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Abbey Laboratories Pty Ltd & anor v Virbac (Australia) Pty Ltd

NSD1847/2025

APPELLANTS' OUTLINE OF SUBMISSIONS

A. INTRODUCTION

1. This appeal concerns the proper construction of a prior art disclosure for the purposes of anticipation. A key issue is whether a prior publication ceases to provide an anticipatory disclosure merely because it makes recommendations or directions about more than one matter, including matters outside the claim, with the result that a skilled addressee would need to make 'choices' to arrive at the claims of the invention.

2. At trial, the Appellants (**Abbey**) raised a "whole of contents" novelty objection against certain claims of the patent in suit,[1] relying on the prior art information contained in Australian patent number 2011234984, entitled "*Parasiticidal compositions comprising multiple active agents, methods and uses thereof*" in the name of Boehringer Ingelheim Animal Health USA Inc (**984**).[2] The primary judge found that while 984 met the definitional requirements of a 'prior art' document, it did not anticipate the impugned claims: *Abbey Laboratories Pty Ltd v Virbac (Australia) Pty Ltd (No 3)* [2025] FCA 1179; 187 IPR 348 (**J**).

3. The claims the subject of this appeal are 1-10, 13, 15, 16 and 18. Grounds 1 and 2 of the Notice of Appeal (**NOA**)[3] concern the errors and findings the primary judge ought to have made in relation to independent claim 1. Ground 3 addresses the primary judge's errors as to dependent claims 2-10, 13, 15, and 18; and independent claim 16, which errors are of the same nature and which Abbey addresses in further detail below.

B. PRINCIPLES

4. The principles regarding an appeal are not controversial. While this is an appeal by way of rehearing: *Branir Pty Ltd v Owston Nominees (No 2) Pty Ltd* (2001) 117 FCR 424 at [13]-[25], Abbey must nonetheless demonstrate error by the primary judge.

C. GROUND 1

5. At J [193], the primary judge correctly found that a prior publication can anticipate even where it gives directions in respect of other matters not within the claims, consistently with the decision in *AstraZeneca AB v Apotex Pty Ltd* [2014] FCAFC 99; (2014) 226 FCR 324 (***AZ FC***) at [262]-[263] and [287]. To address this ground 1, it is convenient to summarise the salient findings in *AZ FC*, including those accepted by the primary judge, before turning to the way in which the primary judge erred in applying those principles to the anticipation in this case.

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[1] The Patent in suit is AU 2012227241 entitled "Veterinary Topical Formulation" (**Virbac Patent**) at Appeal Book Part C Tab 213.

[2] See Appeal Book Part C Tab 214.

[3] Leave was granted by orders of Justice Perram dated 25 June 2026. The Notice of Appeal can be found behind Appeal Book Part A Tab 18.

C.1 Findings in *AZ FC*

6. In *AZ FC*, one of the patents in suit, the '051' or 'low dose' patent, related to the use of a cholesterol-lowering agent in particular dosages. The claims had several integers. Claim 1 was as follows:

> *1. A method of treating a patient suffering from hypercholesterolemia which comprises administration as a starting dose of a single, once daily, oral dose of 5 to 10 mg of the compound [rosuvastatin] or a pharmaceutically acceptable salt thereof, in the form of a pharmaceutical composition.*

7. The alleged anticipation for the 'low dose' patent was a document referred to as the '471 Patent' (see *AZ FC* [256]ff). Amongst other things, it disclosed the matters below which the patentee argued were insufficient to anticipate. The 471 Patent disclosures are useful to note because they elucidate the Full Court's reasoning and contrast the types of disclosures that may, and may not, anticipate integers of a given claim:

   (a) ***Multiple disease states.*** The 471 Patent disclosed that compounds of that invention were useful for the treatment of *three* disease states: hypercholesterolemia (the disease relevant to the low dose patent), but also hyperlipoproteinemia and atherosclerosis: see [256]. The patentee argued that such a disclosure was insufficient because "*what compound should be used to treat which disease is not identified*" (at [262]).

   (b) ***Compound in a large class.*** As to what compound should be used, the patentee submitted at trial that the 471 Patent contemplated "over 57 trillion" compounds by way of a Markush structure only *one* of which was rosuvastatin, thus there was an insufficient disclosure of rosuvastatin (at [261]).

   (c) ***Broad dosage ranges***. The 471 Patent provided that the dosages "may vary", depending on a range of factors – the route of administration, age, weight, and the kind of disease. The 471 Patent then disclosed preferable ranges spanning 0.5 to 200mg per day, 1 to 100mg per day, 0.1 to 100mg per day, .5 to 50mg per day. It also disclosed the possibility of "single or divided" doses (see [259]). Evidently, there were a great many choices to be made about dosage. The patentee argued the 471 Patent did not identify the appropriate dose, or how such a broad class of compounds was to be administered to humans (at [267]).

8. As for **(a) *multiple disease states***, the trial judge (upheld on appeal) rejected the submission that the disclosure of the *three* disease states meant there was insufficient disclosure of the treatment of any particular one of them (at *AZ FC* [263]). The Full Court agreed (at [287]):

> *"The primary judge also correctly held that this disclosure was one of usefulness in the treatment of each condition, not one or more of such conditions".*

9. Thus, it did not matter that the anticipatory document recommended that a compound class was effective in treating diseases that were not the subject of the claims in suit – nor that a person skilled in the art would need to make a 'choice' to select the disease (*hypercholesterolemia*) in order to arrive at the integer of the patent.

10. As for **(b)** ***compound in a large class,*** the Court also rejected the submission there had been an insufficient disclosure of rosuvastatin, even though the 471 Patent did not claim rosuvastatin, and described it only among 2 of at least 7 examples. As the trial judge found at [301] of the first instance decision, rosuvastatin was a member of the class, and:

> *"there cannot be any real doubt that the 471 patent is a sufficient disclosure of the compound rosuvastatin given the terms of the patent as a whole. The fact that many other compounds might also fall within the class, at least insofar as the sufficiency of disclosure of rosuvastatin is concerned, is immaterial given the examples. Hence,* ***to the extent that AZ's submission might suggest that the 471 patent does not disclose the integer rosuvastatin by reason of the breadth of the class of compounds disclosed, the submission cannot be accepted****".*

11. The Full Court agreed, finding at [287]:

> *"In the present case, the primary judge correctly distinguished the disclosures in the 471 patent on the basis that* ***two salts of rosuvastatin were exemplified as useful*** *in the treatment of hypercholesterolemia, hyperlipoproteinemia and atherosclerosis".*

12. As for **(c)** ***broad dosage ranges***, the Full Court found that the disclosures of the 471 Patent were **not** sufficient to anticipate the particular dosages as claimed (5 to 10mg in the case of claim 1, 5.2 to 10.4mg in the case of claim 2). For claim 1, the issue was whether:

> *"the 471 patent disclosed 'precisely the method of treatment claimed in the 051 or the low dose patent' with respect to the treatment of hypercholesterolemia, using…a starting dose of a single, once daily, oral dose of 5 mg to 10 mg of rosuvastatin or a pharmaceutically acceptable salt thereof, in the form of a pharmaceutical composition" ([288]).*

13. Interpolating here, the 471 Patent disclosures about dosage were of a different quality than its disclosure and anticipation of the multiple disease states, and the usefulness of rosuvastatin (one example among a large class) in treating them. The 471 Patent's disclosures about dosage were not direct, and instead depended on several indeterminates. The Full Court in *AZ FC* observed it was "*plain that the dosages* ***may vary on a number of factors****, including the disease to be treated"*, with the result that the disclosure was "*no more particular than that the dosage 'usually' falls within that broad range*" (at [290]). In that way, even though the 471 Patent disclosures about dosage *encompassed* the ranges

claimed in the patent, the 471 Patent did not direct the skilled person to the 5 to 10 mg and single, oral, once daily doses of the claims.

C.2 Errors of the primary judge

14. Having correctly found that a prior publication can anticipate "*even where it gives directions in relation to other matters that would not necessarily fall within the claims*": J [193], the primary judge erred in finding 984 was not a sufficient disclosure to anticipate claim 1 because the skilled addressee would need to "*make many choices*" from within the matters disclosed in 984, in order to arrive at the claimed invention: J [195], among the "*vast range of alternative formulations*": J [194]. This was an error, because the existence of alternatives – and the need to choose between them - necessarily follows from the fact a prior disclosure may permissibly give directions about multiple matters. Put another way, the existence of a 'choice' between recommended matters does not render the disclosure insufficient for anticipation purposes.

15. The particular 'choices' which the primary judge identified as obscuring a sufficient disclosure for the purposes of anticipating claim 1 are found at J [195], namely "*choices about how to proceed in trying to formulate a specific combination, including* **[1]** *the choice of animal,* **[2]** *the choice of anthelmintic agent,* **[3]** *the choice of mode of administration,* **[4]** *the choice of aqueous versus non-aqueous systems,* **[5]** *the choice of solvents and* **[6]** *the criteria to be adopted for stability*" (numbers added). Each of these is addressed in Ground 2 below.

D. GROUND 2

16. ***Claim 1***. Claim 1 of the Virbac Patent, conveniently labelled with integers, appears at J [27]. Abbey compares this with 984, page 69 at paragraph 1 ("**984 para 1**").

17. 984 para 1 directs the reader to make a composition containing the majority of the integers of claim 1 of the Virbac Patent. The remaining integers are found in the paragraphs of 984 which follow para 1, and which conventionally narrow para 1, or they are found earlier in the body of 984. It goes without saying that an alleged anticipatory document should be read as a whole. 984 para 1 directs the reader to make a topical formulation (thus integer [1.3]), for treating an animal (thus integer [1.4], see choice of animal below), comprising at least one macrocyclic lactone (thus integer [1.1(b)]), and another 'anthelmintic' agent (thus integer [1.1(a)], see choice of anthelmintic below), and also comprising a pharmaceutically acceptable carrier (thus integer [1.2], see choice of solvent systems and solvents below). The primary judge did not have regard to this clear recommendation in the reasons at J [194]-[195], which Abbey submits is significant because it provides the starting point by which the skilled reader would understand the recommendations in the whole of 984; and the primary judge ought to have considered it irrespective of the 'defects' in Dr Alawi's approach that his Honour identified in [195].

18. ***Choice of animal.*** The primary judge erred in finding at J [194], read with J [196], that the need for a 'choice' as to the subject animal meant there was not a clear and unmistakable direction for the treatment of cattle. The treatment of cattle was clearly directed: the "*Summary of the Invention*" at P5 L7 of 984 expressly stated that "[*t*]*he present invention provides compositions … for the treatment of …* ***cattle***". The 984 also contained several other recommendations as to cattle: see P9 L25, P47 L14, P54 L14. The adequacy of the direction to use the composition for cattle is not diminished by the inclusion of directions to treat other animals. The primary judge erred in finding that because "*animals are defined very broadly, even including humans*" that this meant the inclusion of *cattle* amongst them was not a sufficient disclosure.

19. ***Choice of anthelmintic.*** The same type of error arises at J [197]. The primary judge erred at J [197] in failing to find that 984 para 10 on page 72 was a clear direction to use levamisole as the 'anthelmintic' (i.e. parasiticide) in the composition. In reaching his finding, the primary judge discounted the disclosure of levamisole because it was to be found "*in a list of sixteen options*". That was the wrong characterisation of the disclosure, having regard to the decision in *AZ FC*. Properly understood, para 10 recommended each of the listed anthelmintics. The fact that levamisole is one of several recommended agents does not negate the direction to use it. Virbac's expert, Professor Bunt, did not demur (T261.5).

20. ***Choice of mode of administration as a solution.*** The same type of error arises at J [198]. The primary judge found that compositions of 984 para 1 could also include emulsions, gels and pastes and thus not a 'solution' as claimed by the Virbac Patent. However, the primary judge did not have regard to the clear direction at 984 P47 L13-17 that, where a topical formulation for cattle was proposed, the topical should take the form of a pour-on solution:

> ***"Pour on formulation[s]*** *may be administered to livestock such as* ***cattle*** *… In one embodiment, the process comprises applying* ***the solution*** *to livestock animals before they arrive in the Feed Lot… "* (emphasis added).

21. Neither the existence of other types of topical compositions in 984 identified by the primary judge at J [198], nor Dr Alawi's acceptance at T257 (that other types of topical treatment of 984 para 1 "could include emulsions, gels and pastes"), detracts from this disclosure. The question is not whether 984 only discloses solutions, but whether it clearly discloses them. Abbey submits it does.

22. ***Choice of solvent system.*** At J [199], the primary judge erred in holding the mere possibility of using a paste, gel or cream for the formulation of 984 para 1,[4] meant there

[4] Each of which requires the use of water, i.e. an aqueous system.

was not an anticipatory disclosure of the use of a non-aqueous system. In making that finding, the primary judge limited his consideration only to 984 para 1, but did not engage with Abbey's submissions that there were cumulative disclosures as to the solvent system appearing at 984 paras 12 and 13 (albeit his Honour later considered those paragraphs at J [200]). Paras 12 and 13 direct, in imperative terms, that the pharmaceutically acceptable carrier '*is'* to be any one or combination of the non-aqueous solvents there listed. Significantly, they do not mention water. The omission of water from the recommendations in paras 12 and 13, notwithstanding references to aqueous solvents in the body of the specification, is significant and enforces that a clear direction is to use a non-aqueous solvent system.

23. ***Choice of particular solvents.*** Further, the primary judge should have held at J [200] that 984 para 13 constitutes a direction to use dimethyl isosorbide (**DMI**) in the 'pharmaceutically acceptable carrier', notwithstanding that other solvents were also recommended. While the primary judge appears to have held the disclosure of DMI in para 13 was of diminished importance given it was listed among four solvent candidates, that reasoning is inconsistent with the reasoning of the Full Court in *AZ FC* at [287] which the primary judge held to be correct at J [193]. As to the primary judge's observation that para 13 (containing the recommendation for DMI) is dependent on para 1 but not para 10 (containing the recommendation to use levamisole), the primary judge adopted a mode of reasoning akin to claim construction, which was not warranted when considering whether a prior document makes a recommendation for the purposes of anticipation. The primary judge's approach did not recognise that the numbered paragraphs in 984 would be read cumulatively (as Dr Alawi did: see for instance Alawi 4 [53] (1))[5].

24. **Criteria of stability.** Anticipation of integer [1.1] required that 984 disclose a "stable" composition. It did so expressly at P36 L26-29: "*The compositions of the invention, which include at least four different active agents in a carrier system that is compatible with each active agent, have been surprisingly discovered to be* ***stable*** *and effective against a broad spectrum of ectoparasites and endoparasites*" and P37 L22-25.

25. Professor Bunt accepted that this assertion of 'stability' **(1)** applied to the formulations of 984 from P69 onwards (T262.11–24) and **(2)** would surpass the stability criterion of claim 6 of the Virbac Patent: T264.14-265.11. It follows from this that **(3)** the asserted 'stable' formulations beginning at 984 P69 would also meet and surpass the less stringent, commercial stability metric at Virbac Patent p 6 ("*stable at* ***room temperature*** *for a period of at least* ***3 months***…"). This is sufficient to anticipate the criteria of stability in claim 1 and the primary judge should have so found. Instead, the primary judge erred in

[5] Appeal Book Part C Tab 26.

his finding at J [201], that "*the paragraphs describing the invention of the 984 Patent do not specifically require a stable formulation at all*". While it is true the paragraphs describing the invention (that is, the paragraphs of beginning P69) do not literally refer to stability, a reader would appreciate the assertion of stability from the specification *applied* to those paragraphs, as Prof Bunt did at T262.11-24. When 984 is read as a whole, that is sufficient to anticipate claim 1. As for the primary judge's findings concerning Example 5 at J [201], while that example specifies one such stable formulation of 984, that instantiation of Example 5 does not constrain the assertion of stability at P36 to that formulation only.

E. GROUND 3

26. ***Claims 2, 7, 10.*** J [203], [206] and [208] concern claims 2, 7 and 10 of the Virbac Patent which specify concentration ranges for the solvents, macrocyclic lactones, and levamisole respectively. The preferred embodiment at P50 L14-19 of 984 clearly directs the use of those concentration ranges: it discloses that the macrocyclic lactone is to be present at 0.1-1% w/v (thus entirely within Virbac Patent claim 7: 0.01-5% w/v); the anthelmintic (levamisole) is to be at 8-12% w/v (thus entirely within Virbac Patent claim 10: 1-30% w/v); and, after accounting for other actives, there remains 63-75.9% w/v for the solvent (DMI) (thus entirely within claim 2: 20-85% w/v).

27. Turning to the errors made by the primary judge, for claim 2, the primary judge found at J [203] that the embodiment did not specify the use of levamisole: however, that is wrong, the disclosure Abbey relied upon at P50 L14-19 directed the use of levamisole as does 984 para 10 as discussed at [19] above. The primary judge also found that the embodiments at 984 P50 did not refer to claim 1 solvents at all. While that is true, it is plain from the disclosures in 984 as a whole that a pharmaceutically acceptable carrier is needed. In that connection, the reader would understand there to be clear directions in 984 para 13 to use at least DMI in a non-aqueous solvent system for the same reasons in [22]-[23].

28. For claim 7, the primary judge noted at J [206] that Abbey relied on the disclosures in 984 P48, which the primary judge found did not anticipate because there was no disclosure also of levamisole nor specific solvents. However Abbey also relied on the disclosures at 984 P50 (as set out in the table at J Annexure, p12) to anticipate claim 7, as it does on this appeal, and that embodiment *does* disclose levamisole (as well as a macrocyclic lactone within the concentration range claimed by claim 7). And, for the reasons in [27], the reader would know those actives must be formulated in a carrier such as DMI.

29. For claim 10, the primary judge made findings at J [208] that purported to apply to claim 10, but did not engage with whether the claimed proportion of levamisole was disclosed. The primary judge's reasons instead focused on **(1)** the form of levamisole (i.e. base or

salt forms) and **(2)** the absence of other integers. However, (1) does not bear on the anticipation of claim 10, which relates to concentration ranges of levamisole irrespective of its form. As to (2), the primary judge erred in apparently considering that each integer needed to be disclosed as part of a single combination in a confined passage of the alleged anticipation rather than in the document as a whole. That imposes too demanding a standard for anticipation, and is inconsistent with the approach taken by the Court in *AZ FC*. There, the Court was not persuaded by the patentee's argument that the 471 did not disclose "***what** compound should be used to treat **which** disease"*. Instead, the Court proceeded on the basis that the separate integers – compound and disease – had adequately been disclosed. The same approach should be adopted here.

30. ***Claim 3*** is a dependent claim for the use of DMI and another solvent (such as glycol ethers) as the solvent system. The primary judge erred in failing to hold at J [204] that there is a clear direction to make such a formulation, because 984 para 13 directs the use of both DMI and diethylene glycol monoethyl ether (a glycol ether) in the pharmaceutically acceptable carrier. The primary judge found that para 13 merely "*encompasses*" but did not "*specify*" the specific solvent system of claim 3 of the Virbac Patent. However, it is difficult to justify why the disclosure of 984 para 13 ("*The topical veterinary composition of paragraph 1, wherein the pharmaceutically acceptable carrier is triacetin, glycerol formal, diethylene glycol monoethyl ether, dimethyl isosorbide, or mixtures thereof*") is materially distinguishable from the disclosure of the 471 Patent in *AZ FC* for usefulness in treating three different diseases, which the Full Court held at [287] "*was one of usefulness in the treatment of each condition, not one or more of such conditions*". Abbey submits that a fair reading of 984 para 13 is that it does specify the solvent system of claim 3, because it recommends *interalia* a mixture of DMI and a glycol ether.

31. ***Claim 4.*** 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. The primary judge made the same findings concerning the dependency of para 13 on para 1 (but not para 10) as set out in [23] above. But for the same reasons, this was too restrictive an approach to adopt for claim 4, and the Court ought to have found the reader would read the recommendations about the formulation in 984 cumulatively.

32. ***Claim 5.*** Dependent claim 5 of the Virbac Patent claims the use of at least one of six specified macrocyclic lactones (eprinomectin, ivermectin, selamectin, and moxidectin, or two others) for the formulation of the invention. On the other hand, 984 para 8 directs that the said macrocyclic lactone is at least one of eprinomectin, ivermectin, selamectin or moxidectin, or three others. The primary judge should have found at J [206] that 984 para

8 thus clearly directs a formulation within claim 5 of the Virbac Patent. Instead, the primary judge reasoned that, because para 8 depends only on para 1, there was no direction to use levamisole with the relevant mectins. That approach was erroneous. 984 para 8 is but one aspect of 984 para 1; 984 para 1 directs the use of other aspects (including an anthelmintic); and 984 para 10 identifies that *that* anthelmintic '*is*' levamisole, amongst others. Read as a whole, 984 progressively narrows the general disclosure in para 1 by specifying particular macrocyclic lactones (paras 8,9) and anthelmintics (para 10). That is a sufficient disclosure of claim 5.

33. ***Claim 6.*** The claimed metric in Virbac Patent claim 6 is one of stability: 10% of initial specification, for at least 3 months when stored at 25°C. Prof Bunt understood that, where a formulation was asserted to be stable, it was asserted to retain 90% of its starting components for at least a year: T264.27-32. Prof Bunt also understood that such an assertion of stability applied to formulations of 984 from P69 onwards: T262.11-24. Accordingly, 984 anticipates claim 6 and the primary judge should have so found at J [207]. Instead, the primary judge focused on 984 Example 5. While Abbey did refer to Example 5, it did so by way of example, and placed primary reliance on the cross examination of Prof Bunt: see J Annexure, p 10. The primary judge's unduly narrow focus on Example 5 led him to conclude that formulations of Example 5 preferred praziquantel, not levamisole, as the anthelmintic, and that 984 therefore did not anticipate claim 6. Even if a focus only on Example 5 were warranted, the primary judge's reasons did not take into account that the example was "*non-limiting*" as to ingredients (P69 L11), and that the example concluded with a statement that all formulations of 984 "*could be successfully formulated into a stable composition*": P68 L19-P69 L1.

34. ***Claims 8 and 9***. The primary judge erred in failing to hold at J [208] that 984 clearly directs a reader to make a formulation according to claims 8 and 9 of the Virbac Patent. The evidence at trial of Prof Bunt was that references to 'levamisole' *per se* in the 984 document are read, according to convention, as references to levamisole base: T266.4-20. The primary judge's finding at J [208], that there was no disclosure of levamisole base specifically, was therefore an error – to the contrary, there *was* such a disclosure.

35. **Claim 13.** 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 an unmistakable recommendation to use antioxidants and/or stabilisers in the formulations of 984. When added to the formulations disclosed by 984, this anticipates claim 13 of the Virbac Patent. The primary judge's finding at J [209] that Claim 13 was not disclosed – on account of there being no disclosure of antioxidants/stabilisers specifically with the ingredients of the preceding integers – was an error, because the recommendation at 984 P60 applies to all "inventive formulations"

of the 984. Because the "inventive formulations" of 984 anticipate the other claims on which claim 13 of the Virbac Patent depends, there has been a sufficient and anticipatory disclosure of all of the integers in claim 13.

36. ***Claim 15.*** 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 *cooperia* and *ostertagia* in accordance with claim 15 of the Virbac Patent. Prof Bunt agreed that *cooperia* and *ostertagia* were nematodes – and further, that they were parasites common to *cattle*: T267.3-21. Accordingly, the primary judge erred to find there was "*no clear and unmistakable direction in* [984] *to treat cattle having the two specific parasitic infestations*". As to the primary judge's finding that there was no clear direction to use the specific formulations in claims 1 to 14 of the Virbac Patent, that too was an error, because those claims were also anticipated for the reasons set out above.

37. ***Claims 16 and 18.*** Virbac Patent claim 16 is an independent claim for a method of preparing a formulation, requiring levamisole and a macrocyclic lactone to be dissolved in a solvent (e.g. DMI), with the addition of a co-solvent in step (b) only "*if desired*". To this, dependent claim 18 adds that antioxidants (amongst other things) are added "*at any time*". These simple methods of preparing a formulation are anticipated by the equally straightforward disclosure at P60 L2-4 which states "*The compositions of the invention are made by* ***mixing*** *the appropriate amount of the* ***active agents****,* ***pharmaceutically acceptable carrier*** *or diluent and optionally a crystallization inhibitor,* ***antioxidant****,…****to form a composition*** *of the invention*".

38. The primary judge held at J [211]-[212] that these claims were not anticipated because P60 L2-4 did not "*specify the active agents"* nor *"require a solution*". That was an unduly confined reading of 984. The reader of 984 would understand that the method of formulating had to pertain to the actives and carrier already disclosed, because the method of 'mixing' pertained to "*the compositions of the invention*". As set out in Ground 2, 984 directs that such a composition contain levamisole, a macrocyclic lactone, and DMI in solution. It did not matter that the 'mixing' disclosure at 984 P60 did not repeat each ingredient, because anticipation arises from reading the prior publication as a whole.

F. CONCLUSION

39. The Appeal should be allowed, and the impugned claims revoked. Abbey seeks its costs of the appeal, and its costs of the proceeding below.

Adrian Ryan SC and Sophie Yates **22 July 2026**

For the Appellants