Patent

- Anticipation
  - *Bombardier Recreational Products Inc v Arctic Cat Inc*, 2017 FC 207
    - [M]erely viewing, without more, may not satisfy the "enabling" condition.
- Common General Knowledge
  - *Frac Shack Inc v AFD Petroleum Ltd*, 2017 FC 104
    - Distinct from what in patent law is regarded as public knowledge.
    - Common general knowledge will include patent specifications that are well known amongst those versed in the art, may include all patent specifications
    - Does not necessarily include scientific papers
    - Does not include what has only been written about and never, in fact, been used in a particular art.

Cases from September 16, 2016 to March 2, 2017

Patent

- Expert Opinion
  - *Bombardier Recreational Products Inc v Arctic Cat Inc*, 2017 FC 207
    - There is no rule of evidence or rule of the Court mandating that expert evidence must be excluded where the expert strays into the province of the Court by opining on the legal issues before the Court.
    - the Court is never bound by such opinion and remains solely responsible for determining the issues before it.
    - In a patent proceeding, expert testimony opining on the construction to be given to patent claims and whether infringement has occurred or not deserves such wariness and heightened scrutiny.

Patent

- Non-infringing alternative
  - *Apotex Inc v ADIR*, 2017 FCA 23
    - for a defendant to show that in the hypothetical world it would have been able to obtain a non-infringing product, the defendant must establish that in the hypothetical world it would and could have obtained sufficient quantities of non-infringing product, and that it would and could have used the non-infringing product
    - To prove “could have”, the defendant must demonstrate that it was possible for it to secure non-infringing product.
    - To prove “would have”, the defendant must demonstrate “that events would transpire in such a way as to put them in that position”