

Federal Court of Appeal



Cour d'appel fédérale

Date: 20121023

**Dockets: A-484-09
A-485-09
A-486-09
A-489-09
A-369-10
A-379-10
A-406-10
A-417-10
A-418-10**

Citation: 2012 FCA 265

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

BETWEEN:

**SANOFI-AVENTIS CANADA INC., and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

and

NOVOPHARM LIMITED

and

SCHERING CORPORATION

Docket: A-484-09

Appellants

Respondent

Respondent

AND BETWEEN:

**SANOFI-AVENTIS CANADA INC., and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

and

APOTEX INC.

Docket: A-485-09

Appellants

Respondent

and

SCHERING CORPORATION

Respondent

AND BETWEEN:

Docket: A-486-09

SCHERING CORPORATION

Appellant

and

APOTEX INC.

Respondent

and

**SANOFI-AVENTIS CANADA INC. and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

Respondents

AND BETWEEN:

Docket: A-489-09

SCHERING CORPORATION

Appellant

and

NOVOPHARM LIMITED

Respondent

and

**SANOFI-AVENTIS CANADA INC. and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

Respondents

AND BETWEEN:

Docket: A-369-10

**SANOFI-AVENTIS CANADA INC. and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

Appellants

and

TEVA CANADA LIMITED

Respondent

and

SCHERING CORPORATION

Respondent

AND BETWEEN:

Docket: A-379-10

SCHERING CORPORATION

Appellant

and

TEVA CANADA LIMITED

Respondent

and

**SANOFI-AVENTIS CANADA INC. and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

Respondents

AND BETWEEN:

Docket: A-406-10

**SANOFI-AVENTIS CANADA INC. and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

Appellants

and

TEVA CANADA LIMITED

Respondent

and

SCHERING CORPORATION

Respondent

AND BETWEEN:

Docket: A-417-10

**SANOFI-AVENTIS CANADA INC. and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

Appellants

and

TEVA CANADA LIMITED

Respondent

and

SCHERING CORPORATION

Respondent

AND BETWEEN:

Docket: A-418-10

SCHERING CORPORATION

Appellant

and

TEVA CANADA LIMITED

Respondent

and

**SANOFI-AVENTIS CANADA INC. and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

Respondents

Heard at Toronto, Ontario, on October 23, 2012.

Judgment delivered from the Bench at Toronto, Ontario, on October 23, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

SHARLOW J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20121023

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A-418-10**

Citation: 2012 FCA 265

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

BETWEEN:

**SANOFI-AVENTIS CANADA INC., and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

and

NOVOPHARM LIMITED

and

SCHERING CORPORATION

Docket: A-484-09

Appellants

Respondent

Respondent

AND BETWEEN:

**SANOFI-AVENTIS CANADA INC., and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

and

APOTEX INC.

Docket: A-485-09

Appellants

Respondent

and

SCHERING CORPORATION

Respondent

AND BETWEEN:

Docket: A-486-09

SCHERING CORPORATION

Appellant

and

APOTEX INC.

Respondent

and

**SANOFI-AVENTIS CANADA INC. and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

Respondents

AND BETWEEN:

Docket: A-489-09

SCHERING CORPORATION

Appellant

and

NOVOPHARM LIMITED

Respondent

and

**SANOFI-AVENTIS CANADA INC. and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

Respondents

AND BETWEEN:

Docket: A-369-10

**SANOFI-AVENTIS CANADA INC. and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

Appellants

and

TEVA CANADA LIMITED

Respondent

and

SCHERING CORPORATION

Respondent

AND BETWEEN:

Docket: A-379-10

SCHERING CORPORATION

Appellant

and

TEVA CANADA LIMITED

Respondent

and

**SANOFI-AVENTIS CANADA INC. and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

Respondents

AND BETWEEN:

Docket: A-406-10

**SANOFI-AVENTIS CANADA INC. and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

Appellants

and

TEVA CANADA LIMITED

Respondent

and

SCHERING CORPORATION

Respondent

AND BETWEEN:

Docket: A-417-10

**SANOFI-AVENTIS CANADA INC. and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

Appellants

and

TEVA CANADA LIMITED

Respondent

and

SCHERING CORPORATION

Respondent

AND BETWEEN:

Docket: A-418-10

SCHERING CORPORATION

Appellant

and

TEVA CANADA LIMITED

Respondent

and

**SANOFI-AVENTIS CANADA INC. and
SANOFI-AVENTIS DEUTSCHLAND GmbH**

Respondents

REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario on October 23, 2012)

SHARLOW J.A.

[1] We have today heard nine appeals and four cross-appeals from judgments and orders of Justice Snider relating to her previous judgments dismissing actions seeking a remedy against Apotex Inc. (“Apotex”), and against Novopharm Limited and its successor Teva Canada Limited (“Teva”), for the infringement of Canadian Patent No. 1,341,206. The plaintiffs in the actions were Sanofi-Aventis Canada Inc. and Sanofi-Aventis Deutschland GmbH (“Sanofi”), the licensee of the patent, and Schering Corporation (“Schering”), the holder of the patent. Justice Snider subsequently dealt with various motions relating to costs. Her disposition of those motions is the subject of the appeals and cross-appeals now before us.

[2] In the two main judgments under appeal, (2009 FC 1138, 2009 FC 1139), Justice Snider determined the principles to be applied in the assessments of the costs awards. There are two appeals and two cross-appeals from each of those judgments:

- a. A-485-09 *Sanofi v. Apotex and Schering* (cross-appeal by Apotex);
- b. A-486-09 *Schering v. Apotex and Sanofi* (cross-appeal by Apotex);
- c. A-484-09 *Sanofi v. Teva and Schering* (cross-appeal by Teva); and
- d. A-489-09 *Schering v. Teva and Sanofi* (cross-appeal by Teva).

[3] The five remaining appeals were from subsequent orders in the Teva matter relating to the quantum of the award and certain issues raised on motions for reconsideration:

- a. Sanofi and Schering's appeals from the quantum of costs order – A-369-10 *Sanofi v. Teva and Schering* and A-379-10 *Schering v. Teva and Sanofi*;
- b. Sanofi's appeal from the reconsideration order – A-406-10 *Sanofi v. Teva and Schering*; and
- c. Sanofi and Teva's appeals from the further reconsideration order making Schering responsible for costs in the Teva costs award – the A-417-10 *Sanofi v. Teva and Schering*; and A-418-10 *Schering v. Teva and Sanofi*.

[4] Despite the able submissions of counsel in all of the appeals and cross-appeals, we have concluded that there is no basis upon which this Court should intervene in any of the judgments or orders under appeal. We do not find it necessary to list or discuss in detail all of the grounds of appeal asserted by the appellants and cross-appellants. It is sufficient to say that in our view, all of them relate to matters that were well within the discretion of Justice Snider in considering matters of costs after a trial. Having carefully reviewed the submissions of counsel and the record, we have been able to detect no error of law or principle, and no failure on the part of Justice Snider to apprehend the relevant facts or to exercise her discretion judicially.

[5] Nor are we persuaded that any of the appeals and cross-appeals raise issues of law or the policy of cost awards that would benefit from detailed consideration by this Court.

[6] It was argued by the appellants in the main appeals that Justice Snider exceeded her jurisdiction by awarding costs related to interlocutory orders in which the matter of costs had already been determined (both in relation to the scale of costs and the number of counsel), and tariff items 16 to 22 (relating to appeals in this Court). It is not clear to us that Justice Snider intended her order to have either effect. However, for the sake of clarity, we are prepared to declare that her judgments and orders should be interpreted to exclude any attempt to vary any award of costs made in an interlocutory motion, and to exclude any attempt to award anything under tariff items 16 to 22. We note also that counsel for Teva conceded that the tariff for preparing the bill of costs should be assessed at 6 units rather than 7.

[7] For these reasons, all appeals and cross-appeals will be dismissed. The issuance of formal judgments will be deferred pending written submissions on costs in this Court, if the parties cannot agree. The parties will be provided with a timetable for those submissions, which are not to exceed 3 pages for the principal submissions and 1 page for the reply, if any (all submissions to be double spaced, with the font and formatting provisions of the *Federal Courts Rules* to be applied).

[8] These reasons apply to all nine appeals and all four cross-appeals, and a copy will be placed in each of the nine files.

“K. Sharlow”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS: **A-484-09, A-485-09, A-486-09, A-489-09, A-369-10, A-379-10,
A-406-10, A-417-10, A-418-10**

**[FOR A-484-09, A-489-09]
APPEAL FROM THE JUDGMENT OF THE HONOURABLE MADAM JUSTICE
SNIDER OF THE FEDERAL COURT DATED NOVEMBER 6, 2009, DOCKET NO.
T-1161-07.**

**[FOR A-485-09, A-486-09]
APPEAL FROM THE JUDGMENT OF THE HONOURABLE MADAM JUSTICE
SNIDER OF THE FEDERAL COURT DATED NOVEMBER 6, 2009, DOCKET NO.
T-161-07.**

**[FOR A-369-10, A-379-10]
APPEAL FROM THE ORDER OF THE HONOURABLE MADAM JUSTICE SNIDER OF
THE FEDERAL COURT DATED SEPTEMBER 28, 2010, DOCKET NO. T-1161-07.**

**[FOR A-406-10]
APPEAL FROM THE ORDER OF THE HONOURABLE MADAM JUSTICE SNIDER OF
THE FEDERAL COURT DATED OCTOBER 15, 2010, DOCKET NO. T-1161-07.**

**[FOR A-417-10, A-418-10]
APPEAL FROM THE ORDER OF THE HONOURABLE MADAM JUSTICE SNIDER OF
THE FEDERAL COURT DATED OCTOBER 25, 2010, DOCKET NO. T-1161-07.**

STYLE OF CAUSE:	A-484-09 SANOFI-AVENTIS CANADA INC., and SANOFI-AVENTIS DEUTSCHLAND GmbH v. NOVOPHARM LIMITED v. SCHERING CORPORATION	A-369-10 SANOFI-AVENTIS CANADA INC. and SANOFI-AVENTIS DEUTSCHLAND GmbH v. TEVA CANADA LIMITED v. SCHERING CORPORATION
	A-485-09 SANOFI-AVENTIS CANADA INC., and SANOFI-AVENTIS DEUTSCHLAND GmbH v. APOTEX INC. v. SCHERING CORPORATION	A-379-10 SCHERING CORPORATION v. TEVA CANADA LIMITED v. SANOFI-AVENTIS CANADA INC. and SANOFI-AVENTIS DEUTSCHLAND GmbH
	A-486-09 SCHERING CORPORATION v. APOTEX INC. v. SANOFI- AVENTIS CANADA INC. and	A-406-10 SANOFI-AVENTIS CANADA INC. and SANOFI-AVENTIS DEUTSCHLAND GmbH v. TEVA

SANOFI-AVENTIS
DEUTSCHLAND GmbH
A-489-09
SCHERING CORPORATION v.
NOVOPHARM LIMITED v.
SANOFI-AVENTIS CANADA
INC. and SANOFI-AVENTIS
DEUTSCHLAND GmbH

CANADA LIMITED v.
SCHERING CORPORATION
A-417-10
SANOFI-AVENTIS CANADA
INC. and SANOFI-AVENTIS
DEUTSCHLAND GmbH v.
TEVA CANADA LIMITED v.
SCHERING CORPORATION
A-418-10
SCHERING CORPORATION v.
TEVA CANADA LIMITED v.
SANOFI-AVENTIS CANADA
INC. and SANOFI-AVENTIS
DEUTSCHLAND GmbH

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: October 23, 2012

**REASONS FOR JUDGMENT OF
THE COURT BY:** (SHARLOW, DAWSON & TRUDEL J.J.A.)

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

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Junyi Chen

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Marc Richard

FOR THE APPELLANT (Schering
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Mark Davis
Ben Wallwork

FOR THE RESPONDENT (Teva
Canada Limited)

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Ben Wallwork

FOR THE RESPONDENT
(Novopharm Limited)

Jerry Topolski

FOR THE RESPONDENT (Apotex
Inc.)

Marc Richard

FOR THE RESPONDENT (Schering
Corporation)

Gunars Gaikis
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