



IPIGRAM (5 FEBRUARY 2021)

## FEATURE POST



Photo by Tingey Injury Law Firm on Unsplash

### **The Wonderful World of Patents: "They Do Things Differently There"**

February 5, 2021 by Prof David Vaver

**THE SCENE:** The patent infringement trial of *Ewon v Fowler* held on Zoom in the Federal Court of Canada, after the decision of the Federal Court of Appeal in *CanMar Foods Ltd v TA Foods Ltd*, [2021 FCA 7](#). That decision affirmed a judgment of Manson J, [2019 FC 1233](#), finding no infringement of the patent in that case but holding, contrary to the judge, that a communication in a proceeding before the US Patent Office could

not be used to help reach that conclusion. The Court of Appeal said that section 53.1 of the [Patent Act, R.S.C. 1985, c. P-4](#), which reversed *Free World Trust v. Électro Santé Inc.*, [2000 SCC 66](#)

*Prof David Vaver is a Professor of Intellectual Property Law at Osgoode Hall Law School and Emeritus Professor of Intellectual Property & Information Technology Law at University of Oxford. This is an abridged version of a Comment that will appear in the Intellectual Property Journal.*

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## LATEST POSTS



### 2020 IP Year In Review

January 28, 2021 by Prof Pina D'Agostino with contributions from IPilogue Editors

As we settle into 2021, it is important to remember and reflect on everything that 2020 brought about in copyright, patent, and trademark law. 2020 was an unprecedented year that shifted the way we interact online, and

exposed many of the inequities within our society. We want to thank our readers for keeping up with these changes and continuing to support the IPilogue. Please take a look at the Top 10 Most Read Blogs of 2020 and a digest of the most notable IP developments of 2020.

*Prof Pina D'Agostino is an Associate Professor at Osgoode Hall Law School and the Founder and Director of IP Osgoode. She is also the Editor-in-Chief of both the IPilogue and the Intellectual Property Journal. This article was prepared with contributions from IPilogue Editors: Meghan Carlin, Emily Xian, Joaquin Arias, Sarah Raja, Saumia Ganeshamoorthy (Copyright); Dan Choi, Gurbir Sidhu, Khristoff Browning, Jin Xu, Madelaine Lynch (Patents); Adele Zhang, Aishwerya Kansal, Jingcai Ying, Eloise*

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## Are Apple's Racially Diverse Emojis Copyright Infringement?

February 4, 2021 by Sarah Raja

Emojis are essential when composing the perfect message. They can be used at the end of a text message to change its tone, but also have the power to stand alone when a user wants to convey a message without

words. Arguably, Apple does them best, with hundreds of emojis that encompass almost any object, metaphor, or activity that a user is trying to convey. In 2015, Apple was commended for introducing racial diversity into their emoji keyboard, giving users the ability to give the characters five different skin tones.



*Written by Sarah Raja, IP Osgoode Innovation Clinic Fellow and IPilogue Contributing Editor.*

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## Events

### ***Federal Court Hearing: Trademark Appeal***

February 9, 2021

We have a privileged seat at the Federal Court of Canada Trademark Hearing in the matter of *Sim McBurney v en Vogue Sculpted Nail Systems Inc.* (Docket: T-435-20). Osgoode Hall Law Students are invited to watch this Hearing for an Application for Judicial Review pursuant to s. 56 of the *Trademark Act*. Visit our [website](#) for more details.

### ***IP Workshop - Trade Secrets and NDA's***

February 18, 2021

Hosted by Spark Centre and featuring Noel Courage and Suzie Suliman from Bereskin & Parr LLP, this webinar will offer startups some insight into protecting your IP rights at early stages of your business, while also developing interest in your company and technology. Topics include effectively protecting trade secrets and deciding whether to patent an innovation. Register for this event [here](#).

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# IP Picks of the Week

Electronic Healthcare Law Review has recently published an article on "*Canadian Privacy Law 2.0: Artificial Intelligence (AI) And Bill C-11, The Consumer Privacy Protection Act*" authored by David Krebs and Myron Mallia-Dave from Miller Thomson LLP. In the article, the authors contemplate the balance between allowing AI technology to reach its innovative potential and protecting consumers' privacy rights. They discuss how developers can proceed in the best interest of both within the bounds of recent statutory developments. The article is available through LexisNexis, but it is based on an earlier version which you can read on Miller Thomson LLP's website [here](#).



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