

Federal Court



Cour fédérale

Date: 20110608

Dockets: T-371-08
T-372-08

Citation: 2011 FC 663

BETWEEN:

Docket: T-371-08

**ASTRAZENECA CANADA INC. AND
ASTRAZENECA AKTIEBOLAG**

Applicants

and

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

Respondents

AND BETWEEN:

Docket: T-372-08

**ASTRAZENECA CANADA INC. AND
ASTRAZENECA AB**

Applicants

and

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

Respondents

REASONS FOR ORDER AS TO COSTS

HUGHES J.

[1] The Applicants initiated two proceedings in this Court under the provisions of the Patented Medicines (Notice of Compliance) Regulations, SOR/93-133, as amended, identified as applications

T-371-08 and T-372-08. In T-372-08, by Order dated May 25, 2010 those proceedings were terminated with the provision that costs were to be settled between the parties after the Court had given Judgment in T-371-08.

[2] On June 30, 2010 this Court gave Judgment in T-371-08 in favour of Apotex Inc. including an award of costs to that party. As set out at paragraph 139 of the Reasons for Judgment (2010 FC 714), it was hoped that the parties could settle the quantum of costs, failing which they could seek the Court's determination in that regard. About one year later the parties have come to the Court having been unable to resolve as between themselves the quantum of costs in either proceeding.

[3] I provided a direction to the parties that Apotex's solicitors were to provide a draft Bill of Costs with copies of documents substantiating any matters believed to be controversial. The Applicants' solicitors were directed to provide their comments as to any contentious matters and Apotex's solicitors were to reply to those comments, all in writing. This has been done. I have reviewed and considered these comments and the draft Bill of Costs.

[4] I am disappointed that the parties have been unable to resolve the quantification of costs. I am satisfied that Apotex's draft Bill of Costs is reasonable. I have considered the Applicants' submissions together with Apotex's response and find that the Applicants have not raised any serious issue as to the quantum costs sought by Apotex. The matters raised by the Applicants are largely speculative and trivial and have been adequately responded to by Apotex. I will therefore Order that costs be paid by the Applicants in the amount set out in Apotex's draft Bill of Costs.

[5] Section 37(2) of the *Federal Courts Act* R.S.C. 1985, c. F-7 provides that in respect of a cause of action arising in more than one province, such as Notice of Compliance proceedings which apply throughout Canada, that the Court shall fix the rate of interest at a rate that it considers reasonable from the date of giving Judgment. A party should not be encouraged not to pay a Judgment simply because it is cheaper to let the interest accumulate. On the other hand the interest rates should be in line with current commercial rates. I have set the rate at 4.5% compounded annually which approximates a current three year mortgage rate. It is reasonable to give a party a brief time to pay without attracting interest therefore I will provide, in effect, that the rate shall be 0% until July 1, 2011, by stipulating that interest shall not run until that date.

"Roger T. Hughes"

Judge

Toronto, Ontario
June 8, 2011

FEDERAL COURT

SOLICITORS OF RECORD

DOCKETS: T-371-08 and T-372-08

STYLE OF CAUSE: ASTRAZENECA CANADA INC. AND
ASTRAZENECA AKTIEBOLAG v. APOTEX INC.
AND THE MINISTER OF HEALTH
AND BETWEEN:
ASTRAZENECA CANADA INC. AND
ASTRAZENECA AB v. APOTEX INC. AND THE
MINISTER OF HEALTH

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER AS TO COSTS BY: HUGHES J.

DATED: JUNE 8, 2011

WRITTEN REPRESENTATIONS BY:

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