

Date: 20080909

Docket: A-558-07

Citation: 2008 FCA 256

**CORAM: RICHARD C.J.
SEXTON J.A.
BLAIS J.A.**

BETWEEN:

DBC MARINE SAFETY SYSTEMS LTD.

Appellant

and

THE COMMISSIONER OF PATENTS

and

THE ATTORNEY GENERAL OF CANADA

Respondents

Heard at Ottawa, Ontario, on September 9, 2008.

Judgment delivered from the Bench at Ottawa, Ontario, on September 9, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

RICHARD C.J.

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(Delivered from the Bench at Ottawa, Ontario, on September 9, 2008)

RICHARD C.J.

[1] We are all of the view that this appeal should be dismissed.

[2] The regime for patent applications is firmly established by the *Patent Act* and the *Patent Rules*. Together, the various legislative provisions set out a complete code governing the duties of

an applicant for a patent, the consequences of a failure to comply with those duties, and the steps that may be taken to avoid those consequences.

[3] We agree with Mr. Justice Mosley's conclusion at paragraph 34 of his Reasons for Judgment (2007 FC 1142).

Thus, where an applicant fails to respond to a requisition and the application is not reinstated within the year provided to rectify the situation, the patent application is abandoned as a matter of law. There is no discretionary decision which is reviewable by the Court.

[4] Accordingly, the appeal will be dismissed.

"J. Richard"
Chief Justice

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-558-07

APPEAL FROM A JUDGMENT OF THE HONOURABLE RICHARD MOSLEY DATED NOVEMBER 5, 2007, DOCKET NO. (T-1667-06)

STYLE OF CAUSE: DBC MARINE SAFETY SYSTEMS LTD. v. THE COMMISSIONER OF PATENTS and THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: September 9, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (RICHARD C.J., SEXTON J.A. & BLAIS J.A.)

DELIVERED FROM THE BENCH BY: RICHARD C.J.

APPEARANCES:

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FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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FOR THE APPELLANT

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Deputy Attorney General of Canada

FOR THE RESPONDENTS