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# Kluwer Patent Blog

## Apimed

Brian Cordery (Bristows) · Monday, February 13th, 2012

On 20 January 2012 the Court of Appeal in England heard the case of Apimed Medical Honey v Brightwake Limited [2012] EWCA Civ 5. Apimed owned European Patent (UK) 1,237,561 ('the Patent') for an invention of "Medical dressings comprising gelled honey" and this was held invalid for obviousness at first instance in the Patent's County Court. At first instance, the patent was also said not to have been infringed by Brightwake.

The Court of Appeal overturned the Patent County Court's invalidity ruling on Apimed's patent. Despite reiterating that "an appellate court will not ordinarily reverse a trial judge's finding on obviousness unless he has made some error of principle", the Court held that the first instance judge had wrongfully concluded that the patent in dispute was obvious over one piece of prior art and obvious over the common general knowledge ("CGK"). In particular the Court of Appeal cautioned that any challenge of obviousness solely based on CGK had to be treated with caution as "it is unencumbered with any detail which might point to non-obviousness and is particularly likely to be tainted with the impermissible use of hindsight".

It is of note that following the first instance judgment, the parties reached a settlement but Apimed still wished to reinstate its patent. In such circumstances previous case law from the Court of Appeal provides that the Comptroller (the head of the UKIPO) be given the option to attend and make counter-arguments, his costs being paid by the patentee (*Energy Services Inc v Smith International (North Sea) Ltd* [2006] RPC 26). This option was given in Apimed's appeal and the Comptroller did attend. The Comptroller's role in such a situation is to present matters objectively and in a non-partisan manner. In the Apimed case, the Court of Appeal however refused to accept an additional point raised by the Comptroller in the appeal as the matter had not been raised at first instance and raised technical issues that were impossible to resolve in the appeal.

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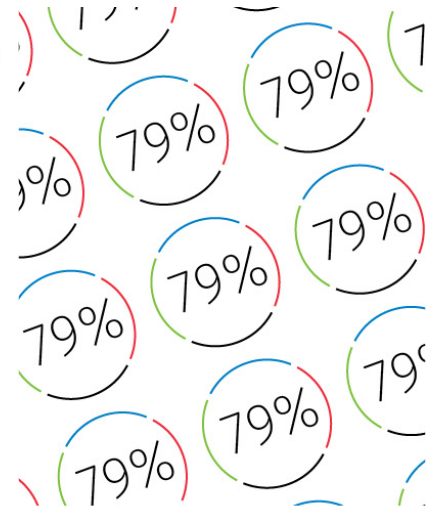
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