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INTELLECTUAL PROPERTY DISPUTES: RESOLUTIONS AND REMEDIES

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This publication is a one-stop reference for litigators and counsel advising on Intellectual Property disputes that focuses on remedies available to IP owners and stakeholders at all stages of possible dispute, from risk management, through mediation and ADR, and to all levels of litigation. This release features updates to Chapter 4 (Industrial Designs) and to the Appendices with the addition of CIPO's Industrial Designs Guide as newly added Appendix 4E.

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Highlights

- **§ 4:27 Statement of Claim** — In this update, reference to the *Industrial Design Act* as it read prior to November 5, 2018, the date on which numerous revisions to the Act came in force (the “Old Act”), have been removed. While the Old Act will remain relevant to registrations having a filing date prior to November 5, 2018, the chapter now only refers to the *Industrial Design Act* as it currently stands. The updated chapter includes several references to the Federal Court’s decision in *Crocs Canada Inc. v. Double Diamond Distribution Ltd.*, 2022 FC 1443, 201 C.P.R. (4th) 137 (F.C.T.D.). In this case, Madam Justice Fuhrer extensively reviewed and confirmed much of the prior case law including the test for infringement of an industrial design. She also clarified the attributes of the “informed consumer” from whose perspective validity and infringement are to be assessed; that the scope of protection is dependent on how close the prior art is to the registered design; what constitutes an insubstantial variant; and the availability of the accounting of profits remedy where there is no bar to equitable relief.

ProView Developments

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