

Oxford International Intellectual Property Moot 2021

Further to the earlier clarification, Paragraph (4) refers to section 65A(2).

Corrections & clarifications

1. HPE and HL are part of the same corporate family. They do not have any directors or company officers in common.
2. In line with the usual practices of the Trust, it was planned that Prozurol be provided for free to patients with cystic fibrosis. Patients would not need to make any financial contribution towards the cost of the drug.
3. Prozurol, like all other current treatments, does not cure cystic fibrosis.
4. HPE and HL have not sought to argue that the Erewhonian government failed to make reasonable efforts to negotiate for a licence, as required by section 65(2) of the Patents Act 1980.
5. The 172 trade marks were all registered in relation to pharmaceutical products. The Trade Marks Act 1993 permits the licensing and assignment of trade marks. In this case, the licence granted by HL to HPE was exclusive for the territory of Erewhon.
6. Reference to “cancellation” and “revocation” of trade marks should be understood as synonyms and referring to the same process.
7. Under section 6(3) of the Copyright Act 1997, the employer is the owner of copyright in works created by employees in the course of employment, subject to any contractual provision to the contrary. That provision does not adjust the rule regarding authorship in section 5(1), which states that “‘author’, in relation to a work, means the person who creates it.”
8. The names of all natural persons were redacted from the Internal Documents, including recipients, senders and people referred to in the substantive text of those documents. Corporate names (including names of internal departments) were not redacted.
9. The whistleblower, whose identity has never been made public, was employed by HPE. He or she supplied the Commissioner for Taxation with over 300 pages of documents.
10. In the PowerPoint presentation referred to in paragraph 26 of the judgment, the slides included: (1) direct quotes from the Internal Documents; and (2) paraphrasing and summary of their contents. The Internal Documents all

related to legal, financial and commercial matters regarding the assignment of the trade marks to HL and the exclusive licence to HPE.

11. Section 44 of the Copyright Act 1997 states:

(1) Fair dealing for the purpose of research, private study, education, parody or satire does not infringe copyright.

(2) Fair dealing for the purpose of criticism or review, whether of that or another work, does not infringe copyright if a sufficient acknowledgement is made.

(3) Fair dealing for the purpose of news reporting does not infringe copyright if a sufficient acknowledgement is made.

(4) "Sufficient acknowledgement" means an acknowledgement identifying the work in question by its title or other description, and identifying the author unless:

(a) in the case of a published work, it is published anonymously; or

(b) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry.

Please note that fair dealing in section 44 was not pleaded by the defendant, and that it is not possible for it to be argued before the Supreme Court.

12. For the conversion rate of the Erewhonian currency, please note that in paragraph 13 of the judgment it is stated that \$20m is approximately GBPE16m.

13. Teams should follow precisely the instructions regarding the grounds of appeal and content of submissions as set out in the Instructions and supplemented by the Moot Rules. They should produce two submissions (one for the appellants, HPE and HL; and one for the respondent, the Republic of Erewhon) which cover all matters for which leave to appeal was granted (i.e., issues 1, 2 and 4). Leave was not granted for item 3 (breach of confidence), although it is permissible for teams to discuss breach of confidence in their copyright analysis, if they consider it relevant. They must not, however, seek to reopen item 3.

14. Corrections:

a. In paragraph 23, the reference to "Copyright Act 1977" should read "Copyright Act 1997".

b. In paragraph 24, the reference to "HP or HLE" should read "HPE or HL".

c. An older version of the moot problem referred in Section 65A(1)(a) of the Patents Act extracts to "the United Kingdom". This should read "Erewhon".