

Life sciences & Law Current Issues

“The conditions for continued strong life sciences M&A activity remain in place for 2011. Pressures on biomedical companies of all sizes to reduce the costs and risks of product development have been and will continue to be a catalyst for mergers and acquisitions activity.”

Canadian Biopharmaceutical and Life Science Deals and Investments – 2010 Review – Michael Herman and Robert D. Ford

“In July 2009, the Federal Court Trial Division issued a decision that upheld the Regulations as a valid exercise of the federal government’s constitutional authority based on the federal trade and commerce power. This decision was appealed . . . [and] dismissed by the Federal Court of Appeal in December 2010.”

Data Protection in Canada: Too Much? Too Little? – Wendy J. Wagner and Graham Ragan

“From a patentee’s perspective, the patent litigation landscape in 2010 and continuing into 2011 appears to have shifted to a more hospitable environment for innovators . . . On the substantive issues of infringement and validity, the Court has begun to take a more balanced approach . . . On procedural issues such as discovery motions, the Court has taken steps that show its commitment to allow litigants to get to trial efficiently.”

Important Recent Trends in Pharmaceutical Patent Litigation – Jennifer L. Wilkie and Isabel J. Raasch

“Implantable medical devices (IMDs), including pacemakers, neurotransmitters and drug pumps, use embedded computer technology and radios to monitor and treat certain chronic diseases . . . Manufacturers today are more exposed than ever to nascent product liability claims and to allegations of privacy breach, intertwining old legal principles with some of the most contemporary issues facing our legal system.”

Security, Sabotage and Privacy: Legal Concerns for Medical Device Makers – Mary M. Thomson and David T. Woodfield

“. . . In the absence of legislative change, Health Canada officials moved forward with broad-based consultations, which began in October 2010. The consultations centre around proposed changes to all therapeutic product areas excluding NHPs – prescription and non-prescription drug regulations, as well as those relating to medical devices.”

Regulatory Reform for Therapeutic Products: Drugs, Devices and Natural Health Products – Adrienne M. Blanchard

“Increasingly, the open innovation business model has been adopted by large international companies throughout the 2000s based on the premise that technology commercialization can be greatly simplified, expedited and accelerated by incorporating external IP, expertise and multiple partnership relationships into technology commercialization activities, instead of relying solely on internal IP and expertise.”

A Shift in Commercialization Strategies: From Closed to Open Innovation – Daniel R. Polonenko and Alaka Chatterjee

“By their nature, biotechnology companies must take high expenditure risks in a quest to create development. To stimulate continued growth in this robust Canadian sector, investors need to be provided with incentives that offset risks.”

Assessing a Role for Flow-through Shares in Canada’s Biotech Industry – Carole Chouinard and Robert D. Ford with contributions from Michael Herman, Partner, and Samuel Singer, Articling Student 2011

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Gowlings is pleased to present the fifth edition of *Life Sciences & Law Current Issues*, a compilation of the key, current legal issues in Canada for life sciences companies. Here is a brief glimpse at the current issues identified this year through a series of brief excerpts.

For a full copy of the publication, please visit Gowlings’ booth in Canada Pavilion, #3831 or download it online at: www.gowlings.com



“Developments in biofuel and bioenergy technology are rapidly growing and key to our future. In order to ensure proper patent protection of these developments, it is important to address differences across various countries in your patent strategy.”

Patent Protection in Biofuels and Bioenergy – Konrad A. Sechley

“The *Weatherford* decision is now on appeal, with an intervention by the Intellectual Property Institute of Canada with respect to the construction of section 73 and to whether a duty of candour exists. Unlike the U.S., which has its general duty of candor rooted in its *Patent Rules*, Canada has not enshrined a general duty of candour in its Patent Act or *Rules*.”

Update on “Duty of Candour” in Prosecuting Canadian Patent Applications – Grant W. Lynds and David Lee

“. . . There is no statutory requirement that an invention be non-obvious over unpublished co-pending applications from a different party. Thus, applicants in Canada can face the unreasonable situation where CIPO raises an ‘obviousness’ rejection based on a commonly owned, co-pending application, but not where the applications are owned by different parties.”

Double Patenting in Canada, the United States and Europe – Sean Alexander and Sonia M. Ziesche

“The distinction between dosage claims that are patentable and those that are not seems to depend on whether the claims are directed at a vendible product having economic value in trade, industry and commerce, based on the rationale that physicians should not be prevented or restricted by patented monopolies from applying their best skill and judgment in treatment decisions.”

Methods of Medical Treatment and Dosage Claims – Gloria Hsi, Konrad A. Sechley and Alaka Chatterjee

“While method of medical treatment claims are not patentable subject matter in Canada, use claims are patentable. However, the Canadian Patent Office does, in certain cases, object to use claims as being method of medical treatment claims where, for example, claims are drafted to a dosage regimen.”

Potential Impact of the Amazon.com Decision on Inventions in the Life Sciences Sector – H  l  ne D’Iorio and Lee A. Johnson

“As a result of recent decisions, generic companies may choose to litigate in provincial superior courts. However, this may not make a practical difference to the amount of damages that will likely be awarded after trial.”

Forum Shopping Under Section 8 of the PM(NOC) Regulations – Patrick Smith

“. . . There is no requirement to have produced the antibody, including a monoclonal antibody, to provide support for a claim to the antibody, although the antigen to which the antibody binds must be fully characterized.”

Patenting of Antibodies – Judy A. Erratt

It is clear from the findings that by employing Markush language in a claim, it was the drafter’s intent that all members of the Markush group be treated together and not in the alternative. . . had the drafter used more appropriate alternative language, such as using the term “or” before the last alternative and avoiding the identification of a group when defining a genus . . . claim 15 may have been found to have been claimed in the alternative.”

Markush Claims Can Pose a Risk of Patent Invalidity – James D. Baker

