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September 29, 2026

BARRY DUSOME & WYATT DUSOME
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Application No.	:	**2,701,028**
PCT No.	:	**CA2008001735**
Owner	:	**DUSOME, BARRY; DUSOME, WYATT**
Title	:	**METHOD FOR PLAYING A CARD GAME**
Classification	:	**A63F 1/00 (2006.01)**
Ou File No.	:	**RM2095E**

Dear Mr. Barry Dusome and Mr. Wyatt Dusome,

Please find enclosed a Commissioner's Decision concerning the above-mentioned patent application.

Yours sincerely,

Stephen MacNeil
A/Chair,
Patent Appeal Board.

TD/ssp
Encl.

Citation: Barry Dusome & Wyatt Dusome (Re), 2026 CACP 5
Commissioner's Decision # 1701
Décision du commissaire nº1701
Date: 2026-09-25

TOPIC:	B00	Claims – Ambiguity or Indefiniteness (incomplete)
	B22	Claims – Excessive Width – Not Supported by Disclosure
	J00	Subject Matter of Applications – Meaning of Art
	J10	Subject Matter of Applications – Computer Programs
	J30	Subject Matter of Applications – Games

SUJET :	B00	Revendications – Caractère ambigu ou indéfini (incomplet)
	B22	Revendications – Portée excessive – Non appuyée par la divulgation
	J00	Objet des demandes – Signification de la technique
	J10	Objet des demandes – Programmes d'ordinateur
	J30	Objet des demandes – Jeux

Application No. 2701028
Demande nº 2 701 028

IN THE CANADIAN PATENT OFFICE

DECISION OF THE COMMISSIONER OF PATENTS

The Commissioner refuses patent application number 2701028 based on the Patent Appeal Board's recommendation. The Board reviewed the application after it was remitted from the Federal Court to the Commissioner for reconsideration in accordance with the Court's reasons. The application had originally been rejected under subsection 30(3) of the *Patent Rules*, SOR/96-423 as they read immediately before October 30, 2019, and refused under section 40 of the *Patent Act*, RSC 1985, c P-4. That refusal was appealed under section 41 of the *Patent Act* to the Federal Court.

Applicant:

Barry Dusome & Wyatt Dusome
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INTRODUCTION

[001] This recommendation concerns the reconsideration of rejected patent application 2701028, which is entitled “Method for playing a card game” and is owned by Barry Dusome and Wyatt Dusome (the Applicant), in accordance with the Federal Court’s reasons in *Dusome v Canada (Attorney General)*, 2025 FC 1809 [*Dusome*].

[002] The application had originally been rejected under subsection 30(3) of the *Patent Rules*, SOR/96-423 as they read immediately before October 30, 2019 (the former *Rules*), and refused under section 40 of the *Patent Act*, RSC 1985, c P-4 (the *Patent Act*). That refusal was appealed under section 41 of the *Patent Act* to the Federal Court. The Court in *Dusome* remitted the rejected application back to the Commissioner for reconsideration.

[003] A panel of the Patent Appeal Board (the Board) was established to review the application on behalf of the Commissioner in accordance with the Court’s reasons. As explained below, the Board’s recommendation is that the Commissioner refuse the application for claiming non-patentable subject-matter, among other defects.

BACKGROUND

The application

[004] Canadian patent application 2701028 was filed under the *Patent Cooperation Treaty* and has an effective filing date in Canada of October 3, 2008. It has been open to public inspection since April 9, 2009.

[005] The application is related to a wagering poker game, where players split their starting hand into two (or more) hands to play consecutive sub-games as part of the overall game. The application indicates that the poker game may be played either with a standard 52-card deck or on a computer device.

[006] The application has 24 claims (the claims on file), which were received at the Patent Office on September 12, 2018. The description on file was received at the Patent Office on January 29, 2018.

Prosecution history

[007] This application was rejected in a Final Action issued on November 22, 2018 under subsection 30(3) of the former *Rules* on the grounds that all the claims on file were directed to non-patentable subject-matter as well as other indefiniteness and formality defects.

[008] The rejected application was referred to the Patent Appeal Board for review on behalf of the Commissioner in accordance with paragraph 199(3)(c) of the *Patent Rules*, SOR/2019-251 (the *Patent Rules*). During the review, the Applicant submitted proposed amendments, the latest of which included proposed claims received on April 12, 2024 (proposed claim set-1) and a proposed description received on June 7, 2022. At the conclusion of the review, the Board recommended that the application be refused for non-patentable subject-matter and other defects. The recommendation was accepted and the application was refused in the Commissioner's Decision *Barry Dusome & Wyatt Dusome (Re)*, 2024 CACP 11 [*CD 1670*] issued on May 29, 2024.

[009] The Applicant appealed *CD 1670* to the Federal Court. The Federal Court issued its decision, *Dusome*, on November 12, 2025, remitting the application to the Commissioner for reconsideration in accordance with the reasons therein.

[010] A new panel of the Board, comprising the undersigned, was established to reconsider the application on behalf of the Commissioner in accordance with the reasons in *Dusome*. We issued a Redetermination Preliminary Review letter to the Applicant on May 5, 2026. The letter outlined our analysis and preliminary views on the application on file and the latest proposed amendments on record at that time, including a review of defects identified in the Final Action and *CD 1670*, as well as additional indefiniteness and formality defects that arose during our review. The letter concluded that, in addition to indefiniteness and formality defects, the claims on file and proposed claim set-1 were directed to non-

patentable subject-matter. The letter also provided the Applicant the opportunity to provide written submissions and attend a hearing.

[011] In a response received on June 8, 2026, the Applicant provided written submissions, including a set of 24 proposed claims (proposed claim set-2). The Applicant provided oral submissions at a hearing which was held virtually on June 16, 2026.

[012] We have completed our review and present our analysis and recommendation below.

ISSUES

[013] We have conducted a review of both the application on file and the Applicant's latest proposed amendments to the application in accordance with the Federal Court's reasons in *Dusome*. As directed by the Court in *Dusome*, the Redetermination Preliminary Review letter fully considered the proposed claim set-1 (equivalent to the "Amended Proposed Claims" in the Court's judgment).

[014] This review considers the issue of whether the claims on file and the latest proposed claims, proposed claim set-2, define patentable subject-matter in compliance with section 2 and subsection 27(8) of the *Patent Act*.

[015] In addition to the patentable subject-matter issue, we consider the following issues:

- whether claims on file and proposed claim set-2 are indefinite and non-compliant with subsection 27(4) of the *Patent Act*;
- whether the application on file and the latest proposed amendments contain cancellations and contravene paragraph 13(1)(c) of the *Patent Rules*;
- whether the pages of the specification are numbered consecutively and comply with subsection 50(1) of the *Patent Rules*;

- whether claim 1 on file is fully supported by the description and complies with section 60 of the *Patent Rules*; and

- whether claim 24 on file refers to other claims in the alternative only and complies with subsection 63(3) of the *Patent Rules*.

[016] In this final review, we first consider the issues that pertain to the claims and description on file. We then consider whether the latest proposed amendments constitute amendments necessary for compliance with the *Patent Act* and *Patent Rules*, in accordance with subsection 86(11) of the *Patent Rules*.

PURPOSIVE CONSTRUCTION

[017] We present our view on the purposive construction of the claims on file below.

Legal principles

[018] Purposive construction is antecedent to any consideration of validity (*Free World Trust v Électro Santé Inc*, 2000 SCC 66 [*Free World Trust*] at para 19; *Whirlpool Corp v Camco Inc*, 2000 SCC 67 [*Whirlpool*] at para 43).

[019] In accordance with *Free World Trust* and *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 at the publication date, considering the whole of the disclosure including the specification and drawings, in order to determine the subject-matter defined by a claim and to ascertain the nature of the invention. In addition to interpreting the meaning of the terms of the claim, purposive construction distinguishes the essential elements of the claim from the non-essential elements.

[020] The test for non-essentiality is two-part: 1) a purposive construction of the words of the claim indicate it was clearly not intended to be essential, and 2) at the date of the publication of the patent, the skilled person would have appreciated that the element could be substituted or omitted without affecting the working of the invention (*AGI Suretrack, LLC v Farmers Edge Inc*, 2025 FCA 134 [*AGI*] at para 61 citing *Free World Trust* at paras 52, 55). The onus is on the party

alleging non-essentiality to establish this (*AGI* at para 61). As explained in *Boehringer Ingelheim (Canada) Ltd v Jamp Pharma Corporation*, 2024 FC 1198 [*Boehringer*] at paragraph 100, it would be entirely inconsistent to find an element of the claim not essential if the language of the claims and a reading of the patent indicate otherwise.

[021] Furthermore, purposive construction ensures that "the Commissioner is alive to the possibility that a patent claim may be expressed in language that is deliberately or inadvertently deceptive" and "what appears on its face to be a claim for an 'art' or 'process' may, on a proper construction, be a claim to a mathematical formula", as was the case in *Schlumberger Canada Ltd v Commissioner of Patents*, [1982] 1 FC 845 (CA) [*Schlumberger*] (*Canada (Attorney General) v Amazon.com, Inc*, 2011 FCA 328 [*Amazon*] at para 44). Determining what in good faith the inventor actually invented or discovered must be grounded in a purposive construction of the claims (*Amazon* at paras 42-43). This is in line with the Courts' statements in *Schlumberger* at page 847 that "[i]n order to determine whether the application discloses a patentable invention, it is first necessary to determine what, according to the application, has been discovered" and in *Dusome* at paragraph 45 that "determining what in good faith the inventor actually discovered is a question that forms part of purposive construction".

[022] Considerations which may inform the skilled person's understanding of the nature of the invention include whether the elements are described as well-known or operating in a well-known manner, and, in the case of computer-implemented inventions, whether executing an algorithm on the computer is described as resulting in any improvements to the functioning of the computer (*Canada (Attorney General) v Benjamin Moore & Co*, 2023 FCA 168 [*Benjamin Moore*] at para 94; *Choueifaty v Canada (Attorney General)*, 2020 FC 837 [*Choueifaty*] at para 42).

[023] Our Redetermination Preliminary Review letter set out the legal principles above and the Applicant was given an opportunity to respond. For the reasons below, we apply the same legal principles in this final review.

Analysis

[024] Since purposive construction is performed from the perspective of the person skilled in the art in light of their common general knowledge, we first identify, as we did in the Redetermination Preliminary Review letter, the skilled person and their common general knowledge in view of the fields relevant to the invention.

[025] The fields relevant to the invention, according to the context provided in the description, include card games, specifically poker games, which may be played either with a standard 52-card deck or on a computer device.

The person skilled in the art

[026] *CD 1670*, at paragraphs 23 and 26, identified the person skilled in the art as a person or a team of people skilled in gaming, card gaming (specifically poker) and computer programming. As indicated in *Dusome* at paragraph 9, the Applicant agreed with the above characterization of the person skilled in the art.

[027] Consistent with the characterization in *CD 1670*, in our Redetermination Preliminary Review letter, we considered the person skilled in the art to be a team of people comprising a poker game designer, a computer technician and a software developer.

[028] The Applicant did not dispute the above characterization in their written or oral submissions. We therefore adopt the same characterization in this final review.

The relevant common general knowledge

[029] *CD 1670* at paragraph 23, citing the Final Action, referenced documents D1 and D2 when identifying the relevant common general knowledge:

D1:	US 6,062,565	Chadband et al.	May 16, 2000
D2:	US 2004/0038720 A1	Valente	February 26, 2004

[030] *CD 1670*, at paragraphs 23-27, identified the relevant common general knowledge of the person skilled in the art as the following:

- a card game can be played using a standard 52 card deck (Description: para 3; D1: col. 5, lines 1-18) or an electronic platform (Description: para 2; D2: claim 16);
- various rules exist for playing a card game, including dividing an initial hand into a first hand and a second hand, and playing a second poker game with said second hand (Description: para 5; D1: abstract, col. 3, lines 5-27);
- various rules exist for placing multiple bets in a card game, including placing a first bet in a first pot and a second bet in a second pot (D1: abstract, col. 3, lines 5-27; D2: para 18);
- various poker games are played with 52 poker cards, and would include a dealer, table, players, chips, wagering and hierarchy of poker hands to determine the winning hands (Applicant's response to the Final Action at page 26);
- gaming techniques could be performed with a specifically programmed computer including a representation of the essential 52 cards (Applicant's response to the Final Action at page 26), including programming a poker game on a computer, gaming machine, portable computerized device or network; and
- client/server computer architecture, internet communication and use of "cookies" allowing users to participate in a virtual poker event on the internet (Applicant's response to the Supplementary Preliminary Review Letter received on March 22, 2024 at pages 15-16).

[031] As indicated in *Dusome* at paragraph 9, the Applicant agreed with the above characterization of the relevant common general knowledge.

[032] For completeness, we noted in the Redetermination Preliminary Review letter that the following disclosure in the description is also relevant to the common general knowledge.

[033] The description at paragraphs 3-4 explains the basic principles of typical poker games: poker is played with a standard deck of 52 playing cards, including four suits of equal value (spades, hearts, diamonds and clubs). In a standard poker game, a player uses his available cards to form the highest value five-card hand. The hierarchy of poker hands, the ranking of hands from highest value to lowest value, is as follows:

- royal flush (10-Jack-Queen-King-Ace of the same suit),
- straight flush (all cards in numerical sequence and of the same suit),
- four of a kind (four cards of same numerical value),
- full house (three of a kind and a pair),
- flush (all cards of the same suit),
- straight (all cards in numerical sequence),
- three of a kind (three cards of same numerical value),
- two pairs,
- pair (two cards of same numerical value),
- high card (a single card of highest numerical value).

[034] If players have the same ranked hand, the hand with the higher ranked card in the category wins. For example, a pair of kings wins against a pair of queens. If players have identically ranked hands, the remaining cards are used to determine the winner. For example, a player with A-A-K-9-5 wins against a player with A-A-Q-9-5.

[035] Standard poker games, such as Texas Hold'em, Omaha, Razz, Stud and Draw, are generally played using a buy-in system, where players contribute a certain amount of money to partake in the game. A buy-in may be in the form of an "ante", where every player places an equal amount of money into a central pot, and/or in the form of a "blind", where one or more players to the left of the

dealer place an amount of money into the central pot as a “blind bet” (a bet placed before a player sees his cards).

[036] Standard poker games, such as Texas Hold’em, generally consist of multiple rounds of betting, where at each round a new card or cards are dealt by the dealer and players are given the opportunity to take one of the following actions:

- “check”: the player passes the action to the next player without betting (putting more money into the pot). This is only possible if no other player has made a bet (put more money into the pot), before the player checking in that betting round,
- “fold”: the player drops out of the round, discarding cards and losing any bets the player made into the pot,
- “call”: the player puts an additional amount of money into the pot, matching the highest bet made by another player, in order to stay in the round, and
- “raise”: the player bets an additional amount of money, increasing the amount of the current bet on the hand, which forces opponents to either fold, call (bet more to match the additional amount), or raise the bet.

[037] Players may use the cards in their hand in addition to “community” cards, which are dealt face-up by the dealer and are available to all players, to create the best hand. If, at the end of the final round of betting, more than one player remains, the remaining players reveal their in-hand cards in a showdown, and the player with the highest hand is awarded the central pot.

[038] The description at paragraph 5 further discloses that there exists a number of casino games, such as Pai Gow poker, in which a player is dealt a large initial hand and must split this initial hand into two smaller hands to be sequentially played. Pai Gow poker is played against the casino, and involves only a single bet which occurs before cards are dealt. There are no betting rounds. Players are dealt an initial hand of seven cards, which are split into 2-card and 5-card smaller hands. Each smaller hand is scored against the dealer’s corresponding 2-card and 5-card hands. The winner of each hand wins half the bet.

[039] In the Redetermination Preliminary Review letter, we considered that, in addition to the common general knowledge cited in *CD 1670* and reproduced above, the following also form part of the common general knowledge of the skilled person at the publication date:

- the rules of standard games of poker including Texas Hold'em and Pai Gow poker;
- buy-in rules including ante and blind bets;
- betting rules including actions that a player may take at each round including check, fold, call and raise actions;
- the use of community cards, cards that are dealt face-up in the middle of the table and are shared by all players to create the best possible hand; and
- the standard hierarchy of 5-card poker hands from highest to lowest value as: Royal Flush, Straight Flush, Four-of-a-Kind, Full House, Flush, Straight, Three-of-a-Kind, Two Pair, Pair, and High Card.

[040] The Applicant did not dispute the above characterization of the common general knowledge in their written or oral submissions. We therefore adopt the above characterization in this final review.

The disclosure

[041] Having identified the person skilled in the art and their relevant common general knowledge, we assess, as we did in the Redetermination Preliminary Review letter, the skilled person's understanding of the invention by examining the disclosure.

[042] According to the description, prospective casino game players look for new card games that are easy to learn yet challenging and rewarding. Casinos and gambling establishments are also interested in card games that attract new players, create player loyalty and increase revenues to the casinos and gambling establishments (para 2). In order to provide a higher level of

excitement and complexity that is not possible in a standard poker game (para 5), the application discloses a new poker game that consists of a combination of Texas Hold'em and Pai Gow poker with additional features (para 6). The specification states that the disclosed game may be played either with a standard deck of physical cards or on a computerized system.

[043] Similar to Pai Gow poker, the invention requires players to split their initial cards into two hands, and play sequential sub-games with their first and second hands. The first sub-game is similar to Texas Hold'em, where players use their first hand in combination with a first set of community cards to place bets over a number of betting rounds, and ultimately win a first pot. The second sub-game is played similarly as well, where over a number of betting rounds, players use their second hand in combination with the first set of community cards, and if applicable an additional set of community cards, to place bets. A winner of the second sub-game is ultimately declared. The winner then plays against the dealer's "showdown" hand, which has the same number of cards as the player's second hand. In the showdown round, face-up community cards are available to the dealer and the second sub-game winner to make the best hand. If the player wins, they take the pot, consisting of the entire second pot. However, if the dealer ties or beats the player, the second pot is split between the player who won the second sub-game and a "holdover" pot, which is added to the pot for the second sub-game pot of subsequent games (para 4, 6, 12).

[044] The description states that the disclosed game would allow players to be involved until the end of the game by having a final "showdown" hand, where losing players maintain a stake in the game as they still have a chance to win a large pot if they win the subsequent second sub-game (para 6).

[045] According to the description, the invention provides a poker game that creates a new math and fresh strategies from prior poker games, and encourages larger pots (paras 6, 14). It also provides two or more rounds of play for each dealt hand, leading to two or more pots that may be won, and possibly different winners for each pot per dealt hand (para 14). The disclosed poker game also allows additional bets per deal in comparison to some known poker games such as Texas Hold'em and Omaha. For example, in a 7-card embodiment, there

would be up to five betting rounds per hand, with a minimum of two betting rounds and a “showdown” round, whereas in Texas Hold’em there would only be up to 4 betting rounds. It further allows the possibility for all betting rounds to occur, even if the first sub-game ends before all betting rounds are completed, the remaining betting rounds are done in the second sub-game in order for the remaining community cards to be dealt (para 32).

[046] With respect to the computer implementation of the disclosed game, the description states that it is understood that the game can be played on electronic video poker gaming machines, on linked electronic video poker gaming machines, electronically from home through the internet, or via handheld electronic devices which may be connected to other nearby devices or to a central device such as mobile phones, palm computers or any mobile electronic device that may connect to other devices (para 13). The only other reference to a computer implementation of the disclosed poker game appears to be in paragraph 22 which mentions that a computer program may act as a dealer. The description does not disclose any details with respect to programming of the computer device to implement the disclosed poker game.

[047] The claimed invention as defined by the claims on file is discussed below.

The claims on file

[048] The application contains 24 claims on file. As we did in the Redetermination Preliminary Review letter, we take claim 1 on file as illustrative of the invention for the purpose of this final review.

[049] Claim 1 on file reads:

> 1. A method of playing a wagering poker card game comprising the steps of:
>
> a) providing card game apparatus including at least one physical 52 card poker deck of standard playing cards Comprising four different suits of thirteen cards depicting Hearts suit of cards numbered 2 to 10, Jack, Queen, King and Ace, thirteen cards depicting Diamonds suit of cards numbered 2 to 10, Jack, Queen, King and Ace, thirteen Spades suit of cards

numbered 2 to 10, Jack Queen, King and Ace, thirteen cards depicting Club suit of cards numbered 2 to 10, Jack, Queen, King and Ace,

and allowing a plurality of players to ante at least a first buy-in bet into a first pot upon commencement of a first poker game.

and a second buy-in bet into a second pot upon commencement of a second poker game;

b) shuffling the physical number generator playing cards into a new order and the dealer dealing to each player an initial hand comprising a plurality of predetermined number of playing cards;

c) each player dividing his initial hand into a first hand and a second hand, the first hand consisting of a first plurality of predetermined number of playing cards and corresponding to said first pot and the second hand consisting of a second plurality of predetermined number of playing cards and corresponding to said second pot;

d) the players playing a first poker game using their first hand and initiating a first betting round wherein each player takes turns to Raise, Call, Fold or Check, the first betting round continues until, 1) players fold and only one player remains, in which case the remaining player wins the first pot; or 2) one player raises and all other players call or fold; or 3) all players check.

e) if two or more players are still in the hand then the dealer dealing a showdown card face-down in a designated area for a dealer’s showdown hand, and the dealer dealing a first community cards face-up;

f) initiating a second round of betting, identical to the first betting round with the remaining players, if there are any remaining players, the dealer dealing a second showdown card face-down in the designated area for the dealer’s showdown hand, and the dealer dealing a second community card face-up;

g) initiating a third round of betting, identical to the first and second betting rounds with the remaining players, if there are any remaining players, then the remaining players combining the cards in their first hand with the two

face-up community cards to form the best possible first poker hand, the player having the best possible first poker hand winning the first pot;

h) the players then playing a second poker game using their second hand and initiating a first betting round in the second poker game wherein each player taking turns to Raise, Call, Fold or Check, if any player remains after the first betting round, the dealer discarding a burn card from the deck, and the dealer dealing a third community card face-up;

i) initiating a final betting round in the second poker game, after which the last player to raise the second pot must show his or her second hand, and the players after him or her may either fold their second hand or show their second hand, then the players each combining their second hand and the three face-up community cards to form a second poker hand, the player having the highest second poker hand is the winner of the second poker game, and awarding a first portion of the second pot to the winning player of the second poker game;

j) comparing the winning player's second poker hand with the dealer's showdown hand comprising the two showdown cards and the three face-up community cards to form a five-card dealer's showdown hand, and awarding the second winning player the remaining portion of the second pot if the winning player's hand of the second poker game has a higher poker hand ranking than the dealer's showdown hand, and wherein the remaining portion of the second pot not won by the winner of the second poker game in a showdown hand is allocated to a showdown pot of a further game played thereafter;

k) if a winner is declared in the first poker game before a prescribed number of community cards are exposed or betting rounds completed then the_remaining community cards and associated betting rounds are transferred to the second poker game;

I) if a winner is declared in the second poker game before revealing all the community cards, the dealer will proceed to create the dealer's showdown

hand and reveal any further community cards with no associated betting rounds.

[050] Dependent claims 2-21 on file recite further limitations regarding the claimed wagering poker card game, including details related to the number of cards in players' initial, first and second hands, number of community cards, number of cards in the dealer's showdown hand, amount for buy-in bets, details of sub-games involving players' first and second hands and the dealer's showdown hand, and the addition of a joker or wild card to represent any card in the deck.

[051] While claims 1-21 are directed to a method of playing the poker game with physical cards, claims 22-24 are directed to a computerized implementation of the game in claim 1.

[052] Claim 22 is directed to a method of playing the game in claim 1 on a computer device. Claim 23 recites that the computer device is a personal computing device or a casino-type gaming machine. Claim 24 specifies that the computer device is operated wirelessly over the internet to connect a group of players virtually.

Meaning of terms

[053] Though no issues appeared to have been raised during the prosecution with regard to the meaning or scope of any of the terms used in the claims on file, in line with the Court's reasons in *Dusome,* we provided in the Redetermination Preliminary Review letter an assessment with respect to the meaning of terms used in the claims in order to identify the skilled person's understanding of the elements of the claimed invention as contemplated by the Applicant and which define the subject-matter of the claims.

[054] In the Redetermination Preliminary Review letter, we set out our view that the person skilled in the art, considering the disclosure of the application in light of the relevant common general knowledge, would construe the meaning of the following terms recited in the claims on file as follows:

- “first buy-in bet”: the claims on file are directed to an ante buy-in system. A first buy-in bet is the set amount of money each player is required to put into the first pot (description: paras 11, 22).

- “second buy-in bet”: the set amount of money that each player is required to put into the second pot (description: paras 11, 22).

- “the physical number generator playing cards”: The description and drawings do not mention this term. The description discloses the use of physical cards and a computer implementation with virtual representations of cards. However, given that this term is recited in claim 1 on file which specifies the use of physical cards, not a computer implementation of the game, it was our preliminary view that a person skilled in the art would construe the term “the physical number generator playing cards” to mean a standard deck of 52 physical cards.

- poker hand rankings: the claims on file refer to players with the “best possible first poker hand” / “highest second poker hand” / “higher poker hand ranking” winning. The description at paragraph 3 discloses that “a player must use his available cards to form the highest value five-card hand” based on the standard poker hand hierarchy. The description discloses embodiments with different number of cards in the initial hand, where in each of the first sub-game, second sub-game and the showdown round, the player with the best five-card poker hand wins (paras 27, 30, 37, 38, 41). It was therefore our preliminary view that the skilled person would construe the ranking of poker hands in the claims on file to correspond to the standard poker hand rankings based on the best five-card combination of the player’s in-hand cards and shared community cards on the table.

- “showdown”: a final round that is played at the end of the claimed poker game, where the winner of the second sub-game plays against the dealer’s showdown hand. The dealer’s showdown in-hand cards consist of face-down cards given to the dealer throughout the game. The dealer and the winner of the second sub-game have the same number of cards in their hand for the showdown round. The dealer and the winner would combine

their in-hand cards with the face-up community cards to make the best poker hand in accordance with the rankings explained above (description: paras 4, 6).

- “showdown pot”: the portion of the second pot (pot for the second sub-game) that does not get awarded to the winner of the second sub-game if the winner does not beat the dealer’s showdown hand. The showdown pot is held in trust by the dealer and is added to the second pot of subsequent hands (description: paras 12, 30).

[055] Furthermore, in the Redetermination Preliminary Review letter, we addressed a number of terms in the claims on file to remove any uncertainty in their meaning.

[056] Claims 1, 8, 15 and 18 on file mention first/second poker games, while claims 14-18 and 21 on file recite first/second sub-games. It was our preliminary view that the skilled person would construe the two sets of terms to refer to the same portion of the overall game, i.e. sub-games that are played with the first and second hands respectively.

[057] Claim 19 on file recites that “the dealer deals a number of cards equal to the number of cards in the second round to a "showdown " [*sic*] hand”. As explained under the “Indefiniteness” section below, claim 1 on file, on which claim 19 indirectly depends, refers to rounds only in terms of betting rounds within the first and second sub-games. It was therefore our preliminary view that the skilled person would reasonably construe all the iterations of the term “second round” in claim 19 on file to refer to the previously claimed second poker game or sub-game. Similarly, claim 21 on file recites “betting rounds from the first round being transferred to the second round”. It was our preliminary view that the skilled person would reasonably construe the terms “first round” and “second round” to refer to the previously claimed first and second poker game or sub-games, respectively.

[058] Claim 22 on file recites “wherein a computer device…providing a non-transitory computer readable medium coded with instructions comprising: a processor…a display…and input means…; wherein the card game and representation of a 52

card playing deck stored thereon entails the processor to perform the steps of claim 1." It was our preliminary view that the skilled person would construe this phrase to mean that the computer device comprises the display, the input means, the processor and the computer readable medium coded with instructions, which when executed instruct the processor to perform the steps of claim 1. Additionally, as explained under the "Indefiniteness" section below, it was our preliminary view that claim 22 and its dependent claims 23-24 are indefinite as it is not clear whether these claims are directed to the game being played using physical cards or on a computerized system. However, as explained above, despite this ambiguity, it was our preliminary view that the skilled person, given the language of claims 22-24, would reasonably construe these claims to be directed to a computerized implementation of the poker game defined by claim 1, not the use of physical cards.

[059] The Applicant did not dispute or comment on the above meanings of the terms in their written or oral submissions. We therefore adopt the above meanings in this final review.

Essential elements

[060] As explained under the "Legal principles" section, the identification of essential and non-essential elements of a claim depends on the intent in the language of the claim and on the obvious substitutability of the elements.

[061] As in the Redetermination Preliminary Review letter, starting from the intent of the inventor as expressed in or inferred from the language of the claims, we also consider the specification and the drawings to determine if the inventor establishes any of the claimed elements to be non-essential.

[062] In the Redetermination Preliminary Review letter, we first considered the intent expressed in, or inferred from, the language of the claims on file.

[063] Claims 1-21 on file are directed to a method of playing a wagering poker game using a standard deck of physical cards. It was our preliminary view that the skilled person would understand that there is no use of language in the claims indicating that any of the claimed elements are optional, a preferred

embodiment, or one of a list of alternatives. Similarly, it was our preliminary view that the intent expressed in, or inferred from, the language of claims 1-21 on file, in light of the above discussion on the disclosure and the meaning of the claim terms, does not indicate that any of the claimed features were intended to be non-essential. Therefore, in our preliminary view, there was no indication that a purposive construction of the words of claims 1-21 indicates that any of the claimed features were clearly not intended to be essential.

[064] Claims 22-24 on file recite a computerized implementation of the game in claim 1. As indicated above, although these claims directly or indirectly depend on claim 1 on file, which recites the use of physical cards, it was our preliminary view that the skilled person would reasonably construe these claims as being directed to a computerized implementation with virtual representations of the cards.

[065] As indicated in the Redetermination Preliminary Review letter, it was our preliminary view that the skilled person would understand that there is no use of language in claims 22-24 on file indicating that the Applicant intended any of the claimed elements to be optional or a preferred embodiment. Although claim 23 on file includes a list of alternative embodiments, it was our preliminary view that the person skilled in the art would understand that the Applicant intended that each alternative or combination of alternatives, when chosen, would be an essential feature of the claim. Similarly, it was our preliminary view that the intent expressed in, or inferred from, the language of claims 22-24 on file, in light of the above discussion on the disclosure and the meaning of the claim terms, does not indicate that any of the claimed features were intended to be non-essential. Therefore, in our preliminary view, there was no indication that a purposive construction of the words of claims 22-24 indicates that any of the claimed features were clearly not intended to be essential.

[066] As explained under the “Legal principles” section above, a claimed feature is considered essential if its purposive construction indicates that it was intended to be essential [*AGI* at para 61; *Boehringer* at para 100; *Choueifaty* at para 39]. Given our assessment above with respect to the first part of the non-essentiality test that all the claimed elements as purposively construed were intended to be

essential, it was our preliminary view that the skilled person would consider all the claimed elements to be essential.

[067] However, for completeness, in the Redetermination Preliminary Review letter, we also considered the second part of the non-essentiality test, which asks whether, at the publication date, the skilled person would have considered that a particular element could be substituted or omitted without affecting the working of the invention. That is, had the skilled person at that time been told of both the element specified in the claim and a variant, and asked whether the variant would obviously work in the same way, the answer would be yes. Work in the same way is taken to mean that the variant would perform substantially the same function in substantially the same way to obtain substantially the same result (*Free World Trust* at para 55).

[068] Claims 1-21 on file are directed to a method of playing a wagering poker game using a standard deck of physical cards while claims 22-24 on file recite a computerized implementation of the game in claim 1. It was our preliminary view that there is no indication that the skilled person, considering the disclosure in view of the relevant common general knowledge, would have appreciated that any of the claimed features, including the claimed rules of the game and the claimed form of cards (physical in claims 1-21; virtual representations in claims 22-24), could be omitted or substituted with other means that would perform substantially the same function in substantially the same way to obtain substantially the same result. It was our preliminary view that the skilled person would not have considered the claimed rules of the game and the claimed form of cards to be omittable or substitutable without affecting the working of the invention.

[069] The Applicant did not dispute the above in their written or oral submissions. We therefore adopt the position that the person skilled in the art would consider all the elements in the claims on file to be essential.

The invention as claimed

[070] Having assessed the disclosure and the claims on file from the perspective of the person skilled in the art in view of the relevant common general knowledge, we provide below, as we did in the Redetermination Preliminary Review letter, our view of the skilled person's understanding of the nature of the claimed invention.

[071] In light of the above, it was our preliminary view that the skilled person considering the disclosure would understand the nature of the invention in the claims on file to involve a poker game, played with either physical cards or on a computer, which combines the rules of Texas Hold'em and Pai Gow poker with additional features including a showdown round with the dealer.

[072] Furthermore, as explained under the "Legal principles" section above, *Dusome* at paragraph 45 states that "determining what in good faith the inventor actually discovered is a question that forms part of purposive construction". This is in line with the Court's statement in *Schlumberger* at page 847 that "[i]n order to determine whether the application discloses a patentable invention, it is first necessary to determine what, according to the application, has been discovered."

[073] With respect to the physical card implementation of the poker game in claims 1-21, given that the physical cards are standard and their use to play poker games is part of the common general knowledge at the relevant time, it was our preliminary view that the skilled person, considering the whole disclosure and the relevant common general knowledge, would understand the discovery to lie in the set of rules governing the poker game.

[074] With respect to the computer implementation of the poker game, as explained under the "Legal principles" section above, a number of factors, such as the nature of the computer components and the steps they perform as well as their impact on the functioning of the computer, may be considered to inform the nature of the invention. As explained under "The disclosure" section above, the description does not disclose details with respect to the claimed computer device or its programming to implement the poker game. There is no suggestion

in the specification that the claimed computer device or any of its components, such as the processor, computer readable medium, input means, display and wireless operation means, represent anything other than well-known computer components. Similarly, there is no suggestion in the specification that the claimed computer steps performed by these components, such as executing programmable instructions to perform the steps of claim 1 or operating the computer device wirelessly over the internet to connect a group of players virtually, represent anything other than the well-known functions of a generic computer system.

[075] Furthermore, there is no indication in the specification that the functioning of the computer device is improved by the claimed steps. There is no suggestion in the specification that there were any challenges or deficiencies in the operation of a computer system used to implement the claimed poker game. There is no detailed discussion of the computer implementation of the claimed poker game in the specification that would suggest any difficulties would be overcome in that respect. Therefore, it was our preliminary view that the skilled person would consider that the claimed computer elements are well-known components merely used in a well-known manner, and that the claimed method steps do not result in any improvements to the functioning of the computer device.

[076] In light of the above and with respect to the computer implementation of the poker game in claims 22-24, it was our preliminary view that the skilled person considering the whole of the disclosure and the relevant common general knowledge would understand the discovery to lie in the algorithm or set of programmable instructions which is coded on the non-transitory computer readable medium and executed by the processor to implement the claimed invention, the algorithm corresponding to the set of rules governing the poker game.

[077] The Applicant's written and oral submissions are addressed in detail below under "Applicant's submissions" in the "Patentable subject-matter" section. However, with respect to the identification of the discovery, we note that the Applicant disagreed with the manner in which that inquiry was conducted in the Redetermination Preliminary Review letter, and instead submitted that *Dusome*

"instructed the Commissioner to assess whether the essential elements form a patentable novel combination as claimed". As explained under the "Applicant's submissions" section below, at the oral hearing, we attempted to clarify where the Applicant considered the discovery to lie. In response, the Applicant stated that the discovery is the claimed combination, and that this question cannot be brought up during essential elements analysis under purposive construction. We respectfully note that, as explained above, *Dusome* at paragraph 45 states that "determining what in good faith the inventor actually discovered is a question that forms part of purposive construction". It was on this basis that we provided our assessment of where the skilled person would consider the discovery to lie, in view of the whole of the disclosure and the relevant common general knowledge. As stated above, in our view the skilled person would consider all the elements in the claims on file to be essential.

[078] Therefore, it is our view that the skilled person, considering the whole disclosure in light of the relevant common general knowledge at the publication date, would understand the invention defined by the claims on file to be a poker game governed by a specific set of rules. The set of rules includes the distribution of cards to players and the dealer, players splitting their initial hand into two hands and playing sequential sub-games with the two hands, a final showdown round between the winner of the second sub-game and the dealer, multiple betting rounds, and the awarding and/or transfer of pots or portions of pots depending on the outcomes of the sub-games and the showdown round. The specification indicates that the poker game may be implemented with a standard 52-card deck or on a computer device, both embodiments being reflected in the claims on file. Both the standard deck of cards and the computer device (and its components) are well-known implementation instruments which, in our view, the skilled person would not regard as supplying the discovery. In our view, the skilled person would consider what has been discovered to lie in the claimed set of rules itself, not the well-known physical or virtual means by which those rules are carried out.

PATENTABLE SUBJECT-MATTER

[079] We consider that the claims on file define non-patentable subject-matter, and present our assessment below.

Legal principles

[080] Once a purposive construction of the claims is performed and the subject-matter defined by the claims is determined, a patentable subject-matter assessment can be conducted. This requires assessing whether the claimed subject-matter, as purposively construed, meets the definition of "invention" under section 2 of the *Patent Act* and does not otherwise fall within a statutory or judicially-excluded category.

[081] 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.

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

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

[083] *Shell Oil Co of Canada v Canada (Commissioner of Patents)*, [1982] 2 SCR 536 [*Shell Oil*] is the starting point for the definition of a patentable "art" and focuses the inquiry on whether there is a practical application of the discovery or idea (*Amazon* at para 50, citing *Amazon.com, Inc v Canada (Attorney General)*, 2010 FC 1011 at para 50). Later Courts have interpreted *Shell Oil* as establishing that a process or method is a patentable art if it (i) is not a disembodied idea but has a method of practical application; (ii) is a new and innovative method of applying skill or knowledge, and (iii) has a result or effect that is commercially useful (*Amazon* at para 50; *Progressive Games, Inc v*

Canada (Commissioner of Patents) (1999), 177 FTR 241 (FC) [*Progressive Games FC*] at para 16; *Dusome* at para 42).

[084] In accordance with *Shell Oil* at 554, "[a] disembodied idea is not *per se* patentable. But it will be patentable if it has a method of practical application."

[085] The Federal Court of Appeal in *Amazon* at paragraphs 61, 66 and 69 clarified that an abstract idea does not become patentable subject-matter merely because it has a practical application. It is implicit in the definition of "invention" that patentable subject-matter must be something with physical existence, or something that manifests a discernible effect or change. This physicality requirement cannot be met merely by the fact that the claimed invention has a practical application. This was the situation in *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."

[086] A relevant and necessary question in understanding a claimed invention so as to assess patentable subject-matter is what in good faith the inventor actually invented or discovered (*Amazon* at para 42; *Benjamin Moore* at para 68). As explained above under "Purposive construction", this is in line with the Court's statement in *Schlumberger* at 847 that "in order to determine whether the application discloses a patentable invention, it is first necessary to determine what, according to the application, has been discovered." This determination is grounded in a purposive construction of the claims (*Amazon* at para 43; *Dusome* at para 45).

[087] With respect to the three elements of "art" in *Shell Oil* as mentioned above, *Amazon* at paragraph 51 stated that they reflect the statutory requirement of novelty, utility, non-obviousness, and the prohibition on the granting of a patent for a mere scientific principle or abstract. Similarly, the Federal Court of Appeal in *Benjamin Moore* at paragraph 65, considering the approach in *Shell Oil*, stated that novelty and ingenuity were relevant considerations in determining whether the addition to human knowledge fell within the statutory definition of "invention" at section 2, which refers to "new and useful art".

[088] As noted in *Benjamin Moore* at paragraph 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 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*.”

[089] With respect to the use of well-known instruments or tools, such as a computer, to implement a method, the mere presence of such instruments as essential elements may not be sufficient to meet the physicality requirement (*Amazon* at para 69; *Benjamin Moore* at para 87). In such cases, an assessment with respect to the *Schlumberger* question is conducted to determine whether the purposive construction of the claims leads to the conclusion that the claimed invention is distinguishable from *Schlumberger* where “the Court concluded that the only novel aspect of the claimed invention was the mathematical formula which, as a ‘mere scientific principle or abstract theorem’, cannot be the subject of a patent because of the prohibition in subsection 27(8)” (*Amazon* para 62). This is in line with the inquiry in *Amazon* at paragraph 63 and the direction in *Dusome* at paragraph 48 to determine whether *Schlumberger* is distinguishable. *Dusome* at paragraph 48 states that:

> Based on a purposive construction of the claims of [the instant application], the Commissioner will need to determine whether the only inventive aspect of claims 1-21 are the rules of a game, and whether the only inventive aspect of claims 22-24 is the algorithm that is programmed into the computer to cause it to take the necessary steps to accomplish the subject-matter defined by the claims (which may or may not be new rules of a game). Alternatively, the Commissioner should consider whether *Schlumberger* is distinguishable because the rules of the game and the use of playing cards and a computer are not the whole invention but only one of a number of essential elements in a novel combination.

[090] With respect to card games, *Progressive Games, Inc v Canada (Commissioner of Patents),* 2000 CanLII 16577 (FCA) [*Progressive Games FCA*] “considered the changes in the method of playing poker by comparing them to the poker

game as it was generally known, and affirmed the Federal Court's conclusion that although the changes involved the physical manipulation of cards (allegedly a practical application), this was insufficient to qualify them as an invention as they were not a 'contribution or addition to the cumulative wisdom on the subject of games' within the meaning of *Shell Oil*" (*Benjamin Moore* at para 66). *Progressive Games FCA* also noted that "we do not want to be taken as deciding that more substantial changes in the existing game would have changed the result."

[091] Our Redetermination Preliminary Review letter set out the legal principles above and the Applicant was given an opportunity to respond. For the reasons below, we apply the same legal principles in this final review.

Analysis

[092] Based on the purposive construction of the claims on file, and having identified their essential elements and the nature of the invention, we determine, as we did in the Redetermination Preliminary Review letter, whether the subject-matter defined by the claims is directed to patentable subject-matter, in compliance with section 2 of the *Patent Act* and statutory and judicial exclusions including subsection 27(8) of the *Patent Act*.

[093] We first present our assessment of claims 1-21 on file and claims 22-24 on file, including our preliminary views expressed in the Redetermination Preliminary Review letter. We then consider the Applicant's submissions in response to our letter before stating our final determination as to whether the claims on file define patentable subject-matter.

Claims 1-21

[094] Claims 1-21 on file are directed to a method of playing a wagering poker game with physical cards.

[095] As in the Redetermination Preliminary Review letter, we first consider independent claim 1 on file. As purposively construed, the subject-matter defined by independent claim 1 on file is a method of playing a wagering poker

game and includes, as essential elements, a set of rules for the game as described under “The invention as claimed” section, and a standard deck of physical cards.

[096] As discussed under the “Legal principles” section above, the Courts have indicated that determining what in good faith the inventor actually invented or discovered is a question that forms part of purposive construction (*Dusome* at para 45) and that such a determination is a relevant and necessary question when assessing patentable subject-matter (*Benjamin Moore* at para 68).

[097] As discussed under the “Purposive construction” section above, the claimed physical cards belong to a standard deck of cards and the skilled person would consider the discovery or new knowledge to lie in the specific set of rules governing the claimed poker game.

[098] As explained in the “Legal principles” section above, although the *Shell Oil* test is the starting point for the definition of “art”, the Federal Court of Appeal in *Amazon* clarified that a physicality requirement is implicit in the definition of “invention” under section 2 of the *Patent Act* (*Amazon* at para 66), and that this requirement cannot be met merely by the fact that the claimed invention has a practical application (*Amazon* at para 69). Particularly for cases where an abstract idea is implemented using a well-known tool, the Federal Court of Appeal in *Benjamin Moore* provided the following guidance at paragraph 94: if the only new knowledge lies in a 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 tool, such as a book or a computer, to implement this method, then the physicality requirement will likely not be satisfied without something more.

[099] As explained above, the physical cards are nothing more than a well-known tool, albeit essential elements in the claim as intended by the Applicant, that are simply used to implement the game. It was our preliminary view that the skilled person would not consider the use of a standard deck of cards to implement the game to alter the nature of the discovery identified above. The use of the physical cards would not, in itself, add to human knowledge on the subject of

poker games. As explained above, the skilled person would consider the new knowledge or discovery to lie in the set of rules for the claimed game of poker. These rules by themselves are abstract in nature. In view of the guidance in *Benjamin Moore* at paragraph 94, it was our preliminary view that since the new knowledge or discovery is an abstract idea (a set of rules governing a poker game), the use of a well-known tool (a standard deck of physical cards) to implement this abstract idea would not satisfy the physicality requirement without something more. Although claim 1 on file may be considered to involve a practical application in the form of the physical manipulation of a standard deck of cards, it was our preliminary view that the claimed subject-matter as purposively construed does not provide the "something more" to which the Court in *Benjamin Moore* refers to provide a practical application that meets the physicality requirement in *Amazon*.

[100] The above assessment is in line with the *Schlumberger* inquiry identified in *Dusome* at paragraph 48, including whether, based on a purposive construction of the claims, "the only inventive aspect of claims 1-21 are the rules of a game".

[101] With respect to *Schlumberger*, *Benjamin Moore* at paragraph 87 stated that:

> *Schlumberger* is an example of a case that is found at one end of this spectrum, where the computer was nothing more than a tool, albeit an essential one in the claim as drafted by the patentee, that simply manipulated information faster than a human could. This is why our Court in *Amazon* at paragraph 62 noted that there was nothing novel in the claimed invention in *Schlumberger* other than the mathematical formula. Using the Court's terminology in *Shell Oil*, I would say that there was no new knowledge other than that the use of a computer can manipulate information faster and more efficiently than a human, which did not add anything to human wisdom on the subject.

[102] *Benjamin Moore* also stated in paragraph 69 that:

> In *Amazon*, our Court noted that in *Schlumberger* the particular patent application had failed for want of patentable subject matter because the only novel aspect of the claimed invention was the mathematical formulae

(*Amazon* at para. 62). It also referred to the "inventive aspect" of the claimed invention at paragraph 63.

[103] It was our preliminary view that the subject-matter of claim 1 on file as purposively construed is not distinguishable from the situation in *Schlumberger*. As discussed above, the skilled person would consider the discovery or new knowledge in claim 1 on file to lie in the rules of a game. The subject-matter of claim 1 on file as purposively construed involves the physical manipulation of a standard deck of cards to give the set of rules for the poker game a practical application. However, a standard deck of physical cards is nothing more than a well-known tool, albeit an essential one in the claim, that is used to simply implement the game. The skilled person would not consider the use of a standard deck of physical cards to play the claimed poker game to add to human wisdom on the subject of poker games at the relevant date. Like in *Schlumberger*, there is no novel or inventive aspect in the claimed invention other than the set of rules for the poker game.

[104] It was therefore our preliminary view that the subject-matter of claim 1 on file as purposively construed is not distinguishable from *Schlumberger* and does not provide the "something more" to which the Court in *Benjamin Moore* refers in order to satisfy the physicality requirement in *Amazon*.

[105] Dependent claims 2-21 on file recite further limitations regarding the claimed method of playing a wagering poker card game, including details related to the number of cards in players' initial, first and second hands, number of community cards, number of cards in the dealer's showdown hand, amount for buy-in bets, details of sub-games involving players' first and second hands and the dealer's showdown hand, and the addition of a joker or wild card to represent any card in the deck. It was our preliminary view that the skilled person would consider that the new knowledge or discovery in the dependent claims lies in the set of rules specified in each of these claims, and that the dependent claims do not add any features that would distinguish them from *Schlumberger* and provide the "something more" in *Benjamin Moore* in order to satisfy the physicality requirement in *Amazon* and render these claims patentable.

[106] It was therefore our preliminary view that the subject-matter of claims 1-21 on file as purposively construed is not distinguishable from *Schlumberger*; it does not satisfy the physicality requirement in *Amazon* and is not directed to patentable subject-matter.

Claims 22-24

[107] Claims 22-24 on file are directed to a computerized implementation of the poker game defined in claim 1 on file.

[108] As explained under “Purposive construction” above, although these claims directly or indirectly depend on claim 1 on file which recites the use of physical cards, the skilled person would construe claims 22-24 as being directed to a computerized implementation with only virtual representations of the cards.

[109] As in the Redetermination Preliminary Review letter, we first consider claim 22 on file. As purposively construed, the subject-matter defined by claim 22 on file is a computerized method of playing the poker game in claim 1, and includes as essential elements a set of rules governing the poker game as described under “The invention as claimed” section, and a computer device, comprising a number of components.

[110] Similar to the above patentable subject-matter assessment of claims 1-21, we preliminarily considered, based on the purposive construction of claim 22, what according to the application has been discovered (*Amazon* at paras 42-44; *Dusome* at para 45; *Benjamin Moore* at para 68 referring to *Schlumberger*).

[111] As discussed under “Purposive construction” above, the skilled person would consider the computerized implementation in claim 22 on file to involve programming an algorithm into the claimed computer device to cause it to take the steps necessary to implement the poker game in claim 1. There are no physical elements in claim 22 on file beyond the computer device and its components, including a processor, computer readable medium, input means and a display screen. And, the skilled person would consider that the claimed computer elements are well-known components merely used in a well-known

manner and that the claimed steps do not result in any improvements to the functioning of the computer.

[112] It was therefore our view as explained under the “Purposive construction” section above that the skilled person would consider the discovery or new knowledge to lie in the algorithm or set of programmable instructions which is coded on the non-transitory computer readable medium and executed by the processor to implement the claimed invention, the algorithm corresponding to the set of rules governing the poker game. This algorithm or set of instructions is abstract in nature.

[113] As explained in *Amazon* (paras 61-63, 66, 69), programming an abstract idea onto a well-known computer would not be sufficient to satisfy the physicality requirement implicit in the definition of “invention” in section 2 of the *Patent Act*. This was the situation in *Schlumberger* where nothing other than an abstract algorithm, a mathematical formula, was discovered and 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).

[114] In light of our view that the essential elements of claim 22 on file do not include any physical elements outside the well-known computer device and its components which operate in a well-known manner without any improvements to their operation, and given that the mere use of well-known computer elements may not be sufficient to meet the physicality requirement (*Amazon* at para 69; *Benjamin Moore* at para 87), as we stated in the Redetermination Preliminary Review letter, it is important to ask the *Schlumberger* question in order to determine whether claim 22 on file meets the physicality requirement in *Amazon*.

[115] This is in line with the *Schlumberger* inquiry in *Dusome* at paragraph 48, including whether, based on a purposive construction of the claims, “the only inventive aspect of claims 22-24 is the algorithm that is programmed into the computer to cause it to take the necessary steps to accomplish the subject-matter defined by the claims (which may or may not be new rules of a game)”.

[116] It was our preliminary view that the subject-matter of claim 22 on file as purposively construed cannot be distinguished from the situation in *Schlumberger*, where the computer was merely acting in a well-known manner. In our preliminary view, like in *Schlumberger*, the skilled person would consider the only new knowledge, or novel and inventive aspect, of claim 22 to lie in the algorithm or set of programmable instructions which is coded on the non-transitory computer readable medium and executed by the processor to implement the poker game defined in claim 1.

[117] In line with the guidance in *Benjamin Moore* at paragraph 94, since the new knowledge is an abstract idea (a set of rules governing a poker game), the use of a well-known tool (a well-known computer operating in a well-known manner) to implement this abstract idea would not satisfy the physicality requirement without something more. It was our preliminary view that the subject-matter of claim 22 on file as purposively construed does not provide the "something more" to which the Court in *Benjamin Moore* refers in order to meet the physicality requirement in *Amazon*.

[118] As mentioned in our Redetermination Preliminary Review letter, the Applicant, in the submissions received on June 7, 2022 at page 35, stated that:

> …the instant invention is distinguishable from Schlumberger and is not a set of rules or algorithm that can be programmed into a general purpose computer and turned on to achieve a general result. The instant invention is the novel gaming method, which when programmed into a computer/server system creates a new specifically distinct machine to display the cards and deploy the unique method; which in combination with the internet, physical participants and their physical computer components to send or receive and display inputs (bet, fold, raise, check, fold) and outputs (chip stack and pot winnings) to calculate and process the novel gaming method to achieve a unique result (showdown hand) which is a combination of physical and abstract elements acting together to perform the novel gaming method (the operation of a poker event).

[119] As mentioned in our Redetermination Preliminary Review letter, in the submissions received on March 22, 2024, in addition to similar arguments as above, the Applicant submitted at page 51 the following:

> The computer is not a generic computer that adds and subtracts numbers as per Schlumberger but a unique specifically programmed computer/server that is physically altered with permanently installed memory storage which allows the practical application of the poker event.

[120] We respectfully disagreed with the Applicant's position in our Redetermination Preliminary Review letter. As discussed under "Purposive construction", there is no suggestion in the specification that the claimed computer device or any of its components represent anything other than well-known computer components operating in a well-known manner. There is no suggestion in the specification that there were any challenges or deficiencies in the operation of a computer system used to implement the claimed poker game. There is no detailed discussion of the computer implementation of the claimed poker game in the specification that would suggest any difficulties would be overcome in that respect. Using the terminology in the Applicant's submission above, the "new specifically distinct machine" is merely a general purpose well-known computer that is specifically programmed to implement the claimed poker game. It was our preliminary view that this is no different than the well-known computer in *Schlumberger* being considered a new specifically distinct machine as it was specifically programmed to implement a mathematical algorithm.

[121] The Applicant also stated in their submissions received on June 7, 2022 at page 24 that:

> The computer functioning is also inherently improved by the programmed instant invention, as the gaming mechanics run two games at the same time, the number of betting rounds is more, there could be two winners per round, the new specific computer allows the creation of a novel "showdown hand", the improvement is a better experience for the participants allowing them to be involved in the event until the end of the round. Basically, any improvement in the "computer" is a somewhat subjective assumption and

> has no place in the Patent Act or in Law. Once it is programmed it is a **new** specific computer machine. [emphasis in the original]

[122] In our Redetermination Preliminary Review letter, we respectfully disagreed that the functioning of the computer is inherently improved in the claimed invention simply because the computer/server can run two games at once or because the claimed poker game provides an improved experience for the participants. We noted that one consideration that may inform whether a computer-implemented invention is distinguishable from *Schlumberger* and satisfies the physicality requirement is whether executing the algorithm by the computer results in any improvement to the functioning of the computer (*Choueifaty* at para 42). It was our preliminary view that improvements to the functioning of the computer would include such examples as improvement in memory usage or processing speed. As discussed under “Purposive construction”, there is no suggestion in the specification that the claimed invention results in an improvement in the functioning of the computer.

[123] It was therefore our preliminary view that the subject-matter of claim 22 on file as purposively construed is not distinguishable from *Schlumberger* and does not provide the “something more” in *Benjamin Moore* in order to satisfy the physicality requirement in *Amazon*.

[124] Dependent claim 23 recites that the computer device is a personal computing device or a casino-type gaming machine. Dependent claim 24 specifies that the computer device is operated wirelessly over the internet to connect a group of players virtually. As explained under “Purposive construction”, the skilled person would consider that the claimed computer elements are well-known components merely used in a well-known manner, and that the claimed method steps do not result in any improvements to the functioning of the computer device. It was also our preliminary view that the skilled person would consider that the new knowledge or discovery in the dependent claims lies in the set of rules governing the claimed poker game (the set of rules corresponding to the algorithm that is programmed into the computer to cause it to take the necessary steps to implement the poker game), and that the dependent claims do not add any features that would distinguish them from *Schlumberger* and

that would provide the “something more” in *Benjamin Moore* in order to satisfy the physicality requirement in *Amazon* and render the subject-matter defined by these claims patentable.

[125] It was therefore our preliminary view that the subject-matter of claims 22-24 on file as purposively construed is not distinguishable from *Schlumberger*; it does not satisfy the physicality requirement in *Amazon* and is not directed to patentable subject-matter.

[126] In light of the above, it was our preliminary view that claims 1-24 on file define non-patentable subject-matter, falling outside the definition of “invention” under section 2 of the *Patent Act*. For the same reasons, where the subject-matter defined by the claims amounts to the implementation of the abstract rules of the poker game using well-known instruments without meeting the physicality requirement, it was our preliminary view that the claims are also excluded under subsection 27(8) of the *Patent Act* (*Amazon* at para 62).

Applicant’s submissions

[127] The Applicant’s written submissions in response to our Redetermination Preliminary Review letter were received on June 8, 2026. The written submissions are contained within two files: “028june826.pdf” (Document-1) and “028Appendix2.pdf” (Document-2). Document-1 includes the Applicant’s response (pages 1-10) and proposed claim set-2 amendments (pages 11-17), while the rest of Document-1 (pages 18-297) appears to be a large number of independent parts, consisting of what appears to be historical, jurisprudential and industry reviews, research, advice and strategic recommendations provided to the Applicant, some on hypothetical situations without directly addressing the assessment put forward in the Redetermination Preliminary Review letter. Document-2, named Appendix 2, consists of Federal Court material related to *Dusome* including such documents as a copy of the appeal book, the *Dusome* decision, and the respondent’s memorandum of fact and law in *Amazon*.

[128] The Applicant’s response in Document-1 at pages 2-3 submitted that the analytical approach in the Redetermination Preliminary Review letter was

inconsistent with section 2 and subsection 27(8) of the *Patent Act*, the reasons in *Dusome*, and the jurisprudence in *Amazon*, *Shell Oil* and *Benjamin Moore*. They further stated on pages 3-4 that

> The Federal Court held that the prior analysis improperly:
>
> - identified the “actual invention” separate from the claims;
> - abstracted the invention into rules or information;
> - and failed to assess the claims as purposively construed.
>
> Nevertheless, the [Redetermination] Preliminary Review again states that:
>
> > “the skilled person would consider what has been discovered to lie in the claimed set of rules itself.”
>
> That statement reproduces the exact analytical defect identified by the Court.
>
> The claims are not directed merely to “rules”.
>
> The claims define:
>
> - a structured wagering system;
> - involving sequential operational stages;
> - physical and/or computerized implementation;
> - allocation and transfer of wagered resources;
> - conditional game-state transitions;
> - dealer comparison mechanisms;
> - and real-world commercial outcomes.

> The [Redetermination] Preliminary Review does not analyze this claimed combination as a whole. Instead, it isolates an alleged informational abstraction and treats that abstraction as the invention itself.
>
> That approach is legally impermissible.

[129] We respectfully disagree. As explained above, what in good faith the inventor has actually invented or discovered is a relevant and necessary question in understanding a claimed invention and assessing patentable subject-matter (*Amazon* at para 42; *Benjamin Moore* at para 68; *Schlumberger* at 847). Such a determination is grounded in a purposive construction of the claims (*Amazon* at para 42-43). This is in line with the Courts' statements in *Schlumberger* at page 847 that "[i]n order to determine whether the application discloses a patentable invention, it is first necessary to determine what, according to the application, has been discovered" and in *Dusome* at paragraph 45 that "determining what in good faith the inventor actually discovered is a question that forms part of purposive construction". As stated in *Amazon* at paragraph 44, such an exercise under purposive construction ensures that "the Commissioner is alive to the possibility that a patent claim may be expressed in language that is deliberately or inadvertently deceptive" and "what appears on its face to be a claim for an 'art' or 'process' may, on a proper construction, be a claim to a mathematical formula", as was the case in *Schlumberger*.

[130] In our view, as expressed above and also in our Redetermination Preliminary Review letter, the claims do not merely define rules in the abstract. We agree that the subject-matter defined by the claims, as purposively construed, consists of the rules governing the claimed poker game, including the distribution and use of cards, wagering through buy-in bets and pots, sequential stages of the game including sub-games and betting rounds, dealer actions, and the awarding and/or transfer of pots or portions of pots depending on the outcomes of the sub-games and showdown round, wherein the game is implemented using a deck of physical cards or on a computer. We also agree, as stated above, that there are real-world commercial outcomes. However, as instructed in *Dusome* at paragraph 48, in line with *Amazon* and *Benjamin Moore*, consideration of *Schlumberger* is necessary. It was on that basis that we

concluded in the Redetermination Preliminary Review letter that the claimed invention is not distinguishable from *Schlumberger*, and not directed to patentable subject-matter.

[131] The Applicant's response in Document-1 at pages 4-5 submitted that the Redetermination Preliminary Review letter improperly disregarded the essential claim elements on the basis that such elements are well-known.

[132] We respectfully disagree. As stated in our Redetermination Preliminary Review letter, it was our preliminary view that the skilled person would consider all the claimed elements including the rules of the game, the cards and computer components to be essential elements. However, as explained above, with respect to the use of well-known instruments or tools, such as a computer to implement a method, the mere presence of such tools as essential elements may not be sufficient to meet the physicality requirement in *Amazon* (*Amazon* at para 69; *Benjamin Moore* at para 87). It was on that basis, and in line with the guidance in *Dusome* at paragraph 48, that we assessed the instant application with respect to the *Schlumberger* question in our Redetermination Preliminary Review letter and concluded that the claimed invention is not distinguishable from *Schlumberger*, and does not provide the "something more" to which the Court in *Benjamin Moore* refers to provide a practical application that meets the physicality requirement in *Amazon*.

[133] Furthermore, the Applicant's response in Document-1 at pages 4-5 stated that:

> The Supreme Court in **Shell Oil** expressly recognizes that patentable subject-matter may arise from:
>
> - a new combination;
> - a new application;
> - or a new operational arrangement of known elements.
>
> …

> The issue is not whether individual cards, processors, displays, or wagering inputs were previously known.
>
> The issue is whether the claimed combination, purposively construed as a whole, constitutes:
>
> - a practical application;
> - producing commercially useful results;
> - through a defined operational process.
>
> The [Redetermination] Preliminary Review fails to conduct that required analysis. [emphasis in the original]

[134] The response in Document-1 at pages 5-6 further stated that the claims considered in the Redetermination Preliminary Review letter define a “practical operational process” producing observable state changes, monetary consequences, player eliminations, wager allocations, and commercial gaming outcomes, therefore they define a practical “art” within the meaning of section 2. The Applicant also argued at pages 7-8 that the amended computer claims in proposed claim set-2 were not analyzed in accordance with current FCA authority and that “***Benjamin Moore*** confirmed that patentability cannot be denied through conclusory characterization of computer elements as ‘generic’ while ignoring the claimed operational arrangement” [emphasis in the original].

[135] As mentioned above under “The invention as claimed”, we agree that the instant application involves the distribution of cards, various game stages and states with player eliminations, wagering actions with monetary consequences, and commercial outcomes implemented using physical cards or on a computer system. As explained in the analysis section above, and as was done in our Redetermination Preliminary Review letter, our patentable subject-matter assessment was conducted in accordance with the guidance in the Federal Court of Appeal decisions in *Amazon*, *Benjamin Moore* and *Schlumberger*.

[136] With respect to the Applicant’s arguments regarding *Shell Oil* and *Benjamin Moore*, in particular their submission that *Shell Oil* recognizes that patentable

subject-matter may arise from “a new operational arrangement of known elements” and that the issue is whether the claimed invention constitutes a practical application through a “defined operational process”, we respectfully disagree that *Shell Oil* provides such guidance. Further details on our attempt at the oral hearing to clarify the Applicant’s position on the above statement is provided under “The oral hearing” section below.

[137] Lastly, the Applicant submitted in their response in Document-1 at page 8 that the Redetermination Preliminary Review letter failed to “give effect to the Court’s remittal” in *Dusome*.

[138] We respectfully disagree. As explained above, our purposive construction and patentable subject-matter analysis in the Redetermination Preliminary Review letter was done in accordance with the reasons in *Dusome* and the relevant jurisprudence including *Amazon*, *Benjamin Moore* and *Schlumberger*. Further details on our attempt at the oral hearing to clarify the Applicant’s position on the guidance in *Dusome* are provided under “The oral hearing” section below.

[139] The Applicant’s response (pages 1-10 of Document-1) does not refer to pages 18-297 of Document-1 or to Document-2.

THE ORAL HEARING

[140] Given the nature of the written submissions, at the oral hearing, we attempted to clarify the Applicant’s position on the following. We note that, at the oral hearing, the Applicant confirmed the use of artificial intelligence, specifically ChatGPT, in preparing the written submissions.

[141] First, we provided the Applicant with the opportunity to provide their views on how the physicality requirement in *Amazon* at paragraph 66, the guidance in *Benjamin Moore* at paragraph 94 with respect to implementation using well-known instruments, and the *Schlumberger* question as also mentioned in *Dusome* at paragraph 48, should be applied to the instant application.

[142] The Applicant reiterated, at the hearing, their position set out at pages 166-167 of Document-1, providing their view on a broad comparison between *Dusome*

and *Amazon* without addressing the *Schlumberger* question or how those principles should apply in the instant case. We attempted again to clarify how, in the Applicant's view, the guidance in *Dusome* at paragraph 48 should be applied, particularly with respect to whether *Schlumberger* is distinguishable in this case, and what the Applicant considers the inventive aspect of the instant claims to entail. The Applicant did not engage with that question beyond stating that there is no algorithm, but rather there is physical interaction with the playing cards or the computer and the invention cannot operate without cards in either physical or virtual form. As explained under "The invention as claimed" section above, both in our Redetermination Preliminary Review letter and in this final review, we use "algorithm", as was used in *Dusome* at paragraph 48, to refer to the set of programmable instructions which is coded on the non-transitory computer readable medium and executed by the processor of the computer to implement the claimed poker game. In our view, that algorithm corresponds to the set of rules governing the claimed poker game.

[143] We also asked the Applicant to clarify their position on *Dusome* at paragraph 45 which asks that determining what the inventor has actually discovered is a question that forms part of the purposive construction, and their position on *Dusome* at paragraph 58 which states that the Commissioner will need to take into account the nature of the discovery claimed. In particular, we asked the Applicant to indicate where the discovery lies and what new knowledge has been added on the subject of poker games, and how in the Applicant's view this discovery should be used in the patentable subject-matter assessment.

[144] The Applicant did not engage with that question directly, instead they responded by referencing page 1134 of Document-2 and stated that in their view the framework is sequential and includes first purposively construing the claims to determine essential and non-essential elements. If the essential elements only refer to an abstract theorem, then *Schlumberger* would be considered. But if it's a novel combination, then that would be the practical application of the patentable art under *Shell Oil*. The Applicant stated that in paragraph 58, *Dusome* requires purposive construction, and because the claims define a claimed combination, they are supposed to be analyzed as a claimed combination based on *Shell Oil*.

[145] In response to our question with respect to where the discovery lies, the Applicant stated that the discovery is the claimed combination, and that this question cannot be brought up during essential elements analysis under purposive construction. Instead, the Applicant suggested that if, after determination of essential elements, all that is left is a mathematical formula, the question of where the discovery lies can be asked, and *Schlumberger* may be considered. The Applicant stated that *Dusome* at paragraph 58 did not identify a formula, so the *Shell Oil* test must be considered.

[146] We then asked how the Applicant would apply their framework to the case in *Schlumberger*, as it appears that in their view the computer would not be an essential element, and the essential elements would only be directed to calculations.

[147] The Applicant did not engage with that question and responded that the issue was not relevant to the instant application.

[148] The Applicant's written and oral submissions made references to the instant application being patentable as a new operational arrangement of known elements and being a defined operational process. For example, at the hearing, the Applicant referred to pages 262-267 of Document-1, which broadly argue that *Schlumberger* must be read narrowly and consistently with the later Supreme Court and Federal Court of Appeal jurisprudence, stating that "the key idea in *Schlumberger* was that a mathematical formula does not become patentable merely because a computer performs it. That is narrower than the idea that all computer-implemented **operational** systems are abstract" (Document-1 at page 263, emphasis added). The Applicant also argued that according to *Shell Oil* a disembodied idea is not *per se* patentable, but it will be patentable if it has a method of practical application, which according to the Applicant "substantially narrows aggressive readings of *Schlumberger*" (Document-1 at page 263), and "shifts the inquiry towards **operational implementation**, practical effect and applied commercial activity" (Document-1 at page 264, emphasis added). The Applicant also argued that *Amazon* teaches that claims cannot be reduced to "an abstract concept while disregarding the **operational implementation**" (Document-1 at page 265, emphasis added).

With respect to *Dusome*, the Applicant argued that since the Court stated that "*Schlumberger* may be distinguishable because the rules, cards, and computer implementation may together form part of a novel combination…the invention cannot be automatically reduced to rules alone" and the operational combination matters (Document-1 at page 266). The Applicant also argued that the inventive substance in *Schlumberger* resided in mathematical calculations, but in the instant case, "the claims define operational wagering structures; sequential game-state transitions; monetary allocation systems; dealer comparison mechanics; player continuation/elimination states; physical and computerized implementation; and observable commercial effects" (Document-1 at pages 266-267).

[149] We asked the Applicant to clarify from which court decision the need for an operational process is derived, and that if it is with respect to the *Shell Oil* test for a patentable art, if the Applicant could point to where in *Shell Oil* or subsequent court decisions such a requirement is mentioned. The Applicant did not respond directly and instead referred to *Dusome* paragraphs 48 and 58.

[150] In our view, there is no support in the cited jurisprudence, including *Dusome*, for such an operational process requirement or consideration in the assessment of patentable subject-matter.

[151] We have considered the Applicant's submissions that the claims define a new operational combination involving distribution of cards, division of player hands, sequential betting stages, allocation of funds, creation of dealer showdown states and various other operations. Considering the claimed subject-matter as purposively construed and viewed as a whole, including its physical and computer implementations, the Applicant's submissions do not alter our conclusion that the only inventive aspect of the claims is the rules of the game and the algorithm corresponding to those rules programmed into a computer, and that *Schlumberger* is not distinguishable.

[152] Lastly, the Applicant made submissions with regard to the history of wagering and its physical and tangible commercial aspects as a transaction with obligations, liabilities, economic position changes and settlement mechanics.

The Applicant also submitted that, in that respect, *Amazon* and the instant application are similar as both involve a practical application with real-world actions and effects, rather than a disembodied idea.

[153] We agree, as mentioned above, that the instant application involves wagering actions with obligations, liabilities, economic position changes and settlement mechanics, and that there are real-world actions and a commercially useful result, thereby satisfying the third *Shell Oil* requirement for patentable "art" as explained under "Legal principles" above. However, as explained above under "Legal principles", the Federal Court of Appeal in *Amazon* stated that a physicality requirement is implicit in the definition of "invention" under section 2 of the *Patent Act* (*Amazon* at para 66), and that this requirement cannot be met merely by the fact that the claimed invention has a practical application (*Amazon* at para 69). Particularly for cases where an abstract idea is implemented using a well-known tool, the Federal Court of Appeal in *Benjamin Moore* stated at paragraph 94 that if the only new knowledge lies in a method itself, it is the method that must be patentable subject-matter, however if the new knowledge is simply the use of a well-known tool, such as a book or a computer, to implement this method, then the physicality requirement will likely not be satisfied without something more. We concluded that the claimed subject-matter as purposively construed involves the use of well-known tools to implement a set of poker rules and does not provide the "something more" to which the Court in *Benjamin Moore* refers to provide a practical application that meets the physicality requirement in *Amazon*.

[154] In light of the above, taking into consideration the Applicant's submissions, our view is that, consistent with the Redetermination Preliminary Review letter, claims 1-24 on file define non-patentable subject-matter, falling outside the definition of "invention" under section 2 of the *Patent Act* and prohibited under subsection 27(8) of the *Patent Act*.

Progressive Games considerations

[155] For completeness, in our Redetermination Preliminary Review letter, we considered jurisprudence specifically addressing a card-game invention as

articulated in *Progressive Games FC*, where patentable subject-matter was the only issue before the Court and the Court did not consider a method of playing poker to meet the definition of “art” or “process” under section 2 of the *Patent Act*. Although each case turns on its own facts, given the similarity between the two cases, we assessed the instant application with respect to the situation in *Progressive Games FC*. We present the assessment in our Redetermination Preliminary Review letter below.

[156] In *Progressive Games FC*, the claimed game was a modified version of a five-card stud poker game, where each player plays their poker hand against a poker hand held by the house, and in which a player receives a bonus payment based on the type of poker hand that a player holds (*Progressive Games FC* at paras 2-3). The method is summarized as follows (*Progressive Games FC* at para 3):

> In a preferred method of play, after each player places an ante in a designed location, the dealer deals five cards to each player and to himself; all cards being dealt face down except for one of the dealer's cards. Each player views his hand and then decides whether to continue to play by making an additional bet or to fold or drop (i.e. retire), in which case he loses his ante. The dealer then reveals his entire hand; if the dealer's hand does not have a poker value of at least Ace-King, then the dealer is not permitted to continue to play. In this case, the dealer pays even money on the remaining player's antes, and returns their bets to them. If the dealer's hand has a poker value of Ace-King or better, the dealer compares his hand to each player, paying or collecting the bets as appropriate. The dealer also pays odds of more than even money on each winning player's hand of two pairs or better according to a bonus payment schedule.

[157] As discussed under the “Legal principles” section above, *Shell Oil* is the starting point for the definition of a patentable “art”. Its test for patentable “art” contains the following elements: (i) it must not be a disembodied idea but have a method of practical application; (ii) it must be a new and innovative method of applying skill or knowledge, and (iii) it must have a commercially useful result (*Amazon* at para 50*; Progressive Games FC* at para 16).

[158] With respect to the first criterion in the *Shell Oil* test, *Progressive Games FC* at paragraph 18 indicated that the claimed invention had a practical application as it involved the physical manipulation of cards. The Federal Court of Appeal in *Benjamin Moore* stated in paragraph 66 that the physical manipulation of cards in *Progressive Games FCA* was "allegedly a practical application", raising the possibility in our view that the physical manipulation of cards in a poker game may not be sufficient to meet the practical application requirements in *Shell Oil*.

[159] With respect to the practical application requirement in *Shell Oil*, the Federal Court of Appeal in *Amazon* stated at paragraph 66 that:

> …the "practical application" requirement "ensures that something which is a mere idea or discovery is not patented – it must be concrete and tangible. This requires some sort of manifestation or effect or change of character"…because a patent cannot be granted for an abstract idea, it is implicit in the definition of "invention" that patentable subject matter must be something with physical existence, or something that manifests a discernible effect or change.

[160] *Amazon* also clarified that the mere presence of a practical application is not sufficient to satisfy the physicality requirement implicit in the definition of "invention" in section 2 of the *Patent Act* (*Amazon* at paras 61, 65-66 and 69). The physicality requirement will not likely be satisfied without something more than a well-known instrument being used to implement an abstract method (*Benjamin Moore* at para 94). This was the basis for our view above that the claimed poker game, whether played with physical cards or on a computer, is not directed to patentable subject-matter.

[161] With respect to the second criterion, the Court in *Progressive Games FC* did not consider the claimed game to conform to the method of applying skill or knowledge criterion in *Shell Oil*, stating at paragraph 20 that:

> I don't believe that the Appellant's changes in the method of playing poker are a contribution or addition to the cumulative wisdom on the subject of games. In my view, those changes do not refer to "learning" or "knowledge"

> as commonly used in expressions such as “the state of the art” or “the prior art”.

[162] The Court at paragraph 23 explained that:

> In the present case, I believe that the Appellant's changes in the method of playing poker — i.e. by adding a new player referred to as "the house" — do not substantially modify the poker game as it exists nor do they create a new game. The Appellant's method uses the standard deck of playing cards, uses the five-card poker hand where the priority of winning hands is determined by the conventional rules of poker. Regarding the bonus payment schedule, although it can make the game more attractive to the consumer, it does not modify the way a poker game is played. The winnings that a player earns refer to wagering and not to the game itself.

[163] The Court also did not accept the Appellant’s argument that they had invented a method of using the old card game in a new way, as the use of cards for wagering in casinos, including against the house, was a known use.

[164] As explained under the “Legal principles” section above, *Progressive Games FCA* affirmed *Progressive Games FC* and indicated at paragraph 1 that:

> [*Progressive Games FC*] concluded that the Appellant’s changes in the method of playing poker did not amount to a contribution or addition to the cumulative wisdom on the subject of the game…. The Appellant's suggested game uses the standard deck of playing cards and the conventional rules of poker with a slight variation. We do not believe this amounts to a new and innovative method of applying skill or knowledge within the meaning given to those words in [*Shell Oil*].

[165] The Court’s reasoning suggests that, although changes to the rules of play compared to existing and well-known poker games may be identified, such changes would not necessarily be considered to amount to an addition to the cumulative wisdom on the subject of poker games, or to a new and innovative method of applying skill or knowledge within the meaning of *Shell Oil*.

[166] Regarding the second criterion asking whether it is a new and innovative method of applying skill or knowledge, *Benjamin Moore* at paragraph 67, referring to *Shell Oil* and *Progressive Games FCA*, confirmed that concepts of novelty and ingenuity are relevant to the patentable subject-matter assessment. The Court, however, indicated at paragraph 72 that "our courts have yet to deal expressly with the extent to which the consideration of these concepts [concepts of novelty and ingenuity] in application of section 2 differs from the exercises mandated by sections 28.2 and 28.3 of the Act."

[167] Nonetheless, in the Redetermination Preliminary Review letter, we provided the following comparison of the instant application with the situation in *Progressive Games FC* with respect to the second criterion in *Shell Oil*. The claimed game in the instant application is played with a standard deck of playing cards, and uses a five-card poker hand where a winning hand is determined in accordance with the conventional hierarchy of five-card poker hands. The claimed poker game combines the well-known hand splitting and two sub-game features of Pai Gow poker with the well-known rules of Texas Hold'em and adds a showdown round with the dealer to create a game that is more attractive for players by creating larger pots and more betting rounds, and maintaining the players' interest in the game until the end. It was our preliminary view that the claimed games in both the instant application and *Progressive Games FC* use the same standard rules of poker: using standard playing cards, at each betting round players use their in-hand cards in combination with any available community cards to make a five-card hand where a winning hand at each round is determined in accordance with the conventional hierarchy of five-card poker hands. What is different is the manner in which cards are dealt out to players and the number and mechanics of betting rounds, which ultimately results in different odds of winning, creating new maths and strategies, but without adding to the skilled person's knowledge of poker as a game itself. However, as noted above, the Court in *Progressive Games FC* found that the addition of a new player did not substantially modify the poker game and that the winnings that a player earns referred to wagering, and not to the game itself. It was our preliminary view that this is comparable to the claimed invention in the instant application which combines features from two well-known games of poker and adds a showdown

round in order to create new maths and new strategies. In the context of the state of knowledge at the relevant time, the instant application and *Progressive Games FC* both use the same standard rules of poker with modifications to the known games of poker at the relevant time for each case, resulting in different winning odds for players, which the Court in *Progressive Games FC* did not find to amount to a contribution or addition to the cumulative wisdom on the subject of the game.

[168] It was our preliminary view that, similar to *Progressive Games FC*, the skilled person would consider that a more attractive game to the consumer with new wagering strategies and winning maths is claimed in the instant application without substantially modifying the poker game as it was generally known at the relevant date. It was our preliminary view that, like in *Progressive Games FC*, the skilled person would consider that the changes to the game of poker in the instant application in view of the common general knowledge at the relevant date do not amount to a new and innovative method of applying skill or knowledge within the meaning given to those words in *Shell Oil*.

[169] Even if the person skilled in the art considered the modifications in the claimed poker game compared to the well-known games of poker and the common general knowledge at the relevant time to be more substantial than those in *Progressive Games FC*, as explained above, *Progressive Games FCA* noted that “we do not want to be taken as deciding that more substantial changes in the existing game would have changed the result.”

[170] With respect to the third criterion in *Shell Oil* test, *Progressive Games FC* at paragraph 18 indicated that the Appellant’s method reaches a result that may be commercially useful. It was our preliminary view that the poker game in the instant application also has a result or effect that may be commercially useful, as it provides a game of poker which may be licensed to gaming or gambling establishments such as casinos.

[171] In light of the above, in the Redetermination Preliminary Review letter, we considered the conclusions reached in the present case to be consistent with *Progressive Games FC* insofar as the claimed modifications to the rules of play

do not constitute a new and innovative method of applying skill or knowledge, nor a contribution or addition to the cumulative wisdom on the subject of poker games within the meaning of the second criterion in *Shell Oil*. While the Court in *Progressive Games FC* accepted that the physical manipulation of cards constituted a practical application under the framework at the time, subsequent jurisprudence has clarified that the presence of a practical application alone is not sufficient to meet the physicality requirement implicit in the definition of "invention" under section 2 of the *Patent Act*. Applying the physicality requirement articulated in *Amazon* and *Benjamin Moore*, it was our preliminary view that the claimed subject-matter in the instant application, whether implemented using a standard deck of physical cards or on a computer, does not amount to a patentable "art" or "process" within the meaning of section 2 of the *Patent Act*.

APPLICANT'S SUBMISSIONS ON PROGRESSIVE GAMES

[172] The Applicant's response in Document-1 and their oral submissions did not directly address the above assessment. However, pages 239-243 of Document-1 appear to set out general or hypothetical arguments concerning *Progressive Games FC*. For completeness, we address those arguments below.

[173] Document-1 on page 239 states that the Redetermination Preliminary Review letter "places more weight on [*Progressive Games FC*] than the Federal Court's remittal in *Dusome* comfortably permits – particularly if the comparison was used to minimize novelty or characterize the [instant application] as merely a variant of known poker rules."

[174] As explained in the Redetermination Preliminary Review letter, the above analysis was provided for completeness given the similarity between the instant application and the case in *Progressive Games FC*. It was not the primary basis for our patentable subject-matter assessment.

[175] Document-1 on page 241 states that novelty/inventiveness and patentable subject-matter are "separate inquiries". As explained above, *Benjamin Moore* at paragraph 67, referring to *Shell Oil* and *Progressive Games*, confirmed that

concepts of novelty and ingenuity may be relevant to the patentable subject-matter assessment.

[176] Document-1 on page 242 states that the instant claims are not merely “change payout table” or “add side bet”, but rather the claims are “materially more structured than a simple rule tweak”. As explained above, it was our view in the Redetermination Preliminary Review letter that the claimed game in the instant application is comparable to the game considered in *Progressive Games FC* in that they both modify the dealing structure and betting mechanics of conventional poker to produce different odds, strategies, and wagering outcomes, changes that the Court in *Progressive Games FC* did not find to amount to a contribution or addition to the cumulative wisdom on the subject of games. We further explained that, even if the person skilled in the art considered the modifications in the claimed poker game compared to the well-known games of poker and the common general knowledge at the relevant time to be more substantial than those in *Progressive Games FC*, *Progressive Games FCA* noted that “we do not want to be taken as deciding that more substantial changes in the existing game would have changed the result.”

[177] In light of the above, taking into consideration the Applicant’s submissions, we maintain in this final review our position above with respect to how the instant application compares to the situation in *Progressive Games FC*.

OTHER ISSUES

[178] We identified other defects with respect to the claims and description on file in the Redetermination Preliminary Review letter, and present our assessment below.

[179] The Applicant did not dispute, contest or comment on these defects. Instead, the Applicant submitted amendments which are discussed below. We therefore adopt the same position in this final review.

Indefiniteness

We consider claims 19-24 on file to be indefinite.

Legal principles

[180] Subsection 27(4) of the *Patent Act* requires claims to distinctly and explicitly define subject-matter:

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

[181] In *Minerals Separation North American Corp v Noranda Mines Ltd*, [1947] Ex CR 306 at 352, the Court emphasized both the obligation of an applicant to make clear in the claims the ambit of the monopoly sought and the requirement that the terms used in the claims be clear and precise:

> By his claims the inventor puts fences around the fields of his monopoly and warns the public against trespassing on his property. His fences must be clearly placed in order to give the necessary warning and he must not fence in any property that is not his own. The terms of a claim must be free from avoidable ambiguity or obscurity and must not be flexible; they must be clear and precise so that the public will be able to know not only where it must not trespass but also where it may safely go.

Analysis

[182] The Final Action indicated on page 6 that claims 1 and 22-24 on file are indefinite for the following reasons:

> Claim 1 is indefinite and does not comply with subsection 27(4) of the Patent Act. The term the physical number generator playing cards has no antecedent.
>
> Claim 1 is indefinite and does not comply with subsection 27(4) of the Patent Act. It is unclear as to what is meant by the physical number generator playing cards.
>
> Claims 22 to 24 are indefinite and do not comply with subsection 27(4) of the Patent Act. Claim 22 is directed to a method of playing a card game as

> in claim 1, however, claim 22 appears to be describing a computer device, and not a method. Claim 23 is directed to "The computer device of claim 22", however, claim 24 is directed to a method as in claims 22 and 23. Accordingly, it is unclear as to whether or not claims 22 to 24 are intended to be directed to a computer device or to a method.

[183] In the Redetermination Preliminary Review letter, we disagreed with the defects identified in the Final Action with respect to the term "the physical number generator playing cards". As indicated in the "Meaning of terms" section above, given that this term is recited in claim 1 on file which specifies the use of physical cards, not a computer implementation, it was our preliminary view that the skilled person would understand the term "the physical number generator playing cards" to refer to a standard deck of 52 physical cards which is previously defined in claim 1 on file as "one physical 52 card poker deck of standard playing cards".

[184] We agreed with the above defects identified in the Final Action with respect to claims 22-24 on file. Claim 22 recites "[a] method of playing a card game as in Claim 1 wherein a computer device configured to display images of playing cards…the processor to perform the steps of claim 1", which appears to be directed to a computerized implementation of the game. However, claim 1 is directed to a method of playing the game using physical cards, which causes ambiguity as it implies the use of both physical cards and a computer implementation in the claimed method. Similarly, claim 23 is directed to "The computer device of claim 22", however claim 22 is a method claim. Claim 24 is directed to "A method as in claim 22 and 23", however claims 22 and 23 are directed to a method and computer device, respectively.

[185] Furthermore, as also explained in *CD 1670*, we noted the following:

[186] Claim 22 on file recites "wherein a computer device configured…" which appears to be lacking a verb, and should possibly read "wherein a computer device is configured…".

[187] Claim 23 on file recites the subjective term “such as” which directs the claim to both broad and narrow embodiments, causing a lack of clarity as to the intended scope of the claim.

[188] Finally, in our Redetermination Preliminary Review letter, we identified the following additional indefiniteness defects:

[189] Claim 19 on file recites “dealer deals a number of cards equal to the number of cards in the second round to a "showdown " [*sic*] hand” and further refers to the winner of the second round. Claim 1 on file, on which claim 19 indirectly depends, refers to rounds only in terms of betting rounds within the first and second sub-games. It was therefore our preliminary view that the terms “second round” and “2nd round” in claim 19 cause ambiguity as it is not clear whether they refer to the previously defined second betting round or to the second sub-game. Similarly, claim 21 on file recites “betting rounds from the first round being transferred to the second round”. It was our preliminary view that the terms “first round” and “second round” cause ambiguity as it is not clear whether they refer to the previously defined first and second betting rounds or to the first and second sub-games. It was therefore our preliminary view that claims 19 and 21 on file are indefinite.

[190] Claim 20 on file recites “at least one joker or wild card is added to the standard deck…to represent any card (value and suit) in the deck”. It was our preliminary view that the inclusion of a feature in parentheses raises uncertainty as to whether this feature is optional or not. Additionally, the description does not appear to mention the use of the joker or a wild card in the poker game. It was therefore our preliminary view that it is not clear what role the joker or a wild card would play in the poker game. For example, it is not clear how to rank two identical hands, one with the joker and another with the card that the joker represents. It was therefore our preliminary view that claim 20 on file is indefinite.

[191] Therefore, it was our preliminary view that claims 19-24 on file are indefinite and do not comply with subsection 27(4) of the *Patent Act*.

[192] In addition, in the Redetermination Preliminary Review letter, we identified the following typographical issues in the claims on file:

[193] Claim 1 on file appears to include additional periods in steps a) and d). In step a), it recites “…upon commencement of a first poker game.”, and at the end of step d) it recites “all players check.”, both of which appear to include a period. We stated that these additional periods appear to be mistakenly included and should possibly be replaced with a comma and a semicolon, respectively. Additionally, we stated that step k) recites “the_remaining”, which should instead read “the remaining”.

[194] Claim 13 on file recites “the initial a number of cards”. We stated that this appears to be a typographical error and should read “the initial number of cards”.

[195] Claim 16 on file recites “the initial number of cards dealt in the first sub-game consists of 7 cards”. We stated that it appears that this expression was meant to refer to the number of cards dealt in the initial hand, rather than dealt in the first sub-game.

[196] Claim 19 on file recites “a "showdown " hand”. We stated that it appears that the quotation marks around the term showdown are unnecessary, as the term has previously been introduced without quotation marks, and should be removed.

[197] The Applicant did not dispute or comment on the above defects. Instead, the Applicant submitted amendments which are discussed below.

[198] It is therefore our view in this final review that claims 19-24 on file are indefinite and do not comply with subsection 27(4) of the *Patent Act*.

Presentation of the application

[199] We consider that the description on file contains cancellations or corrections, and does not comply with paragraph 13(1)(c) of the *Patent Rules*.

Legal principles

[200] Paragraph 13(1)(c) of the *Patent Rules*, equivalent to paragraph 68(1)(c) of the former *Rules*, requires that documents submitted in connection with a patent application be free of interlineations, cancellations or corrections.

Analysis

[201] The Final Action on page 6 identified the following defect:

> The description does not comply with subsection 68(1) of the *Patent Rules.* Pages 6 and 6a contain interlineations, cancellations or corrections and should be replaced. These pages contain underlining and need to have a clean copy with no markups.

[202] In the Redetermination Preliminary Review letter, we agreed with the above position. We additionally noted that the term “type” on page 6, line 1 also appears to be cancelled.

[203] The Applicant did not dispute or comment on the above defects. Instead, the Applicant submitted amendments which are discussed below.

[204] It is therefore our view that the description on file does not comply with paragraph 13(1)(c) of the *Patent Rules*.

Specification page numbers

[205] We consider that the pages of the specification are not numbered consecutively.

Legal principles

[206] Subsection 50(1) of the *Patent Rules* requires the pages of the specification to be numbered consecutively. The specification consists of the description and the claims.

[207] Section 193 of the *Patent Rules* provides the following exception: where an application was filed between October 1, 1996 and October 30, 2019, the

Applicant may meet the requirements of subsection 73(1) of the former *Rules*, instead of subsection 50(1) of the current *Patent Rules*. Nonetheless, this alternative would still require the pages of the description and claims to be numbered consecutively.

Analysis

[208] The Final Action on page 6 identified the following defect:

> The pages of the claims are not numbered consecutively and do not comply with subsection 73(1) of the *Patent Rules.* Claim pages should start at page 25, as Description pages end at page 24.

[209] In the Redetermination Preliminary Review letter, we agreed with the above position. Claims on file start on page 90, whereas the description on file ends on page 24.

[210] We also noted that, as explained in *CD 1670*, pages 6 and 6a of the description are correctly numbered at the top, however these pages also include additional page numbers 88 and 89 at the bottom.

[211] The Applicant did not dispute or comment on the above defects. Instead, the Applicant submitted amendments which are discussed below.

[212] It is therefore our view that the specification on file does not comply with subsection 50(1) of the *Patent Rules* and subsection 73(1) of the former *Rules*.

[213] In the Redetermination Preliminary Review letter, we also noted an additional observation with respect to the Applicant's amendments to the description. We stated that it appears that the Applicant intended to amend paragraph [0006] but mistakenly submitted amendment pages 6 and 6a. The amended page 6 replaced page 6 of the original description, which also contained paragraphs [0007]-[0008] and part of paragraph [0009], thus inadvertently removing these paragraphs from the description on file. This resulted in a discontinuity in the content of page 6a and page 7 of the description on file. Although this does not contravene the *Patent Act* or *Rules*, we suggested that the Applicant may wish

to submit amendments to the description containing both the amended paragraph [0006] (current pages 6 and 6a) as well as the content of page 6 of the original description (original paragraphs [0007]-[0009]). The Applicant was advised to ensure that amendment pages are numbered consecutively.

Lack of support

[214] We consider that claim 1 on file is fully supported by the description on file.

Legal principles

[215] Section 60 of the *Patent Rules* requires that the claims be fully supported by the description:

> The claims must be clear and concise and must be fully supported by the description independently of any document referred to in the description.

Analysis

[216] According to *CD 1670*, claim 1 on file recites the term “physical number generator” which is not mentioned in the description on file and cannot be inferred from it.

[217] In the Redetermination Preliminary Review letter, we stated that even though the term is not mentioned in the description, a person skilled in the art could infer the term “physical number generator playing cards” from the description as the description discloses shuffling a deck of physical cards to play the poker game.

[218] It is therefore our view that claim 1 on file complies with section 60 of the *Patent Rules*.

Reference to claims in the alternative

[219] We consider that claim 24 on file does not refer to other claims in the alternative.

Legal principles

[220] Subsection 63(3) of the *Patent Rules* states that:

> A dependent claim that refers to more than one claim must refer to those claims in the alternative only.

Analysis

[221] Claim 24 on file recites “A method as in claim 22 and 23…”. We stated in the Redetermination Preliminary Review letter that, as explained in *CD 1670*, claim 24 depends on both claims 22 and 23 at the same time, rather than in the alternative.

[222] The Applicant did not dispute or comment on the above defects. Instead, the Applicant submitted amendments which are discussed below.

[223] Therefore, it is our view that claim 24 on file does not comply with subsection 63(3) of the *Patent Rules*.

PROPOSED AMENDMENTS

[224] For the reasons set out below, we do not consider the proposed amendments to remedy all the defects and make the application allowable.

[225] In the Redetermination Preliminary Review letter, as directed by the Court in *Dusome*, we provided our preliminary views on the latest proposed amendments on file at that time, namely proposed claim set-1 received on April 12, 2024 and the proposed amendments to description received on June 7, 2022.

[226] It was our preliminary view that the proposed description would remedy the defects identified above with respect to the description on file.

[227] It was also our preliminary view that proposed claim set-1 would remedy a number of indefiniteness defects and the defect related to reference to other claims in the alternative only. However, we indicated that the proposed claims

would not remedy all the defects, including the patentable subject-matter defect, and that proposed claim set-1 would not comply with the *Patent Act* and *Patent Rules*.

[228] In a response to our Redetermination Preliminary Review letter received on June 8, 2026, the Applicant provided written submissions, including proposed claim set-2 containing a set of 24 proposed claims. In line with the Board's procedures for the review of rejected applications, we analysed these latest proposed claims and provide our views below. We note that proposed claim set-2 is substantially similar to proposed claim set-1 in that the proposed amendments therein appear directed primarily to defects other than the patentable subject-matter defect.

Latest proposed claims

[229] We consider that proposed claim set-2 would remedy a number of indefiniteness defects as well as the defects related to reference to other claims in the alternative only and the presentation of the application. However, for the reasons set out below, our view is that the claims in proposed claim set-2 would not comply with the *Patent Act* and *Patent Rules* as they define non-patentable subject-matter and are indefinite.

[230] Compared to the claims on file, proposed claim set-2 includes amendments to claims 1, 13, 19 and 21-24, as noted below.

[231] Relevant portions of claim 1 in proposed claim set-2 are reproduced below:

> 1. A method of operating a wagering poker game based on and directed to the 52 card Poker deck (according to the hierarchy of poker hands) comprising the steps of:
>
> a) providing a card game apparatus including at least one physical 52 card poker deck of standard playing cards;
>
> Comprising four different suits of thirteen cards…,

> and coordinating with a plurality of players/participants to ante at least a first buy-in bet into a first pot upon commencement of a first poker game.
>
> and a second buy-in bet into a second pot for commencement of a second poker game;
>
> b) shuffling the physical 52 poker playing cards into a new order and the dealer dealing to each player an initial hand comprising a plurality of predetermined number of playing cards;
>
> …
>
> d) the players playing a first poker game…wherein each player takes turns to Raise, Call Fold or Check…; 3) all players check;
>
> …

[232] The proposed amendment to claim 13 in proposed claim set-2 compared to the claims on file is typographical in nature and replaces “the initial a number of cards” with “the initial number of cards”.

[233] Claim 19 in proposed claim set-2 reads as follows:

> 19. A method of playing a card game according to claim 13 where the dealer deals a number of cards equal to the number of cards used in the second poker game to a "showdown " hand and further comparing the winner of the second poker game with the showdown hand and awarding the entire pot if the player beats the showdown hand and awarding all or a portion of the second pot depending on whether the player hand defeats, ties or loses to the showdown hand.

[234] The proposed amendment to claim 21 in proposed claim set-2 replaces “sub-game” with “poker game”, first/second “round” with first/second “poker game”, and “each exposed card” with “each exposed community card” respectively.

[235] Claim 22 in proposed claim set-2 reads as follows:

> 22. A computer system comprising a processor, memory, display, interface and network communication interface configured to implement the method of operating a virtual wagering poker game according to the steps of the method of Claim 1 wherein a specifically configured computing system is serving to display images of virtual playing cards on a display screen; providing a non-transitory computer readable storage medium coded with instructions comprising: the processor for executing a set of programmable instructions for operating the poker game; a display in operative communication with said processor/server; and input means by way of remote computers through the internet in operative communication with said processor/server for receiving inputs from participants during operation of the poker game and determining wagering outcomes based upon participant gaming interactions; wherein executable instructions and data representing a 52 card Poker deck are stored in the memory, the processor thereby configured to perform the interactive networked gaming operation of the steps of Claim 1 and the specifically configured computing system coordinates and operationally controls the dynamic wagering states and generating wagering outcome determinations as they pertain to operational game-state management and the configured computing system operationally recalculating the participant chip stack values.

[236] Claim 23 in proposed claim set-2 is directed to a “specifically configured computing system for operating a wagering poker game as in claim 22, wherein the computer device programmed to implement the poker game is connected to other devices…” and replaces “such as” in claim 23 on file with “including”.

[237] Claim 24 in proposed claim set-2 recites further limitations with respect to claim 24 on file regarding the virtual connection to a group of players and reads as follows:

> 24. A specifically configured computing system for operating a wagering poker game as in claim 22, wherein the specifically configured computing system to implement the poker game is operated wireless over the internet from the configured computing system in connection with the identified remote physical computer devices of the participants to connect a

> cooperating group of players virtually through their participant computers to the merchant device/server providing poker games and/or tournaments executing the operation of a wagering poker game(s).

[238] Claims 2-12, 14-18 and 20 in proposed claim set-2 remain the same as those in the claims on file.

Purposive construction

[239] We present our analysis of the purposive construction of the proposed claim set-2 below.

Person skilled in the art, the relevant common general knowledge and the disclosure

[240] The above characterization of the person skilled in the art, the relevant common general knowledge and the skilled person's understanding of the disclosure under purposive construction of the claims on file apply equally to the proposed claim set-2 given the nature of the proposed amendments.

Meaning of terms

[241] We adopt the construction of the terms shared between the claims on file and the proposed claim set-2 in accordance with the "Meaning of terms" section under purposive construction of the claims on file above.

[242] In our view, the person skilled in the art, considering the disclosure of the application in light of the relevant common general knowledge, would construe the meaning of the following additional terms recited in the proposed claim set-2 as follows:

[243] "operating a wagering poker game" / "operating a virtual wagering poker game": these expressions do not appear in the description, nor does the expression operating a poker game. In our view, the skilled person would understand that operating a poker game would refer to a dealer running a poker game. As indicated in the description, the dealer may be one of the actual players, a

casino-appointed dealer, or a computer program which acts as a dealer (page 2 line 31 - page 3 line 2; page 11 line 32 - page 12 line 2).

[244] “a specifically configured computing system”: proposed claims 23-24 are directed to a “specifically configured computing system for operating a wagering poker game as in claim 22”. Proposed claim 22 is directed to a computer system comprising a processor, memory, display, interface and network communication interface configured to implement the method of operating a virtual wagering poker game according to the steps of the method of claim 1. Proposed claim 22 further recites what steps the specifically configured computing system performs. The term “specifically configured computing system” does not appear in the description. However, given the language in proposed claim 22, it is our view that the skilled person would understand that the claimed “computer system” and the claimed “specifically configured computing system” refer to the same system. Proposed claims 22 and 24 also recite the term “the configured computing system”. In our view, given the language of these proposed claims, the skilled person would understand that “the configured computing system” and “the specifically configured computing system” both refer to the same computer system. Furthermore, as previously mentioned, with respect to the computer implementation of the game, the description states that it is understood that the game can be played on electronic video poker gaming machines, on linked electronic video poker gaming machines, electronically from home through the internet, or via handheld electronic devices which may be connected to other nearby devices or to a central device such as mobile phones, palm computers or any mobile electronic device that may connect to other devices (para 13). There is no suggestion in the specification that the computer device is specifically configured in any way other than possibly being a gaming machine, as the specification does not provide details regarding electronic video poker gaming machines or an indication that such a gaming machine would be specialized or different than any other well-known gaming machine or a generic computer programmed in order to offer virtual poker games. It is therefore our view that the skilled person would understand that the term “specifically configured computing system” refers to a well-known computer device operating in a well-

known manner, and being specifically programmed to implement the claimed poker game.

[245] “the computer device”: proposed claim 23 recites “the computer device programmed to implement the poker game”. It is our view that the term “the computer device” is indefinite (further explanation is provided under the “Indefiniteness” section below). However, given that proposed claim 22 is directed to a “computer system…configured to implement the method of…Claim 1”, it is our view that the skilled person would reasonably understand that “the computer device” in proposed claim 23 refers to the “computer system” and the “specifically configured computing system” in proposed claim 22.

[246] “the identified remote physical computer devices of the participants to connect a cooperating group of players virtually through their participant computers”: recited in proposed claim 24, the step of identifying remote participant computers does not appear in the description. As explained under the “Indefiniteness” section below, it is our view that the term “the identified remote physical computer devices” is indefinite. However, given that proposed claim 22 recites “input means by way of remote computers through the internet” and the disclosure in the description at paragraph 13, it is our view that the skilled person would reasonably understand that the “remote computers” in proposed claim 22, the “identified remote physical computer devices of the participants” and the “participant computers” in proposed claim 24 refer to the same devices, which are used by players to connect, and provide input, to the computer system operating the virtual poker game.

[247] “the merchant device/server”: recited in proposed claim 24, this term does not appear in the description or the rest of the proposed claims. As explained under the “Indefiniteness” section below, it is our view that this term is indefinite. However, given the language of proposed claim 24 and proposed claim 22, on which proposed claim 24 depends, it is our view that the skilled person would reasonably construe “the merchant device/server” to be the same device as the “computer system” and the “specifically configured computing system”, as all these devices are claimed to operate the poker game.

[248] “chip stack values”: recited in proposed claim 22, this expression does not appear in the description or the rest of the proposed claims. To play poker games, it is part of the common general knowledge that players generally exchange real money for poker chips for ease and speed of play. Each type of chip represents a specific monetary value. In our view, the skilled person would understand each “chip stack value” to refer to the monetary value of a player’s total amount of chips at any given time during the game.

[249] “the specifically configured computing system coordinates and operationally controls the dynamic wagering states and generating wagering outcome determinations as they pertain to operational game-state management and the configured computing system operationally recalculating the participant chip stack values”: recited in proposed claim 22, the expressions “dynamic wagering states”, “wagering outcome determinations”, “operational game-state management”, and “operationally recalculating the participant chip stack values” do not appear in the description. Given the limited disclosure on the computer implementation of the poker game in the description, as explained above, it is our view that the skilled person would understand that this expression in proposed claim 22 refers to the computer system, programmed with executable instructions to implement the claimed poker game and to operate the game with players, determining the outcome of each round of the game including determining the participants’ chip stack values after each round.

Essential elements

[250] As explained above for the claims on file, the identification of essential and non-essential elements of a claim depends on the intent in the language of the claim and on the obvious substitutability of the elements.

[251] Starting from the intent of the inventor as expressed in or inferred from the language of the claims, we consider the specification and the drawings to determine if the inventor establishes any of the claimed elements to be non-essential.

[252] First, we consider the intent expressed in, or inferred from, the language of the proposed claim set-2.

[253] Claims 1-21 in proposed claim set-2 are directed to a method of operating a wagering poker game using a standard deck of 52 physical cards. In our view, the skilled person would understand that there is no use of language in these claims indicating that any of the claimed elements are optional (with the exception of the terms in parentheses which are discussed in the "Indefiniteness" section below), a preferred embodiment, or one of a list of alternatives. Similarly, the intent expressed in, or inferred from, the language of proposed claims 1-21, in light of the above discussion on the disclosure and the meaning of the claim terms, does not indicate that any of the claimed features were intended to be non-essential.

[254] Claims 22-24 in proposed claim set-2 are directed to a computer system programmed to implement the method of operating a virtual wagering poker game according to steps of the method in proposed claim 1. Although these claims directly or indirectly depend on proposed claim 1 which recites the use of physical cards, it is our view that the skilled person would construe these claims as being directed to a computerized implementation with only virtual representations of the cards.

[255] In our view, the skilled person would understand that there is no use of language in claims 22-24 in proposed claim set-2 indicating that the Applicant intended any of the claimed elements to be a preferred embodiment or optional (with the exception of the terms in parentheses which are discussed in the "Indefiniteness" section below). Although claim 23 in proposed claim set-2 includes a list of alternative embodiments, it is our view that the person skilled in the art would understand that the Applicant intended that each alternative or combination of alternatives, when chosen, would be an essential feature of the claim. Similarly, the intent expressed in, or inferred from, the language of claims 22-24 in proposed claim set-2, in light of the above discussion on the disclosure and the meaning of the claim terms, does not indicate that any of the claimed features were intended to be non-essential.

[256] As explained previously, a claimed feature is considered essential if its purposive construction indicates that it was intended to be essential [*AGI* at para 61; *Boehringer* at para 100; *Choueifaty* at para 39]. Given our assessment above with respect to the first part of the non-essentiality test that all the claimed elements as purposively construed were intended to be essential, it is our view that the skilled person would consider all the elements in proposed claim set-2 to be essential.

[257] However, for completeness, we also considered the second part of the non-essentiality test, which asks whether, at the publication date, the skilled person would have considered that a particular element could be substituted or omitted without affecting the working of the invention.

[258] Claims 1-21 in proposed claim set-2 are directed to a method of playing a wagering poker game using a standard deck of 52 physical cards while claims 22-24 in proposed claim set-2 recite a computerized implementation of the game in proposed claim 1. It is our view that there is no indication that the skilled person, considering the disclosure in view of the relevant common general knowledge, would have appreciated that any of the claimed features, including the claimed rules of the game and the claimed form of cards used (physical in claims 1-21; virtual representations in claims 22-24) could be omitted or substituted with other means which would perform substantially the same function in substantially the same way to obtain substantially the same result. It is our view that the skilled person would not have considered that the claimed rules of the game and the claimed form of cards (physical or virtual) could be omitted or substituted without affecting the working of the invention.

[259] Therefore, it is our view that the person skilled in the art would consider all the elements in proposed claim set-2 to be essential.

The invention as claimed

[260] In our view, the proposed claim set-2 amendments do not alter the skilled person's understanding of the nature of the invention or the discovery identified above under purposive construction of the claims on file.

[261] In our view, the skilled person considering the disclosure would understand the nature of the invention in proposed claim set-2 to involve a poker game, played with either physical cards or on a computer, which combines the rules of Texas Hold'em and Pai Gow poker with additional features including a showdown round with the dealer.

[262] With respect to the physical card implementation of the poker game in claims 1-21 of proposed claim set-2, it is our view that, given that the physical cards are standard and their use to play poker games is part of the common general knowledge at the relevant time, the skilled person would consider the discovery to lie in the set of rules governing the poker game.

[263] With respect to the computer implementation of the game in claims 22-24 of proposed claim set-2, we note, as also explained above, that the description does not provide details with respect to the computer implementation of the game beyond the brief disclosure in paragraphs 13 and 22. There is no suggestion in the specification that the components of the claimed computer system or the claimed participant computers represent anything other than well-known computer components. There is no suggestion in the specification that the claimed computer steps performed by the computer system or its components, such as executing programmable instructions to perform the steps of proposed claim 1, displaying images of virtual cards on a screen, receiving input from participants via remote computers through the internet, determining wagering outcomes, or operating the computer system wirelessly over the internet to connect a group of players virtually via their participant computers, represent anything other than the well-known functions of a generic computer system. In our view, the skilled person would consider that the claimed computer system and other computer elements in proposed claims 22-24 are merely well-known computer components used in a well-known manner, and that the claimed method steps do not result in any improvements to the functioning of the computer. It is therefore our view that the skilled person would consider the discovery of proposed claims 22-24 to lie in the algorithm or set of programmable instructions which is coded on the non-transitory computer readable medium and executed by the processor to implement the claimed

invention, the algorithm corresponding to the set of rules governing the poker game.

[264] Therefore, it is our view that the skilled person would consider the discovery in the proposed claim set-2 to lie in a set of rules governing the poker game, which in brief consists of incorporating hand-splitting into the standard game of poker and providing a final showdown round between the winner of the second sub-game and the dealer.

Patentable subject-matter

[265] For the reasons set out below, our view is that claims 1-24 in proposed claim set-2 define non-patentable subject-matter.

[266] In our view, the proposed amendments to claims 1-21 on file would not alter our patentable subject-matter assessment of the claims on file. In view of the purposive construction of the proposed claims discussed above, it is our view that the subject-matter of claims 1-21 in proposed claim set-2 would still be directed to a method of playing a poker game and would include a set of rules for the poker game and a standard deck of physical cards as essential elements. In our view, the skilled person would still consider that the new knowledge or discovery lies in the set of rules for the poker game, and that the subject-matter of these proposed claims would not be distinguishable from *Schlumberger*.

[267] In view of the guidance in *Benjamin Moore* at paragraph 94 and *Dusome* at paragraph 48, similar to our analysis of claims 1-21 on file, since the new knowledge or discovery is an abstract idea (a set of rules governing a poker game), the use of a well-known tool (a standard deck of physical cards) to implement this abstract idea would not satisfy the physicality requirement without something more. It is our view that the proposed amendments do not add any features that would provide the “something more” to which the Court in *Benjamin Moore* refers to meet the physicality requirement in *Amazon*.

[268] Similarly, it is our view that the proposed amendments in proposed claim set-2 to claims 22-24 on file would not alter their patentable subject-matter assessment.

[269] As explained above, claim 22 in proposed claim set-2 is directed to a computer system configured to implement the method of operating a virtual poker game according to the method in proposed claim 1. Similar to claim 22 on file, it recites a computer system and its components. However, it recites a few additional limitations including the specifically configured computing system coordinating and controlling dynamic wagering states, and the steps of determining wagering outcomes and recalculating participants' chip stack values.

[270] As explained under the "Meaning of terms" section above, in our view, the skilled person would understand that the specifically configured computing system refers to a well-known computer device operating in a well-known manner and being specifically programmed to implement the poker game. We also explained under "Meaning of terms" that the skilled person would understand that the terms "specifically configured computing system" in proposed claims 22-24 and "the computer device" in proposed claim 23 refer to the computer system first defined in proposed claim 22.

[271] Additionally, as explained under the "Meaning of terms" section above, it is our view that the skilled person would understand the claimed steps of coordinating and operationally controlling the dynamic wagering states, determining the wagering outcomes and recalculating chip stack values to be directed to the computer system, programmed using an algorithm to implement the claimed poker game and to operate the game with players, determining the outcome of each round of the game including determining the participants' chip stack values after each round.

[272] Given the above purposive construction of proposed claims 22-24, it is our view that these proposed amendments would not alter the patentable subject-matter assessment of the claims on file. The subject-matter of these proposed claims as purposively construed would still be directed to a method of playing a poker

game and would include a set of rules for the poker game and a well-known computer as essential elements. There is no suggestion in the disclosure that this computer system and its components represent anything other than the well-known functions of a well-known computer system, or that there is any improvement to the functioning of the computer system. Therefore, in our view, the skilled person would still consider that the new knowledge or discovery lies in the set of rules for the poker game (the set of rules corresponds to the algorithm that is programmed into the computer to cause it to take the necessary steps to implement the poker game), and that the subject-matter of these proposed claims would not be distinguishable from *Schlumberger*.

[273] In view of the guidance in *Benjamin Moore* at paragraph 94 and *Dusome* at paragraph 48, similar to our analysis of claims 22-24 on file, since the new knowledge or discovery lies in an abstract idea (a set of rules governing a poker game), the use of a well-known tool (a well-known computer operating in a well-known manner) to implement this abstract idea would not satisfy the physicality requirement without something more. It is our view that the proposed amendments to claims 22-24 do not add any features that would provide the "something more" to which the Court in *Benjamin Moore* refers to meet the physicality requirement in *Amazon*.

[274] In light of the above, it is our view that proposed claims 1-24 define non-patentable subject-matter, falling outside the definition of "invention" in section 2 of the *Patent Act*. For the same reasons, where the subject-matter defined by the claims amounts to the implementation of the abstract rules of the poker game using well-known instruments without meeting the physicality requirement, it is our view that these claims would also be excluded under subsection 27(8) of the *Patent Act*.

Indefiniteness

[275] Proposed claim set-2 would remedy certain indefiniteness defects identified above with respect to claims on file. However, for the reasons set out below, our view is that proposed claims 1, 20, 22-24 would be indefinite.

[276] Proposed claims 1, 20 and 24 include features in parentheses which raise uncertainty as to whether these features are optional or not. Proposed claim 1 recites “(according to the hierarchy of poker hands)”. Proposed claim 20 recites “(value and suit)”. Proposed claim 24 recites “a wagering poker game(s)”.

[277] Proposed claim 22 contains the following defects:

- the term “said processor/server” at lines 8-9 lacks an antecedent, as it is not clear whether it refers to the previously defined “processor” at lines 1 and 7 (there is a second recitation of the term “said processor/server” at line 10 as well); and

- the term “a set of programmable instructions” at line 7 is defined with the indefinite article “a”, causing a lack of clarity as to whether it is intended to refer to “instructions” previously introduced at line 6 or an additional element thereto.

[278] Proposed claim 23 recites “the computer device” at line 2 which is unclear as it lacks an antecedent.

[279] Proposed claim 24 contains the following defects:

- it recites that “the specifically configured computing system…is operated wireless over the internet from the configured computing system”. It is not clear whether the “specifically programmed computing system” and “the configured computing system” are the same system. Under the “Meaning of terms” section, we stated our view that the skilled person would reasonably construe them to be the same system. In such a case, this expression would be unclear as it states that the computing system is operated wirelessly from itself;

- the term “the identified remote physical computer devices” lacks an antecedent as no step of identifying remote computer devices is previously defined in the claims; and

- the term “the merchant device/server” is unclear as it lacks an antecedent.

[280] Therefore, it is our view that proposed claims 1, 20 and 22-24 are indefinite, and would not comply with subsection 27(4) of the *Patent Act*.

[281] We also note that amendments in proposed claim set-2 did not remedy all the typographical issues identified above with respect to claims 1, 16 and 19 on file. Additionally, claim 12 in proposed claim set-2 appears to be missing a period at the end of the claim.

Conclusion on proposed amendments

[282] In light of the above, our view is that the proposed claim amendments would not make the application allowable and are therefore not necessary amendments in accordance with subsection 86(11) of the *Patent Rules*.

RECOMMENDATION OF THE BOARD

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

- claims 1-24 on file define non-patentable subject-matter, falling outside the definition of "invention" in section 2 of the *Patent Act* and prohibited under subsection 27(8) of the *Patent Act*;
- claims 19-24 on file are indefinite and do not comply with subsection 27(4) of the *Patent Act*;
- the description on file contains cancellations or corrections, and does not comply with paragraph 13(1)(c) of the *Patent Rules*;
- the specification on file does not consist of consecutively-numbered pages, and does not comply with subsection 50(1) of the *Patent Rules* and subsection 73(1) of the former *Rules*;
- claim 24 on file does not refer to other claims in the alternative only, and does not comply with subsection 63(3) of the *Patent Rules*;
- proposed claims 1-24 in proposed claim set-2 define non-patentable subject-matter, falling outside the definition of "invention" in section 2 of the *Patent Act* and prohibited under subsection 27(8) of the *Patent Act*; and
- proposed claims 1, 20 and 22-24 in proposed claim set-2 are indefinite and would not comply with subsection 27(4) of the *Patent Act*.

In light of the conclusions above, the proposed amendments are not considered necessary amendments under subsection 86(11) of the *Patent Rules*.

Mehdi Ghayour Lewis Robart Christine Teixeira

Member Member Member

DECISION OF THE COMMISSIONER

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

- claims 1-24 on file define non-patentable subject-matter, falling outside the definition of "invention" in section 2 of the *Patent Act* and prohibited under subsection 27(8) of the *Patent Act*;
- claims 19-24 on file are indefinite and do not comply with subsection 27(4) of the *Patent Act*;
- the description on file contains cancellations or corrections, and does not comply with paragraph 13(1)(c) of the *Patent Rules*;
- the specification on file does not consist of consecutively-numbered pages, and does not comply with subsection 50(1) of the *Patent Rules* and subsection 73(1) of the former *Rules*;
- claim 24 on file does not refer to other claims in the alternative only, and does not comply with subsection 63(3) of the *Patent Rules*;
- proposed claims 1-24 in proposed claim set-2 define non-patentable subject-matter, falling outside the definition of "invention" in section 2 of the *Patent Act* and prohibited under subsection 27(8) of the *Patent Act*; and
- proposed claims 1, 20 and 22-24 in proposed claim set-2 are indefinite and would not comply with subsection 27(4) of the *Patent Act*.

[285] Therefore, in accordance with section 40 of the *Patent Act*, I refuse to grant a patent for this application. The Applicant has six months from the mailing of my

decision to appeal it to the Federal Court of Canada under section 41 of the *Patent Act*.

Konstantinos Georgaras

Commissioner of Patents
Dated at Gatineau, Quebec
this 25th day of September, 2026.