

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110322

Docket: A-196-10

Citation: 2011 FCA 112

**CORAM: NOËL J.A.
NADON J.A.
PELLETIER J.A.**

BETWEEN:

M-SYSTEMS FLASH DISK PIONEERS LTD.

Appellant

and

**THE COMMISSIONER OF PATENTS
(ATTORNEY GENERAL OF CANADA)**

Respondent

Heard at Montreal, Quebec, on March 22, 2011.

Judgment delivered from the Bench at Montreal, Quebec, on March 22, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Montréal, Quebec, on March 22, 2011)

NADON J.A.

[1] In our opinion, notwithstanding Mr. Grenier's forceful arguments to the contrary, there is no basis for us to intervene in this matter.

[2] We are satisfied that de Montigny J. made no reviewable error in dismissing the appellant's judicial review application of the Commissioner of Patents' refusal to reinstate patent application

No. 2,334,113, essentially on the basis that the application was abandoned by operation of law and not as a result of a decision on the part of the Commissioner.

[3] More particularly, we are all agreed that our decision in *DBC Marine Safety Systems Ltd. v. Canada* (2008), 69 C.P.R. (4th) 189 (*DBC Marine*), which upheld the decision of Mosley J. of the Federal Court (2008), 62 C.P.R. (4th) 279, is determinative of the issue now before us in this appeal. We would add to this that the fact that the appellant takes the position that Rule 29 of the *Patent Rules* and the September 2, 2003 Practice Note are invalid, null and void as incompatible with the *Patent Act* and the *Canadian Bill of Rights*, does not affect the binding nature of our decision in *DBC Marine*.

[4] To avoid any doubt, the Judge's determination with respect to the constitutional validity of Rule 29 and, in particular, as to whether the Rule violates Section 2(e) of the *Canadian Bill of Rights* is, in our view, correct.

[5] As a result, the appeal will be dismissed with costs.

“Marc Nadon”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-196-10

STYLE OF CAUSE: M-SYSTEMS FLASH DISK
PIONEERS LTD. v THE
COMMISSIONER OF PATENTS
(AGC)

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: March 22, 2011

REASONS FOR JUDGMENT OF THE COURT BY: NOËL, NADON, PELLETIER JJ.A.

DELIVERED FROM THE BENCH BY: NADON J.A.

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