

# No-Go for the Patentability of U-Haul Business Method

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The Canadian Patent Office has signaled its intention to continue applying the restrictive principles for patentable subject matter first established in last year's "Amazon 1-Click" decision. In its decision regarding the patentability of U-Haul's Canadian Patent Application No. 2,349,479, the Patent Appeal Board (the Board) recently applied the test set out in the "Amazon 1-Click" decision in upholding rejections for non-statutory subject matter.

The test established in the *Amazon* decision considers both the form and substance of a claim. The "form" of a claim is what the language of the claim, on its face, appears to be defining as the invention. Conversely, the "substance" of a claim is that which it contributes to human knowledge. To qualify as patentable subject matter, the claim must in form and substance: (i) fall into one of the five categories of statutory subject matter (art, process, machine, manufacture, or composition of matter); (ii) not be directed to excluded subject matter; and (iii) be "technological."

The U-Haul application contained system and method claims for a vehicle fleet management system that automatically generates an availability prediction for a vehicle under repair and distributes that prediction throughout a network. The Board found that some of the claims contained language indicative of administrative activity, which it considered a "business method" in form. More importantly, the Board followed reasoning established in the *Amazon* decision to reject all claims as being directed to a business method in substance. In doing so, it reaffirmed its position that business methods are excluded subject matter.

The Board also found the automated element of the availability prediction insufficient to satisfy the "technological" requirement. This element was determined to be a mere calculation based on given inputs. However, the Board did leave open the possibility for other software or device claims to supply a technological effect.

Despite the continuity shown in this decision, the patentable subject matter landscape remains uncertain. In particular, the "Amazon 1-Click" decision is presently under appeal in the Federal Court and may yet force changes to the current Patent Office approach. The Federal Court may even take some inspiration from the recently delivered and highly anticipated decision of the United States Supreme Court in *Bilski v. Kappos*.

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