



# Rx IP UPDATE

CANADIAN PHARMACEUTICAL INTELLECTUAL PROPERTY LAW NEWSLETTER

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## Patented Medicines Prices Review Board (PMPRB) Matters

The PMPRB will hold a public hearing commencing on December 6, 2006, to determine whether Janssen-Ortho is selling or has sold **CONCERTA (methylphenidate hydrochloride)** in any market in Canada at a price that, in the Board's opinion, is or was excessive, and if so, what order, if any, should be made. A pre-hearing conference will be held on September 15, 2006.

*Notice of Hearing*

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## Recent Court Decisions

### *Patented Medicines (Notice of Compliance) Regulations*

*Eli Lilly Canada v. Apotex (olanzapine (ZYPREXA))*, August 4, 2006

Lilly is partially successful in its motion to strike portions of the sur-reply affidavits filed by Apotex as not being properly responsive to Lilly's reply evidence. Apotex has appealed.

*Full Judgment (2006 FC 953)*

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*Pfizer Canada v. Canada (Minister of Health) (quinapril (ACCUPRIL))*, August 17, 2006

Judge dismisses Pfizer's appeal of a Prothonotary's decision declining to grant Pfizer leave to file reply evidence. The Judge finds that the Prothonotary correctly described the test for granting leave to file reply evidence, namely that the Court may allow such evidence where: (i) the evidence to be adduced will serve the interests of justice; (ii) the evidence will assist the Court; (iii) the evidence will not cause substantial or serious prejudice to the other side; and (iv) the evidence was not available at an earlier date. Pfizer has appealed.

*Full Judgment (2006 FC 984)*

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### *Other Decisions*

*Procter & Gamble Company v. Commissioner of Patents (DIDROCAL, DIDRONEL)*, August 15, 2006

Procter & Gamble sought judicial review of a Commissioner of Patents decision which refused to correct the reissue date of a patent. Judge finds that the Commissioner has a legal duty to correct the reissue date and orders the Commissioner to make the correction.

*Full Judgment (2006 FC 976)*

# Canadian Internet Registration Authority's Domain Name Dispute Resolution Policy Decisions

*Allergan v. Hiebert Net* ([www.combigan.ca](http://www.combigan.ca)), August 17, 2006

Panel orders the registration of the domain name [www.combigan.ca](http://www.combigan.ca) transferred to the complainant, Allergan. Panel finds the registrant's domain name: to be confusingly similar to Allergan's registered trade-mark COMBIGAN, in which Allergan had rights prior to the date of registration of the domain name; that the registrant has no legitimate interest in it; and that the registrant has registered the name in bad faith.

[Full Decision](#)

## New Court Proceedings

### *Patented Medicines (Notice of Compliance) Regulations*

**Medicine:** **atorvastatin calcium (LIPITOR)**  
**Applicants:** Pfizer Canada Inc and Warner-Lambert Company LLC  
**Respondents:** Ranbaxy Laboratories Limited, Ranbaxy Inc, and The Minister of Health  
**Date Commenced:** July 28, 2006  
**Court File No:** T-1356-06  
**Comment:** Application for Order of prohibition until expiry of Patents Nos. 2,521,776, 2,521,792, 2,521,828, 2,521,887, 2,521,891, 2,521,956, 2,521,908, 2,522,899 and 2,521,833. Ranbaxy alleges non-infringement.

**Medicine:** **desmopressin acetate (MINIRIN TABLETS and DDAVP TABLETS)**  
**Applicants:** Ferring Inc and Ferring BV  
**Respondents:** Apotex Inc and the Minister of Health  
**Date Commenced:** August 11, 2006  
**Court File No:** T-1476-06  
**Comment:** Application for Order of prohibition until expiry of Patent No. 2,490,335. Apotex alleges non-infringement, invalidity, and improper listing on the Patent Register.

**Medicine:** **desmopressin (MINIRIN TABLETS and DDAVP TABLETS)**  
**Applicants:** Ferring Inc and Ferring BV  
**Respondents:** Apotex Inc and the Minister of Health  
**Date Commenced:** August 11, 2006  
**Court File No:** T-1478-06  
**Comment:** Application for Order of prohibition until expiry of Patent No. 2,486,833. Apotex alleges non-infringement, invalidity, and improper listing on the Patent Register.

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**Medicine:** **omeprazole magnesium (LOSEC)**  
**Applicants:** AstraZeneca Canada Inc and Aktiebolaget Hässle  
**Respondents:** Novopharm Limited and The Minister of Health  
**Date Commenced:** August 11, 2006  
**Court File No:** T-1483-06  
**Comment:** Application for Order of prohibition until expiry of Patent No. 1,302,891. Novopharm alleges non-infringement, invalidity, and that the patent is not eligible for listing on the Patent Register.

*Other New Proceedings*

**Trade-mark:** **PROTANDIM and PROTANDRIN**  
**Applicant:** Lifeline Therapeutics Inc  
**Respondent:** Nu-Life Nutrition Ltd  
**Date Commenced:** July 25, 2006  
**Court File No:** T-1304-06  
**Comment:** Trade-mark infringement and passing-off action relating to Nu-Life's use of the trade-mark PROTANDRIN in association with a dietary supplement.

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