



T-1144-97

BETWEEN:

ELI LILLY AND COMPANY and  
ELI LILLY CANADA INC.,

Applicants,

- and -

APOTEX INC. and  
THE MINISTER OF HEALTH,

Respondents.

REASONS FOR ORDER

TEITELBAUM, J:

On September 25, 1997, I issued an Order, pursuant to an application to submit reply evidence and, at the same time, I granted the respondent Apotex Inc. the right to cross-examine on the Reply affidavits.

I issued reasons for doing so.

On October 15, 1997, the respondent Apotex Inc. filed into the Federal Court Registry a Notice of Motion wherein Apotex makes the following request:

1. An Order pursuant to Rule 337(5)(b) of the Federal Court Rules for reconsideration of the terms of the Order of Mr. Justice Teitelbaum dated September 25, 1997, so that Apotex be permitted to file further affidavit evidence in response to the affidavits filed by the Applicants on October 2, 1997.
2. An Order for an extension of time in which the within Application may be filed.
3. Such further and other relief as I deem just.

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Rule 337(5)(b) of the *Federal Court Rules* states:

337. (5) Within 10 days of the pronouncement of judgment under paragraph (2)(a), or such further time as the Court may allow, either before or after the expiration of that time, either party may move the Court, as constituted at the time of the pronouncement, to reconsider the terms of the pronouncement, on one or both of the following grounds, and no others:

(b) that some matter that should have been dealt with has been overlooked or accidentally omitted.

Apotex Inc. lists 14 grounds for bringing the present Notice of Motion before the Court. Grounds 7 to 11, 13 and 14 are most relevant to the present application but I believe it not necessary to list the grounds in the present decision.

I heard the submissions of the parties and I am satisfied that had I considered the issue of whether Apotex be permitted to file further affidavit evidence in response to the affidavits filed by the applicants, I would have permitted Apotex Inc. not only to cross-examine the affiants of the applicants but would have allowed Apotex Inc. to file further reply evidence in response. I would have allowed this "further reply evidence" as I am satisfied that this is the first time that Apotex Inc. would have been in a position to reply as the evidence made by applicants' affiants was not previously known to Apotex Inc. I am also satisfied that it is in the interest of justice that in matters of Notice of Compliance issues, the more relevant information made and put before the Court the better.

The present Notice of Motion is allowed, the request for extension of time is allowed and the respondent Apotex Inc. is permitted to file reply evidence within 7 days of today's date if the cross-examination of applicants' affiants have been completed or within 7 days of completion of the said cross-examinations.

"Max M. Teitelbaum"

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J.F.C.C.

OTTAWA  
November 14, 1997

FEDERAL COURT OF CANADA  
NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO. : T-1144-97

STYLE OF CAUSE : ELI LILLY AND COMPANY ET AL. v. APOTEX INC. ET AL.

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: OCTOBER 17, 1997

REASONS FOR ORDER OF THE HONOURABLE MR. JUSTICE TEITELBAUM

DATED: NOVEMBER 14, 1997

APPEARANCES:

MR. PATRICK SMITH REPRESENTING THE APPLICANTS  
MR. JAMES E. MILLS

MR. ANDREW BRODKIN REPRESENTING THE RESPONDENT APOTEX INC.

SOLICITORS OF RECORD :

GOWLINGS, STRATHY & FOR THE APPLICANTS  
HENDERSON  
OTTAWA, ONTARIO

GOODMAN, PHILLIPS & VINEBERG FOR THE RESPONDENT APOTEX  
TORONTO, ONTARIO

GEORGE THOMSON FOR THE RESPONDENT MINISTER  
DEPUTY ATTORNEY GENERAL  
OF CANADA

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