

Experimental Testing

TO:

Notice to the Parties and the Profession

FROM:

The Honourable Paul Crampton
Chief Justice

DATE:

SUBJECT:

Experimental Testing

In an action for infringement or validity of a patent, where a party intends to establish any fact in issue by experimental testing conducted for the purpose of litigation, it shall, no later than two months before the scheduled service of its expert report(s) to which the testing relates, provide reasonable notice to the other parties as to:

- the facts to be proven by such testing;
- the nature of the experimental procedure to be performed;
- when and where the adverse parties' counsel and representative(s) can attend to watch the experiment(s); and
- when and in what format the data and test results from such experiment(s) will be shared with the adverse parties.

In circumstances where the minimum two month notice requirement is not workable (for example, with regard to responding reports), the time period may be abridged by the Case Management Judge.

Where the parties cannot agree as to these matters, the Case Management Judge may resolve them at a case management conference.

Unless a party intending to rely on such experiments has so advised the other parties, the party shall not, without leave of the Court, lead evidence at the trial or hearing as to any experiments conducted by or for it for the purpose of the litigation.

« Paul Crampton »

Chief Justice