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INTELLECTUAL PROPERTY DISPUTES: RESOLUTIONS AND REMEDIES

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This publication is a one-stop reference for litigators and counsel advising on Intellectual Property disputes that focuses on remedies available to IP owners and stakeholders at all stages of possible dispute, from risk management, through mediation and ADR, and to all levels of litigation. This release includes updates to Appendix 1B, *Patent Rules* made under the *Patent Act*, SOR/2019-251 – Amended by SOR/2021-131, ss. 1 (Fr.), 2-26; SOR/2022-44, s. 2; SOR/2022/120; SOR/2023-113, ss. 1-23 [ss. 1, 3-6, 11-23 to come into force January 1, 2024]. Chapter 11. Examinations for Discovery, and Chapter 21. Monetary Relief – Quantum have also been updated.

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Highlights

- **§ 11:6.50 Protective Orders** — In *Arkipelago Architecture Inc. v. Enghouse Systems Limited*, the Court held that the “counsel and experts eyes only” (CEEEO) designation will only be applied to protective orders where the evidence establishes the existence of “unusual circumstances” that warrant the extraordinary order of a disclosure on a CEEEO basis.
- **§ 21:34 Accounting of Profits** — The authors have updated this section to include discussion of the three-step framework for quantifying an accounting of profits which was further clarified by the Supreme Court of Canada in *Nova Chemicals Corp. v. Dow Chemical Co.* In addition to reviewing the framework, the authors have also included a chart which sets out the Court’s definitions of the terms “differential costs”, “full costs”, and “differential profits”.
- **§ 21:38 Take the Infringer as You Find Him** — The authors have updated this section to add the Supreme Court of Canada’s reaffirmation of the principle that a plaintiff must “take the infringer as you find him in the *Nova Chemicals Corp. v. Dow Chemical Co.* decision. In the decision, Rowe J. stated that “(i)f an infringer is an inefficient manufacturer, and, as a result, makes less profit than theoretically possible, the patentee cannot claim profits that the infringer ‘should have’ made, but if the infringer is an efficient manufacturer, the patentee is entitled to all the profits actually made, even if the patentee could not have achieved similar profit levels”.

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