Infringement by common design found in Canadian case

December 08, 2025

Introduction

Infringement by common design was established for the first time in Canada by the Federal Court (FC) in the decision *Adeia Guides Inc. v. Videotron Ltd*, released on Nov. 14, 2025. The FC found Videotron liable for infringement of two patents on the theory of common design. Discussing the concept of infringement by common design, the FC stated at paragraph 476:

> *The concept stems from the principle of holding someone accountable for their actions towards another if they are working with a third party to further those actions.* ***Put simply, one cannot escape liability for patent infringement by virtue of subcontracting out a portion of the infringing act, or by being but one party to an overall harm towards another****.*

The analysis by the FC

Background

The case involves Adeia Guides Inc. (formerly Rovi Guides, Inc.) (Adeia) suing Videotron Ltd. (Videotron) for patent infringement related to interactive television program guide (IPG) technology. Adeia alleges that Videotron infringed on four patents: Canadian Patent Nos. 2,967,187 (187 Patent), 2,775,674 (674 Patent), 2,553,922 (922 Patent), and 2,635,571 (571 Patent). Videotron counterclaimed, arguing the patents were invalid due to anticipation and obviousness, and claimed non-infringement.

The parties and their business relationships

Adeia is the patent holder and licensed a patent portfolio to Videotron from 2010-2016. None of the patents now asserted were granted at the time the licence was signed. In 2016, discussions about renewal ended without agreement and Videotron and Comcast began collaborating via a 2017 partnership.

Comcast is U.S.-based company operating Helix TV on Videotron's behalf. Videotron provides source content and manages subscribers, but Comcast powers the technological platform. Comcast services were designed to answer Videotron's specific needs/requirements, but the evidence also shows that for its Helix TV system, Videotron and Comcast were actively engaged in providing the Helix TV system to Videotron's customers.

Brightcove is a U.S.-based subcontractor delivering VRAI OTT content to end users on behalf of Videotron.

The "common design" doctrine

The FC held that common design has been accepted in Canada in the context of large torts. However, while it has been referenced in the context of patent infringement, no finding of patent infringement by common design had occured. The FC described the common design doctrine starting at paragraph 470:

> *whereby two parties agree on a common action and, in carrying out that action together, infringe on the rights of the plaintiff*

As noted by the FC at paragraph 471, the doctrine originates from the United Kingdom. In *Fish & Fish v Sea Shepherd*, [2015] UKSC 10, the Supreme Court of the United Kingdom stated that for a respondent to be jointly liable with the principal tortfeasor, the two must combine to do acts which constituted a tort. That required proof of two elements, the respondent:

> i. must have acted in a way which furthered the commission of the tort by the principal tortfeasor; and
>
> ii. must have done so in pursuance of a common design to commit the tort.

In the context of infringement by common design, knowledge of the patent would not be a prerequisite for a finding of infringement[1] but may form part of the reasoning.[2]

The FC at paragraph 474 commented that in non-patent cases that turned on the notion of common design, the precise content of what the actual common design ought to be is highly fact specific and is tailored to the precise action that occurred.

Application of the "common design" doctrine in a patent case

With regards to Comcast, the FC found Videotron infringed both the 187 Patent and the 674 Patent through its contractual agreement with Comcast. In this case, the specific common design was to launch Videotron's Helix TV offerings with the "Resume Viewing" function, through sub-contracting part of their patent infringement to Comcast. Not only were Comcast services designed to answer Videotron's specific needs/requirements, but the evidence also shows that for its Helix TV system, Videotron and Comcast were actively engaged in providing the Helix TV system to Videotron's customers. This led the Court to conclude that Videotron was not a docile party but instead was engaged in the acts of infringement.

The FC, citing *Sea Shepherd* at para 55, commented that Comcast not being included in the litigation did not bar the finding of common design as both parties do not need to be named defendants to find infringement by common design.

With regards to Brightcove, although all essential elements of the 187 Patent were found in the VRAI interface, the FC noted there was not sufficient evidence of the contractual relationship between Videotron and [REDACTED] and Brightcove, to find that Adeia has met its burden to prove that Videotron would have participated in the design of the VRAI “Resume Viewing” menu.

Takeaways

As the only decision finding infringement by common design in Canada, further development of the doctrine in subsequent cases will be necessary. What is clear is that it is now an available assertion for a plaintiff to make in its patent infringement claim, even if not all impugned parties are named as defendants, but success will likely be dependent on the evidence of the relationship between the parties.

Footnotes

[1] *Bauer Hockey Corp. v. Easton Sports Canada Inc.*, 2010 FC 361 at para 206.

[2] *Adeia Guides Inc. v. Videotron Ltd.* 2025 FC 1725 at para 472.

By

Chantal Saunders, Beverley Moore, Michael Mitchell

Expertise

Intellectual Property

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.