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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 11 (Divisional Applications and Biological Materials), Chapter 14 (Reissue of Patents; Disclaimers, Reexamination and Transfers), Chapter 15 (Standard-essential Patents; Legal Proceedings) 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)—§ 9:32 (Claim Construction—Use of Extrinsic Evidence)**—The following is an excerpt from this section:

The principles of claim differentiation operate to provide a rebuttable presumption that a limitation from a dependent claim is not an implicit element in a claim from which it depends. However, it is not the case that a limitation from a dependent claim is excluded from that claim on which it depends. The Federal Court of Appeal found an error of law where the subject-matter of a claim encompassed two embodiments (an annular barrier had a gap embodiment and a sealed embodiment). The broader claim was held by the Federal Court of Appeal to encompass embodiments both with and without limitations introduced by a dependent claim. Therefore the fact that a dependent claim specified a sealed annular barrier did not restrict the claim from which it depended to cover only the gap embodiment: *NCS Multistage Inc. v. Kobold Corporation*, 2025 FCA 187, 2025 CarswellNat 4372 (F.C.A.), at paras. 28-38, per Walker, J.A.

- **Chapter 14 (Reissue of Patents; Disclaimers, Reexamination and Transfers)—III (Re-Examination)—§ 14:20 (Section 48.5 Appeals—Case Law)**—The following is an excerpt from this section:

A decision of the re-examination board not to re-examine a patent has no preclusive effect on subsequent litigation. The Ontario Superior Court held that a defendant was not prevented from raising invalidity arguments in patent infringement litigation merely because re-examination had been refused by the re-examination board. The Court distinguished between questions of patentability (subject to potential review by the re-examination board) and questions of validity, which were held to be specifically reserved to the court. The denial of a request of re-examination does not operate to make the initial examiner’s decision to allow a patent application “infallible and unchallengeable”: *Zacon Limited v. Provincial Doors Inc.*, 2025 ONSC 2954, 2025 CarswellOnt 7914, 213 C.P.R. (4th) 344 (Ont. S.C.J.), per Gordon, J.