

Date: 20080508

Docket: T-1329-07

Citation: 2008 FC 587

Ottawa, Ontario, May 8, 2008

PRESENT: The Honourable Mr. Justice Blanchard

BETWEEN:

**ANTIBALLISTIC SECURITY
AND PROTECTION INC.**

Applicant

and

THE COMMISSIONER OF PATENTS

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

I. Introduction

[1] The Applicant, Antiballistic Security and Protection Inc., seeks judicial review of a decision rendered by the Commissioner of Patents (the Commissioner) on June 18, 2007 and July 11, 2007. The Commissioner refused to accept for Canadian National Phase entry International Patent Application No. PCT/US2004/020989.

[2] The Applicant seeks a writ of *certiorari* quashing the Commissioner's decision, a declaration the Applicant's Canadian National Phase application with respect to International

Patent Application No. PCT/US2004/020989 is in good standing, and a writ of *mandamus* to compel the Commissioner to accept the Applicant's request for entry into National Phase in Canada with respect to the said International Patent.

II. Background

[3] On July 1, 2003, the Applicant filed a Provisional Application for Patent in the United States, in respect of a first invention entitled "Anti-Ballistic Materials and Processes" for which the United States Patent and Trademark Office (USPTO) issued the provisional application number 60/483,630 with a filing date of July 1, 2003.

[4] On April 2, 2004, the Applicant filed a second Provisional Application for Patent in the United States, in respect of a second invention entitled "Armor Panels, Methods of Making and Assembling Thereof and Methods of Incorporating Armor Panels in Vehicles and Structures" for which the USPTO issued application number 60/521,336 with a filing date of April 2, 2004.

[5] On May 5, 2004, Applicant filed a third Provisional Application for Patent in the United States, in respect of a third invention entitled "Step By Step Layers of ASAP BAM-1A Wall" for which the USTPO issued application number 60/567,795 with a filing date of May 5, 2004.

[6] On July 1, 2004, pursuant to the United States becoming signatory to the Patent Cooperation Treaty (PCT), the Applicant filed with the World Intellectual Property Organization Bureau (WIPO) an international patent application claiming priority to the First Invention, the Second Invention, and the Third Invention, (collectively, the Inventions). WIPO assigned

International Patent Application Number PCT/US2004/020989 to this application (the PCT Application). The Applicant designated Canada on the PCT Application as a country to which protection for the Inventions would apply.

[7] By letter dated May 17, 2007 to WIPO, the Applicant sought to “disclaim” the priority claim to the First Invention while retaining the priority claims to the Second and third Invention. The Applicant consequently amended their claims to reflect the subject matter disclosed in the Second Invention and Third Invention, and enclosed amended claims with the letter.

[8] By letter dated May 18, 2007, the Applicant submitted their application for Canadian National Phase entry to the Canadian Intellectual Property Office (CIPO) along with payment of the application fee, late fee and second annuity. The Applicant notified the CIPO that they were claiming priority only to the Second Invention and Third Invention.

[9] By fax dated May 23, 2007, WIPO informed the Applicant that it would not record the withdrawal of the priority claim because the time had expired for a withdrawal in accordance with the Regulations under the PCT. The Applicant responded by letter dated May 24, 2007, clarifying that it had not requested a withdrawal, but rather a disclaimer of the priority claim to the First Invention.

[10] By letter dated June 18, 2007, CIPO informed the Applicant that the application had not entered the National Phase as the required steps had not been met. The Applicant responded by letter dated June 27, 2007, stating that it had in fact complied with the required steps to enter

National Phase within the 42 month period. The Applicant relied on the priority date of the Second Invention, namely April 2, 2004 since it had disclaimed the First Invention.

[11] By letter dated July 11, 2007, CIPO restated that the Office is unable to comply with the “disclaim” of the July 1, 2003 priority date because PCT Regulation 90*bis*.3 only allowed for a withdrawal of a priority claim prior to the expiration of 30 months from the priority date and that the time for doing so had already expired. CIPO maintained the position that the application had not entered the Canadian National Phase.

[12] On July 19, 2007, the Applicant filed the present application for judicial review challenging the Commissioner’s decision.

III. Impugned decision

[13] On June 18, 2007, the Commissioner decided that “the applicant did not take all the required steps to request to enter national phase within the expiry of the 42 months period, namely by January 1, 2007 and is therefore why the Office has deemed the current application not to have entered the national phase.” Further, he noted that according to WIPO, the priority date July 1, 2003 (60/483,630) was not withdrawn at the time of request for national entry. CIPO essentially restated this position in its July 11, 2007 letter to the Applicant.

IV. Issue

[14] The only issue in this application is whether the Commissioner erred in denying Canadian National Phase entry to International Patent Application Number PCT/US2004/020989.

V. Standard of Review

[15] The parties are in agreement that the relevant standard here is that of correctness.

[16] In *Dutch Industries Ltd. v. Canada (Commissioner of Patents)*, 2001 FCT 879, [2002] 1 F.C. 325, [2001] F.C.J. No. 1250 (FCTD), Justice Dawson considered the standard of review of a decision by the Commissioner of Patents as to the interpretation of requirements in the *Patent Rules*, SOR/96-423, (the Rules) with respect to the payment of maintenance fees. She found that the only privative provisions were those of sections 18 and 18.1 of the *Federal Courts Act*, R.S. 1985 c. F-7, s. 1; 2002, c. 8, s. 14, which make it clear that the Commissioner is subject to judicial review. She considered that the Commissioner's expertise does not include the interpretation of statutes and statutory instruments, and that any such decision has precedential effect. She noted that the nature of the issue was a question of law. Based on these considerations she concluded that the standard of correctness applied. Her conclusion on this point was affirmed by the Federal Court of Appeal in *Dutch Industries Ltd. v. Canada (Commissioner of Patents)*, 2003 FCA 121, [2003] 4 F.C. 67 at para. 23; leave to appeal denied [2003], S.C.C.A. No. 204 (see also: *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, 2005 SCC 26, [2005] 1 S.C.R. 533 at paragraph 36).

[17] I believe the same considerations are applicable to the sole issue raised in the present case. I am in agreement with Justice Dawson's analysis and adopt her conclusion. I will therefore apply the correctness standard in reviewing the issue before me.

VI. Analysis

[18] The Applicant submits the Commissioner erred in law in determining that it did not take all the required steps to request National Phase entry within the prescribed 42 month period. In particular, the Commissioner erred in determining that the CIPO was unable to comply with the "disclaimer" of the First Invention.

[19] The pertinent provisions of the Rules, the PCT and Regulations made there under are found in annex to these reasons.

[20] The Applicant argues that nothing in the PCT, Regulations under the PCT, Paris convention for the Protection of Industrial Property, *Patent Act*, R.S.C. 1985, c. P-4, (the Act) or the Rules prohibits the disclaiming of priority dates. It follows that since the priority date relating to the first invention is disclaimed; the applicable priority date for Canadian entry is the filing date of the Second Invention. The Applicant maintains that this is consistent with Article 2(xi) of the PCT, because, by reason of the "disclaimer", the second invention becomes "the earliest application whose priority is so claimed". The Applicant further argues that this interpretation is consistent with the object of the Act, which is to allow inventors to obtain Patents for inventions that are novel, non-obvious and useful; and is also consistent with the object of the PCT, which is to facilitate the filing and obtaining of patent protection in several countries around the world.

[21] The Applicant also relies on the common law right to disclaim priority dates. It is argued that the Act's silence on a procedure to "disclaim" is not determinative so long as there was no contradiction with anything in the Act which may affect patent rights. In support of his argument the Applicant cites the Federal Court of Appeal, in *Parke-Davis Division, Warner-Lambert Canada Inc. v. Canada (Minister of Health)*, 2002 FCA 454, [2003] 2 F.C. 514.

[22] The Applicant therefore submits that, it has complied with all the required steps for Canadian National Phase entry within the prescribed time, as set out in 58(3) of the Rules, for the completion of the requirements set out in Section 58(1) and (2) of the Rules. As a consequence, it is submitted that the Commissioner was not authorized to refuse and deny the entry of a Canadian National Phase application.

[23] In my opinion, the Applicant's arguments must fail. The relevant priority date to the Applicant's entry into the National Phase in Canada is July 1, 2003, the priority date for the First Invention claimed in the impugned International Patent Application. The Commissioner was correct in denying Canadian National Phase entry to International Patent Application Number PCT/US2004/020989. My reasons follow.

[24] The Rules provide for the process to be followed for an international application to be accepted as a national phase application. Paragraph 58(3)(b) of the Rules provide that upon payment of a late payment fee, the application must be filed within 42 months after the priority date. The "priority date" is therefore critical in such applications and Rule 50 defines it to have

the same meaning as in Article 2(xi) of the PCT. Paragraph (b) of that Article finds application here. It provides, that “‘priority date’, for the purpose of computing time limits, means: (b) where the international application contains several priority claims under Article 8, the filing date of the earliest application whose priority is so claimed;”. There is no dispute that the filing date of the earliest application in the international application is July 1, 2003. The Applicant argues that this filing date is not the earliest application “whose priority is so claimed” because of its “disclaimer”. In other words, since the Applicant chose to disclaim the First Invention, the earliest application whose priority is claimed for the purpose of Canadian Phase entry, becomes the Second Invention and by definition the priority date must be the filing date of the Second Invention, April 2, 2004.

[25] The difficulty with the Applicant’s argument is that there is no provision for a “disclaimer” of a priority claim made in the international application in the PCT or in its Regulations. The Regulations do provide for the withdrawal of an international application, or the withdrawal of a priority claim, made in the international application, at any time prior to the expiration of 30 months from the priority date. See PCT Regulation 90*bis*.1 and PCT Regulation 90*bis*.3. No such withdrawal was requested by the Applicant within the 30 month time limitation. The Applicant now seeks to obtain the same result outside the time limitation by invoking a process not provided for in the PCT or in the Regulations, the “disclaimer”. The Applicant’s position, if accepted, would essentially allow for the withdrawal of a priority date beyond the limitation expressly provided for in the Regulations.

[26] Further, had the Applicant wanted to claim separate priority dates for the Second Invention and Third Invention, it could have elected to file separate international applications for those inventions. This was not done. The Applicant chose to submit a single international patent application claiming the First Invention priority date.

[27] I am not persuaded by the argument that because “disclaiming” is not prohibited in the legislation, it should therefore be allowed. Acceptance of an international application for entry into the National Phase in Canada is governed by sections 56 to 58 of the Rules. These mandatory provisions are clear. Neither the Commissioner nor the Court has jurisdiction to modify, set aside, or ignore them. See: *F. Hoffman-Laroche v. Canada*, 2003 FC 1381, [2004] 2 F.C.R. 405, affirmed on appeal at 2005 FCA 140; *Eiba v. Canada*, 2004 FC 250; and *P.E. Fusion and Pfizer Inc.* 2004 FC 645.

[28] I am also not persuaded by the argument that the common law provides a right to disclaim priority dates in the circumstances. Silence in the Act does not necessarily lead to this result. Here, the circumstances are different than in *Parke-Davis Division*. In that case the Federal Court of Appeal found that dedication of patents to public use occurs often and that the dedication of patents to the public through notices published in the Canadian Patent Office Record has become an established practice. In the instant case, although the legislation is silent on “disclaimer,” there is no established practice. There is, however, an established practice for withdrawal of a claim of priority date, which is provided for in the PCT Regulations.

[29] I am satisfied that the legislation here provides for a comprehensive regulatory scheme for matters relating to the filing in Canada of international applications. In my view, the legislative scheme prevails over and displaces the common law. The Regulations provide for a specific provision which could have been utilized by the Applicant in order to render the First Invention priority date ineffective. To allow the Applicant to “disclaim” the First Invention priority date, when its withdrawal is prescribed by a limitation period in the Regulations, would be to render the provisions under PCT Regulation 90*bis*.3 meaningless and defeat the intention of the legislation.

VII. Conclusion

[30] For the above reasons, I conclude the Commission was correct in denying Canadian National Phase entry to International Patent Application Number PCT/US2004/020989. The Application for judicial review will be dismissed.

[31] The Respondent is not seeking costs of this application. No costs will be ordered.

JUDGMENT

THIS COURT ORDERS AND ADJUDGES that:

1. The application for judicial review is dismissed without costs.

“Edmond P. Blanchard”

Judge

SCHEDULE

Federal Courts Act / Loi sur les Cours fédérales

18. (1) Subject to section 28, the Federal Court has exclusive original jurisdiction

(a) to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal; and

(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

(2) The Federal Court has exclusive original jurisdiction to hear and determine every application for a writ of *habeas corpus ad subjiciendum*, writ of *certiorari*, writ of prohibition or writ of *mandamus* in relation to any member of the Canadian Forces serving outside Canada.

(3) The remedies provided for in subsections (1) and (2) may be obtained only on an application for judicial review made under section 18.1.

18.1(1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

(2) An application for judicial review in respect of a decision or an order of a federal

18. (1) Sous réserve de l'article 28, la Cour fédérale a compétence exclusive, en première instance, pour :

a) décerner une injonction, un bref de *certiorari*, de *mandamus*, de prohibition ou de *quo warranto*, ou pour rendre un jugement déclaratoire contre tout office fédéral;

b) connaître de toute demande de réparation de la nature visée par l'alinéa a), et notamment de toute procédure engagée contre le procureur général du Canada afin d'obtenir réparation de la part d'un office fédéral.

(2) Elle a compétence exclusive, en première instance, dans le cas des demandes suivantes visant un membre des Forces canadiennes en poste à l'étranger : bref d' *habeas corpus ad subjiciendum*, de *certiorari*, de prohibition ou de *mandamus*.

(3) Les recours prévus aux paragraphes (1) ou (2) sont exercés par présentation d'une demande de contrôle judiciaire.

18.1(1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

(2) Les demandes de contrôle judiciaire sont à présenter dans les trente jours qui suivent la

board, commission or other tribunal shall be made within 30 days after the time the decision or order was first communicated by the federal board, commission or other tribunal to the office of the Deputy Attorney General of Canada or to the party directly affected by it, or within any further time that a judge of the Federal Court may fix or allow before or after the end of those 30 days.

(3) On an application for judicial, the Federal Court may

(a) order a federal board, commission or other tribunal to do any act or thing it has unlawfully failed or refused to do or has unreasonably delayed in doing; or

(b) declare invalid or unlawful, or quash, set aside or set aside and refer back for determination in accordance with such directions as it considers to be appropriate, prohibit or restrain, a decision, order, act or proceeding of a federal board, commission or other tribunal.

(4) The Federal Court may grant relief under subsection (3) if it is satisfied that the federal board, commission or other tribunal

(a) acted without jurisdiction, acted beyond its jurisdiction or refused to exercise its jurisdiction;

(b) failed to observe a principle of natural justice, procedural fairness or other procedure that it was required by law to observe;

(c) erred in law in making a decision or an order, whether or not the error appears on the face of the record;

(d) based its decision or order on an

première communication, par l'office fédéral, de sa décision ou de son ordonnance au bureau du sous-procureur général du Canada ou à la partie concernée, ou dans le délai supplémentaire qu'un juge de la Cour fédérale peut, avant ou après l'expiration de ces trente jours, fixer ou accorder.

(3) Sur présentation d'une demande de contrôle judiciaire, la Cour fédérale peut :

a) ordonner à l'office fédéral en cause d'accomplir tout acte qu'il a illégalement omis ou refusé d'accomplir ou dont il a retardé l'exécution de manière déraisonnable;

b) déclarer nul ou illégal, ou annuler, ou infirmer et renvoyer pour jugement conformément aux instructions qu'elle estime appropriées, ou prohiber ou encore restreindre toute décision, ordonnance, procédure ou tout autre acte de l'office fédéral.

(4) Les mesures prévues au paragraphe (3) sont prises si la Cour fédérale est convaincue que l'office fédéral, selon le cas :

a) a agi sans compétence, outrepassé celle-ci ou refusé de l'exercer;

b) n'a pas observé un principe de justice naturelle ou d'équité procédurale ou toute autre procédure qu'il était légalement tenu de respecter;

c) a rendu une décision ou une ordonnance entachée d'une erreur de droit, que celle-ci soit manifeste ou non au vu du dossier;

d) a rendu une décision ou une ordonnance

erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it;

fondée sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments dont il dispose;

(e) acted, or failed to act, by reason of fraud or perjured evidence; or

e) a agi ou omis d’agir en raison d’une fraude ou de faux témoignages;

(f) acted in any other way that was contrary to law.

f) a agi de toute autre façon contraire à la loi.

(5) If the sole ground for relief established on an application for judicial review is a defect in form or a technical irregularity, the Federal Court may

(5) La Cour fédérale peut rejeter toute demande de contrôle judiciaire fondée uniquement sur un vice de forme si elle estime qu'en l'occurrence le vice n'entraîne aucun dommage important ni déni de justice et, le cas échéant, valider la décision ou l'ordonnance entachée du vice et donner effet à celle-ci selon les modalités de temps et autres qu'elle estime indiquées.

(a) refuse the relief if it finds that no substantial wrong or miscarriage of justice has occurred; and

(b) in the case of a defect in form or a technical irregularity in a decision or an order, make an order validating the decision or order, to have effect from any time and on any terms that it considers appropriate.

The Patent Rules / Règles sur les brevets

50. In this Part,

50. La définition qui suit s’applique à la présente partie.

“priority date” has the same meaning as in Article 2(xi) of the Patent Cooperation Treaty.

«date de priorité» S’entend au sens de l’article 2xi) du Traité de coopération en matière de brevets.

...

[...]

56. Where an international application in which Canada is designated is filed, the

56. Lorsqu’est déposée une demande

Commissioner shall act as the designated Office as defined in Article 2(xiii) of the Patent Cooperation Treaty.

57. Where an international application in which Canada is designated is filed and the applicant has elected Canada as a country in respect of which the international preliminary examination report referred to in Article 35 of the Patent Cooperation Treaty shall be established, the Commissioner shall act as an elected Office as defined in Article 2(xiv) of the Patent Cooperation Treaty.

58. (1) An applicant who designates Canada, or who designates and elects Canada, in an international application shall, within the time prescribed by subsection (3),

(a) where the International Bureau of the World Intellectual Property Organization has not published the international application, provide the Commissioner with a copy of the international application;

(b) where the international application is not in English or French, provide the Commissioner with a translation of the international application into either English or French; and

(c) pay the appropriate basic national fee prescribed by subsection 3(5).

(2) An applicant who complies with the requirements of subsection (1) after the second anniversary of the international filing date shall, within the time prescribed by subsection (3), pay any fee set out in item 30 of Schedule II that would have been payable in accordance with section 99 or 154 had the international application been filed in Canada as a Canadian

internationale dans laquelle le Canada est désigné, le commissaire agit à titre d'office désigné au sens de l'article 2(xiii) du Traité de coopération en matière de brevets.

57. Lorsqu'est déposée une demande internationale dans laquelle le Canada est désigné et que le demandeur a élu le Canada comme pays pour lequel un rapport d'examen préliminaire international visé à l'article 35 du Traité de coopération en matière de brevets doit être établi, le commissaire agit à titre d'office élu au sens de l'article 2(xiv) de ce traité.

58. (1) Le demandeur qui, dans une demande internationale, désigne le Canada ou désigne et élit le Canada est tenu, dans le délai prévu au paragraphe (3) :

a) lorsque le Bureau international de l'Organisation mondiale de la propriété intellectuelle n'a pas publié la demande internationale, de remettre au commissaire une copie de cette demande;

b) lorsque la demande internationale n'est ni en français ni en anglais, de remettre au commissaire la traduction française ou anglaise de cette demande;

c) de verser la taxe nationale de base appropriée visée au paragraphe 3(5).

(2) Le demandeur qui se conforme aux exigences du paragraphe (1) après le deuxième anniversaire de la date du dépôt international verse, dans le délai visé au paragraphe (3), la taxe prévue à l'article 30 de l'annexe II qui aurait été exigible selon les articles 99 ou 154 si la demande internationale avait été déposée au Canada à titre de demande canadienne à la date du

application on the international filing date.

(3) An applicant shall comply with the requirements of subsection (1) and, where applicable, subsection (2) not later than on the expiry of

(a) the 30-month period after the priority date; or

(b) if the applicant pays the additional fee for late payment set out in item 11 of Schedule II before the expiry of the 42-month period after the priority date, the 42-month period after the priority date.
[Emphasis added.]

dépôt international.

(3) Le demandeur se conforme aux exigences du paragraphe (1) et, s'il y a lieu, du paragraphe (2) dans le délai suivant :

a) dans les trente mois suivant la date de priorité;

b) s'il verse la surtaxe pour paiement en souffrance prévue à l'article 11 de l'annexe II avant l'expiration du quarante-deuxième mois suivant la date de priorité, dans les quarante-deux mois suivant cette date. [Je souligne.]

Patent Cooperation Treaty / Traité de coopération en matière de brevets

For the purposes of this Treaty and the Regulations and unless expressly stated otherwise;

(xi) "priority date," for the purposes of computing time limits, means:

- (a) where the international application contains a priority claim under Article 8, the filing date of the application whose priority is so claimed;
- (b) where the international application contains several priority claims under Article 8, the filing date of the earliest application whose priority is so claimed;
- (c) where the international application does not contain any priority claim under Article 8, the international filing date of such application;

Au sens du présent traité et du règlement d'exécution, et sauf lorsqu'un sens différent est expressément indiqué :

(xi) on entend par « date de priorité », aux fins du calcul des délais :

- a) lorsque la demande internationale comporte une revendication de priorité selon l'article 8, la date du dépôt de la demande dont la priorité est ainsi revendiquée;
- b) lorsque la demande internationale comporte plusieurs revendications de priorité selon l'article 8, la date du dépôt de la demande la plus ancienne dont la priorité est ainsi revendiquée;
- c) lorsque la demande internationale ne comporte aucune revendication de priorité selon l'article 8, la date du dépôt international de cette demande;

***Regulations under the Patent Cooperation Treaty /
Règlement d'exécution du Traité de coopération en matière de brevets***

90bis.1 *Withdrawal of the International Application*

- (a) The applicant may withdraw the international application at any time prior to the expiration of 30 months from the priority date.
- (b) Withdrawal shall be effective on receipt of a notice addressed by the applicant, at his option, to the International Bureau, to the receiving Office or, where Article 39(1) applies, to the International Preliminary Examining Authority.
- (c) No international publication of the international application shall be effected if the notice of withdrawal sent by the applicant or transmitted by the receiving Office or the International Preliminary Examining Authority reaches the International Bureau before the technical preparations for international publication have been completed.

...

90bis.3 *Withdrawal of Priority Claims*

- (a) The applicant may withdraw a priority claim, made in the international application under Article 8(1), at any time prior to the expiration of 30 months from the priority date.
- (b) Where the international application contains more than one priority claim, the applicant may exercise the right provided for in paragraph (a) in respect of one or more or all of the priority claims.
- (c) Withdrawal shall be effective on receipt of a notice addressed by the applicant, at his option, to the International Bureau, to

90bis.1 *Retrait de la demande internationale*

- a) Le déposant peut retirer la demande internationale à tout moment avant l'expiration d'un délai de trente mois à compter de la date de priorité.
- b) Le retrait est effectif dès réception d'une déclaration, adressée par le déposant, au choix, au Bureau international, à l'office récepteur ou, lorsque l'article 39.1) s'applique, à l'administration chargée de l'examen préliminaire international.
- c) Il n'est pas procédé à la publication internationale de la demande internationale si la déclaration de retrait envoyée par le déposant ou transmise par l'office récepteur ou l'administration chargée de l'examen préliminaire international parvient au Bureau international avant l'achèvement de la préparation technique de la publication internationale.

[...]

90bis.3 *Retrait de revendications de priorité*

- a) Le déposant peut retirer une revendication de priorité, faite dans la demande internationale en vertu de l'article 8.1), à tout moment avant l'expiration d'un délai de trente mois à compter de la date de priorité.
- b) Lorsque la demande internationale contient plus d'une revendication de priorité, le déposant peut exercer le droit prévu à l'alinéa a) à l'égard de l'une, de plusieurs ou de la totalité desdites revendications.
- c) Le retrait est effectif dès réception d'une déclaration, adressée par le déposant,

the receiving Office or, where Article 39(1) applies, to the International Preliminary Examining Authority.

(d) Where the withdrawal of a priority claim causes a change in the priority date, any time limit which is computed from the original priority date and which has not already expired shall, subject to paragraph (e), be computed from the priority date resulting from that change.

(e) In the case of the time limit referred to in Article 21(2)(a), the International Bureau may nevertheless proceed with the international publication on the basis of the said time limit as computed from the original priority date if the notice of withdrawal sent by the applicant or transmitted by the receiving Office or the International Preliminary Examining Authority reaches the International Bureau after the completion of the technical preparations for international publication.

au choix, au Bureau international, à l'office récepteur ou, lorsque l'article 39.1) s'applique, à l'administration chargée de l'examen préliminaire international.

d) Lorsque le retrait d'une revendication de priorité entraîne une modification de la date de priorité, tout délai calculé à partir de la date de priorité initiale qui n'a pas encore expiré est calculé, sous réserve de l'alinéa e), à partir de la date de priorité résultant de la modification.

e) S'agissant du délai mentionné à l'article 21.2)a), le Bureau international peut néanmoins procéder à la publication internationale sur la base dudit délai calculé à partir de la date de priorité initiale si la déclaration de retrait envoyée par le déposant ou transmise par l'office récepteur ou l'administration chargée de l'examen préliminaire international parvient au Bureau international après l'achèvement de la préparation technique de la publication internationale.

FEDERAL COURT

SOLICITORS OF RECORD

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**REASONS FOR JUDGMENT
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APPEARANCES:

Aliyaz A. Alibhai
James Wagner
Carla White
604-669-4350

FOR THE APPLICANT

Ms. Cindy W. Mah
604-666-0530

FOR THE RESPONDENT

SOLICITORS OF RECORD:

MBM Intellectual Property Law LLP

FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada

FOR THE RESPONDENT