

Pharma in brief - Canada

Apotex seeks leave to appeal to SCC in omeprazole case

Case:	<i>Apotex Inc v AstraZeneca Canada Inc, et al</i> (SCC Docket: 37478)
Drug:	LOSEC [®] (omeprazole)
Nature of case:	Appeal from validity and infringement action under the <i>Patent Act</i> , RSC 1985, c P-4 (Patent Act)
Appellant:	Apotex Inc. (Apotex)
Respondents:	AstraZeneca Canada Inc., AstraZeneca AB and Aktiebolaget Hässle (collectively AstraZeneca)
Date:	March 13, 2017

Summary

On March 13, 2017, Apotex filed for leave to appeal the Federal Court of Appeal's (**FCA**) decision addressing validity and infringement of AstraZeneca's Canadian Patent No. 1,292,693 (the **693 Patent**) (reported [here](#)) with the Supreme Court of Canada (**SCC**).

As we [reported](#), the Federal Court held AstraZeneca's patent valid and infringed by Apotex's manufacture, sale, and promotion of Apo-Omeprazole capsules.

On appeal, the FCA upheld the Federal Court's findings on construction, validity and infringement, and affirmed that a patent need only describe a single method or process for making the claimed invention. However, the FCA overturned the Federal Court's decision on the applicable limitation periods, and held that, as the 693 Patent is covered by the pre-1989 *Patent Act*, provincial statutory limitations would apply to any "cause of action arising in that province" instead of the six-year federal limitation period. The FCA also dismissed AstraZeneca's cross-appeal on punitive damages.

Links:

- SCC Docket: [37478](#)
- Federal Court of Appeal Decision: [Apotex Inc v Astrazeneca Canada Inc, 2017 FCA 9](#)
- Federal Court Decision: [Astrazeneca Canada Inc v Apotex Inc, 2015 FC 322](#) and [Astrazeneca Canada Inc v Apotex Inc, 2015 FC 671](#) (amended judgment)

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