

Citation: Brink's Network, Inc (Re), 2024 CACP 15
Commissioner's Decision #1674
Décision du commissaire n° 1674
Date: 2024-07-04

TOPIC: C00 Disclosure—Adequacy or Deficiency of Description
J00 Subject Matter of Applications—Meaning of Art
J10 Subject Matter of Applications—Computer Programs
O00 Obviousness

SUJET : C00 Divulgence—Caractère adéquate ou inadéquat de la description
J00 Objet des demandes—Signification de la technique
J10 Objet des demandes—Programmes d'ordinateur
O00 Évidence

Application No. 2693164
Demande n° 2 693 164

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

Patent application number 2693164, 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:

Bereskin & Parr LLP/SENCRL, srl
40th floor, Scotia Plaza
40 King Street West
Toronto, Ontario
M5H 3Y2

INTRODUCTION

- [1] This recommendation concerns the review of rejected Canadian patent application number 2693164, which is entitled “PROCESS OF AND SYSTEM FOR ADVANCING CREDIT FOR CASH COLLECTIONS” and is owned by BRINK'S NETWORK, INC. 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) (“*Patent Rules*”). As explained in more detail below, the Board’s recommendation is that the Commissioner of Patents refuse the application on the basis that the claims on file would have been obvious and that the description is non-compliant with the *Patent Rules*.

BACKGROUND

The application

- [2] The instant application was filed under the provisions of the *Patent Cooperation Treaty* and has an effective filing date in Canada of July 24, 2008. It was laid open to public inspection on February 5, 2009.
- [3] The instant application relates to a process for providing bank credit to retailers for cash that is collected during a time period. Rather than a retailer only being credited for the collected cash after it has been deposited at a bank, the disclosed process provides for a retailer to be advanced credit based on the cash that has been deposited into an electronic safe at a retailer location. Credit is advanced based on data files transmitted to the bank indicating the amount of cash collected. Credit may be later adjusted based on any discrepancies between the advanced credit amount and the amount actually received by the bank.

Prosecution history

- [4] On September 6, 2019, a Final Action (“FA”) was written pursuant to subsection 30(4) of the *Patent Rules* (SOR/96-423) as they read immediately before October 30, 2019. The FA stated that the application is defective on the grounds that:
- claims 1-17 on file at the time of the FA (“claims on file”) encompass subject matter that lies outside the definition of “invention” and do not comply with section 2 of the *Patent Act* (based on office practice that has now been superseded by that set out in “Patentable Subject-Matter under the *Patent Act*” (CIPO, November 2020) [PN2020-04]); and
 - claims 1-17 would have been obvious and do not comply with section 28.3 of the *Patent Act*.
- [5] In a March 4, 2020 response to the FA (“R-FA”), the Applicant provided a proposed set of amended claims 1-17 (“proposed claim set-1”) and provided arguments in favor of patentability.
- [6] As the Examiner considered the application not to comply with the *Patent Act* and *Patent Rules*, pursuant to subsection 199(3)(c) of the *Patent Rules*, the application was forwarded to the Board for review on May 27, 2020 along with an explanation outlined in a Summary of Reasons (“SOR”). The SOR indicated that the claims on file were still considered to be directed to subject matter that is non-statutory and that would have been obvious. With respect to proposed claim set-1, the SOR indicated that while it would overcome the non-statutory subject matter defect, it would not overcome the obviousness defect and would introduce a lack of support defect in the claims.
- [7] In a letter dated May 29, 2020, the Board forwarded to the Applicant a copy of the SOR and requested that the Applicant confirm their continued interest in having the application reviewed.

- [8] In a response to the SOR dated August 21, 2020 ("R-SOR"), the Applicant confirmed continued interest in having the application reviewed.
- [9] The undersigned Panel was assigned to review the instant application and to make a recommendation to the Commissioner of Patents as to its disposal.
- [10] In a Preliminary Review letter ("PR letter") sent April 16, 2024, the Panel set out its preliminary analysis of the outstanding issues. In particular, the Panel was of the preliminary view that:
- Claims 1-17 on file are directed to patentable subject matter that complies with section 2 and subsection 27(8) of the *Patent Act* (based on the latest practice guidance set out *PN2020-04*);
 - Claims 1-17 on file would have been obvious to the skilled person in view of the prior art and the relevant common general knowledge and are therefore non-compliant with section 28.3 of the *Patent Act*; and
 - The description is non-compliant with subsections 57(1) and (2) of the Patent Rules (a defect newly noted by the Panel).
- [11] The Panel was of the preliminary view that proposed claim set-1 was also compliant with section 2 and subsection 27(8) of the *Patent Act*, would have been obvious and therefore non-compliant with section 28.3 of the *Patent Act*, and would introduce impermissible new matter to the claims, contrary to section 38.2 of the *Patent Act*.
- [12] The PR letter provided the Applicant with an opportunity to make both written and oral submissions.
- [13] The Applicant requested and received a two week extension to the deadlines set out in the PR letter. In a telephone conversation on May 23, 2024, the agent for

the Applicant confirmed that no oral hearing would be required but that written submissions may be made by the extended deadline for making them.

- [14] In a submission dated May 30, 2024 (“R-PR”), the Applicant provided an amended set of proposed claims 1-17 (“proposed claim set-2”) to address the potential impermissible new matter defect, proposed amendments to the description, and provided further argumentation to support the non-obviousness of the claims.
- [15] Having considered the submissions and proposed amendments in the R-PR, the Panel’s final analysis of the issues is provided below.

ISSUES

- [16] The issues to be addressed in this final review are whether:
- Claims 1-17 on file are directed to patentable subject matter that complies with section 2 and subsection 27(8) of the *Patent Act*;
 - Claims 1-17 on file would have been obvious to the skilled person in view of the prior art and the relevant common general knowledge and are therefore non-compliant with section 28.3 of the *Patent Act*; and
 - The description is non-compliant with subsections 57(1) and (2) of the *Patent Rules*.
- [17] After considering the claims on file and the description, we review proposed claim set-2 submitted with the R-PR, as well as the proposed amendments to the description to determine if they would be considered necessary amendments under subsection 86(11) of the *Patent Rules*.

CLAIM CONSTRUCTION

Legal principles and Office practice

- [18] 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*]).
- [19] In accordance with *Free World Trust* 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 an element is essential depends on the intent expressed in or inferred from the claim, and on whether it would have been obvious to the skilled person that a variant has a material effect upon the way the invention works.
- [20] *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).

Analysis

The person skilled in the art

- [21] In the PR letter at pages 3-4, we set out our preliminary view of the person skilled in the art, adopting the characterization in the FA, but supplementing it with an additional profile:

In the FA at page 2, the person skilled in the art was described as:

a team of business managers and computer programmers.

The above characterization was not disputed in the R-FA.

Given that the subject matter of the described and claimed invention involves processes such as credit allocation and credit adjustment/reconciliation based on deposit verification, in our preliminary view, the person skilled in the art should also include, as part of the team identified above, someone familiar with basic accounting principles.

- [22] The Applicant did not offer any comments in the R-PR in respect of the above. We therefore proceed on this basis.

The relevant common general knowledge

- [23] At pages 4-6 of the PR letter, we set out our preliminary view as to the relevant points of CGK, which included that taken from the FA as well as further points identified by the Panel:

The FA at page 2 indicated that the relevant CGK was illustrated by the background discussions in prior art documents D2, D4, D5 and D8, identified below, as well as the background discussion of the instant application:

D2: US 7216098 B1 May 8, 2007 Brooks et al.

D4: Internet Archive of applicant's website as captured on June 8, 2004
https://web.archive.org/web/20040608083944/http://www.us.brinksinc.com:80/compusafeservice/how_it_all_works.htm

D5: US 6067530 A May 23, 2000 Brooks et al.

D8: Wikipedia entry for "Automated Cash Handling," July 13, 2007

<https://en.wikipedia.org/w/index.php?title=Automated%20cash%20handling&oldid=144428678>

According to the FA at page 3, the relevant CGK would include:

- Knowledge of the day-to-day operational aspects of running a retail business, including managing accounts receivables, accounts payables and the need to ensure adequate liquidity for continued operations of said retail business;
- ensuring that a variety of funding sources were utilized to maintain adequate liquidity, including cash on hand, and available equity and lines of credit, along with associated security risks for each means of funding;
- knowledge of various cash management systems that provide for a more efficient and secure means of handling cash maintained at a particular retail site;
- knowledge of secured drop safe or cashbox on-site facilities used in the retail establishment space;
- knowledge that automated cash handling in retail applications would be performed through specially designed hardware and software (including cash acceptors/validators) for the purposes of loss prevention, theft deterrence and reduced management time for oversight of cash drawer operations;
- knowledge that certain automated cash handling systems allowed for networking and remote operation (dispensing, counting, reporting), and that remote operation of automated cash handling equipment would facilitate cost savings and efficiency by centralizing all cash related activity to one location that could remotely monitor and control cash operations;
- knowledge of the capability of transmitting reports with tabulated on-site cash amounts to a central server; and

- knowledge of standard networking architectures, tailoring of software applications to meet specific retail operational requirements, database programming, as well as common computing equipment hardware.

The Applicant did not dispute the above characterization of the relevant CGK in the R-FA.

To the above CGK, we would add that as described at page 10 of the instant application, electronic data transmission and encryption, as well as the hardware/software capable of carrying out such transmission and encryption, were well-known.

Further, given that the person skilled in the art would have had an accounting background and been knowledgeable of day to day operational aspects of running a retail business, it is also our preliminary view that such a person would have had knowledge of accounting techniques for tracking credit advanced to such a retail business.

We would also add the common knowledge of exemplary safes that may be used to implement the claimed process and system such as the Brink's CompuSafe 4000® safe, referred to in the instant application at paragraphs [0031] and [0061] and shown in Figure 3.

As set out in paragraph [0031], such a safe is capable of recognizing the denomination of currency and can accumulate cash deposit totals over a period of time, such as a business day. Bill acceptors accept cash and transfer it into sealed cassettes. Deposit reports are produced identifying the contents of the cassettes by denomination, total case deposit and other information.

At paragraph [0061], the Applicant describes business day reporting in the context of safes that may be used to implement the claimed process and system, that such safes produce reports that identify cash collections broken out by each partial business day and each full business day. The Applicant states that:

safes with such capability, such as the Brink's CompuSafe 4000® safe, may be employed within the present invention to provide the above-described additional feature of allocating and reporting credit on a business day basis.

The Applicant does not assert anywhere to have invented, as part of the instant application, the kind of safes that may be used to implement the claimed process and systems. We acknowledge of course that the particular safe referred to, the Brink's CompuSafe 4000® safe, is a past invention of the Applicant. However, in light of the manner in which such safes are described in the application, it is our understanding that they were well known at the claim date and that the functions described in association with them may be taken to have been part of the CGK. As set out in the quoted passage above, the Brink's CompuSafe 4000® safe is disclosed as an example of such safes and in our view, may be taken as representative of the type of safe that may be used.

We would also add to the relevant CGK, the disclosure in the "BACKGROUND OF THE INVENTION" section of D2 of traditional operators of cash deposit safes completing deposit tickets when removing cash from a safe. The deposit ticket includes information regarding the cash removed and is transported with the cash to a bank. Upon receipt of the cash, the bank reconciles the actual cash transported with what is indicated in the deposit ticket.

- [24] The Applicant did not offer any comments in respect of the relevant CGK in the R-PR. We therefore proceed on the basis of the relevant CGK set out above.

The claims on file

- [25] The instant application contains five independent claims 1, 6, 9, 11 and 15.
- [26] Independent claim 1 is directed to a process for providing credit to a retailer for cash collections, a process that uses a safe at the retailer location, which includes a bill acceptor to accept cash and determine the denomination of the

cash. The safe uses the bill acceptor to total the amount of cash collected and produces a data file that is transmitted externally such that the retailer may be credited for the cash before it is actually deposited at the bank. After the cash is later transferred to a facility and the amount deposited has been verified, the prior credit amount may be adjusted if necessary, such adjustments being tracked and such tracking including the identify of the creator of the deposit and the identity of personal at the facility that later handled the deposit.

[27] Independent claims 6, 9 and 11 recite a similar process as that of claim 1, with some variations such as where the data file is transmitted, the details of the data file and the process being applied to multiple retail locations at the same time. Independent claim 15 is directed to a system for providing credit to a retailer for cash collections, the system including safes of the type set out in the process claims, as well as the safes and a facility performing the types of process steps set out in the other independent claims.

[28] We take claim 1 on file as representative of the claimed subject matter:

1. A process for providing credit to a retailer for cash collections, comprising the steps of:

collecting cash by a retailer over a plurality of business days;

depositing by the retailer the collected cash into a safe disposed at the retailer, the safe including a bill acceptor for accepting the cash and for determining the denomination of the cash;

calculating, by a processor of the safe, at an end of day for each of the business days, a total amount of cash deposited into the safe between the end of day of a business day preceding the respective business day and the end of day for the respective business day;

electronically transmitting, at the end of day of each of the business days, a respective data file identifying the respective calculated total amount;

arranging, on each of the business days, for the retailer to be credited by a bank with the respective calculated total amount identified in the respective electronically transmitted data file;

transferring the cash deposited into the safe to a facility;

verifying at the facility the amount of cash to produce a verified amount;

adjusting the credit previously provided to the retailer based on differences, if any, between the verified amount and the calculated total amount of cash deposited into the safe as identified in the transmitted data file; and

tracking adjustments of credit to the retailer and storing the tracked adjustments in a database,

wherein the step of tracking includes tracking an identity of a creator of a deposit or deposits corresponding to each adjustment and tracking an identity of a facility personnel handling the deposit or deposits at the facility, and storing the tracked identities in the database.

- [29] As we stated in the PR letter at page 7, there have been no issues raised during the prosecution of the instant application in regard to the meaning or scope of any of the terms used in the claims on file. We proceed on the basis that the meaning and scope of the claims would have been clear to the skilled person.

The essential elements

- [30] At page 7 of the PR letter, we indicated that, based on the updated practice guidance set out in *PN2020-04*, all the elements of the claims are considered to be essential for the purposes of our analyses:

The FA presented at pages 2-4 an analysis of the purposive construction of the claims on file in accordance with a previous office practice, now superseded by *PN2020-04*.

With respect to the claims on file, 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.

Therefore, in our preliminary view, in accordance with *PN2020-04*, all the elements of the claims on file are considered to be essential.

[31] The Applicant did not comment on the above position in the R-PR and we therefore proceed on that basis.

PATENTABLE SUBJECT MATTER

Legal principles and Office practice

[32] 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.

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

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

[34] *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.

- [35] 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) [*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).
- [36] *Amazon* at para 44 tells us 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*.
- [37] This sentiment is expressed in the position of the *Amazon* Court 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 discernable effect or change (*Amazon* at paras 66 and 69). To illustrate this point, *Amazon* referred 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).
- [38] The patentable subject matter concerns regarding the well-known use of a computer to process an algorithm, illustrated by *Schlumberger*, are expressed 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.

[39] 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 69-70, 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.

[40] As noted in *Benjamin Moore* at para 94 (and similarly expressed in *Amazon* at para 61), the physicality requirement will not likely be satisfied without something more than only a well-known instrument, such 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

[41] At pages 9-10 of the PR letter, we set out our preliminary analysis as to why claims 1-17 on file comply with both section 2 and subsection 27(8) of the *Patent Act* and are therefore directed to patentable subject matter:

In our preliminary view, claims 1-17 on file are directed to subject matter that satisfies the "physicality requirement" that is implicit in the definition of "invention" (*Amazon* at paras 65 and 66) and is therefore compliant with section 2 and subsection 27(8) of the *Patent Act*.

Each of independent claims 1, 6, 9, 11 and 15 include, as part of the claimed process or system, the use of a safe at a retailer location, a safe which includes a bill acceptor for accepting physical cash, the bill acceptor also determining the denomination of the deposited cash. While the safe does include a processor that performs abstract calculations, such as the total amount of cash deposited over a time period, and does perform other functions of a generic computer, such as transmitting information over a network, in our preliminary view such a device cannot be characterized as a generic computer processing an algorithm in a well-known manner. The safe is a specialized device with components that are not part of a generic computer system, namely a bill acceptor with the aforementioned functionality.

The bill acceptor and its associated functionality cooperate with the other functions of the safe, such as the calculation of total cash deposited over a time period and transmission of deposit information over a network, and forms part of the actual invention of the independent claims.

Therefore, the use of the safe in the claims on file is not, in our view, similar to the use of a generic computer to perform calculations in an expected manner, as was

the case in *Schlumberger*. It is more than a well-known instrument, such a computer, being used to implement an abstract method (*Benjamin Moore* at para 94, similarly expressed in *Amazon* at para 61). The claims on file therefore define an actual invention that has physical existence and that manifests a discernible physical effect or change (*Amazon* at paras 66 and 69).

[42] The Applicant acknowledged but did not provide any comments on the above preliminary view of the claims on file in the R-PR.

[43] For the reasons in the PR letter, quoted above, we conclude that claims 1-17 on file are directed to subject matter that satisfies the "physicality requirement" that is implicit in the definition of "invention" (*Amazon* at paras 65 and 66) and is therefore compliant with section 2 and subsection 27(8) of the *Patent Act*.

OBVIOUSNESS

Legal principles

[44] Section 28.3 of the *Patent Act* sets out the legislative requirement that claimed subject matter 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.

[45] In *Apotex Inc v Sanofi–Synthelabo Canada Inc*, 2008 SCC 61 [*Sanofi*], the Supreme Court of Canada stated that it is useful in an obviousness inquiry to follow the following four-step approach, which we use below in our analysis:

- (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

[46] In the PR letter at pages 11-16, we set out our preliminary obviousness analysis. It was our preliminary view that claims 1-17 on file would have been obvious in view of prior art document D2 and the relevant CGK:

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

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

The relevant CGK has also been identified under the Purposive Construction analysis. In our preliminary 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

In this assessment we have taken into account all the essential elements of the claims on file. In our preliminary view, the combination of essential elements of each claim also represent their inventive concepts. This is consistent with the approach taken in the FA where all of the elements of representative claim 1 were set out as representing its 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

We begin our assessment with claim 1 on file. Below we provide a table comparing the elements of claim 1 to those of prior art document D2.

Elements of Claim 1	Corresponding disclosure of D2
1. A process for providing credit to a retailer for cash collections, comprising the steps of:	
collecting cash by a retailer over a plurality of business days;	Col. 1, line 61-col. 2, line 1: cash control system for collecting cash over an accounting period (e.g., a business day). Cash is continually collected, but reports are produced at the end of each

	business day (see e.g., col. 5, lines 51-53).
depositing by the retailer the collected cash into a safe disposed at the retailer, the safe including a bill acceptor for accepting the cash and for determining the denomination of the cash;	Col. 1, lines 61-67: "The cash control system includes a safe assembly including a safe for securing cash and a currency reader coupled to the safe for determining the amount of cash received in the safe. A central control unit is configured to receive deposit information from the safe assembly and to generate and transmit deposit reports concerning deposit information accumulated during an accounting period". See also col. 4, lines 3-15 and Figure 1, feature 7n.
calculating, by a processor of the safe, at an end of day for each of the business days, a total amount of cash deposited into the safe between the end of day of a business day preceding the respective business day and the end of day for the respective business day;	See col. 1, line 61-col. 2, line 1, quoted above. Reports produced over an accounting period, e.g., a business day. See also col. 8, lines 64-66: information regarding cash deposited during the day transmitted to a cash information server and col. 5, lines 51-59.
electronically transmitting, at the end of day of each of the business days, a respective data file identifying the respective calculated total amount;	See above reference to col. 8, lines 64-66. See also col. 5, line 65- col. 6, line 6.
arranging, on each of the business days, for the retailer to be credited by a bank with the respective calculated total amount identified in the respective electronically transmitted data file;	See col. 11, lines 4-14: "In another example, the bank may use the cash information to allow immediate authorization or use of the cash withdrawn from the business establishment, before the cash is deposited in the bank..."
transferring the cash deposited into the safe to a facility;	See above passage, as well as col. 7, lines 37-50, col. 9, lines 10-12, col. 10, lines 34-37.
verifying at the facility the amount of cash to produce a verified amount;	See col. 10, lines 34-58 and discussion of an auditing agent.
adjusting the credit previously provided to the retailer based on differences, if any, between the verified amount and the calculated	While D2 does disclose verification of the amount of cash that is picked up at a business establishment and/or reconciliation with what was deposited

total amount of cash deposited into the safe as identified in the transmitted data file; and	into a bank, as well as the allocation of credit to a business before the cash is removed from a safe or after removal and before deposit into a bank, D2 does not discuss any credit adjustment based on the verification and reconciliation.
tracking adjustments of credit to the retailer and storing the tracked adjustments in a database,	Since D2 does not discuss credit adjustments, it does not discuss tracking them. D2 does disclose tracking of cash deposits to the safe based on the individual that made the deposit (col. 4, lines 25-45). D2 also discloses reconciliation of store cash receipts and/or verification of bank deposits (D2 at col. 10, line 65-col. 11, line 3, as well as col. 10, lines 34-58 and discussion of an auditing agent).
wherein the step of tracking includes tracking an identity of a creator of a deposit or deposits corresponding to each adjustment and tracking an identity of a facility personnel handling the deposit or deposits at the facility, and storing the tracked identities in the database.	As discussed above, D2 discloses tracking of individuals that make deposits into the safes. D2 also discloses tracking the identity of the armored service that makes pickups from the safe (D2 at col. 9, lines 34-38). However, since D2 does not disclose adjusting the credit allocated to a retailer, it does not disclose tracking any adjustments, nor the details of it.

In light of the differences identified above in respect to the last three elements of claim 1 on file, we preliminarily agree with the differences identified at page 8 of the FA.

These differences are common to the other independent claims 6, 9, 11 and 15.

With respect to any additional difference in respect of the dependent claims, we assess these at step 4 of *Sanofi* as needed.

(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?

The FA refers to prior art document D4 and the relevant CGK as filling the gap between D2 and the inventive concept of claim 1 on file.

D4 is a disclosure by the Applicant that discusses the features of a CompuSafe® unit. As discussed at the bottom of page 8 to the top of page 9 of the FA, D4 discloses that with use of this safe, discrepancies between what is actually deposited into the safe and what is recorded on the content report at pick-up should be virtually eliminated. Exceptions would be deposited unfit currency in envelope drops or checks. Verification of picked up deposits is performed by currency room employees and thereafter deposit information can be electronically transmitted to a bank.

In our preliminary view, while the D4 document is consistent with what was disclosed by D2, it does not disclose any significant features over and above those disclosed by D2.

Nonetheless, it is our preliminary view that claim 1 on file would have been obvious to the person skilled in the art in light of D2 and the relevant CGK for the following reasons.

As discussed above at *Sanofi* step 3, D2 discloses the collection of cash deposits at a safe, recording of those deposits, transmission of that information to a bank and the allocation of credit for the deposits, either before the deposits are picked up from a retailer, or after pickup has occurred but before the deposit is transferred to the bank. D2 also clearly discloses the verification of the deposit amounts after pickup and reconciliation of amounts with what is actually deposited into the bank.

Taking the extra step of adjusting the credit allocated to a retailer based on a difference between the amount initially reported to the bank based on information produced by the safe, and the amount verified at the facility where the cash is transferred to, would have been a very logical and obvious step to the skilled person. Business managers familiar with basic accounting principles, that are part of the definition of the person skilled in the art, would have been well aware that if a retailer was allocated more credit than warranted by a bank, that bank would either

adjust the allocated amount based on any discrepancy between that initially allocated and verified cash deposits, or, if the credit had for some reason already been used, ensure that any excess amount was collected from the retailer in some other way. The person skilled in the art would not have expected the bank to take no action if excess credit was allocated, in the same way that a member of the public would not expect a bank to take no action if the amount recorded at an ATM deposit did not match that later verified by a bank employee.

Since it is our preliminary view that adjusting credit amounts would have been obvious, it is also our preliminary view that tracking those adjustments would also have been obvious for reporting purposes.

Given that D2 discloses tracking of the employees that make deposits to the safes, as well as tracking of the armored services that pick up the deposits, it is our preliminary view that tracking the identification of personnel associated with any credit adjustments would also have been obvious. Any credit adjustment would be linked with a particular deposit, which was already linked with retailer personnel and armored service personnel, hence tracking of employees that made the initial deposit in the safe and the associated armored service.

In light of the above reasons, it is our preliminary view that claim 1 on file would have been obvious.

We are also of the preliminary view that the subject matter of the other independent claims would have been obvious as well in light of D2 and the relevant CGK, given the minor variations between them.

With particular regard to independent claims 11 and 15, D2 at col. 8, lines 23-46 discusses an embodiment comprising multiple safe assemblies connected to a host safe assembly, the host safe assembly collecting deposit reports from the multiple safe assemblies to create a combined deposit report. In this way, D2 discloses multiple safes each transmitting deposit reports to a central facility, which reports are used to allocate credit.

Regarding dependent claims 2, 3 and 12, D2 at col. 11, lines 4-14 discloses allocating credit to a business both before any cash in the safe is picked up and after pickup but before the cash is deposited into a bank.

Regarding dependent claim 4, D2 at col. 1, line 61-col. 2, line 1 discusses the cash control system for collecting cash over an accounting period (e.g., a business day) with cash being continually collected, but reports being produced at the end of each business day (see e.g., col. 5, lines 51-53).

Regarding claims 5 and 14, D2 discloses possible immediate authorization of credit for cash not yet deposited in the bank. D2 also discloses the possible authorization of credit based the daily deposit reports. With the first possibility, D2 does not set limits on when the authorization can be given and presumably authorization for cash not yet deposited could occur whenever cash is picked up from the business, which could possibly occur more frequently than once a day, depending on business volume and pickup scheduling. It is therefore our preliminary view that allocating credit multiple times in a day would have been obvious in view of D2 and the relevant CGK.

Regarding dependent claims 7 and 8, D2 discloses at col. 9, lines 10-15, the possibility of an armored service pickup occurring during the day after cash has been collected over a period of time. Given that D2 does not limit the pickups to occurring at the end of a business, variation on pickup is clearly contemplated. As such, the variability specified in claims 7 and 8 would have been within the discretion of the skilled person in implementing the processes disclosed in D2, based on particular business scheduling and requirements.

Regarding dependent claim 10, since D2 discloses the authorization of credit for cash deposits, be it before or after cash is picked up by an armored service, any records of deposited cash would represent a report on allocated credit. In addition, a bank would undoubtedly produce a some kind of receipt for the record of cash deposits transmitted to it that are used to allocate credit to a business. We are therefore of the preliminary view that the subject matter of claim 10 would have been obvious as well.

Regarding dependent claim 13, as discussed above in relation to claims 11 and 15, D2 at col. 8, lines 23-46 discusses an embodiment comprising multiple safe assemblies connected to a host safe assembly, the host safe assembly collecting deposit reports from the multiple safe assemblies to create a combined deposit report. In this way, D2 discloses multiple safes each transmitting deposit reports to a central facility, which reports are used to allocate credit. Given that multiple safe assemblies may communicate with a host safe assembly, such safe assemblies could be in different time zones depending on the nature of the business involved. In such circumstances, the end of a business day would be different in the different time zones, corresponding to a different accounting period (D2 at col. 1, line 64-col. 2, line 1 referring to an example accounting period). For these reasons, we are of the preliminary view that claim 13 would have been obvious.

Regarding dependent claims 16 and 17 and the additional feature of tracking a previous credit allocated for each case of adjustment, it is our preliminary view that this would have been obvious. Given that the subject matter of claim 10 would have been obvious, namely that of producing reports to a retailer of allocated credit, records would necessarily have been kept of such reports that were linked to particular deposits. Since we were also of the preliminary view that the tracking of any credit adjustments would have been obvious, the records of any such credit adjustments would have been associated with particular deposits, which themselves would have been associated with any credit reports as well.

We have reviewed the Applicant's submissions in the R-FA regarding obviousness. However, they focus on the additional features that are part of the proposed claims submitted with the R-FA. We address these arguments below as part of our consideration of the proposed claims.

[47] In the R-PR at page 4, the Applicant asserted that none of the prior art documents, alone or in combination, describe or suggest:

adjusting the credit previously provided to the retailer based on differences, if any, between the verified amount and the calculated total amount of cash deposited into the safe as identified in the transmitted data file. [Emphasis in R-PR]

- [48] The adjustment of “credit” has been emphasized by the Applicant in the above quoted passage presumably since, as discussed in the PR letter, D2 does disclose verification of the amount of cash picked up at a business and/or reconciliation with what was deposited into a bank. As such, D2, while not disclosing adjustment of allocated “credit” based on differences between the calculated amount from the safe and what is deposited into the bank, does disclose adjustment/reconciliation of the cash records themselves based on those same differences (D2 at col. 10, lines 34-58), the same cash records that would have been used in D2 to initially allocate credit to the business, as discussed in the PR letter and below.
- [49] The PR letter quoted above set out that D2 disclosed the provision of credit to a business for cash removed from the safe but not yet deposited in the bank, or for cash that is still in the safe, based on the daily reports generated from the safe (D2 at col. 11, lines 4-13). This option was presented in D2 after the abovementioned discussion of the adjustment/reconciliation of the cash records. While it was not additionally clarified that if this option was exercised, the allocated credit based on the reports generated from the safe would then have to be adjusted/reconciled, it was our preliminary view in the PR letter that this would have been a logical and obvious step to take for the skilled person.
- [50] As we stated in the PR letter at page 14, it would have been obvious to the skilled person at the time that if a bank had allocated, e.g., excess credit, to a business based on inaccurate cash records, that bank would want to correct the allocated credit, which, per D2, was directly related to the cash reported to have been received by the safe. In the same way that D2 discloses reconciliation of the cash records if there is a difference between what is reported by a safe and what is deposited in the bank, in our view, it would have been obvious to the

skilled person that reconciliation of the allocated credit versus what should have been allocated should take place as well.

- [51] In the R-PR at page 4, the Applicant suggests that the Panel is generalizing in taking the position that it would be obvious to the skilled person that the bank would check the actual cash deposit against the credit provided and make the necessary adjustment.
- [52] In our view, in the same way that the auditing agent of D2 (col. 10, lines 34-37) performs verification/reconciliation to ensure that the cash picked up by an armoured car service from the business corresponds to what is deposited in the bank, so too would the bank want to verify that the allocated credit corresponds to the actual cash amount received, and reconcile any differences from the amount initially provided in the reports sent from the safe on which the allocated credit was based (the reports being in the form of emails and corresponding to the transmitted data file of the claims).
- [53] Contrary to the Applicant's assertion in the R-PR, it is our view that the motivation to adjust credit previously provided to a business in D2 would have been evident both from D2 itself and the relevant CGK. Reconciliation is explicitly disclosed in relation to the cash reports transmitted from the safe, the reports that are themselves initially used to allocate credit. Also, the skilled person's CGK of general accounting practices would have included being aware that if credit was allocated based on a reported cash amount and that amount was later determined to be inaccurate, the allocated credit would more than likely be adjusted.
- [54] In view of the above, we conclude that claims 1-17 on file would have been obvious to the skilled person in view of D2 and the relevant CGK and are therefore not compliant with section 28.3 of the *Patent Act*.

DESCRIPTION REQUIREMENTS

Legal principles

[55] Subsections 57(1) and (2) of the *Patent Rules* specifies that:

No incorporation by reference

57(1) The description must not incorporate any document by reference.

No reference to certain documents

57(2) The description must not refer to a document that does not form part of the application for a patent unless the document is available to the public.

Analysis

[56] In the PR letter at page 16, we set out our preliminary view that the description of the instant application was non-compliant with subsections 57(1) and (2) of the *Patent Rules*:

The instant application at paragraph [0049] incorporates by reference a previously file[d] foreign patent application owned by the Applicant and is therefore non-compliant with subsection 57(1) of the *Patent Rules*.

Further, at paragraphs [0049] and [0052] of the instant application the serial number of a co-pending foreign patent application is set out, but the country of origin has not been specified. In order to determine if the document is available to the public, per the requirements of subsection 57(2) of the *Patent Rules*, its country of origin must be specified.

[57] The Applicant did not contest our preliminary view of these defects and provided proposed amended pages of the description to correct them.

[58] In view of the above, we conclude the description of the instant application is not compliant with subsections 57(1) and (2) of the *Patent Rules*.

PROPOSED AMENDMENTS

Proposed claim set-2

[59] With the R-PR, the Applicant submitted proposed claim set-2, which includes changes proposed in proposed claim set-1, but also addressed the impermissible new matter defect identified in the PR letter.

[60] Below we review each of the defects identified in the claims on file and how proposed claim set-2 addresses them.

[61] In respect of purposive construction, we see no issues in respect of the meaning or scope of any of the terms used in proposed claim set-2. We proceed on the basis that the meaning and scope of these proposed claims would have been clear to the skilled person.

[62] Further, it is our preliminary view that the person skilled in the art would understand that there is no use of language in any of the claims of proposed claim set-2 indicating that the elements in each claim are optional, alternatives or a preferred embodiment. We therefore consider all the elements of these proposed claims to be essential.

Patentable subject matter

[63] As with the claims on file, proposed independent claims 1, 6, 9, 11 and 15 of proposed claim set-2 all include the use of a safe at a retailer location, a safe which includes a bill acceptor for accepting physical cash, the bill acceptor also determining the denomination of the deposited cash.

[64] Therefore, it is our view that proposed claim set-2 is directed to subject matter that satisfies the "physicality requirement" that is implicit in the definition of "invention" (*Amazon* at paras 65 and 66) and is therefore compliant with section 2 and subsection 27(8) of the *Patent Act*.

New matter/lack of support

[65] In the PR letter at pages 17-19, we set out why, in our preliminary view, the lack of support issue identified in the SOR was better addressed as one of compliance with the provisions of section 38.2 of the *Patent Act*, which deal with the addition of matter to the specification. We also set out our preliminary view that proposed claim set-1 included impermissible new matter.

[66] With the submission of proposed claim set-2, proposed claims 1, 6, 9, 11 and 15 no longer contain the problematic language that caused non-compliance with section 38.2 of the *Patent Act*. Further, a cash verification clause that is consistent with the language of the claims on file was inserted, which, in our view, does not introduce any impermissible new matter.

[67] In view of the above, proposed claim set-2 would be compliant with section 38.2 of the *Patent Act*.

Obviousness

[68] With proposed claim set-2 having removed the impermissible new matter and added a cash amount verification clause consistent with the language of the claims on file, our obviousness assessment of proposed claim set-1 in the PR letter at pages 19-20, and reproduced below, would equally apply to proposed claim set-2:

...the most significant change to the proposed independent claims is the addition of the creation of deposit tickets that accompany cash deposits to a cash processing

facility. Each deposit ticket includes a unique identification that is used at the cash processing facility to verify the received cash deposit against the deposit information in the previously transmitted data file. These features were highlighted by the Applicant at page 8 of the R-FA.

However, as noted in the SOR, D2 at col. 7, lines 25-50 discusses the generation of a receipt by an output device operationally coupled to the safe controller. The receipt includes a deposit barcode that is an encoded representation of the deposit information and is used by a money room computer of an armored car service or bank to compare the cash actually picked from the store with what is indicated on the receipt. As disclosed at col. 9, lines 22-30, such a receipt includes information such as cash information and the store number.

In light of the above it is our preliminary view that D2 does disclose the generation of a deposit ticket that accompanies any cash deposits to a cash processing facility. It is also our preliminary view that D2 discloses the provision of a unique identification in association with a deposit ticket, namely the deposit barcode that is generated based on the deposit information. As such the addition of this feature to the independent claims on file (that have already been found to be preliminarily obvious in view of D2 and the CGK), does not render them non-obvious.

The other proposed amendments to the independent claims, such as the electronic safe including a computer processor executing computer instructions, the electronic transfer of the data file “through a computer network, to a computer processor of the cash processing facility” are clearly part of the system describe in D2 as well.

In the R-FA at pages 8-9, the Applicant highlighted the features of proposed claims 5 and 14, in particular “periodically” calculating and transmitting a collected deposit at a particular retail location and processing credit multiple times during a business day.

We have already addressed the patentability of allocating credit multiple times in a day in relation to claims 5 and 14 on file and why it is our preliminary view that the

addition of such a feature would have been obvious in view of D2 and the relevant CGK.

Lastly, in the R-FA at pages 9-10, the Applicant highlights proposed claims 11 and 15 and the features of collecting cash from a plurality of retailer locations over a plurality of business days, aggregating and calculating the deposit information from the multiple locations and extending credit based on the deposit information for the multiple locations, which locations can operate on different daily schedules or be in different time zones.

The Applicant highlighted features of proposed claims 11 and 15 have already been addressed in our preliminary assessment of claim 13 on file, which contemplates multiple safes at multiple locations with different end of day times. As such, the addition of such features to proposed claims 11 and 15 would not alter our preliminary view that claims including such features would have been obvious.

- [69] The only submissions in the R-PR in respect of the obviousness issue were those already addressed in relation to the claims on file, which would apply equally to proposed claim set-2.
- [70] As we stated in relation to the claims on file, it is our view that based on D2 and relevant CGK, a bank would have wanted to verify that the allocated credit corresponds to the actual cash amount received, and reconcile any differences from the amount initially provided in the reports sent from the safe on which the allocated credit was based (the reports being in the form of emails and corresponding to the transmitted data file of the claims referred to by the Applicant in the R-PR).
- [71] Therefore, for the reasons set out in the PR letter in respect of proposed claim set-1 and in view of the considerations of the Applicant's submissions in the R-PR, it is our view that the subject matter of proposed claim set-2 would have been obvious.

Proposed amendments to the description

- [72] In response to the identification of defects in the description, set out in the PR letter at page 16, the Applicant included with the R-PR proposed amended pages to address the defects.
- [73] Having reviewed the proposed replacement pages, it is our view that they would be compliant with subsections 57(1) and (2) of the *Patent Rules*.

Conclusions in respect of the proposed amendments

- [74] In light of the above, since the proposed amendments to the application would not overcome all of the identified defects, namely the obviousness defect, they are not considered a “necessary” amendment for compliance with the *Patent Act* and *Patent Rules*, as required by subsection 86(11) of the *Patent Act*.

CONCLUSIONS

[75] We conclude that:

- Claims 1-17 on file are directed to patentable subject matter and are compliant with both section 2 and subsection 27(8) of the *Patent Act*;
- Claims 1-17 on file would have been obvious to the person skilled in the art and are therefore not compliant with section 28.3 of the *Patent Act*; and
- The instant application is not compliant with subsections 57(1) and (2) of the *Patent Rules*.

[76] We also conclude that the proposed claims would not overcome all of the outstanding defects present in the claims on file and therefore are not considered a “necessary” amendment for compliance with the *Patent Act* and *Patent Rules*, as required by subsection 86(11) of the *Patent Rules*.

RECOMMENDATION OF THE BOARD

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

- Claims 1-17 on file would have been obvious to the person skilled in the art and are therefore not compliant with section 28.3 of the *Patent Act*; and
- The instant application is not compliant with subsections 57(1) and (2) of the *Patent Rules*.

Stephen MacNeil
Member

Michael Green
Member

Howard Sandler
Member

DECISION OF THE COMMISSIONER

[78] I concur with the conclusions and recommendation of the Board that the application be refused on the grounds that:

- Claims 1-17 on file would have been obvious to the person skilled in the art and are therefore not compliant with section 28.3 of the *Patent Act*; and
- The instant application is not compliant with subsections 57(1) and (2) of the *Patent Rules*.

[79] 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.

Konstantinos Georgaras

Commissioner of Patents

Dated at Gatineau, Quebec

this 4th day of July, 2024.