



LITIGATION RISK OUTLOOK FOR 2025

Fostering innovation and protecting investments: patent law’s double-edged sword and environmental technologies

AUTHORS



Alexandra Peterson



Andrew M. Shaughnessy

Deleterious human impact on the environment—and vice versa—will continue their ruinous mutual slides, unless we can preserve the climate we currently have or develop technologies to cope. Either way, technology will be a tool in the path forward: WIPO, the World Intellectual Property Organization, declares that “technology was at the root of the problem; and technology will be at the core of the solution”¹. It is the same for intellectual property (IP), which is seen by many to be a double-edged sword—especially when it comes to patents.

While patents create solutions, they also pose problems when it comes to tackling the climate crisis. Most patent systems are designed with innovation at the core of the public policy that grounds them: to coax innovation out of inventors and put it into the public domain, where new technologies can be widely disseminated and built upon. The extent of this public good, however, is precariously positioned in a balance where private rights (and investments) are protected with a time-limited period of exclusivity. The sheer cost of building an international patent portfolio, and the

onerous cost of protecting innovation, requires a generous system of enforcement. This may be seen by many as a means of blocking access to new technologies, thus denuding the public of the benefits of the patent system and the new technology (until after the patent expires, when, frankly, it may be too late).

This is more than just theory. We have already seen significant litigation in the climate change sector, such as in the area of electric motor vehicles (EMVs). In 2021, Nippon Steel filed a lawsuit in Tokyo District Court over intellectual property rights in and to patents relating to high flux steel used in electric batteries. The lawsuit ensnared a Chinese steel producer as well as a Japanese automaker that used the steel sheets in the production of EMV batteries. Having Japan's biggest steelmaker and largest automaker in a rare court battle signifies the high stakes involved in the global low-carbon revolution. In 2023, Nippon let the automaker out of the action, stating that disputes among Japanese companies were “not in the best interests of strengthening Japan’s industrial competitiveness”, nor were they fitting for a period of uncertainty and rapid change toward carbon neutrality².

Nationalistic cooperation aside, the suits among major competitors continue to roll in. In October 2024, China Aviation Lithium Battery Group, one of the world’s largest suppliers of EMV batteries, sued the world’s largest supplier of EMV batteries, Contemporary Amperex Technology, in China, as well as automotive vehicle manufacturers for the infringement of four Chinese patents. In June 2024, EMV manufacturer Tesla filed suit against one of its equipment suppliers in the Northern District of California, with allegations of trade secret misappropriation. And this isn’t just an EMV issue. There have been patent infringement lawsuits between major players in the wind turbine technology sector³.

Meanwhile, in Europe, interest and innovation in green energy has driven up the number of European patent applications. These applications cannot be considered in isolation from the growth of Europe’s new Unitary Patent system as well as the Unified Patent Court (UPC), the goals of which are to improve the environment for innovation in Europe by providing simpler and more cost-effective options for innovators to protect their inventions. While those that have flocked to the new streamlined processes have included patent litigation’s usual suspects—big pharma, medical devices, standard essential patents—the new court has also been used by market entrants in the green energy space. In October 2024, a manufacturer of components used in solar panels filed lawsuits against a rival competitor. This increase in litigious activity underscores the importance of patents, patent enforcement, and exclusivity to the development and exploitation of green technologies.

What does this mean for Canada? That is an open question. Though our patent office has tools to expedite the examination of green energy patent applications⁴, Canada has not been a strategic venue of choice (yet) in terms of litigation. Why not? It could be because these technologies are still in their early days. Or it could come down to remedy and leverage—factors that are driven by consideration of market size. For one, interlocutory injunctions are notoriously difficult to obtain, even with the courts increasingly interested in considerations of the public interest when it comes to weighing the balance that an injunction might have (consider *Siemens v. GE*⁵, where the court in the U.S. had to grapple with shutting down an offshore wind farm). This may augur against investment in Canada (why build if an investor cannot get an injunction against an infringer?). Second, while it is possible to get to trial in Canada relatively quickly given the Federal Court’s case management protocols and guidelines, we cannot match the speed (and relatively lower expense) of the UPC in Europe. Third, while it boasts loser-pays cost-shifting mechanisms and potential decent recovery, Canada, by virtue of its smaller market, lacks the sheer cost and disruption of U.S.-style litigation, or Europe-wide injunctive relief, that can readily broker settlements. It would appear that the larger markets have more effective IP enforcement remedies.

The question remains as to how our patent system will help us tackle climate change. It is too early to say which of the two edges of the patent’s system’s sword will cut the deepest: fostering innovation, or protecting investment. For the good of us all, however, let’s hope the axe will swing, as we need a victor in this climate war.

FOOTNOTES

¹. See World Intellectual Property Organization, [Climate Change and the Intellectual Property System: What Challenges, What Options, What Solutions? A Summary of the Issues](#). Draft 5.0 14. Xi.08.

². Reuters, [Nippon Steel drops patent lawsuits against Toyota, Mitsui](#) (November 2, 2023).

³. See *Siemens Gamesa Renewable Energy A/S v. GE (General Electric)*, 626 F.Supp.3d 468 (D. Mass. 2022).

[4.](#) See Canadian Intellectual Property Office, [Advanced Examination for Green Technologies](#). Government of Canada (October 10, 2024).

[5.](#) *Supra*, note 2.

To discuss these issues, please contact the author(s).

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.

For permission to republish this or any other publication, contact [Richard Coombs](#).

© 2026 by Torys LLP.

All rights reserved.