

Federal Court



Cour fédérale

**Date: 20230608**

**Docket: T-1632-16**

**Citation: 2023 FC 783**

**Ottawa, Ontario, June 8, 2023**

**PRESENT: The Honourable Madam Justice St-Louis**

**BETWEEN:**

**ELI LILLY CANADA INC., ELI LILLY AND  
COMPANY, LILLY DEL CARIBE, INC.,  
LILLY, S.A. and ICOS CORPORATION**

**Plaintiffs/Defendants by counterclaim**

**and**

**APOTEX INC.**

**Defendant/Plaintiff by counterclaim**

**PUBLIC ORDER AND REASONS**

**I. Introduction**

[1] This Order deals with the costs and disbursements payable as a result of the Judgment and Reasons in which I allowed the Defendants Teva Canada Limited, Pharmascience Inc. and Laboratoire Riva Inc., Apotex Inc. (“Apotex”), and Mylan Pharmaceuticals ULC’s counterclaims and held that the asserted claims of the Plaintiffs’ (hereinafter collectively referred to as “Lilly”) in the Canadian Letters Patent No. 2,226,784 [the 784 Patent] were invalid for

overbreadth and insufficiency and dismissed Lilly's infringement against each of the Defendant as it relates to the 784 Patent (2022 FC 1398). I then reserved the issue of costs, allowed the parties to file written submissions in this regard, but granted the costs on the hearsay motion to Lilly in accordance with Rule 407 of the *Federal Courts Rules*, SOR/98-106 [the Rules]. Apotex and Lilly have filed written submissions in regards to costs in the summary trial.

[2] I must thus determine which party is entitled to the costs and the amount of costs to be awarded.

[3] As the Defendants have been successful on the summary trial, I will award costs to Apotex. In brief, and for the reasons that follow, I find that (1) elevated costs, i.e., in excess of the Tariff, in the form of a lump sum are justified; (2) an amount corresponding to 25% of the adjusted amount of Apotex's legal fees is appropriate; (3) Apotex's disbursements of the amount of \$11,763.90, inclusive of tax, were actually incurred and were reasonably required; and (4) this amount will bear post-judgment interest of 5% starting 30 days from the date of this Order. I will also grant Lilly's costs of the hearsay motion (\$1,084.80) which I will deduct from Apotex's costs award.

## II. Parties' positions

[4] Apotex requests that an award of costs be made in this action as it relates to the 784 Patent in the amount of \$961,474.54, being (i) 37.5% of its actual fees (\$949,710.64) and 100% of its reasonable disbursements (\$11,763.90), plus costs of this motion in the amount of \$1,000.00 and post-judgment interest on the costs award at a rate of 5%.

[5] In the alternative, Apotex requests that an award of costs be made in this action as it relates to the 784 Patent in the amount of \$175,297.50, consisting of (i) fees as they relate to the 784 Patent to be assessed in accordance with the upper end of column V of Tariff B, resulting in fees of \$163,533.60; and (ii) reasonable and necessary disbursements totaling \$11,763.90, plus costs of this motion in the amount of \$1,000 and post-judgment interest on the costs award at a rate of 5%.

[6] In the further alternative, Apotex requests an Order pursuant to Rules 400 and 403 directing an assessment officer to compute Apotex's costs (fees and disbursements) in accordance with paragraphs 2, or 3 above, or an alternative methodology.

[7] In support of its request, Apotex relies on the affidavit of Ms. Lisa Ebdon, a law clerk employed by the firm Goodmans LLP. Ms. Ebdon, who was not cross-examined, introduces 11 exhibits and more than 700 pages including, *inter alia*, the copies of all invoices from Goodman LLP to Apotex for T-1632-16 fees dated November 2016 to March 2020 (Exhibit A, partially redacted, about 420 pages), redacted copies of all the invoices sent by Goodmans to Apotex for its fees relating to the within action from April 2020 to October 2021 (Exhibit D), and a Bill of Costs for the 784 Patent prepared in accordance with the upper end of column V, Tariff B (Exhibit F) for \$163,533.60, inclusive of tax.

[8] Copies of invoices attached to Exhibits A and D include redacted dockets related to patents that are not at issue in the present case, i.e., Canadian Patents No. 2,379,948, No. 2,371,684 and No. 2,492,540. As a result, Ms. Ebdon presents a summary and a total of the fees

incurred for the 784 Patent dated November 2016 to March 2020, totalling \$624,278.16 (including tax) (Exhibits B and C, partially redacted). Ms. Ebdon also asserts that only the partially redacted or unredacted dockets in Exhibit D refer to 784 Patent fees incurred between April 2020 and October 2021. According to her affidavit at paragraph 10, the fees associated with the 784 Patent during that period amount to \$1,908,283.55 (including tax). Per the information contained in her affidavit, the fees incurred between November 2016 and October 2021 for the 784 Patent total \$2,532,561.71 (including tax).

[9] As for disbursements, at paragraph 12 of her affidavit, Ms. Ebdon asserts that Apotex's disbursements total \$11,763.90 (including tax) and introduces Exhibit E, which contains a summary of the disbursements billed to Apotex for expenses relating to the 784 Patent along with supporting documentation. It includes invoices for the transcription of the examination for discovery of the inventor of the 784 Patent, and travel expenses for counsel to attend Lilly's motion to amend in Ottawa, Ontario.

[10] In regards to the legal fees portion of its request, Apotex submits that an elevated costs award in the way of a lump sum award of 37.5% of its actual legal fees is appropriate. Apotex submits that this is justified given: (1) the Defendants were entirely successful at the summary trial; (2) the action was a complex drug patent proceeding; (3) the parties are sophisticated litigants; (4) the legal fees are substantially above the amounts contemplated by Tariff B (column V represents approximately 6.4% of Apotex's total fees); and (5) the parties are in a position to respond to the incentives provided by an elevated award of costs.

[11] In their Opening and Closing Submissions on the summary trial, the Defendants proposed that costs be dealt with following release of the decision while Lilly asked for its costs at an elevated level. It is not clear if Lilly was then referring, by the use of the term “elevated”, to costs still within the Tariff, but higher than column III, or to costs outside the realm of the Tariff.

[12] In any event, in its written submissions on costs, Lilly submits that the Court should not grant costs sought by Apotex under column V of the Tariff B, which it qualifies as elevated, or as a percentage of Apotex’s actual legal fees. Lilly submits that the Court should award costs at the upper end of column III of the Tariff, or alternatively, no higher than column IV. Lilly asks that the amount of the costs in the summary trial be reduced by an amount equal to the costs it was awarded in regards to the hearsay motion which it calculated at \$1,084.80; which I will grant Lilly.

[13] Lilly submits the affidavit of Ms. Kathy Paterson, a law clerk at Borden Ladner Gervais LLP, who introduces, *inter alia*, two Bill of Costs in respect of the costs of the summary trial, hence one prepared in accordance with the upper end of column III of Tariff B, totalling \$57,183.42 (\$52,007.12 plus disbursements of \$6,261.10 inclusive of taxes, and less Lilly’s costs on hearsay motion) and the other in accordance with the upper end of column IV of Tariff B, totalling \$76,447.66 (\$71,271.36 plus disbursements of \$6,261.10 inclusive of taxes, and less Lilly’s costs on hearsay motion) (Exhibits F and I), one Bill of Costs in respect of the Defendants’ hearsay motion, totalling \$1,084.80 (Exhibit E), and various correspondences between the Defendants and Lilly’s counsel.

[14] Lilly asserts the following items in Apotex's Bill of Costs contained claims that should not be awarded, and which it deducted in its own Bills of Costs: 5, 6, 10-11, 13, 14.

[15] Lilly thus asserts that costs should be awarded at the upper end of column III of Tariff B, with reductions for various items per its proposition, totalling \$52,007.12, tax inclusive, or alternatively, no higher than the upper end of column IV of Tariff B with reductions for various items per its proposition totalling \$76,447.66, tax inclusive.

[16] In essence, Lilly opines that Apotex is entitled to the upper end of column III because (1) motions for summary trials in patent proceedings warrant a reduced cost award (*Janssen Inc v Apotex Inc*, 2022 FC 107 [Apotex]; *Janssen Inc v Pharmascience Inc*, 2022 FC 62 [Pharmascience]; *Mud Engineering Inc v Secure Energy (Drilling Services) Inc*, 2022 FC 943 [Mud]); (2) the cases cited by the Defendants, namely *Apotex Inc v Shire LLC*, 2021 FCA 54 [Shire] and *Swist v MEG Energy Corp*, 2021 FC 198), are not appropriate comparators as they were full patent trials (as opposed to a motion for summary trial); (3) the Defendants unnecessarily increased the length and complexity of the proceeding; (4) the Defendants clearly duplicated work; and (5) costs greater than column III would be exceptional and there is nothing extraordinary that warrants a departure here.

[17] In particular, Lilly submits that the case law recognizing that the upper end of column IV is reasonable and appropriate in patent actions applies only when such litigations proceeded through full trials (see e.g., *Shire and Allergan Inc v Sandoz Canada Inc*, 2021 FC 186 [Allergan]). Lilly also relies on the three decisions cited above (i.e., *Apotex*, *Pharmascience*, and

*Mud*) to assert that a sort of “norm” was created by the jurisprudence in pharmaceutical patent-related summary trial proceedings to award costs under column III and there is therefore a lack of jurisprudential basis to depart from column III in such circumstances.

[18] Lilly argues that the quantum and scale of costs sought by Apotex are exorbitant. It is Lilly’s opinion that the purpose of an award of costs favors an award under column III in this proceeding. Specifically, Lilly asserts that the overriding consideration in making an award of costs is fairness and reasonableness (*Bristol-Myers Squibb Canada Co v Teva Canada Ltd*, 2016 FC 991 at para 5) and it would be unreasonable for Lilly to compensate the Defendants for the excessive fees they claim, i.e., the multiple counsels retained from each party.

[19] Furthermore, Lilly opines that the Court should not award a lump sum calculated as a percentage of Apotex’s legal fees instead of the Tariff. It asserts that the cited cases do not support Apotex’s request as they are readily distinguishable, at minimum, for not being a motion for summary trial, and that fees for full patent infringement trials – which is not the scenario here – are “exceptional” when higher than the range of 25-33% (*Shire* at para 22). If the Court disagrees and awards a lump sum, Lilly asserts that any such award should be substantially below 25% of Apotex allowable fees.

[20] Lilly further opines that, if a lump sum is awarded, Apotex’s legal fees are unreasonably high at over \$2.5 million and should be substantially limited. Lilly also argues that Apotex included non-compensable fees in its lump sum calculation that should be reduced. In particular, Lilly submits that Apotex improperly included dockets for work unrelated to the 784 Patent

action (\$249,008.00 should be reduced from Apotex's total claimed fees before tax) and for motions which it lost (total of \$435,755.00 should be reduced from Apotex's total claimed fees before tax).

[21] Finally, Lilly submits that Apotex should be entitled to disbursements in the amount of \$6,261.10, inclusive of tax, because Apotex has not provided receipts or any information for \$5,502.80 of its claimed disbursements. Lilly leaves post-judgment interest to the discretion of the Court, but asks that, if awarded, interest should begin to run 30 days after the date of this judgment to allow time for payment.

### III. General principles of costs assessment

[22] The law of costs is not an exact science. In adjudicating costs, courts attempt to strike an appropriate balance between three main objectives: compensation, providing incentive to settle, and dissuasion of abusive conduct in litigation. In this exercise, Rule 400(1) of the Rules provides that the Court "shall have full discretionary power over the amount and allocation of costs and the determination of by whom they are paid".

[23] Rule 400(3) provides a non-exhaustive list of considerations for a Court to consider in assessing costs. With respect to quantum, Rule 407 of the Rules dictates that within this general rule, costs are to be awarded in accordance with column III of the table to Tariff B on a default basis (*Consorzio del Prosciutto di Parma v Maple Leaf Meats Inc*, 2002 FCA 417 at para 9 [*Consorzio del Prosciutto*]). However, the Court's broad discretion includes the power to order



an assessment under a different column of Tariff B or to permit a departure from the Tariff (*Philip Morris Products SA v Marlboro Canada Ltd*, 2015 FCA 9 at para 4).

[24] Rule 400(4) allows the Court to fix costs and award a lump sum in lieu of an assessment of costs pursuant to Tariff B.

[25] On the topic of lump sum, the award of a lump sum is increasingly valued by the courts as it saves the parties time and money and further the objective of securing “the just, most expeditious and least expensive determination” of proceedings (Rule 3) (*Nova Chemicals Corporation v Dow Chemical Company*, 2017 FCA 25 at para 11 [*Nova*]). When a court can award costs on a lump sum basis, granular analyses are avoided and the costs hearing does not become an exercise in accounting (*Nova* at para 11). The Federal Court of Appeal in *Nova* adds that “[l]ump sum awards may be appropriate in circumstances ranging from relatively simple matters to particularly complex matters where a precise calculation of costs would be unnecessarily complicated and burdensome: *Mugesera v Canada (Minister of Citizenship & Immigration)*, 2004 FCA 157 at para. 11” (*Nova* at para 12). At paragraph 15 of the decision *Mugesera v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 157, the Federal Court of Appeal outlined that “[...] the Court should be guided, as much as possible, by the standards established in the table to Tariff B when awarding a lump sum in lieu of assessed costs”.

[26] Hence, a lump sum may be awarded for an amount akin to that would be awarded under the Tariff or it can represent “elevated costs”, i.e., costs in excess of the Tariff, often calculated as a percentage of the actual legal fees incurred.

[27] The Court often deviates from the Tariff (1) to sanction reprehensible conduct; and (2) where the default scale would provide inadequate compensation for particularly costly or complex litigation (*Nova* at para 13). Regarding the costly and complex litigation, the Court has to consider if the default Tariff scale would be unjust because it would leave the successful party insufficiently compensated (*Crocs Canada Inc v Holey Soles Holdings Ltd*, 2008 FC 384 at para 2). An award of costs is usually intended to ensure a “reasonable contribution” to the successful party’s legal costs (*Nova* at para 13; *Conorzio del Prosciutto* at paras 8-9). The practice of awarding lump sum costs as a percentage of actual costs reasonably incurred is increasingly common in “complex litigation conducted by sophisticated parties” (*Seedlings* at para 4).

[28] Chief Justice Crampton outlined the general principles that must guide the Court in deciding an award of costs (*Allergan*). I adopt these principles and note particularly the following statement of paragraph 27:

For essentially the same reasons identified immediately above, it is also increasingly common in intellectual property cases to award a significant lump sum amount “well in excess of the Tariff”: *Vengo*, above, at para 85; *Bauer Hockey Ltd v Sport Maska Inc*, 2020 FC 862 at para 12 [Bauer]. In this regard, a lump sum award in the range of 25-50% of actual fees, plus reasonable disbursements, is often made: *Nova v Dow*, above, at paras 17 and 21; *Seedlings*, above, at para 6; *Bauer*, above, at para 13. See also *Loblaws Inc v Columbia Insurance Company*, 2019 FC 1434 at para 15. In approaching this assessment, it should be kept in mind that determining the level of a lump sum award “is not an exact science”: *Nova v Dow*, above, at para 21.

[29] In regards to the evidentiary considerations of legal fees, the Federal Court of Appeal in *Nova* examined the requirement and mentioned that “[a]n award of costs on a lump sum basis must be justified in relation to the circumstances of the case and the objectives underlying costs. It is not a matter of plucking a number or percentage out of the air” (*Nova* at para 15). The parties should provide both a Bill of Costs and evidence demonstrating the fees actually incurred (*Nova* at para 18). “What is required is sufficient evidence of the nature and extent of the services provided so that a party can make an informed decision whether to settle the fees or contest and that the Court can be satisfied that the actual fees incurred and the percentage awarded are reasonable in the context of the litigation” (*Nova* at para 18).

[30] Concerning the disbursements, “[w]here disbursements are outside of the knowledge of the solicitor, they should generally be accompanied by an affidavit such that the Court can be satisfied that they were actually incurred and were reasonably required” (*Nova* at para 20). As set forth in subsection 1(4) of Tariff B, no disbursement shall be assessed or allowed under the Tariff B unless it is reasonable and it is established by affidavit or by the solicitor appearing on the assessment that the disbursement was made or is payable by the party. The Federal Court of Appeal repeated that principle, stating that a party is allowed to recover disbursements when reasonable and necessary for the conduct of the proceeding (*Exeter v Canada (Attorney General)*, 2012 FCA 153 at para 13, citing *Merck & Co Inc v Apotex Inc*, 2006 FC 631).

IV. Application to the facts of the case

A. *Costs to each Defendant*

[31] Each of the Defendant (Teva Canada Limited, Mylan Pharmaceuticals ULC, Pharmascience Inc and Laboratoire Riva Inc, and Apotex) is entitled to its own costs award and Lilly has not disputed this in this proceeding. In similar circumstances, where the separate proceedings were consolidated, the Court held that the Defendants were each entitled to separate costs awards (*Packers Plus Energy Services Inc v Essential Energy Services*, 2020 FC 68; *Eli Lilly Canada Inc v Apotex Inc*, 2023 FC 3 at paras 37-40). Accordingly, I am satisfied that Apotex is entitled to its own costs award.

B. *Lump sum*

[32] After consideration of the circumstances of the case, I am satisfied that an award of costs in the form of a lump sum is justified. As the Federal Court of Appeal stated at paragraph 11 of *Nova*, it will allow “the just, most expeditious and least expensive determination” of proceedings (Rule 3) and avoid granular analyses and an exercise in accounting.

C. *Scale of costs*

[33] I am satisfied it is reasonable and appropriate in this case to award elevated costs, i.e., in excess of the Tariff, in the form of a lump sum calculated as a percentage of Apotex’s actual legal fees. The subject matter had some level of technical complexity, the parties are sophisticated litigants, Apotex’s legal fees were substantially above the amounts contemplated

by column V of Tariff B, and the parties “are in a position to respond to the incentives provided by an elevated award of costs” (*Allergan* at para 38, citing *Bauer Hockey Ltd v Sport Masko Inc (CCM Hockey)*, 2020 FC 862 at para 22 [*Bauer*]).

[34] The Defendants were successful on almost all substantive issues at the summary trial. The Court granted the Defendants’ motion for summary trial and dismissed Lilly’s action with respect to the 784 Patent, upon concluding that the 784 Patent was invalid for both obviousness and overbreadth.

[35] I agree with Apotex that the subject matter had some level of technical complexity and required a great amount of work from the parties. The Defendants alleged overbreadth, insufficiency and inutility. The asserted claims of the 784 Patent were directed to physiologically acceptable salts of tadalafil or methyltadalafil. One of the key issues in the summary trial was whether a physiologically acceptable salt of tadalafil could be made. Expert affidavits from three experts were tendered at the hearing; all experts were cross-examined at the summary trial. The hearing lasted five days. As the Court has observed in the past, patent matters are inherently complex (*Pollard Banknote Ltd v Babn Technologies Corp*, 2016 FC 1193 at para 13; *Teva Canada Limited v Janssen Inc*, 2018 FC 1175 at para 14), and pharmaceutical patent cases are especially so.

[36] Lilly and Apotex raise issues with a number of each other’s conduct. I will give this factor a neutral weight. Each party vigorously defended the interest of its client and I see no justification to penalize one of them in particular for their conduct in the present case. As Justice

Grammond recently noted: “[m]y role in awarding costs [...] is not to engage in an autopsy of the trial and criticize retrospectively the parties’ tactical decisions” (*Bauer* at para 32).

[37] The Defendants in this action are competitors. Lilly chose to pursue multiple defendants in multiple proceedings and they were each entitled to receive representation by different counsel – and it was not unreasonable for the Defendants to choose to do so. It should not be for the losing party to “tell the winning party how they could have succeeded by doing or spending less” (*Hospira Healthcare v Kennedy Trust for Rheumatology Research*, 2018 FC 1067 at para 24).

[38] As for a “norm” having been created, I disagree with Lilly. The Court has full discretion to determine the appropriate column or level of costs in the circumstances, and I do not see how the case law could create a “norm” that interferes with the Court’s discretion (Rule 400(1); *Betser-Zilevitch v Petrochina Canada Ltd*, 2021 FC 151 at para 9; *Guest Tek Interactive Entertainment Ltd v Nomadix Inc*, 2021 FC 848 at para 17). Furthermore, the decisions cited by Lilly are not persuasive in the circumstances of the present case as they either seemingly did not deal with issues of invalidity, did not detail the submissions from the parties on costs or indicate that submissions on costs were provided, and-or did not provide reasons for awarding costs under column III of the Tariff. I also note other decisions were lump sum, seemingly for an amount higher than the Tariff, was awarded in cases of patent-related summary trials and in which I saw no mention of a discussion about column III (*Steelhead LNG (ASLNG) Ltd v ARC Resources Ltd*, 2022 FC 998 at para 93; *ViiV Healthcare Company v Gilead Sciences Canada Inc*, 2020 FC 486 at paras 179-181).

[39] Lilly has not satisfied me that the jurisprudence awarding costs on a full trial basis in intellectual property litigations cannot serve as a guide to award costs in patent cases that proceeds by way of a motion for summary trial. I note that, per Rule 407, column III is the level of costs that applies unless the Court decides otherwise and that the case law has found that it is often deemed inappropriate as it is only intended to provide partial indemnification for “cases of average or usual complexity” (*Allergan* at para 25). In recognition of the particular attributes of cases involving patent disputes along with Rule 400(3) factors, it is common for increased costs to be awarded in those cases (*Allergan* at paras 25-26; *Shire*). These factors include “greater than average complexity, sophisticated parties, legal bills far in excess of what is contemplated by Column III of Tariff B, and ‘giving parties an incentive to litigate efficiently’” (*Allergan* at para 26, citing *Seedlings* at para 4). Accepting Lilly’s argument of some sort of a norm being fixed at column III for summary trials in intellectual property would entail, in addition to encroaching on the Court’s discretion, assuming that summary trials in intellectual property are, by default, of average complexity. While summary trials may mitigate the considerations highlighted by the Chief Justice in *Allergan*, I have not been convinced that they necessarily or always completely diminish the complexity of a pharmaceutical patent litigation to the point that these 400(3) factors cannot be considered and found to be present.

[40] Additionally, in the present case, the amount compelled under the *Tariff* do not provide a level of indemnification sufficient to further the purposes of costs awards for intellectual property disputes (*Bauer* at paras 10-11). “It is well known that assessing costs according to the tariff usually leads to an award that is below 10% of the prevailing party’s actual legal fees” (*Bauer* at para 11). Given the amounts in dispute, the costs generated even at the upper end of

column V of Tariff B bear little relationship to the objective of making a reasonable contribution to the costs of litigation (*Nova* at para 13).

[41] As for the reasonableness of Apotex's legal fees, I find again some of the points raised by Lilly at paragraphs 46 to 56 of its submissions to be persuasive in showing that some legal fees are non compensable and in showing that the amount of Apotex's legal fees (\$2,532,561.71, tax inclusive) is unreasonable and excessive in the circumstance of this case. I find Apotex's reasonable fees to be more around \$1,900,000.00, tax inclusive.

[42] Finally, in my view, in the particular circumstances of this summary trial, 25% of reasonable legal fees amounts to an appropriate and adequate amount for costs amounting to \$475,000.00 tax inclusive.

[43] Deducting the costs for the hearsay motion (\$1,084.80), I will establish the final award at \$473,915.20 tax inclusive.

D. *Disbursements*

[44] Apotex seeks total disbursements of \$11,763.90, inclusive of tax, while Lilly contends that Apotex should only receive \$6,261.10 because Apotex failed to adduced receipts for \$5,502.80 of the claimed amount. In particular, Lilly contests the following disbursements: photocopies (\$3,275.82); conference calls (\$25.21); process server (\$285.00); meetings (\$297.51); meals (\$490.30); delivery (\$101.67); and miscellaneous (\$546.91).



[45] The charges claimed by Apotex appear reasonable and are consistent with the record, notably showing that Apotex produced an extensive number of photocopies required in the summary trial (*Murphy v Canada (Minister of National Revenue)*, 2002 FCA 160 at para 4) and Apotex's counsel travelled to Ottawa for Lilly's motion to amend on those dates. While it is true that Apotex did not file receipts for those claims, it filed a summary of the disbursements billed to Apotex (Exhibit E). Furthermore, the affidavit was an unqualified statement that the disbursements claimed were incurred, the affiant was not cross-examined and no evidence was submitted by the other party to dispute or contradict the disbursements that were claimed (*Fournier Pharma Inc v Canada (Health)*, 2008 FC 369). Based on the foregoing, I find that Apotex has established the reasonableness and the necessity of these disbursements (*Eli Lilly Canada Inc v Novopharm Ltd*, 2006 FC 781 at para 15; *MK Plastics Corporation v Plasticair Inc*, 2007 FC 1029 at paras 34-37).

[46] Accordingly, I will award Apotex disbursements of the amount of \$11,763.90, inclusive of tax.

E. *Interest*

[47] Lilly leaves post-judgment interest to the discretion of the Court, but asks that, if awarded, interest should begin to run 30 days after the date of this judgment to allow time for payment.

V. Conclusion

[48] For the aforementioned reasons, I will award Apotex total costs of \$485,679.10 inclusive of all fees, disbursements and tax, with post-judgment interest at a rate of 5% starting 30 days from the date of this Order.

**ORDER IN T-1632-16**

**THIS COURT'S ORDER is that:**

1. The costs of the hearsay motion payable to Lilly are deducted from the costs award payable to Apotex.
2. Apotex is awarded total costs of \$485,679.10 inclusive of all fees, disbursements and tax.
3. This amount will bear 5% interest starting 30 days from the date of this Order.
4. No costs are awarded on this Order for costs.

“Martine St-Louis”

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Judge

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1632-16

**STYLE OF CAUSE:** **ELI LILLY CANADA INC., ELI LILLY AND COMPANY, LILLY DEL CARIBE, INC., LILLY, S.A. and ICOS CORPORATION INC.v. APOTEX INC.**

**PLACE OF HEARING:** HELD BY VIDEOCONFERENCE

**DATE OF HEARING:** OCTOBER 18, 2021

**PUBLIC ORDER AND REASONS:** ST-LOUIS J.

**DATED:** JUNE 8, 2023

**APPEARANCES:**

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(DEFENDANTS BY COUNTERCLAIM)

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