

NOTICE OF FILING AND HEARING

Filing and Hearing Details

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File Title:	ABBEY LABORATORIES PTY LTD ACN 156 000 430 & ANOR v VIRBAC (AUSTRALIA) PTY LTD ACN 003 268 871
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
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Place:	To Be Advised



Sia Lagos

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Notice of appeal

No. NSD1847 of 2025

Federal Court of Australia
District Registry: New South Wales
Division: General

On appeal from the Federal Court of Australia

Abbey Laboratories Pty Ltd (ACN 156 000 430) and another named in the Schedule
Appellants

Virbac (Australia) Pty Ltd (ACN 003 268 871)
Respondent

To the Respondent

The Appellants appeal from the judgment as set out in this notice of appeal.

1. The papers in the appeal will be settled and prepared in accordance with the Federal Court Rules Division 36.5.
2. The Court will make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence. You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing: 10.15 am, 19 August 2026

Place: Law Courts Building, 184 Phillip Street, Queens Square, SYDNEY NSW 2000

Date: _____ July 2026

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of

Prepared by

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Appellants

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The Appellants appeal from the declaration, certification and orders 1, 3, 4, 5, 7, and 8 of the Federal Court, made with reasons published in *Abbey Laboratories Pty Ltd v Virbac (Australia) Pty Ltd (No 3)* [2025] FCA 1179 (“J”) on 24 September 2025 at Sydney, concerning findings of a lack of anticipation of the patent in suit and from order 1 of the Federal Court, made with reasons published in *Abbey Laboratories Pty Ltd v Virbac (Australia) Pty Ltd (No 5)* [2025] FCA 1427 on 18 November 2025 at Sydney, concerning costs.

Grounds of appeal

1. The learned primary judge correctly held at J [193], consistently with *AstraZeneca AB v Apotex Pty Ltd* [2014] FCAFC 99; (2014) 226 FCR 324 at [262]-[263] and [287], that “*a prior publication can anticipate even where it gives directions in relation to other matters that would not necessarily fall within the claims of the patent in suit*”. However, the primary judge then erred in holding that the alleged anticipation, the 984 Patent (“**984**”), did not contain clear and unmistakable directions to do what the patent in suit (“**Virbac Patent**”) claims to have invented, and that there was no sufficient disclosure in 984 of the specific claim 1 composition of the Virbac Patent, because choices would need to be made by the addressee of 984 in formulating such a composition: J [194]-[195].
2. The primary judge should have held that the existence of such choices did not undermine or diminish the clear directions of 984 to make the composition of claim 1 of the Virbac Patent.

Particulars

Paragraph 1 beginning on page 69 of 984 (“**984 para 1**”) directs the reader to make a composition containing the majority of the integers of claim 1 of the Virbac Patent. As to the missing integers:

- (a) Whilst 984 para 1 refers to a composition for the treatment of an “*animal*”, the primary judge should have held (and erred in not doing so) at J [196] that the directions in the “*Summary of the Invention*” at P5 L7 of 984 that “*the invention provides compositions ... for the treatment of ... cattle*” was a clear direction to use the composition for cattle, notwithstanding that there were also directions to treat other animals. (See also P9 L25, P47 L14, P54 L14.)
- (b) Whilst 984 para 1 refers to a constituent of the composition as an “*anthelmintic active agent*”, the primary judge should have held at J [197] (and erred in not doing so) that 984 para 10 on page 72 was a clear



direction to use levamisole in the composition, notwithstanding that there were also directions to use other anthelmintic active agents.

- (c) Whilst 984 para 1 does not specify that the topical composition is a solution, the primary judge should have held at J [198] (and erred in not doing so) that the direction at P47 L13-17 that:

“Pour on formulations may be administered to livestock such as cattle ... In one embodiment the process comprises applying the solution to livestock animals before they arrive at the Feed Lot”

was a clear direction to prepare the composition for cattle as a solution (see also P5 L10, P7 L15, P37 L23, P45 L4), notwithstanding the mention of other forms of topical composition in the body of the specification.

- (d) Whilst 984 para 1 does not expressly specify that the solvent system of the composition is non-aqueous, the primary judge should have held at J [199] (and erred in not doing so) that as the solvents directed in 984 paras 12 and 13 are all non-aqueous, there was a clear direction to use a non-aqueous solvent system, and no direction to use an aqueous solvent system, notwithstanding the mention of aqueous solvents in the body of the specification.
- (e) Whilst 984 para 1 refers to a “*pharmaceutically acceptable carrier*” as part of the composition, the primary judge should have held at J [200] (and erred in not doing so) that 984 para 13 constitutes a direction to use DMI in the said pharmaceutically acceptable carrier of the composition, notwithstanding that there were also directions to use other solvents as the carrier. The primary judge further erred in holding that, because 984 para 13 refers to 984 para 1 but not 984 para 10, the PSA would fail to understand 984 paras 1, 10, and 13 to be cumulative directions to use levamisole and DMI as constituents of the composition of 984 para 1.
- (f) Whilst 984 para 1 does not expressly direct that the composition should be stable, the primary judge should have held at J [201] (and erred in not doing so) that the passage at P36 L26-29 of 984, that “*The compositions of the invention ... have been surprisingly discovered to be **stable** ...*” (see also P37 L22-25), was a clear direction that the compositions are stable. His Honour further erred in failing to find that, where a composition



is asserted as “*stable*” in 984, this necessarily means it will ~~meet and~~ surpass the stability requirements of the Virbac Patent.

3. The primary judge should have held that 984 contained directions to make the compositions and use the methods of the further dependent and independent claims of the Virbac Patent because, when considered with Ground 2 above (concerning the directions to make the composition of independent claim 1):
- (a) The primary judge erred in failing to hold at J [203], [206] and [208] that the preferred embodiment at P50 L14-19 of 984 provides a clear direction to make a formulation according to the concentration ranges of claims 2, 7 and 10 of the Virbac Patent.
 - (b) The primary judge erred in failing to hold at J [204] that there is a clear direction to make a formulation of claim 3 of the Virbac Patent, since 984 para 13 directs the use of both DMI and diethylene glycol monoethyl ether (a glycol ether) in the pharmaceutically acceptable carrier.
 - (c) The primary judge erred in failing to hold at J [205] that there is a clear direction to make a formulation of claim 4 of the Virbac Patent, since 984 para 13 further directs the use of glycerol formal and triacetin (a glycerol acetate) in the pharmaceutically acceptable carrier.
 - (d) The primary judge erred in failing to hold at J [206] that there is a clear direction to make a formulation of claim 5 of the Virbac Patent, since 984 para 8 directs that the said macrocyclic lactone be eprinomectin, ivermectin, selamectin or moxidectin.
 - (e) The primary judge erred in failing to hold at J [207] that the matters in Ground (2)(f) above also provide a clear direction to make a formulation according to claim 6 of the Virbac Patent.
 - (f) The primary judge erred in failing to hold at J [208] that there is a clear direction to make a formulation according to claims 8 and 9 of the Virbac Patent, because references to “*levamisole*” per se in 984 necessarily means levamisole in the base form.
 - (g) The primary judge erred in failing to hold at J [209] that the passage at P60 L12-13 of 984, that “*the inventive formulations may contain other inert ingredients such as **antioxidants** preservatives or pH **stabilisers**. These compounds are*



well known in the formulation art”, provides a clear direction to make a formulation according to claim 13 of the Virbac Patent.

- (h) The primary judge erred in failing to hold at J [210] that the direction at P54 L7-15 of 984, being a direction to treat “*nematodes*” and “*parasites commonly encountered by [cattle]*”, was a direction to treat cattle infected with the nematodes (being commonly encountered parasites) *cooperia* and *ostertagia* in accordance with claim 15 of the Virbac Patent.
- (i) The primary judge erred in failing to hold at J [211] and [212] that **(I)** 984 at P60 L2-4 provides a clear direction to use the method of independent claim 16 and dependent claim 18 of the Virbac Patent; **(II)** 984 at P60 L12-13 provides a further clear direction to use stabilisers and viscosity modifiers, in accordance with claim 18 of the Virbac Patent; and **(III)** 984 provides a clear direction that the methods are to be used in respect of a formulation which, for the reasons in Ground 2 above, 984 directs is to contain levamisole, a macrocyclic lactone, and DMI, in accordance with claims 16 and 18 of the Virbac Patent.

Orders sought

1. A declaration that each of claims 1-10, 13, 15, 16 and 18 of Australian patent number 201222724 entitled “Veterinary Topical Formulation” (**Patent**) is, and at all material times has been, invalid.
2. An order that each of the claims 1-10, 13, 15, 16 and 18 of the Patent be revoked pursuant to section 138 of the *Patents Act 1990* (Cth).
3. The Respondent pay the Appellants’ costs of the appeal, and pay the Appellants’ costs of the proceeding NSD698/2024 below.
4. Such further or other orders as the Court thinks fit.

Appellants’ address

The Appellants’ address for service is:

Place: Bird & Bird, Level 22, 25 Martin Place SYDNEY NSW 2000

Email: rebecca.currey@twobirds.com

**Service on the Respondent**

It is intended to serve this application on the Respondent.

A handwritten signature in blue ink, appearing to read "Armitage Currey", is positioned above a horizontal dotted line.

Signed for and on behalf of Rebecca Nicole
Armitage Currey
Lawyer for the Appellants

**Schedule**

No. NSD1847 of 2025

Federal Court of Australia

District Registry: New South Wales

Division: General

Appellants

Second Appellant: Abbey Animal Health Pty Ltd (ACN 164 159 764)