

Federal Court  
of Appeal



Cour d'appel  
fédérale

**Date: 20120503**

**Docket: A-490-11**

**Citation: 2012 FCA 137**

**CORAM: SHARLOW J.A.  
PELLETIER J.A.  
STRATAS J.A.**

**BETWEEN:**

**JANSSEN INC. AND  
DAIICHI SANKYO COMPANY, LIMITED**

**Appellants**

**and**

**TEVA CANADA LIMITED**

**Respondent**

Heard at Toronto, Ontario, on May 3, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on May 3, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

PELLETIER J.A.

Federal Court  
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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Toronto, Ontario, on May 3, 2012)**

**PELLETIER J.A.**

[1] This is an appeal of an interlocutory order, the reasons for which are reported at 2011 FC 1480, in which the trial judge exercised his discretion to dismiss a motion for the joinder of parties. The motion was made following the infringement/liability portion of a patent infringement action which was bifurcated. The plaintiffs/appellants seek to add additional parties as plaintiffs on the basis that they are entitled to damages as persons claiming through the patentee.

[2] Having read the trial judge's reasons and having heard the submissions of counsel for the appellant, we are not persuaded that the trial judge erred in principle in exercising his discretion as he did, that he seriously misapprehended the facts, or that an obvious injustice will result from his decision: see *Janssen Pharmaceutica Inc. v. Apotex*, (1988) 82 C.P.R. (3d) 574 at para. 2. In particular, we are not persuaded that the trial judge's interpretation of the bifurcation order was such as to amount to an error in principle.

[3] The appeal will be dismissed with costs fixed at \$5,000 inclusive of disbursements.

“J.D. Denis Pelletier”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-490-11

**(APPEAL FROM THE ORDER OF THE HONOURABLE JUSTICE HUGHES DATED  
DECEMBER 15, 2011, DOCKET NO. T-2175-04)**

**STYLE OF CAUSE:** Janssen Inc. and Daiichi Sankyo  
Company, Limited v. Teva Canada  
Limited

**PLACE OF HEARING:** Toronto, Ontario

**DATE OF HEARING:** May 3, 2012

**REASONS FOR JUDGMENT OF THE COURT BY:** SHARLOW, PELLETIER &  
STRATAS JJ.A.

**DELIVERED FROM THE BENCH BY:** PELLETIER J.A.

**APPEARANCES:**

Neil Belmore  
Greg Beach

FOR THE APPELLANTS

Marcus Klee  
David Aitken

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Belmore Neidrauer LLP  
Toronto, Ontario

FOR THE APPELLANTS

Olser Hoskin & Harcourt  
Toronto, Ontario

FOR THE RESPONDENT