

Federal Court
of Appeal



CANADA

Cour d'appel
fédérale

Date: 20100615

Docket: A-502-09

Citation: 2010 FCA 161

**CORAM: SHARLOW J.A.
DAWSON J.A.
TRUDEL J.A.**

BETWEEN:

BAYER INC.

Appellant

and

**THE MINISTER OF HEALTH and
THE ATTORNEY GENERAL OF CANADA**

Respondents

Heard at Ottawa, Ontario, on June 15, 2010.

Judgment delivered from the Bench at Ottawa, Ontario, on June 15, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on June 15, 2010)

SHARLOW J.A.

[1] This is an appeal of the judgment of Justice Russell (2009 FC 1171) dismissing the application of Bayer Inc. for judicial review of the decision of the Minister of Health not to list Canadian Patent No. 2,194,979 on the patent register in respect of a drug called YAZ because the patent does not meet the eligibility test in paragraph 4(2)(b) of the *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-133. It is common ground that no other eligibility rule could possibly apply.

[2] Justice Russell concluded that the Minister's interpretation of paragraph 4(2)(b) is correct. We agree, substantially for the reasons he gave. For that reason, this appeal will be dismissed with costs.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-502-09

STYLE OF CAUSE: Bayer Inc. v. The Minister Of Health
and The Attorney General Of Canada

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: June 15, 2010

REASONS FOR JUDGMENT OF THE COURT BY: Sharlow J.A.
Dawson J.A.
Trudel J.A.

DELIVERED FROM THE BENCH BY: SHARLOW J.A.

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