



UCL Institute of Brand and Innovation Law
Conor v Angiotech on Appeal

Skeleton Arguments of Counsel

Counsel for the Appellants

The Rt Hon Professor Sir Robin Jacob:

- (a) Patents should only be granted for inventions
- (b) The so-called invention here is no more than that taxol might work;
- (c) That was self-evident since taxol (a poison) was a known anti proliferative - and the prior art had suggested that anti-proliferatives (as a class) could possibly work.
- (d) You don't get a patent just for naming a member of a potentially useful class
- (e) That the CAM assay added nothing useful.

Counsel for the Respondents

The Rt Hon Professor Lord Hoffmann:

- (a) Is correct.
- (b) The claimed invention was not that taxol might work but that it would work;
- (c) It was self-evident that it was one of a large class of substances that might work but it was inventive to hit upon the one that would work
- (d) If the claimed invention works, it is irrelevant that you arrived at it by accident or on the basis of an altogether mistaken theory;
- (e) You do not have to provide experimental data to show that it works. It is enough that you provide enough to show it is "plausible" that it will work. The CAM assay was enough for that purpose.
- (f) RJ has "interpreted" the claim in accordance with his para (b). But that is not what it says. You have to take the claim at face value.