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OUR INTELLECTUAL PROPERTY EXPERTISE

At Lenczner Slaght, we recognize the vital importance of intellectual property in a complex and fast-moving global marketplace. Our team represents clients in all types of high-profile and technically sophisticated patent, trademark, and copyright matters in proceedings before all levels of court.

Intellectual Property

“Many decisions from 2024 highlight challenges faced by businesses, specifically patentees, when applying for and enforcing patents in Canada.”

What were the most interesting developments of 2024, and why?

2024 saw interesting developments relating to patents, trademarks, and copyright.

For patents, the Federal Court of Appeal clarified the law on entitlement to equitable remedies including injunctions in two companion appeals brought by Rovi Guides. The FCA reversed errors made by the trial judge and clarified that a successful patentee is presumptively entitled to profits tied to infringement, unless the defendant provides evidence why the Court should not award this remedy. Similarly, the FCA held that a permanent injunction should be refused to a successful patentee “only in very rare

circumstances”, a principle that holds true even if the patented invention is only a small part of the accused product, and even if the patentee does not practice its invention in Canada.

For pharmaceutical patents, in [Bayer v Amgen](#), the Federal Court addressed section 6.07(1) of *Canada’s Patented Medicines (Notice of Compliance) Regulations* for the first time since updates to the regulations seven years ago. The Court granted a declaration that the impugned patent was ineligible for inclusion on the Patent Register, and lifted the 24-month stay in respect of that patent.

In the area of trademarks, a key development was the publication of amendments to Canada’s Trademarks Regulations. Of note, the amended Regulations will allow the Registrar to award costs against a party to a proceeding, a change that may deter parties from commencing unmeritorious oppositions or engaging in delay tactics during a proceeding.

For copyright, the proliferation of litigation relating to AI has been a key development, which we canvass in our blog series, [AI in the Courtroom](#).

What’s the primary takeaway for businesses from the past year?

Many decisions from 2024 highlight challenges faced by businesses, specifically patentees, when applying for and enforcing patents in Canada.

For patent applications, the Supreme Court of Canada denied leave to hear an appeal in [Canada \(Attorney General\) v Benjamin Moore & Co](#), missing an opportunity to provide clear guidance on the convoluted and complex area of patent law dealing with the patentability of computer-implemented inventions.

Several decisions also highlight challenges for patent enforcement. In [Mud Engineering Inc v Secure Energy Services Inc](#), the majority of a divided FCA found the plaintiff failed to establish patent ownership in a summary trial. The majority held that the question of ownership is a threshold standing issue (for which the patentee bears the burden), rather than treating ownership as a validity attack (for which the defendant bears the burden). In [Steelhead LNG \(ASLNG\) Ltd v Arc Resources Ltd](#), the FCA upheld a finding that the marketing of an apparatus that – if built – would infringe the patent, did not constitute “use” under section 42 of the [Patent Act](#), limiting the flexible approach courts have historically taken when interpreting patent use.

What’s one decision you are waiting for in 2025?

Leave to the Supreme Court of Canada was granted in [Pharmascience v Janssen](#), addressing the question of whether dosing regimens are patentable subject-matter. Up to now, such regimes were patentable so long as not amounting to a method medical treatment. The appeal asks the SCC to reverse that long applied principle and find that dosing regimens are not an invention under the *Patent Act* and not patentable. This critical appeal is expected to be heard in mid-2025. The SCC decision of that matter has the potential to significantly impact the pharmaceutical industry; both in the ability to obtain and later enforce patents for dosage regimens. The SCC may also comment on patentable subject matter more broadly, which could have a bearing on, for example, computer-implemented inventions, and have far-reaching implications for all patentees in numerous industries.