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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 Appendix O. Practice Notices and Guidance Documents, Appendix P. Patent Law Treaty (PLT) and Regulations under the Patent Law Treaty, Appendix Q. Quantum Table — Remedies.

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Highlights

- **Quantum Table—Remedies Table for Patent Infringement—Accounting of Profits**—The present order did not address *per se* the actual quantification of the compensation owed to the Plaintiffs but was limited to the entitlement to certain remedies and who was entitled to remedies. Justice Roy noted that there was no substantiated allegation of some reason for denying the Plaintiffs the ability to conduct, in due course, an accounting of profits. There was no demonstration concerning the alleged complexity and difficulties of the accounting of profits. The alleged misconduct of the Plaintiffs stemmed largely from the fact that numerous claims in six different patents had been made the subject of litigation that was complex. Nevertheless, Justice Roy was not prepared to accept that asserting rights to a patent, especially where there is a measure of success following litigation, leads as such to a conclusion of misconduct by the patentee. It is seldom that protracted litigation is the responsibility of only one party. Justice Roy concluded that the accounting of profits would not lead to a more complex and less contentious process than an allocation of damages. As a result, the Plaintiffs were entitled to elect between damages and accounting of profits: *Angelcare Canada Inc. v. Munchkin, Inc.*, 2023 CF 1111, 2023 FC 1111, 2023 CarswellNat 4130, 2023 CarswellNat 4131 (F.C.).