

Date: 20080312

**Dockets: A-164-07
A-165-07
A-166-07
A-167-07
A-168-07
A-169-07**

Citation: 2008 FCA 96

**CORAM: LÉTOURNEAU J.A.
NADON J.A.
SHARLOW J.A.**

BETWEEN:

Docket: A-164-07

HARRY O. WICKS

Appellant

and

THE COMMISSIONER OF PATENTS

Respondent

AND BETWEEN:

Docket: A-165-07

HARRY O. WICKS

Appellant

and

THE COMMISSIONER OF PATENTS

Respondent

AND BETWEEN:

Docket: A-166-07

HARRY O. WICKS

Appellant

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Docket: A-167-07

HARRY O. WICKS

Appellant

and

THE COMMISSIONER OF PATENTS

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Docket: A-168-07

HARRY O. WICKS

Appellant

and

THE COMMISSIONER OF PATENTS

Respondent

AND BETWEEN:

Docket: A-169-07

HARRY O. WICKS

Appellant

and

THE COMMISSIONER OF PATENTS

Respondent

Heard at Toronto, Ontario, on March 12, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on March 12, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

Date: 20080312

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and

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on March 12, 2008)

SHARLOW J.A.

[1] These are six appeals from judgments of Justice Layden-Stevenson dated February 26, 2007 (2007 FC 222) dismissing six applications for judicial review of decisions of the Commissioner of Patents declaring two of Mr. Wicks' patent applications to have been irrevocably abandoned.

[2] Mr. Wicks had attempted to save his patent applications on the basis of section 78.6 of the *Patent Act*, R.S.C. 1985, c. P-4. Justice Layden-Stevenson concluded that section 78.6 applies to permit a top-up payment when a patent applicant incorrectly pays an annual maintenance fee at the “small entity” rate rather than the “large entity” rate, but it cannot be used to remedy a subsequent complete failure to pay an annual maintenance fee. We agree with her conclusion, substantially for the reasons she gave.

[3] Despite the able submissions of Mr. Zarnett, we have concluded that these appeals must be dismissed with costs (limited to one set of costs for the hearing).

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: A-164-07, A-165-07, A-166-07, A-167-07, A-168-07,
A-169-07

(AN APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE LAYDEN-STEVENSON, DATED FEBRUARY 26, 2007, FOR A JUDICIAL REVIEW IN FEDERAL COURT FILE NO. T-527-06, WAS DISMISSED.)

STYLE OF CAUSE: HARRY O. WICKS v. THE COMMISSIONER OF PATENTS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MARCH 12, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (LÉTOURNEAU, NADON & SHARLOW J.J.A.)

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

APPEARANCES:

Benjamin Zarnett FOR THE APPELLANT
Richard Naiberg

Banafsheh Sokhansanj FOR THE RESPONDENT

SOLICITORS OF RECORD:

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Barristers and Solicitors
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