

# Federal Court Says Business Methods Are Not Excluded From Patentability

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In a strongly worded decision, the Federal Court of Canada has quashed the Commissioner of Patents' refusal of the Canadian patent application for Amazon.com's "1-Click" patent application (for further details see: Canadian Federal Court Sides with Amazon in 1-Click Appeal). In reversing the Commissioner's decision, the Court criticized virtually every aspect of the reasons for refusing the 1-Click application, including the formulation of a "form and substance" analysis, the introduction of a "technological" requirement, and the overly restrictive definition of patentable "art." The Court also firmly affirmed that "there is not, nor has there ever been, a statutory exclusion for business methods in Canada."

This latter point was one of the most controversial aspects of the original 1-Click decision, as the Commissioner explicitly stated that business methods were excluded from patentability. However, the Court was unequivocal in rejecting this approach. According to the Court, business methods, just as any other claimed invention, are to be assessed in terms of the categories of art, process, machine, manufacture or composition of matter. They should not be given their own unique category of exclusion, as this "would be a 'radical departure' from the current regime."

Significantly, this decision more closely aligns Canadian subject matter guidelines with those of the United States. The U.S. Supreme Court recently rejected a strict "machine-or-transformation" test for subject matter as being too rigid (for further details see: *Bilski v. Kappos* - Was it Worth the Wait?). Echoing the American Court, the Canadian Court cautioned that "it is important to remain focused on the requirement for practical application rather than merely the physicality of the invention."

Although this decision is especially relevant to computer-implemented and business method inventions, it will likely have far-reaching implications. However, it is uncertain what immediate changes, if any, the Canadian Patent Office will make to its practices. The Commissioner has already appealed this decision on several grounds. Although a full reversal of this decision is unlikely, it remains to be seen how the Federal Court of Appeal will decide this issue.

In the interim, the law has shifted in favour of prospective patentees, who can for now rely on the legal authority of this Federal Court decision when arguing for the patentability of their inventions.

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