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Commissioner's Decision #1645  
Décision du commissaire n°1645  
Date: 2023-04-04

TOPIC: B00 Claims—Ambiguity or  
Indefiniteness  
(incomplete)  
O00 Obviousness

SUJET: B00 Revendications—  
Caractère ambigu ou  
indéfini (incomplet)  
O00 Évidence—Évidence

Application No. 2583965

Demande n° 2 583 965

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2583965, having been rejected under subsection 199(1) of the *Patent Rules* (SOR/2019–251), has subsequently 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 2583965, which is entitled “System and Method for Facilitating a Wireless Financial Transaction” and is owned by CFPH, LLC. The outstanding defect indicated by the Final Action (FA) is obviousness. The Patent Appeal Board (the Board) reviewed the rejected application pursuant to paragraph 86(7)(c) of the *Patent Rules* (SOR/2019–251). As explained below, we recommend refusal of the application.

## BACKGROUND

### The application

- [2] Canadian patent application 2583965, based on a previously filed Patent Cooperation Treaty application, is considered to have a filing date of October 14, 2005, and has been open to public inspection since April 27, 2006.
- [3] The invention concerns the facilitation of wireless financial transactions. Particularly, it concerns a method for executing a wireless trade via a handheld device and a wireless network, and which includes authorizing the device, based on its location, before executing the trade.

### Prosecution history

- [4] On May 25, 2020, an FA issued pursuant to subsection 86(5) of the *Patent Rules*. The FA indicated the application to be defective on the ground that claims 1 to 11 (the claims on file, dated September 6, 2019) are directed to obvious subject matter, contrary to section 28.3 of the *Patent Act*.
- [5] In its September 16, 2021 response to the FA (RFA), the Applicant proposed an amended set of 12 claims (the proposed claims).
- [6] The Examiner did not consider either the claims on file or the proposed claims to comply with section 28.3 of the *Patent Act*. Therefore, pursuant to paragraph 86(7)(c) of the *Patent Rules*, the application was forwarded to the Board for review on behalf of the Commissioner of Patents. On September 9, 2022, 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 assigned to review the rejected application and make a recommendation to the Commissioner as to its disposition. Following a preliminary review, a letter (the PR letter) was sent on February 21, 2023. This letter explained why, based on the record before us, we considered the claims on file to define obvious subject matter, contravening section 28.3 of the *Patent Act*.
- [8] In accordance with subsection 86(9) of the *Patent Rules*, the PR letter also explained why we considered certain claims on file to be indefinite, contravening subsection 27(4) of the *Patent Act*. In addition, the PR letter identified a likely typographical error in the description and claims on file. It further explained why we also considered the proposed claims to define obvious subject matter, be indefinite (in part) and include the likely typographical error. The PR letter then invited the Applicant to respond by participating in a hearing and by making written submissions.
- [9] The Applicant's response (RPR) was received on March 7, 2023. It indicated that they did not want a hearing, and did not intend to make written submissions. Accordingly, we undertook the 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.

## **THE ISSUES ARE OBVIOUSNESS AND INDEFINITENESS**

- [10] This review first addresses the issue of whether the claims on file define obvious subject matter, contravening section 28.3 of the *Patent Act*. Next, the review addresses the issue of whether the claims on file are indefinite, contravening subsection 27(4) of the *Patent Act*. The potential typographical error is then

addressed. Finally, the review addresses whether the proposed claims would constitute a necessary amendment under subsection 86(11) of the *Patent Rules*.

## **IS THE CLAIMED INVENTION OBVIOUS?**

[11] As explained in the PR letter, we consider the claimed invention to be obvious.

[12] 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 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.

[13] 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 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?

[14] The following documents, cited in the PR letter, are considered relevant to the determination of the common general knowledge (CGK) or of obviousness:

- D1: US 2002/0120571 A1 August 29, 2002 Maung et al.
- D3: US 2003/0220835 A1 November 27, 2003 Barnes, Jr.
- D4: WO 02/101486 A2 December 19, 2002 Carter
- D5: US 2002/0174055 A1 November 21, 2002 Dick et al.
- D6: US 2003/0220867 A1 November 27, 2003 Goodwin et al.
- D7: Diep Dao, Chris Rizos & Jinling Wang, "Location-based services: technical and business issues" (December 2002) 6:3 GPS Solutions 168.

[15] D3 and D4 were also cited in the FA to support the reasoning concerning obviousness or the CGK. D1 was also cited by the Examiner during the prosecution. D5, D6 and D7 arose during our preliminary review.

[16] As observed in the PR letter:

D1 discloses a system enabling users to conduct transactions with their financial institution via wireless handheld devices. D3 discloses a system providing location-based functions and mobile e-commerce. D4 discloses a system providing access to gambling events via users' mobile devices; access is regulated based on a user's location. D5 and D6 disclose networked systems for trading or auctioning financial products; traders can access the exchange via their mobile devices. D7 discusses the technology and issues involved in available location-based services.

**Identify the notional person skilled in the art and the relevant common general knowledge**

[17] In the PR letter, we characterized the skilled person as:

a team comprising exchange trading professionals and technologists. The technologists would be experienced with developing and providing the systems conventionally used to support the designs and activities of such professionals, especially in the context of electronic trading.

[18] Based on this definition of the skilled person, the PR letter identified the relevant CGK as including:

- the procedures, operations and concerns conventionally involved in trading financial products on an exchange, including:
  - the transmission of trading data such as stock quotes to customers or clients over the Internet via their wireless devices (D1 [paragraphs 4, 5 and 8]); and
- the design, implementation, operation and maintenance of computer systems, networks and software, including:
  - Internet-based electronic financial trading systems, including those enabling:
    - professional exchange traders to receive data and submit trades (application [pages 1 to 2]; D5 [paragraphs 2 to 3]);
    - individual customers or clients to receive data and submit exchange trades (D1 [paragraph 4]; D5 [paragraphs 2 and 4]):
      - via their wireless devices (demonstrated by the common presence of such technology in the disclosures of D1 [paragraphs 8 to 10, 15, 16 and 41], D5 [paragraphs 2, 4, 16, 22, 32 and 33] and D6 [paragraphs 85, 91, 142, 195 and 203 to 205]); and



- individual customers or clients to participate in [an] auction via the Internet (D6 [paragraphs 3 to 14]);
- general purpose computers, computing devices, processors and user interfaces;
- commercially available handheld computing and communication devices;
- database systems and other data storage systems; and
- wireless communication technologies and protocols, including:
  - cellular networks and base stations; and
  - conventional techniques and tools for determining the location of a mobile communications device and providing location-based services (D7 [entire document]), including:
    - the “Cell of Origin” location-determining technique, whereby cell identification information within a cellular telephone network is used to identify the approximate location of a caller (D7 [pages 6 to 7]).

[19] As explained in the PR letter, this characterization was:

based on the above definition of the skilled person, and on what the present description (pages 1, 2, 6, 8, 9, 11, 12, 17, 18 and 25), D1 (paragraphs 3 to 8), D3 (paragraphs 3 to 7), D4 (pages 1 to 3), D5 (paragraphs 2 to 4), D6 (paragraphs 3 to 15) and D7 (entire document) describe as generally known or conventionally done in the field. (More precise pinpoints supporting specific technologies and concepts have also been indicated above.) We also specifically consider the use of wireless devices to carry out trading to be within the CGK; as indicated above, this is supported by that technology’s common presence in several disclosures.

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

[20] As noted in the PR letter:

[t]he application (pages 2 to 3) explains that Internet-based electronic financial systems may lack sufficient security. Users often lack confidence that their financial transactions are secure and will be properly authenticated, and that their privacy will remain intact. Moreover, contends the application, use of the Internet provides inadequate location verification to ensure that a user is within an area approved for financial activity. The application proposes to address these issues by employing wireless networks and handheld devices, and the location data they provide.

[21] Independent claims 1 and 6 on file are directed to apparatuses for controlling a device's ability to engage in financial trading depending on its geographical location. Claim 1 is representative of the invention:

Claim 1. An apparatus, comprising:

at least one processor;

a memory configured to store instructions which, when executed by the at least one processor, cause the at least one processor to:

receive, via a communications network, an identifier associated with a base station in communication with a device, the base station being a component of the communications network;

identify a geographic area associated with the identifier in a database;

determine whether the geographic area associated with the identifier is within a restricted area or an allowed area;

in response to determining that the geographic area associated with the identifier is within the restricted area, prevent the device from receiving real-time trading data and permit limited types of trades when the device is within the restricted area;

in response to determining that the geographic area associated with the identifier is within the allowed area, permit the device to access real-time trading data and to execute all available types of trades when the device is within the allowed area;

receive, from the device, a request to engage in the given trade;

in response to the request to engage in the given trade:

execute the given trade if a type of the given trade is permitted in a current location of the device; and

decline the given trade if the type of the given trade is not permitted in the current location of the device.

[22] Regarding the inventive concepts, the PR letter explained:

We preliminarily take the wording of claim 1 as representing its inventive concept.

Although claim 6 contains some wording differences, it is effectively directed to the same subject matter as claim 1. We thus preliminarily consider it to have the same inventive concept as claim 1.

The dependent claims on file recite further details that do not practically limit the structure or functionality of the claimed apparatus. Accordingly, we preliminarily consider these claims to share the same inventive concept as that of the independent claims.

**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**

[23] As remarked in the PR letter, we consider D3 to be the most relevant reference:

D3 (abstract; paragraphs 7 and 33; figure 1) describes a wireless system for providing location-based services, including mobile electronic commerce. Mobile multi-function communications devices are used to access the system.

D3 (paragraphs 33 and 95 to 101; figure 1) discloses the use of location-determining means in the mobile device’s use of a location module. As an

alternative, the mobile device may instead use location data received from a network-based position-location system.

D3 (paragraphs 313 to 315, 320 to 322 and 451 to 455) discloses that the system can use the location information to detect when the user of a mobile device is in a restricted area and react accordingly. This can include prohibiting certain actions within the area, such as certain types of transactions. D3 does not explicitly disclose prevention of receipt by the mobile device of real-time trading data within restricted areas.

D3 (paragraphs 11, 29, 127 to 135 and 300 to 309) discloses the system being used for a variety of commercial applications, including the purchase of financial products and participation in localized auctions. It does not, however, explicitly disclose participation in the sort of financial exchange or market as contemplated in the application for the present invention.

D3 also does not explicitly describe the commercially available network-based system as identifying the geographic area associated with a base station communicating with the mobile device.

Furthermore, as the Applicant had noted [in a written submission to the Examiner before the FA], D3 describes the mobile device, not an external component or entity from elsewhere via the network, as enacting the restrictions.

[24] As the PR letter noted, D4 is also relevant to our obviousness assessment:

D4 (abstract; page 4) discloses a system permitting gamblers to place wagers via mobile units accessing the system through a wireless network. Gamblers' access to certain games and events can be restricted based on a gambler's determined location. D4 does not discuss financial trading, however.

**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?**

[25] As the PR letter explained, the differences between the state of the art and the inventive concept would have constituted obvious steps:

As noted above, the CGK includes computerized systems supporting trading by individual clients or customers—via their wireless devices—in financial markets or exchanges. It would thus be obvious to the skilled person to adapt the technology of D3 to such a system. It would also be obvious that for someone to trade effectively in such a market or exchange, they would need access to current trading data (e.g. stock quotations).

Among the location-determining techniques belonging to the CGK is the relatively straightforward “Cell of Origin.” The Cell of Origin technique uses the cell (and thus base station) identification information within the cellular telephone network to identify the approximate location of a caller. It would be obvious for the location-determining network-based system in D3 to employ this solution.

It would be obvious to exercise location-based restrictions of a mobile device’s actions from an entity or component external to the mobile device. Doing so would be expected to improve control over the system for the entity responsible for its operation. D4 (pages 4, 9, 11 to 13, 15; figures 1 to 3) provides an example and discloses means for doing so. Although D4 does not discuss financial trading, it discloses a system enabling wagering via a wireless network and mobile interfaces, and thus focuses on technical systems and environments similar to those of D3. Additionally, as with the rules and laws concerning financial trading, those concerning gambling vary across jurisdictions. D4 thus discloses use of location determination and location-based restrictions to avoid violating any such rules and laws. The skilled person would recognize the applicability of the relevant teachings of D4 to the systems of D3.

## **Conclusion on obviousness**

- [26] As stated in the PR letter, we consider that the subject matter of claims 1 to 11 on file would have been obvious to the skilled person in view of D3, D4 and the CGK. Therefore, these claims do not comply with section 28.3 of the *Patent Act*.

## **ARE THE CLAIMS INDEFINITE?**

- [27] We consider claims 2 and 7 on file to be indefinite.
- [28] Subsection 27(4) of the *Patent Act* requires claims to distinctly and explicitly define subject matter:

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

- [29] The PR letter explained:

Dependent claims 2 and 7 on file are directed to apparatuses. These apparatuses are systems enabling users of certain devices to engage in trading under certain conditions. Claims 2 and 7 define these devices as comprising at least one of several types of devices, including “a personal computer (PC).” It does not make sense for the device to be a personal computer, however, given the definition of the claimed apparatus, as well as the described purpose of the invention.

Claims 1 and 6 (upon which claims 2 and 7 depend) define the apparatuses and devices as communicating with each other via a communications network. The communications network includes a “base station,” which is in communication with the device, and which may be used to identify the geographic area of the device by sending its own identity to the apparatus. A conventional characterization of a network-connected personal computer’s operation does not fit into this defined structure and function.

Furthermore, the application states that the invention is to address the needs for greater security and for location verification for users of networked electronic financial transaction systems. According to the application, the invention is intended to achieve this by employing wireless networks and

handheld devices. A handheld device capable of communicating via wireless networks would not conventionally be characterized as a personal computer.

It is also noted that the implicit differentiation of “personal computer” from the other types of devices listed as possible in claims 2 and 7 reinforce a conventional characterization of “personal computer.”

- [30] This seeming impossibility or contradiction makes the claims unclear. Accordingly, our view is that claims 2 and 7 on file are indefinite and do not comply with subsection 27(4) of the *Patent Act*.

### **ARE THERE TYPOGRAPHICAL ERRORS?**

- [31] We consider the specification on file to unintentionally state “table PC” instead of “tablet PC” in several instances. The PR letter described the issue:

Claims 2 and 7, and the description on pages 21 and 23, each refer to a “table PC.” The description’s references give it as an example of a handheld device. Nowhere else does the application refer to “table PCs.” The description (page 17) refers to “tablet personal computers,” though, characterizing them as particularly suited for the invention.

Given their relative amounts of description in the application, we preliminarily believe the application was intended to refer to a “tablet PC” in each of these instances. This reasoning is also supported by the relative likelihood of usefulness of a tablet personal computer versus a tabletop personal computer in the context of the invention. It is also supported by the comparison of their relative dates of achieving commercial availability (approximately 2001–2003 for tablet computers and approximately 2012 for tabletop computers) compared to the claim date of October 14, 2004.

### **DO THE PROPOSED CLAIMS REMEDY THE DEFECTS?**

- [32] We do not consider the proposed claims—the amended set of 12 claims the Applicant proposed with the RFA—to remedy the defects. The PR letter explained why:

A step of maintaining “an audit trail of keystrokes entered via the apparatus” was added to both of the independent claims. A dependent claim (proposed

claim 6) was also added, but it corresponds to a claim already on file and depending on the other independent claim (claim 11 on file depends on claim 6 on file). Otherwise, the proposed claims are similar to those on file, with slight wording differences (e.g. the proposed claims are directed to “computer systems” instead of “apparatuses.”)

D3 (paragraphs 317 to 318) discloses the monitoring and storage of keystrokes entered via the wireless device. Thus, this step does not distinguish the proposed claims over the state of the art, and these claims are also obvious.

In addition, the indefiniteness defects identified above remain in proposed claims 2 and 8, and the typographical errors remain in proposed claims 2 and 8, and in the unchanged description.

Furthermore, the “apparatus” in the step added to the independent claims lacks an antecedent and makes them indefinite.

- [33] It follows that proposed claims 1 to 12 are not considered a necessary amendment under subsection 86(11) of the *Patent Rules*.



## **RECOMMENDATION OF THE BOARD**

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

- claims 1 to 11 on file define obvious subject matter, contravening section 28.3 of the *Patent Act*; and
- claims 2 and 7 on file are indefinite, contravening subsection 27(4) of the *Patent Act*.

Leigh Matheson

Jeffrey Butler

Lewis Robart

Member

Member

Member

## **DECISION OF THE COMMISSIONER**

[35] I agree with the Board's findings and its recommendation to refuse the application on the basis that:

- the claims on file define obvious subject matter, contravening section 28.3 of the *Patent Act*; and
- claims 2 and 7 on file are indefinite, contravening subsection 27(4) of the *Patent Act*.

[36] 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 4<sup>th</sup> day of April, 2023