



Friday, 21 June 2024

Weekly Intellectual Property Law

A Weekly Bulletin listing Decisions
of Superior Courts of Australia covering Intellectual Property
Law

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Executive Summary (One Minute Read)

Elanco Australasia Pty Ltd v Abbey Laboratories Pty Ltd (FCA) - patent lacked inventive step where a prior document did not identify the range of a tick-killing substance to be applied to animals, but a hypothetical skilled team would have adopted routine testing and determined that range

HABEAS CANEM

Small dog, big surf



Summaries With Link (Five Minute Read)

Elanco Australasia Pty Ltd v Abbey Laboratories Pty Ltd [2024] FCA 640

Federal Court of Australia

Burley J

Patents - a delegate of the Commissioner of Patents allowed an opposition by Abbey to the grant of patent titled "Ectoparasitic treatment method and composition" on the grounds that particular claims lacked support pursuant to s40(3) of the *Patents Act 1990* (Cth); lacked novelty in the light of the prior publication of a document; and lacked an inventive step in light of that document and the common general knowledge - Elanco appealed - held: despite the appeal being brought by Elanco, Abbey was the effective moving party, as the proceeding was in the original jurisdiction of this Court and involved a hearing *de novo* on the grounds and evidence before the Court, and Abbey bore the onus in relation to each ground of opposition raised - regarding claim 1, which was a method of controlling lice on an animal by application of a particular range of dosages of the relevant substance, the question was whether a skilled team would have been directly led by the earlier document to test dosages within the claimed range - nowhere in the specification as any suggestion that the inventive step was in the selection of the range - based on the earlier document, a hypothetical skilled team would be confident, in commencing its proof of concept studies, that it would obtain an efficacious backlining treatment using the substance, and, although it would not know the dosage amounts, it would adopt routine testing and would have arrived at a dosage amount that fell within the claims - patent lacked inventive step - appeal dismissed.

[Elanco Australasia Pty Ltd](#)

[From Benchmark Tuesday, 18 June 2024]

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INTERNATIONAL LAW

Executive Summary and (One Minute Read)

Food and Drug Administration v Alliance for Hippocratic Medicine (SCOTUS) - Plaintiff pro-life doctors and medical associations challenged Food and Drug Administration (FDA) decision to relax prescribing restrictions on a drug used to terminate pregnancies. The Court held the plaintiffs lacked standing to challenge the FDA decision

Summaries With Link (Five Minute Read)

Food and Drug Administration v Alliance for Hippocratic Medicine [2024] 602 US ____
Supreme Court of the United States

In 2021, the Food and Drug Administration (FDA) relaxed regulations for prescribing mifepristone, an abortion drug, to make the drug more accessible to women. The plaintiffs, consisting of pro-life doctors and medical associations, brought suit, alleging that the FDA regulations violated the *Administrative Procedure Act*. The District Court granted plaintiffs an injunction. The Court of Appeals found that plaintiffs had standing to sue and were likely to win on the merits. Reversing the lower courts, a unanimous Supreme Court held that the doctors and medical societies lacked standing to bring suit. Article III of the US Constitution limits the jurisdiction of federal courts to actual cases and controversies. The Court said that this is a matter of separation of powers. General complaints about how the government conducts its business are matters for the legislative and executive branches, not the judiciary. To establish standing, a plaintiff must demonstrate that (1) the plaintiff will likely suffer an injury in fact; (2) that the injury would likely be caused by the defendant; and (3) that the injury can be redressed by judicial relief. The plaintiffs are pro-life and do not prescribe the abortion drug. Nothing contained in the FDA regulations requires doctors to prescribe this drug. In short, the plaintiffs are acting to restrict the availability of the drug to others. While plaintiffs argued that they have suffered injury because doctors may suffer conscience objections when forced to perform abortions or perform abortion related treatment, the argument failed because federal conscience laws explicitly protect doctors from being required to perform abortions or other treatment that violates their consciences. The Court also rejected arguments that, if plaintiffs were not allowed to sue, then no one would have standing to challenge the FDA's actions. The Court said that even if this were true, it could not create standing and that some issues must be dealt with through the political and democratic processes and not the courts.

[Food and Drug Administration](#)



Poem for Friday

"Hope" is the thing with feathers (314)

By Emily Dickinson (10 December, 1830-15 May, 1886)

Hope is the thing with feathers -
That perches in the soul -
And sings the tune without the words -
And never stops - at all -

And sweetest - in the Gale - is heard -
And sore must be the storm -
That could abash the little Bird
That kept so many warm -

I've heard it in the chilliest land -
And on the strangest Sea -
Yet - never - in Extremity,
It asked a crumb - of me.

Emily Dickinson https://en.wikipedia.org/wiki/Emily_Dickinson

Emily Dickinson Museum https://en.wikipedia.org/wiki/Emily_Dickinson_Museum

Hope is the thing with feathers, sung by Nazareth College Treble Choir, Linehan Chapel,
Nazareth College

<https://www.youtube.com/watch?v=gDIso4hEzmE>

Recitation by **Patricia Conolly**. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world's leading theatrical centres. She has worked extensively in her native Australia, in London's West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada.

Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir

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Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love's Labour's Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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