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ANNOTATED PATENT ACT

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This publication examines the provisions of *Canada's Patent Act* to explain the history, purpose and importance of each provision within the broader scheme of the legislation as a whole. Each section of the Act is examined and the following information included: the current section is reproduced in full; related sections and related rules are gathered for ease of reference, a legislative history of the provision is discussed as it relates to the development of the law of patents as a whole, and upon the specific issues dealt with by the provision, and commentary upon the section (and its subsections) is provided in terms of the purpose and function of the section within the context of the act as a whole, specific issues in respect of both the obtaining and enforcement of patent rights, and relevant, specific facts of case law are summarized.

What's New in this Update:

This release features updates to Chapter 2 (Interpretation), Chapter 9 (Application for Patents), Chapter 13 (Refusal of Patents; Grant of Patents; Form and Term of Patents) and Chapter 16 (Infringement).

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Highlights

- **Chapter 9. Application for Patents—I. Section 27—E. Section 27(4)—“claim or claims defining distinctly and in explicit terms the subject-matter of the invention”—2. Case Law—§ 9:35. No Ambiguity in Claims**—The following is an excerpt from the case law added to this section:

A claim is not invalid simply because it is not a model of concision and lucidity: “The Court will attempt to give a patent claim meaning if it can, while recognizing that the onus to define the scope of their claim is statutorily placed on the inventor.” Loose or uncertain language is not permitted if it will allow the language to be twisted this way or that to avoid prior art while covering a defendant’s conduct: *McCain Foods Limited v. J.R. Simplot Company*, 2025 FC 1078 (F.C.), at para 324, per McHaffie, J.

- **Chapter 16. Infringement—§ 16:22. Section 55.01 Limitation—Case Law**—The following is an excerpt from the case law added to this section:

The ambit of the “due care required” as set out in s. 73(3)(b) of the Patent Act was considered by the Court of Appeal in a case where the Federal Court had overturned a decision of the Commissioner who had refused to reinstate a patent application. The Commissioner’s decision was reinstated by the Federal Court of Appeal on the basis that the original decision had met the reasonableness standard. The Commissioner had correctly focused on the failure chain of events which led to the applicant not receiving a copy of the notice sent by the Patent Office to the patent agent that a maintenance fee for a patent application had not been paid. The patent agent had sent the notice to U.S. counsel for the U.S.-based applicant but U.S. counsel had been instructed not to pay maintenance fees and so did not forward the notice to the applicant. The Federal Court of Appeal held that either the U.S. counsel had failed to exercise due care by not forwarding the notice or the Canadian agent failed to exercise due care by forwarding it to someone who could not be expected to forward it to the applicant. The Federal Court of Appeal held that obligations of due care could extend beyond the applicant itself to include agents and representatives. The Commissioner was also reasonable in focussing on the action that should have been taken to avoid abandonment (ensuring the notice was provided to the applicant) and not on the proximate cause of the failure to pay the maintenance fee (a data migration error when moving from one maintenance fee paying agency to another). Deference must be given to the Commissioner’s finding that no reason was provided for the failure of the U.S. counsel to provide notice to the applicant. Although the applicant had instructed the U.S. counsel not to pay maintenance fees it had not instructed U.S. counsel not to inform the applicant of missing maintenance fee payments: *Canada (Attorney General) v. Matco Tools Corporation*, 2025 FCA156, 2025 CarswellNat 3599 (F.C.A.), per Locke, J.A.