



Rx IP UPDATE

CANADIAN PHARMACEUTICAL INTELLECTUAL PROPERTY LAW NEWSLETTER

1

Canadian Generic
Pharmaceutical
Association Seeks
to Intervene in
Appeal of Estoppel
Decision Under
Linkage
Regulations

Supreme Court of
Canada Leave
Applications

2

Recent Court
Decisions

3

Canadian Internet
Registration
Authority's
Domain Name
Dispute Resolution
Policy Decision

4

New Court
Proceedings

Canadian Generic Pharmaceutical Association Seeks to Intervene in Appeal of Estoppel Decision Under Linkage Regulations

The Canadian Generic Pharmaceutical Association (CGPA) has sought leave to intervene in Apotex's appeal of an Order of prohibition under the *Patented Medicines (Notice of Compliance) Regulations* ("*Regulations*"). As reported in the [March 2005](#) issue of *Rx IP Update*, the Federal Court granted the Order of prohibition (relating to the medicine omeprazole magnesium, AstraZeneca's LOSEC), finding that Apotex was precluded by the doctrine of issue estoppel from alleging non-infringement and invalidity in view of a previous allegation of non-infringement (*AB Hassle v. Apotex*, [2005 FC 234](#)). The CGPA submits that its members "are directly affected by the estoppel/abuse of process issue raised by this appeal" and that "[p]rior to the decision of Madam Justice Layden-Stevenson, it had been understood and considered as settled law that successive NOAs [notices of allegation] may be made in respect of the same patent, provided that the NOAs do not raise identical issues".

Supreme Court of Canada Leave Applications

Genpharm v. Procter & Gamble (etidronate disodium (DIDROCAL)), April 22, 2005

Leave has been denied. Genpharm had filed an application for leave to appeal the Court of Appeal's dismissal ([2004 FCA 393](#)) of its appeal of a prohibition Order.

Genpharm v. AB Hassle (omeprazole (LOSEC)), April 22, 2005

Leave has been denied. Genpharm had filed an application for leave to appeal the Court of Appeal's dismissal ([2004 FCA 413](#)) of its appeal of a prohibition Order.

Apotex v. AB Hassle (omeprazole magnesium (LOSEC)), April 22, 2005

Leave has been denied. Apotex had filed an application for leave to appeal the Court of Appeal's dismissal ([2004 FCA 369](#)) of its appeal of a prohibition Order.

Recent Court Decisions

Patented Medicines (Notice of Compliance) Regulations

Janssen-Ortho v. Novopharm (levofloxacin (LEVAQUIN)), January 6, 2005

Court of Appeal dismisses Janssen-Ortho's appeal from a Judge's dismissal of Janssen-Ortho's application for a prohibition Order. Novopharm received a notice of compliance (NOC) on the same day that Janssen-Ortho filed the appeal. The Court of Appeal found the appeal was moot.

Court of Appeal Decision

Motions Judge's Decision (2004 FC 1631)

Apotex v. Syntex and Roche; Canada (Attorney General), Third Party (naproxen slow-release tablets (NAPROSYN SR)), April 12, 2005

Judge allows the Crown's appeal and strikes Syntex' and Roche's third party claims against the Crown in the event Syntex/Roche are found liable to Apotex in the main action for damages under section 8 of the *Regulations*. Syntex and Roche have appealed.

Motions Judge's Decision (2005 FC 480)

Prothonotary's Decision (2005 FC 121)

Other Proceedings

Roche and Allergan v. Apotex (ketorolac ophthalmic solution (APO-KETOROLAC, ACULAR)), April 14, 2005

Court determines a number of procedural matters in an Ontario Superior Court patent infringement action and action for common law and equitable remedial orders arising out of allegedly fraudulent, deceptive and misleading information provided in an NOA and detailed statement provided by Apotex under the *Regulations*.

Full Judgment

Canadian Internet Registration Authority's Domain Name Dispute Resolution Policy Decision

CanadaDrugs.com Partnership v. NC Britton Holdings Ltd. o/a Minit Drugs (www.canadadrugs.ca), April 7, 2005

Panel orders the registration of the domain name to be transferred to the complainant, CanadaDrugs.com. Panel finds the registrant's domain name to be confusingly similar to CanadaDrugs.com's CANADA DRUGS and CANADADRUGS.COM trade-marks, and that the registrant had registered the domain in bad faith and had no legitimate interest in it.

[Full Decision](#)

New Court Proceedings

Patented Medicines (Notice of Compliance) Regulations

Medicine: atorvastatin calcium (LIPITOR)
Applicants: Pfizer Canada Inc and Warner-Lambert Company, LLC
Respondents: Novopharm Limited and The Minister of Health
Date Commenced: March 24, 2005
Comment: Application for Order of prohibition until expiry of Patent No. 2,021,546. Novopharm alleges non-infringement and invalidity.

Medicine: atorvastatin calcium (LIPITOR)
Applicants: Pfizer Canada Inc and Warner-Lambert Company, LLC
Respondents: Novopharm Limited and The Minister of Health
Date Commenced: March 31, 2005
Comment: Application for Order of prohibition until expiry of Patent No. 2,150,372. Novopharm alleges non-infringement and invalidity.

Medicine: atorvastatin calcium (LIPITOR)
Applicants: Pfizer Canada Inc and Warner-Lambert Company, LLC
Respondents: Novopharm Limited and The Minister of Health
Date Commenced: April 13, 2005
Comment: Application for Order of prohibition until expiry of Patents Nos. 2,220,018, 2,220,455, and 2,220,458. Novopharm alleges non-infringement and invalidity.

OTTAWA

55 Metcalfe Street, Suite 900
 P.O. Box 2999, Station D
 Ottawa, Ontario Canada
 K1P 5Y6
 t. 613.232.2486
 f. 613.232.8440

ottawa@smart-biggar.ca

TORONTO

438 University Avenue
 Suite 1500, Box 111
 Toronto, Ontario Canada
 M5G 2K8
 t. 416.593.5514
 f. 416.591.1690

toronto@smart-biggar.ca

MONTREAL

1000 de La Gauchetière St. W.
 Suite 3300
 Montreal, Québec Canada
 H3B 4W5
 t. 514.954.1500
 f. 514.954.1396

montreal@smart-biggar.ca

VANCOUVER

650 West Georgia Street
 Suite 2200
 Box 11560, Vancouver Centre
 Vancouver, B.C. Canada
 V6B 4N8
 t. 604.682.7780
 f. 604.682.0274

vancouver@smart-biggar.ca

EDMONTON

10060 Jasper Avenue, Suite 1501
 Scotia Place, Tower Two
 Edmonton, Alberta Canada
 T5J 3R8
 t. 780.428.2960
 f. 780.423.6975

edmonton@smart-biggar.ca

www.smart-biggar.ca

Other New Proceedings

Medicine: enoxaparin sodium injection (LOVENOX)
Applicant: Aventis Pharma Inc
Respondents: The Minister of Health, The Attorney General of Canada and Novopharm Limited
Date Commenced: April 1, 2005
Comment: Application for an Order quashing the notice of compliance issued to Novopharm for enoxaparin sodium injection.

Contact Info

For more information, or to request a copy of any decision, pleading or legislation, please contact:

Gunars A. Gaikis
ggaikis@smart-biggar.ca

J. Sheldon Hamilton
jshamilton@smart-biggar.ca

Nancy P. Pei (Editor)
nppei@smart-biggar.ca

Pharmaceutical Practice Group

James D. Kokonis, Q.C., B.A.Sc. (Metallurgy), LL.B.
 John R. Morrissey, B.Eng. (Elec.Eng.), S.M., LL.B.
 Joy D. Morrow, B.Sc., M.Sc. (Cell Bio.), LL.B.
 Keltie R. Sim, B.Sc. (Mycology), LL.B.
 Mark K. Evans, B.Sc., LL.B.
 J. Christopher Robinson, B.Sc., M.Sc. (Genetics), LL.B.
 Steven B. Garland, B.Eng. (Chem.-Biochem.Eng.), LL.B.
 David E. Schwartz, B.Sc. (Genetics), LL.B.
 Yoon Kang, B.Sc., M.Sc. (Molec.Bio. & Genetics), LL.B.
 Thuy H. Nguyen, B.Sc., Ph.D. (Biochem.)
 Denise L. Lacombe, B.Sc. (Chem.), M.Sc. (Chem.Phys.), LL.B.
 May Ming Lee, B.Sc.Pharm., LL.B.
 S. Serge Shahinian, B.Sc., Ph.D. (Biochem.)
 Scott A. Beeser, B.Sc. (Biochem.) Ph.D. (Bio.), LL.B.
 Y. Lynn Ing, B.Sc. (Biochem.), Ph.D. (Molec.Bio.), J.D.

A. David Morrow, B.Sc. (Physics), LL.B.
 John Bochnovic, B.Eng. (Elec.Eng.), S.M., LL.B.
 Gunars A. Gaikis, B.Sc.Pharm., LL.B.
 Michael D. Manson, B.Sc. (Bio.), Dipl.Ed., LL.B.
 Tokuo Hiram, B.Sc., M.Sc. (Chem.)
 Solomon M.W. Gold, B.Sc., M.Sc. (Bio.), LL.B.
 J. Sheldon Hamilton, B.A.Sc. (Chem.Eng.), LL.B.
 Brian G. Kingwell, B.Sc. (Biochem.), M.Sc. (Molec. Cell Bio.), LL.B.
 Nancy P. Pei, B.Sc.Pharm., LL.B.
 Daphne C. Ripley, B.Sc., M.Sc. (Chem.), LL.B.
 Sally A. Hemming, B.Sc., Ph.D. (Biochem.), J.D.
 James Jun Pan, B.Eng. (Eng.Phys.), Ph.D. (Chem.), LL.B.
 Kavita Ramamoorthy, B.Sc. (Pharma.), Ph.D. (Toxic.), LL.B.
 Jennifer L. Ledwell, B.Sc. (Biochem.), Ph.D. (Molec. & Cell Physio.)

Disclaimer

The preceding is intended as a timely update on Canadian intellectual property and regulatory law of interest to the pharmaceutical industry. The contents of our newsletter are informational only, and do not constitute legal or professional advice. To obtain such advice, please communicate with our offices directly. To join the *Rx IP Update* mailing list, or to amend address information, please send an e-mail to rxip.update@smart-biggar.ca.