

Federal Court



Cour fédérale

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<b>Total number of pages (including this page) /          Nombre de pages (incluant cette page) :</b> <b>4</b>	

**SUBJECT / OBJET :**

Court File Nos. / N<sup>os</sup> des dossiers de la Cour: **T-1468-13 & T-1368-14**  
 Between / entre: **Bayer Inc. et al. v. Apotex Inc.**

Enclosed is a true copy of the Order of the Honourable Mr. Justice Fothergill, dated September 7, 2016.

*Pursuant to section 20 of the Official Languages Act all final decisions, orders and judgments, including any reasons given therefore, issued by the Court are issued in both official languages. In the event that such documents are issued in the first instance in only one of the official languages, a copy of the version in the other official language will be forwarded on request when it is available.*

*Conformément à l'article 20 de la Loi sur les langues officielles, les décisions, ordonnances et jugements définitifs avec les motifs y afférents, sont émis dans les deux langues officielles. Au cas où ces documents ne seraient émis, en premier lieu, que dans l'une des deux langues officielles, une copie de la version dans l'autre langue officielle sera transmise, sur demande, dès qu'elle sera disponible.*

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**Date: 20160907****Dockets: T-1468-13  
T-1368-14****Ottawa, Ontario, September 7, 2016****PRESENT: The Honourable Mr. Justice Fothergill****BETWEEN:****BAYER INC. and BAYER PHARMA  
AKTIENGESELLSCHAFT****Plaintiffs  
Defendants by Counterclaim****and****APOTEX INC.****Defendant  
Plaintiff by Counterclaim****ORDER**

**UPON** the motion of Apotex Inc. [Apotex] for a stay pending appeal of the Judgment of this Court released in draft to the parties on July 22, 2016, and formally issued on September 7, 2016;

**AND UPON** reading the materials filed and hearing counsel for Bayer Inc. and Bayer Pharma Aktiengesellschaft [Bayer] and Apotex on August 31, 2016, in Toronto;

**AND CONSIDERING** that Bayer does not object to a stay of the Judgment pending appeal, subject to certain conditions;

**AND CONSIDERING** that the tri-partite test for granting a stay described in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 334 has been met.

**AND CONSIDERING** that Apotex has provided an undertaking as to damages in a form that is satisfactory to Bayer;

**THIS COURT ORDERS that:**

1. The motion for a stay pending appeal is allowed in part, subject to the following conditions:
  - a. the stay applies only to Apotex;
  - b. the stay applies only to the injunction and delivery up/destruction orders insofar as they relate to Apotex (paragraphs 2 and 3 of the Judgment);
  - c. Apotex shall proceed with the proposed appeal on an expedited basis;
  - d. Apotex shall file and serve a notice of appeal within three days of receiving the formally issued Judgment and shall thereafter bring a motion in the Federal Court of Appeal forthwith to expedite the appeal;
  - e. the parties shall agree to the contents of the appeal book within 10 days after filing the notice of appeal; if an agreement cannot be reached, Apotex shall file a motion to determine the contents of the appeal book within five days thereafter;

- f. Apotex shall serve and file the appeal book within 14 days after the day on which a copy of any agreement to the contents of the appeal book is filed or an order prescribing the contents of the appeal book is issued;
  - g. Apotex shall serve and file a memorandum of fact and law within 30 days after filing the appeal book;
  - h. Bayer shall serve and file a memorandum of fact and law within 30 days after service of Apotex's memorandum of fact and law;
  - i. Apotex shall request a hearing of the appeal at the earliest possible date; and
  - j. Apotex shall keep accurate records of all Zamine and Mya tablet sales in Canada during the stay period, the cost of goods sold, and Apotex's profits related to those sales;
2. Costs of the motion shall be in the cause of the appeal.

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"Simon Fothergill"

Judge