

Federal Court



Cour fédérale

December 7, 2007

NOTICE TO THE PARTIES AND THE PROFESSION

The Federal Court has been facing increasing challenges to its work load in the intellectual property area, particularly in dealing with **Notice of Compliance proceedings**. A growing number of cases has meant that the Court must seek appropriate ways to ensure that such matters are disposed of promptly, usually within a twenty-four month period, while ensuring the just, most expeditious and least expensive determination of every proceeding. The Court has met with and received submissions from a wide range of members of the bar and persons having an interest in such proceedings and carefully considered comments and submissions received.

Effective September 27, 2007, changes to the *Federal Courts Rules* now envisage more flexible case management of Federal Court proceedings. A prothonotary or a judge may be appointed as case management judge. Also, the Court may order case management on its own initiative at any time in the proceeding. These changes should permit more effective management of all proceedings before the Court.

In particular with respect to Notice of Compliance proceedings, the Court will implement the following Practice Direction effective January 7, 2008:

1. Practice Direction – NOC Proceedings

Pursuant to Rule 384, the Court may order that a proceeding commenced under the provisions of the *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-133 as amended, (NOC proceeding) shall forthwith continue as a specially managed proceeding.

A judge or prothonotary will be assigned as case management judge to each newly instituted NOC proceeding. The case management judge or prothonotary will convene a conference with counsel for the parties shortly after all parties have appeared in the proceeding or the time for appearance has expired. At that conference, counsel for the parties will be expected to address:

1. whether it is appropriate to reverse the order in which some or all of evidence is submitted, that is, the respondent (generic) would file some or all of its evidence first and the applicant (brand) file some or all its evidence in response;

Federal Court



CANADA

Cour fédérale

2. fixing a schedule for filing evidence, conducting cross-examination and dealing with any other matters such as section 6(5) motions;
3. fixing a date for the filing of a requisition for hearing; and
4. any other matters useful to ensure the just, most expeditious and least expensive disposition of the proceeding.

At least six weeks before the date fixed for hearing, the presiding judge may hold a hearing management conference to discuss the following:

1. content of the application record;
2. provision of a compendium of “core bundle” documents to the hearing judge;
3. provision of materials in electronic form for the use of the hearing judge;
4. identification of and settlement of issues;
5. agreement as to any facts and documents; and
6. any other matter to ensure the just, most expeditious and least expensive disposition of the proceeding.

“Allan Lutfy”

Chief Justice