AMAZON'S PATENT: THE LAST CLICK

JEAN-FRANÇOIS JOURNAULT*
ROBIC, LLP
LAWYERS, PATENT AND TRADE-MARK AGENTS

The saga concerning Amazon's "one click" online shopping technology, which Amazon has attempted to patent in Canada since 1998, came to an end in early 2012, the patent being issued by the Canadian Intellectual Property Office on January 17, 2012.
The Commissioner's decision to issue the patent came shortly after a decision of the Federal Court of Appeal which upheld most of the findings of the earlier Federal Court decision on this issue. The latter had established that business methods were not excluded per se from the definition of invention under the Patent Act, and that the analysis used by the Commissioner to determine the patentability of business methods was incorrect in law.

The Federal Court of Appeal had however refused to rule on the patentability of the pending claims. The Court argued that only a new construction of these claims could determine if the subject matter of the claims was a disembodied idea or not, and whether the claims met the "physicality" condition requiring a change of character or condition of a physical object. Therefore, the case had been returned to the Commissioner for the claims to be construed and the application to be re-examined based on the criteria established by the Federal Court of Appeal. The notice of allowance issued by the Commissioner, following its re-examination, shows that the Commissioner determined that, in this case, the claims met the conditions established by the Court.

The outcome is great news for Amazon, which will benefit from patent protection on this technology for approximately the next 6 ½ years remaining from the 20-year period following the filing of its patent application. The issuance of this patent also sets a precedent for those who wish to patent computer-implemented inventions in Canada, and provides an example of a technology that can be used as a barometer of a business method reaching the threshold of patentability in Canada.

On the other hand, for practitioners and companies in the field of computer-implemented inventions, the issuance of the patent represents a missed opportunity to obtain clear guidelines from the Supreme Court of Canada concerning the patentability of this type of innovation, the latter not being called upon to rule on the subject. In the current context where case law on the subject is scarce, the opinion of the country's highest Court would have been welcome.

* From ROBIC, LLP, multidisciplinary firm of Lawyers, and Patent and Trade-mark Agents. Published in the Winter 2012 (Vol. 15, no. 4) Newsletter of the firm. Publication 068.144E.

At this stage we can only speculate on the reasoning which led the Commissioner to conclude that, upon re-examination, the claims contained patentable subject matter. However, the analysis of subsequently granted applications will help to better assess what the patent office considers to be a patentable business method or computer-implemented invention (i.e. that is not a disembodied idea and meets the "physicality" criterion). To this end, new examination guidelines, which should be issued to examiners in response to this recent development, should also be very useful.

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ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

QUEBEC
2828 Laurier Boulevard, Tower 1, Suite 925
Quebec, Quebec, Canada G1V 0B9
Tel.: +1 418 653-1888 Fax.: +1 418 653-0006

ROBIC, LLP
www.robic.ca
info@robic.com

MONTREAL
1001 Square-Victoria - Bloc E - 8th Floor
Montreal, Quebec, Canada H2Z 2B7
Tel.: +1 514 987-6242 Fax: +1 514 845-7874

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