Federal Court of Appeal | Cour d'appel fédérale

Date: 20250905

Docket: A-42-25

Citation: 2025 FCA 156

CORAM: **LOCKE J.A.**
LEBLANC J.A.
GOYETTE J.A.

BETWEEN:

ATTORNEY GENERAL OF CANADA

Appellant

and

MATCO TOOLS CORPORATION

Respondent

Heard at Toronto, Ontario, on June 23, 2025.

Judgment delivered at Ottawa, Ontario, on September 05, 2025.

REASONS FOR JUDGMENT BY: LOCKE J.A.

CONCURRED IN BY: LEBLANC J.A.
GOYETTE J.A.

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REASONS FOR JUDGMENT

LOCKE J.A.

I. Overview

[1] The Attorney General of Canada (the AGC) appeals a decision of the Federal Court (2025 FC 118, *per* Justice Russel W. Zinn, the FC Decision) that granted an application for judicial review of a decision of the Commissioner of Patents (the Commissioner). That decision (the Commissioner's Decision) refused a request by the respondent, Matco Tools Corporation

(Matco), to reinstate its Canadian Patent Application No. 3,086,194 (the 194 Application) pursuant to subsection 73(3) of the *Patent Act*, R.S.C. 1985, c. P-4, which had been deemed abandoned pursuant to paragraph 73(1)(c) following the non-payment of a periodic maintenance fee and associated late fee.

[2] The FC Decision set aside the Commissioner's Decision on the basis that it was unreasonable in at least two respects and remitted the matter to the Commissioner for redetermination. The AGC now requests that the FC Decision be set aside, and the Commissioner's Decision be restored.

[3] I have concluded that the FC Decision should indeed be set aside, and the Commissioner's Decision restored.

II. Legislative Framework

[4] Canada's patent regime provides for the payment of annual fees for the maintenance of patents and patent applications. This is to discourage the proliferation of deadwood patents and patent applications: *Dutch Industries Ltd. v. Canada (Commissioner of Patents)*, 2003 FCA 121, [2003] 4 F.C. 67 at para. 30. For patent applications, these payments are contemplated in section 27.1 of the *Patent Act* and prescribed in the *Patent Rules*, S.O.R./2019-251. If a prescribed maintenance fee is not paid on time, abandonment of the patent application can be avoided by payment of the missing maintenance fee as well as a late fee within a prescribed time. The deadline for such late payment is the later of (i) six months after the date the maintenance fee

was originally due, and (ii) two months after the date of the Commissioner's notice to the applicant of the failure to pay the maintenance fee on time.

[5] If the prescribed maintenance fee and the late fee are not paid by the deadline, the patent application is deemed abandoned: paragraph 73(1)(c) of the *Patent Act*.

[6] A patent application that is deemed abandoned may be reinstated pursuant to subsection 73(3) of the *Patent Act*. In order to reinstate a patent application under this provision, the applicant must, within the prescribed time, (i) make a request for reinstatement with the Commissioner, (ii) state, in the request, "the reasons for the failure to take the action that should have been taken in order to avoid the abandonment", (iii) take "the action that should have been taken in order to avoid the abandonment", and (iv) pay the prescribed reinstatement fee. The deadline for requesting reinstatement is 12 months after the day on which the application for a patent is deemed, as a result of the failure to take action, to be abandoned: subsection 133(1) of the *Patent Rules*.

[7] Pursuant to paragraph 73(3)(b) of the *Patent Act*, another requirement for reinstatement of an abandoned patent application is that "the Commissioner determines that the failure occurred in spite of the due care required by the circumstances having been taken and informs the applicant of this determination."

III. Factual Background

[8] The 194 Application was filed as a PCT (Patent Cooperation Treaty) application on January 8, 2019, and entered the national phase in Canada on June 17, 2020. Annual maintenance fees were due beginning on the second anniversary of filing.

[9] The third anniversary maintenance fee was due on January 10, 2022 because the anniversary of filing fell on a Saturday. This fee was not paid on time. Matco ascribed this failure to an administrative error when Matco switched maintenance fee payment service providers in June 2021. The data concerning the 194 Application was not properly transferred to the new service provider (Dennemeyer), and a notice sent from Dennemeyer to Matco advising it of the problem went unnoticed by Matco. I will refer to this as the data migration error.

[10] On February 21, 2022, the Commissioner issued a notice pursuant to paragraph 27.1(2)(b) of the *Patent Act* advising Matco of the failure to pay the maintenance fee on time (the Notice). In the Notice, the Commissioner indicated that the 194 Application would be deemed abandoned if the maintenance fee and late fee were not paid by July 11, 2022, being six months after the due date of the maintenance fee. The Notice was sent to Matco's then patent agent of record, Ridout & Maybee LLP (Ridout). Ridout forwarded the Notice the next day to Matco's US counsel, Hahn Loeser & Parks LLP (Hahn), from whom Ridout had been receiving all of its instructions concerning the 194 Application. Ridout had also notified Hahn in January 2022 of the then upcoming deadline to pay the maintenance fee. Hahn did not forward to Matco either the Notice or the January 2022 notice from Ridout apparently because of Matco's standing

instructions that Hahn was to “take no further action” with respect to the payment of maintenance fees.

[11] In August 2022, the Commissioner issued a courtesy letter indicating that, as a result of the failure to pay the prescribed maintenance fee and late fee, the 194 Application was deemed abandoned (the Abandonment Letter). The Abandonment Letter also addressed the possibility of requesting reinstatement of the 194 Application within 12 months after July 11, 2022. Ridout forwarded the Abandonment Letter to Hahn. This time, Hahn took the step of forwarding the Abandonment Letter to Matco.

[12] On December 13, 2022, Matco, through Ridout, requested reinstatement of the 194 Application, paying the maintenance fee, the late fee and the reinstatement fee, and stating that the failure to pay the maintenance fee on time had occurred in spite of due care having been taken. The request referred to the data migration error, which it described as isolated, unexpected and unforeseeable. The reinstatement request also referred to Hahn’s inaction on forwarding notices from Ridout about the maintenance fee to Matco based on standing instructions from Matco to take no further action on the payment of maintenance fees.

[13] On May 8, 2023, the Commissioner issued a courtesy letter indicating, and explaining, his intention to refuse reinstatement on the basis that he was not satisfied that the failure to pay the fees in issue by July 11, 2022, occurred in spite of the due care required by the circumstances having been taken. The Commissioner also invited submissions from Matco on the courtesy letter before he made a final decision.

[14] Despite further information provided by Matco, the Commissioner issued a final letter on December 6, 2023 refusing the request for reinstatement.

IV. The Commissioner's Decision

[15] After summarizing the legislative framework for abandonment and reinstatement of patent applications as described above, the Commissioner's Decision cited the Manual of Patent Office Practice (MOPOP), which it acknowledged was not binding on him. He noted that "the applicant is required to provide the reasons for the failure to take the action that should have been taken to avoid the abandonment of the application." He also stated that, in considering a request for reinstatement, (i) the Commissioner "will assess whether the applicant took all measures that a reasonably prudent applicant would have taken – given the set of circumstances related to the failure – to avoid the failure", and (ii) "[m]easures taken by the applicant after the failure occurred will not be taken into consideration in making the determination."

[16] The Commissioner stated that the grounds of due care in the conduct of patent business must have been clearly established to his satisfaction.

[17] The Commissioner also stated that he would have regard to considerations that are taken into account by the World Intellectual Property Organization (WIPO) International Bureau and Receiving Offices as described in paragraph 166M of the WIPO Receiving Office Guidelines (WIPO Guidelines). That paragraph includes sub-paragraph (d) that states that "[a] prudent agent

advises the applicant of all important matters in relation to the timely filing of an international application and the consequences of a late filing in a clear manner."

[18] The Commissioner's analysis made clear that he considered the failure that resulted in the abandonment, which must be the focus of the reinstatement request, was the failure to pay the maintenance fee and the late fee by the July 11, 2022 deadline. For this reason, the Commissioner found Matco's submissions concerning the data migration error, which concerned the failure to pay the maintenance fee by January 10, 2022, were not relevant. The Commissioner was of the view that, despite the data migration error, the abandonment could have been avoided if the Notice had been forwarded to Matco. Though the Commissioner acknowledged the standing instructions from Matco to Hahn to take no further action with regard to the payment of maintenance fees, he found that no explanation had been provided as to why the Notice was not forwarded to Matco. The Commissioner stated that he must consider whether due care was taken by all parties involved with the maintenance and prosecution of the 194 Application, including Matco, its agents and any other authorized representatives.

[19] The Commissioner ended his analysis by indicating that Matco might wish to read the Patent Office's Due Care Observations.

[20] The Commissioner concluded that he was not satisfied that the failure to pay the fees in issue by July 11, 2022, occurred in spite of the due care required by the circumstances having been taken.

V. The FC Decision

[21] The FC Decision summarized the facts and the Commissioner's Decision much as described above and stated that the only issue was the reasonableness of the Commissioner's analysis on due care.

[22] The Federal Court then summarized the legal framework surrounding the abandonment and reinstatement of patent applications.

[23] The Federal Court found that the Commissioner's analysis on due care was unreasonable in at least two respects. The Federal Court concluded that it was unreasonable for the Commissioner to have found (i) that the data migration error was not relevant, and (ii) that no explanation had been provided as to why the Notice was not forwarded to Matco.

[24] With regard to the relevance of the data migration error, the Federal Court stated that the Commissioner had overlooked that, but for the data migration error, the maintenance fee would have been paid and the 194 Application would never have been deemed abandoned. The Federal Court described the data migration error as the proximate cause of the events that led to the deemed abandonment. The Federal Court stated at paragraph 41 that the Commissioner must ask, "what caused the failure to pay the 194 Application maintenance fee?" He must then ask, "was due care taken by either or both the Applicant and its representatives to avoid the Proximate Cause?" The Federal Court found that an exercise of due care in respect of the data migration error should result in reinstatement of the 194 Application. Even if due care was not exercised in

respect of the data migration error, the Federal Court found that reinstatement may still be justified if due care was exercised later in respect of the Notice.

[25] The Federal Court acknowledged that the WIPO Guidelines and the Patent Office's Due Care Observations both stress the importance of post-Notice diligence. However, the Federal Court added that these documents do not recommend disregarding an initial root error (here, the data migration error) simply because the Notice offered a subsequent opportunity for correction.

[26] With regard to the Commissioner's view that Matco provided no explanation as to why the Notice was not forwarded to it, the Federal Court found that the evidence did not support this view. It noted that Ridout had explained that it had forwarded the Notice to Hahn (rather than to Matco) because it had communicated only with Hahn and was not tasked with paying maintenance fees.

[27] The Federal Court also noted at paragraph 48 that Hahn explained that (i) it was not responsible for the payment of maintenance fees, (ii) it was "operating under strict instructions" that Dennemeyer alone was responsible for such payments, and (iii) it had no knowledge of the data migration error, and hence it "could reasonably have expected Dennemeyer … to make the required payment without needing to inform Matco of [the Notice]." The Federal Court concluded that the Commissioner had reached his conclusions without regard to Hahn's limited responsibilities and knowledge, and without considering the actions of Dennemeyer.

VI. Standard of Review and Issues in Dispute

[28] Since this is an appeal of a decision of the Federal Court on a judicial review, this Court's task is to determine (i) whether the Federal Court identified the appropriate standard of review to assess the Commissioner's Decision, and (ii) whether the Federal Court applied that standard of review correctly: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 45 (*Agraira*). In other words, we must step into the shoes of the Federal Court and focus on the Commissioner's Decision: *Agraira* at para. 46.

[29] As indicated above, the Federal Court applied a standard of reasonableness to the Commissioner's Decision and concluded that the Commissioner's analysis on due care was unreasonable.

[30] The parties agree, and I concur, that the Federal Court was correct in identifying reasonableness as the appropriate standard of review. Therefore, the only issue in dispute is whether the Federal Court correctly applied that standard in its review of the Commissioner's due care analysis.

[31] The Supreme Court of Canada provided helpful guidance regarding reasonableness analysis in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653 (*Vavilov*). At paragraph 13 of *Vavilov*, the majority of the Supreme Court stated:

> [13] Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a

respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.

[32] The majority of the Court in *Vavilov* expanded on this at paragraphs 82 to 86:

> [82] Reasonableness review aims to give effect to the legislature's intent to leave certain decisions with an administrative body while fulfilling the constitutional role of judicial review to ensure that exercises of state power are subject to the rule of law [citations omitted].
>
> [83] It follows that the focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to *review*, and they are, at least as a general rule, to refrain from deciding the issue themselves. Accordingly, a court applying the reasonableness standard does not ask what decision it would have made in place of that of the administrative decision maker, attempt to ascertain the "range" of possible conclusions that would have been open to the decision maker, conduct a *de novo* analysis or seek to determine the "correct" solution to the problem…
>
> [84] As explained above, where the administrative decision maker has provided written reasons, those reasons are the means by which the decision maker communicates the rationale for its decision. A principled approach to reasonableness review is one which puts those reasons first. A reviewing court must begin its inquiry into the reasonableness of a decision by examining the reasons provided with "respectful attention" and seeking to understand the reasoning process followed by the decision maker to arrive at its conclusion [citations omitted].
>
> [85] Developing an understanding of the reasoning that led to the administrative decision enables a reviewing court to assess whether the decision as a whole is reasonable. As we will explain in greater detail below, a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker. The reasonableness standard requires that a reviewing court defer to such a decision.
>
> [86] Attention to the decision maker's reasons is part of how courts demonstrate respect for the decision-making process: see *Dunsmuir* [*v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190], at paras. 47-49. In *Dunsmuir*, this Court explicitly stated that the court conducting a reasonableness review is concerned with "the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes": para. 47. Reasonableness, according to *Dunsmuir*, "is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process", as well as "with whether

> the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law": *ibid*. In short, it is not enough for the outcome of a decision to be *justifiable*. Where reasons for a decision are required, the decision must also be *justified*, by way of those reasons, by the decision maker to those to whom the decision applies. While some outcomes may be so at odds with the legal and factual context that they could never be supported by intelligible and rational reasoning, an otherwise reasonable outcome also cannot stand if it was reached on an improper basis.

[33] Matco criticizes the Commissioner's Decision for failing to respond to its submissions in response to the earlier letter indicating his intention to refuse reinstatement. Specifically, Matco argues that the Commissioner erred in failing to explain why he extended the obligation to exercise due care beyond Matco to its agents and other authorized representatives.

[34] Matco also criticizes the Commissioner, as did the Federal Court, with regard to (i) his view that the data migration error was not relevant to the assessment of due care, and (ii) his conclusion that no explanation had been provided as to why the Notice was not forwarded to Matco.

[35] I will address each of these issues in turn after addressing the following preliminary issue.

VII. Analysis

[36] A preliminary issue concerns the reference in the Commissioner's Decision to the Due Care Observations. Matco notes that this document was published only after it made its final submissions to the Commissioner upon receiving his letter indicating an intention to refuse

reinstatement. Before the Federal Court, Matco attempted to argue that the Commissioner's reference to this document was procedurally unfair. However, the Federal Court refused to consider that argument because it was raised for the first time in oral argument. That finding by the Federal Court has not been put in issue, and therefore the fairness of the Commissioner's reference to the Due Care Observations is not in dispute in this appeal.

[37] In my view, there was nothing inappropriate in the Commissioner's reference to this document. The Commissioner simply indicated at the end of his decision that Matco might wish to read it. My analysis of the reasonableness of the Commissioner's Decision does not depend on the Due Care Observations.

[38] Before discussing the issues in dispute, I will also note that this Court in *Taillefer v. Canada (Attorney General)*, 2025 FCA 28, [2025] F.C.J. No. 219 at paras. 8 and 9, in another case involving a request for reinstatement, found that the Commissioner's reference to the WIPO Guidelines to interpret the due care standard in that case, just as in this case, was reasonable.

A. *Obligation to Exercise Due Care Extended to Matco's Agents and Other Authorized Representatives*

[39] I preface my comments on this issue by noting that, unlike the other two issues discussed below, the Federal Court did not express agreement with Matco's position on this issue. The Federal Court was of the view that the Commissioner should have taken into account the limited responsibilities and knowledge of Matco's agents and other authorized representatives, but it did not express doubt that the actions of these third parties were relevant to the due care issue.

[40] There are two aspects to Matco's argument that the due care obligation does not extend beyond Matco itself. The first is whether the actions of Matco's Canadian patent agent, Ridout, are relevant to due care. If so, the second aspect of this issue is whether other representatives of Matco, such as its US counsel, Hahn, or its maintenance fee payment service provider, Dennemeyer, are likewise subject to a duty to exercise due care. In both cases, Matco's main complaint is about a lack of reasoning in support of the Commissioner's conclusion that these entities were expected to exercise due care, just as was Matco.

[41] With regard to the expectation that Ridout would exercise due care, the situation was quite straightforward, such that little explanation by the Commissioner was required. Ridout was Matco's agent of record before the Patent Office for the purposes of the 194 Application. By virtue of this status, Ridout was the point of contact for the Patent Office concerning the 194 Application: see MOPOP, Chapter 5.08. In accordance with the usual practice concerning patent applicants represented by a patent agent, the Patent Office had no direct contact with Matco. Accordingly, the Notice (which, pursuant to paragraph 27.1(2)(b) of the *Patent Act*, advised of the failure to pay the maintenance fee due by January 10, 2022) was sent to Ridout just like all other notices concerning the 194 Application. In order for the obligation of due care to have any practical effect, it is evident that the duty to exercise due care must apply to the recipient of a notice regarding the failure to pay a maintenance fee. Otherwise, the provision for sending such a notice would be pointless.

[42] Matco criticizes the sending of the Notice to Ridout instead of directly to Matco as a "trap" for patent applicants created by the abandonment and reinstatement regime. Matco also criticizes the Commissioner for not addressing its "trap" argument.

[43] I see no reason that the Commissioner was obliged to do so. He reasonably concluded that Ridout was subject to the due care obligation, and that answered the "trap" argument. Moreover, I see no trap. The failure to forward the Notice to Matco seems to have arisen from Hahn's interpretation of Matco's instructions that Hahn was to take no further action with respect to the payment of maintenance fees. It would be problematic, in my view, if an applicant were able to reduce or evade the strict requirements of due care by simply citing the limited scope of its instructions to its agents and other representatives. Patent applicants should not be encouraged to limit the scope of their instructions for this purpose.

[44] Matco's "trap" argument would require the Commissioner to send a notice pursuant to paragraph 27.1(2)(b) of the *Patent Act*, advising of the failure to pay the maintenance fee on time, directly to the applicant rather than to the agent of record. This cannot be what Parliament intended. Such a requirement would be unique in the context of the patent regime, both in terms of skirting the patent agent and in terms of requiring the Commissioner to send a notice to someone who may be located outside Canada. If this had been Parliament's intention, I would have expected explicit wording to that effect: *R. v. Wolfe*, 2024 SCC 34, [2024] S.C.J. No. 34 at para. 35.

[45] Moreover, the answer to the further question of whether the obligation to exercise due care extended to Matco's other representatives, such as Hahn, does not assist Matco. If Hahn was not subject to the due care obligation, then the question would become whether Ridout exercised due care in sending the Notice to Hahn only, and not to Matco. As stated in the Commissioner's Decision, and in MOPOP, Chapter 9.04.03, the question of the exercise of due care turns on whether the applicant (or in this case, its agent) "took all measures that a reasonably prudent applicant would have taken". It is difficult to imagine that Ridout could meet this requirement by forwarding the Notice to someone who was not Matco (the applicant) and who had no obligation themselves to advise Matco of the Notice. Ridout indicated that it had no direct contact with Matco, and this was the reason that it forwarded the Notice to Hahn. But a prudent agent would do so only if it expected that Hahn would ensure that Matco was made aware of the Notice.

[46] In the end, either Hahn failed to exercise due care by not forwarding the Notice to Matco, or Ridout failed to exercise due care by forwarding the Notice to someone who could not be expected to forward it to Matco.

[47] In my view, it was not necessary for the Commissioner's Decision to provide the foregoing discussion explicitly. I am confident that the Commissioner understood and considered Matco's arguments on the extent to which the obligation of due care applied to parties other than Matco itself. The Commissioner's Decision makes clear that he was unsatisfied both (i) with Ridout's explanation to Hahn of the importance of responding to the Notice (though I note that the Notice itself clearly indicated that the 194 Application would be deemed abandoned if the

maintenance fee and late fee were not paid by July 11, 2022), and (ii) with Hahn's explanation for not forwarding the Notice to Matco.

[48] Though the Commissioner's Decision does not provide much reasoning for imposing the due care obligation on agents and other representatives, the MOPOP and the WIPO Guidelines do. As alluded to above, Chapter 5.08 of the MOPOP indicates that correspondence to an applicant will be sent to its patent agent when one has been appointed. It stands to reason that that agent is expected, at a minimum, to forward such correspondence to the applicant for their action. It also stands to reason that sending such correspondence to an applicant's US counsel (instead of to the applicant itself) would constitute due care only if that US counsel had an attendant duty at least to forward it to the applicant.

[49] Nothing in the Supreme Court of Canada's recent decision in *Pepa v. Canada (Citizenship and Immigration)*, 2025 SCC 21, on which the parties made post-hearing submissions, changes my view on this issue.

B. *Relevance of Data Migration Error*

[50] As indicated above, the Federal Court concluded that it was unreasonable for the Commissioner to treat the data migration error as not relevant, and that the Commissioner should have asked what caused the failure to pay the maintenance fee. In my view, that was not the question to be asked.

[51] As noted at paragraph 6 above, a request for reinstatement of a patent application that has been deemed abandoned is provided for in subsection 73(3) of the *Patent Act*. Among the requirements is that the applicant state, in the request, "the reasons for the failure to take the action that should have been taken in order to avoid the abandonment". It is important to focus on what precisely was the "failure"; it concerned the action that was required to avoid the abandonment. In this case, the abandonment is what occurred on July 11, 2022, and therefore the action that should have been taken to avoid the abandonment was the payment of both the maintenance fee and the late fee. It is that failure that should be the focus of the Commissioner's determination as to "whether the failure occurred in spite of the due care required by the circumstances having been taken", *per* paragraph 73(3)(b) of the *Patent Act*.

[52] This is why, in my view, it was entirely reasonable for the Commissioner to state that the data migration error was not relevant. The Commissioner was properly concerned with measures that were taken, or could have been taken, to avoid the deemed abandonment after the deadline for paying the maintenance fee had passed. Here, the Commissioner was principally concerned with the failure to forward the Notice to Matco.

[53] In my view, the Federal Court's focus on the data migration error represented an inappropriate failure to defer to the Commissioner's reasoning. Instead, the Federal Court improperly asked itself what decision it would have made. For example, the Federal Court stated at paragraph 41 of the FC Decision that, "[i]f the Commissioner finds that due care was taken to avoid [the initial failure to pay the maintenance fee], then the [194] Application ought to be reinstated." It is implicit in this statement that the Federal Court's view was that reinstatement

would be merited upon showing due care in respect of the initial maintenance fee, regardless of the absence of due care in response to the Notice.

[54] The Commissioner did not overlook the importance of the data migration error to the situation. It may be true that the data migration error was the proximate cause of the failure to pay the maintenance fee, but the deemed abandonment that Matco sought to set aside with its request for reinstatement occurred later after the failure to respond to the Notice by paying the maintenance fee and the late fee by the deadline to avoid abandonment. The Commissioner did not err by focusing on the time between the Notice (February 21, 2022) and the deemed abandonment deadline (July 11, 2022).

C. *Explanation for Not Forwarding Notice to Matco*

[55] As indicated above, the Federal Court concluded that it was unreasonable for the Commissioner to state that no explanation had been provided as to why the Notice was not forwarded to Matco. The Federal Court cited the fact that Ridout had no direct contact with Matco, but had forwarded the Notice to Hahn, from whom it had been receiving instructions regarding the 194 Application. With regard to Hahn's failure to forward the Notice to Matco, the Federal Court cited the fact that Hahn (i) was unaware of the data migration error (and hence had no reason to doubt that Dennemeyer would make any necessary maintenance fee payments), and (ii) had been instructed to take no further steps with regard to the payment of maintenance fees.

[56] These may indeed be reasons that Hahn did not itself pay the maintenance fee, or the late fee. However, they do not contradict the Commissioner's conclusion that no explanation had been provided for failing to forward the Notice to Matco.

[57] First, it was reasonable for the Commissioner to find that Matco's claim that Hahn was "completely unaware" of the data migration error did not fully align with the information it had that the maintenance fee in question had not been paid on time. At a minimum, Hahn had reason to be concerned that there was a problem with the payment of the maintenance fee on the 194 Application.

[58] Second, Matco's instructions to Hahn not to pay any maintenance fees did not amount to instructions not to forward the Notice to Matco, or otherwise inform it of the missing maintenance fee payment.

[59] Again, I am concerned that the Federal Court failed to defer to the Commissioner's analysis of the facts, and formed its own conclusions regarding what Hahn knew and what it had been instructed to do (or not do).

VIII. Conclusion

[60] For the foregoing reasons, I would allow the present appeal, set aside the FC Decision and, making the decision the Federal Court should have made, dismiss the application for judicial review.

[61] In accordance with the agreement of the parties, I would award costs to the AGC in the all-inclusive amount of $2,000.

"George R. Locke"
J.A.

"I agree.
René LeBlanc J.A."

"I agree.
Nathalie Goyette J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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