



Teaching patent law to UK Law Students: A technical problem in search of a pedagogical solution

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Status of decided cases

- Civil Law
 - Useful to illustrate and exemplify legislation, and how it works in practice
- Common Law
 - A source of law in their own right
 - A source of binding precedent

Cases in the classroom

- USA: Cases dominate: 'case book method'
- UK: Case books less prevalent, but much teaching is case-centred
- Europe: You tell me, but I guess (a) less emphasis on decided cases, (b) less interest in case facts, as opposed to abstract law, (c) many more decided cases in patent law

Patent claims: the law

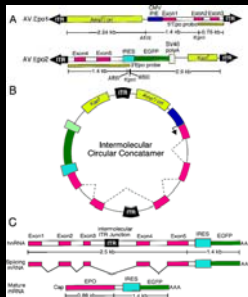
- All Europe: Art 69 EPC and Protocol
- UK: Art 69 and Protocol as interpreted in most recent/most binding judicial decision
- 1982-2004: 'Catnic' or 'Improver' questions
- 2004-present: Kirin Amgen v TKT

Technology timeline



1982: Catnic v Hill & Smith

1990: Improver v Remington



Epilady 1986

2004: Kirin Amgen v TKT

Amgen: claims 1, 19, 26

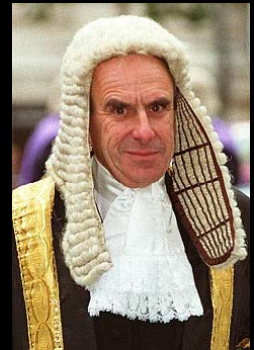
- 1: 'A DNA sequence for use in securing expression in a procaryotic or eucaryotic host cell of a polypeptide product'
- 19: 'A recombinant polypeptide ... characterised by being the product of eucaryotic expression of an exogenous DNA sequence'
- 24: 'A polypeptide product of the expression in a eucaryotic host cell of a DNA sequence according to ... claim 1... .'

Crossing the cultures

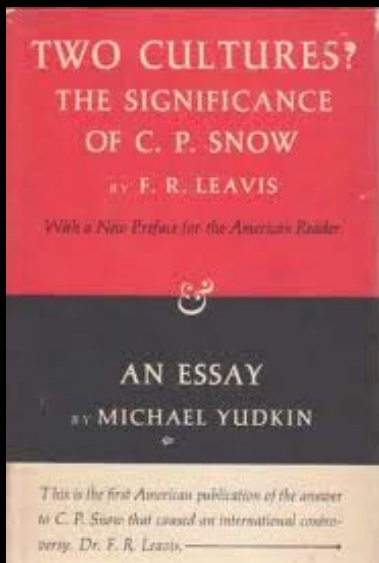


'In 2004 Michael Yudkin was appointed as scientific adviser to the House of Lords in connection with an important patent case that had been going through the courts. He gave tutorials on the scientific background to the Law Lords before they heard the case, and attended the hearings. His contribution was warmly acknowledged in the final Lords judgment.'

'I should like to pay a particularly warm tribute to the valuable assistance which, with the agreement of the parties and in common with others of your Lordships, I received from Professor Michael D Yudkin, Professor of Biochemistry at Oxford University, in a series of seminars which he gave in camera before the appeal was heard to introduce us to the relevant aspects of recombinant DNA technology. ... It was at Lord Hoffmann's suggestion ... that this was done, as there was no dispute about the technology.'



Old problem, new context



- If it takes one professor of biotechnology four two-hour seminars to explain the technology of Amgen to five Law Lords
- Then how many hours does it take one professor of law to explain the case to a typical class of undergraduates?

Possible answers

- Change the law of Art 69/Protocol
- Hope for 'simple' cases in superior courts
- Ideal solution: scientifically literate lawyers, and (legally) literate scientists

“Patent litigation is like the neurosurgery of litigation: it is hard scientifically and it is hard legally.”



Thank you

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