

Federal Court



Cour fédérale

Date: 20101019

**Dockets: T-644-09
T-933-09**

Citation: 2010 FC 1022

Toronto, Ontario, October 19, 2010

PRESENT: The Honourable Mr. Justice Campbell

BETWEEN:

Docket: T-644-09

APOTEX INC.

Plaintiff

and

SANOFI-AVENTIS

Defendant

Docket: T-933-09

AND BETWEEN:

**SANOFI-AVENTIS AND
BRISTOL-MYERS SQUIBB SANOFI
PHARMACEUTICALS HOLDINGS PARTNERSHIP**

Plaintiffs

and

**APOTEX INC.
APOTEX PHARMACHEM INC. AND
SIGNA SA DE CV**

Defendants

REASONS FOR ORDER AND ORDER

[1] The issue addressed in the present Order is whether a Prothonotary appeal in the present consolidated Action should be conducted as an interlocutory step leading to trial or whether it should be concluded by the Judge who will be conducting the trial. For the reasons provided, in my opinion the latter option should be put into effect.

[2] On February 18, 2010, acting in her capacity as Case Management Judge in the present specially managed proceeding, Prothonotary Tabib denied Apotex's motion to amend its pleadings (see: *Apotex Inc. v. Sanofi-Aventis*, 2010 FC 182). Apotex appealed Prothonotary Tabib's decision with the matter being placed on my list for hearing on July 20, 2010. On July 16, 2010 a pre-motion teleconference was held with Counsel on the appeal in which, given that the trial in the present Action is scheduled to commence in April 2011, I expressed the opinion that, for the greatest efficiency and least disruption with respect to the trial process, by consent, the appeal should be placed before the trial judge for disposition as she or he might direct. No consent to do so was forthcoming at that time. On July 20th, the process issue was again addressed at length with the matter being adjourned to today's date for further consideration.

[3] At today's proceeding, Counsel on the appeal confirmed that no consent exists to place the appeal in the hands of the trial judge. As a consequence, I have firmly come to the conclusion that, nevertheless, an order should be made to this effect. My detailed reasons for so finding are

expressed in the transcript of the July 20th proceeding and that of today's date, both of which form part of these reasons.

ORDER

Accordingly, I adjourn the appeal of Prothonotary Tabib's decision of February 18, 2010 to the Trial Judge of the present Action for disposition as she or he might direct.

"Douglas R. Campbell"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS: T-644-09 and T-933-09

STYLE OF CAUSE: APOTEX INC. v. SANOFI-AVENTIS

AND BETWEEN:

SANOFI-AVENTIS AND BRISTOL-MYERS SQUIBB
SANOFI PHARMACEUTICALS HOLDINGS
PARTNERSHIP v. APOTEX INC. APOTEX
PHARMACHEM INC. AND SIGNA SA de CV

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: OCTOBER 19, 2010

**REASONS FOR ORDER
AND ORDER BY:** CAMPBELL J.

DATED: OCTOBER 19, 2010

APPEARANCES:

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