

PATENTS

Motion by Novopharm for order declaring *Regulations Amending the Patented Medicines (Notice of Compliance) Regulations*, SOR/2008-211, ss. 2, 3, 4 *ultra vires* and of no force and effect, dismissing application for prohibition order pursuant to *Patented Medicines (Notice of Compliance) Regulations*, SOR/93-133, s. 6(5)(a)—Requested relief not summarily available—In any event, Court having discretion to decline ruling upon validity of impugned regulatory provisions—Declaration of invalidity can only be granted by final judgment, not by order made in the course of summary motion to dismiss application—Motion constituting attempt to circumvent obligation to serve and file application for judicial review—Because of Court's limited jurisdiction and powers, summary nature of proceeding, public interest, complexity of matters raised preliminarily, balance of convenience and availability of better suited recourse, not in best interest of justice that final ruling be made—Impugned regulatory provisions presumed valid—Motion dismissed.

ELI LILLY CANADA INC. v. NOVOPHARM LTD. (T-703-08, 2008 FC 1221, Martineau J., judgment dated November 3, 2008, 18 pp.)