

# Intellectual Property Weekly Abstracts Bulletin — Week of February 13, 2017

February 15, 2017

## Patent Decisions

### **Allegations of Invalidity Found Justified on the Basis of Obviousness**

[Astrazeneca Canada Inc. v. Mylan Pharmaceuticals ULC, 2017 FC 142](#)

Drug: esomeprazole and naproxen

In this case, the Federal Court dismissed an application for an order of prohibition. The patent at issue claimed pharmaceutical formulations of esomeprazole and naproxen.

The court considered and rejected challenges to the experts of both sides, holding that the analysis would turn on which of the experts provided the most compelling evaluations of the common general knowledge of the POSITA, the state of the art and the other factors in the obviousness allegations. The court held that the obviousness allegations were justified. There was nothing novel or inventive about combining an NSAID and a PPI, nor the specific type of each used in the asserted claims. Nor was the concept of sequential release when co-formulating a PPI with a gastroprotective drug novel. However, the Court held it was novel to apply the sequential release profile in an NSAID-PPI co-formulation.

The Court held that the claimed sequential release was obvious. Furthermore, it was obvious to try.

### **Dismissed Motion to Amend Statement of Claim Upheld on Appeal**

[Nov Downhole Eurasia Limited v. TIL Oilfield Consulting Ltd, 2017 FCA 32](#)

The Court of Appeal upheld the Federal Court's decision denying leave to amend the Appellants' statement of claim in a patent infringement action. The proposed amendments fell into two categories: the addition of individuals as defendants in the action and a claim for joint and several liability. The three individuals sought to be added were both directors and officers of one of the respondents or involved in the development of an allegedly infringing product.

The Court of Appeal concluded that the judge did not err in law in identifying and applying the legal principles concerning the amendment of pleadings, or in its understanding of this Court's decision regarding the personal liability of directors and **officers in Mentmore Manufacturing Co. v. National Merchandise Manufacturing Co.** (1978), 40 C.P.R. (2d) 164. Furthermore, the Court found that the proposed pleading was deficient because it did not contain material facts with sufficient specificity to establish "the deliberate, wilful and knowing pursuit of a course of conduct," as **described in Mentmore** . The Court of Appeal also found that the judge made no reviewable error in declining the second category of amendments. The Court noted that the material facts, to the effect that each of the corporate defendants infringed the patent, were not sufficient to support a claim for joint and several liability.

## Industry News

Health Canada has released a [Notice: Submission Filing Requirements – Good Manufacturing Practices \(GMP\)/Drug Establishment Licences \(DEL\)](#).

Health Canada has released a [Notice - Prescription Drug List \(PDL\): Multiple additions](#). The Notice indicates the additions of Apomorphine hydrochloride, Daclizumab beta, Edoxoban, Ivabradine hydrochloride and Rupatadine to the Human and Veterinary Prescription Drug Lists (PDL).

By

[Chantal Saunders](#), [Beverley Moore](#), [Adrian J. Howard](#), [Jillian Brenner](#)

Expertise

[Intellectual Property](#), [Copyright](#), [Licensing](#), [Patents](#), [Trademarks](#)

---

## BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

[blg.com](http://blg.com)

## BLG Offices

### Calgary

Centennial Place, East Tower  
520 3rd Avenue S.W.  
Calgary, AB, Canada  
T2P 0R3

T 403.232.9500  
F 403.266.1395

### Ottawa

World Exchange Plaza  
100 Queen Street  
Ottawa, ON, Canada  
K1P 1J9

T 613.237.5160  
F 613.230.8842

### Vancouver

1200 Waterfront Centre  
200 Burrard Street  
Vancouver, BC, Canada  
V7X 1T2

T 604.687.5744  
F 604.687.1415

**Montréal**

1000 De La Gauchetière Street West  
Suite 900  
Montréal, QC, Canada  
H3B 5H4

T 514.954.2555  
F 514.879.9015

**Toronto**

Bay Adelaide Centre, East Tower  
22 Adelaide Street West  
Toronto, ON, Canada  
M5H 4E3

T 416.367.6000  
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing [unsubscribe@blg.com](mailto:unsubscribe@blg.com) or manage your subscription preferences at [blg.com/MyPreferences](http://blg.com/MyPreferences). If you feel you have received this message in error please contact [communications@blg.com](mailto:communications@blg.com). BLG's privacy policy for publications may be found at [blg.com/en/privacy](http://blg.com/en/privacy).

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.