

Intellectual Property

“In 2025, we saw the first patent case the Supreme Court of Canada has taken in the last decade, before a highly engaged and divided bench.”

What were the most interesting developments of 2025, and why?

In patents, Canadian courts continued to grapple with challenges in assessing patentable subject matter. *Dusome v Canada* reinforced the central role of purposive construction in the proper approach to determining subject-matter patentability, while the Supreme Court of Canada heard the appeal in *Pharmascience v Janssen* (discussed below), a pivotal case on the patentability of dosing regimens.

In trademarks, the *Canadian Intellectual Property Office* made significant progress reducing the backlog of pending trademark applications and *improved timelines* for the examination of newly filed applications.

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In copyright, a major development (discussed in our *Artificial Intelligence Snapshot*) was the surge in litigation surrounding AI, including actions relating to unauthorized use of copyright material in AI model training.

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

Several patent decisions highlight the importance of timing. In *Taillefer v Canada (Attorney General)* and *Canada (Attorney General) v Matco Tools Corporation*, the Federal Court of Appeal upheld refusals to reinstate applications/patents that were abandoned due to inadvertent failure to make maintenance payments. These decisions indicate that applicants and agents will face a high standard in showing that the failure occurred despite due care being taken. *Bayer Inc v Amgen Canada Inc* underscores the importance of submitting a pharmaceutical patent for listing on the Patent Register as soon as possible. The FCA held that Amgen did not need to address a patent under the *Patented Medicines (Notice of Compliance) Regulations* because it was not listed at the time of Amgen's regulatory submission, despite the delay being caused by the Minister taking eight days to list the patent. Finally, in *JL Energy Transportation Inc v Alliance Pipeline Limited Partnership*, the Alberta Court of Appeal held that patent infringement claims are subject to the six-year limitation period under the federal *Patent Act* rather than the provincial two-year period.

Amendments to the *Trademarks Act* that came into force in 2025 will change trademark practice. In particular, businesses should be more engaged before the Trademarks Opposition Board (TMOB) because they no longer have the automatic right to file additional evidence when appealing TMOB decisions to Federal Court.

Anti-piracy remedies in Canada continued to develop in 2025. In *Bell Media v John Doe 1 (Soap2day)*, the Federal Court granted an expandable site-blocking order that required internet service providers to prevent access to websites associated with online piracy and provided the plaintiffs with a simplified procedure to add additional websites linked to the same infringing platform.

What's one trend you are expecting in 2026?

The most hotly anticipated IP decision in 2026 is the SCC's decision in *Pharmascience v Janssen*, which will determine whether methods of medical treatment are patentable in Canada and how courts define or test for a method of medical treatment. This decision has the potential to have far-reaching effects on the ability to obtain and enforce patents in many key innovative industries. The appeal asks the SCC to reverse a long line of Federal Court authority allowing the patentability of dosing regimens and invites the Court to find that dosing regimens are not inventions under the *Patent Act*.

The hearing before the SCC took place on October 9, 2025, before a highly engaged and divided bench. We would not be surprised to see a dissent. This is the first patent case the SCC has taken in the last decade, and it may take the opportunity to pronounce more broadly on patentable subject matter. No matter the outcome, the SCC decision will significantly impact the pharmaceutical industry and potentially other industries including the tech industry in the context of computer-implemented inventions.

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