



# IP Litigation

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## Overview

When considering intellectual property (IP) litigation, you need experienced and trusted lawyers and agents at your side. To help you navigate your dispute and secure a result that achieves your objectives, Field Law has a team with broad experience in IP litigation matters before both Provincial and Federal Courts and in arbitrations and mediations.

When working with clients facing technical or mechanical related patent litigation, our team is further strengthened by [Ryan Krushelnitzky](#), a lawyer in Field Law's litigation team who also has a Ph.D. in civil engineering. Combining Ryan's engineering background with our IP experience provides clients with a unique and comprehensive approach to IP litigation.

The lawyers and agents in our IP litigation group can help you across a range of areas including:

- IP litigation strategy and planning before the suit commences and throughout
- Representative discoveries
- Obtaining pre-trial injunctions and orders including:
  - *Norwich orders* (to get evidence from non-parties about the identity of alleged infringers)
  - *Anton Piller orders* (to provide the right to search premises and seize evidence in advance of suit)
  - Mareva injunctions (for the preservation or "freezing" of assets in the course of an IP dispute)
  - Preliminary injunctions to restrain or prevent infringing conduct
- Trademark opposition proceedings before the Trademarks Opposition Board (TMOB)
- Appeals of US trademark issuances before the Trademark Trial and Appeal Board (TTAB)
- Protesting (Canadian) Patent applications, claims re-examination requests;
- Proceedings before the (US) Patent Trial and Appeal Board (PTAB) including:
  - IPRs (Inter-parties post-grant reviews)
  - Derivation proceedings
  - Appeals and re-examination proceedings

Contact any one of our IP litigation group including Laura MacFarlane at [lmacfarlane@fieldlaw.com](mailto:lmacfarlane@fieldlaw.com) or 403-260-8577 to discuss how we can protect and enforce your IP rights.

## Experience

Optrics Inc. v Lloyd's Underwriters, 2022 ABCA 26

Packers Plus Energy Services Inc. v. Essential Energy Services Ltd., 2017 FC 1111

## Industries

Emerging Technology  
 Media + Entertainment

## Services

Intellectual Property + Technology  
 Commercializing IP  
 Copyright  
 Designs  
 IP Litigation  
 Patents  
 Trademarks  
 Trade Secrets

Andrews v. McHale and 1625531 (Gemstone Logistics) , 2016 FC 624

Geophysical Service Incorporated v. Encana Corporation, 2016 ABQB 230

College of Dietitians of Alberta v. 3393291 Canada Inc. (Canadian School of Natural Nutrition), 2015 FC 449

Resource Well Completion Technologies Inc. v. Canuck Completions Ltd., 2014 ABQB 209

Online Constructors Ltd. v. Speers Construction Inc., 2011 ABQB 43

Pat's Off-Road Transport v. Campbell et al, 2010 ABQB 443

Stonetile (Canada) Ltd. v. Castcon Ltd., 2010 ABQB 392

Marty Sanders v. Smart & Biggar Intellectual Property & Technology Law, 2010 FC 73

Community Credit Union Ltd. v. Canada (Registrar of Trade Marks), 2006 FC 1119

Credit Union Central of Canada v. Community Credit Union Ltd., 2005 CanLII 78195

Excalibre Oil Tools Ltd. v. Garay, 1999 CanLII 8705 (FC)

Ital-Press Ltd. v. Sicoli, 1999 CanLII 8048 (FC)

Cookie Florist Canada Ltd. v. 132831 Canada Inc. (c.o.b. Monsieur Felix & Mr. Norton Cookies Inc.), 1998 CanLII 8079 (FCA)

Ital-Press Ltd. v. Sicoli, 1999 F.C.J. No. 837

Norac Systems International Inc. v. Massload Technologies Inc., 1997 CanLII 4900

Cookie Florist Canada Ltd. V. 132831 Canada Inc. (c.o.b. Monsieur Felix & Mr. Norton Cookies Inc.), [1996] F.C.J. No. 1598, Federal Court of Canada - Trial Division

Ital-Press Ltd. v. Sicoli, [1996] F.C.J. No. 1119, Federal Court of Canada - Trial Division

Alwest Neon Signs Ltd. v. Coldwell Banker Achievers Realty, 1994 CanLII 9222 (AB QB)

Gunther's Building Centre Ltd. V. Moli Industries Ltd., [1993] A.J. No. 1037, Alberta Court of Queen's Bench

Strait Line Contractors Ltd. v. Rainbow Oilfield Maintenance Ltd. , 1991 ABCA 78

Nutman Co. v. Magic Afterburners Inc., [1991] F.C.J. No. 1112, Federal Court of Canada - Trial Division

## People

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## Client Stories

### Oilfield computer software protected

**Our Client:** An oilfield service provider with a very successful program for booking workers' travel and related needs.

**Where we began:** Our client built a very successful sales book. A prior employee involved in the software development issued suit against our client claiming he was a co-author of the software.

**Our approach:** Our team applied what they have learned through the years on copyright cases - in Canada the author is the owner; that is, the person *"holding the pen"* (in this case, coding the software by tapping the keyboard). In addition, it was clear that the true author had reams of experience and success in developing software and that the prior employee had little or no training and didn't know computer languages. In other words, the claim *"didn't add up."* We oversaw our client's case and also advised two consecutive teams of outside lawyers handling the case for the client's Director who was also sued. *"Keep it simple, get the necessary facts in, don't complicate it and get it to trial"* was the mantra.

**The result:** We got the team to follow the mantra against all temptations otherwise. The case was dismissed by the Federal Court in a relatively quick manner, relatively cheaply, and without any live testimony or cross-examination required along the way or at trial. The case is now the only Canadian precedent on what activities give rise to software authorship.