, and the retail product data including text data corresponding to a description of the at least one retail product, price data corresponding to a price of the at least one retail product, and image data corresponding to a graphical image of the at least one retail product ([0019]; [0024]-[0025]; [0028]-[0029]);

storing, with the circular data server, the retail product data ([0028]-[0029]);

receiving, with the circular data server, a location of a content-viewing user ([0037]);

identifying, with the circular data server, a particular retail location from the plurality of retail locations based on the received location of the content-viewing user ([0037]); and

identifying, with the circular data server, location specific retail product data associated with at least one retail product offered for sale at the particular retail location ([0037]).

In our preliminary view, D5 does not fully disclose:

1. receiving, with the circular data server, a plurality of links to a plurality of content web pages stored on at least one content server, the content web pages each including content generated by at least one content-generating user;
2. comparing, with the circular data server, the retail product data for the at least one retail product with the content of each content web page of the plurality of content web pages;
3. identifying, with the circular data server, at least one content web page that includes content associated with the at least one retail product offered for sale by the retailer based on the comparing;
4. generating, with the circular data server, a retail circular web page that displays the retail product data, including the text data, the price data, and the image data for the at least one retail product offered for sale by the retailer and that displays at least one link to the identified at least one content web page;
5. cross-linking the generated retail circular web page with the identified at least one content web page by inserting, with the circular data server, a circular data display section into the identified at least one content web page through communication with the at least one content server storing the identified at least one content web page, the circular data display section including a link to the generated retail circular web page;
6. wherein identifying the at least one content web page includes identifying at least one content web page that includes content associated with the at least one retail product offered for sale at the particular retail location; and
7. wherein generating the retail circular web page includes generating the retail circular web page to display the location specific retail product data and to display at least one link that corresponds to the identified at least one content web page that includes content associated with the at least one retail product offered for sale at the particular retail location.

[26] We maintain the view that D5 does not fully disclose the above noted seven differences.

*(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?*

[27] As stated in the PR Letter:

The skilled person seeking to generate online flyers and seeking to improve upon the earlier technology of D5 with more modernized concepts, would look to recent online retail advertising art, such as D1 and D4. D1 adds on to earlier online advertising by including social networking integration and related feedback from the social networks as well as linking content. D4 adds on by including the ability to link websites and related content to one another.

Differences 1 to 3

In regard to differences 1 to 3, D5 does not specifically disclose the feature of links to content web pages which includes content generated by users. D5 does disclose the ability to link with other websites, such as the retail website from the flyer website ([0039], “ by selecting an appropriate hyperlink”).

D1 discloses content generated by users as well as linking to more content; the user content related to products for purchase from a retailer ([0068]-[0069]). D1 also discloses the ability to include social networking content related to feedback and reviews of retail products, gathered through the integration of social media networks ([0066]; [00137]).

In our preliminary view, while D5 does not disclose differences 1 to 3, these differences would have been obvious in view of D1.

Difference 4

Regarding difference 4, while D5 does not disclose all the elements of this feature, D5 does disclose generating a retail circular web page that includes product retail data ([0019]; [0024]-[0025]; [0028]-[0029]) as well as the ability to display a link to other websites ([0039]). D1 discloses linking to a content web page ([0068]-[0069]).

In our preliminary view, while D5 does not disclose difference 4, this difference would have been obvious in view of D1.

Difference 5

In regard to difference 5, D5 does not specifically disclose the features of cross-linking and sharing content between web pages. D4, as well as the Applicant’s submitted definitions of cross-linking, discloses the feature of providing links between websites (pg

19, lines 23-25; pg 21, lines 13-14). D4 also discloses shared content between pages for shopping as well as shipping the items purchased (pgs 19, 21, 39; Figs 7B, 8, 10B).

In our preliminary view, while D5 does not disclose difference 5, this difference would have been obvious in view of D4 to be able to use links between web pages and to share information and content between web pages.

Differences 6 and 7

Having regard to differences 6 and 7, D5 does not specifically disclose content web pages nor identifying product offered for sale at a particular retail location. D5 provides user location information to the website to provide local advertisements to the user ([0037]) and displays a link to content associated to the retail product for sale ([0039]).

As presented above, D1 discloses content generated by users as well as linking to more content; the user content related to products for purchase from a retailer ([0068]-[0069]). As well, D1 discloses the feature of having product availability information at a particular location on the ad for a particular product ([0077]; [0088]; Figs 1A, 1C, 2B label 224h, 3 label 312b).

In our preliminary view, while D5 does not disclose differences 6 and 7, these differences would have been obvious in view D1 to be able to provide product availability at a particular retail location.

[28] We maintain these differences as obvious having regard to D5, in view of D1 and D4.

### *Conclusions on Obviousness*

[29] Consistent with the PR Letter, it is our view that claims 1 to 14 would have been obvious having regard to D5 in view of D1 and D4 and thus the claims do not comply with paragraph 28.3 of the *Patent Act*.

**RECOMMENDATION OF THE BOARD**

[30] In view of the above, we recommend that the application be refused on the basis that the claims on file are prohibited under section 28.3 of the *Patent Act*.

Mara Gravelle

Member

Kristina Bodnar

Member

Howard Sandler

Member

## **DECISION OF THE COMMISSIONER**

[31] I concur with the findings of the Board and its recommendation to refuse the application on the basis that the claims on file are prohibited under section 28.3 of the *Patent Act*.

[32] Therefore, in accordance with section 40 of the *Patent Act*, 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.

Konstantinos Georgaras  
Commissioner of Patents

Dated at Gatineau, Quebec  
this 12<sup>th</sup> day of January, 2023