

Court File No. A-435-10  
(T-1476-09)

**FEDERAL COURT OF APPEAL**

BETWEEN:

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

Appellants

and

**AMAZON.COM, INC.**

Respondent

**NOTICE OF APPEAL**



TO THE RESPONDENT:

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

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.

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.

November 15, 2010

**ORIGINAL SIGNED BY  
JOSÉE DÉCOSSE**

Issued by: ORIGINAL SIGNÉ PAR  
(Registry Officer)

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Solicitors for the Respondent

I HEREBY CERTIFY that the above document is a true copy of the original issued out of / filed in the Court on the 15<sup>th</sup>

day of November A.D. 20 10

Dated this 15<sup>th</sup> day of November 20 10

**JOSÉE DÉCOSSE  
REGISTRY OFFICER  
AGENT DU GREFFE**

**APPEAL**

THE APPELLANTS APPEAL to the Federal Court of Appeal from the Order of the Federal Court in Court File No. T-1476-09, per Phelan J., dated October 14, 2010, by which the Commissioner of Patents' refusal to grant a patent in respect of Canadian Patent Application No. 2,246,933 was quashed, the appeal with respect to the Commissioner's findings on statutory subject matter was allowed, and the matter sent back to the Commissioner for re-examination with the direction that the Application's claims constitute patentable subject-matter.

THE APPELLANTS ASK that the said Order be reversed, and the Commissioner's refusal to grant the patent be affirmed, with costs to the Attorney General.

THE GROUNDS OF APPEAL are as follows:

1. The Learned Judge erred in fact and in law in finding that the claims of the said Application constitute patentable subject matter.
2. In particular, the Learned Judge erred in law in his interpretation of the definition of "invention" in section 2 of the *Patent Act*, R.S.C. 1985, c. P-4, as follows.
  - a. He erred in construing the terms "art" and "process" so broadly as to include the "Applicant's invention", as defined by the method claims of the Application.
  - b. He erred in finding that the terms "art" and "process" are not limited to an act or series of acts performed by some physical agent upon some physical object and producing in such object some change either of character or condition.

c. He erred in construing the term “machine” so broadly as to include the “Applicant’s invention”, as defined by the system claims of the Application.

d. He erred in finding that an “invention” as defined in section 2 need not display a technological aspect.

3. Further in particular, the Learned Judge erred in fact and in law in his characterization of the “Applicant’s invention” for the purpose of determining whether it fell within the definition of “invention” in section 2, as follows.

a. He erred in rejecting the “form and substance” approach used for that purpose by the Commissioner of Patents.

b. He erred in not properly applying the “what has been discovered” approach, as described in binding jurisprudence, including *Schlumberger Canada Ltd. v. Commissioner of Patents* [1982] 1 F.C. 845 (C.A.) and *Shell Oil Co. v. Canada (Commissioner of Patents)*, [1982] 2 S.C.R. 536, for that purpose.

c. He erred in characterizing the “Applicant’s invention”, as defined by the method claims of the Application, such that it fell within the scope of the terms “art” and “process”, as used in the definition of “invention” in section 2 of the *Patent Act*.

d. He erred in characterizing the “Applicant’s invention”, as defined by the system claims of the Application, such that it fell within the term “machine”, as used in the definition of “invention” in section 2 of the *Patent Act*.

November 15, 2010



Myles J. Kirvan  
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