Federal Court  Cour fédérale

Date: 20150617

Docket: T-2280-12

Citation: 2015 FC 760

Ottawa, Ontario, June 17, 2015

PRESENT: The Honourable Mr. Justice O'Keefe

BETWEEN:

TEVA CANADA LIMITED

Plaintiff
(Defendant by Counterclaim)

and

PFIZER CANADA INC.,
PFIZER INC. and
PFIZER IRELAND PHARMACEUTICALS

Defendants
(Pfizer Canada Inc. Plaintiff by Counterclaim)

and

PFIZER PRODUCTS INC.

(Plaintiff by Counterclaim)

PUBLIC REASONS FOR ORDER AND ORDER
(Confidential Reasons for Order and Order issued November 27, 2014)

[1] The plaintiff is suing the defendants for damages under section 8 of the *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-133 [the Regulations]. The defendants

now move for summary judgment dismissing that action pursuant to subsections 213(1) and 215(1) of the *Federal Courts Rules*, SOR/98-106 [the Rules]. The defendants also seek a Rule 151 confidentiality order. The plaintiff requests an order providing summary judgment on the issue of [...], namely, that Pfizer cannot reduce or otherwise effect Teva's claims in this action.

I. Issues

[2] This motion raises four issues:

A. Is this matter suitable for summary judgment?

B. Is the plaintiff affected by [...]?

C. If so, does that [...] bar the underlying action?

D. Should a confidentiality order be issued to prevent disclosure [...]?

II. Undisputed Background Facts

[3] The following facts are established by the evidence and have not been disputed.

[4] Pfizer Canada Inc. is a pharmaceutical company authorized to sell sildenafil citrate tablets in Canada under the name VIAGRA®. The other defendants and the other plaintiff by counterclaim are affiliated companies and I will refer to them all collectively as Pfizer unless there is a reason to distinguish between them.

[5] Teva Canada Limited is also a pharmaceutical company. Before February 16, 2010, Teva Canada Limited was called Novopharm Limited. On August 10, 2010, it and ratiopharm Inc.,

along with a few other companies, amalgamated under section 185 of the *Canada Business Corporations Act*, RSC 1985, c C-44. The amalgamated entity continued as Teva Canada Limited. For the sake of convenience, I will refer to the post-amalgamation company as Teva and to its relevant predecessors as Novopharm and ratiopharm.

[6] Both Novopharm and ratiopharm had filed abbreviated new drug submissions seeking to make generic versions of VIAGRA®. Novopharm had filed its submission for Novo-Sildenafil on December 19, 2006, while ratiopharm had filed its submission for ratio-Sildenafil on April 11, 2008. Among other things, both alleged in their notices of allegation that the patents protecting Pfizer's monopoly were invalid or would not be infringed. Against each company, Pfizer sought an order from this Court prohibiting the Minister from issuing a notice of compliance (Novopharm in Court File No. T-1566-07 and ratiopharm in Court File No. T-1935-08).

[7] [...].

[8] Meanwhile, Pfizer's application against Novopharm was progressing through the courts. Ultimately, Pfizer's application for a prohibition order was dismissed on November 8, 2012, when the Supreme Court of Canada decided that the main patent for VIAGRA® (Patent No. 2,163,446) was invalid (see *Teva Canada Limited v Pfizer Canada Inc and others*, 2012 SCC 60, [2012] 3 SCR 625 [*Teva (SCC)*]).

[9] Consequently, the Minister issued a notice of compliance for Novo-Sildenafil on November 8, 2012. The drug's name was later changed to Teva-Sildenafil.

[10] [...].

[11] Teva then brought the present action against Pfizer Canada Inc., Pfizer Inc. and Pfizer Ireland Pharmaceuticals. It sought to recover the losses it allegedly suffered from Teva-Sildenafil's delayed entry into the market.

[12] Among Pfizer's defences is a claim that [...]. As well, Pfizer Products Inc. has been added to the action, and both it and Pfizer Canada Inc. have counterclaimed against Teva for allegedly violating trademarks and passing off Teva's products as Pfizer's by imitating the colour and shape of the VIAGRA® tablets.

[13] The only ground upon which Pfizer moves for summary judgment is that related to [...].

[14] Since it could not make this argument publicly without potentially violating [...], Madam Prothonotary Roza Aronovitch granted a temporary confidentiality order. Pfizer asks the Court to make that permanent.

III. Pfizer's Submissions

[15] Pfizer submits that there is no genuine issue for trial and observes that the Court has granted summary judgment to give effect to [...].

[16] [...].

[17] As such, the only remaining issue is whether [...] applies to this action. In Pfizer's view, it does. [...]; extrinsic evidence of the parties' subjective intentions should be inadmissible.

[18] In this case, Pfizer argues that the plain words indicate a [...] but is not limited to them, since "including" is meant to enlarge the meaning of preceding words, not limit them (see *National Bank of Greece (Canada) v Katsikonouris*, [1990] 2 SCR 1029 at 1039 to 1041, [1990] SCJ No 95 [*Katsikonouris*]). Pfizer submits that this is only reinforced by [...]. (emphasis added).

[19] Considering that, Pfizer submits that this action is plainly within the ambit of [...]. Pfizer says that [...]. Moreover, Pfizer reiterates that these sophisticated parties expressly contemplated that [...].

[20] Pfizer also made supplementary submissions relating to the affidavit and cross-examination of Dr. Kane Denike, Teva's Director, Intellectual Property. It says that some portions of the affidavit are inadmissible because he is argumentative, he derives conclusions

from the case law and the Regulations and he sometimes gives evidence about the subjective intentions of the parties. As well, it criticizes him for inaccurately summarizing the language of [...].

[21] Beyond that, Pfizer mostly reiterates its earlier arguments but supports it with references to Dr. Denike's cross-examination. Specifically, Pfizer notes that Dr. Denike said it was his understanding that Teva was bound by [...]. Pfizer also says that Dr. Denike agreed with a statement that implied that Teva-Sildenafil would closely match [...].

[22] Pfizer also elaborates on other arguments that were less expansive in its original memorandum. It points out that Dr. Denike acknowledged that the amalgamation was a global merger worth billions of dollars, of which Canada was only a small part. After conducting its due diligence, these parties concluded that the benefits of amalgamation were worth the costs and Pfizer submits that it is not unjust if those costs include this type of situation.

[23] Finally, Pfizer also responds to two arguments that could emerge from Dr. Denike's affidavit. First, Dr. Denike had said it would be commercially absurd for a generic company to waive any claims present and future, for the minor benefit of being second to market. However, Pfizer notes that he admitted on cross-examination that the benefit would actually be that it could launch its product at the same time as the first generic.

[24] Second, Dr. Denike swore that Pfizer's interpretation of [...] was inconsistent with its failure to raise it in earlier proceedings, since [...] would arguably have precluded that as well. However, Pfizer argues that [...] could not have been asserted in the prior action.

[25] As for the confidentiality order, [...]. Yet, [...] is a lynchpin of Pfizer's defence. In these circumstances, Pfizer argues that a confidentiality order is necessary so that it can defend this action properly and still uphold its [...] obligations (see *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at paragraphs 49, 55 and 59, [2002] 2 SCR 522 [*Sierra Club*]). It also argues that the public interest in encouraging [...] could only be fostered by respecting [...]. In its view, the benefits of such an order would therefore outweigh any deleterious effects.

IV. Teva's Written Submissions

[26] Teva agrees that summary judgment on the [...] issue is appropriate in this case, but argues it should be in its favour. It says that [...] clearly does not apply and is therefore not a genuine issue for trial.

[27] With respect to that, Teva agrees that it inherited ratiopharm's obligations [...]. However, it emphasizes that it also inherited Novopharm's rights and that an amalgamated corporation is meant to continue the companies without subtraction. The cause of action in this case predated the amalgamation and Novopharm's rights were always distinct from those that ratiopharm [...]. Consequently, Teva argues that this action should survive. Indeed, it says that the federal courts have already confirmed that with respect to this same amalgamation in *Teva Canada Ltd v Wyeth*

LLC, 2012 FCA 141 at paragraphs 7, 22, 431 NR 342 [*Wyeth (FCA)*] and in *Pfizer Canada Inc v Ratiopharm Inc*, 2011 FC 74 at paragraph 22, 382 FTR 264 [*Ratiopharm*].

[28] Teva then addresses [...], arguing [...]. On this point, Teva says that Pfizer misconstrues Dr. Denike's cross-examination. He had explained only that [...]. Teva says that more specific language would need to have been employed to [...] of a separate company with a different product in a different proceeding.

[29] Besides, Teva submits that Pfizer's interpretation [...] is commercially untenable. In its view, the plain language [...]. That latter interpretation is commercially absurd. Teva acknowledges that Pfizer's position actually only extends to claims related to VIAGRA®, but argues that even this is absurd and that this departure from the plain language completely undermines Pfizer's position. As well, Teva assigns no significance to the fact that [...].

[30] In any event, Teva submits that the question should be resolved by looking at [...]. Dr. Denike explained that the first generic to serve a notice of allegation is often the first to market. If it is successful, it is usually much easier for other generics to then enter the market, so parallel applications are [...].

[31] [...].

[32] Moreover, Teva submits that the fact that amalgamation also had benefits is irrelevant. Teva says that there is no evidence that anyone involved would have considered Pfizer's

convoluted interpretation of [...] as part of its due diligence. It is only the commercial reasonableness [...] that is relevant.

[33] Teva also follows Dr. Denike's lead and argues that Pfizer's subsequent conduct indicates that its interpretation [...] was recently fabricated. If its interpretation were correct, [...]. Yet, Pfizer never objected when Teva did just that in *Teva (SCC)*.

[34] Finally, Teva says that evidence of the subjective intention of the parties is admissible whenever [...] is ambiguous. Dr. Denike's affidavit is the only evidence to that and Teva submits that an adverse inference should be drawn against Pfizer for not submitting any evidence of its own.

[35] As for the motion for a confidentiality order, Teva takes no position.

V. Analysis and Decision

A. *Issue 1 - Is this matter suitable for summary judgment?*

[36] Pursuant to subsection 215(1) of the Rules, a court shall grant summary judgment if it is satisfied that there is no genuine issue for trial. In *Hryniak v Mauldin*, 2014 SCC 7 at paragraph 49, 366 DLR (4th) 641 [*Hryniak*], the Supreme Court of Canada wrote the following:

> There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a

> proportionate, more expeditious and less expensive means to achieve a just result.

[37] Although *Hryniak* was about Ontario's rule, that paragraph largely resonates with the jurisprudence of this Court, which has also interpreted the rules regarding summary judgment liberally (see *Garford Pty Ltd v Dywidag Systems International, Canada, Ltd*, 2010 FC 996 at paragraph 5, 375 FTR 38 [*Garford (FC)*], aff'd 2012 FCA 48 at paragraph 9, 428 NR 306).

[38] Indeed, summary judgment should be granted whenever "the case is so doubtful that it does not deserve consideration by the trier of fact at a future trial" (*Garford (FC)* at paragraph 2, citing *Granville Shipping Co v Pegasus Lines Ltd*, [1996] 2 FC 853 at paragraph 8, 111 FTR 189 (TD) [*Granville Shipping*]). However, the motion should be denied if the necessary facts cannot be found or if it would be unjust to find them by a summary process and the determination of serious credibility issues should usually be reserved for trial (see *Garford (FC)* at paragraph 10; *Granville Shipping* at paragraph 8).

[39] I agree with the parties that the evidence filed in this case will allow me to make the necessary findings of fact for this issue and apply the law to them. As well, neither party is prejudiced by the lack of oral testimony in Court and I am satisfied that a just result can be reached.

[40] Further, although not every issue will be resolved, the disposition of this issue is central to the case. If I agree with Pfizer, then this motion will defeat Teva's claim. If I do not, then it will at least narrow the issues considerably and allow the action to resolve more quickly (see

Teva Canada Ltd v Wyeth LLC, 2011 FC 1169 at paragraphs 32 and 34, [2011] FCJ No 1441, [*Wyeth (FC)*] reversed on other grounds, 2012 FCA 141 [*Wyeth (FCA)*]).

[41] Therefore, this issue is suitable for summary judgment.

B. *Issue 2 - Is the plaintiff affected by [...] one of its predecessors prior to amalgamation?*

[42] I agree that Teva is bound by [...].

[43] In relevant part, section 186 of the *Canada Business Corporations Act*, RSC 1985, c C-44, provides the following:

186. On the date shown in a certificate of amalgamation	186. À la date figurant sur le certificat de fusion :
(a) the amalgamation of the amalgamating corporations and their continuance as one corporation become effective;	a) la fusion des sociétés en une seule et même société prend effet;
...	...
(c) the amalgamated corporation continues to be liable for the obligations of each amalgamating corporation;	c) la société issue de la fusion est responsable des obligations de chaque société;
(d) an existing cause of action, claim or liability to prosecution is unaffected; ...	d) aucune atteinte n'est portée aux causes d'actions déjà nées; ...

[44] Both parties essentially accept that and their dispute lies in their focus. Pfizer emphasizes subsection 186(c) to say that Teva must obey [...] by ratiopharm. Teva accepts that it could not

sue for lost sales of ratio-Sildenafil, but emphasizes subsection 186(d) to say that it also inherited Novopharm's rights.

[45] Up to that point, I agree with both parties, but Teva's argument then becomes fairly nuanced. It points out that the Supreme Court discussed the old *Canada Corporations Act*, RSC 1970, c C-23, in *R v Black and Decker Manufacturing Co*, [1975] 1 SCR 411 at 422, 43 DLR (3d) 393 [*Black and Decker*]. Speaking of amalgamation, the Supreme Court said that its effect "is to have the amalgamating companies continue without subtraction in the amalgamated company, with all their strengths and their weaknesses, their perfections and imperfections, and their sins, if sinners they be" (emphasis added). Further, the Supreme Court had also confirmed that no "new" company is created and no "old" company is extinguished (*Black and Decker* at 417). Teva submits that "in the eyes of the law, Teva *is* ratiopharm and Novopharm" (emphasis in original, Teva's memorandum of fact and law at paragraph 40).

[46] If all that means is that Teva inherits the rights and obligations of both parties, then I agree. I also agree that the *Black and Decker* approach is incorporated in section 186 of the *Canada Business Corporations Act* (see *Wyeth (FC)* at paragraph 42, reversed on other grounds *Wyeth (FCA)*).

[47] However, Teva appears to be extending that further. It argues that Novopharm's right to section 8 damages arose prior to amalgamation and that therefore no obligation incurred by ratiopharm could change that going forward.

[48] With that, I disagree.

[49] For one thing, Novopharm's cause of action under section 8 of the Regulations did not arise prior to amalgamation. Until a subsection 6(1) application is withdrawn, discontinued or defeated, no liability under section 8 is incurred. As such, the cause of action arose on November 8, 2012 (see *Wyeth (FCA)* at paragraph 30). That was well after the amalgamation in August 2010, so subsection 186(d) of the *Canada Business Corporations Act* is not directly engaged regardless.

[50] More importantly, Teva is continued as one corporation pursuant to subsection 186(a) of the *Canada Business Corporations Act*. Teva, however, seems to suggest that the obligations incurred by ratiopharm only affect the "ratiopharm part" of the company and can never touch the "Novopharm part". In my view, retaining those divisions is inconsistent with the Supreme Court's guidance in *Black and Decker* at 421:

> [T]he end result [of amalgamation] is to coalesce to create a homogeneous whole. The analogies of a river formed by the confluence of two streams, or the creation of a single rope through the intertwining of strands have been suggested by others.
>
> [Emphasis added]

[51] Teva's submissions treat the amalgamation as if the streams of ratiopharm and Novopharm simply aligned themselves parallel to one another, with their waters never mixing.

[52] That is not the case. Rather, the rights and obligations that Teva's predecessors incurred are now vested in one entity and they must be reconciled where they conflict. As Dr. Denike said

in cross-examination and Pfizer emphasized, this was a multi-billion dollar amalgamation. For whatever benefits it has, Teva must also accept the costs. After all, only the amalgamating corporations decide whether they amalgamate. A third party to whom one of those corporations owes some obligation does not. Generally speaking, therefore, the obligation owed to that third party should not be reduced in favour of a right of one of the precedent corporations.

[53] As such, if ratiopharm [...] , then Teva cannot do it either. The fact that Novopharm would have been able to do it had the amalgamation not happened is irrelevant. Teva is not divisible in that way.

[54] I also do not think the prior cases about this amalgamation assist Teva in this regard.

[55] In *Wyeth (FC)*, Novopharm had asked another company to assert a particular patent against ratiopharm prior to the amalgamation. Mr. Justice Roger Hughes found that by doing so, Novopharm had exercised a right that was inconsistent with ratiopharm's right to pursue damages under section 8 of the Regulations, thus engaging the equitable doctrine of election and defeating Teva's action (*Wyeth (FC)* at paragraphs 46, 54 and 55). The Federal Court of Appeal reversed that, saying that Novopharm's consultation with the other company did not engage any right that was inconsistent with ratiopharm's right to pursue damages (*Wyeth (FCA)* at paragraph 36). However, it did not make any finding about what would have happened if Novopharm's actions had been inconsistent with ratiopharm's rights. Therefore, that case does not support Teva's much broader argument.

[56] In the other case that Teva cites, ratiopharm and Novopharm had both been trying to develop generic versions of the same drug. After the amalgamation, this meant that both notices of allegation were being advanced by Teva, which would ordinarily be an abuse of process. However, Mr. Prothonotary Kevin Aalto found that it was not in those circumstances. That may be relevant to issue 3, but it has no bearing on the present question.

[57] Consequently, I am satisfied that [...] and could potentially affect rights that it inherited from Novopharm. The question reduces to what obligations [...] actually created, which I will consider under issue 3.

C. *Issue 3 - If so, does that [...] bar the underlying action?*

[58] I agree with Teva that [...] and that it therefore does not preclude the present action.

[59] [...]. I previously described the rules relating to the interpretation of [...].

[60] [...].

[61] Teva submits its interpretation at paragraph 71 of its memorandum:

[...].

[62] Actually, the [...] only supports the second interpretation, not the first. As Pfizer pointed out in its supplementary memorandum, Teva's construction essentially [...]. This creates a limitation that otherwise does not exist. The word "including" is meant to enlarge the scope of

preceding words by giving examples, not limit the preceding words to the examples (*Katsikonouris* at paragraph 13). Whatever the merit of Teva's overall position, it finds no support in [...].

[63] However, [...] has to be read as a whole. [...].

[64] Therefore, I accept that [...]. I mostly agree with Dr. Denike's observation at paragraph 68 of his affidavit:

[...].

[65] Although I accept that it would actually mean ratiopharm would be tied for first, these are companies that frequently litigate against each other. Given that context, neither party could have intended that [...]. As Ontario's Court of Appeal stated in *Kentucky Fried Chicken v Scott's Food Services Inc*, [1998] OJ No 4368 (QL) at paragraph 27, 114 OAC 357, courts should avoid interpreting commercial documents in a way "that would result in a commercial absurdity" (see also *Consolidated-Bathurst Export Limited v Mutual Boiler and Machinery Insurance Company* (1979), [1980] 1 SCR 888 at 901, 112 DLR (3d) 49). Therefore, the plain meaning of [...] cannot necessarily be relied upon in and of itself.

[66] However, that is not Pfizer's position. Pfizer takes the much more modest view that the [...].

[67] Even then, Teva submits that would be absurd, citing Dr. Denike's passage quoted above for the proposition that "[a] generic in Ratiopharm's position would not have released Pfizer

from all future damages relating to any and all future actions involving sildenafil" (Teva's memorandum at paragraph 93).

[68] However, I am not satisfied that is true.

[69] First, Dr. Denike only said at paragraph 69 that it would be absurd if [...]. That does not necessarily mean it would be absurd to agree not to litigate with respect to another generic version of VIAGRA®.

[70] [...].

[71] [...]:

> [...]
>
> [Bold in original; underlining added]

[72] Pfizer emphasizes the last [...] and also observes that Teva-Sildenafil essentially matches the description of the drugs in the first. Further, no section 8 claim had been made at the [...].

[73] Teva, on the other hand, observes that the [...].

[74] There is a slight problem with Teva's interpretation. If it is true, it would mean that ratiopharm could have subsequently developed a different generic version of VIAGRA® and filed another notice of allegation regarding it. Under Teva's interpretation, [...]. However, that would essentially deprive Pfizer of most of the benefit it obtains [...] while allowing Teva to still

benefit from the automatic issuance of a notice of compliance for one of its products if another generic succeeds before it does. On first impression, that seems unreasonable.

[75] However, that particular situation was not a realistic possibility. By the time [...], the Federal Court of Appeal had already held that it would usually be an abuse of process for one generic to advance more than one notice of allegation (see *Pharmascience Inc v Canada (Health)*, 2007 FCA 140 at paragraph 41, 282 DLR (4th) 145).

[76] As such, both interpretations are plausible and in the ordinary course of events, both would have the same effect. [...].

[77] However, a consideration of the surrounding context reveals that Teva's proposed interpretation should be preferred. As mentioned earlier, [...].

[78] [...].

[79] [...].

[80] Here, I agree with Pfizer that the subject matter of the claim described [...] and the present action is similar. I also agree that many [...]. However, the circumstances in which the present cause of action arose are such that [...].

[81] As Teva points out, ratio-Sildenafil and Teva-Sildenafil have always been distinct drug products. The abbreviated new drug submissions for each were filed and pursued by companies that were still different at the time. Further, Pfizer was already engaged in parallel litigation with Novopharm. It knew full well that [...] would have no effect on that litigation. Neither party could have intended [...] about a different drug product with a different company. By mounting this defence now, Pfizer is seeking a benefit for which it never bargained.

[82] Interpreting the words of [...] in that context, I am satisfied that Teva's interpretation is preferable. [...]. I would therefore reject Pfizer's defence and grant summary judgment in Teva's favour.

[83] Before leaving this, I should mention that some of Dr. Denike's affidavit spoke only to the subjective intent of ratiopharm (see for example, affidavit of Dr. Kane Denike at paragraphs 73 and 74). Such evidence is usually not admissible (see *White v Central Trust Co*, 7 DLR (4th) 236 at 248, 54 NBR (2d) 293; *York University v Markicevic*, 2013 ONSC 378 at paragraph 48, [2013] OJ No 249 (available on CanLII)). However, Teva submitted that it could be to the extent that a contract is ambiguous (see *United Brotherhood of Carpenters and Joiners of America, Local 579 v Bradco Construction Limited*, [1993] 2 SCR 316 at 342, 102 DLR (4th) 402). To be clear, I did not find it necessary to consider this evidence to resolve the issue and so I would not rule on its admissibility.

[84] Teva also submits that Pfizer's failure to assert its rights under article 8 during the earlier litigation shows that its interpretation has essentially been fabricated. Pfizer replies that it never had any occasion to do so, since Teva did not do any of those prohibited actions after [...].

[85] Regardless, I would not assign any significance to Pfizer's failure to raise this objection earlier. [...].

D. *Issue 4 - Should a confidentiality order be issued to prevent disclosure of [...]?*

[86] Finally, I will address the motion under Rule 151. The materials filed under seal should remain sealed.

[87] I am convinced by Pfizer's argument about [...].

[88] Further, promoting [...]. I am also satisfied that nothing but keeping [...] sealed could satisfy that objective.

[89] As for the second stage, the salutary effects of such an order would normally outweigh its deleterious effects. Generally speaking, the public interest in knowing exactly what [...] says is minimal. I am satisfied that the material currently filed under seal should remain sealed.

[90] I would note that the plaintiff did not take any position on this motion regarding confidentiality.

[91] The plaintiff sought costs on a solicitor-and-client basis payable forthwith. I am not prepared to make an award of costs on this basis as I do not perceive that the conduct of the defendants was reprehensible, scandalous or outrageous.

[92] I would therefore deny the defendants' motion for summary judgment with costs to the plaintiff. Also, I would allow the plaintiff's request for an order providing summary judgment on the issue of [...], namely, that the defendants cannot assert [...] to reduce or otherwise affect Teva's claims in this action. As well, I rule that the materials filed under seal remain sealed.

ORDER

THIS COURT ORDERS that:

1. The defendants' motion for summary judgment is denied with costs to the plaintiff.

2. The plaintiff is granted summary judgment on the issue of [...], namely, that the defendants cannot assert [...] to reduce or otherwise affect Teva's claims in this action.

3. The materials filed under seal remain sealed.

"John A. O'Keefe"
Judge

ANNEX

Relevant Enactments

Patented Medicines (Notice of Compliance) Regulations, SOR/93-133

8. (1) If an application made under subsection 6(1) is withdrawn or discontinued by the first person or is dismissed by the court hearing the application or if an order preventing the Minister from issuing a notice of compliance, made pursuant to that subsection, is reversed on appeal, the first person is liable to the second person for any loss suffered during the period	8. (1) Si la demande présentée aux termes du paragraphe 6(1) est retirée ou fait l'objet d'un désistement par la première personne ou est rejetée par le tribunal qui en est saisi, ou si l'ordonnance interdisant au ministre de délivrer un avis de conformité, rendue aux termes de ce paragraphe, est annulée lors d'un appel, la première personne est responsable envers la seconde personne de toute perte subie au cours de la période :
(a) beginning on the date, as certified by the Minister, on which a notice of compliance would have been issued in the absence of these Regulations, unless the court concludes that	a) débutant à la date, attestée par le ministre, à laquelle un avis de conformité aurait été délivré en l'absence du présent règlement, sauf si le tribunal conclut :
(i) the certified date was, by the operation of An Act to amend the Patent Act and the Food and Drugs Act (The Jean Chrétien Pledge to Africa), chapter 23 of the Statutes of Canada, 2004, earlier than it would otherwise have been and therefore a date later than the certified date is more appropriate, or	(i) soit que la date attestée est devancée en raison de l'application de la Loi modifiant la Loi sur les brevets et la Loi sur les aliments et drogues (engagement de Jean Chrétien envers l'Afrique), chapitre 23 des Lois du Canada (2004), et qu'en conséquence une date postérieure à celle-ci est plus appropriée,
(ii) a date other than the certified date is more appropriate; and	(ii) soit qu'une date autre que la date attestée est plus appropriée;
(b) ending on the date of the withdrawal, the	b) se terminant à la date du retrait, du désistement ou du

discontinuance, the dismissal or the reversal.	rejet de la demande ou de l'annulation de l'ordonnance.
(2) A second person may, by action against a first person, apply to the court for an order requiring the first person to compensate the second person for the loss referred to in subsection (1).	(2) La seconde personne peut, par voie d'action contre la première personne, demander au tribunal de rendre une ordonnance enjoignant à cette dernière de lui verser une indemnité pour la perte visée au paragraphe (1).

***Federal Courts Rules*, SOR/98-106**

151. (1) On motion, the Court may order that material to be filed shall be treated as confidential.	151. (1) La Cour peut, sur requête, ordonner que des documents ou éléments matériels qui seront déposés soient considérés comme confidentiels.
(2) Before making an order under subsection (1), the Court must be satisfied that the material should be treated as confidential, notwithstanding the public interest in open and accessible court proceedings.	(2) Avant de rendre une ordonnance en application du paragraphe (1), la Cour doit être convaincue de la nécessité de considérer les documents ou éléments matériels comme confidentiels, étant donné l'intérêt du public à la publicité des débats judiciaires.
...	...
213. (1) A party may bring a motion for summary judgment or summary trial on all or some of the issues raised in the pleadings at any time after the defendant has filed a defence but before the time and place for trial have been fixed.	213. (1) Une partie peut présenter une requête en jugement sommaire ou en procès sommaire à l'égard de toutes ou d'une partie des questions que soulèvent les actes de procédure. Le cas échéant, elle la présente après le dépôt de la défense du défendeur et avant que les heure, date et lieu de l'instruction soient fixés.
...	...

214. A response to a motion for summary judgment shall not rely on what might be adduced as evidence at a later stage in the proceedings. It must set out specific facts and adduce the evidence showing that there is a genuine issue for trial.

214. La réponse à une requête en jugement sommaire ne peut être fondée sur un élément qui pourrait être produit ultérieurement en preuve dans l'instance. Elle doit énoncer les faits précis et produire les éléments de preuve démontrant l'existence d'une véritable question litigieuse.

215. (1) If on a motion for summary judgment the Court is satisfied that there is no genuine issue for trial with respect to a claim or defence, the Court shall grant summary judgment accordingly.

215. (1) Si, par suite d'une requête en jugement sommaire, la Cour est convaincue qu'il n'existe pas de véritable question litigieuse quant à une déclaration ou à une défense, elle rend un jugement sommaire en conséquence.

(2) If the Court is satisfied that the only genuine issue is

(2) Si la Cour est convaincue que la seule véritable question litigieuse est :

(a) the amount to which the moving party is entitled, the Court may order a trial of that issue or grant summary judgment with a reference under rule 153 to determine the amount; or

a) la somme à laquelle le requérant a droit, elle peut ordonner l'instruction de cette question ou rendre un jugement sommaire assorti d'un renvoi pour détermination de la somme conformément à la règle 153;

(b) a question of law, the Court may determine the question and grant summary judgment accordingly.

b) un point de droit, elle peut statuer sur celui-ci et rendre un jugement sommaire en conséquence.

(3) If the Court is satisfied that there is a genuine issue of fact or law for trial with respect to a claim or a defence, the Court may

(3) Si la Cour est convaincue qu'il existe une véritable question de fait ou de droit litigieuse à l'égard d'une déclaration ou d'une défense, elle peut :

(a) nevertheless determine that issue by way of summary trial

a) néanmoins trancher cette question par voie de procès

and make any order necessary for the conduct of the summary trial; or	sommaire et rendre toute ordonnance nécessaire pour le déroulement de ce procès;
(b) dismiss the motion in whole or in part and order that the action, or the issues in the action not disposed of by summary judgment, proceed to trial or that the action be conducted as a specially managed proceeding.	b) rejeter la requête en tout ou en partie et ordonner que l'action ou toute question litigieuse non tranchée par jugement sommaire soit instruite ou que l'action se poursuive à titre d'instance à gestion spéciale.

***Canada Business Corporations Act*, RSC 1985, c C-44**

186. On the date shown in a certificate of amalgamation	186. À la date figurant sur le certificat de fusion :
(a) the amalgamation of the amalgamating corporations and their continuance as one corporation become effective;	a) la fusion des sociétés en une seule et même société prend effet;
(b) the property of each amalgamating corporation continues to be the property of the amalgamated corporation;	b) les biens de chaque société appartiennent à la société issue de la fusion;
(c) the amalgamated corporation continues to be liable for the obligations of each amalgamating corporation;	c) la société issue de la fusion est responsable des obligations de chaque société;
(d) an existing cause of action, claim or liability to prosecution is unaffected;	d) aucune atteinte n'est portée aux causes d'actions déjà nées;
(e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating corporation may be continued to be prosecuted by or against the amalgamated corporation;	e) la société issue de la fusion remplace toute société fusionnante dans les poursuites civiles, pénales ou administratives engagées par ou contre celle-ci;
(f) a conviction against, or ruling, order or judgment in	f) toute décision, judiciaire ou quasi-judiciaire, rendue en

favour of or against, an amalgamating corporation may be enforced by or against the amalgamated corporation; and

(g) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated corporation and the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated corporation.

faveur d'une société fusionnante ou contre elle est exécutoire à l'égard de la société issue de la fusion;

g) les statuts de fusion et le certificat de fusion sont réputés être les statuts constitutifs et le certificat de constitution de la société issue de la fusion.

FEDERAL COURT
SOLICITORS OF RECORD

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STYLE OF CAUSE:	TEVA CANADA LIMITED v PFIZER CANADA INC., PFIZER INC. AND PFIZER IRELAND PHARMACEUTICALS
PLACE OF HEARING:	OTTAWA, ONTARIO
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CONFIDENTIAL REASONS FOR ORDER AND ORDER:	O'KEEFE J.
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DATED:	JUNE 17, 2015

APPEARANCES:

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