

Nycomed Canada Inc., Nycomed GmbH and Nycomed International Management GmbH
(appellants) v. Teva Canada Limited (respondent)
(A-480-11)

Nycomed Canada Inc (appellant) v. Apotex Inc. (respondent)

Nycomed Canada Inc. and Nycomed GmbH (appellants) v. Apotex Inc. (respondent)
(A-481-11; 2012 FCA 195)

Indexed As: Apotex Inc. v. Nycomed Canada Inc.

Federal Court of Appeal
Noël, Evans and Sharlow, J.J.A.
June 25, 2012.

Summary:

In patent infringement litigation a prothonotary ruled that the plea of "contributory infringement" in a statement of defence and counterclaim by Nycomed had to be struck as it was plain and obvious that it would fail. Nycomed appealed.

The Federal Court, in a decision reported [2011] F.T.R. Uned. 878, dismissed the appeal. Nycomed appealed again.

The Federal Court of Appeal dismissed the appeal.

Patents of Invention - Topic 3513

Infringement actions - General - Indirect or contributory infringement - [See **Patents of Invention - Topic 3644**].

Patents of Invention - Topic 3644

Infringement actions - Pleadings - Striking out - In patent infringement litigation, a prothonotary ruled that the plea of "contributory infringement" in a statement of defence and counterclaim by Nycomed had to be struck as it was plain and obvious that it would fail - Nycomed appealed - The Federal Court (Simpson, J.) dismissed the appeal - Nycomed appealed again - The Federal Court of Appeal dismissed the appeal, holding that it detected no error in Simpson, J.'s decision - The court stated that "In particular, we adopt the reasoning set out at paragraph 27 of her reasons for holding that the decision of the Supreme Court in Monsanto Canada Inc. v. Schmeiser, 2004 SCC 34, is not indicative of an intention to depart from the existing precedents and to recognize 'contributory infringement' as a cause of action under the Canadian law" - See paragraph 3.

Cases Noticed:

Monsanto Canada Inc. et al. v. Schmeiser et al., [2004] 1 S.C.R. 902; 320 N.R. 201; 2004 SCC 34, reld to. [para. 3].

Counsel:

Lindsay Neidrauer and Afif Hamid, for the appellants;
Daniel Cappe, for the respondent;
Andrew Skodyn and Ben Wallwork, for the respondent.

Solicitors of Record:

Belmore Neidrauer LLP, Toronto, Ontario, for the appellants;
Goodmans LLP, Toronto, Ontario, for the respondent;
Heenan Blaikie LLP, Toronto, Ontario, for the respondent.

These appeals were heard in Toronto, Ontario, on June 25, 2012, before Noël, Evans and Sharlow, J.J.A., of the Federal Court of Appeal. The following decision was delivered orally, from the bench, for the court, by Noël, J.A., on June 25, 2012.

Appeals dismissed.

Editor: Elizabeth M.A. Turgeon

Patents of Invention - Topic 3513

Infringement actions - General - Indirect or contributory infringement - In patent infringement litigation, a prothonotary ruled that the plea of "contributory infringement" in a statement of defence and counterclaim by Nycomed had to be struck as it was plain and obvious that it would fail - Nycomed appealed - The Federal Court (Simpson, J.) dismissed the appeal - Nycomed appealed again - The Federal Court of Appeal dismissed the appeal, holding that it detected no error in Simpson, J.'s decision - The court stated that "In particular, we adopt the reasoning set out at paragraph 27 of her reasons for holding that the decision of the Supreme Court in *Monsanto Canada Inc. v. Schmeiser*, 2004 SCC 34, is not indicative of an intention to depart from the existing precedents and to recognize 'contributory infringement' as a cause of action under the Canadian law" - See paragraph 3.