



October 27, 2008

**Decision: PMPRB-08-D1-APO-SALVENT
- Application for Leave to Intervene by ratiopharm Inc.**

**IN THE MATTER OF the *Patent Act* R.S.C. 1985, c. P-4,
as amended**

**AND IN THE MATTER OF Apotex Inc. (the "Respondent")
AND the medicine Apo-Salvent**

1. This is the decision of the panel of the Board hearing this proceeding (the "Panel") on the motion of ratiopharm Inc. ("ratiopharm") for leave to intervene.
2. ratiopharm has sought "leave to intervene" in this proceeding "as a party". The Board's *Rules of Practice and Procedure* allow persons to apply for intervener status. Taking all of the submissions of ratiopharm into account, the Panel takes ratiopharm to be applying for intervener status with rights to participate in the proceeding on the same terms as a party.
3. The issue on which ratiopharm seeks to intervene is "the interpretation of the *Patent Act* and the scope of the Board's jurisdiction."
4. Apotex Inc. ("Apotex"), the respondent in this proceeding, did not file submissions related to this motion. Board Staff did not object to ratiopharm being granted leave to intervene, provided that the intervention was confined to the issue defined by ratiopharm and was limited to certain specific rights of participation. ratiopharm responded to this position with submissions supporting "full party rights" for ratiopharm.
5. On consideration of the submissions of ratiopharm and Board Staff, the Panel grants ratiopharm leave to intervene on the issue of the interpretation of the *Patent Act* and the scope of the Board's jurisdiction, as that issue is framed in the Statement of Allegations of Board Staff, the Response of Apotex and the Reply of Board Staff in this proceeding.
6. ratiopharm shall have the right to present evidence and argument and to cross-examine witnesses, but only on the issue defined in paragraph 5, above, and only to the extent that such participation is not duplicative of the participation of Apotex in this proceeding.

7. The participation of ratiopharm in this proceeding will follow the same schedule as will apply to Apotex. In its submissions on this motion, ratiopharm undertook to the Panel that, if it was granted leave to intervene, it would avoid duplicating the participation of Apotex. Accordingly, the Panel will require ratiopharm to coordinate with Apotex at each stage of the proceeding, from the filing of evidence to the presentation of final argument, to avoid such duplication.
8. ratiopharm also submitted that its intervention would not unduly delay this proceeding. The Panel is very conscious of the potential for undue delay resulting from the addition of counsel and witnesses to the scheduling of a proceeding. Apotex itself is under an obligation to make its counsel and witnesses reasonably available in accordance with the scheduling stipulated by the Panel. Accordingly, the Panel will require ratiopharm to make its counsel and witnesses, if any, available on dates that are coordinated with the participation of Apotex in this proceeding.

Board Members: Dr. Brien G. Benoit
Anne Warner La Forest

Board Counsel: Gordon Cameron

Original signed by
Sylvie Dupont
Secretary of the Board