Amazon.com finally clicks with the Canadian Intellectual Property Office

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More than 12 years after its original filing date, the Canadian Intellectual Property Office (CIPO) has finally granted Canadian Patent No. 2246933 for a “Method and System for Placing a Purchase Order via a Telecommunications Network” (the “One Click Patent”). The application had most recently been sent back to the CIPO for further consideration following the decision by the Court of Appeal in late November, 2011. Although CIPO could have sought leave to appeal the decision to the Supreme Court of Canada, they rather chose to quickly allow the application, bringing an abrupt end to this current leg of the saga of software and computerized method patents in Canada.

The One Click Patent as granted comprises six independent method claims and one independent system claim. These claims are directed generally to placing an order in a client/server environment. During examination, the CIPO had objected to the application as not relating to patentable subject matter. In objecting, CIPO chose to separate the known underlying client/server infrastructure from the remaining claim elements and then focused on the contribution of these remaining elements alone in the assessment of the subject matter issue. It was this approach that the Court of Appeal rejected, holding that prior to any assessment of patentable subject matter, a “purposive construction” of the claims must be performed, which in turn forms the basis of their examination. Provided the claimed invention is novel, useful, non-obvious and not a mere scientific principle or abstract theorem, the CIPO is obliged to grant the patent.

The granting of the One Click Patent lends support to a much greater acceptance of methods where the novelty rests in the manner that the user interacts with the computer system. On a practical level, however, the claims must be drafted to avoid being construed purposively as a mere scientific principle or abstract theorem. Typically, inclusion of at least one set of claims which comprise some essential elements related to the actual implementation of the method on the supporting computer system(s), for example, should avoid rejection of the application on the basis of not relating to patentable subject matter.

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