Pharma in brief - Canada

Generic companies seek leave to appeal to the Supreme Court of Canada on the “promise of the patent”

Cases: Apotex Inc. v. Pfizer Canada Inc. et al. and Mylan Pharmaceuticals ULC v. Pfizer Canada Inc. et al. applications for leave to appeal from the judgment of the Federal Court of Appeal 2014 FCA 250

Drug: CELEBREX® (celecoxib)

SCC Docket Nos.: SCC#36227 and SCC#36228

Nature of cases: Leave to Appeal of two s.6 prohibition orders pursuant to the PM(NOC) Regulations

Date of applications: December 23, 2014

Summary

On December 23, 2014, Apotex Inc. and Mylan Pharmaceuticals ULC each filed Supreme Court of Canada (SCC) applications for leave to appeal the Federal Court of Appeal’s decision in 2014 FCA 250 dated October 30, 2014. In the decision, the Federal Court of Appeal upheld prohibition orders issued under the Patented Medicines (Notice of Compliance) Regulations against Mylan and Apotex with respect to the drug CELEBREX® (celecoxib). As detailed in our Pharma in Brief from November 2014, the Federal Court of Appeal decision provides further guidance on assessing the “promise” of patent utility by holding that a “promise” must be explicitly and unambiguously made and construed on a claim-by-claim basis.

These leave applications, if successful, may allow the SCC its first opportunity to consider the issue of patent utility and the “promise of the patent”, given the discontinuance, on consent, of Apotex’s SCC appeal in the PLAVIX® case on the eve of hearing on November 3, 2014.

Link to materials:

The materials filed with the Supreme Court for the leave applications can be found at:

Apotex (SCC#36227)

Mylan (SCC#36228)

For more information, please contact your IP/Life sciences and healthcare practice professional at Norton Rose Fulbright Canada LLP. For a complete list of our IP team, click here. For a complete list of our Life sciences and healthcare team, click here.
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