

ARCHIVED - Case and Trial Management Guidelines for Complex Proceedings under PM(NOC)

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**Case and Trial Management Guidelines for Complex Proceedings,
Proceedings under the *PM(NOC) Regulations*, and Appeals under Subsection 56(1) of the
*Trademarks Act***

July 18, 2025

AMENDMENTS HISTORY	
Paragraphs 2, 45-47	July 18, 2025
Paragraphs 1, 4, 7, 8(d), 9, 22, 28, 32(a)(vii), 35, 36, 38, 42	November 28, 2024
Paragraphs 12, 32, 40	October 18, 2023
	May 17, 2021

These guidelines are to be interpreted in a manner that seeks to secure the just, most expeditious and least expensive determination of every proceeding on its merits. They are intended to complement and not derogate from the *Federal Courts Rules*, nor constrain the discretion of judges or associate judges to depart from these guidelines having regard to the particular circumstances of each case.

These guidelines consolidate and replace the following:

- Notice to the Parties and the Profession re: Streamlining Complex Litigation dated May 1, 2009;
- Notice to the Parties and the Profession re: Case Management: Increased Proportionality in Complex Litigation Before the Federal Court, dated June 24, 2015;
- Notice to the Profession re: Experimental Testing dated May 12, 2016;
- Notice to the Parties and the Profession re: Case Management Guidelines for NOC Applications dated May 2016; and
- Notice to the Parties and the Profession re: Guidelines for Actions Under the *Amended PM(NOC) Regulations*, dated September 21, 2017.

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A. CASE AND TRIAL MANAGEMENT GUIDELINES FOR COMPLEX PROCEEDINGS

General

1. **Priority of guidelines.** These guidelines are to be read in conjunction with the [Consolidated General Practice Guidelines](#). In the event of a conflict, the guidelines below take precedence.

2. **Applicability.** Paragraphs [5](#) to [29](#) below apply to complex proceedings, or proceedings which are expected to require at least five (5) trial days.

Paragraphs [30](#) to [44](#) below are specific to proceedings under the *Patented Medicines (Notice of Compliance) Regulations* (“PM(NOC) Regulations”) and take precedence over any potentially conflicting paragraphs.

Paragraphs [45](#) to [47](#) below are specific to appeals of the Registrar of Trademarks under subsection 56(1) of the *Trademarks Act* and take precedence over any potentially conflicting paragraphs.

3. **Election for short-notice trial.** On consent, parties can request to be added to a short-notice trial waiting list. Earlier trial dates may be offered to parties on this list.
4. **Target dates.** Where target dates are referenced, such dates may be subject to further discussion with the case management judge based on the particular circumstances of the case.

Discovery

5. **Electronic documents.** The Court encourages parties to proceed electronically, and if they so choose, to set out specifics for electronic production of documents, including the following:
 - a) Whether or not documents will be produced electronically;
 - b) Electronic searchability of documents (through optical character recognition);
 - c) Format of production of electronic documents (such as PDF for documents, and JPEG for images);
 - d) The use of a consistent naming convention for documents;
 - e) Unique identification codes for documents; and
 - f) Cost-effective litigation support software for electronic production (if applicable).

6. **Discovery planning.** The scope of documentary discovery and examinations for discovery shall be among the topics for early discussion with the case management judge. Such discussions should include the potential utility, content and timing of discovery plans, the representative(s) to be examined, the timing of documentary production and the scheduling of examinations for discovery and where applicable, the discovery of inventors. All discussions should be guided by the principle of proportionality. Parties should also be prepared to discuss the knowledge of their representative(s).

In creating their discovery plan, parties are to make a *bona fide* effort to agree on and set realistic timetables. Missed deadlines set at case management conferences, without adequate justification, can result in consequences, including significant costs.

7. **Limits on oral discovery.** Unless the Court orders otherwise, oral discovery per party being examined for discovery shall not exceed:

- a) One (1) day for trials scheduled for 5 days or less;
- b) Two (2) days for trials scheduled for 6 to 10 days;
- c) Three (3) days for trials scheduled for 11 to 20 days;
- d) Four (4) days for trials scheduled for 21 days or more; and
- e) Any follow-up discovery will be limited to one (1) day per party.

8. **Examination for discovery**

- a) Subject to paragraph 7(e), examinations for discovery shall be conducted by way of a single comprehensive examination;
- b) No questions are to be taken under advisement;
- c) Questions should be answered unless clearly improper or prejudicial, or would require the disclosure of privileged information;
- d) Parties are encouraged to use Rule 95(2) during discovery. Any answers provided under reserve of objection will be considered by the trial judge, if the objection is not sustained; and
- e) With leave of the Court, a follow up examination may be conducted, addressing answers to undertakings, questions ordered to be answered and documents ordered to be produced.

9. **Duration of discovery.** Notwithstanding paragraph 7 of the Guidelines, the duration of discovery may also consider the volume of documentary evidence and complexity of the

proceeding. Without being limited to the list below, the following factors may be considered:

- a) The number of alleged infringing products;
- b) The number of defendants;
- c) The number of patents;
- d) The number of documents (or pages) produced;
- e) The number of trial days;
- f) Whether there is bifurcation;
- g) The number of defences;
- h) Translation requirements of documents.

Motions

10. Limits on refusal motions

- a) No refusal motion may be brought until all parties have completed their examinations for discovery of any adverse party as provided under Rule 235.
- b) Such motions will be limited to one (1) hour per day of discovery of each party's representative.
- c) Significant cost sanctions may be imposed against unsuccessful/unreasonable parties.

No motions may be brought within 60 days of the trial date without leave of the case management judge or trial judge.

Any motion for commission evidence shall be brought as soon as it is deemed necessary to the party seeking such order and, in any event, no later than two (2) months before trial.

Expert evidence

- 11. Strict enforcement of the limit on the number of experts.** Absent exceptional circumstances, the Court will strictly enforce the limit of five (5) expert witnesses called by each party in a proceeding as provided by Rule 52.4.
- 12. Outlining areas of agreement between experts.** With the help of their experts early on in the proceeding, parties must make *bona fide* efforts to agree on issues of fact and law, including interpretation/construction of science, technology and other expert evidence.

Expert reports shall state where the experts agree and disagree, and provide the reasons for disagreement.

- 13. Experimental testing (patent infringement/invalidity only).** In an action for infringement or invalidity of a patent, where a party intends to establish any fact in issue by experimental testing conducted for the purpose of litigation, it shall, no later than two (2) months before the scheduled service of its expert report(s) to which the testing relates, provide reasonable notice to the other parties as to:

- a) the facts to be proven by such testing;
- b) the nature of the experimental procedure to be performed;
- c) when and where the adverse parties' counsel and representative(s) can attend to watch the experiment(s); and
- d) when and in what format the data and test results from such experiment(s) will be shared with the adverse parties.

Where the minimum two-month notice requirement is unworkable (for example, with regard to responding reports), the time period may be abridged by the case management judge.

Where the parties cannot agree on these matters, the case management judge and/or trial judge may resolve them at a case management conference.

Unless a party intending to rely on such experiments has so advised the other parties, the party shall not, without leave of the Court, lead evidence at the trial or hearing as to any experiments conducted by or for it for the purpose of the litigation.

- 14. Expert reports to be relied upon at trial.** Expert reports in chief to be relied upon at trial shall be submitted to the Court in both electronic and paper format at least one (1) month before trial, subject to any direction from the trial judge extending or abridging that time.

By submitting an expert report to the Court, the party is undertaking to the Court to call such expert as a witness at trial, unless a previous agreement with opposing parties and the trial judge has been made. If the calling of an expert is contingent on a subsequent event at trial, the expert report shall not be delivered until such undertaking to call the witness can be made.

Pre-trial preparation

- 15. Trial management conference.** A trial management conference shall be requisitioned by the parties to take place at least two (2) months prior to trial, subject to an extension or

abridgement by direction of the case management judge or trial judge. (For proceedings under the *PM(NOC) Regulations*, see paragraph [32](#) below.)

An agenda for the trial management conference should be proposed at the time it is requisitioned. The requisition shall identify and propose the timing of any motions that need be brought before the case management judge or trial judge. Hours of sitting will be established by the trial judge either at the trial management conference or at least two (2) weeks prior to trial, after hearing from the parties, and shall include any necessary breaks for holidays or otherwise.

The parties shall canvass the timing of closing arguments either at this trial management conference or with the trial judge at the beginning of the trial. Both the timing and the time ultimately allotted will be in the trial judge's sole discretion, after hearing from the parties.

As part of this conference, counsel should discuss the timing and mode of delivery of trial documents. In this regard, the Court encourages counsel to provide digital versions of written evidence, submissions, authorities, and any other important documents, via a USB key. Hyperlinks to case law are also helpful to the trial judge.

- 16. No new demonstrative evidence at trial.** Parties are strongly encouraged to exchange any demonstrative evidence they seek to use at trial at least 60 days before trial.

Unless the Court orders otherwise, any objections to such evidence must be raised with the case management judge and/or trial judge at least 45 days before trial.

For proceedings under the *PM(NOC) Regulations*, see paragraph [35](#) below.

- 17. Experts: early engagement and qualifications.** Counsel are expected to make a *bona fide* effort to consult and engage experts early in the pre-trial stage to properly assess their case's merit. Where an expert is intended to be called at trial, counsel should also provide opposing counsel with early notice of their experts' views regarding issues in dispute.

Any objections to expert reports or expert qualifications, including those contemplated by Rules 52.5 and 262(2), should be made to the case management judge within 30 days of service of the reports and no later than 30 days prior to trial.

The trial judge has the sole discretion as to whether to hear any such objections prior to or during the trial, if raised by the parties before the 30-day pre-trial period. The parties shall exchange short statements of each expert's proposed expertise and reach agreement when possible. Costs consequences may follow any unsuccessful challenge to expert qualifications.

- 18. A proposed schedule is required.** A proposed schedule for the use of trial time, including the order and estimated duration of the testimony of witnesses and opening statements,

shall be submitted to the Court and trial judge at least two (2) weeks before trial. Any disagreement regarding the schedule will be decided by the trial judge, in their sole discretion, after hearing from the parties. In the alternative, parties may agree to use a “chess clock” and use their allocated time as they see fit, provided that they provide the Court with a schedule indicating the dates upon which each witness will be called.

19. **A Joint statement of issues.** The parties shall make a *bona fide* effort to prepare a joint statement of issues to be delivered two (2) weeks before trial. For those issues upon which an agreement cannot be reached, each party shall deliver its own statement.
20. **Claims charts.** The parties shall prepare claim charts to be delivered at least two (2) weeks before trial.
21. **Science and technology primers prior to trial.** Parties may be required—jointly or separately—to provide science and technology primers to the Court before trial, at a time that the Court, in its sole discretion, will determine after consultation with counsel for the parties. Parties are encouraged to be proactive in identifying circumstances when such a primer may be helpful.
22. **Exchanging will say statements and fact witness affidavits for fact witness testimony.** The parties shall exchange will say statements or fact witness affidavits for fact witnesses at least two (2) weeks before trial.

The parties should make a *bona fide* effort to discuss the use of fact stipulations where cross-examination may not be necessary.
23. **Confidential information in an expert report.** The parties shall identify before trial any evidence in an expert report or fact witness statement that is considered confidential and not to be admitted on the public court record. The parties shall seek a Confidentiality Order where appropriate. Any motion for a Confidentiality Order shall be brought at least two (2) weeks before trial.
24. **Agreed statement of facts and joint book of documents.** The parties shall submit an electronic and paper version of an agreed statement of facts and an agreed joint book of documents at least two (2) weeks before trial, including admissions on authenticity, to the extent possible. The trial judge has discretion to limit the number of paper copies of documents to be filed, on request by either party.

Counsel should agree on the authenticity and admissibility of as many documents as possible. Disagreements should be addressed before trial. The parties should carefully document their agreement regarding the documents and file the agreement with the Court along with the documents. The parties are strongly encouraged to fully explore the extent to which requests to admit and explanations of grounds for denial can assist to streamline

the issues in dispute. Where necessary, formal mechanisms contemplated by the *Rules* should be used, such as Requests to Admit under Rules 255-256. Blanket denials and other forms of uncooperative behaviour will be subject to sanction, including through the imposition of elevated costs payable forthwith.

25. **Pre-trial conference memorandum.** The parties shall advise the Registry at the time of filing their pre-trial conference memorandum whether the trial judge may have access to said memorandum, or portions thereof. In the absence of the parties' consent, no such access will be provided.
26. **Compendia and slide decks.** A compendium in both electronic and paper format shall be provided to the trial judge, and shall include only the relevant excerpts of the key evidence to be relied upon by each party. The length of the compendium and the number of copies to be provided shall be determined at the trial judge's discretion after hearing from the parties.

Best efforts should be made to provide a joint compendium by the parties. Where counsel are unable to agree in this regard, separate compendia shall be provided to the Court. Leave of the Court is required if a party wishes to file more than one compendium.

If counsel intends on presenting a slide deck in addition to its compendium, leave from the trial judge should be requested at least two (2) weeks before trial.

27. **Testimony by videoconference.** For in-person hearings, counsel may request that one or more out-of-town witnesses be permitted to testify by videoconference. Any such request should be made at least forty-five (45) days before the start of trial and will be subject to leave of the Court and available resources.

Counsel will be responsible for ensuring the proper and effective functioning of video technology to be used by their witnesses. No less than thirty (30) days before the date scheduled for the commencement of the trial or hearing of a proceeding, the parties should discuss arrangements for the provision of such remote testimony by writing to the Judicial Administrator of the Court. At least fourteen (14) days prior to the date scheduled for the hearing, the parties must make a joint submission in writing to the Judicial Administrator regarding the arrangements they propose.

28. **Special equipment and facilities.** Any request for special equipment or facilities needed by the parties for trial shall be raised with the Court as early as possible but no later than six (6) weeks before the trial. The Court Registry will endeavour to accommodate all reasonable requests.
29. **Written arguments - 50 pages or less at the end of trial.** Unless otherwise directed, written arguments in both electronic and paper format shall be provided at the end of trial, at a time and in a length and format to be determined by the trial judge, after hearing

submissions from counsel for the parties. Unless directed otherwise, written arguments shall not exceed fifty (50) pages.

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B. PROCEEDINGS UNDER THE *PM(NOC) REGULATIONS*

30. Letter to the Registry. The Statement of Claim shall be accompanied by a letter to the Registry which:

- a) Identifies the proceeding as a proceeding under the *PM(NOC) Regulations*;
- b) Identifies any other on-going proceedings before the Court involving the same patents and/or medicinal ingredient(s);
- c) Requests that the proceeding be specially managed pursuant to subsection 6.1(1) of the *Regulations*; and
- d) Indicates whether the statutory stay has been renounced under paragraph 7(5)(b) of the *Regulations*.

31. Notice of intention to respond. The second person (defendant) must file and serve a Notice of Intention to Respond within ten (10) days of service of the Statement of Claim. The Notice of Intention to Respond must indicate:

- a) Whether the second person intends to challenge the validity of any claims in the patent; and
- b) Whether there will be a counterclaim relating to the validity seeking a declaration of invalidity and impeachment.

32. Requisition of initial case management conference. The first person (plaintiff) must requisition a case management conference within seven (7) days of service of the Notice of Intention to Respond. The requisition letter should address the steps set out in the [*PMNOC Timetable Checklist*](#). In their requisition letter, the first person must provide the following: This includes providing:

- a) A jointly-proposed timetable of all steps leading up to trial, including:
 - i. deadlines for voluntary productions;
 - ii. deadlines for producing documents that are not primarily in English or French, as well as how and when translation issues will be dealt with, and who will bear the cost;
 - iii. deadlines for serving affidavits of documents;
 - iv. deadlines for requesting particulars;
 - v. deadlines for exchanging claims charts;

- vi. deadlines for completing examinations for discovery;
 - vii. deadlines for exchanging requests to admit; and
 - viii. duration, city, and language of trial.
- b) Dates of mutual availability for trial, to be completed no later than twenty-one (21) months from the date of commencement of the proceeding;
- c) Identification of any motions contemplated by the parties, including motions relating to:
- i. protective or confidentiality orders;
 - ii. production pursuant to subsections 6.04(1) and 6.04(2) of the *Regulations*; and
 - iii. relief pursuant to sections 6.07 or 6.08 of the *Regulations*.

Where counsel cannot agree on a joint timetable, parties should make separate submissions to the Court in advance of the initial case management conference.

- 33. Initial case management conference.** An initial case management conference shall be requested within twenty-eight (28) days of Statement of Claim issuance. The topics for the initial case management conference will include:
- a) Scheduling all steps in the action in a timely and reasonable fashion (see the [Checklist](#));
 - b) Dealing with procedural matters that should be addressed at an early stage; and
 - c) Exploring settlement prospects.
- 34. Subsequent case management conferences.** The Court expects counsel to confer amongst themselves before requesting any case management conference or bringing any motion. A case management conference should be requested before any motion is brought. Regular case management conferences will be convened to discuss the timetable and narrowing the issues for trial.

Two (2) days prior to each case management conference, the parties shall provide a joint letter to the Court addressing:

- a) A proposed agenda for the case management conference;
- b) An update on the status of the proceeding; and
- c) An update on steps that have been taken to settle the proceedings or narrow the issues (without disclosing any settlement offers that have been exchanged).

35. **Target dates for service of expert reports.** The following are target dates for service of:
(a) expert reports in chief, five (5) months before the trial, (b) responding expert reports, three (3) months before trial and, (c) if any, reply expert reports, two (2) months before the trial.
36. **Target dates for completion of discovery.** Discovery (first round steps, as set out in the [Timetable Checklist](#)) should be completed no later than six (6) months from the close of pleadings.
- A date from which no further discovery or production can be made without leave shall be included in the schedule after discussion with the case management judge.
37. **No new demonstrative evidence at trial.** Parties must exchange any demonstrative evidence that they seek to use at trial at least thirty (30) days before trial. Objections to any demonstrative evidence must be raised with the Court at least twenty (20) days before trial.
38. **Pre-trial conferences.** A streamlined pre-trial conference shall be held in proceedings under the *PM(NOC) Regulations* to address the possibility of settlement (Rule 263(a)). Such pre-trial conference shall be conducted in accordance with Rule 260 and include the participation of the solicitors of record for the parties and the parties or their authorized representatives.
39. **Initial trial management conference.** The parties shall requisition a first trial management conference forthwith upon the trial dates being fixed. This trial management conference will serve as an initial meeting with both the case management judge and the trial judge to discuss issues leading to trial on a preliminary basis.
40. **Further trial management conference.** A further trial management conference should be held at least thirty (30) days prior to trial. This trial management conference will address, amongst other things:
- a) Identification of patents and/or claims still in dispute;
 - b) Specific claim construction disputes; and
 - c) A trial schedule, including the dates upon which each witness will testify. In the alternative, parties may agree to use a “chess clock” and use their allocated time as they see fit, provided that they provide the Court with a schedule indicating the dates upon which each witness will be called.
41. **Tutorial session.** At the request of, and at a time specified by, the trial judge, the parties shall provide a tutorial session in a form to be agreed upon by the parties or on direction of the Court. Parties are encouraged to be proactive in identifying circumstances when such a session may be helpful.

- 42. Evidence at trial.** Parties will ordinarily be expected to adduce evidence-in-chief by way of affidavit, subject to variation by the case management judge or trial judge prior to trial, for example, to facilitate a short overview presentation by expert witnesses, prior to the commencement of cross-examination. Such affidavits shall be served and filed in accordance with the schedule fixed by the Court, and the witness should be made available for cross-examination at trial.

Where fact evidence will be adduced by *viva voce* testimony, counsel shall submit a will say statement or affidavit for any fact witnesses in advance of trial, in accordance with the schedule fixed by the Court.

Parties may agree that certain fact evidence may be introduced without cross-examination, and are encouraged to adduce stipulations of such testimony to streamline the necessity for trial testimony.

- 43. Trial length.** The length of a trial under the *PM(NOC) Regulations* shall be no longer than ten (10) days, unless the Court determines that additional time is required.
- 44. Submissions on costs.** Parties shall submit submissions on costs at the end of the evidentiary phase of the trial, with their final written arguments or as agreed to by the trial judge. Parties are encouraged to reach an agreement as to a lump sum for an amount to be awarded to the prevailing party.

C. APPEALS OF THE REGISTRAR OF TRADEMARKS UNDER SUBSECTION 56(1) OF THE *TRADEMARKS ACT*

- 45. Proceedings with requests for leave to file new evidence.** All appeals of decisions of the Registrar of Trademarks made pursuant to subsection 56(1) of the *Trademarks Act* shall be accompanied by a letter to the Registry which:
- a) identifies the proceeding as a proceeding under subsection 56(1) of the *Trademarks Act*; and
 - b) indicates whether the appellant will be seeking leave under subsection 56(5) of the *Trademarks Act* to adduce new evidence in addition to the evidence adduced before the Registrar. If so, the letter shall request that the proceeding continue as a specially managed proceeding and ask for the appointment of a Case Management Judge pursuant to Rule 383 of the *Federal Courts Rules*.
- 46. Determination of leave requests.** All requests for leave to adduce new evidence shall be determined by the applications judge.
- 47. Scheduling.** Within ten (10) days of the appointment of a Case Management Judge, pursuant to paragraph 45 above, the parties shall jointly request a case management conference to discuss a schedule for the steps of the proceeding, including the timing and manner for determination of the leave request, their availability for the hearing of the application, and the timing of appointment of the applications judge.



**Case and Trial Management Guidelines for Complex Proceedings and
Proceedings under the PM(NOC) Regulations**

November 28, 2024

AMENDMENTS HISTORY	
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Paragraphs 12, 32, 40	October 18, 2023
	May 17, 2021

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A. CASE AND TRIAL MANAGEMENT GUIDELINES FOR COMPLEX PROCEEDINGS

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Paragraphs [30](#) to [44](#) below are specific to proceedings under the *Patented Medicines (Notice of Compliance) Regulations* (“PM(NOC) Regulations”) and take precedence over any potentially conflicting paragraphs.
3. **Election for short-notice trial.** On consent, parties can request to be added to a short-notice trial waiting list. Earlier trial dates may be offered to parties on this list.
4. **Target dates.** Where target dates are referenced, such dates may be subject to further discussion with the case management judge based on the particular circumstances of the case.

Discovery

5. **Electronic documents.** The Court encourages parties to proceed electronically, and if they so choose, to set out specifics for electronic production of documents, including the following:
 - a) Whether or not documents will be produced electronically;
 - b) Electronic searchability of documents (through optical character recognition);
 - c) Format of production of electronic documents (such as PDF for documents, and JPEG for images);
 - d) The use of a consistent naming convention for documents;
 - e) Unique identification codes for documents; and
 - f) Cost-effective litigation support software for electronic production (if applicable).
6. **Discovery planning.** The scope of documentary discovery and examinations for discovery shall be among the topics for early discussion with the case management judge. Such discussions should include the potential utility, content and timing of discovery plans, the representative(s) to be examined, the timing of documentary production and the scheduling

of examinations for discovery and where applicable, the discovery of inventors. All discussions should be guided by the principle of proportionality. Parties should also be prepared to discuss the knowledge of their representative(s).

In creating their discovery plan, parties are to make a *bona fide* effort to agree on and set realistic timetables. Missed deadlines set at case management conferences, without adequate justification, can result in consequences, including significant costs.

7. Limits on oral discovery. Unless the Court orders otherwise, oral discovery per party being examined for discovery shall not exceed:

- a) One (1) day for trials scheduled for 5 days or less;
- b) Two (2) days for trials scheduled for 6 to 10 days;
- c) Three (3) days for trials scheduled for 11 to 20 days;
- d) Four (4) days for trials scheduled for 21 days or more; and
- e) Any follow-up discovery will be limited to one (1) day per party.

8. Examination for discovery

- a) Subject to paragraph 7(e), examinations for discovery shall be conducted by way of a single comprehensive examination;
- b) No questions are to be taken under advisement;
- c) Questions should be answered unless clearly improper or prejudicial, or would require the disclosure of privileged information;
- d) Parties are encouraged to use Rule 95(2) during discovery. Any answers provided under reserve of objection will be considered by the trial judge, if the objection is not sustained; and
- e) With leave of the Court, a follow up examination may be conducted, addressing answers to undertakings, questions ordered to be answered and documents ordered to be produced.

9. Duration of discovery. Notwithstanding paragraph 7 of the Guidelines, the duration of discovery may also consider the volume of documentary evidence and complexity of the proceeding. Without being limited to the list below, the following factors may be considered:

- a) The number of alleged infringing products;

- b) The number of defendants;
- c) The number of patents;
- d) The number of documents (or pages) produced;
- e) The number of trial days;
- f) Whether there is bifurcation;
- g) The number of defences;
- h) Translation requirements of documents.

Motions

10. Limits on refusal motions

- a) No refusal motion may be brought until all parties have completed their examinations for discovery of any adverse party as provided under Rule 235.
- b) Such motions will be limited to one (1) hour per day of discovery of each party's representative.
- c) Significant cost sanctions may be imposed against unsuccessful/unreasonable parties.

No motions may be brought within 60 days of the trial date without leave of the case management judge or trial judge.

Any motion for commission evidence shall be brought as soon as it is deemed necessary to the party seeking such order and, in any event, no later than two (2) months before trial.

Expert evidence

- 11. Strict enforcement of the limit on the number of experts.** Absent exceptional circumstances, the Court will strictly enforce the limit of five (5) expert witnesses called by each party in a proceeding as provided by Rule 52.4.
- 12. Outlining areas of agreement between experts.** With the help of their experts early on in the proceeding, parties must make *bona fide* efforts to agree on issues of fact and law, including interpretation/construction of science, technology and other expert evidence. Expert reports shall state where the experts agree and disagree, and provide the reasons for disagreement.
- 13. Experimental testing (patent infringement/invalidity only).** In an action for infringement or invalidity of a patent, where a party intends to establish any fact in issue by experimental testing conducted for the purpose of litigation, it shall, no later than two (2)

months before the scheduled service of its expert report(s) to which the testing relates, provide reasonable notice to the other parties as to:

- a) the facts to be proven by such testing;
- b) the nature of the experimental procedure to be performed;
- c) when and where the adverse parties' counsel and representative(s) can attend to watch the experiment(s); and
- d) when and in what format the data and test results from such experiment(s) will be shared with the adverse parties.

Where the minimum two-month notice requirement is unworkable (for example, with regard to responding reports), the time period may be abridged by the case management judge.

Where the parties cannot agree on these matters, the case management judge and/or trial judge may resolve them at a case management conference.

Unless a party intending to rely on such experiments has so advised the other parties, the party shall not, without leave of the Court, lead evidence at the trial or hearing as to any experiments conducted by or for it for the purpose of the litigation.

- 14. Expert reports to be relied upon at trial.** Expert reports in chief to be relied upon at trial shall be submitted to the Court in both electronic and paper format at least one (1) month before trial, subject to any direction from the trial judge extending or abridging that time.

By submitting an expert report to the Court, the party is undertaking to the Court to call such expert as a witness at trial, unless a previous agreement with opposing parties and the trial judge has been made. If the calling of an expert is contingent on a subsequent event at trial, the expert report shall not be delivered until such undertaking to call the witness can be made.

Pre-trial preparation

- 15. Trial management conference.** A trial management conference shall be requisitioned by the parties to take place at least two (2) months prior to trial, subject to an extension or abridgement by direction of the case management judge or trial judge. (For proceedings under the *PM(NOC) Regulations*, see paragraph [32](#) below.)

An agenda for the trial management conference should be proposed at the time it is requisitioned. The requisition shall identify and propose the timing of any motions that need be brought before the case management judge or trial judge. Hours of sitting will be established by the trial judge either at the trial management conference or at least two (2)

weeks prior to trial, after hearing from the parties, and shall include any necessary breaks for holidays or otherwise.

The parties shall canvass the timing of closing arguments either at this trial management conference or with the trial judge at the beginning of the trial. Both the timing and the time ultimately allotted will be in the trial judge's sole discretion, after hearing from the parties.

As part of this conference, counsel should discuss the timing and mode of delivery of trial documents. In this regard, the Court encourages counsel to provide digital versions of written evidence, submissions, authorities, and any other important documents, via a USB key. Hyperlinks to case law are also helpful to the trial judge.

- 16. No new demonstrative evidence at trial.** Parties are strongly encouraged to exchange any demonstrative evidence they seek to use at trial at least 60 days before trial.

Unless the Court orders otherwise, any objections to such evidence must be raised with the case management judge and/or trial judge at least 45 days before trial.

For proceedings under the *PM(NOC) Regulations*, see paragraph [35](#) below.

- 17. Experts: early engagement and qualifications.** Counsel are expected to make a *bona fide* effort to consult and engage experts early in the pre-trial stage to properly assess their case's merit. Where an expert is intended to be called at trial, counsel should also provide opposing counsel with early notice of their experts' views regarding issues in dispute.

Any objections to expert reports or expert qualifications, including those contemplated by Rules 52.5 and 262(2), should be made to the case management judge within 30 days of service of the reports and no later than 30 days prior to trial.

The trial judge has the sole discretion as to whether to hear any such objections prior to or during the trial, if raised by the parties before the 30-day pre-trial period. The parties shall exchange short statements of each expert's proposed expertise and reach agreement when possible. Costs consequences may follow any unsuccessful challenge to expert qualifications.

- 18. A proposed schedule is required.** A proposed schedule for the use of trial time, including the order and estimated duration of the testimony of witnesses and opening statements, shall be submitted to the Court and trial judge at least two (2) weeks before trial. Any disagreement regarding the schedule will be decided by the trial judge, in their sole discretion, after hearing from the parties. In the alternative, parties may agree to use a "chess clock" and use their allocated time as they see fit, provided that they provide the Court with a schedule indicating the dates upon which each witness will be called.

19. **A Joint statement of issues.** The parties shall make a *bona fide* effort to prepare a joint statement of issues to be delivered two (2) weeks before trial. For those issues upon which an agreement cannot be reached, each party shall deliver its own statement.
20. **Claims charts.** The parties shall prepare claim charts to be delivered at least two (2) weeks before trial.
21. **Science and technology primers prior to trial.** Parties may be required—jointly or separately—to provide science and technology primers to the Court before trial, at a time that the Court, in its sole discretion, will determine after consultation with counsel for the parties. Parties are encouraged to be proactive in identifying circumstances when such a primer may be helpful.
22. **Exchanging will say statements and fact witness affidavits for fact witness testimony.** The parties shall exchange will say statements or fact witness affidavits for fact witnesses at least two (2) weeks before trial.
- The parties should make a *bona fide* effort to discuss the use of fact stipulations where cross-examination may not be necessary.
23. **Confidential information in an expert report.** The parties shall identify before trial any evidence in an expert report or fact witness statement that is considered confidential and not to be admitted on the public court record. The parties shall seek a Confidentiality Order where appropriate. Any motion for a Confidentiality Order shall be brought at least two (2) weeks before trial.
24. **Agreed statement of facts and joint book of documents.** The parties shall submit an electronic and paper version of an agreed statement of facts and an agreed joint book of documents at least two (2) weeks before trial, including admissions on authenticity, to the extent possible. The trial judge has discretion to limit the number of paper copies of documents to be filed, on request by either party.

Counsel should agree on the authenticity and admissibility of as many documents as possible. Disagreements should be addressed before trial. The parties should carefully document their agreement regarding the documents and file the agreement with the Court along with the documents. The parties are strongly encouraged to fully explore the extent to which requests to admit and explanations of grounds for denial can assist to streamline the issues in dispute. Where necessary, formal mechanisms contemplated by the *Rules* should be used, such as Requests to Admit under Rules 255-256. Blanket denials and other forms of uncooperative behaviour will be subject to sanction, including through the imposition of elevated costs payable forthwith.

25. **Pre-trial conference memorandum.** The parties shall advise the Registry at the time of filing their pre-trial conference memorandum whether the trial judge may have access to said memorandum, or portions thereof. In the absence of the parties' consent, no such access will be provided.
26. **Compendia and slide decks.** A compendium in both electronic and paper format shall be provided to the trial judge, and shall include only the relevant excerpts of the key evidence to be relied upon by each party. The length of the compendium and the number of copies to be provided shall be determined at the trial judge's discretion after hearing from the parties.

Best efforts should be made to provide a joint compendium by the parties. Where counsel are unable to agree in this regard, separate compendia shall be provided to the Court. Leave of the Court is required if a party wishes to file more than one compendium.

If counsel intends on presenting a slide deck in addition to its compendium, leave from the trial judge should be requested at least two (2) weeks before trial.

27. **Testimony by videoconference.** For in-person hearings, counsel may request that one or more out-of-town witnesses be permitted to testify by videoconference. Any such request should be made at least forty-five (45) days before the start of trial and will be subject to leave of the Court and available resources.

Counsel will be responsible for ensuring the proper and effective functioning of video technology to be used by their witnesses. No less than thirty (30) days before the date scheduled for the commencement of the trial or hearing of a proceeding, the parties should discuss arrangements for the provision of such remote testimony by writing to the Judicial Administrator of the Court. At least fourteen (14) days prior to the date scheduled for the hearing, the parties must make a joint submission in writing to the Judicial Administrator regarding the arrangements they propose.

28. **Special equipment and facilities.** Any request for special equipment or facilities needed by the parties for trial shall be raised with the Court as early as possible but no later than six (6) weeks before the trial. The Court Registry will endeavour to accommodate all reasonable requests.

29. **Written arguments - 50 pages or less at the end of trial.** Unless otherwise directed, written arguments in both electronic and paper format shall be provided at the end of trial, at a time and in a length and format to be determined by the trial judge, after hearing submissions from counsel for the parties. Unless directed otherwise, written arguments shall not exceed fifty (50) pages.

B. PROCEEDINGS UNDER THE *PM(NOC) REGULATIONS*

30. Letter to the Registry. The Statement of Claim shall be accompanied by a letter to the Registry which:

- a) Identifies the proceeding as a proceeding under the *PM(NOC) Regulations*;
- b) Identifies any other on-going proceedings before the Court involving the same patents and/or medicinal ingredient(s);
- c) Requests that the proceeding be specially managed pursuant to subsection 6.1(1) of the *Regulations*; and
- d) Indicates whether the statutory stay has been renounced under paragraph 7(5)(b) of the *Regulations*.

31. Notice of intention to respond. The second person (defendant) must file and serve a Notice of Intention to Respond within ten (10) days of service of the Statement of Claim. The Notice of Intention to Respond must indicate:

- a) Whether the second person intends to challenge the validity of any claims in the patent; and
- b) Whether there will be a counterclaim relating to the validity seeking a declaration of invalidity and impeachment.

32. Requisition of initial case management conference. The first person (plaintiff) must requisition a case management conference within seven (7) days of service of the Notice of Intention to Respond. The requisition letter should address the steps set out in the [*PMNOC Timetable Checklist*](#). In their requisition letter, the first person must provide the following: This includes providing:

- a) A jointly-proposed timetable of all steps leading up to trial, including:
 - i. deadlines for voluntary productions;
 - ii. deadlines for producing documents that are not primarily in English or French, as well as how and when translation issues will be dealt with, and who will bear the cost;
 - iii. deadlines for serving affidavits of documents;
 - iv. deadlines for requesting particulars;
 - v. deadlines for exchanging claims charts;

- vi. deadlines for completing examinations for discovery;
 - vii. deadlines for exchanging requests to admit; and
 - viii. duration, city, and language of trial.
- b) Dates of mutual availability for trial, to be completed no later than twenty-one (21) months from the date of commencement of the proceeding;
- c) Identification of any motions contemplated by the parties, including motions relating to:
- i. protective or confidentiality orders;
 - ii. production pursuant to subsections 6.04(1) and 6.04(2) of the *Regulations*; and
 - iii. relief pursuant to sections 6.07 or 6.08 of the *Regulations*.

Where counsel cannot agree on a joint timetable, parties should make separate submissions to the Court in advance of the initial case management conference.

- 33. Initial case management conference.** An initial case management conference shall be requested within twenty-eight (28) days of Statement of Claim issuance. The topics for the initial case management conference will include:
- a) Scheduling all steps in the action in a timely and reasonable fashion (see the [Checklist](#));
 - b) Dealing with procedural matters that should be addressed at an early stage; and
 - c) Exploring settlement prospects.
- 34. Subsequent case management conferences.** The Court expects counsel to confer amongst themselves before requesting any case management conference or bringing any motion. A case management conference should be requested before any motion is brought. Regular case management conferences will be convened to discuss the timetable and narrowing the issues for trial.

Two (2) days prior to each case management conference, the parties shall provide a joint letter to the Court addressing:

- a) A proposed agenda for the case management conference;
- b) An update on the status of the proceeding; and
- c) An update on steps that have been taken to settle the proceedings or narrow the issues (without disclosing any settlement offers that have been exchanged).

35. **Target dates for service of expert reports.** The following are target dates for service of:
(a) expert reports in chief, five (5) months before the trial, (b) responding expert reports, three (3) months before trial and, (c) if any, reply expert reports, two (2) months before the trial.
36. **Target dates for completion of discovery.** Discovery (first round steps, as set out in the [Timetable Checklist](#)) should be completed no later than six (6) months from the close of pleadings.
- A date from which no further discovery or production can be made without leave shall be included in the schedule after discussion with the case management judge.
37. **No new demonstrative evidence at trial.** Parties must exchange any demonstrative evidence that they seek to use at trial at least thirty (30) days before trial. Objections to any demonstrative evidence must be raised with the Court at least twenty (20) days before trial.
38. **Pre-trial conferences.** A streamlined pre-trial conference shall be held in proceedings under the *PM(NOC) Regulations* to address the possibility of settlement (Rule 263(a)). Such pre-trial conference shall be conducted in accordance with Rule 260 and include the participation of the solicitors of record for the parties and the parties or their authorized representatives.
39. **Initial trial management conference.** The parties shall requisition a first trial management conference forthwith upon the trial dates being fixed. This trial management conference will serve as an initial meeting with both the case management judge and the trial judge to discuss issues leading to trial on a preliminary basis.
40. **Further trial management conference.** A further trial management conference should be held at least thirty (30) days prior to trial. This trial management conference will address, amongst other things:
- a) Identification of patents and/or claims still in dispute;
 - b) Specific claim construction disputes; and
 - c) A trial schedule, including the dates upon which each witness will testify. In the alternative, parties may agree to use a “chess clock” and use their allocated time as they see fit, provided that they provide the Court with a schedule indicating the dates upon which each witness will be called.
41. **Tutorial session.** At the request of, and at a time specified by, the trial judge, the parties shall provide a tutorial session in a form to be agreed upon by the parties or on direction of the Court. Parties are encouraged to be proactive in identifying circumstances when such a session may be helpful.

- 42. Evidence at trial.** Parties will ordinarily be expected to adduce evidence-in-chief by way of affidavit, subject to variation by the case management judge or trial judge prior to trial, for example, to facilitate a short overview presentation by expert witnesses, prior to the commencement of cross-examination. Such affidavits shall be served and filed in accordance with the schedule fixed by the Court, and the witness should be made available for cross-examination at trial.

Where fact evidence will be adduced by *viva voce* testimony, counsel shall submit a will say statement or affidavit for any fact witnesses in advance of trial, in accordance with the schedule fixed by the Court.

Parties may agree that certain fact evidence may be introduced without cross-examination, and are encouraged to adduce stipulations of such testimony to streamline the necessity for trial testimony.

- 43. Trial length.** The length of a trial under the *PM(NOC) Regulations* shall be no longer than ten (10) days, unless the Court determines that additional time is required.
- 44. Submissions on costs.** Parties shall submit submissions on costs at the end of the evidentiary phase of the trial, with their final written arguments or as agreed to by the trial judge. Parties are encouraged to reach an agreement as to a lump sum for an amount to be awarded to the prevailing party.



**Case and Trial Management Guidelines for Complex Proceedings and
Proceedings under the *PM(NOC) Regulations***

**October 16, 2020
(last amended on October 18, 2023)**

These guidelines are to be interpreted in a manner that seeks to secure the just, most expeditious and least expensive determination of every proceeding on its merits. They are intended to complement and not derogate from the *Federal Courts Rules*, nor constrain the discretion of judges or associate judges to depart from these guidelines having regard to the particular circumstances of each case.

More specifically, this update includes instructions for subsequent case management conferences (paragraph 36) and timing for submissions on costs (paragraph 40).

These guidelines consolidate and replace the following:

- Notice to the Parties and the Profession re: Streamlining Complex Litigation dated May 1, 2009;
- Notice to the Parties and the Profession re: Case Management: Increased Proportionality in Complex Litigation Before the Federal Court, dated June 24, 2015;
- Notice to the Profession re: Experimental Testing dated May 12, 2016;
- Notice to the Parties and the Profession re: Case Management Guidelines for NOC Applications dated May 2016; and
- Notice to the Parties and the Profession re: Guidelines for Actions Under the *Amended PM(NOC) Regulations*, dated September 21, 2017.

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A. CASE AND TRIAL MANAGEMENT GUIDELINES FOR COMPLEX PROCEEDINGS

General

1. These consolidated guidelines are to be read in conjunction with the most recent [Consolidated General Practice Guidelines](#) (the “Consolidated Guidelines”). In the event of a conflict, the Consolidated Guidelines take precedence.
2. **Applicability.** Paragraphs 3 to 27 apply to complex proceedings, or proceedings which are expected to require at least five (5) trial days.

Paragraphs 28 to 40 below are specific to proceedings under the *Patented Medicines (Notice of Compliance) Regulations* (“PM(NOC) Regulations”) and take precedence over any potentially conflicting paragraphs.
3. **Election for short-notice trial.** On consent, parties can request to be added to a short-notice trial waiting list. Earlier trial dates may be offered to parties on this list.

Discovery

4. **Electronic documents.** The Court encourages parties to proceed electronically, and if they so choose, to set out specifics for electronic production of documents, including the following:
 - a) Whether or not documents will be produced electronically;
 - b) Electronic searchability of documents (through optical character recognition);
 - c) Format of production of electronic documents (such as PDF for documents, and JPEG for images);
 - d) The use of a consistent naming convention for documents;
 - e) Unique identification codes for documents; and
 - f) Cost-effective litigation support software for electronic production (if applicable).
5. **Discovery planning.** The scope of documentary discovery and examinations for discovery shall be among the topics for early discussion with the case management judge. Such discussions should include the potential utility, content and timing of discovery plans, the representative(s) to be examined, the timing of documentary production and the scheduling of examinations for discovery and where applicable, the discovery of inventors. All discussions should be guided by the principle of proportionality. Parties should also be prepared to discuss the knowledge of their representative(s).

In creating their discovery plan, parties are to make a *bona fide* effort to agree on and set realistic timetables. Missed deadlines set at case management conferences, without adequate justification, can result in consequences, including significant costs.

- 6. Limits on oral discovery.** Unless the Court orders otherwise, oral discovery per party shall not exceed:
- a) One (1) day for trials scheduled for 5 days or less;
 - b) Two (2) days for trials scheduled for 6 to 10 days;
 - c) Three (3) days for trials scheduled for 11 to 20 days; and
 - d) Four (4) days for trials scheduled for 21 days or more.

Any follow-up discovery will be limited to one (1) day per party.

7. Examination for discovery

- a) Subject to paragraph 6(e), examinations for discovery shall be conducted by way of a single comprehensive examination;
- b) No questions are to be taken under advisement;
- c) Questions should be answered unless clearly improper or prejudicial, or would require the disclosure of privileged information;
- d) Answers provided under reserve of objection pursuant to Rule 95(2) will be considered by the trial judge, if the objection is not sustained; and
- e) With leave of the Court, a follow up examination may be conducted, addressing answers to undertakings, questions ordered to be answered and documents ordered to be produced.

Motions

8. Limits on refusal motions

- a) No refusal motion may be brought until all parties have completed their examinations for discovery of any adverse party as provided under Rule 235.
- b) Such motions will be limited to one (1) hour per day of discovery of each party's representative; and
- c) Significant cost sanctions may be imposed against unsuccessful/unreasonable parties.

No motions may be brought within 60 days of the trial date without leave of the case management judge or trial judge.

Any motion for commission evidence shall be brought as soon as it is deemed necessary to the party seeking such order and, in any event, no later than two (2) months before trial.

Expert Evidence

9. **Strict enforcement of the limit on the number of experts.** Absent exceptional circumstances, the Court will strictly enforce the limit of five (5) expert witnesses called by each party in a proceeding as provided by Rule 52.4.
10. **Outlining areas of agreement between experts.** With the help of their experts early on in the proceeding, parties must make *bona fide* efforts to agree on issues of fact and law, including interpretation/construction of science, technology and other expert evidence. Expert reports shall state where the experts agree and disagree, and provide the reasons for disagreement.
11. **Experimental Testing (patent infringement/invalidity only).** In an action for infringement or invalidity of a patent, where a party intends to establish any fact in issue by experimental testing conducted for the purpose of litigation, it shall, no later than two (2) months before the scheduled service of its expert report(s) to which the testing relates, provide reasonable notice to the other parties as to:
 - the facts to be proven by such testing;
 - the nature of the experimental procedure to be performed;
 - when and where the adverse parties' counsel and representative(s) can attend to watch the experiment(s); and
 - when and in what format the data and test results from such experiment(s) will be shared with the adverse parties.

Where the minimum two-month notice requirement is unworkable (for example, with regard to responding reports), the time period may be abridged by the case management judge.

Where the parties cannot agree on these matters, the case management judge and/or trial judge may resolve them at a case management conference.

Unless a party intending to rely on such experiments has so advised the other parties, the party shall not, without leave of the Court, lead evidence at the trial or hearing as to any experiments conducted by or for it for the purpose of the litigation.

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By submitting an expert report to the Court, the party is undertaking to the Court to call such expert as a witness at trial, unless a previous agreement with opposing parties and the trial judge has been made. If the calling of an expert is contingent on a subsequent event at trial, the expert report shall not be delivered until such undertaking to call the witness can be made.

Pre-trial Preparation

- 13. Trial management conference.** A trial management conference shall be requisitioned by the parties to take place at least two (2) months prior to trial, subject to an extension or abridgement by direction of the case management judge or trial judge. (For proceedings under the *PM(NOC) Regulations*, see item [30](#) below.)

An agenda for the trial management conference should be proposed at the time it is requisitioned. The requisition shall identify and propose the timing of any motions that need be brought before the case management judge or trial judge. Hours of sitting will be established by the trial judge either at the trial management conference or at least two (2) weeks prior to trial, after hearing from the parties, and shall include any necessary breaks for holidays or otherwise.

The parties shall canvass the timing of closing arguments either at this trial management conference or with the trial judge at the beginning of the trial. Both the timing and the time ultimately allotted will be in the trial judge's sole discretion, after hearing from the parties.

As part of this conference, counsel should discuss the timing and mode of delivery of trial documents. In this regard, the Court encourages counsel to provide digital versions of written evidence, submissions, authorities, and any other important documents, via a USB key. Hyperlinks to case law are also helpful to the trial judge.

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case's merit. Where an expert is intended to be called at trial, counsel should also provide opposing counsel with early notice of their experts' views regarding issues in dispute.

Any objections to expert reports or expert qualifications, including those contemplated by Rules 52.5 and 262(2), should be made to the case management judge within 30 days of service of the reports and no later than 30 days prior to trial.

The trial judge has the sole discretion as to whether to hear any such objections prior to or during the trial, if raised by the parties before the 30-day pre-trial period. The parties shall exchange short statements of each expert's proposed expertise and reach agreement when possible. Costs consequences may follow any unsuccessful challenge to expert qualifications.

16. **A proposed schedule is required.** A proposed schedule for the use of trial time, including the order and estimated duration of the testimony of witnesses and opening statements, shall be submitted to the Court and trial judge at least two (2) weeks before trial. Any disagreement regarding the schedule will be decided by the trial judge, in his or her sole discretion, after hearing from the parties. In the alternative, parties may agree to use a "chess clock" and use their allocated time as they see fit, provided that they provide the Court with a schedule indicating the dates upon which each witness will be called.
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20. **Exchanging a description of proposed areas of fact witness testimony.** The parties shall exchange a brief description of the proposed areas of testimony of fact witnesses at least two (2) weeks before trial.

The parties should make a *bona fide* effort to discuss the use of witness statements and fact stipulations where cross-examination may not be necessary.

21. **Confidential information in an expert report.** The parties shall identify before trial any evidence in an expert report or fact witness statement that is considered confidential and not to be admitted on the public record. The parties shall seek a confidentiality order where

appropriate. Any motion for a confidentiality order shall be brought at least two (2) weeks before trial.

22. **Agreed statement of facts and joint book of documents.** The parties shall submit an electronic and paper version of an agreed statement of facts and an agreed joint book of documents at least two (2) weeks before trial, including admissions on authenticity, to the extent possible. The trial judge has discretion to limit the number of paper copies of documents to be filed, on request by either party.

Counsel should agree on the authenticity and admissibility of as many documents as possible. Disagreements should be addressed before trial. The parties should carefully document their agreement regarding the documents and file the agreement with the Court along with the documents. The parties are strongly encouraged to fully explore the extent to which requests to admit and explanations of grounds for denial can assist to streamline the issues in dispute. Where necessary, formal mechanisms contemplated by the *Rules* should be used, such as Requests to Admit under Rules 255-256. Blanket denials and other forms of uncooperative behaviour will be subject to sanction, including through the imposition of elevated costs payable forthwith.

23. **Pre-trial conference memorandum.** The parties shall advise the Registry at the time of filing their pre-trial conference memorandum whether the trial judge may have access to said memorandum, or portions thereof. In the absence of the parties' consent, no such access will be provided.

24. **Compendia and slide decks.** A compendium in both electronic and paper format shall be provided to the trial judge, and shall include only the relevant excerpts of the key evidence to be relied upon by each party. The length of the compendium and the number of copies to be provided shall be determined at the trial judge's discretion after hearing from the parties.

Best efforts should be made to provide a joint compendium by the parties. Where counsel are unable to agree in this regard, separate compendia shall be provided to the Court. Leave of the Court is required if a party wishes to file more than one compendium.

If counsel intends on presenting a slide deck in addition to its compendium, leave from the trial judge should be requested at least two (2) weeks before trial.

25. **Testimony by videoconference.** For in-person hearings, counsel may request that one or more out-of-town witnesses be permitted to testify by videoconference. Any such request should be made at least forty-five (45) days before the start of trial and will be subject to leave of the Court and available resources.

Counsel will be responsible for ensuring the proper and effective functioning of video technology to be used by their witnesses. No less than thirty (30) days before the date scheduled for the commencement of the trial or hearing of a proceeding, the parties should discuss arrangements for the provision of such remote testimony by writing to the Judicial Administrator of the Court. At least fourteen (14) days prior to the date scheduled for the hearing, the parties must make a joint submission in writing to the Judicial Administrator regarding the arrangements they propose.

26. **Special equipment and facilities.** Any special equipment or facilities needed by the parties for trial, which has not been discussed at the pre-trial conference, shall be requisitioned no later than three (3) weeks before trial. The Court Registry will endeavour to accommodate all reasonable requests.
27. **Written arguments - 50 pages or less at the end of trial.** Unless otherwise directed, written arguments in both electronic and paper format shall be provided at the end of trial, at a time and in a length and format to be determined by the trial judge, after hearing submissions from counsel for the parties. Unless directed otherwise, written arguments shall not exceed fifty (50) pages.

B. PROCEEDINGS UNDER THE *PM(NOC) REGULATIONS*

28. Letter to the Registry. The Statement of Claim shall be accompanied by a letter to the Registry which:

- a) Identifies the proceeding as a proceeding under the *PM(NOC) Regulations*;
- b) Identifies any other on-going proceedings before the Court involving the same patents and/or medicinal ingredient(s);
- c) Requests that the proceeding be specially managed pursuant to subsection 6.1(1) of the *Regulations*; and
- d) Indicates whether the statutory stay has been renounced under paragraph 7(5)(b) of the *Regulations*.

29. Notice of Intention to Respond. The second person (defendant) must file and serve a Notice of Intention to Respond within ten (10) days of service of the Statement of Claim. The Notice of Intention to Respond must indicate:

- a) Whether the second person intends to challenge the validity of any claims in the patent; and
- b) Whether there will be a counterclaim relating to the validity seeking a declaration of invalidity and impeachment.

30. Requisition of first case management conference. The first person (plaintiff) must requisition a case management conference within seven (7) days of service of the Notice of Intention to Respond. The requisition letter should address the steps set out in the [*PMNOC Timetable Checklist*](#). This includes providing:

- a) a jointly-proposed timetable of all steps leading up to trial, including:
 - i. deadlines for voluntary productions;
 - ii. deadlines for producing documents that are not primarily in English or French, as well as how and when translation issues will be dealt with, and who will bear the cost;
 - iii. deadlines for serving affidavits of documents;
 - iv. deadlines for requesting particulars;
 - v. deadlines for exchanging claims charts;
 - vi. deadlines for completing examinations for discovery;

- vii. deadlines for exchanging notices to admit and the consequences of failing to admit a fact; and
 - viii. duration, city, and language of trial.
- b) dates of mutual availability for trial, to be completed no later than twenty-one (21) months from the date of commencement of the proceeding;
 - c) identification of any motions contemplated by the parties, including motions relating to:
 - i. protective or confidentiality orders;
 - ii. production pursuant to subsections 6.04(1) and 6.04(2) of the *Regulations*; and
 - iii. relief pursuant to sections 6.07 or 6.08 of the *Regulations*.

Where counsel cannot agree on a joint timetable, parties should make separate submissions to the Court in advance of the initial case management conference.

- 31. Initial case management conference.** An initial case management conference shall be requested within twenty-eight (28) days of Statement of Claim issuance. The topics for the initial case management conference will include:
- a) Scheduling all steps in the action in a timely and reasonable fashion (see the [Checklist](#));
 - b) Dealing with procedural matters that should be addressed at an early stage; and
 - c) Exploring settlement prospects.
- 32. Subsequent case management conferences.** The Court expects counsel to confer amongst themselves before requesting any case management conference or bringing any motion. A case management conference should be requested before any motion is brought. Regular case management conferences will be convened to discuss the timetable and narrowing the issues for trial.

Two (2) days prior to each case management conference, the parties shall provide a joint letter to the Court addressing:

- a) A proposed agenda for the case management conference;
- b) An update on the status of the proceeding; and
- c) An update on steps that have been taken to settle the proceedings or narrow the issues (without disclosing any settlement offers that have been exchanged).

33. **No new demonstrative evidence at trial.** Parties must exchange any demonstrative evidence that they seek to use at trial at least thirty (30) days before trial. Objections to any demonstrative evidence must be raised with the Court at least twenty (20) days before trial.
34. **Pre-trial conferences.** No pre-trial conferences shall be held in proceedings under the *PM(NOC) Regulations*.
35. **First trial management conference.** The parties shall requisition a first trial management conference forthwith upon the trial dates being fixed. This trial management conference will serve as an initial meeting with both the case management judge and the trial judge to discuss issues leading to trial on a preliminary basis.
36. **Further trial management conference.** A further trial management conference should be held at least thirty (30) days prior to trial. This trial management conference will address, amongst other things:
- a) Identification of patents and/or claims still in dispute;
 - b) Specific claim construction disputes; and
 - c) A trial schedule, including the dates upon which each witness will testify. In the alternative, parties may agree to use a “chess clock” and use their allocated time as they see fit, provided that they provide the Court with a schedule indicating the dates upon which each witness will be called.
37. **Tutorial session.** At the request of, and at a time specified by, the trial judge, the parties shall provide a tutorial session in a form to be agreed to by the parties or on direction of the Court. Parties are encouraged to be proactive in identifying circumstances when such a session may be helpful.
38. **Evidence at trial.** Parties will ordinarily be expected to adduce evidence-in-chief by way of affidavit, subject to variation by the case management judge or trial judge prior to trial, for example to facilitate a short overview presentation by expert witnesses, prior to the commencement of cross-examination. Such affidavits shall be served and filed in accordance with the schedule fixed by the Court, and the witness should be made available for cross-examination at trial.

Where fact evidence will be adduced by *viva voce* testimony, counsel shall submit an outline of the areas of testimony of any fact witnesses in advance of trial, in accordance with the schedule fixed by the Court.

Parties may agree that certain fact evidence may be introduced without cross-examination, and are encouraged to adduce stipulations of such testimony to streamline the necessity for trial testimony.

- 39. Trial length.** The length of a trial under the *PM(NOC) Regulations* shall be no longer than ten (10) days, unless the Court determines that additional time is required.
- 40. Submissions on costs.** Parties shall submit submissions on costs at the end of the evidentiary phase of the trial, with their final written arguments or as agreed to by the trial judge. Parties are encouraged to reach an agreement as to a lump sum for an amount to be awarded to the prevailing party.

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**Case and Trial Management Guidelines for Complex Proceedings and
Proceedings under the PM(NOC) Regulations**

**October 16, 2020
(last amended on May 17, 2021)**

These guidelines are to be interpreted in a manner that seeks to secure the just, most expeditious and least expensive determination of every proceeding on its merits. They are intended to complement and not derogate from the *Federal Courts Rules*, nor constrain the discretion of a judge or prothonotary to depart from these guidelines having regard to the particular circumstances of each case.

These guidelines consolidate and replace the following:

- Notice to the Parties and the Profession re: Streamlining Complex Litigation dated May 1, 2009;
- Notice to the Parties and the Profession re: Case Management: Increased Proportionality in Complex Litigation Before the Federal Court;
- Notice to the Profession re: Experimental Testing dated May 12, 2016;
- Notice to the Parties and the Profession re: Case Management Guidelines for NOC Applications dated May 2016; and
- Notice to the Parties and the Profession re: Guidelines for Actions Under the *Amended PM(NOC) Regulations* dated September 21, 2017.

Previous version: A comparison with the previous version dated October 16, 2020, can be found here: **INSERT LINK**

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A. CASE AND TRIAL MANAGEMENT GUIDELINES FOR COMPLEX PROCEEDINGS

General

1. **Cross-reference.** These consolidated guidelines are to be read in conjunction with the CONSOLIDATED COVID-19 PRACTICE DIRECTIONS - June 25, 2020 (the “Consolidated COVID-19 Directions”). In the event of a conflict, the Consolidated COVID-19 Directions take precedence.
2. **Applicability.** Items 3 to 30 apply to complex proceedings, or proceedings which are expected to require at least five (5) trial days.

Items 31 to 42 are specific to proceedings under the *Patented Medicines (Notice of Compliance) Regulations* (“PM(NOC) Regulations”) and take precedence over any conflicting items.
3. **Election for short notice trial.** On consent, parties can request to be added to a short-notice-trial waiting list. Earlier trial dates may be offered to parties on this list.

Discovery

4. **Electronic documents.** The Court encourages parties to proceed electronically, and if they so choose, to set out specifics for electronic production of documents, including the following:
 - (a) whether or not documents will be produced electronically;
 - (b) electronic searchability of documents (through optical character recognition);
 - (c) format of production of electronic documents (such as PDF for documents, and JPEG for images);
 - (d) the use of a consistent naming convention for documents;
 - (e) unique identification codes for documents; and
 - (f) cost-effective litigation support software for electronic production (if applicable).
5. **Discovery planning.** The scope of documentary discovery and examinations for discovery shall be among the topics for early discussion with the case management judge. Such discussions should include the potential utility, content and timing of discovery plans, the representative(s) to be examined, the timing of documentary production and the scheduling of examinations for discovery and where applicable, the discovery of inventors. All discussions should be guided by the principle of proportionality. Parties should also be prepared to discuss the knowledge of their representative(s).

In creating their discovery plan, parties are to make a *bona fide* effort to agree on and set realistic timetables. Missed deadlines set at case management conferences, without adequate justification, can result in consequences, including significant costs.

6. Limits on oral discovery. Unless the Court orders otherwise, oral discovery per party shall not exceed:

- (a) One (1) day for trials scheduled for 5 days or less;
- (b) Two (2) days for trials scheduled for 6 to 10 days;
- (c) Three (3) days for trials scheduled for 11 to 20 days; and
- (d) Four (4) days for trials scheduled for 21 days or more.

Any follow-up discovery will be limited to one (1) day per party.

7. Examination for discovery.

- (a) Subject to paragraph 6(e), examinations for discovery shall be conducted by way of a single comprehensive examination;
- (b) No questions are to be taken under advisement;
- (c) Questions should be answered unless clearly improper or prejudicial, or would require the disclosure of privileged information;
- (d) Answers provided under reserve of objection pursuant to Rule 95(2) will be considered by the trial judge, if the objection is not sustained; and
- (e) With leave of the Court, a follow up examination may be conducted, addressing answers to undertakings, questions ordered to be answered and documents ordered to be produced.

Motions

8. Limits on refusal motions.

- (a) No refusals motion may be brought until all parties have completed their examinations for discovery of any adverse party as provided under Rule 235.
- (b) Such motions will be limited to one (1) hour per day of discovery of each party's representative; and
- (c) Significant cost sanctions may be imposed against unsuccessful/unreasonable parties.

9. No motions may be brought within 60 days of the trial date without leave of the case management judge or trial judge.
10. Any motion for commission evidence shall be brought as soon as it is deemed necessary to the party seeking such order and, in any event, no later than two (2) months before trial.

Expert Evidence

11. **Strict enforcement of the limit on the number of experts.** Absent extraordinary circumstances, the Court will strictly enforce the limit of five (5) expert witnesses called by each party in a proceeding as provided by Rule 52.4.
12. **Outlining areas of agreement between experts.** With the help of their experts early on in the proceeding, parties must make *bona fide* efforts to agree on issues of fact and law, including interpretation/construction of science, technology and other expert evidence. Expert reports shall state where the experts agree and disagree, and provide the reasons for disagreement.
13. **Experimental Testing (patent infringement/invalidity only).** In an action for infringement or invalidity of a patent, where a party intends to establish any fact in issue by experimental testing conducted for the purpose of litigation, it shall, no later than two (2) months before the scheduled service of its expert report(s) to which the testing relates, provide reasonable notice to the other parties as to:
 - the facts to be proven by such testing;
 - the nature of the experimental procedure to be performed;
 - when and where the adverse parties' counsel and representative(s) can attend to watch the experiment(s); and
 - when and in what format the data and test results from such experiment(s) will be shared with the adverse parties.

Where the minimum two-month notice requirement is unworkable (for example, with regard to responding reports), the time period may be abridged by the case management judge.

Where the parties cannot agree on these matters, the case management judge and/or trial judge may resolve them at a case management conference.

Unless a party intending to rely on such experiments has so advised the other parties, the party shall not, without leave of the Court, lead evidence at the trial or hearing as to any experiments conducted by or for it for the purpose of the litigation.

- 14. Expert Reports to be relied upon at trial.** Expert reports in chief to be relied upon at trial shall be submitted to the Court in both electronic and paper format at least two (2) weeks before trial, subject to any direction from the trial judge extending or abridging that time.

By submitting an expert report to the Court, the party is undertaking to the Court to call such expert as a witness at trial, unless a previous agreement with opposing parties and the trial judge has been made. If the calling of an expert is contingent on a subsequent event at trial, the expert report shall not be delivered until such undertaking to call the witness can be made.

Pre-Trial Preparation

- 15. Trial management conference.** A trial management conference shall be requisitioned by the parties to take place at least two (2) months prior to trial, subject to an extension or abridgement by direction of the case management judge or trial judge. (For proceedings under the *PM(NOC) Regulations*, see item 33 below.)

An agenda for the trial management conference should be proposed at the time it is requisitioned. The requisition shall identify and propose the timing of any motions that need be brought before the case management judge or trial judge. Hours of sitting ordinarily will be established by the trial judge either at the trial management conference or at least two weeks prior to trial, after hearing from the parties, and shall include any necessary breaks for holidays or otherwise.

The parties shall canvass the timing of closing arguments either at this trial management conference or with the trial judge at the beginning of the trial. Both the timing and the time ultimately allotted will be in the trial judge's sole discretion, after hearing from the parties.

As part of this conference, counsel should discuss the timing and mode of delivery of trial documents. In this regard, the Court encourages counsel to provide digital versions of written evidence, submissions, authorities, and any other important documents, via a USB key. Hyperlinks to caselaw are also typically helpful to the trial judge.

- 16. No new demonstrative evidence at trial.** Parties are strongly encouraged to exchange any demonstrative evidence they seek to use at trial at least 60 days before trial.

Unless the Court orders otherwise, any objections to such evidence must be raised with the case management judge and/or trial judge at least 45 days before trial.

For proceedings under the *PM(NOC) Regulations*, see item 36 below.

- 17. Experts: early engagement and qualifications.** Counsel are expected to make a *bona fide* effort to consult and engage experts early in the pre-trial stage to properly assess their case's

merit. Where an expert is intended to be called at trial, counsel should also provide opposing counsel with early notice of their experts' views regarding issues in dispute.

Any objections to expert reports or expert qualifications, including those contemplated by Rules 52.5 and 262(2), should be made to the case management judge within 30 days of service of the reports and no later than 30 days prior to trial.

The trial judge has the sole discretion to agree to hear any such objections at trial, if raised by the parties before the 30-day pre-trial period. The parties shall exchange short statements of each expert's proposed expertise and reach agreement when possible. Costs consequences may follow any unsuccessful challenge to expert qualifications.

18. **A proposed schedule is required.** A proposed schedule for the use of trial time, including the order and estimated duration of the testimony of witnesses and opening statements, shall be submitted to the Court and trial judge at least two (2) weeks before trial. Any disagreement regarding the schedule will be decided by the trial judge, in his or her sole discretion, after hearing from the parties. In the alternative, parties may agree to use a "chess clock" and use their allocated time as they see fit, provided that they provide the Court with a schedule indicating the dates upon which each witness will be called.
19. **A Joint Statement of Issues.** The parties shall make a *bona fide* effort to prepare a joint statement of issues to be delivered two (2) weeks before trial. For those issues upon which an agreement cannot be reached, each party shall deliver its own statement.
20. **Claim charts.** The parties shall prepare claim charts to be delivered at least two (2) weeks before trial.
21. **Science and technology primers prior to trial.** Parties may be required—jointly or separately—to provide science and technology primers to the Court before trial, at a time that the Court, in its sole discretion, will determine after consultation with counsel for the parties. Parties are encouraged to be proactive in identifying circumstances when such a primer may be helpful.
22. **Exchanging a description of proposed areas of fact witness testimony.** The parties shall exchange a brief description of the proposed areas of testimony of fact witnesses at least two (2) weeks before trial.
23. The parties should make a *bona fide* effort to discuss the use of witness statements and fact stipulations where cross-examination may not be necessary.
24. **Confidential information in an expert report.** The parties shall identify before trial any evidence in an expert report or fact witness statement that is considered confidential and not to be admitted on the public record, so that such evidence can be treated accordingly.

25. **An agreed statement of facts and joint book of documents.** The parties shall submit an electronic and paper version of an agreed statement of facts and an agreed joint book of documents at least two (2) weeks before trial, including admissions on authenticity, to the extent possible. The trial judge has discretion to limit the number of paper copies of documents to be filed, on request by either party.

Counsel should agree on the authenticity and admissibility of as many documents as possible. Disagreements should be addressed before trial. The parties should carefully document their agreement regarding the documents and file the agreement with the Court along with the documents. The parties are strongly encouraged to fully explore the extent to which requests to admit and explanations of grounds for denial can assist to streamline the issues in dispute. Where necessary, formal mechanisms contemplated by the *Rules* should be used, such as Requests to Admit under Rules 255-6. Blanket denials and other forms of uncooperative behaviour will be subject to sanction, including through the imposition of elevated costs payable forthwith.

26. **Pre-trial conference memorandum.** The parties shall advise the Registry at the time of filing their pre-trial conference memorandum whether the trial judge may have access to said memorandum, or portions thereof. In the absence of the parties' consent, no such access will be provided.
27. **Compendia and slide decks.** A compendium in both electronic and paper format shall be provided to the trial judge, and shall include only the relevant excerpts to be relied upon by each party. The length of the compendium and the number of copies to be provided shall be determined in the trial judge's discretion after hearing from the parties.

Best efforts should be made to provide a joint compendium by the parties. Where counsel are unable to agree in this regard, separate compendia shall be provided to the Court. Leave of the Court is required if a party wishes to file more than one compendium.

If counsel intends on presenting a slide deck in addition to its compendium, leave from the trial judge should be requested at least two (2) weeks before trial.

28. **Testimony by videoconference.** For in-person hearings, counsel may request that one or more out-of-town witnesses be permitted to testify by videoconference. Any such request should be made at least sixty (60) days before the start of trial and will be subject to leave of the Court and available resources.

Counsel will be responsible for ensuring the proper and effective functioning of video technology to be used by their witnesses. No less than thirty (30) days before the date scheduled for the commencement of the trial or hearing of a proceeding, the parties should discuss arrangements for the provision of such remote testimony with the eCourt Co-ordinator of the Court. At least fourteen (14) days prior to the date scheduled for the meeting,

the parties must make a joint submission in writing to the eCourt Co-ordinator regarding the arrangements they propose.

29. **Special equipment of facilities.** Any special equipment or facilities needed by the parties for trial, which has not been discussed at the pre-trial conference, shall be requisitioned no later than three (3) weeks before trial. The Court Registry will endeavour to accommodate all reasonable requests.
30. **Written arguments 50 pages or less at the end of trial.** Unless otherwise directed, written arguments in both electronic and paper format shall be provided at the end of trial, at a time and in a length and format to be determined by the trial judge, after hearing submissions from counsel for the parties. Unless directed otherwise, written arguments shall not exceed fifty (50) pages.

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B. PROCEEDINGS UNDER THE *PM(NOC) REGULATIONS*

- 31. Letter to the Registry.** The Statement of Claim shall be accompanied by a letter to the Registry which:
- (a) identifies the proceeding as a proceeding under the *PM(NOC) Regulations*;
 - (b) identifies any other on-going proceedings before the Court involving the same patents and/or medicinal ingredient(s);
 - (c) requests that the proceeding be specially managed pursuant to subsection 6.1(1) of the *Regulations*; and
 - (d) indicates whether the statutory stay has been renounced under paragraph 7(5)(b) of the *Regulations*.
- 32. Notice of Intention to Respond.** The second person (defendant) must file and serve a Notice of Intention to Respond within ten (10) days of service of the Statement of Claim. The Notice of Intention to Respond must indicate:
- (a) whether the second person intends to challenge the validity of any claims in the patent; and
 - (b) whether there will be a counterclaim relating to the validity seeking a declaration of invalidity and impeachment.
- 33. Requisition of first case management conference.** The first person (plaintiff) must requisition a case management conference within seven (7) days of service of the Notice of Intention to Respond. The requisition letter should address the steps set out in the [*PMNOC Timetable Checklist*](#). This includes providing:
- (a) a jointly-proposed timetable of all steps leading up to trial, including:
 - i. deadlines for voluntary productions;
 - ii. deadlines for producing documents that are not primarily in English or French, as well as how and when translation issues will be dealt with, and who will bear the cost;
 - iii. deadlines for serving affidavits of documents;
 - iv. deadlines for requesting particulars;
 - v. deadlines for exchanging claims charts;
 - vi. deadlines for completing examinations for discovery;

- vii. deadlines for exchanging notices to admit and the consequences of failing to admit a fact; and
 - viii. duration, venue, and language of trial;
- (b) dates of mutual availability for trial to be completed no later than twenty-one (21) months from the date of commencement of the proceeding;
- (c) identification of any motions contemplated by the parties, including motions relating to:
- i. Protective or confidentiality orders;
 - ii. Production pursuant to subsections 6.04(1) and 6.04(2) of the *Regulations*; and
 - iii. Relief pursuant to sections 6.07 or 6.08 of the *Regulations*.

Where counsel cannot agree on a joint timetable, parties should make separate submissions to the Court in advance of the initial case management conference.

- 34. Initial case management conference.** An initial case management conference will be held within twenty-eight (28) days of Statement of Claim issuance. The topics for the initial case management conference will include:
- (a) Scheduling all steps in the action in a timely and reasonable fashion (see the [Checklist](#));
 - (b) Dealing with procedural matters that should be addressed at an early stage; and
 - (c) Exploring settlement prospects.
- 35. Subsequent case management conferences.** The Court expects counsel to confer amongst themselves before requesting any case management conference or bringing any motion. A case management conference should be requested before any motion is brought. Regular case management conferences will be convened to discuss the timetable and narrowing the issues for trial.
- 36. No new demonstrative evidence at trial.** Parties must exchange any demonstrative evidence that they seek to use at trial at least thirty (30) days before trial. Objections to any demonstrative evidence must be raised with the Court at least twenty (20) days before trial.
- 37.** No pre-trial conferences shall be held in proceedings under the *PM(NOC) Regulations*.
- 38. First trial management conference.** The parties shall requisition a first trial management conference forthwith upon the trial dates being fixed. This trial management conference will serve as an initial meeting with both the case management judge and the trial judge to discuss issues leading to trial on a preliminary basis.

- 39. Further trial management conference.** A further trial management conference should be held at least thirty (30) days prior to trial. This trial management conference will address, amongst other things:
- (a) Identification of patents and/or claims still in dispute;
 - (b) Specific claim construction disputes; and
 - (c) A trial schedule, including the dates upon which each witness will testify.
- 40. Tutorial session.** At the request of, and at a time specified by, the trial judge, the parties shall provide a tutorial session in a form to be agreed to by the parties or on direction of the Court. Parties are encouraged to be proactive in identifying circumstances when such a session may be helpful.
- 41. Evidence at trial.** Parties will ordinarily be expected to adduce evidence-in-chief by way of affidavit, subject to variation by the case management judge or trial judge prior to trial, for example to facilitate a short overview presentation by expert witnesses, prior to the commencement of cross-examination. Such affidavits shall be served and filed in accordance with the schedule fixed by the Court, and the witness should be made available for cross-examination at trial.
- Where fact evidence will be adduced by *viva voce* testimony, counsel shall submit an outline of the areas of testimony of any fact witnesses in advance of trial, in accordance with the schedule fixed by the Court.
- Parties may agree that certain fact evidence may be introduced without cross-examination, and are encouraged to adduce stipulations of such testimony to streamline the necessity for trial testimony.
- 42. Trial length.** The length of a trial under the *PM(NOC) Regulations* shall be no longer than ten (10) days, unless the Court determines that additional time is required.

Federal Court



Cour fédérale

**Timetable Checklist for proceedings under the
Patented Medicines (Notice of Compliance) Regulations**

**October 16, 2020
(last amended on May 17, 2021)**

Previous version: A comparison with the previous version dated October 16, 2020, can be found here: [Blacklined - Timetable Checklist for IP May-2021.pdf \(fct-cf.gc.ca\)](#)

Item No.	Description	Yes/ No	Date for Completion/Filing
Pleadings and Related Motions Phase			
1.	Issuance and service of Statement of Claim and submission of letter to the Registry that (i) identifies the proceeding as a NOC proceeding; (ii) identifies any other on-going proceedings before the Federal Court involving the same patents and/or medicinal ingredient(s); (iii) requests that the proceeding be specially managed; and (iv) advises whether the stay has been renounced under paragraph 7(5)(b)	Yes	
2.	Service and filing of Notice of Intention to Respond, together with an indication as to whether the Defendant intends to challenge the validity of any claims in the patent, and whether there will be a counterclaim relating to the validity seeking a declaration of invalidity and impeachment	Yes	
3.	Plaintiff to requisition a case management conference and provide a jointly-proposed timetable of all steps leading up to trial (including duration, venue and language of trial) and dates of mutual availability for	Yes	

Item No.	Description	Yes/ No	Date for Completion/Filing
	trial no later than 20.5 months from the date of commencement of the proceeding		
4.	Initial case management conference	Yes	
5.	Motion to dismiss and/or strike pursuant to section 6.08 of the <i>Patented Medicines (Notice of Compliance) Regulations</i> [Regs] or Rule 221		
6.	Motion for particulars		
7.	Service and filing of Statement of Defence or Defence and Counterclaim	Yes	
8.	Service and filing of Reply or Reply and Defence to Counterclaim	Yes	
9.	Service and filing of Reply to Defence to Counterclaim	Yes	
10.	Motion to amend any pleading		
11.	Service and filing of any amended pleadings		
Documentary Discovery and Related Motions Phase			
12.	Finalization of protective agreement		
13.	If required, motion for protective order		
14.	Motion for confidentiality order under Rule 151/152 and/or section 6.06 of the Regs		
15.	Motion pursuant to subsection 6.07(1) of the Regs for declaration that a patent or certificate of supplementary protection is ineligible for inclusion on the register		
16.	Motion for joinder pursuant to section 6.02		

Item No.	Description	Yes/ No	Date for Completion/Filing
	of Regs		
17.	To advise whether the parties are interested in a fully electronic trial	Yes	
18.	Finalization of documentary discovery plan	Yes	
19.	Exchange of affidavits of documents and schedule 1 productions	Yes	
20.	Motion to set aside or vary confidentiality rules under subsection 6.03(4) of Regs		
21.	Motion for production of portions of the ANDS pursuant to subsections 6.04(1) of the Regs		
22.	Motion for production of invention documents pursuant to subsection 6.04(2) of the Regs		
23.	Motion for production of generic samples		
24.	Motion for further and better affidavit of documents		
25.	Motion for production from a non-party		
Dispute Resolution Phase			
26.	Parties to advise whether they are interested in participating in a dispute resolution process at this stage or at a later stage in the proceeding	Yes	
27.	Dispute resolution conference		
Examinations for Discovery and Related Motions Phase			
28.	Finalization of oral discovery plan	Yes	
29.	Delivery of request to admit facts		

Item No.	Description	Yes/ No	Date for Completion/Filing
30.	Delivery of response to request to admit facts		
31.	Completion of examinations for discovery	Yes	
32.	Exchange of undertakings charts	Yes	
33.	Delivery of answers to undertakings	Yes	
34.	Parties to meet and confer to narrow any disputes related to discoveries	Yes	
35.	Hearing of any motions related to examinations for discovery		
36.	Delivery of answers ordered on motion		
37.	Motion to examine a non-party		
38.	If permitted by the Court, completion of follow-up examinations for discovery		
39.	If permitted by the Court, delivery of answers to undertakings from follow-up examinations		
40.	If permitted by the Court, hearing of any motions related to the follow-up examinations		
41.	Motion for a preliminary determination of a question of law in relation to claims construction or other issue		
42.	Last day for delivery of any answers to undertakings	Yes	
Expert Evidence and Related Motions Phase			

Item No.	Description	Yes/ No	Date for Completion/Filing
43.	Service of notices for <i>inter partes</i> testing		
44.	Completion of <i>inter partes</i> testing		
45.	Service of infringement expert report(s)	Yes	
46.	Service of invalidity expert report(s)	Yes	
47.	Date for raising any objections to expert reports	Yes	
48.	Service of responding infringement expert report(s)	Yes	
49.	Service of responding invalidity expert report(s)	Yes	
50.	Date for raising any objections to responding expert reports	Yes	
51.	Delivery of any proposed reply expert reports		
52.	Date for raising objections to any proposed reply expert reports		
53.	Motion for leave to file reply expert evidence		
54.	Service of any reply expert evidence		
Trial Preparation and Related Motions Phase			
55.	Service and filing of any evidence-in-chief affidavits	Yes	
56.	Service and filing of outline of intended <i>viva voce</i> testimony of fact witnesses (if any)	Yes	
57.	Motion for letters rogatory		

Item No.	Description	Yes/ No	Date for Completion/Filing
58.	Deadline for final amendments to claims construction chart	Yes	
59.	Filing of joint claims construction chart	Yes	
60.	To advise whether the parties are interested in having the proceeding added to the trial ready list	Yes	
61.	Service and filing of trial record	Yes	
62.	Filing of expert reports in electronic and paper format and a list of the issue that remain in dispute	Yes	
63.	Further trial management conference to address issues such as identification of the patents and/or claims that remain in issue, specific claim construction disputes that still exist and how objections to expert reports will be addressed	Yes	
64.	Meet and confer regarding whether any or all discovery transcripts of a party or inventor can be used as evidence at trial	Yes	
65.	Filing of proposed discovery read-ins	Yes	
66.	Service of demonstrative evidence notice pursuant to Rule 287	Yes	
67.	Service and filing of any objections to demonstrative evidence	Yes	
68.	Delivery of <i>Evidence Act</i> notices	Yes	
69.	Parties to requisition the Court for equipment or special facilities for the trial	Yes	

Item No.	Description	Yes/ No	Date for Completion/Filing
70.	Service of any final request to admit facts or documents		
71.	Deadline for responses to final request to admit facts or documents		
72.	Parties to exchange short statements of each expert's proposed expertise and to meet and confer in an attempt to reach an agreement as to each expert's expertise	Yes	
73.	Plaintiff to deliver to Defendant a proposed agreed statement of facts and joint book of documents	Yes	
74.	Defendant to serve response to proposed agreed statement of facts and joint book of documents	Yes	
75.	Filing of agreed statement of facts	Yes	
76.	Filing of joint book of documents	Yes	
77.	Filing of joint statement of issues	Yes	
78.	Filing joint claims charts on infringement and validity	Yes	
79.	Presentation of joint or individual primer to trial judge	Yes	
80.	Filing of jointly-prepared schedule setting out the expected order and direction of the testimony of each witness	Yes	
Trial Phase			
81.	Start of trial	Yes	
82.	End of trial	Yes	

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