

Federal Court



Cour fédérale

**Date: 20160129**

**Docket: T-1791-13**

**Citation: 2016 FC 107**

**Montréal, Quebec, January 29, 2016**

**PRESENT: The Honourable Mr. Justice Locke**

**BETWEEN:**

**LEO PHARMA INC.**

**Applicant**

**and**

**TEVA CANADA LIMITED AND THE  
MINISTER OF HEALTH**

**Respondents**

**and**

**LEO PHARMA A/S**

**Respondent/Patentee**

**ORDER AND REASONS**

[1] This decision concerns costs in this matter following my judgment dated November 18, 2015 (*Leo Pharma Inc v Teva Canada Limited*, 2015 FC 1237) in which I granted LEO Pharma

Inc.'s (LEO's) application under section 6 the *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-133 (the Regulations), for an Order prohibiting the Minister of Health from issuing a Notice of Compliance to Teva Canada Limited (Teva) in respect of 50 mcg/g calcipotriol and 0.5 mg/g betamethasone (as dipropionate) ointment until after the expiry of Canadian Patent No. 2,370,565.

[2] In my November 18, 2015 judgment, I indicated that Teva was liable to pay LEO's costs, and invited the parties to make written submissions on the amount of those costs. LEO filed submissions, including a bill of costs and supporting documentation, on November 30, 2015. LEO claims \$118,953.14 in fees and \$470,604.66 in disbursements for a total of \$589,557.80. Teva filed responding submissions on December 15, 2015. It disputes some of LEO's claims and argues that costs should be \$266,000 (including \$41,000 in fees and \$225,000 in disbursements). LEO also filed reply submissions.

[3] I have now reviewed and considered those submissions. It is most efficient for me to use LEO's bill of costs as a starting point and to weigh Teva's various arguments in dispute of that bill of costs, as well as LEO's reply to such arguments. To the extent that I agree with Teva's arguments, I deduct the appropriate amount from LEO's bill of costs. The amended bill of costs is attached as an Annex to this decision. The headings below roughly follow those used in Teva's submissions.

[4] Though Teva has asked, in the alternative, that the issue of costs be sent for assessment, I find that setting a lump sum now will determine the issues in the just, most expeditious and least expensive manner.

I. Counsel Fees

A. *Applicable Scale*

[5] Teva argues that there is nothing notably complex in this matter that justifies departing from the default scale for counsel fees, the middle of Column III of Tariff B of the *Federal Courts Rules*, SOR/98-106. I disagree. The complexity of issues in this matter is demonstrated by the number of expert witnesses put forward (five by LEO and three by Teva).

[6] Though Teva argues that there is no general recognition in the jurisprudence that Column IV is the norm in matters brought pursuant to the Regulations, there is likewise no general recognition that the threshold for finding complexity is any higher in such matters. LEO need not establish that this matter was more complex than a typical proceeding under the Regulations.

[7] Though LEO argues that fees should be calculated at the top of Column IV, I find that the middle of Column IV is more appropriate. The figures for LEO's bill of costs are adjusted accordingly.

B. *Amount of work*

[8] Teva argues that the amount of work required for LEO in this matter was inflated at least in part because LEO retained two different law firms. Teva may be right, but I am not persuaded that any such increased amount of work is reflected in LEO's bill of costs.

[9] The parties also disagree as to whether I should take into account the fact that, in its evidence, LEO addressed many issues that were raised by Teva in its notice of allegation but that Teva did not pursue at the hearing before me. LEO argues that Teva never informed it that Teva was not intending to pursue these issues, and so it was reasonably necessary at the time for LEO to address them in its evidence. Teva responds that, since LEO was the applicant in this matter with the burden of proving its case, Teva had no obligation to inform LEO of issues it did not intend to pursue. Teva argues that its conduct was neither abusive nor improper such as to merit increased costs. Though I agree, I am of the view that LEO's work on such issues was indeed reasonably necessary at the time it was done.

[10] I make no change to LEO's bill of costs in regard to the amount of work.

C. *Travel Time*

[11] Teva argues that counsel fees for time spent travelling should not be allowed because LEO has not established that it actually paid for counsel's travel time. In the absence of comment on this point by LEO in reply, I agree with Teva. Accordingly, I disallow LEO's claim under item 24 of Tariff B.

D. *Documentary Discovery*

[12] Teva argues that no amount should be allowed for documentary discovery because proceedings under section 6 of the Regulations are summary proceedings in which there is no defined documentary discovery phase. In the absence of comment on this point by LEO in reply, I agree with Teva. I disallow LEO's claim in this regard under item 7 of Tariff B.

E. *Motions*

[13] Teva argues that, though the December 18, 2014 Order of Justice Sean Harrington (on appeal from the October 20, 2014 Order of Prothonotary Mireille Tabib on LEO's motion to submit reply evidence) granted LEO's appeal in part, Justice Harrington's Order granted costs only in respect of the motion before him, and did not alter Prothonotary Tabib's Order as it concerned costs. Prothonotary Tabib's Order required that LEO pay Teva its costs of the motion before her. Consequently, Teva argues, it is entitled to have the costs of the motion before Prothonotary Tabib assessed and set off against LEO's bill of costs. I agree with Teva.

[14] Teva submitted a bill of costs concerning the motion before Prothonotary Tabib in the amount of \$7,561.52, including \$4,081.56 in fees and \$3,479.96 in disbursements. However, the fees portion of this bill of costs is based on the middle of Column III. Having concluded that this is too low for LEO's bill of costs, it is my view that the amount of Teva's costs for the motion before Prothonotary Tabib should be increased. I would assess the amount of Teva's costs for this motion at \$9,000, inclusive of taxes and disbursements, to be set off against LEO's costs.

F. *Cross-Examination*

(1) Motion for Reply Evidence

[15] Teva argues that no costs should be awarded to LEO for cross-examinations conducted with respect to its motion to submit reply evidence. This argument concerns preparing for and attending the following cross-examinations: Kenneth Walters on October 7, 2014, Steven Feldman on October 8, 2014, and William Bosch on October 9, 2014. For the same reasons as discussed above in relation to motions, and in the absence of comment on this point by LEO in reply, I agree with Teva.

[16] Consequently, the amounts claimed in LEO's bill of costs in relation to these three cross-examinations in Tariff B under items 8 and 9 should be removed.

(2) Goldberg Cross-Examination

[17] Teva also argues that the amount claimed under item 9 of Tariff B for attending the cross-examination of Dr. Goldberg on January 15, 2015, is excessive. In the absence of comment on this point by LEO in reply, I agree with Teva. The recognized time for this cross-examination should be reduced from seven hours to four.

G. *Trial*

[18] Teva argues that LEO should not be allowed to claim more than one senior counsel and one junior counsel in attendance at the hearing on the merits. Though LEO had four counsel at

the hearing and claims for three, I am persuaded by the fact that Teva was represented at the hearing by just two counsel. I agree with Teva that LEO should not be allowed costs for more than one senior counsel and one junior counsel. The amount claimed by LEO under item 14(b) of Tariff B for a second junior counsel is disallowed.

#### H. *Assessment of Costs*

[19] Teva argues that LEO should be denied the costs of this assessment of costs under item 26 of Tariff B. As will be shown below, my conclusion on costs in this matter is close to the midpoint between the figure put forward by LEO and that put forward by Teva. In fact, it is slightly closer to Teva's position. Therefore, I agree with Teva that no costs should be allowed for this assessment of costs. I disallow LEO's claim in this regard.

#### II. Experts Fees

##### A. *Duplication of Expert Witnesses*

[20] Teva argues that LEO relied on expert witnesses who duplicated the work of other expert witnesses, and therefore should not be allowed in assessing costs. Firstly, Teva argues that LEO's reliance on two clinical experts (Paul Contard and Neil Shear) to address some of the same issues was unnecessary, and that costs associated with Dr. Shear's testimony should not be allowed. Secondly, Teva argues that LEO's choice to have two formulation experts (Arthur Goldberg and Kenneth Walters) addressing some of the same issues should likewise disentitle it to costs associated with the testimony of Dr. Goldberg.

[21] During the hearing of this matter on the merits, I had no sense that there had been any needless duplication of expert evidence, and Teva's argument does not persuade me that any of LEO's expert evidence was not reasonably necessary.

[22] I make no change to LEO's bill of costs in this regard.

B. *Excessive Costs*

(1) Expert's Time

[23] Teva argues that LEO is not entitled to (i) costs for an expert's time spent meeting with counsel, (ii) costs incurred by an expert after the conclusion of their evidence, or (iii) an expert's time during breaks in their cross-examination.

[24] In support of point (i), Teva relies on the decision of Justice Howard Wetston in *Apotex Inc v Wellcome Foundation Ltd*, [1998] FCJ No 1736 (QL) at para 63, including the following statement:

... I find that Glaxo should, however, be granted costs for experts' fees and disbursements which arose as a result of experts' time spent in: preparing their affidavits; reviewing the patent, reviewing the other experts' affidavits, and attendance in court. Glaxo shall receive costs for experts' travel, but only with respect to their attendance in court. I deny Glaxo's request for costs for experts' time spent meeting with counsel. ...

[25] I do not read this statement as being of general application. I prefer the reasoning of Assessment Officer Charles E. Stinson in *Mercury Launch & Tug Ltd v Texada Quarrying Ltd*, 2009 FC 331 at para 38 [*Mercury Launch*]:



... With respect, I am uncertain as to how the bar in *Wellcome* to compensation for the time of experts in meeting with counsel can be reconciled with the practical and reasonably necessary requirement, in my view, of having supervising counsel shape, further to meetings either in person or by teleconference, an expert's work to mesh with the former's case strategy. Compensation for the role of counsel is limited by the partial indemnity provisions of the Tariff as required by Rule 407, but compensation for the role of an expert is generally fully recoverable within the limitations of reasonable necessity ... Costs for the time of experts meeting with supervising counsel are assessable if necessary and not duplicative of either previous meetings or work more properly the responsibility of supervising counsel.

[26] I am satisfied that experts' time spent meeting with counsel in this case was reasonably necessary, except as indicated below.

[27] With regard to point (ii) above, it is not clear to me that any of the costs incurred by LEO's experts occurred after the conclusion of their evidence.

[28] Finally, with regard to point (iii), I revert to Assessment Officer Stinson's statement in the *Mercury Launch* decision. There is an important difference in concept between costs for counsel's time (which are generally calculated on a partial indemnity basis by reference to Tariff B) and expert's costs (which are generally fully recoverable within the limitations of reasonable necessity). Though counsel time should be calculated after removing time for breaks, this is not necessarily the case for an expert's time.

[29] I make no change to LEO's bill of costs pursuant to any of Teva's arguments under this heading.

(2) Dr. Goldberg's Billable Rate

[30] Teva argues that, to the extent that costs are allowed for the work of Dr. Goldberg, the billable rate should be reduced to that charged by Dr. Walters. I am not persuaded that Dr. Goldberg's billable rate was unreasonably high or that it should be reduced simply because it is higher than Dr. Walters' rate.

[31] I make no change to LEO's bill of costs in this regard.

(3) Preparing Expert Response that was Never Served or Filed

[32] Teva argues that costs should be disallowed for the 27 hours spent by Dr. Goldberg in September 2014, on the preparation of a response that was never served or filed to one of Teva's experts. I agree. It is difficult to justify as reasonably necessary work that was never relevant to or admissible in the proceeding. The disallowed expenses amount to US\$13,500. I calculate that amount to have corresponded at the time to roughly CDN\$16,000, which is deducted from LEO's bill of costs.

(4) Dr. Goldberg's Meetings in Preparation for his Cross-Examination

[33] Teva argues that two days of meetings in New York City and four days of meetings in Montreal in the days leading up to Dr. Goldberg's cross-examination in January 2015, should be disallowed or reduced as they are excessive. I agree that this seems excessive. Dr. Goldberg's

bill for January 2015, was US\$29,171.61, which corresponded to roughly CDN\$35,000. In my view, a substantial reduction in the amount of CDN\$20,000 is called for.

C. *Expert Affidavit of Fritz Blatter*

[34] Teva argues that no amount should be allowed for the work of LEO's expert Fritz Blatter because, though he provided an expert report and was cross-examined thereon, no reference was made to his evidence at the hearing on the merits. Indeed, as it turned out, LEO did not need to refer to Dr. Blatter's evidence. Nevertheless, I am not persuaded that his evidence was not reasonably necessary. In my view, Dr. Blatter's evidence was reasonably necessary at the time it was prepared.

[35] Teva also argues, in the alternative, that costs should not be allowed for Dr. Blatter's time spent on travel to meetings and other non-productive work. I agree, in part because of the admission that such work is non-productive. I am also struck that the amount of such time recorded in Dr. Blatter's invoice of April 27, 2015, (27 hours) far exceeds the amount of his productive time (12 hours).

[36] The amount of time in dispute on this point is 28 hours (27 hours in Dr. Blatter's invoice of April 27, 2015, and one hour in his invoice of December 23, 2013) which amounts to 5,600 Swiss Francs. Using a rough exchange rate, I reduce the amount of LEO's costs in association with the work of Dr. Blatter by CDN\$7,000.

III. Travel Transportation

[37] LEO indicates in its submissions that the amount it claims under this heading has been reduced by 50% of the actual costs. Teva argues that this reduction is insufficient to reflect impermissible costs such as (i) costs associated with LEO's motion to submit reply evidence, (ii) multiple meetings with experts which could have been held by telephone or video-conference, and (iii) multiple counsel attending meetings and cross-examinations.

[38] I disagree. Firstly, I am not persuaded that meetings in person with experts were not reasonably necessary. Such meetings are often much more efficient than a video-conference. Secondly, while I would have been inclined to reduce the total expenses incurred for travel if LEO had not already done so, I find that the 50% reduction applied by LEO is adequate.

[39] Accordingly, I make no change to LEO's bill of costs in this regard.

IV. Online Research

[40] Teva argues that LEO's claims for costs associated with online searches, if allowed at all, should be properly supported. The evidence provided by LEO is scant. The supporting Affidavit of Christian Leblanc includes an Exhibit 8 comprising over 100 pages of invoices and computer printouts, together with the following statement by Mr. Leblanc at paragraph 34 of his affidavit:

The preparation of the evidence and submission at trial required a substantial amount of scientific and legal research, both on behalf of LEO and its experts. The expenses incurred by LEO in the payment of online research services were necessary and reasonable.

[41] In my view, the evidence that the online research was necessary and reasonable amounts to little more than a bald statement. Also, it is not clear to me whether the claimed online research expenses represent actual disbursements by LEO's counsel, or merely amounts that were charged to LEO but which were not disbursements by LEO's counsel (much like internal photocopying). I find that the amount of expenses allowable for online research should be reduced to \$3,000.

V. Photocopying, Binding, Scanning, Stationery

A. *Photocopying*

[42] Teva argues that LEO is entitled to costs associated with photocopying only in respect of certain steps in this matter, and only if they are essential to the conduct of the proceeding. Teva also argues that LEO has failed to provide information in support of the indicated rate of 25 cents per page. Other than the fact that the test for permissibility of photocopy charges is reasonable necessity (rather than essentiality), Teva is correct.

[43] As with costs for online research, the evidentiary support for photocopying expenses is scant. The reasonable necessity of such expenses is likewise supported by what is little more than a bald statement to that effect in the Leblanc Affidavit.

[44] LEO's claim of \$65,923.25 corresponds to over 260,000 copies. While I accept that 25 cents per page is a reasonable rate for photocopies, I agree with Teva that the number of copies is excessive, and that a more reasonable number would be 80,000, which corresponds to \$20,000.

B. *Binding*

[45] LEO claims \$1,872.45 as costs of binding. I agree with Teva's argument that binding costs are overhead and should not be allowed.

C. *Stationery*

[46] I reach the same conclusion in respect of LEO's claim for \$66.02 in stationery costs.

D. *Scanning*

[47] LEO claims \$1,390 for costs of scanning at a rate of 25 cents per page (which corresponds to 5,560 pages). I agree with Teva's argument that the rate per page for scanning should be less than that for photocopying (since there are no costs for paper or ink), and should be set at an acceptable commercial rate. Based on the decision in *Novopharm Limited v Janssen-Ortho Inc*, 2012 FCA 29 at para 18, it appears that an acceptable commercial rate is 17 cents per page. Based on 5,560 pages of scanning, a reasonable amount for the costs associated with scanning is \$945.20.

E. *Conclusion on Photocopying, Binding, Scanning, Stationery*

[48] Based on the foregoing, the amount allowed under this category of disbursements is reduced to \$20,945.20.

VI. Stenographers

[49] Teva argues that expenses for expediting cross-examination transcripts should not be allowed. I disagree. Given the short timelines involved in this matter, and in the absence of any reference by Teva to any authority to the contrary, it is my view that expediting cross-examination transcripts was reasonably necessary.

[50] Teva also argues that court reporter expenses should not be allowed for cross-examinations conducted in relation to LEO's motion for reply evidence. I agree. The only such expense I see claimed in LEO's bill of costs concerns the cross-examination of Steven Feldman on October 8, 2014, the invoice for which is in the amount of \$510.49. This amount is deducted.

VII. Conclusion

[51] For the reasons provided above, I have concluded that LEO's bill of costs should be amended as indicated in the Annex to this decision.

**ORDER**

**THIS COURT ORDERS that** Teva Canada Limited shall pay LEO Pharma Inc.'s costs in this matter in the amount of \$419,729.92.

“George R. Locke”

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Judge



## ANNEX "A"

LEO PHARMA AMENDED BILL OF COSTS**FEES**

Based on Column IV of Tariff B of *Federal Court Rules* and on a Unit Value of \$140.00. Multiplier represents either number of days, hours or additional counsel depending on item.

**A. Originating documents and Other Pleadings**

1 Preparation and filing of originating documents, other than a notice of appeal to the Federal Court of Appeal, and application records.

Item	Assessable Services	Units	Multiplier	Total Units	Total Units Unit Value
1	Notice of application with regard to Section 55.2(4) of the <i>Patent Act</i> and under Section 6 of the <i>Patented Medicines (Notice of Compliance) Regulations</i> issued on October 31, 2013	97	N/A	97	\$1,260.00 \$980.00
1	Application Record filed on May 22, 2014	97	N/A	97	\$1,260.00 \$980.00

**B. Motions**

5 Preparation and filing of a contested motion, including materials and responses thereto.

Item	Assessable Services	Units	Multiplier	Total Units	Total Units Unit Value
5	Motion of Leo Pharma in appeal of the Order of the Prothonotary dated October 20, 2014	97	N/A	97	\$1,260.00 \$980.00

6 Appearance on a motion, per hour.

Item	Assessable Services	Units	Multiplier	Total Units	Total Units Unit Value
6	Hearing of Leo Pharma's Motion in appeal in Ottawa on 26-NOV-2014 before Justice Harrington	43	2	86	\$1,120.00 \$840.00

**C. Discovery and Examinations**7 *Discovery of documents, including listing, affidavit and inspection.*

<b>Item</b>	<b>Assessable Services</b>	<b>Units</b>	<b>Multiplier</b>	<b>Total Units</b>	<b>Total Units Unit Value</b>
7	<del>Discovery of documents annexed to the Notice of Allegation of Teva and its Abbreviated New Drug Submissions</del>	9	N/A	9	\$1,260.00
7	Preparation of the Affidavit of Dr. Arthur H. Goldberg	9 <u>6</u>	N/A	9 <u>6</u>	\$1,260.00 <u>\$840.00</u>
7	Preparation of the Affidavit of Fritz Blatter	9 <u>6</u>	N/A	9 <u>6</u>	\$1,260.00 <u>\$840.00</u>
7	Preparation of the Affidavit of Dr. Paul Contard	9 <u>6</u>	N/A	9 <u>6</u>	\$1,260.00 <u>\$840.00</u>
7	Preparation of the Affidavit of Karen Gow	9 <u>6</u>	N/A	9 <u>6</u>	\$1,260.00 <u>\$840.00</u>
7	Preparation of the Affidavit of Jens Hansen	9 <u>6</u>	N/A	9 <u>6</u>	\$1,260.00 <u>\$840.00</u>
7	Preparation of the Affidavit of Jacob Rasmussen	9 <u>6</u>	N/A	9 <u>6</u>	\$1,260.00 <u>\$840.00</u>
7	Preparation of the Affidavit of Dr. Neil Shear	9 <u>6</u>	N/A	9 <u>6</u>	\$1,260.00 <u>\$840.00</u>
7	Preparation of the Affidavit of Kenneth Walters	9 <u>6</u>	N/A	9 <u>6</u>	\$1,260.00 <u>\$840.00</u>
7	Preparation of the Reply Affidavit of Kenneth Walters	9 <u>6</u>	N/A	9 <u>6</u>	\$1,260.00 <u>\$840.00</u>
7	Preparation of the Affidavit of Kang Lee	3	N/A	3	\$420.00

8 *Preparation for an examination, including examinations for discovery, on affidavits, and in aid of execution*

<b>Item</b>	<b>Assessable Services</b>	<b>Units</b>	<b>Multiplier</b>	<b>Total Units</b>	<b>Total Units Unit Value</b>
8	<del>Preparing for cross examination of Leo Pharma's expert witness Kenneth Walters on his affidavit sworn September 17, 2014 on October 7, 2014</del>	8	N/A	8	\$1,120.00

8	<del>Preparing for cross examination of Teva's expert witness Dr. Steven Feldman on his affidavit sworn September 29, 2014 on October 8, 2014</del>	<del>8</del>	<del>N/A</del>	<del>8</del>	<del>\$1,120.00</del>
8	<del>Preparing for cross examination of Teva's expert witness Dr. William Bosch on his affidavit sworn October 1, 2014 on October 9, 2014</del>	<del>8</del>	<del>N/A</del>	<del>8</del>	<del>\$1,120.00</del>
8	Preparing for cross-examination of Leo Pharma's expert witness Dr. Arthur H. Goldberg on January 15, 2015	<u>8</u>	N/A	<u>8</u>	<u>\$1,120.00</u> <u>\$840.00</u>
8	Preparing for cross-examination of Leo Pharma's expert witness Dr. Neil Shear on February 23, 2015	<u>8</u>	N/A	<u>8</u>	<u>\$1,120.00</u> <u>\$840.00</u>
8	Preparing for cross-examination of Leo Pharma witness Karen Gow on February 24, 2015	<u>8</u>	N/A	<u>8</u>	<u>\$1,120.00</u> <u>\$840.00</u>
8	Preparing for cross-examination of Leo Pharma witness Jacob Rasmussen on March 18, 2015	<u>8</u>	N/A	<u>8</u>	<u>\$1,120.00</u> <u>\$840.00</u>
8	Preparing for cross-examination of Leo Pharma witness Jens Hansen on April 8, 2015	<u>8</u>	N/A	<u>8</u>	<u>\$1,120.00</u> <u>\$840.00</u>
8	Preparing for cross-examination of Leo Pharma's expert witness Fritz Blatter on April 9, 2015	<u>8</u>	N/A	<u>8</u>	<u>\$1,120.00</u> <u>\$840.00</u>
8	Preparing for cross-examination of Leo Pharma's expert witness Dr. Kenneth Walters on April 10, 2015	<u>8</u>	N/A	<u>8</u>	<u>\$1,120.00</u> <u>\$840.00</u>
8	Preparing for cross-examination of Leo Pharma's expert witness Dr. Paul Contard on April 30, 2015	<u>8</u>	N/A	<u>8</u>	<u>\$1,120.00</u> <u>\$840.00</u>
8	Preparing for cross-examination of Teva's expert witness Dr. Eugene Cooper on February 4, 2015	<u>8</u>	N/A	<u>8</u>	<u>\$1,120.00</u> <u>\$840.00</u>
8	Preparing for cross-examination of Teva's expert witness Dr. Gerald Krueger on February 16, 2015	<u>8</u>	N/A	<u>8</u>	<u>\$1,120.00</u> <u>\$840.00</u>

8	Preparing for cross-examination of Teva's expert witness Dr. Steven Feldman on April 22, 2015	<u>8 6</u>	N/A	<u>8 6</u>	\$1,120.00 <u>\$840.00</u>
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9 *Attending on examinations, per hour.*

Item	Assessable Services	Units	Multiplier (# of hours)	Total Units	Total Units Unit Value
9	<del>Cross examination of Leo Pharma's expert witness Kenneth Walters on his affidavit sworn September 17, 2014 on October 7, 2014</del>	4	1	4	\$560.00
9	<del>Cross examination of Teva's expert witness Dr. Steven Feldman on his affidavit sworn September 29, 2014 on October 8, 2014</del>	4	1	4	\$560.00
9	<del>Cross examination of Teva's expert witness Dr. William Bosch on his affidavit sworn October 1, 2014 on October 9, 2014</del>	4	1	4	\$560.00
9	Cross-examination of Leo Pharma's expert witness Dr. Arthur H. Goldberg on January 15, 2015	<u>4 2</u>	<u>7 4</u>	<u>28 8</u>	\$3,920.00 <u>\$1,120.00</u>
9	Cross-examination of Leo Pharma's expert witness Dr. Neil Shear on February 23, 2015	<u>4 2</u>	4	<u>16 8</u>	\$2,240.00 <u>\$1,120.00</u>
9	Cross-examination of Leo Pharma witness Karen Gow on February 24, 2015	<u>4 2</u>	1	<u>4 2</u>	\$560.00 <u>\$280.00</u>
9	Cross-examination of Leo Pharma witness Jacob Rasmussen on March 18, 2015	<u>4 2</u>	2	<u>8 4</u>	\$1,120.00 <u>\$560.00</u>
9	Cross-examination of Leo Pharma's expert witness Dr. Fritz Blatter on April 9, 2015	<u>4 2</u>	7	<u>28 14</u>	\$3,920.00 <u>\$1,960.00</u>
9	Cross-examination of Leo Pharma's expert witness Dr. Kenneth Walters on April 10, 2015	<u>4 2</u>	7	<u>28 14</u>	\$3,920.00 <u>\$1,960.00</u>
9	Cross-examination of Leo Pharma's expert witness Dr. Paul Contard on April 30, 2015	<u>4 2</u>	5	<u>20 10</u>	\$2,800.00 <u>\$1,400.00</u>

9	Cross-examination of Teva's expert witness Dr. Eugene Cooper on February 4, 2015	4 <u>2</u>	7	28 <u>14</u>	<u>\$3,920.00</u> <u>\$1,960.00</u>
9	Cross-examination of Teva's expert witness Dr. Gerald Krueger on February 16, 2015	4 <u>2</u>	2	8 <u>4</u>	<u>\$1,120.00</u> <u>\$560.00</u>
9	Cross-examination of Teva's expert witness Dr. Steven Feldman on April 22, 2015	4 <u>2</u>	4	16 <u>8</u>	<u>\$2,240.00</u> <u>\$1,120.00</u>

**E. Trial or Hearing**

14 Counsel fee:

(a) to first counsel, per hour in Court; and

(b) to second counsel, where Court directs, 50% of the amount calculated under paragraph (a).

Item	Assessable Services	Units	Multiplier	Total Units	Total Units Unit Value
14(a)	Appearance of first counsel on behalf of Leo Pharma at 4-day hearing in Montreal starting on September 14, 2015 before the Honourable Mr. Justice Locke	4 <u>3</u>	28 (4 days 7 hours)	112 <u>84</u>	<u>\$15,680.00</u> <u>\$11,760.00</u>
14(b)	Appearance of first junior counsel on behalf of Leo Pharma at 4-day hearing in Montreal starting on September 14, 2015 before the Honourable Mr. Justice Locke	2 <u>1.5</u>	28	56 <u>42</u>	<u>\$7,840.00</u> <u>\$5,880.00</u>
14(b)	<del>Appearance of second junior counsel on behalf of Leo Pharma at 4 day hearing in Montreal starting on September 14, 2015 before the Honourable Mr. Justice Locke</del>	<del>2</del>	<del>28</del>	<del>56</del>	<del>\$7,840.00</del>

**G. Miscellaneous**

~~24 Travel by counsel to attend a trial, hearing, motion, examination or analogous procedure, at the discretion of the Court.~~

Item	Assessable Services	Units	Multiplier	Total Units	Total Units Unit Value
24	<del>Travel by counsel to attend motions hearing and examinations motions in London, U.K., New York and Salt Lake City, U.S.A., Ottawa and Toronto (10 in total)</del>	<del>7</del>	<del>10</del>	<del>70</del>	<del>\$9,800.00</del>

25 *Services after judgment not otherwise specified.*

Item	Assessable Services	Units	Multiplier	Total Units	Total Units Unit Value
25	Letter from Applicant dated 13-NOV-2015 advising the Court, that insofar as it is concerned, there is nothing in the Reason for Order which should be deleted or modified in the public version.	1	N/A	1	\$140.00

~~26~~ ~~*Assessment of Costs.*~~

Item	Assessable Services	Units	Multiplier	Total Units	Total Units Unit Value
<del>26</del>	<del>Assessment of Costs</del>	<del>7</del>	<del>N/A</del>	<del>7</del>	<del>\$980.00</del>

27 *Such other services as may be allowed by the assessment officer or ordered by the Court.*

Item	Assessable Services	Units	Multiplier	Total Units	Total Units Unit Value
27	Requisition for Hearing filed on 10-MAR-2008	1	N/A	1	\$140.00

**SUB-TOTAL FEES:** **~~\$ 103,460.00~~**  
**\$ 50,960.00**

G.S.T (5%) \$ 5,173.00

\$ 2,548.00

P.S.T. (9.975%) \$ 10,320.14

\$ 5,083.26

**TOTAL FEES:** **~~\$ 118,953.14~~**  
**\$ 58,591.26**

**EXPERTS**

Arthur H. Goldberg	\$ 101,370.97
	<u>\$ 65,370.97</u>
Kenneth Walters	\$ 112,407.10
Neil Shear	\$ 13,560.00
Fritz Blatter	\$ 96,319.14
	<u>\$ 89,319.14</u>
Paul Contard	\$ 17,782.88
<b>TOTAL EXPERTS:</b>	<b>\$ 341,440.09</b>
	<b><u>\$ 298,440.09</u></b>

**DISBURSEMENTS**

Stenographers	\$ 9,469.93
	<u>\$ 8,959.44</u>
Travel – Transportation*	\$ 22,723.95
Accommodations*	\$ 10,358.31
Meals*	\$ 2,208.80
Stationery, binding, scans, photocopies	\$ 69,099.47
	<u>\$ 20,945.20</u>
Online searches	\$ 11,648.99
	<u>\$ 3,000.00</u>
Bailiff, process server	\$ 55.63
Delivery, courier	\$ 3,257.01
Fax, telephone	\$ 190.23
<b>TOTAL DISBURSEMENTS:</b>	<b>\$ 129,164.57</b>
	<b><u>\$ 71,698.57</u></b>

\*Reduced by 50%

Fees	\$118,953.14
	<u>\$58,591.26</u>
Experts + Disbursements	\$470,604.66
	<u>\$370,138.66</u>
<b><i>Total before set-off:</i></b>	<b><u>\$428,729.92</u></b>
<b><i>Teva's costs to be set off:</i></b>	<b><u>- \$9,000.00</u></b>
<b>GRAND TOTAL:</b>	<b>\$589,557.79</b>
	<b><u>\$419,729.92</u></b>

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1791-13

**STYLE OF CAUSE:** LEO PHARMA INC. v TEVA CANADA LIMITED AND  
THE MINISTER OF HEALTH AND LEO PHARMA A/S

**SUBMISSIONS MADE IN WRITING CONSIDERED AT MONTREAL, QUÉBEC  
PURSUANT TO THE COURT'S ORDER DATED OCTOBER 30, 2015.**

**ORDER AND REASONS:** LOCKE J.

**DATED:** JANUARY 29, 2016

**APPEARANCES:**

Julie Desrosiers  
Marie Lafleur  
Christian Leblanc  
Kang Lee

FOR THE APPLICANT

Jonathan Stainsby  
Lesley Caswell  
Ronak Shah

FOR THE RESPONDENT  
TEVA CANADA LIMITED

**SOLICITORS OF RECORD:**

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FOR THE RESPONDENT  
TEVA CANADA LIMITED