

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20090624

Docket: A-210-07

Citation: 2009 FCA 216

**CORAM: NOËL J.A.
PELLETIER J.A.
TRUDEL J.A.**

BETWEEN:

APOTEX INC.

Appellant

and

PFIZER CANADA INC. & PFIZER LIMITED

Respondents

and

THE MINISTER OF HEALTH

Respondent

Heard at Ottawa, Ontario, on June 24, 2009.

Judgment delivered from the Bench at Ottawa, Ontario, on June 24, 2009.

REASONS FOR JUDGMENT OF THE COURT BY:

NOËL J.A.

Federal Court
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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Ottawa, Ontario, on June 24, 2009)

NOËL J.A.

[1] Although this appeal is directed against the order of prohibition issued by the Federal Court Judge with respect to Apo-Amlodipine tablets, we are effectively being asked to reconsider the decision of this Court in *Pfizer Canada Inc. and Pfizer Limited v. The Minister of Health and*

Ratiopharm Inc., 2006 FCA 214; leave to appeal dismissed, [2006] S.C.C.A. No. 335 (*Ratiopharm*) in light of the decision of the Supreme Court of Canada in *Apotex Inc. v. Sanofi-Synthelabo Canada Inc.*, 2008 SCC 61 (*Sanofi*).

[2] It is well established that this Court will only overrule one of its decisions if it is shown to be manifestly wrong, in the sense that the Court overlooked a relevant statutory provision or a case that ought to have been followed (see *Miller v. Attorney General of Canada*, 2002 FCA 370 at paragraph 10).

[3] In order to succeed, it was incumbent upon Apotex to show that, in light of the intervening decision of the Supreme Court in *Sanofi*, *Ratiopharm* was decided on wrong principle. In our view, this has not been shown. The principles enunciated by this Court in *Ratiopharm* are consistent with the law of selection patents, including the approaches to anticipation and obviousness, as stated by the Supreme Court in *Sanofi*.

[4] The appeal will be dismissed with costs.

“Marc Noël”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-210-07

**(APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE
HENEGHAN DATED MARCH 26, 2007, NO. T-1255-04.)**

STYLE OF CAUSE: Apotex Inc. and Pfizer Canada Inc. & Pfizer
Limited and The Minister of Health

DATE OF HEARING: June 24, 2009

REASONS FOR JUDGMENT OF THE COURT BY: Noël, Pelletier and Trudel JJ.A.

DELIVERED FROM THE BENCH BY: Noël J.A.

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