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Update to the Federal Court Case and Trial Management Guidelines

Last week, the Federal Court published a consolidated practice notice, updating and consolidating four other case and trial management guidelines for complex proceedings and proceedings under the *PM(NOC) Regulations* from 2015, 2016, and 2017 (available here, here, here, and here).

The key updates are summarized below:

The Federal Court encourages parties to facilitate efficient electronic production: While not mandated, the Court has encouraged parties to proceed electronically and set parameters for electronic production. Such parameters include the format of production, consistent naming conventions, and searchability of documents. While this list is far from exhaustive, it may signal the Court's lack of patience for incomplete, difficult to synthesize, or unmanageable document production "dumps."

Cost consequences for missing deadlines: Missed deadlines set at case management conferences, without adequate justification, can result in consequences, including significant costs.

Expert agreement and early engagement of experts: The Court expects counsel "to make a *bona fide* effort to consult and engage experts early in the pre-trial stage to properly assess their case's merit. Counsel should also provide opposing counsel with early notice of their experts' views regarding issues in dispute." Moreover, although the Court did not raise the spectre of "hot-tubbing," the Court mandated that "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." It is unclear how this will be enforced, beyond usual case/trial management and costs.

The push to digital: In an effort to hasten the move to electronic trials (and into the 21st Century), the Court is encouraging the delivery of "digital versions of written evidence, submissions, authorities, and any other important documents, via a USB key" to the Court. Within written representations, the Court is also requesting hyperlinks to case law, as "the hyperlinks … [are] typically helpful to the trial judge."

Additionally, the Court now provides an option for out-of-town witnesses to testify by video conference for in-person hearings. Such requests should be made 60 days in advance of trial.

Officially introducing the chess clock: As an alternate to a detailed schedule for trial time, the Court has stated that parties may use a chess clock.

Written arguments limited to 50 pages or less: While parties were previously “encouraged” to keep submissions to 50 pages or less, the Court now limits written arguments to 50 pages unless otherwise directed.

Updates to procedures in *PM(NOC)* Actions: The procedures counsel have become accustomed to in actions brought under the *PM(NOC) Regulations* remain largely the same. Minor changes include identifying “any other on-going proceedings before the Court involving the same patents and/or medicinal ingredient(s)” in the initial letter to the Registry and formalizing the PM(NOC) Timetable Checklist. While the Court previously “expected” evidence-in-chief to be introduced by way of affidavit, it is now mandated “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.”