

Date: 20090729

Docket: T-651-08

Citation: 2009 FC 783

Vancouver, British Columbia, July 29, 2009

PRESENT: The Honourable Mr. Justice Hughes

BETWEEN:

**JANSSEN-ORTHO INC. and
ORTHO-McNEIL PHARMACEUTICAL, INC.**

Applicants

and

**APOTEX INC. and
THE MINISTER OF HEALTH**

Respondents

REASONS FOR ORDER AND ORDER

[1] There are two motions that are before this Court in these proceedings that have been heard at the same time and will be dealt with in this single set of Reasons and Order. The first is a motion by way of an appeal from an Order of Prothonotary Aalto dated June 12, 2009, in which he dismissed these proceedings pursuant to section 6(5)(b) of the *Patented Medicines (Notice of Compliance) Regulations*, SOR-93/133, as amended (the *PMNOC Regulations*). The second is a motion by the Applicants for the designation of the material filed in that motion as confidential and for a stay of

Prothonotary Aalto's Order and any order of this Court as may dismiss the appeal from that Order pending further disposition by the Federal Court of Appeal.

[2] At the outset of the hearing I entered into a discussion with counsel for the Applicants and the Respondent Apotex (nobody appeared for the Respondent Minister of Health), indicating that I was of the view that Prothonotary Aalto's decision was correct and that I would be inclined to endorse his reasons for that decision even though I was quite aware that I am to consider the matter *de novo*. I also discussed with counsel the motion for confidentiality and what portion or portions of the materials filed should be treated as confidential.

[3] As a result, I adjourned the hearing for a period of time during which counsel received instructions from their clients and arrived at an agreement as to the form of the Order which I should issue, all predicated upon Applicants' counsel indicating to this Court that it would be appealing promptly an Order dismissing its appeal from Prothonotary Aalto's decision.

[4] Consequently, I am giving the following Order which is in the terms as agreed to by counsel:

ORDER

For the reasons provided,

THIS COURT ORDERS that:

1. The appeal from the Order of Prothonotary Aalto dated June 12, 2009, is dismissed without prejudice to the Applicants Janssen-Ortho Inc. and Ortho-McNeil Pharmaceutical Inc.'s right to appeal the matter to the Federal Court of Appeal;
2. The motion for a stay is withdrawn;
3. The motion respecting confidentiality is dismissed except that the affidavit of Jeffrey Eustrom sworn June 15, 2009, may be maintained as confidential provided that a copy of said affidavit is provided by the Applicants forthwith for filing on the public record from which copy the Applicants may redact:
 - the numerical values set out in paragraphs 7 and 15
 - all of paragraph 10
4. Costs of the present motions are reserved for disposition by the Federal Court of Appeal.

“Roger T. Hughes”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-651-08

STYLE OF CAUSE: JANSSEN-ORTHO INC. et al. v. APOTEX INC. et al.

PLACE OF HEARING: Vancouver, BC

DATE OF HEARING: July 29, 2009

**REASONS FOR ORDER
AND ORDER:** HUGHES J.

DATED: July 29, 2009

APPEARANCES:

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