

## **Eli Lilly v. HGS (Court of Appeal), Court of Appeal Civil Division (Court of Appeal Civil Division), 09 February 2010**

**Kluwer Patent Blog**  
February 9, 2010

Sam Tuxford

*Please refer to this post as: Sam Tuxford, 'Eli Lilly v. HGS (Court of Appeal), Court of Appeal Civil Division (Court of Appeal Civil Division), 09 February 2010', Kluwer Patent Blog, February 9 2010, <http://patentblog.kluweriplaw.com/2010/02/09/eli-lilly-v-hgs-court-of-appeal-court-of-appeal-civil-division-court-of-appeal-civil-division-09-february-2010/>*

---

The Court of Appeal upheld the High Court's judgment that HGS' patent relating to a new protein called Neutrokine- $\alpha$  was invalid for lack of industrial application. The Court of Appeal agreed with the High Court's determination that uses for Neutrokine- $\alpha$  disclosed in the patent were not plausible at the time the patent was filed as it would have been necessary to perform a research program to ascertain which, if any, of the proposed uses were real. The Court of Appeal reached a different decision to the Technical Board of Appeal of the EPO who found HGS' patent to be valid. The Court of Appeal explained that this was in part due to new evidence which had been submitted in the EPO appeal which could not be introduced into the UK appeal.

The full summary of this case has been published on [Kluwer IP Law](#).