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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, whether intellectual property specialists or not, advising and representing parties in disputes over Intellectual Property. It covers every aspect of a dispute including the many subject areas of Intellectual Property and the various options and remedies available to resolve a dispute from risk management to ADR to all stages of litigation. This release features updates to Chapters 12, Intellectual Property Pleadings; 13, Intellectual Property Trial; and 15, Alternative Dispute Resolution Process.

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Highlights

- **Chapter 12, Intellectual Property Pleadings** — This chapter has been updated to reflect recent developments and practice trends in IP litigation pleadings. The patent sections have been updated to address pleading considerations relating to what constitutes patent use, inducing infringement, invalidity based on material misrepresentation and entitlement to equitable relief, as well as highlighting recent case law on overbreadth, double patenting, ambiguity and patentable subject matter, namely methods of medical treatment and computer implemented inventions. The update also includes expanded guidance on copyright pleadings, including the availability of site-blocking orders as a form of injunctive relief, the material facts required for copyright infringement, director liability, and infringement defenses for moral rights and useful articles. These updates are intended to assist readers in pleading and responding to evolving issues in IP disputes.
- **Chapter 13, Intellectual Property Trial** — This chapter is a practical road map for taking intellectual property disputes to trial. IP trials often turn on the careful coordination of law, science, evidence, and persuasion. Counsel must not only prove ownership, infringement, validity, confusion, copying, or other core issues, but also educate the court efficiently, preserve procedural fairness, and present the case in a way that is technically accurate, strategically coherent, and compelling. This chapter guides readers through the distinctive trial issues that arise in patent, PM(NOC), trademark, and copyright cases, the strategic use and limits of fact witnesses, expert evidence, surveys, experiments, demonstrative aids, confidentiality protections, summary procedures, and the Federal Court of Canada's procedural guidelines applicable to IP trials. This chapter has been updated to reflect recent developments and practice trends affecting IP Trials in the Federal Court, including increasing reliance on fact witness affidavits at trial; evolving treatment of survey evidence in trademark infringement and passing-off cases; bifurcation of liability and damages; the availability of lump-sum or Federal Court Tariff-based cost awards for successful litigants and the use of Artificial Intelligence (AI) to prepare Court documents and the Federal Court's AI disclosure requirements.
- **Chapter 15, Alternative Dispute Resolution Process** — This chapter provides an overview of the various forms of dispute resolution that may be encountered in intellectual property matters. Mediation, arbitration, and other forms of alternative dispute resolution are discussed. A review of the advantages and disadvantages of engaging in dispute resolution processes like arbitration versus the Court process is provided. Further, the chapter addresses the issues and strategies that should be considered when drafting mediation or arbitration clauses or considering whether to participate in a mediator or arbitration. Finally, the chapter addresses some of the legal issues that pertain specifically to arbitration, such as the interpretation of arbitration clauses, selecting an arbitrator, jurisdiction, and the standard of review. This most recent update details important changes to procedural rules and developments in the case law pertaining to mediation and arbitration.

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