

Court No. T- 1476-09



**FEDERAL COURT**

**AMAZON.COM, INC.**

Appellant

- and -

**THE ATTORNEY GENERAL OF CANADA, and  
THE COMMISSIONER OF PATENTS**

Respondents

**NOTICE OF APPEAL**

**TO THE RESPONDENTS:**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the appellant. The relief claimed by the appellant appears on the following pages.

THIS APPEAL will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court directs otherwise, the place of hearing will be as requested by the appellant. The appellant requests that this appeal be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPEAL, to receive notice of any step in the appeal or to be served with any documents in the appeal, you or a solicitor acting for you must prepare a notice of appearance in Form 341 prescribed by the *Federal Courts Rules* and serve it on the appellant's solicitor, or where the appellant is self-represented, on the appellant, WITHIN 10 DAYS of being served with this notice of appeal.

IF YOU INTEND TO SEEK A DIFFERENT DISPOSITION of the order appealed from, you must serve and file a notice of cross-appeal in Form 341 prescribed by the *Federal Courts Rules* instead of serving and filing a notice of appearance.

Copies of the *Federal Courts Rules* information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local

office.

IF YOU FAIL TO OPPOSE THIS APPEAL, JUDGMENT MAY BE GIVEN  
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

DATED this 3<sup>rd</sup> day of September, 2009.

Issued by: ORIGINAL SIGNED BY  
CHANTAL CANTIN  
ORIGINAL SIGNÉ PAR  

---

(Registry Officer)

Thomas D'Arcy McGee Building  
90 Sparks Street, 5th floor  
Ottawa, Ontario  
K1A 0H9

TO: ATTORNEY GENERAL OF CANADA  
East Memorial Building  
284 Wellington  
Ottawa, Ontario  
K1A 0H8

AND TO: THE COMMISSIONER OF PATENTS  
Canadian Intellectual Property Office  
Place du Portage I, 3rd Floor  
50 Victoria Street  
Gatineau, Quebec  
K1A 0C9

## APPEAL

THE APPELLANT APPEALS to the Federal Court, pursuant to Section 41 of the *Patent Act*, R.S.C. 1985, c. P-4 (the “*Patent Act*”), from the decision of the Commissioner of Patents (the “Commissioner”) dated March 4, 2009 by which the Commissioner refused to grant a patent in respect of Canadian Patent Application No. 2,246,933 (the “’933 Application”).

### THE APPELLANT ASKS FOR:

1. An order directing the Commissioner to allow claims 1 through 75 of the ’933 Application, or such alternative claims as may be found allowable by the Court, and to grant to the Appellant a patent in respect of the ’933 Application pursuant to the provisions of the *Patent Act*.
2. Such further and other relief as to this Honourable Court seems just.

### THE GROUNDS OF APPEAL are as follows:

1. By decision dated March 4, 2009, the ’933 Application was refused by the Commissioner (the “Decision”). The basis of the Decision is stated to be that the claimed invention was not patentable under Section 2 of the *Patent Act*.
2. In rendering the Decision, the Commissioner erred in fact and law as follows:
  - (a) in concluding that the subject matter of claims 1 through 75 of the ’933 Application was not a “machine”, “manufacture”, “process” or “art” within the definition of “invention” in the *Patent Act*;
  - (b) in construing the definition of “invention” in Section 2 of the *Patent Act*, including:

- i. in concluding that the terms “art” and “process” in the definition of “invention” are limited to “an act or series of acts performed by some physical agent upon some physical object to produce in that object some change of either character or condition”;
  - ii. in finding that business methods do not fall within the definition of “invention” and are therefore unpatentable *per se* in Canada; and
  - iii. in finding that subject matter must be “technological” in order to come within the definition of “invention” so as to be patentable in Canada;
- (c) in construing the claims of the '933 Application, including:
  - i. in purporting to consider the “form” and “substance” of the claims of the '933 Application, and thereby failing to apply the proper principles of patent claims construction; and
  - ii. in failing to consider the claims of the '933 Application as a whole when assessing whether the subject matter of the '933 Application falls within the definition of “invention” in Section 2 of the *Patent Act*, including by considering only whether the elements of the claims identified as being new and non-obvious fall within the definition of “invention”; and
- (d) in the alternative to (b) and (c), in finding that the claims of the '933 Application do not fall within the definition of “invention” in Section 2 of the *Patent Act* as construed, including:




- i. in finding that the claimed invention is not an act or series of acts performed by some physical agent upon some physical object to produce in that object some change of either character or condition;
- ii. in finding that the claimed invention is not technological and therefore unpatentable; and
- iii. in finding that the claimed invention is a business method, and therefore unpatentable.

3. The Appellant relies upon the provisions of the *Patent Act*, including sections 2, 27, 28.2, 28.3, 40 and 41, and the provisions of the *Patent Rules* SOR/96-423, including section 31.

Pursuant to Rules 317 to 319 and 350 of the *Federal Courts Rules*, the Appellant requests the Commissioner to send a certified copy of the complete file in relation to Canadian Patent Application No. 2,246,933 to the Appellant and to the Registry.

Dated at Ottawa, Canada this 3<sup>rd</sup> day of September, 2009.

 for:  
Smart & Biggar  
Suite 900, 55 Metcalfe Street  
P.O. Box 2999, Station D  
Ottawa, Ontario, K1P 5Y6


John R. Morrissey  
Steven B. Garland  
Colin B. Ingram

Tel: (613) 232-2486  
Fax: (613) 232-8440

Solicitors for Appellant

I HEREBY CERTIFY that the above document is a true copy of  
the original issued out of the Court on the \_\_\_\_\_  
day of \_\_\_\_\_ A.D. 20 \_\_\_\_\_

Dated this SEP 03 2009 day of \_\_\_\_\_ 20 \_\_\_\_\_

  
C. CANTIN  
REGISTRY OFFICER  
AGENT DU GREFFE