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### ANNOTATED PATENT ACT

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This publication examines the provisions of Canada's *Patent Act* to explain the history, purpose and importance of each provision within the broader scheme of the legislation as a whole. Each section of the Act is examined and the following information included: the current section is reproduced in full; related sections and related rules are gathered for ease of reference, a legislative history of the provision is discussed as it relates to the development of the law of patents as a whole, and upon the specific issues dealt with by the provision, and commentary upon the section (and its subsections) is provided in terms of the purpose and function of the section within the context of the act as a whole, specific issues in respect of both the obtaining and enforcement of patent rights, and relevant, specific facts of case law are summarized.

This release features updates to the Bylaws of the College of Patent Agents and Trademark Agents, SOR/2023-73. This release also includes updates to the Patent Rules – Amended by SOR/2023-113, ss. 1-23, and the addition of the Patented Medicines Prices Review Board's (PMPRB) Interim Guidance. This release also features updates to Appendix Q. Quantum Table Remedies including updates to Appendix Q1. Quantum Table – Remedies for Patent Infringement, and updates to Appendix Q2. Remedies Table – Claims for Punitive and Aggravated Damages in Patent Infringement Actions.

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## Highlights

- **PMPRB—Interim Guidance**—In order for the PMPRB to move forward with implementing the basket of comparator countries, the Board proposes to amend the Interim Guidance to give early guidance and greater predictability to certain New Medicines (i.e. medicines without a MAPP or NEAP as of July 1, 2022) regarding their review status. The Board proposes that the provisions of the Interim Guidance related to the patented medicines without a MAPP or projected NEAP be amended to indicate that they will be considered as reviewed if their list price is below the median international price for the PMPRB11 countries. New Medicines that do not meet this criterion will continue to be under review until new guidelines are in place.
- **Remedies Table—Claims for Punitive and Aggravate Damages in Patent Infringement Claims**—Allegations of willful and knowing infringement are alone insufficient to support a claim to punitive damages. However, there were aggravating circumstances that warranted punitive damages. Skotidakis sought to conceal the infringement by evidence intended to mislead the court as to the date the cells were made. The highly reprehensible conduct was deliberate and motivated by the desire to obtain patented technology at low cost. Skotidakis was a large company, with annual sales of \$200 million. Justice Grammond explained that if a Defendant is only ordered to pay a sum equivalent to the profits or savings resulting from the infringement, this could be seen as an incentive to run the risk of being caught. The amount of compensatory damages was of the same order of magnitude as the savings Skotidakis made by ordering the cells from Frimasco rather than Fromfroid. An additional amount was therefore needed to deter anyone who might be tempted to engage in similar conduct. Justice Grammond ordered Skotidakis to pay \$200,000 in punitive damages: *Fromfroid SA v. 1048547 Ontario Inc.*, 2023 CF 925, 2023 FC 925, 2023 CarswellNat 2336, 2023 CarswellNat 2337 (F.C.).