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# Legal Insights on Patents and Trademarks

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### **Business Methods Patentable in Canada**

The Federal Court of Canada has recently declared that business methods are not excluded from patentability. It has quashed the decision of the Commissioner of Patents not to allow the patent application for Amazon.com's "1-click". The Court stated that business methods, like any invention, are to be assessed in terms of the categories of art, machine, process, manufacture or composition of matter. Business methods should not be given their own category of exclusion according to the Federal Court.

This decision aligns with the law in the United States. The U.S. Supreme Court recently rejected a strict "machine or transformation" test for subject matter, stating that it is too rigid. The Canadian Court echoed this by stating that it is crucial to remain focused on the requirement for practical application rather than merely on the physicality of the invention.

### **What does this mean for you?**

Canadian law has shifted in favour of potential patentees who can now rely on this Federal Court of Canada decision when arguing for the patentability of their business method inventions. In light of the above, it is recommended that businesses take advantage of this decision by considering whether they should be filing patent applications for their methods patents.

### **Trademarks: First Come, First Served**

The purpose of a trademark is to signify that it originates from a unique source and to distinguish your products or services from others, including competitors. A trademark is your identity in the marketplace.

A trademark can be a logo, a word(s), a combination of a logo and word(s), a smell and the shape of a product. The best trademark is one that is unique and distinct. It is all about standing out! A trademark that is originally coined or has no dictionary meaning in relation to the goods or services for which it is used, has a strong distinctive character. Such trademarks are easily enforced and are therefore entitled to the widest scope of protection.

Trademark rights exist regardless of whether the trademark is registered under the Trade-marks Act. Registered trademarks, however, are easier and less expensive to enforce and the Trade-marks Act provides additional remedies not available to unregistered trademarks.

### What does this mean for you?

Getting your trademark registered at the Trade-marks Office is on a first come first served basis. Therefore, it is very important that you file your trademark application as soon as possible, whether it is based on proposed use or actual use. This ensures an earlier filing date for entitlement purposes and could help you avoid opposition proceedings to competitor applications which could be costly.

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Silvia's practice is concentrated in the area of business law with an emphasis on intellectual property law, life sciences law and technology law. Her practice also includes intellectual property transactions, commercial law, financings and licensing matters.