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Resolution Chemicals v Lundbeck – it's a small world!

Brian Cordery (Bristows) · Wednesday, October 30th, 2013

In my August post reported [here](#), I mentioned that the skirmish between Resolution and Lundbeck regarding the validity of Lundbeck's SPC for escitalopram is scheduled to be heard in the English Patents Court next month. Readers may recall that Arnold J dismissed Lundbeck's application for summary judgment and that the Court of Appeal upheld his decision that previous challenges to the patent did not preclude Resolution from bringing the action. However, on 15 October 2013, Arnold J had to hear some further submissions from the parties – this time a somewhat unusual application by Lundbeck that Arnold J should “recuse” himself from hearing the trial in this action. Here's the story:

At the forthcoming trial, Resolution intends to rely on expert evidence from the eminent chemist Professor Sir Jack Baldwin (famed for the Baldwin rules governing ring closure reactions in organic chemistry) from Oxford University. It just so happened that several decades ago before entering the legal profession, Arnold J studied chemistry at Oxford University. In addition to attending Baldwin's synthetic organic chemistry lectures it transpired that Baldwin had acted as Arnold J's research supervisor in his final year of study albeit his supervision was very remote. In light of this, Lundbeck attempted to argue that Arnold J would be subconsciously biased in his assessment of Baldwin's evidence because of the past association between the two.

In his 22 October 2013 judgment, Arnold J set out the law on apparent bias, noting the doctrine's aim of avoiding both the risk of subconscious bias and public perception of that risk, and the test being objective and assessed by “the fair-minded and informed observer”. Factors which that person would take into account would include:

- (i) the overall context of the case – patents are a specialist area and many of the participants know each other;
- (ii) the nature and extent of the judge's past association with Baldwin;
- (iii) the passage of time and the change in status of the judge and Baldwin; and
- (iv) the judicial approach – English judges (and Arnold J reminded the court that he had five years' standing) are equipped by their training and experience to identify and combat their own cognitive biases.

Having given the matter “anxious consideration”, Arnold J was in no doubt that the fair-minded and informed observer would conclude that there was no real possibility of him being subconsciously biased in his assessment of Baldwin's evidence. He therefore rejected the application to recuse himself.

This is an interesting judgment from Arnold J. Although brief, the judgment makes interesting and at times entertaining reading. Most notably, the Judge reflects on a less than satisfying final year as an undergraduate: “*My abiding recollection of that period was that I found it quite demoralising. I did not find the laboratory environment congenial and I was frustrated by the fact that most of my experiments failed.*”

The decision may be appealed although it is difficult to find serious fault in Arnold J’s analysis. In any event, whichever judge hears the case, next month looks set to witness an intriguing clash of heavyweight organic chemists Sir Jack Baldwin and Steve Davies, respectively the former and present Waynflete Professors of Chemistry at Oxford University.

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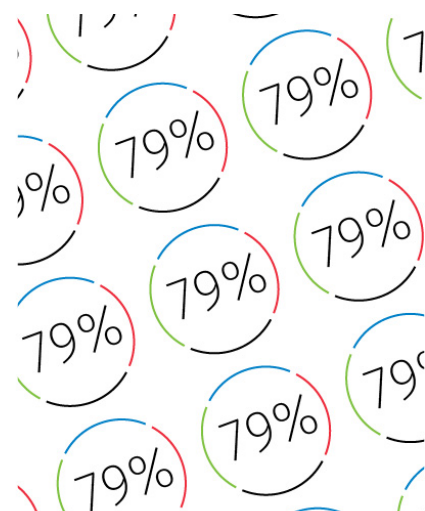
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