



IP Users Committee

MINUTES

NOVEMBER 19, 2015

TORONTO, ON

Attendance: Justice Manson (Chair), Chief Justice Crampton, Justice Phelan, Justice Hughes, Justice Locke, Prothonotary Lafrenière, Prothonotary Tabib (by phone), Prothonotary Milczynski, Yuri Chumak, Francois Grenier (by phone), Carol Hitchman, Benjamin Hackett, Trent Horne, Jonathan Stainsby, Brad White, Andrew Shaughnessy (by invitation), Lise Lafrenière Henrie

Regrets: Justice O'Reilly, Justice Harrington, Prothonotary Milczynski Aalto, Andrew Brodtkin

SUBJECT	STATUS / ACTION
<p>1. Minutes of previous meeting (May 28, 2015) are not available.</p> <p>2. Discussion of Practise Guidelines for Complex Litigation published June, 2015</p> <p>Concerns were raised about the limits (number of days) being placed on oral discovery. More flexibility was requested, such as in cases involving a large volume of documents. Justice Manson explained that the <i>Guidelines</i> were just that. Counsel need only establish to the Court that additional time is required.</p> <p>3. Proposed new guidelines for NOC Proceedings & Input from the IP Bar and Potential Amendments to the NOC Regulations.</p> <p>There was a discussion about the duplicative nature of the current legal framework, pursuant to which parties litigate one or more patents in a NOC proceeding and then essentially repeat the exercise in a patent infringement action. Justice Hughes mentioned that the United States had an interesting process where a single action can be taken (allows for witnesses, etc). The Court is looking to the Bar for suggestions. Members of the Bar mentioned that there is a movement towards trials in any event. However, it is less expensive to do a NOC case; trials are more expensive. That said, a trial allows the judges to hear witnesses – the evidence is easier to absorb. Discussion about a need for legislative change to allow for a consolidated approach. Bench and Bar will follow up with government representatives on this front.</p> <p>Miscellaneous:</p> <ul style="list-style-type: none"> Judges want claim charts to be provided as early as possible both for NOC and regular patent infringement cases. Chief Justice Crampton: the CETA is not yet ratified by European states. It will require amendments to the <i>PM(NOC) Regulation</i>, e.g., re: rights of appeal. Considering the recent practice direction issued regarding proportionality and the pending practice direction on hearing and case management, the Court is getting itself into a position where we can guarantee disposition of an action within two years of filing, especially if we were given two extra prothonotaries. 	<p>Bench and Bar to follow up with government representatives.</p> <p>IP Bar to consider timing for resolution of application.</p>

<ul style="list-style-type: none"> • It was noted that for “generics”, 30 months is a huge investment upfront. It would help if the CBA IP Section supported amendments. Is there a consensus on timing? • Compendium – the approach to the Compendium is becoming more and more harmonized. A standard approach by the Bar is better for all. There was discussion about providing the Compendium on a USB stick given the additional time required to ensure that the sticks are secure. • Various comments: Typically, counsel tender their outlines at the hearing. However, the NOC Guidelines indicate that they should be sent 15 days ahead. Page limits should be set, such 20 pages for skeleton outline. Justice Manson asked the IP Bar to send their proposals. • Paper vs. electronic filing: Bar members indicated that they would prefer to file electronically. The cost of preparing an application record is quite high, especially when three copies have to be filed. There was discussion about asking the case management judge to allow filing just one copy and the bar was encouraged to discuss with the case management and hearing judges on a case-by-case basis. The Court mentioned that the intention is to move to electronic filing at some point but it would require more resources. <p>4. Update re: Prothonotary recruitment The process to fill the Ottawa position has started. It is expected to take a few months as it requires an Order-in-Council to appoint a new prothonotary. A short list for any other positions that may become available in Montreal, Toronto and Vancouver will be established. The deadline for application for the latter process was November 15th.</p> <p>5. Workload/scheduling The Court now has a full complement. Chief Justice Crampton reminded the Bar that if they have a short trial that is ready, they can be added to the “ready list” which can mean a much quicker trial date.</p> <p>6. Facilitating claim construction at an earlier stage. (see above)</p> <p>7. Hearing Management Conferences (HMC) for NOCs (see above)</p> <p>8. Timing for release of judgments where reasons are delayed It is possible to ask the court to issue an order with reasons to follow when a judgment has to be out by a certain date. The problem may arise (under section 20 of the <i>Official Languages Act</i>) if the order is released without translation unless it can be shown that any delay may cause prejudice.</p> <p>The Bar also commented that if confidential reasons are issued, the website should specify if the application was dismissed or allowed.</p> <p>9. Practice Direction on Experimental Testing - modifications Carol Hitchman suggested changes.</p> <p>10. Next meeting The next meeting will take place on May 12, 2016 at 2:00 p.m. in Ottawa.</p>	<p>IP Bar to provide the Lise with comments on <i>Case Management Guidelines for NOC Applications</i> by end of December 2015.</p> <p>IP Bar to propose a solution to volume of paper filing.</p> <p>IP Bar to provide the Court with wording changes for <i>Practice Direction on Experimental Testing</i>.</p>
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