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Commissioner's Decision #1669

Décision du commissaire n° 1669

Date: 2024-05-23

TOPIC: J00 Subject Matter of Applications—Meaning of Art
J10 Subject Matter of Applications—Computer Programs

SUJET : J00 Objet des demandes—Signification de la technique
J10 Objet des demandes—Programmes d'ordinateur

Application No. 2746656

Demande n° 2 746 656

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2746656, 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 2746656, which is entitled “Construction project prequalification” and is owned by Textura Corporation. A review of the rejected application has been conducted by the Patent Appeal Board pursuant to paragraph 199(3)(c) of the *Patent Rules* (SOR/2019–251) (“the *Patent Rules*”).
- [2] As explained in more detail below, the recommendation of the Patent Appeal Board is that the Commissioner of Patents refuse the application.

BACKGROUND

The application

- [3] Canadian patent application 2746656 was filed under the provisions of the Patent Cooperation Treaty and has an effective filing date in Canada of December 11, 2009. It was laid open to public inspection on June 17, 2010.
- [4] The application relates to systems and methods designed to facilitate prequalification among multiple organizations in the construction industry. The methods involve establishing clear prequalification criteria, managing documents and evaluations and providing a secure platform for bid management.

Prosecution history

- [5] On August 2, 2019, a Final Action was written under subsection 30(4) of the *Patent Rules* (SOR/96–423) as they read immediately before October 30, 2019. The Final Action indicated that claims 1 to 47 on file at the time of the Final Action (“claims on file”) define unpatentable subject-matter and do not comply with section 2 of the *Patent Act*.
- [6] The Response to the Final Action, dated January 7, 2020, referred to comments provided in earlier responses to support the patentability of the claims on file.

- [7] On March 4, 2022 the application was forwarded to the Patent Appeal Board for review under paragraph 199(3)(c) of the *Patent Rules* along with a Summary of Reasons that explained that the rejection was maintained. Notably, subsequent to the Final Action, the Office updated its guidance in determining whether the subject-matter defined by a claim is patentable subject-matter in the following Patent Notice: “Patentable Subject-Matter under the *Patent Act*” (CIPO, November 2020) [PN2020–04]. The Summary of Reasons applied the guidance in PN2020–04 and maintained that the claims on file are directed to unpatentable subject-matter but cited subsection 27(8) of the *Patent Act* as the relevant legal authority.
- [8] In a letter dated March 7, 2022, the Patent Appeal Board forwarded a copy of the Summary of Reasons to the Applicant and requested that they confirm their continued interest in having the application reviewed.
- [9] In the letters dated March 18, 2022 and March 21, 2022, the Applicant confirmed their interest in having the review proceed.
- [10] The undersigned was assigned to review the rejected application under paragraph 199(3)(c) of the *Patent Rules*. On March 7, 2024, I sent a Preliminary Review letter which detailed my preliminary analysis and opinion that the actual inventions of claims 1 to 47 on file do not fit within any category of invention in section 2 of the *Patent Act*.
- [11] In addition, the Preliminary Review letter notified the Applicant, in accordance with subsection 86(9) of the *Patent Rules*, that I also considered that the claims on file defined subject-matter prohibited by subsection 27(8) of the *Patent Act*.
- [12] Finally, the Preliminary Review letter provided the Applicant with an opportunity to make oral and/or written submissions.
- [13] The Preliminary Review letter requested the Applicant respond by March 21, 2024, to confirm the suitability of the tentative hearing date and by April 4, 2024, to provide written submissions. No response to the Preliminary Review letter was received and so on April 3, 2024, an email was sent to the Applicant, requesting confirmation that the hearing date was suitable. There was also no response to

this communication. On April 22, 2024, another follow up email was sent to the Applicant, notifying them that given the absence of any response and the elapsed hearing date, I would proceed with completing my review based on the written record available and make my recommendation to the Commissioner of Patents.

THE ISSUES

[14] In view of the above, the following issues are considered in this review:

- whether claims 1 to 47 on file encompass subject-matter outside the definition of invention and do not comply with section 2 of the *Patent Act*; and
- whether claims 1 to 47 define subject-matter prohibited by subsection 27(8) of the *Patent Act*.

PURPOSIVE CONSTRUCTION

Legal background

[15] Purposive construction is antecedent to any consideration of validity: *Free World Trust v Électro Santé Inc*, 2000 SCC 66 at para 19 [*Free World Trust*].

[16] In accordance with *Free World Trust* and *Whirlpool Corp v Camco Inc*, 2000 SCC 67 [*Whirlpool*], purposive construction is performed from the point of view of the person skilled in the art in light of the relevant common general knowledge, considering 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 person skilled in the art that a variant has a material effect upon the way the invention works.

[17] *PN2020-04* notes that all elements in a claim are presumed essential unless such presumption is contrary to the claim language, or it is established otherwise:

see also *Free World Trust* at para 57, *Distrimedic Inc v Dispill Inc*, 2013 FC 1043 at para 201.

- [18] Since both interpretation of term meaning and identification of the essential elements are done in light of the relevant common general knowledge, I must first identify the person skilled in the art to determine their common general knowledge: *Manual of Patent Office Practice* (CIPO) [MOPOP] at §12.02.01, revised June 2015.

Analysis

- [19] The Preliminary Review letter, on pages 4 to 7, stated the following with regard to the identity of the person skilled in the art and their expected common general knowledge:

The person skilled in the art and the relevant common general knowledge

The Final Action, on page 2, identifies the person skilled in the art and the relevant common general knowledge:

The person skilled in the art and their relevant common general knowledge (CGK)

In view of statements in the description (paragraphs 0002–0003), the person skilled in the art to which the patent application is directed can be characterized as one versed in project management or a business professional in the field of general contracting, and technologists who develop tools for such professionals.

The person skilled in the art would possess the following CGK: knowledge of procedures, tasks and tools associated with soliciting, submitting, prequalifying, approving and managing project bids.

The Response to the Final Action did not contest or comment on these characterizations of the person skilled in the art and their relevant common general knowledge. Further, the Applicant does not propose any additional

considerations with regard to either the person skilled in the art or the relevant common general knowledge in this response or in any previous responses.

The Summary of Reasons, on page 2, presented the same identification of the person skilled in the art and their relevant common general knowledge as found in the Final Action.

Regarding the person skilled in the art, several court decisions have provided additional context for their identification. For example, the Supreme Court of Canada explained that although the person skilled in the art is deemed to have no scintilla of inventiveness or imagination, a patent specification is addressed to “skilled individuals sufficiently versed in the art to which the patent relates to enable them on a technical level to appreciate the nature and description of the invention”: *Whirlpool* at para 53. Moreover, “in the case of patents of a highly technical and scientific nature, that person may be someone possessing a high degree of expert scientific knowledge and skill in the particular branch of science to which the patent relates”: *Consolboard v MacMillan Bloedel (Sask) Ltd*, [1981] 1 SCR 504 at page 525.

In addition, the person skilled in the art can represent a composite of scientists—highly skilled and trained persons who conduct scientific research to advance knowledge in an area of interest—and researchers: *Bayer Aktiengesellschaft v Apotex Inc* [1995] 60 CPR (3d) 58 at page 79

The notional skilled technician can be a composite of scientists, researchers and technicians bringing their combined expertise to bear on the problem at hand: “This is particularly true where the invention relates to a science or art that transcends several scientific disciplines.” (Per Wetston J. in *Mobil Oil Corp. v. Hercules Canada Inc.* (unreported, September 21, 1994, F.C.T.D., at p. 5 [now reported 57 C.P.R. (3d) 488 at p. 494, 82 F.T.R. 211].)

With the above considerations in mind and having reviewed the specification as a whole, I consider that the characterization of the person

skilled in the art presented in the Final Action and the Summary of Reasons is reasonable. For example, para [0001] of the present description identifies the field of the invention as relating to “systems and methods for effectuating prequalification between multiple organizations in the construction industry and for managing the project bidding process.” Further, the subject-matter of the claims on file relates to automating prequalification assessments, streamlining document management and evaluation processes and providing a secure platform for managing the procurement process for construction projects.

Given the technical field to which the present patent application relates and the subject-matter of the claims on file, I would further add that, in my preliminary view, this team is familiar with the procurement process as it relates to construction projects.

Regarding the identification of the common general knowledge, it is well established that the common general knowledge is limited to knowledge which is generally known by persons skilled in the field of art or science to which a patent relates: *Apotex Inc v Sanofi–Synthelabo Canada Inc*, 2008 SCC 61 at para 37 [*Sanofi*]; *Free World Trust* at para 31. Accordingly, the common general knowledge is with respect to the subset of patents, journal articles and technical information which is generally acknowledged by persons skilled in the art as forming part of the common general knowledge in the field to which a patent relates.

Established reference works (such as textbooks, review articles, handbooks, etc.) or demonstrated commonality of certain knowledge in a number of disclosures in the field are relevant to the inquiry: *MOPOP* at §12.02.02c, revised October 2019.

Furthermore, it is my preliminary view that information in the present specification may be evidence of the common general knowledge as it could be reasonable to consider general or broadly worded assertions of conventional practice or knowledge as common general knowledge:

Corning Cable Systems LLC v Canada (Attorney General), 2019 FC 1065 and *Newco Tank Corp v Canada (Attorney General)*, 2015 FCA 47.

Having reviewed the specification, I am of the preliminary view that the information regarding the processes used in construction project procurement as set out in the Final Action and Summary of Reasons would have been generally known by the person skilled in the art as defined above who is “sufficiently versed in the art to which the patent relates to enable them on a technical level to appreciate the nature and description of the invention”: *Whirlpool* at para 53.

- [20] In the absence of submissions from the Applicant, I adopt the above characterizations of the person skilled in the art and the relevant common general knowledge for my final analysis.

The claims on file

- [21] The Preliminary Review letter, on pages 7 to 10, summarized the content of the claims on file and expressed my preliminary view that their meaning and scope would have been clear to the person skilled in the art:

There are 47 claims on file. Independent claims 1 and 26 are directed to computer-implemented automated construction project prequalification systems and independent claim 9 is directed to a computer-implemented method of managing construction project prequalification applications. Claim 1 is representative and reads as follows:

1. A computer-implemented automated construction project prequalification system for use by remote organizations over a communication network, said system comprising a server including a processor and a computer-readable memory that stores computer-executable instructions that, when executed on the processor, cause the server to:

establish electronic communication between the server and a first device associated with a first organization through said communication network;

electronically receive from said first device over said communication network at a first time, information relating to said first organization, said information comprises a plurality of data items;

store the plurality of data items in a form library included in the computer-readable memory, wherein the plurality of data items can be reused for multiple prequalification applications;

store a request package listing a subset of said data items required to complete a prequalification application for assessment by a second organization, wherein the request package can be reused to request data items relating to multiple organizations;

electronically send, from the server over the network to the first device associated with the first organization, selectable options for controlling access to said subset of data items relating to said first organization, said options comprising a first option for allowing access to the data items in the forms library and a second option for denying access to the data items in the form library;

controlling access, by the server, to the data items based on the selectable options wherein in response to the first option being selected to allow access, the server is caused to, at a second time, electronically generate a first aggregated data document including one or more of the data items from the subset of data items by:

said server receiving an identification of said first organization;

accessing a prequalification template from the computer-readable memory;

searching said form library for said subset of data items associated with said first organization and accessing the subset of data items in the form library; and

populating the prequalification template with the subset of data in the form library;

communicate the first aggregated data document to the first device of the first organization over said communication network for display on the first device;

receive an electronic signature from the first organization confirming the accuracy of the data items included in the first aggregated data document;

in response to receiving the electronic signature from the first organization, communicate to the second device associated with the second organization over said communication network the data items included in the first aggregated data document for display to said second organization;

receive over said communication network a rating from said second organization for each data item and associating said rating with said each data item;

generated a final aggregated approval document including each of the rating of each data item;

receive a final approval of the final aggregated approval document from the second organization;

assign a score to said first organization; and

store said score and a prequalification indication on the computer-readable memory after receiving the final approval, the prequalification indication indicating that said first organization is

approved to submit bids to the second organization for construction projects.

The dependent claims on file recite additional functionalities and features of the computer-implemented automated construction project prequalification systems and methods for managing construction project prequalification applications and managing the bidding process.

Meaning of the terms

As indicated above, purposive construction is performed from the point of view of the person skilled in the art in light of their relevant common general knowledge and includes interpreting the meaning of the terms of a claim.

There is no indication in the prosecution record of any issues with respect to the claim language, for example, the meaning of terms or claim ambiguity. The claims on file do not appear to include any terms that would be unfamiliar to the person skilled in the art in light of their relevant common general knowledge. In my preliminary view the person skilled in the art would readily understand the claim language and its meaning.

[22] In the absence of submissions from the Applicant, I adopt the above views for my final analysis.

Essential elements

[23] The Preliminary Review letter, on page 10, stated the following with regard to the elements in the claims that the person skilled in the art would consider to be essential:

Page 2 of the Summary of Reasons specifies, in accordance with *PN2020-04*: “As there is no indication otherwise in the claims, all elements of claims 1–47 are essential.”

As mentioned above and explicitly stated in *Choueifaty v Canada (Attorney General)*, 2020 FC 837 at para 39, citing *Shire Canada Inc v Apotex Inc*,

2016 FC 382 at para 137, in order “to establish that a claim element is non-essential, it must show both (i) that on a purposive construction of the words of the claim it was clearly not intended to be essential, and (ii) that at the date of publication of the patent, the skilled addressees would have appreciated that a particular element could be substituted without affecting the working of the invention” [emphasis in original].

With the above considerations in mind and having reviewed the specification as a whole, it is my preliminary view that the person skilled in the art reading claims 1 to 47 would not view the individual method steps or computer-related elements as either optional or non-essential based on the claim language itself. Likewise, it is my preliminary view that the person skilled in the art would recognize that the use of a computerized system to implement the method steps in the claims on file was not omissible or capable of substitution.

Therefore, I preliminarily agree with the assessment in the Summary of Reasons and consider all of the elements in the claims on file to be essential.

[24] In the absence of submissions from the Applicant, I adopt the above identification of the claim elements that are essential for my final review.

PATENTABLE SUBJECT-MATTER

Legal background

[25] Any patentable invention must fall within the definition set out in section 2 of the *Patent Act*, including falling within one of the categories defined therein:

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.

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

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

- [27] *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.

- [28] The determination of the actual invention is a relevant and necessary question in assessing patentable subject-matter: *Canada (Attorney General) v Amazon.com Inc*, 2011 FCA 328 at para 42 [*Amazon*]. As stated by the Federal Court of Appeal in *Canada (Attorney General) v Benjamin Moore & Co*, 2023 FCA 168 at para 68 [*Benjamin Moore*], this determination is in line with that Court’s statement in *Schlumberger Canada Ltd v Commissioner of Patents*, [1982] 1 FC 845 (CA) at 847 [*Schlumberger*] that a patentable subject-matter assessment involves determining what, according to the application, has been discovered. The actual invention is identified in the context of the new discovery or knowledge and must ultimately satisfy the “physicality requirement” that is implicit in the definition of “invention”: *Amazon* at paras 65 and 66.
- [29] However, *Amazon*, at para 44, cautions that “a patent claim may be expressed in language that is deliberately or inadvertently deceptive” and that what appears on its face to be an “art” or “process” may in fact be a claim to an unpatentable mathematical formula, as was the case in *Schlumberger*.
- [30] This observation is expressed in *Amazon* to explain that the presence of a practical application may not, in some cases, be sufficient to satisfy the physicality requirement, which requires something with physical existence, or

something that manifests a discernible effect or change: *Amazon* at paras 66 and 69. To illustrate this point, *Amazon* refers to *Schlumberger*, where the claims “were not saved by the fact that they contemplated the use of a physical tool, a computer, to give the novel mathematical formula a practical application”: *Amazon* at para 69.

- [31] The patentable subject-matter concerns regarding the well-known use of a computer to process an algorithm, illustrated by *Schlumberger*, are outlined in the factors set out in *PN2020–04* that may be considered when reviewing computer-implemented inventions, namely:
- 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, unpatentable subject-matter and prohibited by subsection 27(8) of the *Patent Act*;
 - a computer programmed to merely process an abstract algorithm in a well-known manner without more will not make it patentable subject-matter; and
 - if processing an algorithm improves the functionality of the computer, then the computer and the algorithm would together form a single actual invention that would be patentable.
- [32] The above factors and the general concerns around the well-known use of a computer to process new abstract algorithms can be seen to involve considerations of novelty or ingenuity. Canadian law does not prohibit considerations of the novelty or ingenuity of elements of a claim in considering patentable subject-matter and finds support in situations like that of *Schlumberger* where a known tool, a computer, is used to give an abstract mathematical formula a practical application: *Benjamin Moore* at paras 69 to 70, referring to *Amazon*. These considerations assist in the determination of the discovery or new knowledge, the method of its application and the actual invention (*Benjamin Moore* at para 89) that is ultimately measured against the physicality requirement.

[33] As noted in *Benjamin Moore* at para 94 (and similarly expressed in *Amazon* at para 61), the physicality requirement will likely not be satisfied without something more than only a well-known instrument, such as a computer, being used to implement an abstract method. The factors set out above from *PN2020-04* assist in determining whether something more is present.

Analysis

[34] The Preliminary Review letter, on pages 13 to 17, explained that in my preliminary view, claims 1 to 47 on file define unpatentable subject-matter, falling outside the categories of invention defined in section 2 of the *Patent Act* and prohibited by subsection 27(8) of the *Patent Act*:

The Summary of Reasons, on pages 2 to 3, explains that the claims on file define an actual invention that is not patentable subject-matter:

As is evident from the claims themselves and confirmed by reference to the rest of the specification considered in light of the relevant CGK, the data input, output and storage steps of the claims represent generic input, output, and storage steps of a computer-implemented process.

In such a case, all of the essential elements correspond only to the processing of data to obtain better results by means of a generic computer. It is therefore necessary to ascertain whether the computer-implemented steps/computer form part of the actual invention. There is no evidence that the functioning of the computer is being improved by applying rules for the prequalification of bidders bidding on a project utilizing a standardized format for the prequalification of applications. This merely relates to data input, manipulation, storage, and display of information. Therefore, the input, output and storage processing steps do not form part of a single actual invention. As the disclosure is focused on the forms, the information contained in the datasets, the approval and the ranking of bids; the actual invention is considered to be mere calculations, application of rules, and the storage and display of

information, which has no physical existence and does not manifest a discernible effect or change.

Claims 1–47 define an actual invention that is excluded subject-matter under subsection 27(8) of the *Patent Act* and is not patentable subject-matter.

Having reviewed the claims on file, I preliminarily consider “machine” or “manufacture” to be the most relevant category of invention for the systems of claims 1 to 8 and 26 to 47. The most relevant category for the methods of claims 9 to 25 would be “art.”

Starting with independent claim 1, in my preliminary view, the actual invention in this claim appears to be limited to an abstract algorithm for managing the prequalification process for construction projects comprising the following data manipulation steps and abstract rules:

- establishing communication with a first organization and receiving information related to the first organization, comprising a plurality of data items;
- storing the plurality of data items in a form library, allowing for their reuse in multiple prequalification applications;
- storing a request package listing a subset of data items required for a prequalification application for assessment by a second organization, facilitating the retrieval of necessary information for multiple organizations
- sending selectable options for controlling access to the subset of data items related to the first organization, the options include allowing or denying access to the data items in the form library based on the first organization's preferences;
- generating a first aggregated data document by populating a prequalification template with the subset of data items when the option of allowing access to the data items is selected;

- communicating the first aggregated data document to the first organization for display and confirmation through a signature;
- communicating the data items to a second organization for review and rating in response to receiving the signature from the first organization;
- generating a final aggregated approval document based on the received ratings of each data item, and upon approval by the second organization, assigning a score and prequalification indication to the first organization; and
- storing the assigned score and prequalification indication, indicating that the first organization is approved to submit bids to the second organization for construction projects.

Although claim 1 recites various computer-related elements, such as a server including a processor and a computer-readable memory that stores computer-executable instructions, the mere fact that these elements are essential elements does not necessarily mean that the claimed invention is directed to patentable subject-matter.

As noted in the Summary of Reasons, there is no suggestion in the specification that the claimed computer-related elements represent anything other than generic computer components. Likewise, there is no suggestion in the specification that the claimed computer-related steps performed by these elements represent anything other than well-known functions of generic computer components, or that the functioning of the computer is being improved by applying rules for managing the prequalification process.

As stated in *Benjamin Moore* at para 94, “if the only new knowledge lies in the method itself, it is the method that must be patentable subject matter. If, however, the new knowledge is simply the use of a well-known instrument (a book or a computer) to implement this method, then it will likely not fall under the definition found at section 2 without something more to meet the requirement described at paragraph 66 of *Amazon*”. In the present case, the computer elements as claimed are merely being used to make the kind of

generic data manipulations they are known to make: see *Schlumberger*. There is nothing in claim 1 to suggest that the computer elements are used beyond well-known generic data processing operations. Therefore, it is my preliminary view that the “new knowledge” or “discovery” does not include the computer implementation, and the computer elements do not form part of the actual invention.

In my preliminary view the actual invention of claim 1 is limited to an abstract construction project prequalification algorithm comprising abstract rules for effectuating prequalification between multiple organizations in the construction industry and for managing the bidding process, which is akin to an abstract idea that does not satisfy the physicality requirement as set out in *Amazon* and *PN2020–04*.

Independent claim 9 is similar to claim 1, but the data items from the first organization are compared to minimum requirements for candidates for prequalification set by a second organization before approval to submit bids. In my preliminary view, these steps also represent an abstract construction project prequalification algorithm that make up the actual invention of this claim.

Independent claim 26 is also similar to claim 1, but includes a mapping file to identify a participant associated with the second organization that can approve each of the data items included in the first aggregated data document. In my preliminary view, variations in the abstract information and steps used in the construction project prequalification algorithm do not change the nature of the actual invention.

Furthermore, in my preliminary view, the additional features recited in dependent claims 2 to 6, 8, 10 to 19, 22, 23, 25, 27 to 42 and 45 to 47 represent variations in the parameters of the construction project prequalification algorithm which do not change the nature of the actual invention. Likewise, claims 7, 20, 21, 24, 43 and 44 specify the use of generic computer-related components which, in my preliminary view, does not change the nature of the actual invention. Therefore, it is my preliminary

view that the dependent claims do not add any features that would satisfy the physicality requirement and render the claims patentable.

In light of the above, it is my preliminary view that, although claims 1 to 47 on file appear on their face to be directed to patentable categories of invention, the actual inventions of these claims are in fact directed to a series of abstract data manipulations and rules that have no physical existence and do not fit within any category of invention in section 2 of the *Patent Act*. Furthermore, since the abstract data operations and rules are akin to a “mere scientific principle or abstract theorem,” they are also prohibited from patentability by subsection 27(8) of the *Patent Act*.

- [35] In the absence of submissions from the Applicant, I conclude that, for the reasons set out above from the Preliminary Review letter, although claims 1 to 47 on file appear on their face to be directed to patentable categories of invention, the actual inventions of these claims are in fact directed to a series of abstract data manipulations and rules that have no physical existence and do not fit within any category of invention in section 2 of the *Patent Act*. Furthermore, since the abstract data operations and rules are akin to a “mere scientific principle or abstract theorem,” they are also prohibited from patentability by subsection 27(8) of the *Patent Act*.

RECOMMENDATION OF THE BOARD

[36] In view of the above, I recommend that the application be refused on the grounds that:

- claims 1 to 47 on file encompass subject-matter outside the definition of invention and do not comply with section 2 of the *Patent Act*; and
- claims 1 to 47 define subject-matter prohibited by subsection 27(8) of the *Patent Act*.

Christine Teixeira

Member

DECISION OF THE COMMISSIONER

[37] I agree with the findings of the Patent Appeal Board and its recommendation to refuse the application on the grounds that:

- claims 1 to 47 on file encompass subject-matter outside the definition of invention and do not comply with section 2 of the *Patent Act*; and
- claims 1 to 47 define subject-matter prohibited by subsection 27(8) of the *Patent Act*.

[38] 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 23rd day of May, 2024.