

Index

ACCOUNTING OF

PROFITS—QUANTUM

See also DAMAGES—QUANTUM;
QUANTUM; VALUATION

Accounting of profits, § 21:34 to § 21:76

actual profits, § 21:35

apportionment, § 21:45 to § 21:47

proof of quantum, § 21:46

when considered, § 21:47

costs, commentary on, § 21:61 to
§ 21:73

administrative, § 21:65

bonuses, § 21:67

cost of capital, § 21:73

income taxes, § 21:72

intangible, § 21:70

legal, § 21:66

manufacturing, § 21:62

marketing, § 21:64

research and development, § 21:69

sales, § 21:63

stock options, § 21:71

units ordered destroyed, § 21:68

differential profits, § 21:36, § 21:37

calculating, § 21:39 to § 21:44

exemplary damages, § 21:76

infringer, § 21:38

introduction, § 21:34

principles, § 21:34

profit on profit, § 21:74, § 21:75

punitive damages, § 21:76

revenues of defendant, § 21:48 to
§ 21:55

convoyed products, sale of, § 21:49

costs to be deducted, § 21:56 to
§ 21:73

fixed costs, § 21:57, § 21:60

foreign jurisdictions, profits made in,
§ 21:51

profit, definitions of, § 21:58

profits earned but unrealized, § 21:54

profits of less than a 100 percent
owned entity, § 21:53

springboard advantages, § 21:55

ACCOUNTING OF

PROFITS—QUANTUM—Cont'd

Accounting of profits, § 21:34 to § 21:76
—Cont'd

revenues of defendant, § 21:48 to
§ 21:55—Cont'd

third parties, revenue realized
through action of, § 21:50

variable costs, § 21:57, § 21:59

wholly owned subsidiaries, § 21:52

simplified three-step test, § 20:16.50

ADR

Generally, § 15:1 et seq.

Advantages, § 15:21 to § 15:29

control, § 15:21 to § 15:24

creativity, § 15:26 to § 15:29

decision-maker, § 15:25

expenses, § 15:21

flexibility, § 15:22, § 15:23

non-legal issues, § 15:24

time, § 15:21

Control

advantage, as, § 15:21 to § 15:24

binding parties, § 15:9, § 15:10

hybrid methods, § 15:11

litigation, § 15:16

mediation, § 15:8

negotiation, § 15:7

spectrum of, § 15:6

Copyright disputes, § 3:15

Court decisions re, § 15:89 to § 15:100

arbitration

appeal, right to, § 15:97

disqualification of arbitrator, § 15:98

jurisdiction of arbitrator, § 15:99

scope of clause, § 15:95

stay pending, § 15:96

valuation and, § 15:100

breach of confidence, § 15:93

enforceability of agreements, § 15:90

mediation, mandatory, § 15:94

settlement

court's authority to enforce, § 15:92

lawyers' authority to effect, § 15:91

ADR—Cont'd

Definitions, § 15:5
 facilitated negotiation, § 15:5
 med-arb, § 15:5
 mini-trial, § 15:5
 negotiation, § 15:5
 neutral evaluation, § 15:5
 neutral fact finding, § 15:5
 summary trial, § 15:5
 Disadvantages, § 15:12 to § 15:20
 complexity, § 15:17, § 15:18
 control, § 15:16
 delay, § 15:13
 executive time, § 15:14
 expense, § 15:12
 judgment, § 15:20
 jurisdiction, § 15:19
 uncertainty, § 15:15
 Failure of process, § 15:88
 Finalizing settlement, § 15:87
 Forums, § 15:30 to § 15:47
 Commercial ADR Services, § 15:34
 court-annexed, § 15:30 to § 15:33
 Federal, § 15:31
 international (multi-jurisdictional)
 ADR services, § 15:35 to § 15:47
 Ontario, § 15:32, § 15:33
 history of mandatory mediation,
 § 15:32
 January 1, 2010 changes, § 15:33
 History of, § 15:4
 Hybrid methods, § 15:11
 Jurisprudence—see court decisions re
 Litigation, vs.—see disadvantages
 Mandatory, § 15:3, § 15:94
 Mediation
 control, spectrum of, § 15:8
 court decisions re, § 15:94
 negotiation, § 15:60, § 15:61
 presentation, § 15:84
 Negotiation—see control; procedure
 Preparation, § 15:67 to § 15:74
 clients, § 15:68 to § 15:70
 counsel, § 15:71 to § 15:74
 facts, § 15:72
 issues, § 15:69, § 15:74
 law, § 15:72
 outcomes, § 15:69, § 15:74
 personalities, § 15:72

ADR—Cont'd

Preparation, § 15:67 to § 15:74—Cont'd
 process, § 15:68, § 15:73
 support, § 15:70
 timing, § 15:71
 Presentation, § 15:75 to § 15:86
 advisor, § 15:77
 agreed statement of facts, § 15:80
 counsel, § 15:75 to § 15:77
 documents, § 15:81
 evaluation, § 15:85
 experts, § 15:82
 facilitator, § 15:76
 facts, § 15:79
 law, § 15:83
 mediation, § 15:84
 support, § 15:75
 witnesses, § 15:81
 Procedure, § 15:48 to § 15:54
 agreed statement of facts, § 15:64
 business issues, § 15:53
 clients only negotiation, § 15:58
 confidentiality, § 15:49
 cost, § 15:48
 counsel in negotiation, § 15:59, § 15:60
 determinations, § 15:63
 factual issues, § 15:52
 forum, § 15:55
 issue analysis, § 15:50, § 15:62
 lawyers' statements, § 15:65
 legal issues, § 15:51
 mediation, § 15:60, § 15:61
 negotiations, § 15:57
 personality issues, § 15:54
 process, § 15:56 to § 15:66
 witnesses, § 15:66
 Spectrum of control—see control
 Voluntary, § 15:3

AFFIDAVIT

See LITIGATION PROCESS; SIMPLIFIED PROCEEDINGS; TRIAL

AGGRAVATED DAMAGES

See also DAMAGES
 Generally, § 19:39

ALTERNATIVE DISPUTE RESOLUTION

See ADR

INDEX

ANTI-COUNTERFEITING

- Counterfeit goods, Canada, overview, § 27:1
- Counterfeit goods and services, § 27:2 *et seq.*
 - airplane parts, § 27:5
 - apparel, § 27:11
 - car parts, § 27:5
 - cosmetics, § 27:12
 - electrical goods, § 27:7
 - food, § 27:8
 - goods, § 27:3
 - grey market goods, § 27:15
 - health products, § 27:10
 - home renovation products, § 27:6
 - luxury goods, § 27:11
 - pharmaceuticals, § 27:4
 - piracy, music, § 27:13
 - piracy, software, § 27:13
 - services, § 27:14
 - toys, § 27:9
- Enforcement, § 27:17 *et seq.*
 - Canadian Border Services Agency (CBSA), § 27:18 to § 27:19
 - procedure, § 27:19
 - request for assistance, § 27:18
 - civil, § 27:24 to § 27:32
 - accounting, § 27:31
 - action, § 27:27
 - aggravated damages, § 27:32
 - application, § 27:28
 - damages, § 27:30
 - procedure, options, § 27:25
 - procedure, preliminary, § 27:26
 - punitive damages, § 27:32
 - remedies, § 27:29
 - criminal, § 27:33 to § 27:37
 - contempt, § 27:37
 - legislation, § 27:34
 - penalties, case law, § 27:36
 - procedure, § 27:35
 - legislation, § 27:20 to § 27:23
 - Canada-United States-Mexico Agreement (CUSMA), § 27:23
 - Combating Counterfeit Products Act, § 27:20
 - Copyright Act, § 27:22
 - Trademarks Act, § 27:21
 - online, § 27:45 to § 27:51
 - domain names, remedies, § 27:52

ANTI-COUNTERFEITING—Cont'd

- Enforcement, § 27:17 *et seq.*—Cont'd
 - online, § 27:45 to § 27:51—Cont'd
 - evidence, § 27:53
 - metaverse, § 27:50
 - non-fungible tokens (NFTs), § 27:50
 - notice and notice regime, Canada, § 27:51
 - takedown notice, § 27:46
 - applications, § 27:49
 - online marketplace, § 27:48
 - social media, § 27:47
 - process, civil and criminal, § 27:17
 - regulatory, § 27:38 to § 27:44
 - sector regulations, § 27:38
 - consumer products, § 27:44
 - electronics, § 27:40
 - food products, § 27:39
 - health products, § 27:42
 - labelling, clothing, apparel, § 27:43
 - pharmaceutical products, § 27:42
 - vehicle parts, § 27:41
 - Scope of counterfeiting problem, § 27:16

ANTON PILLER ORDERS

- Generally, § 18:1 *et seq.*
- Computer-related disputes, § 9:58, § 9:59
- Defendant-specific, § 18:8
- Inherent jurisdiction, § 18:4
- Judicial treatment, § 18:51, § 18:52
- Jurisdiction, § 18:4 to § 18:6
- Origins, § 18:2
- Parties, § 18:7
- Preliminary relief, § 10:76
- Principles, § 18:1 to § 18:3
- Procedure, § 18:21 to § 18:50
 - affidavit of service, § 18:36
 - challenges, § 18:44 to § 18:48
 - Charter, § 18:49
 - confidentiality, § 18:23
 - contempt, § 18:42
 - damage, § 18:28
 - see also harm
 - defendant's solicitor, § 18:37 to § 18:42
 - disclosure obligations, § 18:32
 - evidence, loss of, § 18:29
 - evidence, preliminary segregation of, § 18:25
 - evidence at risk, § 18:48

ANTON PILLER ORDERS—Cont'd

Procedure, § 18:21 to § 18:50—Cont'd
 execution, § 18:33 to § 18:36, § 18:44
 ex parte hearing, § 18:31, § 18:32
 forum, § 18:21
 harm, § 18:47
 see also damage
 inventory list, § 18:36
 John Doe order, § 18:30
 mischaracterization, § 18:46
 monitoring, § 18:38
 non-disclosure, § 18:45
 photographic evidence, § 18:36
 preliminary issues, § 18:21 to § 18:25
 prima facie case, § 18:27
 privilege, § 18:40
 questioning, § 18:39
 records, § 18:36
 review motion, § 18:43
 secrecy, § 18:31
 security for costs/damages, § 18:22
 solicitor's notes, § 18:36
 solicitor's report, § 18:36
 supervision, § 18:24
 test, § 18:26 to § 18:30
 trade-secrets, § 18:41
 undertakings, § 18:50
 Purpose, § 18:3
 Rolling, § 18:9
 Rules, § 18:4 to § 18:6
 Terms, § 18:10 to § 18:20
 defendant's obligations, § 18:16,
 § 18:17
 disclosure prohibitions, § 18:17
 duration, § 18:19
 entry, permitted, § 18:11
 plaintiff's obligations, § 18:13
 preservation pending execution,
 § 18:14
 procedural protections, § 18:18
 review of execution, § 18:20
 search, § 18:15
 seizure, § 18:15
 subject matter, defined, § 18:12

APPEALS

See also, DISCOVERY; EXAMINATION
 FOR DISCOVERY; LITIGATION
 PROCESS; PRE-TRIAL LITIGA-
 TION PROCEDURES; SIMPLI-
 FIED PROCEEDINGS

APPEALS—Cont'd

Appeal procedures, § 10:138 to § 10:180
 appeal books, memoranda and books of
 authorities, § 10:162 to § 10:171
 appeal books, § 10:163
 contents, § 10:164
 material in possession of tribunal,
 § 10:166
 ordering transcripts and exhibits,
 § 10:165
 service and filing, § 10:167
 book of authorities, § 10:169
 general principles, § 10:162
 interlocutory appeals—Ontario
 courts, § 10:171
 memorandum, § 10:168
 prothonotary orders and referee
 reports, § 10:170
 commencement, § 10:152 to § 10:161
 appearance or cross-appeal, § 10:158
 consent judgments, § 10:159
 general principles, § 10:152
 interlocutory appeals—Ontario
 courts, § 10:161
 notice of appeal, § 10:156
 prothonotary orders and referee
 reports, § 10:160
 respondents, § 10:157
 timing, § 10:153 to § 10:155
 appearance or cross-appeal,
 § 10:155
 filing notice of appeal, § 10:153
 service, § 10:154
 hearing procedure, § 10:172 to
 § 10:175
 general principles, § 10:172
 new evidence on appeal, § 10:174
 prothonotary orders and referee
 reports, § 10:175
 requisition of hearing, § 10:173
 right to appeal, § 10:138 to § 10:145
 appeals with leave, § 10:143 to
 § 10:145
 acts of Parliament, § 10:144
 appeal to Supreme Court of Can-
 ada, § 10:145
 Ontario appeals, § 10:143
 appeals without leave, § 10:139
 judgments of trial division,
 § 10:140

INDEX

APPEALS—Cont'd

- Appeal procedures, § 10:138 to § 10:180
 - Cont'd
 - right to appeal, § 10:138 to § 10:145
 - Cont'd
 - appeals without leave, § 10:139
 - Cont'd
 - prothonotary orders and referee reports, § 10:142
 - to Federal Court under acts of Parliament, § 10:141
 - general principles, § 10:152
 - standard of review, § 10:146 to § 10:151
 - appeal from order of Prothonotary/Master, § 10:151
 - discretionary decisions, § 10:149
 - evidentiary rulings, § 10:150
 - expert evidence, § 13:35
 - general principles, § 10:146
 - questions of fact, § 10:148
 - questions of law, § 10:147
 - stays pending appeal, § 10:176 to § 10:180
 - availability, § 10:177
 - generally, § 10:178
 - interlocutory orders, § 10:179
 - general principles, § 10:176
 - procedure, § 10:180

APPORTIONMENT

- See PROFITS, quantum; QUANTUM, profits

ASSESSMENT

- See COSTS

BALANCE OF CONVENIENCE

- See also INJUNCTIONS
- Generally, § 17:13, § 17:14

BUSINESS METHODS

- See also COMPUTER-RELATED DISPUTES, patents
- Generally, § 9:24 to § 9:26

CDRP

- See also DOMAIN NAMES DISPUTE RESOLUTION; INTERNET TRADEMARK DISPUTES
- Basis for complaint and eligibility, § 8:1 to § 8:179
 - bad faith: attracting internet users, § 8:107 to § 8:113
 - attempt to attract users, § 8:109

CDRP—Cont'd

- Basis for complaint and eligibility, § 8:1 to § 8:179—Cont'd
 - bad faith: attracting internet users, § 8:107 to § 8:113—Cont'd
 - commercial gain, § 8:110
 - confusion, § 8:111
 - disclaimer, § 8:113
 - intention, § 8:108
 - parking, § 8:112
- bad faith: blocking complaint, § 8:96 to § 8:101
 - CIRA provision of information and access, § 8:101
- pattern, § 8:99
- purpose, § 8:97
- variations, § 8:98
- WHOIS searching, § 8:100
- bad faith: disrupting business of complainant, § 8:102 to § 8:106
 - competitor, § 8:104
 - disruption, § 8:105
 - parking, § 8:106
 - purpose, § 8:103
- bad faith: other factors, § 8:119 to § 8:136
 - breach of agreement, § 8:123
 - cyberflight, § 8:133
 - defamatory content, § 8:130
 - depreciation of complainant's goodwill, § 8:129
 - disobeyance of Court Order, § 8:135
 - failed negotiation of agreement, § 8:122
 - failure to comply with CPR, § 8:128
 - failure to respond, § 8:121
 - generic name speculation, § 8:124
 - illegal activity, § 8:134
 - impersonation, § 8:131
 - lapsed registration, § 8:125
 - miscellaneous, § 8:136
 - phishing, § 8:132
 - prior knowledge, § 8:120
 - theft and access prevention mechanisms, § 8:127
 - use of proxy service, § 8:126
- bad faith: other factors in 2000 draft, § 8:114 to § 8:118
 - misleading information, § 8:118
 - multiple registrations, § 8:117
 - no intention to use, § 8:115

CDRP—Cont'd

Basis for complaint and eligibility, § 8:1 to § 8:179—Cont'd
 bad faith: other factors in 2000 draft, § 8:114 to § 8:118—Cont'd
 offer to transfer, § 8:116
 bad faith: overview, § 8:81 to § 8:136
 burden of proof, § 8:86
 exhaustive list of factors, § 8:83
 influence of other factors, § 8:89
 intention, § 8:87
 knowledge of complainant's mark, § 8:88
 original definition, § 8:82
 registration, § 8:83
 time, § 8:84
 whose bad faith, § 8:85
 bad faith: purpose of transfer, § 8:90 to § 8:95
 competitor, § 8:94
 excess costs, § 8:95
 legitimate offer, § 8:93
 offer of transfer, § 8:92
 purpose, § 8:91
 basis for complaint, § 8:16
 confusing similarity: decisions, § 8:68 to § 8:73
 decisions applying confusion test, § 8:69
 decisions expressly applying resemblance test, § 8:70
 other approaches, § 8:71
 confusing similarity: overview, § 8:67 to § 8:80
 confusing similarity: resemblance, § 8:74 to § 8:77
 application of resemblance test, § 8:75
 consequences of resemblance test, § 8:76
 examples of resemblance, § 8:77
 resemblance as test, § 8:74
 confusing similarity: “. . .sucks” and related names, § 8:78 to § 8:80
 “sex” domain names, § 8:80
 UDRP decisions, § 8:79
 confusing similarity with mark of complainant, § 8:17
 eligible complainant, § 8:11 to § 8:15
 Canadian presence requirements, § 8:12

CDRP—Cont'd

Basis for complaint and eligibility, § 8:1 to § 8:179—Cont'd
 eligible complainant, § 8:11 to § 8:15—Cont'd
 compliance, § 8:15
 exclusions, § 8:14
 relation to registered trademark, § 8:13
 introduction, § 8:2, § 8:5
 amendment, § 8:5
 differences from UDRP, § 8:3
 legitimate interest: descriptive name, § 8:151 to § 8:155
 descriptive name, § 8:152
 good faith, § 8:155
 preparations, § 8:154
 use, § 8:153
 legitimate interest: generic name, § 8:156 to § 8:160
 generic name, § 8:157
 good faith, § 8:160
 preparations, § 8:159
 use, § 8:158
 legitimate interest: geographical location, § 8:170
 legitimate interest: name, § 8:168, § 8:169
 name, § 8:169
 legitimate interest: non-commercial activity, § 8:161 to § 8:167
 criticism, review or news reporting, § 8:165
 fan site, § 8:167
 good faith, § 8:160
 non-commercial activity, § 8:164
 parody site, § 8:166
 use, § 8:162
 legitimate interest: other factors, § 8:177 to § 8:179
 disclaimer, § 8:178
 parallel challenge to complainant's mark, § 8:179
 legitimate interest: other factors in draft, § 8:171 to § 8:176
 accurate description, § 8:172
 comparative advertising, § 8:175
 demonstrable preparations, § 8:173
 good faith belief, § 8:176
 third party uses, § 8:174

CDRP—Cont'd

- Basis for complaint and eligibility, § 8:1 to § 8:179—Cont'd
 - legitimate interest: overview, § 8:137 to § 8:179
 - absence of legitimate interest, § 8:140
 - burden of proof, § 8:139
 - influence of other factors, § 8:141
 - original definition, § 8:138
 - whose legitimate interest, § 8:142
 - legitimate interest: use as mark, § 8:144 to § 8:150
 - distributors and licensees, § 8:150
 - good faith, § 8:149
 - mark, § 8:145
 - preparations, § 8:148
 - rights, § 8:146
 - use, § 8:147
 - mark: certification mark, § 8:28 to § 8:31
 - licensee, § 8:31
 - licensor, § 8:30
 - successors, § 8:29
 - mark: exclusions, § 8:37 to § 8:39
 - names of individuals, § 8:38
 - mark: overview, § 8:18 to § 8:39
 - mark: prohibited mark, § 8:33 to § 8:36
 - public authority, § 8:35
 - qualifying marks, § 8:34
 - use, § 8:36
 - mark: registered trademark, § 8:32
 - mark: trademark or trade name used in Canada, § 8:19 to § 8:27
 - licensee, § 8:26
 - licensor, § 8:25
 - non-qualifying marks, § 8:27
 - purpose of distinguishing, § 8:23
 - successors, § 8:24
 - trademark, § 8:20
 - trade name, § 8:21
 - use, § 8:22
 - purpose and scope, § 8:6 to § 8:10
 - bad faith registration, § 8:8
 - construction of CDRP, § 8:10
 - obligations of parties, § 8:9
 - purpose of CDRP, § 8:6
 - scope of CDRP, § 8:7
 - rights: overview, § 8:55 to § 8:66
 - date of registration, § 8:56

CDRP—Cont'd

- Basis for complaint and eligibility, § 8:1 to § 8:179—Cont'd
 - rights: prohibited marks, § 8:64 to § 8:66
 - rights: trademark, trade name or certification mark used in Canada, § 8:57 to § 8:60
 - licensees and licensors, § 8:59
 - municipal names, § 8:60
 - successors, § 8:58
 - rights: trademarks registered in Canada, § 8:61 to § 8:63
 - licensees and licensors, § 8:63
 - successors, § 8:62
 - use: business, § 8:51
 - use: non-commercial activity, § 8:52, § 8:53
 - non-commercial, § 8:53
 - use: overview, § 8:40
 - use: services, § 8:43 to § 8:50
 - cross border issues, § 8:44
 - performance, § 8:42
 - services: cross border online issues, § 8:45
 - CDRP decisions, § 8:50
 - computer services, § 8:49
 - entertainment services, § 8:49
 - hospitality services, § 8:47
 - information services, § 8:48
 - retail services, § 8:46
 - telecommunications services, § 8:49
 - use: wares, § 8:41, § 8:42
 - cross border issues, § 8:42
 - use: website, § 8:54
- Procedures and remedies, § 8:180 to § 8:254
 - arbitration legislation, § 8:179
 - communication of complaint, § 8:208
 - communications, § 8:185
 - complaint, § 8:200 to § 8:206
 - additional information, § 8:204
 - amendment, § 8:206
 - certification, § 8:205
 - complainant information, § 8:202
 - delay, § 8:201
 - description of basis for, § 8:203
 - consolidation of proceedings, § 8:227

CDRP—Cont'd

Procedures and remedies, § 8:180 to § 8:254—Cont'd
 court proceedings, § 8:251 to § 8:254
 judicial review, § 8:253
 jurisdiction, § 8:252
 decisions, § 8:240 to § 8:243
 amendment, § 8:241
 communication, § 8:242
 publication, § 8:243
 evidence, § 8:235 to § 8:238
 balance of probabilities, § 8:236
 evidentiary principles, § 8:237
 negotiations, § 8:238
 fees, § 8:183
 further submissions, § 8:229 to § 8:232
 by complainant as of right, § 8:230
 on request by panel, § 8:231
 with leave of panel, § 8:232
 initiation of proceeding, § 8:189 to § 8:191
 introduction, § 8:180, § 8:181
 language, § 8:184
 law, § 8:239
 panel: appointment, § 8:219 to § 8:223
 appointment, § 8:222
 chair, § 8:223
 conversion to single member panel, § 8:221
 qualification of panellists, § 8:220
 three member panel, § 8:219
 panel: powers and obligations, § 8:224 to § 8:226
 communication, § 8:225
 conduct of proceeding, § 8:226
 impartiality, § 8:224
 parallel proceedings, § 8:234
 parties, § 8:192 to § 8:199
 complainant, § 8:193
 identification of registrant, § 8:195 to § 8:199
 CIRA WHOIS policy, § 8:195
 contact procedure, § 8:197
 exceptions to WHOIS policy, § 8:196
 request for disclosure, § 8:199
 request for list of domain names, § 8:198
 registrant, § 8:194
 pre-decision termination, § 8:233

CDRP—Cont'd

Procedures and remedies, § 8:180 to § 8:254—Cont'd
 provider, § 8:182
 provider review of complaint, § 8:207
 provider review of response, § 8:217, § 8:218
 communication of response, § 8:217
 provider review, § 8:218
 refiling, § 8:250
 remedies, § 8:247, § 8:248
 transfer to nominee, § 8:248
 reply, § 8:228
 response, § 8:209 to § 8:216
 additional information, § 8:213
 amendment, § 8:216
 certification, § 8:215
 claim for costs, § 8:214
 extension of time, § 8:210
 registrant information, § 8:211
 response to basis of complaint, § 8:212
 reverse hijacking, § 8:244 to § 8:246
 costs, § 8:246
 unfairly and without colour of right, § 8:245
 termination of proceeding, § 8:249
 time, § 8:186 to § 8:188
 computation, § 8:187
 extension of time, § 8:188

CIRA DISPUTE RESOLUTION POLICY

See CDRP

CLASS ACTIONS

See ENFORCEMENT, computer-related disputes and licensing; LITIGATION PROCESS, parties to litigation

COMPETITION LAW

Generally, § 6:1 et seq.
 Claims/defences in private IP litigation, § 6:52 to § 6:57
 Competition Act claims, § 6:53
 civil claims, § 6:55
 conspiracy, § 6:54
 Competition Act defences to infringement, § 6:56
 settlements in IP litigation, § 6:57
 Competition Act, § 6:2 to § 6:5
 analysis, § 6:5

COMPETITION LAW—Cont'd

- Competition Act, § 6:2 to § 6:5—Cont'd
 - classes of behaviour, § 6:3
 - enforcement, § 6:4
 - overview, § 6:2 to § 6:5
 - purpose, § 6:2
- Enforcement, § 6:24 to § 6:31
 - Competition Bureau, § 6:24
 - confidentiality, § 6:26
 - Intellectual Property Enforcement Guidelines (IPEG), § 6:32
 - investigative powers, § 6:25
 - Competition Tribunal, § 6:30
 - private civil actions, § 6:31
 - proceedings, conduct of, § 6:27
 - injunctions, § 6:28
 - interim orders, § 6:28
 - prohibition orders (Section 34), § 6:29
 - Intellectual Property Enforcement Guidelines (IPEG), § 6:32
- Introduction, § 6:1
- IP rights, key provisions of Competition Act, § 6:33 to § 6:51
 - civil provisions, § 6:34 to § 6:36
 - abuse of dominance (section 78 and 79), § 6:41, § 6:42
 - agreements preventing competition substantially (section 90.1), § 6:37
 - exclusive-dealing, tied-selling and market restriction, § 6:44
 - price maintenance (section 76), § 6:43
 - refusal to deal (section 75), § 6:45
 - section 90.1 applied to IP rights, § 6:38 to § 6:40
 - criminal provisions, § 6:34 to § 6:36
 - conspiracy (section 45), § 6:34 to § 6:36
 - mergers (section 92), § 6:46 to § 6:50
 - application to IP rights, § 6:48
 - challenges to, § 6:49
 - general, § 6:46
 - joint ventures, R and D, § 6:50
 - pre-notification requirements, § 6:47
 - special remedies, § 6:51
- Substantive provisions, summary of, § 6:6 to § 6:23
 - civil reviewable practices, § 6:8 to § 6:14
 - abuse of dominance, § 6:9

COMPETITION LAW—Cont'd

- Substantive provisions, summary of, § 6:6 to § 6:23—Cont'd
 - civil reviewable practices, § 6:8 to § 6:14—Cont'd
 - competitor agreements, § 6:10
 - exclusive-dealing, tied-selling and market restriction, § 6:12
 - price maintenance, § 6:11
 - refusal to deal, § 6:13
 - specialization agreements, § 6:14
 - criminal anti-competitive conduct, § 6:6, § 6:7
 - bid-rigging, § 6:7
 - conspiracy, § 6:6
 - marketing practices, § 6:17 to § 6:22
 - deceptive marketing practices (civil), § 6:18
 - deceptive telemarketing (criminal), § 6:20
 - double-ticketing (criminal), § 6:21
 - false or misleading representations (criminal), § 6:19
 - multi-level marketing and pyramid selling (criminal), § 6:22
 - mergers and notifiable transactions, § 6:15, § 6:16
 - mergers, § 6:15
 - notifiable transactions, § 6:16
 - special remedies, § 6:23

COMPUTER-RELATED DISPUTES

- See also CDRP; DOMAIN NAMES DISPUTE RESOLUTION; INTERNET TRADEMARK DISPUTES
- Generally, § 9:1 et seq.
- Copyright
 - computer programmes, § 9:6 to § 9:8, § 9:20
 - data, § 9:11 to § 9:14
 - merger, § 9:9, § 9:10
 - software reverse engineering, § 9:15, § 9:16
 - technological protection measures, § 3:13, § 9:17, § 9:18
- Intellectual property rights, § 9:5 to § 9:28
- Licensing
 - generally, § 9:29
 - agreement, § 9:2, § 9:30, § 9:42

COMPUTER-RELATED DISPUTES

—Cont'd

- Licensing—Cont'd
 - arbitration provisions, enforcement of rights re, § 9:54.50
 - assignment, § 9:44
 - browse-wrap agreements, § 9:33
 - click-wrap agreements, § 9:32
 - enforcement of rights, § 9:51.50 to § 9:55
 - improvement and similar dealings, § 9:46
 - insolvency, § 9:47
 - interpretation of agreement, § 9:42
 - legislative developments, § 9:38
 - new uses, § 9:45
 - open source licences, § 9:56
 - performance under the license, § 9:43.50
 - shrink-wrap agreements, § 9:31
 - statutory reform, § 9:39 to § 9:41
 - transfer, § 9:44
 - unusually harsh terms, § 9:34
 - website terms checklist, § 9:37
- Moral rights, § 9:19
- Patents, § 9:21 to § 9:26
 - business methods, § 9:24 to § 9:26
 - hardware, § 9:21 to § 9:23
 - software, § 9:21 to § 9:23
- Remedies, § 9:57 to § 9:63
 - Anton Piller orders, § 9:58, § 9:59
 - damages, § 9:62, § 9:63
 - delivery up, § 9:60, § 9:61
 - inspections, § 9:60, § 9:61
 - profits, § 9:62, § 9:63
- Trade secrets, § 9:27, § 9:28

CONFIDENTIAL INFORMATION

See INJUNCTIONS; TRADE SECRETS

CONFIDENTIALITY ORDERS

See LITIGATION PROCESS, pre-trial procedure

CONFLICTS

See PATENTS

CONTEMPT

- Generally, § 23:55 to § 23:75
- Civil, § 23:56, § 23:73
- Contumacious acts, § 23:57
- Corporate, § 23:66

CONTEMPT—Cont'd

- Criminal, § 23:56
- Defences, § 23:74
- Intention, § 23:62
- Jurisdiction, § 23:72
- Knowledge of order, § 23:63
- Last resort, § 23:55
- Non-payment, § 23:70
- Notice, § 23:71
- Orders, § 23:58
 - entitlement, § 23:60
 - non-binding, § 23:59
- Party in contempt, finding a, § 23:61
- Penalties, § 23:75
- Purging, § 23:68
- Recklessness, § 23:67
- Sanctions, § 23:75
- Service, § 23:63
- Specificity, § 23:71
- Standard of proof, § 23:62
- Third parties, § 23:65
- Vicarious liability, § 23:69

CONVERSION

Generally, § 19:25

CONVOYED SALES

See DAMAGES, patent disputes;
 PATENTS, damages; PROFITS, lost;
 PROFITS, statutory and judicial
 treatment; QUANTUM, damages;
 QUANTUM, profits

COPYRIGHT

- Generally, § 3:1 et seq.
- Collective societies
 - absentee owners, § 3:67
 - alternatives, § 3:64
 - apportionment of royalties, § 3:65
 - blank audio recording, § 3:61
 - Copyright Board proceedings, § 3:63
 - dispute resolution, § 3:62 to § 3:67
 - distant signals, § 3:60
 - entitlement to sue, § 3:69
 - judicial review, § 3:68
 - licensing regimes, § 3:56 to § 3:61
 - musical works, § 3:58
 - non-member claims, § 3:66
 - off-air taping, § 3:60
 - other subject matters, § 3:59, § 3:64
 - performance rights, § 3:58
 - published sound recordings, § 3:58

COPYRIGHT—Cont'd

- Collective societies—Cont'd
 - resolutions, § 3:62 to § 3:67
 - retransmission, § 3:60
 - royalties, § 3:65
 - works, § 3:59, § 3:64
- Disputes, § 3:2 to § 3:13
- Industrial designs, relation to, § 4:7 to § 4:15
- Infringement, § 3:3
 - authorization, § 3:10
 - books, § 3:8, § 3:9
 - computer programmes, § 9:6 to § 9:8, § 9:19, § 9:20
 - data, § 9:11 to § 9:14
 - direct, § 3:4
 - merger, § 9:9, § 9:10
 - moral rights, § 3:12, § 9:19
 - parallel importation, § 3:9
 - plates, § 3:7
 - provision of services, § 3:11
 - public performance for profit, § 3:8
 - secondary, § 3:5
 - secondary infringement related to lessons, § 3:6
 - software reverse engineering, § 9:15, § 9:16
- Injunctions
 - availability, § 17:31, § 17:32
 - specific remedies, § 17:33, § 17:34
- Moral rights, infringement of, § 3:12
 - computer programmes, § 9:19
- Pharmaceuticals, § 7:27
- Registration disputes, § 3:51
 - clerical errors, § 3:52
 - damages, § 3:55
 - expungement, § 3:54
 - rectification, § 3:53
 - remedies, § 3:52 to § 3:55
- Remedies — see REMEDIES
 - resolutions, § 3:52 to § 3:55
- Resolutions — see RESOLUTIONS
- Technological measures and rights
 - management information, § 3:13

COSTS

- Generally, § 14:1 et seq.
- Abandonment costs, § 14:14
- Appeals of costs orders, § 14:43, § 14:44
 - review of assessment, § 14:43

COSTS—Cont'd

- Assessment of costs, § 14:28
 - disbursements, § 14:30 to § 14:42
 - computer research, § 14:33
 - couriers, § 14:35
 - expert witnesses, § 14:31
 - investigations, § 14:36
 - law society levy, § 14:37
 - operating expenses, § 14:38
 - photocopying and binding, § 14:32
 - process servers, § 14:35
 - solicitor agency fees, § 14:40
 - travel disbursements, § 14:34
 - trial transcripts, § 14:41
 - witness fees, § 14:42
 - fees, § 14:29
 - tariff B, § 14:29
- Class proceedings, § 14:22
- Copyright disputes, § 3:39
- Costs against a successful party, § 14:8
- Costs of motions, § 14:10
- Discontinuance costs, § 14:14
- Divided success, § 14:6
- Industrial designs disputes, § 4:50
- Motions
 - Anton Piller motions, § 14:13
 - increased costs, § 14:23 to § 14:27
 - factors considered on a rule 403 motion, § 14:27
 - motion for directions to assessment officers, § 14:23
 - evidence in support, § 14:26
 - extension of time to bring motion, § 14:25
 - within 30 days, § 14:24
 - show cause/contempt, § 14:12
 - summary judgment motions, § 14:11
- No costs orders, § 14:7
- Offers to settle, § 14:19
- Patent disputes, § 1:82
 - security for, § 1:43, § 1:63
- Patented Medicines (Notice of Compliance) Regulations proceedings, § 14:15
- Principles, general, § 14:1 to § 14:5
 - award of party-and-party costs, § 14:1
 - discretionary power of court
 - limitations on exercise of full discretionary power, § 14:5

COSTS—Cont’d

- Principles, general, § 14:1 to § 14:5
 - Cont’d
 - discretionary power of court—Cont’d
 - to award party-and-party costs, § 14:2
 - lump-sum awards, § 14:3
 - tariff B, § 14:4
- Pro bono counsel, § 14:18
- Security for costs, § 14:20
- Security for costs for impeachment of patents, § 14:21
- Self-represented litigants, § 14:17
- Solicitor, liability of, § 14:16
- Solicitor-and-client costs, § 14:9
- Specific matters, § 14:6 to § 14:21

CRIMINAL CONDUCT

- Competition Act, § 6:6 to § 6:23
 - see also COMPETITION LAW
 - application to IP, § 6:34 to § 6:36
 - bid-rigging, § 6:7
 - conspiracy, § 6:6, § 6:34 to § 6:36, § 6:54
 - price maintenance, § 6:11, § 6:43
- Contempt, § 23:56
- Copyright disputes, § 3:41 to § 3:49
 - Copyright Act, under, § 3:42 to § 3:47
 - copyright infringement, § 3:42
 - Criminal Code, under, § 3:48
 - limitation periods, § 3:47
 - moral rights infringement, § 3:44
 - multiple offences, § 3:49
 - penalties, § 3:45
 - technological protection measures, § 3:43
- Trade secrets and
 - counseling, § 5:50
 - fraud, § 5:48 to § 5:50
 - mischief, § 5:48 to § 5:50
 - theft, § 5:48 to § 5:50

DAMAGES

- Generally, § 19:1 et seq.
- Aggravated, § 19:39
- Burden of proof, § 19:7
- Computer-related disputes, § 9:62, § 9:63
- Copyright disputes, § 3:30, § 3:55, § 19:23 to § 19:30
 - conversion, § 19:25
 - educational institutions, § 3:33

DAMAGES—Cont’d

- Copyright disputes, § 3:30, § 3:55, § 19:23 to § 19:30—Cont’d
 - entitlement, § 19:30
 - exemplary damages, § 3:31
 - general damages, § 19:23
 - moral rights, for infringement of, § 19:27
 - non-pecuniary damages, § 19:29
 - profits, § 19:24
 - punitive damages, § 3:31, § 19:28
 - statutory damages, § 3:32, § 19:26
- Election for, § 19:34 to § 19:36
 - advantages, § 19:35
 - disadvantages, § 19:36
- Industrial designs disputes, § 4:46, § 4:47, § 19:31 to § 19:33
 - calculation, § 4:46
 - election, § 4:45
 - entitlement, § 19:33
 - profits, § 19:32
 - punitive damages, § 4:47
 - quantification, § 19:31
 - royalty, § 19:32
 - sales, § 19:32
- Judicial treatment, § 19:6
- Patent disputes, § 1:79, § 19:9 to § 19:17
 - convoyed sales, § 19:12
 - entitlement, § 19:16
 - lost sales, § 19:12
 - non-infringing alternatives, § 19:15
 - pharmaceuticals, § 7:1
 - post-issuance, § 19:10 to § 19:17
 - pre-issuance, § 19:9
 - price erosion, § 19:14
 - profits, § 19:11
 - punitive damages, § 19:17
 - royalty, § 19:13
 - sales, § 19:11, § 19:12
 - springboard, § 19:12
- Patented Medicines (NOC) Regulations, § 19:40 to § 19:43
- Principles, § 19:2
- Procedure, § 19:4, § 19:5
 - reference, § 19:5
- Punitive, § 19:28, § 19:37
 - copyright disputes, § 3:31, § 19:28
 - patent disputes, § 19:17
 - trademark disputes, § 2:29, § 19:21
 - trade secret disputes, § 5:83

DAMAGES—Cont'd

- Royalties
 - industrial design disputes, § 19:32
 - patent disputes, § 19:13
 - trademark disputes, § 19:20
- Special, § 19:38
- Statutory damages, § 19:26
- Trademark disputes, § 2:25, § 19:18 to § 19:22
 - entitlement, § 19:22
 - punitive damages, § 2:29, § 19:21
 - quantification, § 19:18
 - royalties, § 19:20
 - sales, § 19:19
- Trade secrets disputes
 - acquisition costs, § 5:79
 - breach of confidence, § 5:76
 - breach of contract, § 5:85
 - breach of fiduciary duty, § 5:84
 - capitalization of royalty, § 5:80
 - consulting fee, § 5:78
 - development costs, § 5:79
 - lost opportunity, § 5:82
 - lost profit, § 5:77
 - market value of information, § 5:81
 - punitive damages, § 5:83
- Undertaking to pay, § 17:15, § 17:16

DAMAGES—QUANTUM

- See also ACCOUNTING OF PROFITS—QUANTUM; QUANTUM; VALUATION
- Damages in intellectual property disputes, § 21:2 to § 21:33
- Introduction, § 21:2 to § 21:10
- Lost profits, § 21:11 to § 21:20
 - conveyed sales, loss of, § 21:16
 - future loss, § 21:20
 - increased costs, § 21:15
 - price reductions, § 21:14
 - sales, loss of, § 21:12, § 21:13
 - springboard damages, § 21:17
 - subsidiary company, loss of, § 21:18
 - substitute products, § 21:19
- Principles, § 21:2 to § 21:10
 - apportionment, § 21:5
 - but for test, § 21:3
 - causation, § 21:3
 - foreseeability, § 21:6
 - hindsight, use of, § 21:8
 - mitigation, § 21:7

DAMAGES—QUANTUM—Cont'd

- Principles, § 21:2 to § 21:10—Cont'd
 - non-infringing alternatives, § 21:4
 - remoteness, § 21:6
 - taxation, § 21:9
 - three-step test, § 20:16.50
 - value to owner, § 21:10
- Royalties, § 21:21 to § 21:33
 - apportionment, § 21:26
 - base, § 21:25
 - considerations, § 21:28 to § 21:32
 - cost basis, § 21:30
 - damages under s. 8 of PM(NOC) regulations, § 21:33
 - hypothetical, § 21:24
 - increased costs, § 21:29
 - industry standard rates, § 21:23
 - nominal damages, § 21:32
 - non-confiscatory, § 21:31
 - normal rates, § 21:22
 - pre-grant damages, § 21:28

DEFAULT JUDGMENTS

- See LITIGATION PROCESS

DELIVERY UP

- See also INJUNCTIONS
- Generally, § 17:19, § 17:20

DESIGNS

- See INDUSTRIAL DESIGNS

DESTRUCTION

- See also INJUNCTIONS
- Generally, § 17:19, § 17:20

DISBURSEMENTS

- See COSTS

DISCOVERY

- See also, APPEALS; EXAMINATION FOR DISCOVERY; LITIGATION PROCESS; PRE-TRIAL LITIGATION PROCEDURES; SIMPLIFIED PROCEEDINGS
- Discovery, § 10:39
 - documentary, § 10:41 to § 10:47
 - confidential documents, § 10:38
 - deponent, § 10:45
 - form of affidavit of documents, § 10:42
 - inspection, § 10:43
 - other matters, § 10:47

DISCOVERY—Cont'd

- Discovery, § 10:39—Cont'd
 - documentary, § 10:41 to § 10:47
 - Cont'd
 - relevant documents, § 10:44
 - simplified action, § 10:46
 - timing, § 10:41
 - general principles, § 10:40
 - oral examination, § 10:48 to § 10:59
 - assignors, § 10:51
 - direction to attend, § 10:59
 - general, § 10:48
 - non-parties, § 10:52
 - other matters, § 10:56
 - persons outside Canada, § 10:58
 - relevance, § 10:54
 - representative, § 10:49
 - scope, § 10:53
 - supplemental discovery, § 10:57
 - timing, § 10:50

DISPUTE TYPES (TRADEMARKS)

- Generally, § 2:5, § 2:6, § 2:13 to § 2:39
- Appeals
 - generally, § 2:14
 - judicial review, vs., § 2:36
- Cause of action
 - generally, § 2:16 to § 2:21
 - false description, § 2:20
 - injurious falsehood, § 2:17
 - official mark, § 2:21
 - passing off, § 2:16
 - registered mark, § 2:21
 - substitution, by, § 2:19
 - trade libel, § 2:17
 - unfair competition, § 2:16
- Challenging
 - published official mark, § 2:35 to § 2:37
 - registration, § 2:32 to § 2:37
- Invalid registration, § 2:33
- Opposition—see OPPOSITION
- Pharmaceuticals—see PHARMACEUTICALS, trademark disputes

DOMAIN NAMES DISPUTE RESOLUTION

- See also CDRP; INTERNET TRADEMARK DISPUTES

DOMAIN NAMES DISPUTE

RESOLUTION—Cont'd

- Basis for complaint and eligibility, § 8:176 to § 8:179
- bad faith: attracting internet users, § 8:107 to § 8:113
 - attempt to attract users, § 8:109
 - commercial gain, § 8:110
 - confusion, § 8:111
 - disclaimer, § 8:113
 - intention, § 8:108
- bad faith: blocking complaint, § 8:96 to § 8:101
 - pattern, § 8:99
 - purpose, § 8:97
 - variations, § 8:98
- WHOIS searching, § 8:100
- bad faith: disrupting business of complainant, § 8:102 to § 8:106
 - competition, § 8:104
 - disruption, § 8:105
 - parking, § 8:106
 - purpose, § 8:103
- bad faith: other factors, § 8:119 to § 8:136
 - breach of agreement, § 8:123
 - cyberflight, § 8:133
 - defamatory content, § 8:130
 - depreciation of complainant's goodwill, § 8:129
 - disobeyance of court order, § 8:135
 - failed negotiation of agreement, § 8:122
 - failure to comply with CPR, § 8:128
 - failure to respond, § 8:121
 - generic name speculation, § 8:124
 - illegal activity, § 8:134
 - impersonation, § 8:131
 - lapsed registration, § 8:125
 - miscellaneous, § 8:136
 - phishing, § 8:132
 - prior knowledge, § 8:120
 - theft and access prevention mechanisms, § 8:127
 - use of proxy service, § 8:126
- bad faith: other factors in 2000 Draft, § 8:114 to § 8:118
 - misleading information, § 8:118
 - multiple registrations, § 8:117
 - no intention to use, § 8:115
 - offer to transfer, § 8:116

DOMAIN NAMES DISPUTE

RESOLUTION—Cont'd

- Basis for complaint and eligibility, § 8:176 to § 8:179—Cont'd
- bad faith: overview, § 8:81 to § 8:136
- burden of proof, § 8:86
- influence of other factors, § 8:89
- intention, § 8:87
- knowledge of complainant's mark, § 8:88
- original definition, § 8:82
- registration, § 8:83
- time, § 8:84
- whose bad faith, § 8:85
- bad faith: purpose of transfer, § 8:90 to § 8:95
 - competition, § 8:94
 - excess costs, § 8:95
 - legitimate offer, § 8:93
 - offer of transfer, § 8:92
 - purpose, § 8:91
- basis for complaint, § 8:16
- confusing similarity: decisions, § 8:68 to § 8:73
 - decisions applying confusion test, § 8:69
 - decisions expressly applying resemblance test, § 8:70
 - other approaches, § 8:71
- confusing similarity: overview, § 8:67 to § 8:80
- confusing similarity: resemblance, § 8:74 to § 8:77
 - application of resemblance test, § 8:75
 - consequences of resemblance test, § 8:76
 - examples of resemblance, § 8:77
 - resemblance as test, § 8:74
- confusing similarity: “. . .sucks” and related names, § 8:78 to § 8:80
- “sex” domain names, § 8:80
- UDRP decisions, § 8:79
- confusing similarity with mark of complainant, § 8:17
- eligible complainant, § 8:11 to § 8:15
 - Canadian presence requirements, § 8:12
 - compliance, § 8:15
 - exclusions, § 8:14

DOMAIN NAMES DISPUTE

RESOLUTION—Cont'd

- Basis for complaint and eligibility, § 8:176 to § 8:179—Cont'd
- eligible complainant, § 8:11 to § 8:15—Cont'd
 - relation to registered trademark, § 8:13
- introduction, § 8:2, 8:5
 - amendment, § 8:5
 - differences from UDRP, § 8:3
- legitimate interest: descriptive name, § 8:151 to § 8:155
 - descriptive name, § 8:152
 - good faith, § 8:155
 - preparations, § 8:154
 - use, § 8:153
- legitimate interest: generic name, § 8:156 to § 8:160
 - generic name, § 8:157
 - good faith, § 8:160
 - preparations, § 8:159
 - use, § 8:158
- legitimate interest: geographical location, § 8:170
- legitimate interest: name, § 8:168, § 8:169
 - name, § 8:169
- legitimate interest: non-commercial activity, § 8:161 to § 8:167
 - criticism, review or news reporting, § 8:165
 - fan site, § 8:167
 - good faith, § 8:163
 - non-commercial activity, § 8:165
 - parody site, § 8:166
 - use, § 8:162
- legitimate interest: other factors, § 8:177 to § 8:179
 - disclaimer, § 8:178
 - parallel challenge to complainant's mark, § 8:179
- legitimate interest: other factors in draft, § 8:171 to § 8:176
 - accurate description, § 8:172
 - comparative advertising, § 8:175
 - demonstrable preparations, § 8:173
 - good faith belief, § 8:176
 - third party uses, § 8:174

DOMAIN NAMES DISPUTE

RESOLUTION—Cont'd

Basis for complaint and eligibility,
 § 8:176 to § 8:179—Cont'd
 legitimate interest: overview, § 8:137
 to § 8:179
 absence of legitimate interest,
 § 8:140
 burden of proof, § 8:139
 influence of other factors, § 8:141
 original definition, § 8:138
 whose legitimate interest, § 8:142
 legitimate interest: use as mark,
 § 8:144 to § 8:150
 distributors and licensees, § 8:150
 good faith, § 8:149
 mark, § 8:145
 preparations, § 8:148
 rights, § 8:146
 use, § 8:147
 mark: certification mark, § 8:28 to
 § 8:31
 licensee, § 8:31
 licensor, § 8:30
 successors, § 8:29
 mark: exclusions, § 8:37 to § 8:39
 names of individuals, § 8:38
 statutory protected marks, § 8:39
 mark: overview, § 8:18 to § 8:39
 mark: prohibited mark, § 8:31 to § 8:34
 public authority, § 8:33
 qualifying marks, § 8:32
 use, § 8:34
 mark: registered trademark, § 8:32
 mark: trademark or trade name used in
 Canada, § 8:19 to § 8:27
 licensee, § 8:26
 licensor, § 8:25
 non-qualifying marks, § 8:27
 purpose of distinguishing, § 8:23
 successors, § 8:24
 trademark, § 8:29
 trade name, § 8:21
 use, § 8:22
 purpose and scope, § 8:6 to § 8:10
 bad faith registration, § 8:8
 construction of, § 8:10
 obligations of parties, § 8:9
 purpose of CDRP, § 8:6
 scope of CDRP, § 8:7

DOMAIN NAMES DISPUTE

RESOLUTION—Cont'd

Basis for complaint and eligibility,
 § 8:176 to § 8:179—Cont'd
 rights: overview, § 8:55 to § 8:66
 date of registration, § 8:56
 rights: prohibited marks, § 8:64 to
 § 8:66
 licensees, § 8:66
 successors, § 8:65
 rights: trademark, trade name or certifi-
 cation mark used in Canada,
 § 8:57 to § 8:60
 licensees and licensors, § 8:59
 municipal names, § 8:60
 successors, § 8:58
 rights: trademarks registered in Canada,
 § 8:61 to § 8:63
 licensees and licensors, § 8:63
 successors, § 8:62
 services: cross border online issues,
 § 8:45
 CDRP decisions, § 8:50
 computer services, § 8:49
 entertainment services, § 8:49
 hospitality services, § 8:47
 information services, § 8:48
 retail services, § 8:46
 telecommunications services,
 § 8:49
 use: business, § 8:51
 use: non-commercial activity, § 8:52,
 § 8:53
 non-commercial, § 8:53
 use: overview, § 8:38
 use: services, § 8:43 to § 8:50
 cross border issues, § 8:44
 use: wares, § 8:41, § 8:42
 cross border issues, § 8:42
 use: website, § 8:54
 Procedures and remedies, § 8:180 to
 § 8:254
 arbitration legislation, § 8:181
 communication of complaint, § 8:208
 communications, § 8:185
 complaint, § 8:200 to § 8:206
 additional information, § 8:204
 amendment, § 8:206
 certification, § 8:205
 complainant information, § 8:202
 delay, § 8:201

DOMAIN NAMES DISPUTE

RESOLUTION—Cont'd

Procedures and remedies, § 8:180 to § 8:254—Cont'd

- complaint, § 8:200 to § 8:206—Cont'd
- description of basis for, § 8:203
- consolidation of proceedings, § 8:227
- court proceedings, § 8:251 to § 8:254
- judicial review, § 8:253
- jurisdiction, § 8:252
- decisions, § 8:240 to § 8:243
 - amendment, § 8:241
 - communication, § 8:242
 - publication, § 8:243
- evidence, § 8:235 to § 8:238
 - balance of probabilities, § 8:236
 - evidentiary principles, § 8:237
 - negotiations, § 8:238
- fees, § 8:183
- further submissions, § 8:229 to § 8:232
 - by complainant as of right, § 8:230
 - on request by panel, § 8:231
 - with leave of panel, § 8:232
- initiation of proceeding, § 8:189 to § 8:191
- introduction, § 8:178, § 8:179
- language, § 8:184
- law, § 8:239
- panel: appointment, § 8:219 to § 8:226
 - appointment, § 8:222
 - chair, § 8:223
 - conversion to single member panel, § 8:221
 - qualification of panellists, § 8:220
 - three member panel, § 8:219
- panel: powers and obligations, § 8:224 to § 8:226
 - communication, § 8:225
 - conduct of proceeding, § 8:226
 - impartiality, § 8:224
- parallel proceedings, § 8:234
- parties, § 8:192 to § 8:199
 - complainant, § 8:193
 - identification of registrant, § 8:195 to § 8:199
 - CIRA WHOIS policy, § 8:195
 - contact procedure, § 8:197
 - exceptions to WHOIS policy, § 8:196
 - request for disclosure, § 8:199

DOMAIN NAMES DISPUTE

RESOLUTION—Cont'd

Procedures and remedies, § 8:180 to § 8:254—Cont'd

- parties, § 8:192 to § 8:199—Cont'd
- identification of registrant, § 8:195 to § 8:199—Cont'd
 - request for list of domain names, § 8:198
 - registrant, § 8:194
- pre-decision termination, § 8:233
- provider, § 8:182
- provider review of complaint, § 8:207
- provider review of response, § 8:217, § 8:218
 - communication of response, § 8:217
 - provider review, § 8:218
- refiling, § 8:250
- remedies, § 8:247, § 8:248
 - transfer to nominee, § 8:248
- reply, § 8:228
- response, § 8:209 to § 8:216
 - additional information, § 8:213
 - amendment, § 8:216
 - certification, § 8:215
 - claim for costs, § 8:214
 - extension of time, § 8:210
 - registrant information, § 8:211
 - response to basis of complaint, § 8:212
- reverse hijacking, § 8:244 to § 8:246
 - costs, § 8:246
 - unfairly and without colour of right, § 8:245
- termination of proceeding, § 8:249
- time, § 8:186 to § 8:188
 - computation, § 8:187
 - extension of time, § 8:188

ELECTION

See DAMAGES; PROFITS, application

ENFORCEMENT

Generally, § 23:1 et seq.

Competition law—see COMPETITION LAW, enforcement

Computer-related disputes, § 9:51.50 to § 9:55

- class action remedies, § 9:52 to § 9:55

Contempt—see CONTEMPT

Foreign judgments, § 23:76 to § 23:88

- British judgments, § 23:88

ENFORCEMENT—Cont'd

Foreign judgments, § 23:76 to § 23:88

—Cont'd

conclusiveness of, § 23:80

court of competent jurisdiction, § 23:77

enforceable orders, types of, § 23:78

exceptions, § 23:81

finality of, § 23:79

fraud, § 23:83

natural justice, § 23:84

other public law, § 23:82

penal law, § 23:82

public policy, § 23:85

Reciprocal Enforcement of Judgments Act, § 23:87

revenue law, § 23:82

statutory enforcement, § 23:86

Licensing

arbitration provisions, re, § 9:54.50

enforcement, § 9:51.50 to § 9:55

Mechanisms, § 23:11 to § 23:54

Creditor's Relief Act, § 23:49, § 23:50

enforcement of intellectual property rights at Canadian border, § 23:52 to § 23:54

Execution Act—see EXECUTION ACT

Fraudulent Conveyances Act—see FRAUDULENT CONVEYANCES ACT

garnishment, § 23:36

Intellectual property rights as security, § 23:51

writs—see WRITS

Principles, § 23:1 to § 23:4

authority of Sheriff's Office, § 23:7

bailiffs, § 23:6

definitions, § 23:1

interlocutory injunctions, § 23:2

engaging sheriff/bailiff, § 23:9

interpleader, § 23:10

liability of sheriff/bailiff, § 23:8

orders, § 23:3

ownership disputes, § 23:10

Sheriff's Office, § 23:5 to § 23:10

stay pending appeal, § 23:4

Trademark disputes, § 2:44

EXAMINATION FOR DISCOVERY

See also APPEALS; DISCOVERY; LITIGATION PROCESS; PRE-TRIAL

EXAMINATION FOR DISCOVERY

—Cont'd

LITIGATION PROCEDURES;
SIMPLIFIED PROCEEDINGS

2020 Guidelines, § 11:3

Basic rules, § 11:4

Categories of questions, § 11:50

arising in IP cases generally, § 11:17 to § 11:26

admitted facts, § 11:17

confidential issues, § 11:21

damages or accounting in absence of bifurcation, § 11:26

existence of documents not produced, § 11:18

facts contained in privileged correspondence, § 11:23

identity of witnesses, § 11:24

internal prosecution file and privilege issue, § 11:22

probative value outweighed by time and trouble, § 11:19

related corporations, § 11:25

vague and overbroad, § 11:20

arising in patent cases, § 11:27 to § 11:44

Canadian and foreign file wrappers, § 11:37

commercial success, § 11:41

development of defendant's product, § 11:38

development of plaintiff's invention and product, § 11:39

elements absent from product or process, § 11:30

foreign applications, patents and proceedings, § 11:36

inventive feature, substance/essential elements of invention, § 11:29

inventorship, § 11:27

prior and enabling disclosure, § 11:33

products or processes not alleged, § 11:40

sound prediction, § 11:34

state of the art, prior art and common general knowledge, § 11:28

sufficiency of disclosure, § 11:35

terms used in patent, § 11:32

testing, § 11:42

EXAMINATION FOR DISCOVERY

—Cont'd

- Categories of questions, § 11:50—Cont'd
 - arising in patent cases, § 11:27 to § 11:44—Cont'd
 - utility, operability and covetous claiming, § 11:31
 - witnesses' background, § 11:44
 - witnesses who are experts and inventors, § 11:43
 - arising in trademark cases, § 11:45 to § 11:50
 - availability of impugned mark in other jurisdictions, § 11:47
 - filing and search strategies, § 11:48
 - intention of defendant, § 11:49
 - notoriety, fame or goodwill of a mark, § 11:45
 - supplier's ability to supply, § 11:50
 - technical specifications of products, § 11:46
- Conduct of Counsel During Discovery, § 11:53
- Cross-examination, discovery vs., § 11:6
 - confidentiality orders, § 11:6.30
 - confidential material, filing of, § 11:6.90
 - discovery of documents, § 11:6.10
 - hybrid orders, § 11:6.70
 - protective orders, § 11:6.3, § 11:6.5
- Directing and terminating discovery, § 11:51
- Discovery plan, developing a, § 11:55
- Discovery strategy, developing a, § 11:55
- Discovery witness, § 11:50.50
- Facts, § 11:8 to § 11:15
 - conclusions, § 11:14
 - evidence, § 11:9
 - hypotheticals, § 11:12
 - interpretations, § 11:10
 - opinions, § 11:11
 - positions, § 11:15
 - reopening discovery, failure to ask relevant questions, § 11:52
 - speculation, § 11:13
- Limits on documentary discovery, § 11:3
 - Limits on oral discovery, § 11:3
 - Limits on refusal motions, § 11:3
- Motion to compel, form of objection, § 11:54

EXAMINATION FOR DISCOVERY

—Cont'd

- Motion to compel, form of presentation, § 11:54
- Particulars, discovery vs., § 11:5
- Purpose, § 11:2
- Relevance, § 11:7

EXECUTION ACT

- Generally, § 23:46 to § 23:48
- Exemptions, § 23:47
- Exigible property, § 23:48

EXEMPLARY DAMAGES

- See also DAMAGES
- Generally, § 3:31

EXPUNGEMENT

- See COPYRIGHT, registration; trademark remedies

FOREIGN JUDGMENTS

- See ENFORCEMENT

FRAUDULENT CONVEYANCES ACT

- Generally, § 23:37 to § 23:45
- Defences, § 23:43
- Definitions, § 23:40, § 23:41
- Intention to defraud, § 23:42, § 23:44
- Scope, § 23:38
- Standing, § 23:39
- Voidable transactions, § 23:45

GARNISHMENT

- See ENFORCEMENT, mechanisms

ICANN UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY

- See DOMAIN NAMES DISPUTE RESOLUTION

INDUSTRIAL DESIGNS

- Generally, § 4:1 et seq.
- Alteration—see correction
- Correction, § 4:18 to § 4:22
 - hague application, § 4:22
 - jurisdiction, § 4:19
 - procedure, § 4:21
 - standing, § 4:20
- Dispute types, § 4:2 to § 4:39
- Expungement, § 4:32 to § 4:37
 - discovery evidence, § 4:37
 - jurisdiction, § 4:33
 - pleadings, § 4:35, § 4:36

INDUSTRIAL DESIGNS—Cont'd

Expungement, § 4:32 to § 4:37—Cont'd
standing, § 4:34
trial evidence, § 4:37
Infringement, § 4:23 to § 4:31
evidence, § 4:29
jurisdiction, § 4:24
pleadings, § 4:26 to § 4:28
standing, § 4:25
Limitation periods, § 22:6
Ownership disputes, § 4:38, § 4:39
jurisdiction, § 4:39
Rectification—see correction
Registrability, § 4:4 to § 4:17
appeals, § 4:17
assignment, § 4:6
copyright, relation to, § 4:7 to § 4:15
descriptions, § 4:15
designs, § 4:7
drawings, § 4:15
examination, § 4:16
licence, § 4:6
morality, § 4:14
non-functional, § 4:10
originality, § 4:11
proprietor, § 4:5
published within year, whether, § 4:14
standing, § 4:5, § 4:6
subject matter, § 4:7 to § 4:15
Remedies, § 4:40 to § 4:51
accounting of profits, § 4:48
amendment of the Register, § 4:40
calculation of damages, § 4:46
costs, § 4:50
damages, generally, § 4:46, § 4:47, § 19:31 to § 19:33
delivery up, § 4:49
destruction, § 4:49
election, § 4:45
entitlement to damages, § 19:33
injunctions, generally, § 4:42, § 4:44, § 17:35, § 17:36
interest, § 4:51
preservation, § 4:41
profits, § 4:48, § 19:32
punitive damages, § 4:47
quantification, § 19:31
royalty, § 19:32
sales, § 19:32
Resolution techniques, § 4:3

INFORMATION TECHNOLOGY

See COMPUTER-RELATED DISPUTES

INFRINGEMENT

See also COPYRIGHT; INDUSTRIAL DESIGNS; PATENTS; PHARMACEUTICALS

INJUNCTIONS

See also ANTON PILLER ORDERS

Generally, § 17:1 *et seq.*

Competition law, § 6:28

Confidential information and trade

secrets, § 17:41, § 17:42

general principles, § 17:41

judicial history and trends, § 17:42

Copyright, availability of injunctive relief, § 17:31, § 17:32

general principles, § 17:31

judicial history and trends, § 17:32

wide injunction, § 3:29

Copyrights, § 3:27

Industrial designs, § 4:42, § 4:44, § 17:35, § 17:36

general principles, § 17:35

judicial history and trends, § 17:36

Information technology, § 17:43, § 17:44

general principles, § 17:43

judicial history and trends, § 17:44

Integrated circuit topographies, § 17:39, § 17:40

general principles, § 17:39

judicial history and trends, § 17:40

Interest-related, § 24:6

Legal tests, § 17:5 to § 17:22

balance of convenience, § 17:13, § 17:14

general principles, § 17:13

judicial history and trends, § 17:14

delivery up and destruction, § 17:19, § 17:20

general principles, § 17:19

judicial history and trends, § 17:20

general principles, § 17:5

irreparable harm, § 17:11, § 17:12

general principles, § 17:11

judicial history and trends, § 17:12

judicial history and trends, § 17:8

lifting of interlocutory injunctions and staying of permanent injunctions, § 17:17, § 17:18

general principles, § 17:17

INJUNCTIONS—Cont'd

- Legal tests, § 17:5 to § 17:22—Cont'd
 - lifting of interlocutory injunctions and staying of permanent injunctions, § 17:17, § 17:18—Cont'd
 - judicial history and trends, § 17:18
- Overview, § 17:1 to § 17:4
 - general principles, § 17:2
 - international obligations, § 17:4
 - judicial history and trends, § 17:3
 - preface, § 17:1
- Patents, availability of injunctive relief, § 1:77, § 17:23, § 17:24
 - general principles, § 17:23
 - judicial history and trends, § 17:24
- Pharmaceutical patents/patented medicines (NOC Regulations), § 7:2 to § 7:18, § 17:25, § 17:26
 - general principles, § 17:25
 - judicial history and trends, § 17:26
- Plant breeders' rights, § 17:37, § 17:38
 - general principles, § 17:37
 - judicial history and trends, § 17:38
- Prima facie case/serious issue, § 17:9, § 17:10
 - general principles, § 17:9
 - judicial history and trends, § 17:10
 - special defences to an injunction, § 17:21, § 17:22
 - general principles, § 17:21
 - judicial history and trends, § 17:22
 - undertaking to pay damages, § 17:15, § 17:16
 - general principles, § 17:15
 - judicial history and trends, § 17:16
- Specific remedies under Copyright Act, § 17:33, § 17:34
 - general principles, § 17:33
 - judicial history and trends, § 17:34
- Specific remedies under Trademarks Act, § 17:29, § 17:30
 - general principles, § 17:29
 - judicial history and trends, § 17:30
- Trademarks, § 2:24
- Trademarks, availability of injunctive relief, § 17:27, § 17:28
 - general principles, § 17:27
 - judicial history and trends, § 17:28

INSPECTION

- See PATENTS, remedies

INTEGRATED CIRCUIT

TOPOGRAPHIES

- Generally, § 17:39, § 17:40
- Limitation periods, § 22:7

INTEREST

- Generally, § 24:1 et seq.
- Federal Courts Act, § 24:2
- Industrial design disputes, § 4:51
- Patent disputes, § 1:83
- Post-judgment, § 24:13
- Pre-judgment, § 24:1
 - pleading, § 24:12
- Profits, deducting from, § 20:26, § 20:41 to § 20:48
 - compound interest, § 20:47
 - rate of interest, § 20:47
 - simple interest, § 20:47
- Provincial law, § 24:3 to § 24:11
 - compound interest, § 24:11
 - exclusions, § 24:5
 - interlocutory injunctions, § 24:6
 - judicial discretion, § 24:9
 - legislative scheme, § 24:4
 - Quebec, § 24:10
 - rate, § 24:8
 - time, § 24:7
 - undertakings, § 24:6

INTERLOCUTORY INJUNCTIONS

- See INJUNCTIONS

INTERLOCUTORY MOTIONS

- See LITIGATION PROCESS

INTERNET TRADEMARK DISPUTES

- See also CDRP; DOMAIN NAMES DISPUTE RESOLUTION
- Basis for complaint and eligibility, § 8:1 to § 8:179
 - bad faith: attracting internet users, § 8:107 to § 8:113
 - attempt to attract users, § 8:109
 - commercial gain, § 8:110
 - confusion, § 8:111
 - disclaimer, § 8:113
 - intention, § 8:108
 - bad faith: blocking complaint, § 8:96 to § 8:101
 - pattern, § 8:99
 - purpose, § 8:97
 - variations, § 8:98

INTERNET TRADEMARK DISPUTES

—Cont'd

Basis for complaint and eligibility, § 8:1 to § 8:179—Cont'd

- bad faith: blocking complaint, § 8:96 to § 8:101—Cont'd
- WHOIS searching, § 8:100
- bad faith: disrupting business of complainant, § 8:102 to § 8:106
- competition, § 8:104
- disruption, § 8:105
- parking, § 8:106
- purpose, § 8:103
- bad faith: other factors, § 8:119 to § 8:136
 - breach of agreement, § 8:123
 - cyberflight, § 8:133
 - defamatory content, § 8:130
 - depreciation of complainant's goodwill, § 8:129
 - disobeyance of court order, § 8:135
 - failed negotiation of agreement, § 8:122
 - failure to comply with CPR, § 8:128
 - failure to respond, § 8:121
 - generic name speculation, § 8:124
 - illegal activity, § 8:134
 - impersonation, § 8:131
 - lapsed registration, § 8:125
 - miscellaneous, § 8:136
 - phishing, § 8:132
 - prior knowledge, § 8:120
 - theft and access prevention mechanisms, § 8:127
 - use of proxy service, § 8:126
- bad faith: other factors in 2000 draft, § 8:114 to § 8:118
 - misleading information, § 8:118
 - multiple registrations, § 8:117
 - no intention to use, § 8:115
 - offer to transfer, § 8:116
- bad faith: overview, § 8:81 to § 8:136
 - burden of proof, § 8:86
 - influence of other factors, § 8:89
 - intention, § 8:87
 - knowledge of complainant's mark, § 8:88
 - original definition, § 8:82
 - registration, § 8:83
 - time, § 8:84
 - whose bad faith, § 8:85

INTERNET TRADEMARK DISPUTES

—Cont'd

Basis for complaint and eligibility, § 8:1 to § 8:179—Cont'd

- bad faith: purpose of transfer, § 8:90 to § 8:95
 - competition, § 8:94
 - excess costs, § 8:95
 - legitimate offer, § 8:93
 - offer of transfer, § 8:92
 - purpose, § 8:91
- basis for complaint, § 8:14
- confusing similarity: decisions, § 8:68 to § 8:73
 - decisions applying confusion test, § 8:69
 - decisions considering dual analysis, § 8:72
 - decisions expressly applying resemblance test, § 8:70
 - decisions implicitly applying resemblance test, § 8:71
 - split decision, § 8:73
- confusing similarity: overview, § 8:67 to § 8:80
- confusing similarity: resemblance, § 8:74 to § 8:77
 - application of resemblance test, § 8:75
 - consequences of resemblance test, § 8:76
 - examples of resemblance, § 8:77
 - resemblance as test, § 8:74
- confusing similarity: “. . .sucks” and related names, § 8:78 to § 8:80
- “sex” domain names, § 8:80
- confusing similarity with mark of complainant, § 8:17
- eligible complainant, § 8:11 to § 8:15
 - Canadian presence requirements, § 8:12
 - compliance, § 8:15
 - exclusions, § 8:14
 - relation to registered trademark, § 8:13
- introduction, § 8:2, § 8:5
 - amendment, § 8:5
 - differences from UDRP, § 8:3
- legitimate interest: descriptive name, § 8:152 to § 8:155
 - descriptive name, § 8:152

INTERNET TRADEMARK DISPUTES

—Cont'd

- Basis for complaint and eligibility, § 8:1 to § 8:179—Cont'd
 - legitimate interest: descriptive name, § 8:152 to § 8:155—Cont'd
 - good faith, § 8:155
 - preparations, § 8:154
 - use, § 8:153
 - legitimate interest: generic name, § 8:156 to § 8:160
 - generic name, § 8:157
 - good faith, § 8:160
 - preparations, § 8:159
 - use, § 8:158
 - legitimate interest: geographical location, § 8:170
 - legitimate interest: name, § 8:168, § 8:169
 - name, § 8:169
 - legitimate interest: non-commercial activity, § 8:161 to § 8:167
 - criticism, review or news reporting, § 8:165
 - fan site, § 8:167
 - good faith, § 8:163
 - non-commercial activity, § 8:165
 - parody site, § 8:166
 - use, § 8:162
 - legitimate interest: other factors, § 8:177 to § 8:179
 - disclaimer, § 8:178
 - parallel challenge to complainant's mark, § 8:179
 - legitimate interest: other factors in draft, § 8:171 to § 8:176
 - accurate description, § 8:172
 - comparative advertising, § 8:175
 - demonstrable preparations, § 8:173
 - good faith belief, § 8:176
 - third party uses, § 8:174
 - legitimate interest: overview, § 8:137 to § 8:179
 - absence of legitimate interest, § 8:140
 - burden of proof, § 8:139
 - influence of other factors, § 8:141
 - original definition, § 8:138
 - whose legitimate interest, § 8:142

INTERNET TRADEMARK DISPUTES

—Cont'd

- Basis for complaint and eligibility, § 8:1 to § 8:179—Cont'd
 - legitimate interest: use as mark, § 8:144 to § 8:150
 - distributors and licensees, § 8:150
 - good faith, § 8:149
 - mark, § 8:145
 - preparations, § 8:148
 - rights, § 8:146
 - use, § 8:147
 - mark: certification mark, § 8:28 to § 8:31
 - licensee, § 8:31
 - licensor, § 8:30
 - successors, § 8:29
 - mark: exclusions, § 8:37 to § 8:39
 - names of individuals, § 8:38
 - mark: overview, § 8:18 to § 8:39
 - mark: prohibited mark, § 8:33 to § 8:37
 - public authority, § 8:35
 - qualifying marks, § 8:34
 - use, § 8:36
 - mark: registered trademark, § 8:32
 - mark: trademark or trade name used in Canada, § 8:19 to § 8:27
 - licensee, § 8:26
 - licensor, § 8:25
 - non-qualifying marks, § 8:27
 - purpose of distinguishing, § 8:23
 - successors, § 8:24
 - trademark, § 8:20
 - trade name, § 8:21
 - use, § 8:22
 - purpose and scope, § 8:6 to § 8:10
 - bad faith registration, § 8:8
 - obligations of parties, § 8:9
 - purpose of CDRP, § 8:6
 - scope of CDRP, § 8:7
 - rights: overview, § 8:55 to § 8:66
 - date of registration, § 8:56
 - rights: prohibited marks, § 8:64 to § 8:66
 - rights: trademark, trade name or certification mark used in Canada, § 8:57 to § 8:60
 - licensees and licensors, § 8:59
 - municipal names, § 8:60
 - successors, § 8:58

INTERNET TRADEMARK DISPUTES

—Cont'd

Basis for complaint and eligibility, § 8:1 to § 8:179—Cont'd
rights: trademarks registered in Canada, § 8:61 to § 8:63
licensees and licensors, § 8:63
successors, § 8:62
use: business, § 8:51
use: non-commercial activity, § 8:52, § 8:53
non-commercial, § 8:53
use: overview, § 8:38
use: services, § 8:43 to § 8:50
cross border issues, § 8:44
performance, § 8:42
services: cross border online issue, § 8:45
CDRP decisions, § 8:50
computer services, § 8:49
entertainment services, § 8:49
hospitality services, § 8:47
information services, § 8:48
retail services, § 8:46
telecommunications services, § 8:49
use: wares, § 8:41, § 8:42
cross border issues, § 8:42
use: website, § 8:54
Procedures and remedies, § 8:180 to § 8:254
arbitration legislation, § 8:181
communication of complaint, § 8:208
communications, § 8:185
complaint, § 8:200 to § 8:206
additional information, § 8:204
amendment, § 8:206
certification, § 8:205
complainant information, § 8:202
delay, § 8:201
description of basis for, § 8:203
consolidation of proceedings, § 8:227
court proceedings, § 8:251, § 8:254
judicial review, § 8:253
jurisdiction, § 8:252
decisions, § 8:240 to § 8:243
amendment, § 8:241
communication, § 8:242
publication, § 8:243

INTERNET TRADEMARK DISPUTES

—Cont'd

Procedures and remedies, § 8:180 to § 8:254—Cont'd
evidence, § 8:235 to § 8:238
balance of probabilities, § 8:236
evidentiary principles, § 8:237
negotiations, § 8:238
fees, § 8:183
further submissions, § 8:229 to § 8:232
by complainant as of right, § 8:230
on request by panel, § 8:231
with leave of panel, § 8:232
initiation of proceeding, § 8:189 to § 8:191
language, § 8:184
law, § 8:239
panel: appointment, § 8:219 to § 8:226
appointment, § 8:222
chair, § 8:223
conversion to single member panel, § 8:221
qualification of panellists, § 8:220
three member panel, § 8:219
panel: powers and obligations, § 8:224 to § 8:226
communication, § 8:225
conduct of proceeding, § 8:226
impartiality, § 8:224
parallel proceedings, § 8:234
parties, § 8:192 to § 8:199
complainant, § 8:193
identification of registrant, § 8:195 to § 8:199
CIRA WHOIS policy, § 8:195
contact procedure, § 8:197
exceptions to WHOIS policy, § 8:196
request for disclosure, § 8:199
request for list of domain names, § 8:198
registrant, § 8:194
pre-decision termination, § 8:232
provider, § 8:182
provider review of complaint, § 8:207
provider review of response, § 8:217, § 8:218
communication of response, § 8:217
provider review, § 8:218
refiling, § 8:250

INTERNET TRADEMARK DISPUTES

—Cont'd

- Procedures and remedies, § 8:180 to § 8:254—Cont'd
 - remedies, § 8:247, § 8:248
 - transfer to nominee, § 8:248
 - reply, § 8:228
 - response, § 8:209 to § 8:216
 - additional information, § 8:213
 - amendment, § 8:216
 - certification, § 8:215
 - claim for costs, § 8:214
 - extension of time, § 8:210
 - registrant information, § 8:211
 - response to basis of complaint, § 8:212
 - reverse hijacking, § 8:244 to § 8:246
 - costs, § 8:246
 - unfairly and without colour of right, § 8:245
 - termination of proceeding, § 8:249
 - time, § 8:186 to § 8:188
 - computation, § 8:187
 - extension of time, § 8:188

IRREPARABLE HARM

- See also INJUNCTIONS
- Generally, § 17:11 to § 17:54
- Academic criticisms, § 17:50
- “Clear and not speculative” standard, § 17:48
- Federal Court threshold, § 17:47
- International landscape, § 17:51
 - Australia, § 17:54
 - United Kingdom, § 17:52
 - United States, § 17:53
 - observations and reflections, § 17:45
 - origins of, § 17:46
 - Quebec, § 17:49

LICENSING

- Generally, § 16:1 et seq.
- Computer-related disputes—see COMPUTER-RELATED DISPUTES
- Drafting a license agreement, § 16:41
- Frand, § 16:42 to § 16:49
- Intellectual property disputes, § 16:1 to § 16:22
 - bankruptcy, impact of, § 16:21, § 16:22
 - contract law, § 16:3 to § 16:22
 - acceptance, § 16:5

LICENSING—Cont'd

- Intellectual property disputes, § 16:1 to § 16:22—Cont'd
 - contract law, § 16:3 to § 16:22
 - Cont'd
 - assignment of IP licenses, § 16:20
 - consideration, § 16:4
 - direct damages, § 16:9
 - good faith, duty of, § 16:10
 - liability, limitation of, § 16:8
 - offer, § 16:5
 - parol evidence rule, § 16:6
 - sole and exclusive rights, § 16:18
 - sublicense, § 16:19
 - termination and waiver of rights, § 16:7
 - third party infringers, § 16:11
 - copyright, § 16:15
 - industrial design, § 16:13
 - integrated circuit topographies, § 16:16
 - negotiation, § 16:2
 - patent, § 16:12
 - plant breeders' rights, § 16:17
 - trademark, § 16:14
- Issues related to, § 16:34 to § 16:40
 - confidential information, § 16:40
 - copyright, § 16:39
 - improvements, § 16:36
 - license back, § 16:37
 - patent rights, definition of, § 16:34, § 16:35
 - trademark licenses, § 16:38
- License agreements, provisions of, § 16:23 to § 16:33
 - enforcement guidelines, § 16:27
 - first sale doctrine, § 16:26
 - grant of rights, § 16:23
 - marking, § 16:28
 - copyright, § 16:30
 - industrial design, § 16:32
 - integrated circuit topographies, § 16:33
 - patent, § 16:31
 - trademark, § 16:29
 - patent rights exhaustion, § 16:26
 - representations, § 16:25
 - termination, § 16:24
 - warranties, § 16:25
- Patent rights, definition of, § 16:34, § 16:35

LIMITATION PERIODS

- Generally, § 22:1 et seq.
- Factors, § 22:16 to § 22:26
 - amended periods, § 22:18
 - amending pleading, § 22:25
 - conflict of laws, § 22:20
 - delay, § 22:23
 - discoverability, § 22:19
 - parties, § 22:21
 - pleading generally, § 22:24
 - promissory estoppel, § 22:22
 - statutory interpretation, § 22:17
 - tolling agreements, § 22:26
- Sources, § 22:2 to § 22:15
 - Competition Act, § 22:13
 - copyrights, § 3:23, § 3:47, § 22:4
 - crown liability, § 22:12
 - Federal Courts Act, § 22:14
 - industrial designs, § 22:6
 - integrated circuit topographies, § 22:7
 - Olympic and Paralympic Marks Act, § 22:10
 - patents, § 22:5
 - plant breeders' rights, § 22:8
 - provincial statutes, § 22:15
 - Time Limits and Other Periods Act (COVID-19), § 22:14.50
 - trademarks, § 22:9
 - trade secrets, § 5:59

LITIGATION, BEST PRACTICES

- See also LITIGATION PROCESS
- case management and scheduling, § 26:9
- discussion, § 26:27
- documentary production, § 26:13
- early motions, § 26:11
- evidence for trial, § 26:23
- expert evidence, § 26:19
- Federal Court, rules and notices, § 26:3, § 26:4
- foundations, § 26:2
- judicial process, interacting with Court Officers, § 26:7
- mentors, § 26:6
- oral discovery, § 26:15
- overview, § 26:1
- pleadings, § 26:11
- preparing witnesses, § 26:23
- pre-trial conferences and preparations, § 26:21

LITIGATION, BEST PRACTICES

—Cont'd

See also LITIGATION PROCESS

—Cont'd

- refusals motions, § 26:17
- rules of professional conduct, provincial, § 26:5
- trial, § 26:25
- troubleshooting, appeal, § 26:28
- troubleshooting, trial, § 26:26

LITIGATION, INTELLECTUAL PROPERTY PLEADINGS

- Declaration of non-infringement/impeachment, patent
 - generally, § 12:66 to § 12:91
- claim
 - generally, § 12:66 to § 12:73
 - business and technology, § 12:70
 - defendant's patent, § 12:69
 - general principles, § 12:66
 - invalidity, § 12:72
 - miscellaneous, § 12:73
 - non-infringement, § 12:71
 - parties, § 12:68
 - prayer for relief, § 12:67
 - standing, § 12:70
- counterclaim
 - generally, § 12:81 to § 12:87
 - general principles, § 12:81
 - infringement, § 12:85
 - miscellaneous, § 12:87
 - parties, § 12:83
 - quantum, relief, § 12:86
 - relief, § 12:82, § 12:86
 - standing, § 12:84
- defence
 - generally, § 12:74 to § 12:80
 - admissions, § 12:75
 - assertions of no knowledge, § 12:75
 - defendant's patent rights, § 12:77
 - denials, § 12:75
 - general principles, § 12:74
 - infringement, § 12:79
 - miscellaneous, § 12:80
 - parties, § 12:76
 - standing, § 12:78
- reply
 - generally, § 12:88 to § 12:89
 - admissions, § 12:88
 - assertions of no knowledge, § 12:88

**LITIGATION, INTELLECTUAL
PROPERTY PLEADINGS—Cont'd**

Declaration of non-infringement/
impeachment, patent—Cont'd
reply—Cont'd
denials, § 12:88
reply and miscellaneous, § 12:89
reply and defence to counterclaim,
§ 12:90
reply to defence to counterclaim,
§ 12:91
Expungement, trademark, § 12:118
Infringement, copyright and moral right
generally, § 12:119 to § 12:156
application, copyright and moral right
infringement, § 12:155
application, TPM circumvention,
§ 12:155
claim
generally, § 12:119 to § 12:127
copyright, § 12:122
general principles, § 12:119
infringing acts, § 12:123
miscellaneous, § 12:127
moral rights, § 12:124
parties, § 12:121
quantum, § 12:126
relief, § 12:120, § 12:126
standing, § 12:122
technological protection measures,
§ 12:125
counterclaim
generally, § 12:145 to § 12:151
business and activities, § 12:148
general principles, § 12:145
invalidity, § 12:150
miscellaneous, § 12:151
non-infringement, § 12:149
parties, § 12:147
prayer for relief, § 12:146
defence
generally, § 12:128 to § 12:144
admissions, § 12:129
assertions of no knowledge, § 12:129
business and activities, § 12:131
defences, no copyright infringement,
§ 12:137 to § 12:139
defences, other, § 12:140
denial of copyright ownership,
§ 12:136

**LITIGATION, INTELLECTUAL
PROPERTY PLEADINGS—Cont'd**

Infringement, copyright and moral right
—Cont'd
defence—Cont'd
denial of subsistence/validity of
copyright, § 12:132
denials, § 12:129
disentitlement to relief, § 12:142
general principles, § 12:128
limitation period, § 12:143
miscellaneous, § 12:144
moral rights, unenforceability,
§ 12:141
parties, § 12:130
reply, § 12:152
reply and defence to counterclaim,
§ 12:153
reply to defence to counterclaim,
§ 12:154
Infringement, patent
generally, § 12:22 to § 12:65
claim
generally, § 12:22 to § 12:28
defendant's infringing activities,
§ 12:26
general principles, § 12:22
miscellaneous, § 12:28
parties, § 12:24
plaintiff's patent rights and standing,
§ 12:25
prayer for relief, § 12:23
relief and quantum sought, § 12:27
counterclaim
generally, § 12:51 to § 12:58
business and technology, § 12:54
general, § 12:51
invalidity of patent, § 12:57
miscellaneous, § 12:58
non-infringement, § 12:56
parties, § 12:53
prayer for relief, § 12:52
statements, false and misleading,
§ 12:55
defence
generally, § 12:29 to § 12:50
admissions, denials, § 12:30
assertions of no knowledge of allega-
tions made in statement of
claim, § 12:30
defendant's business, § 12:32

**LITIGATION, INTELLECTUAL
PROPERTY PLEADINGS—Cont'd**

Infringement, patent—Cont'd
 defence—Cont'd
 disentitlement to relief, § 12:48
 general principles, § 12:29
 invalidity, § 12:35 to § 12:46
 limitation periods, § 12:49
 miscellaneous, § 12:50
 non-infringement, § 12:34
 parties, § 12:31
 patent right, § 12:33
 standing, plaintiff, § 12:33
 unenforceable, patent, § 12:47
 reply
 generally, § 12:59 to § 12:60
 admissions, § 12:59
 assertions of no knowledge
 generally, § 12:59
 denials, § 12:59
 reply and miscellaneous, § 12:60
 reply and defence to counterclaim
 generally, § 12:61 to § 12:65
 admissions, § 12:61
 assertions of no knowledge, § 12:61
 defence to counterclaim, § 12:63
 denials, § 12:61
 miscellaneous, § 12:64
 reply, § 12:62
 Infringement, trademark and passing off
 generally, § 12:92 to § 12:117
 application, passing off, § 12:117
 application, trademark infringement
 and passing off, § 12:117
 claim
 generally, § 12:92 to § 12:97
 general principles, § 12:92
 infringing acts, § 12:96
 miscellaneous, § 12:97
 parties, § 12:94
 relief, § 12:93, § 12:96
 standing, § 12:95
 counterclaim
 generally, § 12:106 to § 12:110
 invalidity, § 12:109
 miscellaneous, § 12:110
 parties, § 12:108
 prayer for relief, § 12:107
 defence
 generally, § 12:98 to § 12:105

**LITIGATION, INTELLECTUAL
PROPERTY PLEADINGS—Cont'd**

Infringement, trademark and passing off
 —Cont'd
 defence—Cont'd
 admission, § 12:99
 assertions of no knowledge, § 12:99
 defence, non-infringement, § 12:102
 defence, trademark invalidity,
 § 12:103
 delay, § 12:101
 denials, § 12:99
 disentitlement to relief, § 12:100
 general principles, § 12:98
 limitation periods, § 12:101
 miscellaneous, § 12:105
 remedies, entitlement, § 12:104
 reply
 generally, § 12:111 to § 12:112
 admissions, § 12:111
 assertions of no knowledge, § 12:111
 denials, § 12:111
 reply and miscellaneous, § 12:112
 reply and defence to counterclaim
 generally, § 12:113 to § 12:115
 admissions, § 12:113
 assertions of no knowledge, § 12:113
 denials, § 12:113
 miscellaneous, § 12:115
 reply to defence to counterclaim,
 § 12:116
 Pleadings, IP
 generally, § 12:1 to § 12:9
 amending pleadings
 generally, § 12:8, § 12:9
 with leave, § 12:9
 without leave, § 12:8
 form and content of pleadings, § 12:2
 to § 12:12:7
 motions, pleadings
 generally, § 12:10 to § 12:18
 default judgment, § 12:18
 motion strike, § 12:11 to § 12:17
 objection to the service of a claim,
 § 12:10
 patent, trademark and copyright litigation
 generally, § 12:19 to § 12:21
 copyright, § 12:18
 patent, § 12:19

LITIGATION, INTELLECTUAL

PROPERTY PLEADINGS—Cont'd

- Pleadings, IP—Cont'd
 - patent, trademark and copyright litigation—Cont'd
 - trademark, § 12:20

LITIGATION PROCESS

See also APPEALS; DISCOVERY; EXAMINATION FOR DISCOVERY; PRE-TRIAL LITIGATION PROCEDURES; SIMPLIFIED PROCEEDINGS

- Appeal procedures, § 10:138 to § 10:180
 - appeal books, memoranda and books of authorities, § 10:162 to § 10:171
 - appeal books, § 10:163
 - contents, § 10:164
 - material in possession of tribunal, § 10:166
 - ordering transcripts and exhibits, § 10:165
 - service and filing, § 10:167
 - book of authorities, § 10:169
 - general principles, § 10:162
 - interlocutory appeals—Ontario courts, § 10:171
 - memorandum, § 10:168
 - prothonotary orders and referee reports, § 10:170
- commencement, § 10:152 to § 10:161
 - appearance or cross-appeal, § 10:158
 - consent judgments, § 10:159
 - general principles, § 10:152
 - interlocutory appeals—Ontario courts, § 10:161
 - notice of appeal, § 10:156
 - prothonotary orders and referee reports, § 10:160
 - respondents, § 10:157
 - timing, § 10:153 to § 10:155
 - appearance or cross-appeal, § 10:155
 - filing notice of appeal, § 10:153
 - service, § 10:154
- hearing procedure, § 10:172 to § 10:175
 - general principles, § 10:172
 - new evidence on appeal, § 10:174
 - prothonotary orders and referee reports, § 10:175
 - requisition of hearing, § 10:173

LITIGATION PROCESS—Cont'd

- Appeal procedures, § 10:138 to § 10:180
 - Cont'd
 - right to appeal, § 10:138 to § 10:145
 - appeals with leave, § 10:143 to § 10:145
 - acts of Parliament, § 10:144
 - appeal to Supreme Court of Canada, § 10:145
 - Ontario appeals, § 10:143
 - appeals without leave, § 10:139
 - judgments of trial division, § 10:140
 - prothonotary orders and referee reports, § 10:142
 - to Federal Court under acts of Parliament, § 10:141
 - general principles, § 10:152
 - standard of review, § 10:146 to § 10:151
 - appeal from order of Prothonotary/Master, § 10:151
 - discretionary decisions, § 10:149
 - evidentiary rulings, § 10:150
 - expert evidence, § 13:35
 - general principles, § 10:146
 - questions of fact, § 10:148
 - questions of law, § 10:147
 - stays pending appeal, § 10:176 to § 10:180
 - availability, § 10:177
 - generally, § 10:178
 - interlocutory orders, § 10:179
 - general principles, § 10:176
 - procedure, § 10:180
- Best practices, see LITIGATION, BEST PRACTICES
- Litigation process, § 10:1 to § 10:9
 - parties, § 10:1 to § 10:5
 - bifurcation of proceedings, § 10:4.50
 - class actions, § 10:5
 - consolidation of proceedings, § 10:4
 - general principles, § 10:1
 - intervention, interpleader, § 10:3
 - joinder, misjoinder, addition or substitution, § 10:2
 - service of proceedings, § 10:6 to § 10:9
 - general principles, § 10:6
 - service outside jurisdiction, § 10:8, § 10:9
 - manner of service, § 10:9

LITIGATION PROCESS—Cont'd

Litigation process, § 10:1 to § 10:9
 —Cont'd
 service of proceedings, § 10:6 to § 10:9
 —Cont'd
 service outside jurisdiction, § 10:8,
 § 10:9—Cont'd
 where allowed, § 10:8
 service within jurisdiction, § 10:7
 Pre-trial procedures, § 10:10 to § 10:110
 affidavit evidence, § 10:27 to § 10:33
 content, § 10:29
 cross-examination, § 10:33
 form, § 10:28
 general principles, § 10:27
 on a motion, § 10:31
 'principled' approach, § 10:30
 solicitor's affidavit, § 10:32
 commission evidence, § 10:60 to
 § 10:63
 availability, § 10:61
 general principles, § 10:60
 procedure, § 10:62
 use of, § 10:63
 confidentiality orders, § 10:34 to
 § 10:38
 access to confidential documents,
 § 10:38
 availability, § 10:35 to § 10:37
 order of confidentiality, § 10:35
 protective agreements, § 10:36.50
 protective order, § 10:36
 general principles, § 10:34
 discovery, § 10:39
 documentary, § 10:41 to § 10:47
 confidential documents, § 10:38
 deponent, § 10:45
 form of affidavit of documents,
 § 10:42
 inspection, § 10:43
 other matters, § 10:47
 relevant documents, § 10:44
 simplified action, § 10:46
 timing, § 10:41
 general principles, § 10:40
 oral examination, § 10:48 to § 10:59
 assignors, § 10:51
 direction to attend, § 10:59
 general, § 10:48
 non-parties, § 10:52

LITIGATION PROCESS—Cont'd

Pre-trial procedures, § 10:10 to § 10:110
 —Cont'd
 discovery, § 10:39—Cont'd
 oral examination, § 10:48 to § 10:59
 —Cont'd
 other matters, § 10:56
 persons outside Canada, § 10:58
 relevance, § 10:54
 representative, § 10:49
 scope, § 10:53
 supplemental discovery, § 10:57
 timing, § 10:50
 interlocutory motions, § 10:18 to
 § 10:26
 general principles, § 10:18
 procedure, § 10:19 to § 10:26
 affidavit evidence, § 10:21
 motion record, § 10:22
 motions in writing, § 10:25
 notice of motion, § 10:19
 time and place, § 10:20
 timing, § 10:23
 offers to settle, § 10:64 to § 10:66
 consequences, § 10:66
 general principles, § 10:64
 procedure, § 10:65
 pleadings, § 12:1 to § 12:9
 amendment, § 12:8, § 12:9
 with leave, § 12:9
 without leave, § 12:8
 form and content, § 12:2
 material facts, § 12:3
 other matters, § 12:7
 particulars, § 12:4
 points of law, § 12:3
 statements of claim, § 12:5
 subsequent pleadings, § 12:6
 general principles, § 12:1
 timing of, § 10:23
 preliminary relief before trial, § 10:67
 to § 10:94
 Anton Piller Orders, § 10:76
 default judgment, § 10:83 to § 10:85
 alternative service of statement of
 claim, § 10:85
 availability, § 10:83
 setting aside, § 10:84
 discontinuance, § 10:87
 dismissal for delay, § 10:86

LITIGATION PROCESS—Cont'd

Pre-trial procedures, § 10:10 to § 10:110
—Cont'd
preliminary relief before trial, § 10:67
to § 10:94—Cont'd
general principles, § 10:67
interim and interlocutory injunctions,
§ 10:68 to § 10:75
evidence, § 10:73
interim, § 10:69
interlocutory, § 10:70
mareva, § 10:75
quia timet, § 10:71
test, § 10:72
undertaking, § 10:74
questions of law and admissibility,
§ 10:92 to § 10:94
availability, § 10:93
procedure, § 10:94
striking out pleadings, § 10:77 to
§ 10:82
abuse of process, § 10:82
immaterial or irrelevant, § 10:79
no reasonable cause of action or
defence, § 10:78
prejudice or delay, § 10:81
scandalous, frivolous or vexatious,
§ 10:80
summary judgment, § 10:88 to
§ 10:91
availability, § 10:89
evidence, § 10:90
timing, § 10:91
pre-trial conferences, § 10:101 to
§ 10:105
availability, § 10:102
evidence, § 10:105
general principles, § 10:101
procedures, § 10:103
scope of, § 10:104
pre-trial evidentiary considerations,
§ 10:106 to § 10:110
demonstrative evidence, § 10:109
expert evidence, § 10:108
general principles, § 10:106
notice to admit, § 10:107
science and technology primers,
§ 10:110
references, § 10:14 to § 10:17
availability and scope, § 10:15
conduct of, § 10:16

LITIGATION PROCESS—Cont'd

Pre-trial procedures, § 10:10 to § 10:110
—Cont'd
references, § 10:14 to § 10:17—Cont'd
general principles, § 10:14
report, § 10:17
security for costs, § 10:11 to § 10:13
amount, § 10:13
availability, § 10:12
general principles, § 10:11
specially managed proceedings,
§ 10:95 to § 10:100
Federal Court, § 10:96, § 10:97
powers of case management
judge, § 10:97
procedure, § 10:96
general principles, § 10:95
Ontario provincial courts, § 10:98
powers of case management judge
or Master, § 10:100
procedure, § 10:99
Simplified proceedings, § 10:111 to
§ 10:137
applications, § 10:111 to § 10:129
application vs. action or appeal,
§ 10:112 to § 10:115
judicial review, § 10:113
proceeding under Act of Parlia-
ment, § 10:114
section 56 of Trademarks Act,
§ 10:115
general principles, § 10:111
procedure, § 10:116 to § 10:129
additional material, § 10:124
affidavit evidence, § 10:121
conversion to an action, § 10:129
cross-examination, § 10:122
notice of appearance, § 10:119
notice of application, § 10:117
oral testimony, § 10:127
parties' records, § 10:123
pre-hearing conference, § 10:126
references from a tribunal,
§ 10:128
request for material in possession
of tribunal, § 10:120
requisition for hearing date,
§ 10:125
respondents, § 10:118

LITIGATION PROCESS—Cont'd

- Simplified proceedings, § 10:111 to § 10:137—Cont'd
- simplified actions, § 10:130 to § 10:137
- availability, § 10:131
- general principles, § 10:130
- procedure, § 10:132
 - discovery, § 10:133
 - Federal Court trial, § 10:135
 - motions, § 10:134
 - Ontario—subsequent proceedings, § 10:137
 - Ontario—summary judgment or trial, § 10:136

MARKETING PRACTICES

- See also COMPETITION LAW, Competition Act overview
- Generally, § 6:17 to § 6:22

MEDIATION

- See ADR, mediation

MOTIONS

- See LITIGATION PROCESS

NEGOTIATION

- See ADR, control; ADR, procedure

OFFERS TO SETTLE

- See LITIGATION PROCESS

OPPOSITION

- Generally, § 2:6
- Advantages v disadvantages, § 2:68 to § 2:78
- Non-compliance, § 2:7
- Non-distinctiveness, § 2:11
- Non-entitlement, § 2:10
- Non-registrability, § 2:9
- Proposed use, § 2:12
- Resolution of, § 2:41 to § 2:122
 - abandonment, § 2:48
 - advertising, § 2:46
 - agreement, limiting, § 2:55
 - agreement, pre-registration, § 2:45
 - agreements, settlement, § 2:96 to § 2:122
 - alternative mark or slogan, § 2:63
 - application file history, § 2:56
 - assessment of case, § 2:41 to § 2:59
 - business, § 2:58

OPPOSITION—Cont'd

- Resolution of, § 2:41 to § 2:122—Cont'd
 - chain-of-title, § 2:51
 - coexistence conditions, § 2:102 to § 2:122
 - description, accuracy of, § 2:50
 - development of case, § 2:41 to § 2:59
 - enforcement, § 2:44
 - foreign registration, § 2:62
 - history of mark, § 2:43 to § 2:46
 - importance of mark, § 2:41
 - internal development of mark, § 2:43
 - judicial reviews, § 2:68 to § 2:78
 - legal basis, § 2:53 to § 2:59
 - licences, § 2:52
 - origin of mark, § 2:43
 - outcome, likelihood of, § 2:60 to § 2:67
 - packaging, § 2:46
 - plans, § 2:42
 - position, establishing, § 2:41 to § 2:52
 - priority, § 2:53, § 2:54
 - proposed use, § 2:61
 - protection, § 2:44
 - purchase of mark, § 2:43
 - registrations, other, § 2:57
 - restrictions on use, § 2:45
 - sales figures, § 2:46
 - settlement, § 2:79 to § 2:95
 - see also OPPOSITION, settlement
 - strength of case, § 2:60
 - use, § 2:43 to § 2:46, § 2:48, § 2:59
 - validity of registration, § 2:47
- Settlement, § 2:79 to § 2:95
 - agreement, § 2:96 to § 2:122
 - coexistence conditions, § 2:102 to § 2:122
 - effects of, § 2:82 to § 2:95
 - structure, § 2:96 to § 2:101
 - timing of approach, § 2:79 to § 2:81

PATENTABILITY

- See PATENTS

PATENTS

- Generally, § 1:1 et seq.
- Business methods disputes, § 9:24 to § 9:26
- Commissioner—see Patent Office
- Computer hardware disputes, § 9:21 to § 9:23

PATENTS—Cont'd

- Computer software disputes, § 9:21 to § 9:23
- Conflict, § 1:21 to § 1:24
 - effect of, § 1:24
 - general principles, § 1:21
 - procedure, § 1:23
 - standing, § 1:22
- Damages, § 19:9 to § 19:17
 - convoyed sales, § 19:12
 - entitlement, § 19:16
 - lost sales, § 19:11
 - non-infringing alternatives, § 19:15
 - post-issuance, § 19:10 to § 19:17
 - pre-issuance, § 19:9
 - price erosion, § 19:14
 - profits, § 19:11
 - punitive damages, § 19:17
 - royalty, § 19:13
 - sales, § 19:11, § 19:12
 - springboard, § 19:12
- Expert witnesses, § 13:16
- History of Patent Act, § 1:2
- Impeachment action, plaintiff's case, § 1:60 to § 1:68
 - discovery, § 1:68
 - general principles, § 1:60
 - jurisdiction, § 1:61
 - pleadings, § 1:64
 - grounds of invalidity, § 1:66
 - parties, § 1:65
 - relief sought, § 1:47
 - security for costs, § 1:63
 - standing, § 1:62
- Infringement, § 1:5
- Infringement action, defendant's case, § 1:40 to § 1:59
 - discovery, § 1:59
 - general principles, § 1:40
 - invalidity defences, § 1:48
 - ambiguity, § 1:53
 - anticipation, § 1:49
 - Old Act patents, § 1:49
 - covetous claiming, § 1:52
 - double patenting, § 1:51
 - inadequate disclosure, § 1:54
 - inutility, § 1:55
 - obviousness, § 1:50

PATENTS—Cont'd

- Infringement action, defendant's case, § 1:40 to § 1:59—Cont'd
 - invalidity defences, § 1:48—Cont'd
 - relevance of uncured deemed abandonment of application, § 1:58
 - unpatentable subject matter, § 1:56
 - untrue material allegations, additions and omissions, § 1:57
- jurisdiction, § 1:41
- pleadings, § 1:44
 - invalidity, § 1:46
 - non-infringement, § 1:45
 - plaintiff's disentitlement to remedies, § 1:47
- security for costs, § 1:43
- standing, § 1:42
- Infringement action, plaintiff's case, § 1:25 to § 1:36
 - bifurcation orders, § 1:34
 - disclaimers, § 1:36
 - discovery, § 1:33
 - jurisdiction, § 1:26
 - pleadings, § 1:28
 - defendant's infringing acts, § 1:31
 - parties, § 1:29
 - plaintiff's rights, § 1:30
 - remedies sought, § 1:32
 - reissue of patents, § 1:35
 - standing, § 1:27
- Injunctions, § 17:23, § 17:24
 - patented medicines, § 17:25, § 17:26
- Introduction, § 1:1
- Limitation periods, § 22:5
- Medicines, § 17:25, § 17:26
 - see also PHARMACEUTICALS
- Patentability, § 1:3
- Patent and claim construction, § 1:6
- Patent disputes, resolutions, § 1:10
- Patent disputes, resolution techniques, § 1:9
- Patent disputes, types of, § 1:4
- Patent office practice, § 1:11 to § 1:13
 - application process, § 1:12
 - judicial review of Commissioner's decisions, § 1:13
 - time to file patent applications, § 1:11
- Protests, § 1:14 to § 1:17
 - effect of, § 1:17

PATENTS—Cont'd

- Protests, § 1:14 to § 1:17—Cont'd
 - general principles, § 1:14
 - procedure, § 1:16
 - standing, § 1:15
- Re-examination, § 1:18 to § 1:20
 - general principles, § 1:18
 - procedure, § 1:20
 - standing, § 1:19
- Remedies, generally, § 1:8
- Remedies, other, § 1:69 to § 1:76
 - amendment of patent records, § 1:69
 - inspection, § 1:70 to § 1:72
 - general principles, § 1:70
 - judicial history and trends, § 1:72
 - procedure, § 1:71
 - preservation, § 1:73 to § 1:75
 - general principles, § 1:73
 - judicial history and trends, § 1:75
 - procedure, § 1:74
 - reasonable compensation, § 1:76
- Remedies common to intellectual property disputes, § 1:77 to § 1:83
 - accounting of profits, § 1:80
 - costs, § 1:82
 - damages, § 1:79
 - delivery-up and destruction, § 1:81
 - election, § 1:78
 - injunctions, § 1:82
 - interest, § 1:83
- Summary judgment, § 13:39
- Title disputes, § 1:37 to § 1:39
 - general principles, § 1:37
 - procedure, § 1:39
 - standing, § 1:38
- Trade secret disputes, relation to, § 5:18, § 5:63
- Trial, § 13:3
 - patented medicines notice of compliance trial, § 13:4
- Validity, § 1:7

PERMANENT INJUNCTIONS

See INJUNCTIONS

PHARMACEUTICALS

- Generally, § 7:1 et seq.
- Copyright disputes, § 7:28

PHARMACEUTICALS—Cont'd

- Nature of disputes, § 7:1 to § 7:18.50
- NOC Regulations, § 7:2 to § 7:18.50
 - appeals, interlocutory orders, § 7:18.50
 - commencing an action, § 7:14
 - confidentiality rules, § 7:13
 - general outline, § 7:3
 - no joinder or consolidation of proceedings, § 7:16
 - notice of allegation, § 7:10
 - notice of allegation—contents and associated documents, § 7:11
 - notice of allegation—patents not subject to, § 7:18
 - notice of allegation—request for inventor information and invention documents, § 7:12
 - notice of compliance, § 7:17
 - one opportunity to commence action, § 7:15
 - patent register—addressing listed patents, § 7:9.50
 - patent register—certificates of supplementary protection, § 7:6
 - patent register—contents of patent list, § 7:8
 - patent register—eligibility, § 7:4
 - patent register—Minister's Responsibilities, § 7:9
 - patent register—relevance of patents to SNDS, § 7:5
 - patent register—timing, § 7:7
 - patent disputes, § 7:1
- Remedies, § 7:29 to § 7:65
 - accounting for profits, § 7:50 to § 7:54
 - damages or accounting for profits, plaintiff's choice, § 7:52
 - NIA—non-infringing alternative, § 7:51
 - patent infringement remedies: damages, § 7:54
 - profits on profits, § 7:53
 - springboard profits, § 7:53.50
 - copyright remedies, § 7:55
 - damages, § 7:49
 - NOC Regulations—Section 8 damages, § 7:31
 - patent—remedies, § 7:29
 - patents—remedies under the NOC Regulations, § 7:30

PHARMACEUTICALS—Cont'd

- Remedies, § 7:29 to § 7:65—Cont'd
 - remedies in trade libel cases, § 7:64
 - Section 8 damages, when to claim, § 7:34
 - Section 8 intra vires; no claim for future losses under pre-2017 NOC Regulations, § 7:32
 - Section 8 scope of damages, § 7:35 to § 7:48
 - additional claims in provincial court, § 7:45
 - NOC Regulations—Remedies:
 - Mareva Injunction, § 7:43
 - NOC Regulations—Remedies:
 - Motion to Dismiss the Application, § 7:44
 - Pantoprazole—Apotex Inc. v. Takeda Canada Inc., § 7:37
 - Pregabalin—Teva Canada Ltd. v. Pfizer Canada Inc., § 7:38
 - proper commencement date, § 7:41
 - Ramipril—Apotex Inc. v. Sanofi-Aventis, § 7:36
 - Ramipril—Sanofi-Aventis Canada Inc. v. Teva Canada Ltd., § 7:35
 - Section 8—claims in provincial courts, § 7:42
 - Section 8—does infringement prevent claim?, § 7:40
 - Section 8—party that bears burden, § 7:39
 - trademarks—remedies, § 7:59 to § 7:63
 - injunctions—undertaking as to damages, § 7:61
 - passing off cases, § 7:60
 - trademark applications and oppositions, § 7:62, § 7:63
 - unjust enrichment or profits of the first person, no claims, § 7:33
- Trade libel disputes, § 7:27
- Trademark disputes, § 7:19 to § 7:26
 - expungement proceedings, § 7:26
 - licensing the appearance of a capsule, § 7:22
 - passing off, § 7:21
 - passing off v. infringement, § 7:24
 - product appearance, § 7:20
 - the name confound, § 7:23
 - trademark applications and opposition proceedings, § 7:25

PLANT BREEDERS' RIGHTS

- Generally, § 17:37, § 17:38
- Licensing, § 16:11
- Limitation periods, § 22:8

PLEADINGS

- See LITIGATION PROCESS

PRESERVATION

- See PATENTS, remedies

PRE-TRIAL LITIGATION PROCEDURES

- See also, APPEALS; DISCOVERY; EXAMINATION FOR DISCOVERY; LITIGATION PROCESS; SIMPLIFIED PROCEEDINGS
- Pre-trial procedures, § 10:10 to § 10:110
 - affidavit evidence, § 10:27 to § 10:33
 - content, § 10:29
 - cross-examination, § 10:33
 - form, § 10:28
 - general principles, § 10:27
 - solicitor's affidavit, § 10:32
 - commission evidence, § 10:60 to § 10:63
 - availability, § 10:61
 - general principles, § 10:60
 - procedure, § 10:62
 - use of, § 10:63
 - confidentiality orders, § 10:34 to § 10:38
 - access to confidential documents, § 10:38
 - availability, § 10:35 to § 10:37
 - general principles, § 10:34
 - discovery, § 10:39
 - documentary, § 10:41 to § 10:47
 - confidential documents, § 10:38
 - deponent, § 10:45
 - form of affidavit of documents, § 10:42
 - inspection, § 10:43
 - other matters, § 10:47
 - relevant documents, § 10:44
 - simplified action, § 10:46
 - timing, § 10:41
 - general principles, § 10:40
 - oral examination, § 10:48 to § 10:59
 - assignors, § 10:51
 - direction to attend, § 10:59

PRE-TRIAL LITIGATION

PROCEDURES—Cont'd

Pre-trial procedures, § 10:10 to § 10:110
—Cont'd

discovery, § 10:39—Cont'd

oral examination, § 10:48 to § 10:59
—Cont'd

general, § 10:48

non-parties, § 10:52

other matters, § 10:56

persons outside Canada, § 10:58

relevance, § 10:54

representative, § 10:49

scope, § 10:53

supplemental discovery, § 10:57

timing, § 10:50

interlocutory motions, § 10:18 to § 10:26

general principles, § 10:18

procedure, § 10:19 to § 10:26

affidavit evidence, § 10:21

motion record, § 10:22

motions in writing, § 10:25

notice of motion, § 10:19

time and place, § 10:20

timing, § 10:23

offers to settle, § 10:64 to § 10:66

consequences, § 10:66

general principles, § 10:64

procedure, § 10:65

pleadings, § 12:1 to § 12:9

amendment, § 12:8, § 12:9

with leave, § 12:9

without leave, § 12:8

form and content, § 12:2

material facts, § 12:3

other motions, § 12:7

particulars, § 12:4

points of law, § 12:3

statements of claim, § 12:5

subsequent pleadings, § 12:6

general principles, § 12:1

preliminary relief before trial, § 10:67 to § 10:94

Anton Piller Orders, § 10:76

default judgment, § 10:83 to § 10:85

alternative service of statement of claim, § 10:85

availability, § 10:83

setting aside, § 10:84

PRE-TRIAL LITIGATION

PROCEDURES—Cont'd

Pre-trial procedures, § 10:10 to § 10:110
—Cont'd

preliminary relief before trial, § 10:67 to § 10:94—Cont'd

discontinuance, § 10:87

dismissal for delay, § 10:86

general principles, § 10:67

interim and interlocutory injunctions, § 10:68 to § 10:75

evidence, § 10:73

interim, § 10:69

interlocutory, § 10:70

mareva, § 10:75

quia timet, § 10:71

test, § 10:72

undertaking, § 10:74

questions of law and admissibility, § 10:92 to § 10:94

availability, § 10:93

procedure, § 10:94

striking out pleadings, § 10:77 to § 10:82

abuse of process, § 10:82

immaterial or irrelevant, § 10:79

no reasonable cause of action or defence, § 10:78

prejudice or delay, § 10:81

scandalous, frivolous or vexatious, § 10:80

summary judgment, § 10:88 to § 10:91

availability, § 10:89

evidence, § 10:90

timing, § 10:91

pre-trial conferences, § 10:101 to § 10:105

availability, § 10:102

evidence, § 10:105

general principles, § 10:101

procedures, § 10:103

scope of, § 10:104

pre-trial evidentiary considerations, § 10:106 to § 10:110

expert evidence, § 10:108

general principles, § 10:106

notice to admit, § 10:107

references, § 10:14 to § 10:17

availability and scope, § 10:15

conduct of, § 10:16

INDEX

PRE-TRIAL LITIGATION

PROCEDURES—Cont'd

- Pre-trial procedures, § 10:10 to § 10:110
 - Cont'd
 - references, § 10:14 to § 10:17—Cont'd
 - general principles, § 10:14
 - report, § 10:17
- security for costs, § 10:11 to § 10:13
 - amount, § 10:13
 - availability, § 10:12
 - general principles, § 10:11
- specially managed proceedings, § 10:95 to § 10:100
 - Federal Court, § 10:96, § 10:97
 - powers of case management judge, § 10:97
 - procedure, § 10:96
 - general principles, § 10:95
 - Ontario provincial courts, § 10:98
 - powers of case management judge or Master, § 10:100
 - procedure, § 10:99

PROFITS

- Generally, § 20:1 et seq.
- Apportionment, § 20:28 to § 20:32
 - application in practice, § 20:32
 - convoy sales and profits, § 20:29
 - extent of infringement, § 20:30
 - view in *Lubrizol*, § 20:31
- basis for determining costs that may be deducted, § 20:27
- comparative approach to assessment of profits, § 20:33 to § 20:40
 - Australia, § 20:40
 - case law after *Schmeiser*, § 20:36
 - case law prior to *Schmeiser*, § 20:34
 - Supreme Court Decision in *Schmeiser*, § 20:35
 - United Kingdom, § 20:38
 - United States, § 20:39
- condonation, § 20:43
- Teledyne and its statement of the principles, § 20:22 to § 20:26
 - cases, § 20:21 to § 20:45
 - cost of unsold inventory ordered to be destroyed, § 20:25
 - incremental costs, § 20:23
 - interest, § 20:26
 - legal costs, § 20:24

PROFITS—Cont'd

- Apportionment, § 20:28 to § 20:32
 - Cont'd
 - Teledyne and its statement of the principles, § 20:22 to § 20:26
 - Cont'd
 - other issues, § 20:41 to § 20:48
 - accounting for interest, § 20:47
 - breach of contract, accounting of profits, § 20:46
 - patent infringement, accounting of profits, availability of, § 20:41
 - specific statutes, § 20:45
 - tax effects, § 20:48
- Conclusion, § 20:49
- General principles, § 20:1 to § 20:3
 - focus on gains of infringer, § 20:1
 - issues that arise, § 20:3
 - remedies generally alternative, § 20:2
- Procedure, § 20:9 to § 20:16
 - bifurcation from issue of liability, § 20:9
 - conduct of compensation hearing, § 20:16
 - directions in the liability judgment, § 20:12
 - factors to consider if compensation bifurcated, § 20:11
 - methods for deferring/separating compensation from liability, § 20:10
 - practical considerations, § 20:14, § 20:15
 - no standard form of accounts, § 20:14
 - standard accounting records not having all information, § 20:15
 - simplified three-step test, § 20:16.50
 - timing of election between remedies, § 20:13
- Profits vs. damages, election between, § 20:4 to § 20:8
 - burden of proof, § 20:7
 - court may refuse on equitable grounds, § 20:5
 - factors to consider, § 20:8
 - volume of documents, § 20:6
- Statutory and judicial history and trends, § 20:17 to § 20:20
 - jurisdiction to award profits, § 20:17

PROFITS—Cont'd

Statutory and judicial history and trends,
 § 20:17 to § 20:20—Cont'd
 profits not inherently more complex or
 difficult to estimate, § 20:20
 profits rarely used IP remedy, § 20:18
 two remedies considered together,
 § 20:19

PROTESTS

See PATENTS

PUNITIVE DAMAGES

See DAMAGES

QUANTUM

See also, ACCOUNTING OF PROFITS-
 QUANTUM; DAMAGES-
 QUANTUM; VALUATION

Generally, § 21:1, § 21:77

Accounting of profits, § 21:34 to § 21:76

 actual profits, § 21:35

 apportionment, § 21:45 to § 21:47

 proof of quantum, § 21:46

 when considered, § 21:47

 costs, commentary on, § 21:61 to
 § 21:73

 administrative, § 21:65

 bonuses, § 21:67

 cost of capital, § 21:73

 income taxes, § 21:72

 intangible, § 21:70

 legal, § 21:66

 manufacturing, § 21:62

 marketing, § 21:64

 research and development, § 21:69

 sales, § 21:63

 stock options, § 21:71

 units ordered destroyed, § 21:68

 differential profits, § 21:36, § 21:37

 calculating, § 21:39 to § 21:44

 exemplary damages, § 21:76

 infringer, § 21:38

 introduction, § 21:34

 principles, § 21:34

 profit on profit, § 21:74, § 21:75

 punitive damages, § 21:76

 revenues of defendant, § 21:48 to
 § 21:55

 convoyed products, sale of, § 21:50

 costs to be deducted, § 21:56 to
 § 21:73

QUANTUM—Cont'd

Accounting of profits, § 21:34 to § 21:76
 —Cont'd

 revenues of defendant, § 21:48 to

 § 21:55—Cont'd

 fixed costs, § 21:57, § 21:60

 foreign jurisdictions, profits made in,
 § 21:51

 profit, definitions of, § 21:58

 profits earned but unrealized, § 21:54

 profits of less than a 100 percent
 owned entity, § 21:53

 springboard advantages, § 21:55

 third parties, revenue realized

 through action of, § 21:50

 variable costs, § 21:57, § 21:59

 wholly owned subsidiaries, § 21:52

Damages in intellectual property disputes,
 § 21:2 to § 21:33

 introduction, § 21:2 to § 21:10

 lost profits, § 21:11 to § 21:20

 convoyed sales, loss of, § 21:16

 future loss, § 21:20

 increased costs, § 21:15

 price reductions, § 21:14

 sales, loss of, § 21:12, § 21:13

 simplified three-step test, § 20:16.50

 springboard damages, § 21:17

 subsidiary company, loss of, § 21:18

 substitute products, § 21:19

 principles, § 21:2 to § 21:10

 apportionment, § 21:5

 but for test, § 21:3

 causation, § 21:3

 foreseeability, § 21:6

 hindsight, use of, § 21:8

 mitigation, § 21:7

 non-infringing alternatives, § 21:4

 remoteness, § 21:6

 taxation, § 21:9

 value to owner, § 21:10

 royalties, § 21:21 to § 21:33

 apportionment, § 21:26

 base, § 21:25

 considerations, § 21:28 to § 21:32

 cost basis, § 21:30

 damages under s. 8 of PM(NOC)

 regulations, § 21:33

 hypothetical, § 21:24

 increased costs, § 21:29

QUANTUM—Cont'd

Damages in intellectual property disputes,
 § 21:2 to § 21:33—Cont'd
 royalties, § 21:21 to § 21:33—Cont'd
 industry standard rates, § 21:23
 nominal damages, § 21:32
 non-confiscatory, § 21:31
 normal rates, § 21:22
 pre-grant damages, § 21:28

RECTIFICATION

See COPYRIGHT, registration disputes

RE-EXAMINATION

See PATENTS

REFERENCES

See DAMAGES; LITIGATION PRO-
 CESS; PROFITS; QUANTUM

REGISTRATION DISPUTES

See COPYRIGHT;

REMEDIES

See also ANTON PILLER ORDERS;
 DAMAGES; INJUNCTIONS;
 PROFITS; QUANTUM
 Competition Act, § 6:51
 Computer-related disputes—see COM-
 PUTER-RELATED DISPUTES
 Copyright disputes, civil remedies re,
 § 3:26 to § 3:40
 Anton Piller orders, § 3:28
 conversion, § 19:25
 costs, § 3:39
 damages generally, § 3:30, § 19:23 to
 § 19:30
 declaratory judgment, § 3:37
 delivery up, § 3:36
 detention of imported or exported cop-
 ies, § 3:38
 educational institutions, against, § 3:33
 entitlement, § 19:30
 exemplary damages, § 3:31
 general damages, § 19:23
 injunctions generally, § 3:27
 moral rights infringement, § 3:40
 non-pecuniary damages, § 19:29
 profits, § 3:35, § 19:24
 punitive damages, § 3:31, § 19:28
 statutory damages, § 3:32, § 19:26
 wide injunctions, § 3:29

REMEDIES—Cont'd

Copyright disputes, criminal remedies re,
 § 3:41 to § 3:49
 Copyright Act, under, § 3:42 to § 3:47
 copyright infringement, § 3:42
 Criminal Code, under, § 3:48
 limitation periods, § 3:47
 moral rights infringement, § 3:44
 multiple offences, § 3:49
 penalties, § 3:45
 Patent disputes—see PATENTS
 Pharmaceuticals
 see also PHARMACEUTICALS
 copyright and, § 7:28
 Trademark disputes—see
 TRADEMARKS
 Trade secret disputes—see TRADE
 SECRETS

RESOLUTIONS

Generally, § 3:14 to § 3:25
 Alternative dispute resolution, § 3:15
 see also ADR
 Copyright, civil remedies, § 3:26 to
 § 3:40
 Anton Piller orders, § 3:28
 conversion, § 19:25
 costs, § 3:39
 damages, generally, § 3:30, § 19:23 to
 § 19:30
 declaratory judgment, § 3:37
 delivery up, § 3:36
 detention of imported or exported cop-
 ies, § 3:38
 educational institutions and, § 3:33
 entitlement, § 19:30
 exemplary damages, § 3:31
 general damages, § 19:23
 injunctions, generally, § 3:27
 moral rights infringement, § 3:40
 profits, § 3:35, § 19:24
 punitive damages, § 3:31, § 19:28
 statutory damages, § 3:32, § 19:26
 wide injunctions, § 3:29
 Copyright, criminal remedies, § 3:41 to
 § 3:49
 Copyright Act, under, § 3:42 to § 3:47
 copyright infringement, § 3:42
 Criminal Code, under, § 3:48
 limitation periods, § 3:47
 moral rights infringement, § 3:44

RESOLUTIONS—Cont'd

Copyright, criminal remedies, § 3:41 to § 3:49—Cont'd
 multiple offences, § 3:49
 penalties, § 3:45
 Copyright, judicial proceedings, § 3:16
 enforcement of foreign judgments, § 3:18
 jurisdiction, § 3:17
 limitation period, § 3:24
 moral rights infringement, § 3:20
 nature of, § 3:22
 parallel importation of books, § 3:9, § 3:20
 presumptions, § 3:23
 standing, § 3:19 to § 3:21
 summary judgment, § 13:40
 third party discovery, § 3:25
 trial, § 13:6

SERVICE

See LITIGATION PROCESS

SETTLEMENT

See OPPOSITION, settlement

SIMPLIFIED PROCEEDINGS

See also, APPEALS; DISCOVERY; EXAMINATION FOR DISCOVERY; LITIGATION PROCESS; PRE-TRIAL LITIGATION PROCEDURES

Simplified proceedings, § 10:111 to § 10:137
 applications, § 10:111 to § 10:129
 application vs. action or appeal, § 10:112 to § 10:115
 judicial review, § 10:113
 proceeding under Act of Parliament, § 10:114
 section 56 of Trademarks Act, § 10:115
 general principles, § 10:111
 procedure, § 10:116 to § 10:129
 additional material, § 10:124
 affidavit evidence, § 10:121
 conversion to an action, § 10:129
 cross-examination, § 10:122
 notice of appearance, § 10:119
 notice of application, § 10:117
 oral testimony, § 10:127
 parties' records, § 10:123

SIMPLIFIED PROCEEDINGS—Cont'd

Simplified proceedings, § 10:111 to § 10:137—Cont'd
 applications, § 10:111 to § 10:129
 —Cont'd
 procedure, § 10:116 to § 10:129
 —Cont'd
 pre-hearing conference, § 10:126
 references from a tribunal, § 10:128
 request for material in possession of tribunal, § 10:120
 requisition for hearing date, § 10:125
 respondents, § 10:118
 simplified actions, § 10:130 to § 10:137
 availability, § 10:131
 general principles, § 10:130
 procedure, § 10:132
 discovery, § 10:133
 Federal Court trial, § 10:135
 motions, § 10:134
 Ontario—subsequent proceedings, § 10:137

SPECIALLY MANAGED PROCEEDINGS

See LITIGATION PROCESS

SPRINGBOARD

See DAMAGES, patent disputes; PROFITS, lost; TRADE SECRETS

STANDARD OF REVIEW

See APPEALS

STATUTORY DAMAGES

See DAMAGES; RESOLUTIONS, civil remedies

STRIKING OUT PLEADINGS

See LITIGATION PROCESS

SUMMARY JUDGMENT

See LITIGATION PROCESS, preliminary relief

TAXATION

See COSTS
 Key areas of interest, § 25:29 to § 25:34
 GST/HST implications of settlements, § 25:33
 structuring settlements, § 25:34

TAXATION—Cont'd

- Key areas of interest, § 25:29 to § 25:34
 - Cont'd
 - surrogatum principle/income tax consequences of settlements/damage awards, § 25:29 to § 25:32
 - case law, § 25:31, § 25:32
 - intellectual property cases — income versus capital, § 25:31
 - punitive damages, § 25:32
 - CRA administrative interpretation, § 25:30
 - income tax and the common law, § 25:29
- Key Federal statutes, § 25:1 to § 25:15
- Excise Tax Act, § 25:7 to § 25:15
 - exempt supplies, § 25:9
 - place of supply rules, § 25:11
 - is the supply made in Canada, § 25:13
 - non-resident override rules, § 25:12
 - participating provinces and supplies within Canada, § 25:14
 - small suppliers and registration requirement, § 25:15
 - taxable supplies of goods and services, § 25:8
 - value-added taxes in Canada, § 25:7
 - zero-rated supplies, § 25:10
- Income Tax Act, § 25:1 to § 25:6
 - income tax in Canada, § 25:1
 - taxation of damage awards and settlement payments, § 25:6
 - types of income and their taxation, § 25:2
 - capital gains, § 25:4
 - income, § 25:3
 - non-taxable receipts, § 25:5
- Relevant key tax concepts, § 25:16 to § 25:28
 - carrying on business in Canada, § 25:21, § 25:22
 - GST/HST purposes, § 25:22
 - income tax purposes, § 25:21
 - general anti-avoidance rule, § 25:28
 - permanent establishment, § 25:23, § 25:24
 - GST/HST purposes, § 25:24
 - income tax purposes, § 25:23

TAXATION—Cont'd

- Relevant key tax concepts, § 25:16 to § 25:28—Cont'd
- residency, § 25:16 to § 25:20
- GST/HST purposes, § 25:19, § 25:20
 - corporations, § 25:20
 - individuals, § 25:19
- income purposes, § 25:16
 - corporations, § 25:18
 - individuals, § 25:17
- transfer pricing considerations, § 25:25 to § 25:27
 - adjustment and penalties, § 25:26
 - arms length principle and transfer pricing methodologies, § 25:25
 - intangible property rights, § 25:27

TRADEMARKS

- Generally, § 2:1 et seq.
- Causes of action, § 2:16 to § 2:21
 - official marks, § 2:21
 - passing off and unfair competition, § 2:16
 - section 7(b) and common law tort of passing off, § 2:18
 - section 7(c) and common law tort of passing off by substitution, § 2:19
 - section 7(a) and common law torts of trade libel and injurious falsehood, § 2:17
 - section 7(d) — false descriptions, § 2:20
- Disputes before the courts, generally, § 2:15
- Evaluating merits of opposition versus court action, § 2:68 to § 2:78
 - advantages of opposition, § 2:68 to § 2:73
 - disadvantages of opposition, § 2:74 to § 2:78
- Introduction, § 2:2 to § 2:5
 - nature of trade mark rights, § 2:2 to § 2:4
 - common law, § 2:2
 - registration under the Trademarks Act, § 2:3
 - special protection for published official marks, § 2:4
 - types of trade mark disputes, § 2:5
- Language of, § 2:1.70

TRADEMARKS—Cont'd

Section 56 — appeals to the Federal Court, § 2:14

Section 38 oppositions, § 2:6

 bad faith, § 2:8

 non-compliance with section 30 - section 38(2)(a), § 2:7

 non-distinctiveness — section 38(2)(d), § 2:11

 non-entitlement, § 2:10

 non-registrability — section 38(2)(b), § 2:8

 proposed use — section 30(e), § 2:12

Section 45 — summary cancellation proceedings for non-use, § 2:13

Settlement, § 2:79 to § 2:95

 benefits to oppose, § 2:82 to § 2:88

 downsides, § 2:89 to § 2:95

 timing of approach to applicant, § 2:79 to § 2:81

Settlement agreement, § 2:96 to § 2:122

 co-existence conditions, § 2:102 to § 2:122

 structure of the relationship, § 2:96 to § 2:101

Settling trademark oppositions, evaluation of successful outcome, § 2:60 to § 2:67

 applicant's commitment, § 2:61 to § 2:63

 foreign registration, § 2:62

 proposed use, § 2:61

 secondary type mark, slogan, § 2:63

 assessing opposer's motivation, § 2:64 to § 2:67

 business issues, § 2:64

 keeping register clean, § 2:65 to § 2:67

 strength of case, § 2:60

Settling trademark oppositions, gathering facts/evaluating case, § 2:40 to § 2:59

 establishing legal basis, § 2:53 to § 2:59

 investigate applicant, § 2:56

 verify priority, § 2:53, § 2:54

 priority of registration/application, § 2:53

 prior use, § 2:54

 establishing position, § 2:41 to § 2:52

 current and future business plans, § 2:42

TRADEMARKS—Cont'd

Settling trademark oppositions, gathering facts/evaluating case, § 2:40 to § 2:59—Cont'd

 establishing position, § 2:41 to § 2:52—Cont'd

 establish marks history and current posture, § 2:43 to § 2:46

 any restrictions on use/registration by prior agreements with others, § 2:45

 origin — internal development or purchase, § 2:43

 protective and/or enforcement efforts, § 2:44

 use, sales figures, advertising, packaging, § 2:46

 identifying importance of mark, § 2:41

 verify mark is up to date, § 2:47 to § 2:52

 chain of title, § 2:51

 goods or services description, § 2:49

 licenses, § 2:52

 mark in use, § 2:48

 presentation of mark, § 2:50

 validly registered, subsisting and renewed, § 2:47

Trademark remedies, § 2:22 to § 2:39

 challenging registered trademarks and official marks, § 2:32 to § 2:37

 challenging published official marks, § 2:35

 declaratory relief, § 2:37

 judicial review vs. appeal, § 2:36

 expunging/amending entries on register, § 2:32

 amendments, § 2:34

 expungement, § 2:33

 expunging distinguishing guise registrations, § 2:35

 concurrent use orders, § 2:38, § 2:39

 enforcement of foreign judgments, § 2:39

 in proceedings involving a registered trade mark, § 2:38

 customs remedies, § 2:30, § 2:31

 interim custody orders and orders prohibiting future importation, § 2:30

TRADEMARKS—Cont'd

- Trademark remedies, § 2:22 to § 2:39
 - Cont'd
 - customs remedies, § 2:30, § 2:31
 - Cont'd
 - section 53.1 — detention orders and other appropriate orders, § 2:31
- general, § 2:22 to § 2:29
 - general remedies, § 2:23
 - destruction, § 2:26
 - exportation, § 2:27
 - injunctions, § 2:24
 - other disposition, § 2:28
 - delivery up, § 2:28
 - removal, obliteration or overlabelling, § 2:28
 - punitive damages, § 2:29
 - recovery of damages or profits, § 2:25
 - jurisdiction of Federal Court versus provincial courts, § 2:22
- Trademarks Act, revised, § 2:1
 - privilege, trademark agent, § 2:1.5

TRADE SECRETS

- Generally, § 5:1 et seq.
- Breach of confidence, § 5:31 to § 5:36
 - damages, § 5:76
 - employer's liability, § 5:36
 - jurisdiction, § 5:31
 - test, § 5:32
 - vicarious liability, § 5:36
- Breach of contract
 - confidentiality agreements, § 5:29
 - damages, § 5:85
 - disputes generally, § 5:11
 - express, § 5:24 to § 5:29
 - implied, § 5:30
 - non-competition clauses, § 5:25
 - non-disclosure agreements, § 5:29
- Breach of fiduciary duty, § 5:37 to § 5:45
 - arm's length, dealing at, § 5:39
 - damages, § 5:84
 - director's duties, § 5:41
 - employees, § 5:42 to § 5:45
 - employment relationship, § 5:40
 - key employees, § 5:43
 - management, duties of, § 5:41
 - management, top, § 5:42
 - negotiating parties, between, § 5:39
 - officer's duties, § 5:41

TRADE SECRETS—Cont'd

- Breach of fiduciary duty, § 5:37 to § 5:45
 - Cont'd
 - other employees, § 5:44
 - senior employees, § 5:42
 - test for employees, § 5:45
 - vulnerability, § 5:38
- Common law protection, § 5:3
- Computer-related disputes
 - employer confidential information, § 9:27, § 9:28
 - programmer skill, § 9:27, § 9:28
- Confidential information, § 5:32
 - past solicitor-client relationship, § 5:63
- Confidential information, distinguished, § 5:22
- Contractual disputes, § 5:11
 - see also breach of contract
- Criminal actions
 - counseling, § 5:50
 - fraud, § 5:48 to § 5:50
 - mischief, § 5:48 to § 5:50
 - theft, § 5:48 to § 5:50
- Defences, § 5:51 to § 5:61
 - acquiescence, § 5:60
 - de minimis non curat lex, § 5:61
 - denial, § 5:52 to § 5:56
 - experience, § 5:53
 - innocent recipient, § 5:58
 - laches, § 5:60
 - limitation periods, § 5:59
 - misappropriation or misuse, denying, § 5:56
 - obligation of confidence, denying, § 5:55
 - personal knowledge, § 5:53
 - public domain, § 5:52
 - public interest, § 5:57
 - reverse engineering, § 5:54
 - sale of proceeds, § 5:54
 - skill, § 5:53
- Employment-related disputes, § 5:7
- Fiduciary duty, § 5:19
 - see also breach of fiduciary duty
- Injunctions, § 17:41, § 17:42
- Negotiations, § 5:14
- Non-competition clause, § 5:28
- Pre-emptive measures, § 5:62 to § 5:64
 - assignment, § 5:64
 - licensing, § 5:64

TRADE SECRETS—Cont’d

- Pre-emptive measures, § 5:62 to § 5:64
 - Cont’d
 - patent protection, § 5:63
- Remedies, § 5:65 to § 5:86
 - accounting of profits, § 5:74
 - Anton Piller orders, § 5:73
 - constructive trust, § 5:86
 - damages, § 5:76 to § 5:85
 - injunctions, § 5:67 to § 5:73
 - interlocutory injunctions, § 5:67
 - permanent injunctions, § 5:72
 - profits, § 5:74
 - punitive damages, § 5:83
 - quantum meruit, § 5:75
 - restitution, § 5:66
- Restrictive covenants, § 5:2
- Springboard principle, § 5:17
- Unjust enrichment, § 5:46
- Wrongful interference with rights, § 5:47

TRIAL

- Generally, § 13:1 et seq.
- Conduct of trial, § 13:61 to § 13:74
 - Canadian Patent Office, written communications, § 13:68
 - confidentiality, § 13:71
 - confidentiality orders, § 13:73
 - protective orders, § 13:72
 - demonstrative evidence, § 13:67
 - electronic trials, § 13:74
 - evidence and hearsay, § 13:66
 - examination in chief/cross-examination, § 13:63 to § 13:65
 - final argument, § 13:69
 - late-produced evidence, § 13:62
 - opening statement, § 13:61
 - PMNOC trial length, § 13:60.50
 - relief sought, § 13:70
 - rule in *Browne v. Dunn*, § 13:65.50
- Fact witnesses, § 13:8
- Introduction, § 13:1
- Materials for trial, § 13:53 to § 13:60
 - trial briefs, § 13:53 to § 13:60
 - book of authorities, § 13:58
 - compendium of evidence and primers, § 13:55
 - co-ordinating matters with Registrar, § 13:59
 - copies, § 13:60
 - counsel’s trial book, § 13:54

TRIAL—Cont’d

- Materials for trial, § 13:53 to § 13:60
 - Cont’d
 - trial briefs, § 13:53 to § 13:60—Cont’d
 - discovery excerpts “read-in,” § 13:56
 - trial memorandum, § 13:57
 - trial record, § 13:53
- Narrowing issues before trial, § 13:36 to § 13:52
 - pre-trial motions, § 13:37 to § 13:49
 - bifurcation order, § 13:37
 - pre-trial conference, § 13:45
 - at pre-trial conference, § 13:48
 - pre-trial conference memoranda, § 13:47
 - requisition, § 13:46
 - trial management conference, § 13:49
 - settlement discussions, § 13:44
 - summary judgment, § 13:38
 - patent cases, § 13:39
 - trademark and copyright cases, § 13:40
 - summary trial, § 13:41
 - patent cases, § 13:42
 - trademark and copyright cases, § 13:43
- requests to admit, § 13:50, § 13:51
 - agreed statements of facts/issues, § 13:52
 - documents, § 13:51
 - facts, § 13:50
- Proving case at trial, § 13:2 to § 13:6
 - copyright cases, § 13:6
 - patent cases, § 13:3
 - patent medicine notice of compliance cases, § 13:4
 - trademark cases, § 13:5
- Witnesses, § 13:7 to § 13:35
 - expert witnesses, § 13:9 to § 13:35
 - assistance in cross-examination, § 13:28
 - code of conduct, § 13:22
 - crafting affidavit or statement, § 13:23
 - assistance of lawyer in preparation of report or affidavit, § 13:26
 - good science, § 13:24
 - translating into understandable form, § 13:25

INDEX

TRIAL—Cont'd

- Witnesses, § 13:7 to § 13:35—Cont'd
 - expert witnesses, § 13:9 to § 13:35
 - Cont'd
 - expert reports to be relied upon at trial, § 13:26.50
 - familiarizing witnesses with courtroom, § 13:27
 - issues addressed, § 13:16
 - experts in patent cases, § 13:17
 - trademark actions: confusion, § 13:18
 - limitations on number, § 13:11
 - outlining areas of agreement between experts, § 13:26.30
 - patent actions: conducting infringement tests, § 13:19
 - preparation of for giving evidence, § 13:21
 - procedure for expert witnesses, § 13:29 to § 13:35
 - blinding, § 13:30
 - code of conduct, § 13:29
 - deference to trial judge on appeal, § 13:35
 - expert witness conference, § 13:32
 - hot-tubbing, § 13:34
 - objection to expert witness, § 13:31
 - pre-trial conference, § 13:33
 - retain early, § 13:10
 - selecting, § 13:12
 - experience as a witness, § 13:15
 - expertise, § 13:13
 - good teacher, § 13:14
 - trademark actions: surveys, § 13:20

UNDERTAKING TO PAY DAMAGES

See also INJUNCTIONS

Generally, § 17:5 to § 17:22

UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY

See DOMAIN NAMES DISPUTE RESOLUTION

VALIDITY

See generally COPYRIGHT, infringement; INDUSTRIAL DESIGNS; PATENTS; PHARMACEUTICALS; TRADEMARKS

VALUATION

See also, ACCOUNTING OF PROFITS—QUANTUM; DAMAGES—QUANTUM; QUANTUM

WITNESSES

See TRIAL

WRITS

Generally, § 23:11 to § 23:54

Delivery, of, § 23:32

Execution, of, § 23:12

Fieri facias, of, § 23:13 to § 23:31

adequacy of price, § 23:28

adverse claims, § 23:22

diligence, § 23:18

entry, § 23:21, § 23:25

finality of auction, § 23:29

notice of sale, § 23:27

proceeds of sale, § 23:30

process, § 23:16

return, § 23:31

sale of property, § 23:26

search, § 23:17

seizable property, § 23:14

seizure, § 23:19, § 23:25

third parties, § 23:22

timeliness, § 23:20

transfer of property, § 23:23

unseizable property, § 23:15

value of property, § 23:24

Seizure and sale, of—see fieri facias

Sequestration, of, § 23:33

leave, § 23:34

notice, § 23:34

sheriff's duties, § 23:35