Federal Court Cour fédérale

Date: 20260409

Docket: T-3922-25

St. John's, Newfoundland and Labrador, April 9, 2026

PRESENT: Associate Judge Trent Horne

BETWEEN:

ASTRAZENECA CANADA INC. and KUDOS PHARMACEUTICALS LIMITED

Plaintiffs

and

NATCO PHARMA (CANADA) INC.

Defendant

ORDER AND REASONS

[1] This is an action brought pursuant to the *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-133 [*PM(NOC) Regulations*]. The defendant wants to move for summary trial, but needs leave to do so because the time and place for trial were fixed months ago. The plaintiffs submit that no summary trial should be scheduled, and that the parties should move forward on the existing schedule. For the reasons that follow, leave is granted to the defendant to move for summary trial.

[2] The statement of claim was issued on October 8, 2025. A scheduling order was issued on November 27, 2025. That order sets out deadlines for document production, discoveries,

interlocutory motions, and expert reports. The scheduling order fixed trial dates, and was silent as to any motions for summary judgment or summary trial.

[3] During the first case management conference [CMC] that preceded the scheduling order, the parties did not agree on the place of trial. Each counsel expressed a preference for their home city. It was not clear at that time where the witnesses would be travelling from, and whether Toronto or Ottawa would be more convenient for participants other than the lawyers. The trial has been scheduled to begin on June 22, 2027 in Ottawa. The scheduling order states that "the place of trial may be revisited during a future case management conference or trial management conference."

[4] The defendant [Natco] wrote to the Court on March 19, 2026 and advised of its intention to move for summary trial. A draft notice of motion was enclosed.

[5] A CMC was held on March 27, 2026. In advance of the CMC, the parties sent joint correspondence to the Court setting out their respective positions. During the CMC, each side confirmed that they had sufficient opportunity to address their positions in writing, and that they were ready to make submissions as to why a summary trial should or should not be scheduled. I am content to decide the issue on this basis; I do not see that anything would be gained in these circumstances by requiring the parties to file formal motion records.

[6] Rule 213 of the *Federal Courts Rules*, SOR/98-106 [Rules] states that a party may move for summary trial after a defence has been filed, but before the time and place for trial have been fixed.

[7] I cannot agree with Natco that the time and place for trial have not been fixed. Unless the Court orders otherwise, the trial of this action will commence on June 22, 2027 in Ottawa. The fact that the place of trial was provisionally set, or there is a possibility that the place of trial may be revisited, does not mean that the time and place for trial have not been fixed.

[8] The fact that the time and place for trial have been fixed does not mean that a party is absolutely precluded from moving for summary trial. The Court has discretion to vary a Rule or dispense with compliance of a Rule, and can proceed with a summary trial notwithstanding the timing issue in Rule 213 (Rule 55; *Janssen Inc v Apotex Inc*, 2022 FC 107 at para 43).

[9] Whether or not to dispense with compliance with Rule 213 is a discretionary decision and must be considered based on the facts of the particular case before the Court, keeping in mind the overarching principle of proportionality and the efficient use of the parties' resources and the judicious use of limited Court resources. In undertaking this analysis, some of the considerations that the Court may take into account include: i) whether special circumstances exist; ii) whether there will be a significant savings of costs, savings of time and efficiencies from permitting the motion to proceed, including a consideration of whether the motion seeks a determination of all or a portion of the issues raised in the action, whether the motion can reasonably be heard and determined sufficiently in advance of the existing trial date, and which procedural steps and

expenses could be avoided if the motion is successful; iii) whether any of the parties would be prejudiced by permitting the motion to proceed; iv) the level of cooperation of the moving party exhibited to date in the proceeding as required by section 6.09 of the *PMNOC Regulations*; and v) whether the moving party seeks to bring the motion in a timely manner (*Hoffmann-La Roche Limited v Pfizer Canada Inc*, 2018 FC 932 [*Hoffmann-La Roche*] at para 5).

[10] Not all these factors favour Natco. It is not ideal that Natco waited until four months after the scheduling order to express an interest to the Court in a summary trial. The Federal Court operates on a system of fixed trial dates, meaning that a specific judge is assigned at the time trial dates are set. At the time the scheduling order was issued, Justice Fothergill was assigned to the trial. It is the Court's preference, but not a requirement, that any motion for summary judgment or summary trial be heard by the trial judge.

[11] The parties do not agree on when any summary trial should be heard, but have provided dates of availability in the event one goes ahead. Justice Fothergill is not available on any of the dates proposed by the parties, but another member of the Court's IP Chambers is. Had Natco expressed its intention to move for summary trial at the time the trial dates were fixed (*ie* what was done in *Janssen Inc v Sandoz Canada Inc*, 2023 FC 1231) it is likely that efforts would have been made to have the same judge assigned to both hearings.

[12] The parties have cooperated with each other over the course of the proceeding. There were a few disagreements on the timetable for the proceeding, but these were resolved quickly. A potential dispute relating to production of samples was resolved without the need for the

Court's intervention. This stands in contrast to how the parties in *Hoffmann-La Roche* comported themselves, where improper conduct was described to include obstructive jockeying and delays (para 18).

[13] As for prejudice, the plaintiffs [AstraZeneca] do not argue that, if a summary trial is scheduled, they will suffer prejudice that cannot be compensated by an award of costs. They do, however, point out that there are two other ongoing proceedings (T-3096-25 and T-5200-25) involving the same medicinal ingredient and the same patent. There are advantages to being the first generic on the market, and AstraZeneca submits that Natco is trying to "jump the queue" to have its motion for summary trial heard before the first trial in the other proceedings. I cannot agree that this is a reason to refuse to schedule a summary trial in this case. There is no demonstrated prejudice to the parties, at least no prejudice that cannot be compensated in costs. The fact that Natco may prevail in a summary trial before another matter is adjudicated does not prejudice AstraZeneca. The defendants in T-3096-25 and T-5200-25 made strategic decisions in their own litigation and elected not to move for summary judgment or summary trial. I am not satisfied that co-pending litigation, on its own, constitutes prejudice to the parties that should preclude the scheduling of a summary trial.

[14] In considering the second factor in *Hoffmann-La Roche*, I am satisfied that there is a sufficient potential for savings of time and cost.

[15] Natco submits that there are two infringement issues to be determined summarily:

- is a matrix polymer that exhibits low hygroscopicity an essential element of each asserted claim of the 400 Patent; and

- does the matrix polymer in the Natco Product exhibit low hygroscopicity?

[16] This is a sub-set of the unadmitted allegations in the pleadings. A resolution of these issues in Natco's favour could have the practical consequence of bringing the entire proceeding to an end before a full trial. This is a different set of circumstances than those in *Ronsco Inc v Canada*, 2025 FC 715 where I refused to permit the defendant to move for summary judgment, in part, because the proposed motion, even if successful, would not resolve all issues in the proceeding (para 15). It is also unlike *Toronto-Dominion Bank v Dyas (TD Benefits)*, 2024 FC 1651 where I refused to schedule a summary trial because the defendant did not demonstrate that proceeding in that fashion would be more efficient (para 11).

[17] I acknowledge that, in proceedings under the *PM(NOC) Regulations*, it is not possible to stay the action pending summary judgment or summary trial. The parties conducted examinations for discovery on all issues in about May 2026 and will be arguing any refusals motions in August 2026. Expert reports in chief are due to be served on November 18, 2026; responding reports are due on February 26, 2027.

[18] If the summary trial is heard during in late October or early November 2026 (Natco's desired dates), it is extremely unlikely that a decision will be made before the first round of expert reports are due. There is a risk of duplication of effort, specifically if the parties spend

time and money on validity reports that may not be required if the overall outcome turns on infringement. During this window, the primary burden of inefficiency will be borne by Natco. Natco acknowledges that it may be preparing a validity report while the summary trial is pending, and that a validity report is likely to be ultimately unnecessary if the Court determines that there is no infringement. Natco is aware of that risk and is willing to take it. For AstraZeneca, scheduling a summary trial may have the practical consequence of expediting their infringement report, but they have not argued that they are unable to do so, or that scheduling a summary trial would constitute prejudice that cannot be compensated in costs.

[19] While the parties have not specifically identified the number of witnesses that would be called on a summary trial, no one is suggesting there could be eight to ten affiants. That was the number of potential witnesses in *Hoffmann-La Roche* (para 17), and one of the reasons the Court dismissed the motion for leave to schedule a summary trial.

[20] I am also not satisfied that the compressed nature of PMNOC litigation is an inherent reason to refuse to schedule a summary trial. If it was, litigants in these cases would be effectively precluded from seeking that relief. The *PM(NOC) Regulations* do not preclude a party from moving for summary judgment or summary trial, and I am hesitant to effectively read in such a prohibition.

[21] I make no prediction as to how the summary trial will be resolved, but there is a possibility that Natco will not achieve its desired result and will appeal. It is unrealistic to expect that any such appeal would be heard and determined before the trial in this action. While this

may lead to two concurrent proceedings in different courts, I am not satisfied that this is a stand-alone reason to refuse to schedule a summary trial. Again, if the possibility of an appeal was enough to preclude summary judgment or summary trial, such motions would be practically unavailable in PMNOC cases.

[22] I am satisfied that the possibility of resolving the entire proceeding by way of a determination of a discrete infringement issue, the potential associated savings of time and cost, and the potential to more efficiently use the Court's resources, constitutes special circumstances such that Natco should be granted leave to move for summary trial after the time and place for trial have been fixed.

[23] The parties disagree on when any summary trial should be heard, and when any disputes as to reply expert evidence should be resolved. Hearing dates will be assigned by the Trial Judicial Administrator, targeting late October/Early November 2026. The timing and procedure for any disputes relating to reply expert evidence shall be determined by the judge assigned to hear the summary trial.

[24] After the hearing, and while this decision was under reserve, Natco sent unsolicited correspondence to the Court with additional facts and reference to further authorities. AstraZenca was not consulted. This was entirely inappropriate. Having represented to the Court that it was ready and able to argue the issue, Natco may not unilaterally supplement its position after the hearing. I have disregarded this letter in its entirety.

THIS COURT ORDERS that the defendant is granted leave to move for summary trial on the issues set out in the joint letter to the Court dated March 26, 2026, with hearing dates and a timetable to be determined.

"Trent Horne"
Associate Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-3922-25
STYLE OF CAUSE:	ASTRAZENECA CANADA INC. ET AL. v. NATCO PHARMA (CANADA) INC.
PLACE OF HEARING:	HELD BY WAY OF TELECONFERENCE
DATE OF HEARING:	MARCH 27, 2026
ORDER AND REASONS:	HORNE A.J.
DATED:	APRIL 9, 2026

APPEARANCES:

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