

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140127

Docket: A-318-13

Citation: 2014 FCA 17

**CORAM: SHARLOW J.A.
WEBB J.A.
NEAR J.A.**

BETWEEN:

**NOVARTIS PHARMACEUTICALS CANADA
INC.**

Appellant

and

**COBALT PHARMACEUTICALS COMPANY and
THE MINISTER OF HEALTH**

Respondents

and

**NOVARTIS AG and ROCHE DIAGNOSTICS
GmbH**

Respondents/Patentees

Heard at Toronto, Ontario, on January 23, 2014.

Judgment delivered at Ottawa, Ontario, on January 27, 2014.

REASONS FOR JUDGMENT BY:

SHARLOW J.A.

CONCURRED IN BY:

**WEBB J.A.
NEAR J.A.**

Federal Court of Appeal



Cour d'appel fédérale

Date: 20140127

Docket: A-318-13

Citation: 2014 FCA 17

CORAM: SHARLOW J.A.
WEBB J.A.
NEAR J.A.

BETWEEN:

NOVARTIS PHARMACEUTICALS CANADA
INC.

Appellant

and

COBALT PHARMACEUTICALS COMPANY
AND THE MINISTER OF HEALTH

Respondents

and

NOVARTIS AG AND ROCHE DIAGNOSTICS
GMBH

Respondents/Patentees

REASONS FOR JUDGMENT

SHARLOW J.A.

[1] This is an appeal of the decision of Justice Hughes (2013 FC 985) dismissing the application of Novartis Pharmaceuticals Canada Inc. under the *Patented Medicines (Notice of Compliance) Regulations* (SOR/93-133) for an order prohibiting the Minister of Health from issuing a notice of

compliance to Cobalt Pharmaceuticals Company for a generic version of a drug containing zoledronic acid to be administered in once-yearly doses for the treatment of osteoporosis, until after the expiry of Canadian Patent No. 2,410,201.

[2] Cobalt alleged that the 201 patent is invalid for want of patentable subject matter. Justice Hughes found that allegation to be justified because the claims essentially are for a method of medical treatment as explained in *Tennessee Eastman Co. v. Commissioner of Patents*, [1974] SCR 111. Novartis argues that this conclusion is wrong in law. I do not agree.

[3] To accept the argument of Novartis it would be necessary to conclude in the face of *Tennessee Eastman* that a method of medical treatment is patentable subject matter, or to conclude that Justice Hughes misconstrued the patent. Having carefully considered the argument of Novartis and the authorities to which the Court was referred, I am unable to reach either conclusion.

[4] For that reason, I would dismiss the appeal with costs.

“K. Sharlow”

J.A.

“I agree
Wyman W. Webb J.A.”

“I agree
D. G. Near J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-318-13

(APPEAL FROM A JUDGMENT OR ORDER OF THE HONOURABLE MR. JUSTICE HUGHES, DATED SEPTEMBER 25, 2013, DOCKET NO. T-724-12)

STYLE OF CAUSE: NOVARTIS PHARMACEUTICALS
CANADA INC. v. COBALT
PHARMACEUTICALS COMPANY and THE
MINISTER OF HEALTH
and NOVARTIS AG and ROCHE
DIAGNOSTICS GmbH

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 23, 2014

REASONS FOR JUDGMENT BY: SHARLOW J.A.

CONCURRED IN BY: WEBB, NEAR J.J.A.

DATED: JANUARY 27, 2014

APPEARANCES:

Anthony G. Creber
Livia Aumand

FOR THE APPELLANT

Douglas N. Deeth
Kavita Ramamoorthy

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

Gowling Lafleur Henderson LLP
Ottawa, Ontario

FOR THE APPELLANT

Deeth Williams Wall LLP
Toronto, Ontario

FOR THE RESPONDENTS