

Federal Court



Cour fédérale

Date: 20100611

Docket: T-772-09

Citation: 2010 FC 633

Toronto, Ontario, June 11, 2010

PRESENT: Kevin R. Aalto, Esquire, Prothonotary

BETWEEN:

APOTEX INC.

Plaintiff

and

PFIZER IRELAND PHARMACEUTICALS

Defendant

REASONS FOR ORDER AND ORDER

[1] This is an action commenced by Apotex to impeach the patent held by Pfizer (the '446 Patent) for the drug commonly known as Viagra (sildenafil citrate).

[2] Apotex has sought to impugn the '446 Patent on prior occasions. By Notice of Allegation dated June 15, 2005, Apotex alleged that it would not infringe the '446 Patent and attacked the validity of the '446 Patent claims. In response, a Notice of Application (the "Application") was

commenced seeking an order prohibiting the Minister of Health from issuing a Notice of Compliance (“NOC”) to Apotex. On September 27, 2007, Mr. Justice Mosley granted the application and issued an order of prohibition to prevent the Minister from issuing a NOC to Apotex (the “Prohibition Order”).

[3] Thereafter, the Prohibition Order was upheld by the Federal Court of Appeal in a decision dated January 16, 2009. Leave to appeal to the Supreme Court of Canada was not sought.

[4] Other litigation has been pursued by Apotex to impeach the ‘446 Patent. In 2005 an application was commenced by Pfizer in response to a NOA from Apotex. The NOA was subsequently withdrawn.

[5] Another generic manufacturer (Novopharm Limited) has also sought to impeach the ‘446 Patent. A Prohibition Order was issued in the matter by decision of Mr. Justice Kelen dated June 18, 2009.

[6] This action was commenced in May 2009. An Amended Statement of Claim was served and filed in July, 2009 and thereafter Pfizer brought a motion for particulars. Pfizer’s Statement of Defence was served and filed in September, 2009.

[7] In its Statement of Claim, Apotex raises seven allegations of invalidity: anticipation, obviousness, covetous claiming, inutility and lack of sound prediction, insufficient disclosure,

improper prosecution and improper disclaimer. All but one, improper prosecution was raised in its NOA which was the basis of the proceeding before Mr. Justice Mosley. Apotex also alleges non-infringement in respect of every claim of the '446 Patent. In its NOA Apotex did not allege on-infringement in respect of every claim. Apotex also alleges the "Gillette defence" which was not raised in the application.

[8] In its Statement of Defence, Pfizer pleads the following:

"[b]y reason of *res judicata*, issue estoppel, collateral estoppel, comity and abuse of process Apotex should be precluded from contesting the validity of the '446 Patent in the present proceeding" (the "Abuse Allegations").

[9] This motion seeks, *inter alia*, to strike this part of the pleading. The motion also seeks particulars of other parts of the Statement of Defence. Those issues will be dealt with below.

Striking the Abuse Allegations

[10] This part of the motion raises a discrete legal issue which has implications for both proceedings ("PMNOC Proceedings") under the *Patented Medicines (Notice of Compliance)*

Regulations (the "Regulations") and patent actions in this Court:

Should a patentee be permitted to plead in its Statement of Defence to an impeachment action commenced by a generic manufacturer that it is an abuse of process, *inter alia*, where the generic manufacturer Plaintiff, having failed under the Regulations at trial and appeal, presents the same allegation (and potentially the same evidence) on the same patent?

[11] Apotex vigorously argues that the answer to this question is an unequivocal “no”. It moves to strike the Abuse Allegations on the grounds that the Abuse Allegations fail to disclose a reasonable defence of law and should be struck. Apotex argues, in essence, that the jurisprudence of this Court is to the effect that PMNOC Proceedings have no precedential effect. Therefore this pleading should be struck.

[12] In support of its position that the Abuse Allegations are a proper pleading in a Statement of Defence, Pfizer provides comparisons and statistics to demonstrate the commonality of issues raised in this action with the prior PMNOC Proceedings. The statistics are provided to show the extensive legal proceedings and hearings which occurred as part in parcel of the prior litigation. For example, Schedule “A” to the written submissions is a flow chart showing Canadian proceedings involving the sildenafil patents all of which were applications under the Regulations. A copy of Schedule “A” is attached to these reasons.

[13] In Schedule “B” to its written representations, Pfizer lists the prior art cited by Apotex in its Amended Statement of Claim in this proceeding. The chart compares that prior art with the prior art cited in Apotex’s NOA dated June 15, 2005. Notably, the prior art cited is identical same and except five additional items of prior art being Canadian Patent Application 2,073,226 filed July 6, 1992 and published January 10, 1993, together with four articles all of which, from their titles, appear to relate to Chinese medicine. A copy of Schedule “B” is also attached to these reasons.

[14] Finally, in Schedule “C” to their written representations Pfizer has attached a chart showing the notices of motion taken in each of the prior PMNOC Proceedings, the number of affidavits relied on in respect of those motions, the number of affidavits relied on in the main proceeding, the number of volumes of application records including appeal records, books of authorities and compendia, and the number of hearing days which those proceedings occupied and the number of interim decisions, orders and rulings which resulted. These statistics show an overwhelming number of motions, affidavits and hearings days which have occupied the Court on these prior occasions. For example, there were seven hearings over 16 days before a Justice of this Court; five hearings over five days before a Prothonotary. A copy of Schedule “C” is attached to these reasons.

[15] With this background, Pfizer argues that it is entitled to raise the Abuse Allegations in its defence.

[16] Pfizer submits that on this motion Apotex has failed to meet the heavy burden to strike under Rule 221 of the *Federal Courts Rules*. They argue that it is not plain and obvious that the Abuse Allegations are not a reasonable defence.

[17] On motions to strike, the approach of the Court is well known:

- No evidence is considered on a motion to strike.
- The pleading must be considered true and provable in evidence.
- It must be “plain and obvious” that the allegations ought to be struck as bereft of any chance of success.

- If there is any doubt as to the propriety of a pleading, it should be left to the trial judge to make a determination based on the evidence

(see *Hunt v. Carey* (1992) S.C.R. 959 and, *Sweet v. Canada* (1999) 249 N.R. 17(F.C.A.) and, *Mathias v. the Queen*, [1980] 2 F.C. 813 (T.D.))

Discussion

[18] As noted, all of the prior proceedings were conducted under the Regulations. As is often said of PMNOC Proceedings, they are intended to be “summary” proceedings. The shorter Oxford English Dictionary provides as one definition of “summary” as applied to the law as follows:

“applied to the proceedings in the Court of law carried out rapidly by the omission of certain formalities required by the common law” and also generally “performed or effected by a short method; done without delay.”

PMNOC Proceedings, while described as summary, usually extend over some 20-months and must be completed within a 2-year period from the date of the issuance of the Notice of Application. While PMNOC Proceedings may be intended to be “summary” that does not mean they are not extremely sophisticated proceedings and intensively litigated. There are quite often five expert reports (sometimes more with leave of the Court) from each party, the bulk of which are from experts in the field of pharmacology and medicine expounding on very technical analyses of the drug in dispute. All of the affidavits filed are usually subject to extensive and intensive cross-examination. Many of the issues raised in PMNOC Proceedings mirror the usual allegations found in any impeachment or invalidity patent action, such as obviousness, anticipation, inutility, etc....

Schedule “C” amply demonstrates that while PMNOC Proceedings are described as “summary” and may lack the formality of a full trial and live witnesses, they nonetheless put many complex patent related issues before the Court for determination on a vast paper record. Indeed, the reasons for decisions in almost all PMNOC Proceedings are lengthy, detailed and provide a careful analysis and construction of the patent in issue.

[19] The fact that they are “summary” proceedings appears to be the basis upon which the jurisprudence has evolved that PMNOC Proceedings do not amount to *res judicata* of a subsequent patent invalidity action, which has all of the trappings of a full hearing including pleadings, production and discovery, and live witnesses at trial. However, the Court of Appeal has not yet taken the jurisprudence as far as Apotex argues. The premise upon which they are not *res judicata* is that they are summary proceedings. That is, none of the usual steps in an action have been resorted to, there are no live witnesses and the matter is determined on a paper record.

[20] However, Pfizer is not pleading *res judicata* to have the matter determined on that basis *per se*. Rather, the pleading is directed toward evidence and witnesses who make the same statements in this proceeding and to that extent it should be open to the Trial Judge to determine if *res judicata* principles can be applied to that evidence. It therefore cannot be said that the pleading is bereft of any chance of success.

[21] Apotex argued that the law is well settled that this pleading cannot succeed. However, for the reasons noted, it is my view that at the pleading stage these pleas ought not to be struck. As further support for this conclusion, Mr. Justice Kelen in *Apotex Inc. v. Glaxo Group Ltd.*, 2001 FCT 1351 observed that there might be some relevance to prior proceedings. He noted, at paras. 8 -10 as follows:

[8] The plaintiff accepts that *estoppel* and *res judicata* do not apply, but argues that this Decision has some relevance in a subsequent action involving the same patent. The defendants take issue in paragraph 18 of the Statement of Defence and Counterclaim "with the characterization of the procedural history of the proceedings in Court File Numbers T-415-98 and T-806-00". Accordingly, the "characterization" of these proceedings is already an issue in the pleadings.

[9] Therefore, the plaintiff submits that the prior proceedings are relevant and the defendants deny their relevance. While it is clear that a patent infringement action is independent and separate from an action under the *Regulations*, **the history of the proceedings and the determinations by the Court may have some relevance.**

[10] Accordingly, it was within the discretion of the Prothonotary to not strike these paragraphs of the Plaintiff's Reply and Defence to Counterclaim in that they may have some relevance, they are not scandalous, frivolous, or vexatious, and they will not prejudice or delay the fair trial of the action. **Reference to prior proceedings are not plainly, obviously and beyond doubt a futile pleading.** In any event, the jurisprudence is that the Court will not strike out statements that are merely surplus provided no prejudice flows from them. In this case, the Court will not be prejudiced from making an independent, fresh determination in the patent infringement action because of the two prior proceedings under the *Regulations*. It is unrealistic and irrational for the defendants to ask that the Court to ignore the history of the proceedings between the parties with respect to related issues. [emphasis added]

[22] In this case it can hardly be said that alleging abuse of process and *res judicata* given the extensive history of proceedings between Pfizer and Apotex that these allegations do not have some relevance to the issues in play. While the doctrine of *res judicata* does not render this proceeding moot or previously decided, to the extent that evidence from prior proceedings is identical to the evidence to be lead in this case, that will have some relevance but not necessarily be determinative of the issue on which that evidence is lead. At the very least it may go to the issue of costs.

[23] It must also be remembered that *res judicata* is a short form of *res judicata pro veritate accipitur* or a “thing adjudicated is received as the truth” [see, Osborn, P.G., A Concise Law Dictionary (1964, 5th Ed.) at p. 278]. Pfizer is not pleading that this proceeding should be determined solely on the basis of the application of the *res judicata* doctrine. Rather, it raises all of its substantive defences and additionally seeks relief “[b]y reason of *res judicata*, issue estoppel, collateral estoppel, comity and abuse of process Apotex should be precluded from contesting the validity of the ‘446 Patent in the present proceeding”. To the extent a witness’ evidence is identical to evidence given in prior proceedings why should it not be left open to the trial judge’s discretion whether there is any applicability of the pleaded principles and whether to assess and weigh that evidence in the context of the prior proceedings.

[24] While the Regulations are designed to be a summary process which is the rationale for not strictly applying the *res judicata* doctrine to subsequent impeachment proceedings such as this, parties ought not to be able to have endless “kicks at the can” and use up more and more judicial

resources because they do not like the prior result and are sufficiently well-heeled to pursue more and more litigation.

[25] The Court has an obligation to control its own process to ensure that judicial resources are available to all. While the policy articulated by the Federal Court of Appeal regarding the application of *res judicata* to proceedings under the Regulations is to be followed, the current pleading is one that should be permitted to stand as the prior proceedings may have some relevance in the context of this proceeding. Further, to the extent that the evidence adduced by Apotex at trial is the same evidence on the same issues as in prior proceedings this too may have some relevance and at a minimum may affect the disposition of costs. This is particularly so given the many similarities between this proceeding and the prior proceedings as described above. The motion insofar as it seeks to strike this part of the pleading is dismissed.

Other Pleadings

[26] In their motion, Apotex also sought to strike “bald denials” or, alternatively, obtain particulars of these allegations in the Statement of Defence. Apotex seeks to strike paragraphs of the Statement of Defence that allege that the use of Apotex’s sildenafil product will infringe the claim of the ‘446 Patent or paragraphs that deny claims of the ‘446 Patent is invalid on certain grounds alleged in the Amended Statement of Claim.

[27] Prior to the delivery of the Statement of Defence, Apotex provided lengthy particulars of various of the allegations in the Amended Statement of Claim. In support of this motion, affidavits of a law clerk and Andre Lapierre, a scientist, both at Apotex's law firm were relied upon. The law clerk's affidavit attached various documents in the proceeding and correspondence. The affidavit of Mr. Lapierre states, *inter alia*, that as the Statement of Defence asserts that the manufacture and sale of sildenafil tablets by Apotex will infringe the claims of the '446 Patent there are no material facts identified to support this allegation nor any explanations or elaboration as to why this is the case. Such explanations or particulars are required, so it is deposed, in order for a meaningful Reply to be delivered. Mr. Lapierre further deposes that without the material facts and particulars one cannot have a full appreciation of the nature of the allegations advanced. Apart from these bald statements of not being able to understand the nature of the allegations pleaded, there are no details of what particulars might be expected to clarify the allegations.

[28] The requirements of pleading entail a need to understand the nature of the case to be met. Pleadings should also contain a concise statement of material facts upon which a party relies [see Rule 174]. In this case, Pfizer's pleading that denies that the Apotex sildenafil product will be non-infringing amounts to a "traverse" of the allegation of Apotex that their product will not infringe. The burden of proving non-infringement lies with Apotex. It is up to Apotex to prove on a balance of probabilities that their sildenafil product will not be infringing. Pfizer is doing nothing more than putting Apotex to the strict proof thereof by denying the allegation. A "traverse" is a denial of an allegation of fact in a pleading. Pfizer argues that their pleading is simply a traverse for which no particulars are required – essentially it says to Apotex – "prove it". Apotex, however, argues that

the bare denials offend the rules of pleading and should be struck or particularized. In essence, they allege that Pfizer's denials are not a traverse but what is known in the old rules of pleading as a "negative pregnant". This is defined by Osborn, *supra*, at p. 219 as:

A literal denial in [a] pleading which does not go to the substance of the allegation. Where a traverse is of a negative averment so that it is clear that it is intended to set up an affirmative case, particulars of the affirmative case ought to be delivered.

[29] In support of its position that the pleadings in dispute are a simple traverse, Pfizer relies on *McLeod Lake Indian Band v. Chingee*, [1998] F.C.J. No. 339. In that case it was observed by Prothonotary Hargrave as follows:

[7] . . . The plea by the Defendants of custom in the first two paragraphs of their Defence is a denial of the Plaintiffs' allegation, in their Statement of Claim, an allegation which the Plaintiffs will have to prove as a part of their case. It has long been established that a traverse by a defendant, even one in the form of an affirmative, so long as it is in substance a traverse of the other side's allegation, does not give rise to a right to particulars: *Weinberger v. Inglis*, [1918] 1 Ch. 133 at 138. In *Weinberger* the plaintiff was turned down in his bid to be re-elected as a member of the stock exchange. The defendants raised only one affirmative plea, that they acted *bonafide* and honestly in exercising their duty and did not re-elect the plaintiff because they did not deem him eligible to be a member of the stock exchange. The court pointed out that the plea of the defendants, even though it was affirmative, was in substance a traverse of the plaintiff's allegation, a plea which the plaintiff must prove in order to succeed and as such did not give rise to a right to particulars, this being so even though the traverse amounted to a wide and undefined positive. The judge pointed out the defendants might properly leave the plaintiff to prove his own case.

[8] In the present instance the Plaintiffs say they were elected in accordance with the custom of the Band. It is up to them to establish, to a judge, that such is the case. The Defendants are merely putting the Plaintiffs to the proof of their case and need not

give the Plaintiffs help by admitting it. The present instance is not one which falls within the further principle that a traverse, although negative in form, may be a negative pregnant with an affirmative and thus require particulars: see *Pinson v. Lloyds and National Provincial Foreign Bank, Ltd.*, [1941] 2 K.B. 72 at 80, 84 and following (C.A.). Rather the present traverse is a denial of an allegation. It is a denial into which one ought not to read an affirmative allegation beyond that necessarily implied from the traverse, as it is for the Plaintiffs to convince the trial judge that they are the newly and validly elected Chief and Councillors, elected "in accordance with the custom of the Band" (to quote paragraph one of the Statement of Claim) and therefore particulars ought to be refused: see for example *Duke's Court Estates, Ltd. v. Associated British Engineering, Ltd.*, [1948] Ch. 458. Counsel for the Defendants puts this idea slightly differently by saying it should be for the trial judge to decide the custom on which the Plaintiffs base their case, but it amounts to the same thing: no particulars will be ordered of a traverse in the form used by the Defendants.

[30] In my view, Prothonotary Hargrave's observations are apposite as is his conclusion which reads as follows:

First, pleadings, including particulars, should be kept brief. A party ought not to be required to provide particulars containing detailed facts which should more properly be presented at trial as evidence: *Cercast Inc. v. Shellcast Foundries Inc.*, [1973] F.C. 28 at 38. Second, for me to order the Defendants to give particulars of the custom of the McLeod Lake Indian Band, as to elections, would be to shift the onus from the Plaintiffs to the Defendants. That is improper. There will be no particulars.

[31] While Apotex points to a number of cases in which particulars were ordered of bald denials, the cases are distinguishable. For example, Apotex relies upon *Teknion Furniture Systems v. Precision Mfg. Inc.* (1992), 45 C.P.R. (3d) 335 (F.C.T.D.) at p. 339 for the following proposition:

In patent infringement actions . . . a plaintiff should set out

- i. facts from which it follows that the plaintiff has the exclusive right to do certain specified things, or, in other words, a succinct description stripped of all unnecessary and irrelevant verbiage, of the essential features which the defendant is alleged to have taken; and
- ii. facts that constitute an encroachment by the defendant on the plaintiff's rights, *i.e.* that the defendant has done one or more specified things that the plaintiff has the right to do.

[32] This case is a patent infringement action not a patent impeachment action in which the plaintiff has failed to provide particularity of the allegations of infringement. It is a case in which the onus is on the plaintiff. The other cases relied on by Apotex are equally not directly applicable to the particular circumstances of this case. As a further example, *Chart Industries Ltd. v. Hein-Werner of Canada Ltd.* (1988), 25 C.P.R. (3d) 373, is cited for the proposition that it is not sufficient to plead that the defendant's product falls within the scope of the patent's claims as they fail to provide the precise facts of the alleged infringement. There, the plaintiff failed to provide facts as to how this had been done in a situation where the plaintiff had the most knowledge about its patent. Here, it is Apotex that is alleging that the '446 Patent is invalid and that the Apotex product will not infringe and they have provided particulars of those allegations. Apotex has the burden of proving those allegations. Pfizer's pleading is not a negative pregnant which might require particulars. They are simply a traverse.

[33] In my view, these pleadings should neither be struck nor are particulars required. Further, based on the evidence before me I am not satisfied that this is a case wherein particulars are required and there is no genuine need for particulars.

[34] The motion will be dismissed and as Pfizer was entirely successful they are entitled to their costs in an amount to be fixed by the Court unless the parties otherwise agree. If the parties do not agree on costs, and, as costs were not directly addressed during argument the Court will entertain brief written submissions (no more than 2 pages) regarding quantum of costs.

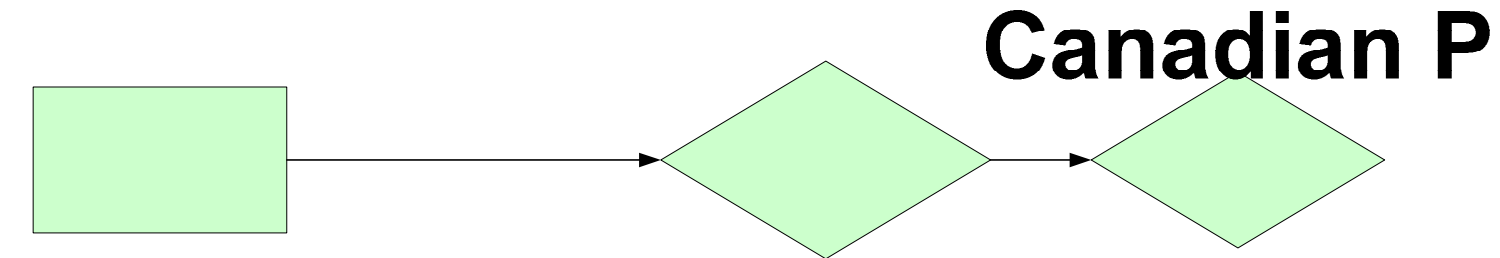
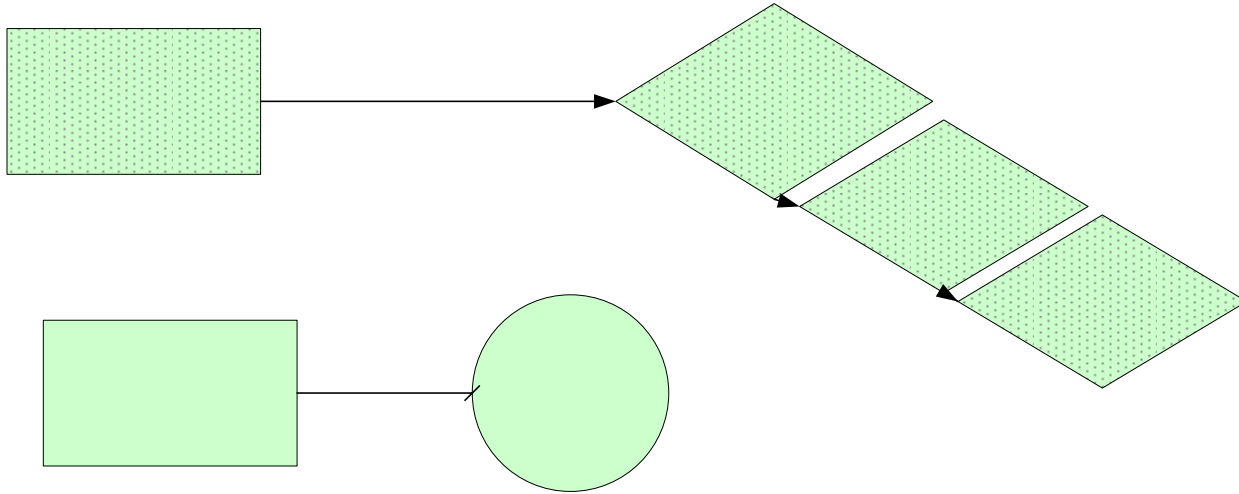
ORDER

THIS COURT ORDERS that the motion is dismissed with costs to the Defendants to be fixed by the Court in accordance with these reasons, if necessary.

“Kevin R. Aalto”

Prothonotary

SCHEDULE "A"



Canadian P

SCHEDULE “B”

Prior Art Cited in Apotex’s Amended Statement of Claim (T-772-09) also cited in Apotex’s NOA dated June 15, 2005 (T-1314-05)

Prior Art cited by Apotex in the Amended Statement of Claim (T-772-09)	Cited in Apotex’s NOA dated June 15, 2005 (T-1314-05)
Rajfer et al., “Nitric oxide as a mediator of relaxation of the corpus cavernosum in response to nonadrenergic, noncholinergic neurotransmission”, <i>New England Journal of Medicine</i> , Vol. 326, No. 2, p. 90, January 9, 1992.	Yes
Murray, K.J. “Phosphodiesterase V _A Inhibitors”, <i>Drug News and Perspectives</i> , Vol. 6(3), p. 150, April 1993.	Yes
Korenman et al., “Treatment of Vasculogenic Sexual Dysfunction with Pentoxifylline”, <i>Journal of American Geriatrics Society</i> , Vol. 41, No. 4, (April 1993).	Yes
Bush, M.A. “The role of the L-arginine-nitric oxide-cyclic GMP pathway in relaxation of corpus cavernosum smooth muscle”, a Ph.D. dissertation, University of California at Los Angeles.	Yes
Trigo-Rocha, Flavio et al., “The Role of Cyclic Adenosine Monophosphate, Cyclic Guanosine Monophosphate, Endothelium and Nonadrenergic, Noncholinergic Neurotransmission in Canine Penile Erection”, <i>Journal of Urology</i> , Vol. 149, p. 872, April 1993.	Yes
Trigo-Rocha, Flavio et al., “Nitric Oxide and cGMP: mediators of pelvic nerve stimulated erection in dogs”, <i>American Journal of Physiology</i> , Vol. 264 (Heart Circ. Physiol. 33) H419 to H422, Feb. 1993	Yes
Taher, A. et al., “Phosphodiesterase activity in human cavernous tissue and the effect of various selective inhibitors” (Abstr.), <i>Journal of Urology</i> , Vol. 149, p. 285A, April 1993.	Yes
Taher, A. et al., “Cyclic nucleotide phosphodiesterase activity in human cavernous smooth muscle and the effect of various selective inhibitors” (Abstr.), <i>Int. J. Impotence Res.</i> (1992), 4 Suppl. 2.	Yes
Ignarro et al., “Nitric oxide and cyclic GMP formation upon electrical field stimulation cause relaxation of corpus cavernosum smooth muscle”, July 31, 1990.	Yes

<p style="text-align: center;">Prior Art cited by Apotex in the Amended Statement of Claim (T-772-09)</p>	<p style="text-align: center;">Cited in Apotex's NOA dated June 15, 2005 (T-1314-05)</p>
European Patent Application No. 0,463,756 filed June 7, 1991.	Yes
Canadian Patent Application 2,044,748 filed June 17, 1991, published December 21, 1991.	Yes
European Patent Application No. 0,526,004 filed July 2, 1992.	Yes
Canadian Patent Application 2,073,226 filed July 6, 1992, published January 10, 1993.	No
Nicholson, David C. et al, "Differential modulation of tissue function and therapeutic potential of selective inhibitors of cyclic nucleotide phosphodiesterase isoenzymes", <i>Trends in Pharmacol. Sci.</i> , Vol. 12, pp. 19-27, January 1991.	Yes
Cortijo, J. et al., "Investigation into the role of phosphodiesterase IV in brochorelaxation, including studies with human bronchus", <i>Br. J. Pharmacol.</i> , 1993: 108: 562-568.	Yes
Bensky, Dan, Gamble, Andrew and Kaptchuk, Ted; "Chinese Medicine Materia Medica": Eastland Press; 1986.	No
Hson-Mou Chang, Paul Pui-Hay But; "Pharmacology and Applications of Chinese Materia Medica (Vol. II)": World Scientific Publishing Co. Pte. Ltd.; 1987.	No
Hong-Yen Hsu; "Oriental Materia Medica: A Concise Guide": Oriental Healing Arts Institute: 1986.	No
Yin Ai-Hua, Zhao Yu-Cui and Qinq Jinq-Xing; "Treating 50 Cases of Erectile Dysfunction Using Yin Yang Huo Tu Si Zi", 10(6) <i>Yunnan Journal of Traditional Chinese Medicine</i> : 13: 1989.	No

SCHEDULE “C”

RECORDED ENTRY DATA FOR T-2137-04, T-1314-05 & ASSOCIATED APPEALS BETWEEN PFIZER CANADA INC., PFIZER IRELAND PHARMACEUTICALS AND APOTEX INC. REGARDING CANADIAN PATENT NOS. 2,044,748 & 2,163,446

Court Number	Style of Cause	Patent At Issue	Recorded Entries	Earliest Entry	Most Recent Entry	Notices of Motions	Affidavits with Respect to Motions	Affidavits with respect to Main Action	Volumes filed as part of Application Records/ Appeal Records/ Books of Authorities/ Compendiums	Hearings			Interim Decisions/ Orders/ Rulings
										Before a Justice(s) of the Court	Before a Prothonotary	Total	
T-2137-04	<i>Pfizer Canada Inc. et. al. v. Apotex Inc.</i>	Canadian Patent No. 2,044,748	183	Dec. 1, 2004	Feb. 22, 2008	8	10	35	36	4 hearings over 8 days	3 hearing over 3 days	7 hearings over 11 days	15
A-58-07	<i>Pfizer Canada Inc. et. al. v. Apotex Inc.</i>	Canadian Patent No. 2,044,748	44	Jan. 1, 2007	Nov. 11, 2008	1	1	0	7	1 hearing over 1 day	N/A	1 hearing over 1 day	1
T-1314-05	<i>Pfizer Canada Inc. et. al. v. Apotex Inc.</i>	Canadian Patent No. 2,163,446	121	July 28, 2005	Jan. 16, 2009	6	5	14	52	1 hearing over 5 days	2 hearings over 2 days	3 hearings over 7 days	6
A-484-07	<i>Apotex Inc. v. Pfizer Canada Inc. et. al.</i>	Canadian Patent No. 2,163,446	53	Oct. 10, 2007	Apr. 15, 2009	2	2	0	36	1 hearing over 2 days	N/A	1 hearing over 2 days	3
TOTAL	N/A	N/A	401	N/A	N/A	17	18	49	131	7 hearings over 16 days	5 hearings over 5 days	12 hearings over 21 days	25

FEDERAL COURT

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: T-772-09

STYLE OF CAUSE: APOTEX INC.
v.
PFIZER IRELAND PHARMACEUTICALS

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: January 25, 2010

**REASONS FOR ORDER
AND ORDER BY:** AALTO P.

DATED: June 11, 2010

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