

**Date: 20070618**

**Docket: T-1232-05**

**Citation: 2007 FC 650**

**Ottawa, Ontario, June 18, 2007**

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

**BETWEEN:**

**PFIZER CANADA INC.**

**Applicant**

**and**

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

**Respondents**

**and**

**SANOFI-AVENTIS DEUTSCHLAND GmbH**

**Respondent/Patentee**

**SUPPLEMENTAL REASONS TO AMENDED ORDER**

[1] At the hearing of this NOC application (an application for an order of prohibition), the Court was asked to provide advance notice to counsel of the timing of its decision.

[2] Subsequent to the NOC hearing, the Respondent brought a motion to dismiss the NOC application, that motion was to be heard on Monday, June 18, 2007. The motion would be redundant if the Court decided to dismiss the Applicant's NOC application. To accommodate counsel and to prevent an unnecessary hearing, the Court advised counsel on Wednesday, June 13, 2007, that it had decided to dismiss the Applicant's application and anticipated releasing its reasons shortly. Counsel were asked to inform the Court as to their position regarding the motion to dismiss.

[3] The formal Order and Reasons were released on Friday, June 15, 2007, despite the Applicant filing a Notice of Discontinuance the day before.

[4] The Court's Order dismissing the application was dated June 15, 2007, despite having been disclosed on June 13, 2007. This was a clerical error as the Order should have been dated June 13, 2007, when counsel were informed of the Court's disposition. The situation is analogous to an oral judgment (see *Baxter Travenol Laboratories of Canada Ltd. v. Cutter (Canada) Ltd.*, [1983] 2 S.C.R. 388).

[5] Pursuant to Rule 397(2), the Order dismissing the Applicant's application for a prohibition order will be amended to be effective as of June 13, 2007.

“Michael L. Phelan”

---

Judge

**FEDERAL COURT**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** T-1232-05

**STYLE OF CAUSE:** PFIZER CANADA INC.

and

THE MINISTER OF HEALTH et al

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** April 23 and 24, 2007

**SUPPLEMENTAL REASONS  
TO AMENDED ORDER:** Phelan J.

**DATED:** June 18, 2007

**APPEARANCES:**

Mr. Peter R. Wilcox  
Mr. Andrew Bernstein  
Ms. Alisse Houweling

FOR THE APPLICANT

Mr. Andrew R. Brodtkin  
Mr. John H. Simpson

FOR THE RESPONDENT,  
APOTEX INC.

Mr. J. Sheldon Hamilton

FOR THE RESPONDENT/PATENTEE

**SOLICITORS OF RECORD:**

TORYS LLP  
Barristers & Solicitors  
Toronto, Ontario

FOR THE APPLICANT

MR. JOHN H. SIMS, Q.C.  
Deputy Attorney General of Canada  
Toronto, Ontario

FOR THE RESPONDENT,  
THE MINISTER OF HEALTH

GOODMANS LLP  
Barristers & Solicitors  
Toronto, Ontario

FOR THE RESPONDENT,  
APOTEX INC.

SMART & BIGGAR  
Barristers & Solicitors  
Toronto, Ontario

FOR THE RESPONDENT/PATENTEE