

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE FEDERAL COURT OF APPEAL)**

BETWEEN:

**ASTRAZENECA CANADA IN.
ASTRAZENECA AKTIEBOLAG and ASTRAZENECA UK LIMITED**

Appellants

-and-

APOTEX INC. and APOTEX PHARMACHEM INC.

Respondents

- and -

**INNOVATIVE MEDICINES CANADA AND BIOTECANADA, CENTRE FOR
INTELLECTUAL PROPERTY POLICY, CANADIAN GENERIC PHARMACEUTICAL
ASSOCIATION, FÉDÉRATION INTERNATIONALE DES CONSEILS EN PROPRIÉTÉ
INTELLECTUELLE, INTELLECTUAL PROPERTY OWNERS ASSOCIATION, and
INTELLECTUAL PROPERTY INSTITUTE OF CANADA**

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PART I - OVERVIEW

1. The *Patent Act* and jurisprudence thereunder are focussed on maintaining a balance between appropriate monopolies and users' rights.¹ The patentee-side interveners, IMC/BTC, IPO, FICPI, and IPIC,² each neglects this balance and asks this Court to abolish or undermine Canada's clear and settled law of patent utility and disclosure. To this end, these interveners depend on distortions of the present law and assertions of prejudice not supported by evidence. Further, the new legal rules these interveners propose conflict with this Court's past decisions and with each other, and would be destined to cause a complexity and uncertainty that a properly-functioning patent system must avoid.

PART II – RESPONDENTS' POSITION ON QUESTIONS IN ISSUE

2. Apotex's³ position on the points raised by the patentee-interveners is:
- (a) There is no unpredictability, inconsistency, ambiguity or unfairness in the current law of utility and sufficiency; the law is based on the *Patent Act*, has been clearly articulated by this Court on multiple occasions, is consistent with Canada's treaty obligations, is applied without difficulty in the lower Courts, and meets the goals of the patent system; and
 - (b) The patentee-interveners' proposals to change the law of utility and insufficiency are unsupported, contradict the *Patent Act* and the jurisprudence thereunder, are confusing and contradictory, and fail stakeholders other than patent owners.

PART III - STATEMENT OF ARGUMENT

A. THE PATENTEE-INTERVENERS' CRITICISMS OF CANADA'S LAW OF UTILITY ARE INCORRECT

¹ *Patent Act*, R.S.C., 1985, Chap. P-4, as amended; See, for example, *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, [2005] 1 S.C.R. 533 at ¶1, Appellants' BOA, V1, T14.

² Innovative Medicines Canada/Biotech Canada, The Intellectual Property Owners Association, Fédération Internationale Des Conseils En Propriété Intellectuelles, Intellectual Property Institute of Canada. IPIC's assertion that is "neutral" (IPIC¶1) is not supported by any evidence and is belied by IPIC's submissions.

³ The Respondents, Apotex Inc. and Apotex Pharmachem Inc.

3. The patentee-intervenors' justifications for their requests stem from four faulty premises as discussed, in turn, under the following headings.

1. The "promise doctrine" is not new: This Court has confirmed Canada's longstanding law of utility to include the so-called "promise doctrine" on multiple occasions

4. Canadian courts have required that the subject matter of patent claims have the utility asserted for this subject matter in the patent for decades.⁴ This Court confirmed this definition of utility in 1968, in 1981, and again in 2012.⁵ Only the labelling of this aspect of utility as the "promise doctrine" and the use of this term as a rhetorical sword to attack the doctrine are new.

5. The patentee-intervenors cloud the analysis by insisting that, before 2005, utility was determined on a "low threshold," or "scintilla" basis, as if courts had only considered the quantum of utility in their analyses.⁶ This was not the approach. Before courts considered whether an invention is useful to any particular threshold, they had already answered the question, "Useful for what?", based on the construction of the patent specification as a whole.⁷ There is no decision of which Apotex is aware which supports the patentee-intervenors' purported acontextual construction of utility.⁸

⁴ See Respondents' Factum, dated August 28, 2016 ("RF") at ¶58-62.

⁵ *Société des Usines Chimiques Rhone-Poulenc et al. v. Jules R. Gilbert Limited et al.*, [1968] S.C.R. 950 ("Rhone-Poulenc"), CGPA Authorities, T43 at pp. 952-954. In the case, a claim to a chemical process was held invalid for inutility because some of the compounds produced by the chemical process did not have the therapeutic utility asserted for these compounds in the disclosure. *Consolboard Inc. v. MacMillan Bloedel (Saskatchewan) Ltd.*, [1981] 1 S.C.R. 504; Respondents' Authorities ("RA"), V3, T33, at 525-526; *Teva Canada Inc. v. Pfizer Canada Inc.*, [2012] 3 S.C.R. 625 at ¶38, RA, V6, T62. Contrary to IPIC's argument (IPIC¶27), that *Consolboard* defined utility in the context of a discussion of sufficiency does not undermine its authority. RF¶74-79.

⁶ FICPI, ¶2, 13, 23; IPO¶4,10; IMC/BTC¶4, 5, 10(a), 13. IPIC misquotes a passage discussing patentable subject matter in *Shell Oil Co. v. Commissioner of Patents*, [1982] S.C.R. 536 at 554 (IPO¶24(c)), IPIC Authorities, T14, as if it were discussing utility. In any event, the invention applied in that case was that described in the disclosure.

⁷ E.g. *Rhone-Poulenc*, supra note 5; *Monsanto Co. v. Commissioner of Patents*, [1979] 2 S.C.R. 1108, RA, V5, T48, ("Monsanto") at p. 1117; See also, RF¶85. There is also no basis for IMC/BTC's argument (IMC/BTC¶3) that the frequency of invalidity findings has increased since 2005. <<http://www.cippmccgill.ca/news/2016/07/28/patent-litigation-putting-assumptions-to-the-empirical-test/>>; CIPP BOA, T12.

⁸ FICPI is wrong to cite *Wellcome Foundation Ltd.*, [2002] 4 SCR. 153 ("Wellcome"), RA, V6, T70, as support for its view that utility can be assessed without reference to the statements in the patent (FICPI¶20, 26) The full passage, in which this Court quotes from *Procter & Gamble Co. v. Bristol-Myers Can. Ltd.* (1979), 42 C.P.R. (2d) 33 at 39 (F.C.A.) FICPI BOA, V2, T17, states "A 'new' process is not an invention unless it is 'useful' in some practical

2. ***Canadian utility and sufficiency requirements do not contradict the Patent Act***

6. The patentee-interveners' legal attacks on the present law of utility and sufficiency all depend on mischaracterizations of how this law is applied by courts.

7. Contrary to the patentee-interveners' arguments, courts do assess utility with regard to subject matter of the claim.⁹ The claim is first construed to define the scope of its subject matter, and then the court asks what, if anything, the specification as a whole states that this subject matter will do. Courts do not demand that every promise in the disclosure [is] to apply every claim nor preclude claim differentiation.¹⁰ The question of whether a particular claim is to be read as excluding any of the utility indicated for that subject matter in the specification of the patent is a matter of construction in each case.¹¹

8. Courts do not require that a promise of utility ever be made nor "elevate every assertion to the status of an explicit promise".¹² Rather, the court considers the patent specification as a whole, disclosure and claims, in a purposive determination of what the inventor intended, sympathetic to the accomplishment of the inventor's purpose. It is only when these words so construed would be understood by the skilled addressee to promise a specific utility for the claimed subject matter that this utility must be met.¹³

9. Courts do not fashion utility as a disclosure requirement, even in sound prediction cases. The requirement to disclose the factual basis and line of reasoning arises because the prediction is the invention and must be described as such pursuant to subsection 27(3) of the *Patent Act*. Contrary to IPO, this principle was not overruled by *obiter dicta* in *Teva* – this Court's comments

sense. Knowing a new process without knowing its utility is not in my view knowledge of an 'invention'. The passage addresses the question of when an invention is made, not whether the utility can be assessed in the abstract.

⁹ IPO¶21, 22, 24; IMC/BTC¶21; IPIC¶25, 26.

¹⁰ Contrary to IPO¶23, IPIC¶25.

¹¹ *Apotex Inc. v. Pfizer* (2014), 125 C.P.R. (4th) 81 (F.C.A.), RA, V1, T18 at ¶77, 89; Reasons for Judgment in A-420-14 ("Appeal Reasons") AR, V1, T3 at ¶5.

¹² Contrary to IPO¶14; IMC/BTC¶5, 10(c), 14;;IPIC¶27.

¹³ RF¶38, 54, 58, 91-93.

were directed only to whether utility was required to be disclosed.¹⁴ The patentee-intervenors are also incorrect to disparage disclosure as a “technical” requirement that does not “defin[e] the terms of the patent bargain” but rather “undermine[s]” it.¹⁵ The disclosure is the consideration the applicant pays in the bargain, and “lies at the heart of the whole patent system”.¹⁶ The public ought to know before it sets out to work or improve upon an invention whether the invention was demonstrated or merely a prediction.

10. Finally, no aspect of the law of utility contradicts section 53 of the *Patent Act*.¹⁷ Section 53 addresses fraud on the patent office, not utility. The “promise doctrine” arises from section 2, utility being a prerequisite for a valid patent application so as to ensure reciprocity in the patent bargain. The public is short-changed by a patent that does not deliver its stated utility whether or not the patent was procured by fraud. As this Court has recently held, the requirements for a valid patent application, including the requirement that the disclosure not be misleading, are in addition to and independent from the requirements of section 53, which serves an entirely different purpose.¹⁸

3. *There is no uncertainty in the law of utility, nor undue difficulty in its application*

11. Examples of courts’ application of the law of utility, including the “promise doctrine,” show none of the uncertainties and ambiguities the patentee-intervenors describe.¹⁹ Courts simply proceed on the basis of purposive construction as described above, eschewing the “extreme parsing of stray phrases” the patentee-intervenors fear. The construed utility is always based on what the inventor has said it is in the patent application.²⁰

¹⁴ IPO¶7, 16, 36, 37; RF¶120-127.

¹⁵ IPO¶14; IPIC¶18,24(d); IMC/BTC¶1.

¹⁶ See cases cited at RF¶49.

¹⁷ Contrary to FICPI¶26, 27, 29; IPO¶5.

¹⁸ *Teva*, at ¶85-87.

¹⁹ The patentee-intervenors use many synonyms and colourful phrases to argue there is calamitous uncertainty in the law of utility, but they do not provide any real judicial support for their arguments. IMC/BTC¶1, 4, 5, 20, 28; IPIC¶12; IPO¶12, 14; FICPI¶6, 9, 14.

²⁰ *Sanofi-Aventis v. Apotex Inc.* (2013), 114 C.P.R. (4th) 1 at ¶34-71, RA, V2, T20; *Apotex Inc. v. Pfizer* (2014), 125 C.P.R. (4th) 81 (F.C.A.) RA, V1, T18 at ¶77, 89

12. The trial judge articulated and applied the law of utility without any apparent difficulty or uncertainty.²¹ The trial judge's "alarm," cited by FICPI,²² was not about determining the promised utility but only in relation Astra's argument that the inventive concept needed to match the utility as construed, an argument rejected by both the trial judge and the Federal Court of Appeal because it had no support in the *Patent Act* or the jurisprudence.²³

13. FICPI and IPO's arguments with respect to the latanoprost case are similarly inapt.²⁴ The same approach to identifying the utility was undertaken in both the Apotex and Pharmascience cases. Apotex led evidence and made argument as to why the true utility asserted in the subject patent included chronic treatment, whereas Pharmascience had not. The difference in result reflects the different issues raised and evidence adduced in the two cases.²⁵

14. The notion that it is the "promise doctrine" that creates "semantic battle[s]" between experts and overzealous dissections of patents is naïve.²⁶ Strenuous debates over patent construction are a feature of practically all patent cases. As this Court has explained in the context of claims construction, the only way to make construction fair, predictable and consistent is to ground the debate in the words of the patent itself, as the "promise doctrine" decidedly does.²⁷

4. *The "promise doctrine" is not inconsistent with the goals of the patent system, nor does it prejudice international applicants for Canadian patents*

15. The "promise doctrine" does not undermine the patent bargain, nor deprive patents to those who disclose new and useful subject matter in "good faith".²⁸ The patentee-interveners' argument to this effect is mistakenly premised upon a decoupling of the term "invention" from the specific invention the applicant described in a patent application. Neither the patentee's commercial

²¹ Reasons of Rennie J., dated July 2, 2014 ("Trial Reasons"), Appellants' Record ("AR"), V1, T1, at paras. 83-90

²² FICPI¶9.

²³ Trial Reasons¶265-269, Appeal Reasons, ¶10-11.

²⁴ FICPI¶10; IPO¶12.

²⁵ *Pfizer Canada Inc. v. Canada (Minister of Health)* (2011), 95 C.P.R. (4th) 193 at ¶21 -28 (F.C.A.), RA, V5, T51.

²⁶ IPO¶5, IMC/BTC¶5, 14, 15, 19.

²⁷ *Free World Trust v. Électro Santé Inc.*, [2000] 2 S.C.R. 1025, RA, V4, T38, at ¶41-44.

²⁸ FICPI¶4, 6, 13, 14, 31; IPO¶13, 15; IMC/BTC¶23-24, 27.

product, nor any “invention” it seeks to constitute in retrospect is at all relevant – the only “invention” that is ever in issue in a patent case is the invention *described in the patent*.

16. This is necessary because the public receives only this description as the *quid pro quo* for the ultimate grant of the patent monopoly. As IPO concedes, one purpose of patent disclosure is so “others can build on [the inventor’s] scientific endeavors,” as described therein.²⁹ If promises of utility in a patent application were not required to be justified, the published patent application and issued patent could not be relied upon by others as a basis for future work.

17. In addition, there is nothing anomalous in a finding that a claim covering a commercially successful product can be held invalid for inutility.³⁰ A declaration that a patent fails for inutility is not a declaration that any associated commercial product is useless. This Court has long held that patents for commercially-valuable subject matter can be invalid for inutility/lack of invention if their applications were filed before the inventors had demonstrated or soundly predicted their utility. The issue is not that these products are not operable, it is that their inventors claimed the reward of a patent prematurely, before the stated invention had actually been made.³¹

18. IPO and FICPI argue that the “promise doctrine” discourages full disclosure because it holds an applicant to account for statements regarding “speculat[ions] on potential advantages” and “beliefs about what their invention does or might accomplish”.³² Again, it is the patentee-interveners’ mischaracterization of the doctrine that is the problem. Nothing in subsection 27(3) or the “promise doctrine” requires an applicant to state with certainty any matter which it considers contingent. Professional patent agents are fully able to distinguish speculative assertions from statements of utility in their drafting.

19. IMC/BTC and FICPI complain, without evidence, that applicants for pharmaceutical patents are caught between their need to conduct clinical trials before filing their patent applications so that they can acquire the needed information to make sound predictions, and the requirement to

²⁹ IPO¶1, 2.

³⁰ FICPI¶4, 14, 31; IMC/BTC¶6, 27.

³¹ *Wellcome* at ¶70; *Monsanto* at 1117.

³² FICPI¶28; IPO¶2.

file their applications before clinical trials to avoid anticipation.³³ In reality, there is no such ‘catch-22’. *Wellcome* definitively held that information from clinical trials is not needed to form a sound prediction of clinical utility as a general matter. Further, the confidentiality associated with clinical trials has been found sufficient to protect against an allegation of anticipation.³⁴ In the end, if applicants simply describe their inventions in a manner consistent with what was actually accomplished, the patent system will fairly reward them with the commensurate monopoly.

20. The patentee-interveners’ arguments³⁵ that Canada’s law is discordant with international consensus ought to be ignored because they are made without evidentiary basis and in a manner that precludes Apotex from challenging these assertions with evidence. Had foreign law been at issue at trial, Apotex would have led evidence to establish the fact that there is no consensus on patent laws and Canada is not an outlier.³⁶ In any event, and more importantly, this Court’s nuanced articulations of the law of utility and disclosure reflect a modern and sophisticated balancing of the goals of the *Patent Act* that other countries ought to emulate. The treaties do not contain any provision precluding Canada’s present definitions of utility and sufficiency.

21. The patentee-interveners’ argument that Canada’s law of utility and disclosure departs from Canada’s treaty obligations is incorrect for the reasons Apotex and others have provided.³⁷ The interveners are also incorrect that the “promise doctrine” frustrates the ability of an applicant to file a common international application.³⁸ If the international application includes “promises” the applicant cannot meet, these promises can be deleted from the Canadian application.³⁹ Of course, there is no reason that applicants with international patent portfolios cannot draft their international applications to comply with Canadian law in the first place.

³³ IMC/BTC¶:17, 25, 26; FICPI¶28, 29.

³⁴ See RF¶107.

³⁵ IMC/BTC¶7; FICPI¶2, 3.

³⁶ See RF¶128-137.

³⁷ RF¶128-137; Factum of Centre for Intellectual Property Policy, ¶35-42; Factum of Canadian Generic Pharmaceutical Association, ¶29-34.

³⁸ IMC/BTC¶18, 25, 26; FICPI¶21.

³⁹ *Patent Act*, subsections 38.2(1) and 38.2(2).

B. THE PATENTEE-INTERVENERS' WISH LIST OF CHANGES TO THE LAW

22. Each of the patentee-interveners proposes a 'rule' that the utility applicable to a patent claim must be found only in the claim itself, but then ignore this rule "where the claim is silent on utility".⁴⁰ In those cases, they say, utility ought to be determined using a second methodology, although the patentee-interveners do not agree on what that secondary methodology would be.

23. To IPIC and IMC/BTC, the second methodology is to have the trial judge conduct an inquiry, independent from the text of the patent, to assess whether there is "a scintilla" of utility to do anything, irrespective of whether this utility was even contemplated by the inventor.⁴¹ FICPI wants the trial judge to apply promises from the disclosure only if these promises are ultimately found to have been "material to patentability" such that "without this [promise], the invention would not have been patentable."⁴² For IPO, the trial judge might ask "what the subject matter does to render it as a useful invention?" or perhaps, "what utility is required to make the claimed invention actually inventive?" or "what is the utility required to support the claimed invention?" or "what must the claimed [subject matter] actually do so that it provides benefit?", *etc.* IPO then adds the further complication of tying the utility to the those aspects of the disclosure that are part of the inventive concept, rather than being "secondary information."⁴³

24. The very need for these secondary methodologies exposes the illegitimacy of the proposals. The *Patent Act* contemplates that all patents are to be assessed by the same rules.

25. Further, all of the proposals postulate that one function of a patent claim is to identify its utility. This is wrong, a fact underscored by the patentee-interveners' need for a secondary approach when the utility is not mentioned in the claim. The function of the claims is to be a

⁴⁰ IMC/BTC¶10(d); IPIC¶5, 24(c); IPO¶28; FICPI¶24.

⁴¹ IMC/BTC¶10(a); IPIC¶24(c).

⁴² FICPI¶24, 25, 28.

⁴³ IPO¶6, 15, 18, 19, 25, 27, 28, 29, 34, 35, 36. IPO does not give any jurisprudential basis for tying utility to inventive concept or for requiring the inventive concept be construed in a utility case; nor does it suggest any instruction for dividing the statements in the patent into primary and secondary categories, particularly in light of the case law that deems most or all of the advantages mentioned in the disclosure to be part of the inventive concept. *Apotex Inc. v. Allergan Inc.* (2012), 105 C.P.R. (4th) 371, Appellants BOA, V1, T5, at 54-75. IPIC argues that utility and inventive concept need not be the same. (IPIC¶24(c)).

“statement of the monopoly that can properly be derived from *the invention disclosed in the specification.*”⁴⁴

26. The “scintilla” approach taken by the patentee-interveners requires that the construction of utility proceed independently from and even contrary to the patent’s language. A patent is a regulation at Canadian law and the court must give effect to its words.

27. The FICPI and IPO proposals alternatively require the Court to retrospectively assess the “materiality” of any promises in the specification, or the degree to which these statements would have been needed to make the patent valid. This makes the utility of a patent unknowable for all but those patents that are challenged at a trial. This proposal also fixes the date of the patent bargain as the date on which a trial judgment issues. In this proposal, the public interest in being able to rely on the statements in a patent, and on the finality of the patent bargain, would be pushed aside. There is no precedent for the types of inquiries envisioned by FICPI and IPO, nor foundation for same in the *Patent Act*.

28. FICPI and IMC/BTC argue that NAFTA and TRIPS designate the terms “industrial applicability” and “utility” as being synonymous.⁴⁵ This is not correct. The treaties state that a member country “may deem” the two standards to be synonymous, but Parliament has not acted to do so.⁴⁶

29. IMC/BTC also seeks a rule that would reverse this Court’s decision in *Wellcome* and allow evidence of utility generated after a patent is filed to nourish the existence of an invention as of the filing date.⁴⁷ *Wellcome* unanimously reversed the Federal Court of Appeal on this very point because it would allow patent applicants to take the benefit of future advancement made by others and force the public to pursue patent litigation before a patent disclosure could be credited as a

⁴⁴ *Whirlpool Corp. v. Camco Inc.*, [2000] 2 S.C.R. 1067, RA, V4, T72, para. 49(e) [emphasis added]. Contrary to IPIC¶9, 25 and IPO¶22, that the *Patent Act* requires novelty (28.2) and obviousness (28.2) to be assessed based on the subject matter of the claim, and does not require this for utility, is supportive of the present law of utility.

⁴⁵ IMC/BTC¶10(a); FICPI¶15, 17, 18, 21, 22, 23.

⁴⁶ In the UK, a statutory amendment was required before the “industrial applicability” standard could be adopted. RF¶129,134; FICPI¶17-18.

⁴⁷ IMC/BTC¶8, 10(b), 30.

useful basis for future work.⁴⁸ IMC/BTC admits that its proposal to admit post-filing evidence would obviate the doctrine of sound prediction, something not even the other interveners support.⁴⁹

30. IMC/BTC's argument does not confront, let alone distinguish, this Court's reasoning in *Wellcome*.⁵⁰ Instead, it notes that post-filing evidence is admitted by the Commissioner and the Court to establish operability. Here, IMC/BTC confuses whether an invention was in existence at the filing date (*i.e.*, whether the applicant had demonstrated or soundly predicted the utility by the filing date) with operability (whether the invention was eventually made to work).⁵¹ Evidence of utility developed post-filing can never establish that an applicant had predicted the utility as of the filing date.

PART IV - SUBMISSIONS CONCERNING ORAL ARGUMENTS AND COSTS

31. If this Court grants the patentee-interveners' requests to make oral argument, Apotex requests the opportunity to make responding oral argument for the same amount of time granted in the aggregate to the patentee-interveners.

32. Apotex requests that it be awarded its costs in responding to the intervention of the patentee-interveners.

October 28, 2016

ALL OF WHICH IS RESPECTFULLY SUBMITTED



**Goodmans LLP,
Lawyers for the Respondents**

⁴⁸ IMC/BTC's assertion (IMC/BTC ¶34-35) that *Wellcome* did not decide this issue is risible RF ¶116.

⁴⁹ According to IMC/BTC, sound prediction would be relegated to the unlikely circumstance that the utility of a patent being litigated had not yet been demonstrated as of the hearing. IMC/BTC ¶36, 38; IPIC:28; FICPI ¶3,23; IPO:9.

⁵⁰ IMC/BTC cites only the cases this Court overruled (the lower court decision in *Wellcome*) or refused to follow (the corresponding U.S. case), and the cases that this Court explained did not address the issue of speculative utility (*Christiani v. Rice*, [1930] S.C.R. 443, *Ernest Scragg & Sons Ltd. v. Leesona Corp.*, [1964] Ex. C.R. 649). IMC/BTC ¶40-42; *Wellcome*, ¶46, 54-55. No case supports IMC/BTC's position that writing down a research goal ought to constitute a patentable invention if it turns out, in retrospect, to have been correct.

⁵¹ RF ¶116. IMC/BTC ¶1, 8, 28, 30-31, 34, 35.

**PART V PART VI- TABLE OF AUTHORITIES, ARRANGED ALPHABETICALLY,
PARAGRAPH NUMBER WHERE AUTHORITY IS CITED**

TAB NO.	DESCRIPTION	PARA.
STATUTES		
	<i>Patent Act</i> , R.S.C., 1985, Chap. P-4, as amended	1, 21
CASE LAW		
	<i>Apotex Inc. v. Allergan Inc.</i> (2012), 105 C.P.R. (4 th) 371¶	1
	<i>Apotex Inc. v. Pfizer</i> (2014), 125 C.P.R. (4 th) 81 (F.C.A.)	7, 11
	<i>Bristol-Myers Squibb Co. v. Canada (Attorney General)</i> , [2005] 1 S.C.R. 533	1
	<i>Consolboard Inc. v. MacMillan Bloedel (Saskatchewan) Ltd.</i> , [1981] 1 S.C.R. 504	4
	<i>Free World Trust v. Électro Santé Inc.</i> , [2000] 2 S.C.R. 1025	14
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	<i>Procter & Gamble Co. v. Bristol-Myers Can. Ltd.</i> (1979), 42 C.P.R. (4 th) 33 (F.C.A.)	5
	<i>Sanofi-Aventis v. Apotex Inc.</i> (2013), 114 C.P.R. (4 th) 1	11
	<i>Shell Oil Co. v. Commissioner of Patents</i> , [1982] S.C.R. 536	5
	<i>Société des Usines Chimiques Rhone-Poulenc et al. v. Jules R. Gilbert Limited et al.</i> , [1968] S.C.R. 950	4
	<i>Teva Canada Inc. v. Pfizer Canada Inc.</i> , [2012] 3 S.C.R. 625	4, 10
	<i>Wellcome Foundation Ltd.</i> , [2002] 4 SCR. 153	5, 17
	<i>Whirlpool Corp. v. Camco Inc.</i> , [2000] 2 S.C.R. 1067	25, 29, 30

TAB NO.	DESCRIPTION	PARA.
PUBLICATIONS		
	CIPP News, <i>Patent Litigation: Putting Assumptions to the Empirical Test</i> , dated July 28, 2016 found at http://www.cippmcgill.ca/news/2016/07/28/patent-litigation-putting-assumptions-to-the-empirical-test/	5

Court File No.: 36654

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE
FEDERAL COURT OF APPEAL)**

B E T W E E N:

**ASTRAZENECA CANADA IN.
ASTRAZENECA AKTIEBOLAG and
ASTRAZENECA UK LIMITED**

Appellants

- and -

**APOTEX INC. and
APOTEX PHARMACHEM INC.**

Respondents

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