Association for Molecular Pathology v Myriad Genetics: Sieving the Gene Pool

Richard H. Stern

© Biotechnological inventions; Genetics; Patentability; United States

In the recent Myriad Genetics case, the Supreme Court rendered a split judgment: DNA is a product of nature, conventionally isolated from chromosomes, and therefore patent-ineligible as a matter of law. But cDNA, from which the nonfunctional "introns" in DNA are deleted by conventional means, is not a natural product and therefore is patent-eligible. The unanimous judgment, perhaps a compromise, is not internally consistent in its treatment of DNA and cDNA. It does not discuss and is not consistent with previous US patent law doctrine as to products of nature, which requires isolation or modification of a natural product to be transformative in terms of physical-chemical properties and utility to justify grant of a patent on the resulting product. Traditional doctrine also deprecates patenting products of purifications based on merely routine, conventional, or trivial steps. The court's doctrinally sparse ruling leaves to a factual determination on remand, however, whether isolated cDNA is unpatentable because obvious even though it is in principle patent-eligible.

In the recent Myriad case, the Supreme Court engaged in a Solomonic baby-splitting exercise. It held without dissent that DNA (deoxyribonucleic acid) segments isolated from human tissue were patent-ineligible products of nature. But complementary DNA (cDNA) segments from which naturally occurring irrelevant, nonfunctioning sequences of DNA (so-called introns) were edited out were held patent-eligible compositions or articles; and they were therefore protectable under the patent system if unobvious and otherwise claimed in accordance with the applicable law. The only difference between DNA and cDNA on which the opinion focused, however, is that edited cDNA does not occur naturally since it does not contain the introns that have been edited out.

To permit readers to understand the ruling, the court (per Thomas J.) felt it necessary to explain the technology at length, prompting one justice (Scalia J.) to concur in the judgment but refuse to join in the technical parts of the opinion because he could not, he said, understand them sufficiently to endorse them. Scalia J. notwithstanding, it is impossible to evaluate the opinion apart from the technology, and at least a brief summary must be endured.

Gene technology

A human gene is a small region of DNA contained within a chromosome of a human cell nucleus, and it contains a set of instructions or the "coding" for creating a string of amino acids that the body uses to make a protein that performs a body function. In cells DNA is found as Crick and Watson's intertwined twin helical strands (the "double helix") linked by cross-bars, as shown in Figure 1. The cross-bars consist of chemically joined molecules on each helical strand—the molecules are known as "nucleotides". There are four types of nucleotides—adenine, thymine, guanine and cytosine—commonly abbreviated by their first letters A, T, G, and C. The nucleotides on each strand are "bound" to a corresponding or complementary nucleotide on the other strand in a very specific manner. In particular, adenine (A) binds only to thymine (T), guanine (G) binds only to cytosine (C), and vice versa. Thus the nucleotides on each strand "complement" each other. Each cross-bar shown in Figure 1 contains an A-T, T-A, G-C, or C-G pair bound to one another.

The precise order of the nucleotides within a given gene varies depending upon the protein being coded. In humans only parts of the nucleotide sequence are used to make amino acids, which are the building blocks of human proteins. The portions of the gene that usefully code for amino acids are called "exons", and the portions that are not known to have useful coding are called "introns". The exons are separated from one another along the DNA strand by introns (see Figure 1).
Given a particular DNA molecule of interest, scientists can create (i.e. manufacture) strands of synthetic DNA molecules that are complementary to the DNA of interest. This synthetic complementary DNA is termed cDNA. It can be inserted into bacteria to make them manufacture desired proteins; cDNA is also useful in making diagnostic probes. In cDNA only the exons of the corresponding DNA are included, and the introns are omitted—they do not help in manufacturing proteins and can interfere with bacterial manufacture of proteins.

The patents in the Myriad litigation involved genes associated with breast and ovarian cancer—known as the BRCA1 and BRCA2 genes. Mutations in these genes often cause cancer, because the mutant genes do not correctly code for the proteins that they are supposed to make. Myriad discovered the location of these genes on the human chromosomes and their respective nucleotide sequences. It then applied for and obtained the patents in suit in this case. It used the patents to eliminate all unlicensed testing for BRCA genes. Two representative patent claims involved in the Supreme Court opinion are:

1. An isolated DNA coding for a BRCA1 polypeptide [i.e. amino acid sequence], said polypeptide having the amino acid sequence set forth in [a given list].
2. The isolated DNA of claim 1, wherein said DNA has the nucleotide sequence set forth in [a second list complementary to the first list].

Claim 2 covers the intron-less cDNA corresponding to the DNA of claim 1.

A given DNA sequence is isolated from the rest of the DNA in a strand by breaking the covalent bonds at each end of the sequence. These bonds are severed by a familiar, routine, conventional process that causes formation of a new molecule not normally present in nature. Cleaving the covalent bonds at the ends of a DNA fragment does not alter the capability of the DNA within the severed fragment to cause formation of amino acids.

**Products of nature**

Although not discussed in the court's opinion, an extensive body of case law exists on when purification or modification of a naturally occurring product (a so-called product of nature) may justify granting a product patent. For example, a synthetic form of the dye alizarine previously made from the madder plant cannot be patented since it is identical to the well-known natural dye. Pure tungsten, which the inventor made by refining tungsten oxide (a brittle product) into a pure metal (useful because ductile), cannot be patented because the product tungsten already “existed in nature and doubtless has existed there for centuries”, as for its improved ductility, that too was old, the court said, for “[i]f it possesses that quality now, it is certain that it possessed it always”. This line of cases eventually came to turn on whether the claimed product is the same in its relevant properties as the old product of nature or instead has new, perhaps surprising and unexpected properties that are achieved by the purification or modification of the natural product. In the case of aspirin, for example, the US court upheld the patent on aspirin despite the prior work of others and impure earlier forms of the product, because the patentee’s new method of synthesising aspirin resulted in a much

---

1. A cDNA for a gene sequence associated with a cancer, for example, can be used as a probe to diagnose presence of the cancer gene to which the cDNA is complementary, since the DNA and corresponding cDNA will bind together.
2. The average American woman has a 12 to 13% risk of developing breast cancer, but for women with certain genetic mutations, the risk can range between 50 and 80% for breast cancer and between 20 and 50% for ovarian cancer: Myriad 133 S. Ct 2107, 2112 (2013).
4. A covalent bond binds two atoms of a molecule together by sharing at least one electron in the respective outer rings of each of the two atoms so bound; ordinarily, the final configuration of each atom is to have eight electrons in the outer ring. For example, in carbon dioxide (CO₂), two oxygen atoms are covalently bound to a carbon atom; each oxygen atom initially has six electrons in its outer ring and the carbon atom initially has four electrons in its outer ring. Once the covalent bond forms, each oxygen atom shares two of its electrons in its outer ring with the carbon atom, which also shares its four outer-ring electrons equally with each oxygen atom. Now each of the two atoms has eight electrons (including the shared ones) in its outer ring, which is a stable configuration. An animation illustrating this bond is available at [http://www.youtube.com/watch?v=SK4yp3vDg] (Accessed August 27, 2013).
7. A so-called product of nature (i.e. tungsten oxide) may justifiably be patented if it possesses that quality now, it is certain that it possessed it always. This line of cases eventually came to turn on whether the claimed product is the same in its relevant properties as the old product of nature or instead has new, perhaps surprising and unexpected properties that are achieved by the purification or modification of the natural product.
8. Products of nature
9. If the inventor made by refining tungsten oxide (a brittle product) into a pure metal (useful because ductile), cannot be patented because the product tungsten already “existed in nature and doubtless has existed there for centuries”, as for its improved ductility, that too was old, the court said, for “[i]f it possesses that quality now, it is certain that it possessed it always”. This line of cases eventually came to turn on whether the claimed product is the same in its relevant properties as the old product of nature or instead has new, perhaps surprising and unexpected properties that are achieved by the purification or modification of the natural product.

---

[Figure 1 Diagram of human gene]
purified product that was less toxic and for the first time a therapeutically useful drug. Other cases speak of whether the purification effectuates a difference in degree or in kind.

An illustrative and leading case is *Merck & Co v Olin Mathieson Chemical Corp*,<sup>13</sup> the Vitamin B-12 case. It had been known that pernicious anemia could be treated by eating liver or consuming liver extract, but the needed dosages were very large and many considered the taste or smell of the products odious. The inventor discovered that the active therapeutic ingredient in liver (Vitamin B-12) could be synthesised by a fermentation process, so that patients would not be obliged to consume liver or its extract. The question was whether mere preparation of a purified form of a natural product, long known in an impure form, could result in a patent on the purified product. Because the previously unavailable, synthesised and isolated Vitamin B-12, freed from its unpalatable liver burden, was vastly superior therapeutically to liver, the court upheld patentability: the difference between the claimed B-12 and naturally occurring liver products was a step "from complete uselessness to great and perfected utility" and therefore it was "no mere advance in the degree of purity of a known product".<sup>13</sup> In effect, purification—here, by artificial synthesis rather than extraction from a mixture—caused a transformative increase in utility.

From these cases, particularly the B-12 case, a principle emerges: extracting gold, even for the first time, by sieving the contents of a mountain stream and discarding the sand or gravel, does not warrant a patent on the gold, for no material change occurs. The product is purified but not transformed. The change is one of degree.

But refining iron ore (iron oxide), by heating it in the presence of charcoal (carbon) to drive off the oxygen and thus extract metallic iron (2 FeO + C → 2 Fe + CO₂), does justify a patent on iron when first done, because such smelting transforms the product of nature into a different and useful substance. It is not the production of a purer form of iron ore but a physical and chemical change, accompanied by a great difference in properties.

Between these two cases on the spectrum of human interference with nature falls another, more difficult and interesting case that *Myriad* illustrates. Consider brandywine or "burnt wine." The alcohol in wine is mixed with a great deal of water and other impurities. Around 1711 a purer form of iron ore but a physical and chemical change, accompanied by a great difference in properties. Between these two cases on the spectrum of human interference with nature falls another, more difficult and interesting case that *Myriad* illustrates. Consider brandywine or "burnt wine." The alcohol in wine is mixed with a great deal of water and other impurities. Around 1711 a step "from complete uselessness to great and perfected utility" and therefore it was "no mere advance in the degree of purity of a known product". In effect, purification—here, by artificial synthesis rather than extraction from a mixture—caused a transformative increase in utility.

From these cases, particularly the B-12 case, a principle emerges: extracting gold, even for the first time, by sieving the contents of a mountain stream and discarding the sand or gravel, does not warrant a patent on the gold, for no material change occurs. The product is purified but not transformed. The change is one of degree.

But refining iron ore (iron oxide), by heating it in the presence of charcoal (carbon) to drive off the oxygen and thus extract metallic iron (2 FeO + C → 2 Fe + CO₂), does justify a patent on iron when first done, because such smelting transforms the product of nature into a different and useful substance. It is not the production of a purer form of iron ore but a physical and chemical change, accompanied by a great difference in properties.

Between these two cases on the spectrum of human interference with nature falls another, more difficult and interesting case that *Myriad* illustrates. Consider brandywine or "burnt wine." The alcohol in wine is mixed with a great deal of water and other impurities. Around 13th century it was discovered that the alcohol can largely be separated from the mixture by distillation into brandywine. Is separation of alcohol from the alcohol-water mixture of wine an act of invention creating a new product? Probably most would agree that the change from wine to brandy is transformative enough to make the concentration and purification of brandy out of the wine mixture a qualitative change deserving the name of invention. That is the principle of the product of nature cases. Arguably, isolating DNA and cDNA are in this intermediate part of the spectrum.

A further concept figures in determining whether a transformation occurs, which has a parallel in the natural principle cases. These cases hold that a principle of nature is not itself patentable, but an implementation of a principle of nature may be patent if the implementation is sufficiently creative.<sup>14</sup> When extraction or modification of a product of nature is accomplished by routine, conventional, or trivial steps, the resulting purified or modified product is unlikely to be considered patentable. But a complex, difficult extraction or modification is more likely to be seen as transformative and thus warranting a patent for the resulting transformed product.<sup>15</sup>

### The Supreme Court opinion in *Myriad*

The Supreme Court's *Myriad* opinion does not try to build on the body of mostly lower court case law concerning purified products of nature to find DNA patent-ineligible. Instead, it builds on the law of principles of nature—the doctrine that a natural principle is not patentable.<sup>16</sup> Thus the legal discussion begins:

> "We have long held that [the patent law] contains an important implicit exception: Laws of nature, natural phenomena, and abstract ideas are not patentable. Rather, they are the basic tools of scientific and technological work that lie beyond the domain of patent protection. As the Court has explained, without this exception, there would be considerable danger that the grant of patents would tie up the use of such tools and thereby inhibit future innovation premised upon them ... We must apply this well-established standard to determine whether Myriad's patents [on DNA] claim ... naturally occurring phenomena."

---

10 Kuehnstedt v Farbenfabriken of Elberfeld Co 179 F. 701, 705 (7th Cir. 1911) (the previous workers in the field "had produced only, at best, a chemical compound in an impure state. And it makes no difference, so far as patentability is concerned, that the medicine thus produced is lifted out of a mass that contained, chemically, the compound; for, though the difference [from the previous workers] be one of purification only ... where the one is therapeutically available and the others were therapeutically unavailable—patentability would follow. In the one case the mass is made to yield something to the useful arts; in the other case what is yielded is chiefly interesting as a fact in chemical learning").

11 See In re Merv 59 F. 2d 599, 601 (C.C.P.A. 1938) ("[i]f the process produces an article of such purity that it differs not only in degree but in kind it may be patentable. If it differs in kind, it may have a new utility in which invention may rest.")

12 *Merck & Co v Olin Mathieson Chemical Corp* 253 F. 2d 156 (4th Cir. 1958).

13 *Merck v Olin Mathieson* 253 F. 2d 156, 164 (4th Cir. 1958).


15 The *Myriad* court observed: "Scientists can ... extract DNA from cells using well known laboratory methods. These methods allow scientists to isolate specific segments of DNA—for instance, a particular gene or part of a gene—which can then be further studied, manipulated, or used."


17 *Myriad* 133 S. Ct 2107, 2116 (2013) (citing Mayo) (internal quotation marks omitted).
The court then pointed out that the genetic information encoded in the BRCA genes, and the location and order of the nucleotides in them, "existed in nature before Myriad found them".14 What Myriad did was to discover the identity, locations, and nucleotide content of the BRCA genes, and "the question is", the court said, whether that act makes the DNA of the genes patentable.15 The court held that Myriad’s act of discovery, because it created nothing, did not make the DNA product of nature patentable: “To be sure, it found an important and useful gene, but separating that gene from its surrounding genetic material is not an act of invention.”16 In effect, as in the product of nature cases unmentioned by the court, sieving BRCA DNA from the gene stream is not the basis for a patent on the sieved product.

The court then turned to refining BRCA cDNA from BRCA DNA by discovering which are the exons and which are the introns, and then editing out the introns; it found this a basis for a patent on the refined cDNA. It stressed that “creation of a cDNA sequence … results in an exons-only molecule that is not naturally occurring.”17 Because of that, “cDNA is not a product of nature and is patent eligible.”18 In so ruling, the court did not assert that editing out introns was transformative or made a qualitative difference in properties in comparison to BRCA DNA. Perhaps that may be so, but the court did not address it, and the procedure for editing them seems little different in inventive quality from separating DNA from its surrounding material. It used the term “product of nature”, but it did not utilise the logic and methodology of that line of case law.

In its ruling, the court emphasised the limits of its holding: first, if Myriad had created an innovative method of manipulating genes it might have obtained a valid method patent on it. But “the processes used by Myriad to isolate DNA were well understood by geneticists at the time of Myriad’s patents; they were well understood, widely used, and fairly uniform insofar as any scientist engaged in the search for a gene would likely have utilized a similar approach.”19 Second, the present case did not involve applications of knowledge about the BRCA genes, such as diagnostic methods. They too could be patented.20 Third, and perhaps most important, although mentioned only in footnote, the court expressed no opinion whether cDNA was obvious, that is, patent-eligible in principle yet not actually patentable because lacking sufficient difference from what was known already to persons of ordinary skill in the art.21 The Court summed up its holding as: “We merely hold that genes and the information they encode are not patent eligible … simply because they have been isolated from the surrounding genetic material.”22

**Analysis**

Because of its narrow holding, reflected in the lack of dissent, the opinion is unremarkable. It is also doctrinally terse, indeed scanty.

**No use of case law on products of nature**

Curiously, it does not discuss the extensive 19th- and 20th-century body of case law on products of nature. That case law’s emerging notion of transformation vel non as a critical factor is implicit in the court’s Myriad opinion but is not developed or at best is imperfectly developed. The reasoning as to cDNA is quite at odds with the case law on products of nature, because the court’s logic is simply that intron-free cDNA is not identically disclosed in natural products, rather than that cDNA is qualitatively different.

---

13 Myriad 133 S. Ct. 2107, 2116 (2013).
14 Myriad 133 S. Ct. 2107, 2116 (2013).
15 Myriad 133 S. Ct. 2107, 2116 (2013).
16 Myriad 133 S. Ct. 2107, 2116 (2013).
18 But if the technology used was conventional or uncreative, the diagnostic method would be patent-ineligible. Mayo 132 S. Ct. 1289 (2012), Stern, "Mayo v Prometheus" (2012) E.I.P.R. 502.
19 Myriad 133 S. Ct. 2107, 2119 n.9 (2013).
21 The competitors responded by suing Myriad for noninfringement and attempted monopolisation, asserting that the infringement suit was bad faith enforcement of patents known to be invalid. See "Ambyr Genetics countersues Myriad Genetics in BRCA testing fight" (August 12, 2013), The Pathology Blawg, http://pathologyblawg.com/pathology-news/pathology-veurds/myriad-genetics/ambyr-genetics-ambyr-genetics-countersues-myriad-genetics-brca-testing-fight/; "Gene by Gene Joins Ambry in Counter suit against Myriad Alleging Antitrust Violations" (August 15, 2013), GenomeWeb Daily News, http://www.genomeweb.com/sequencing/gene-gene-joins-ambry-counter-suit-against-myriad-alleging-antitrust-violations. The claim of known invalidity is based on the combined teachings of the Mayo and Myriad cases. Paragraphs 127 and 133 of Ambry's Answer and Counterclaim assert that "Myriad was aware before filing its complaint in this action that the claims it was asserting are invalid per Mayo and Prometheus"; see http://www.patenthco.typpapad.com/files/ambyr-answer.pdf [All websites accessed August 27, 2013]. See also para.62 ("Two decisions by the Supreme Court, issued before plaintiffs brought this suit, rebut the presumption by Myriad that it brought this suit in good faith" (citing Mayo and Myriad)). Other paragraphs discuss and apply those decisions to the facts of the Myriad-Ambry suit. Myriad responded (Aug. 26, 2013) with a motion to dismiss the antitrust claims because Myriad’s infringement suit was not "objectively baseless" and is therefore immune from antitrust challenge. Myriad contends that the legal standard to be applied is whether "a neutral observer would reasonably think … that the patent was almost certain to be declared invalid" or whether the patent owner has a "a reasonable belief that there is a chance that a claim may be held valid upon adjudication". It also argues that its infringement suit satisfies that standard. See Myriad’s Motion to Dismiss, Case 2:13-cv-00640-RJS, Document 95, Filed 08/26/13, D. Utah.
Equation of natural phenomena and products of nature

The opinion’s equation of laws of nature, natural phenomena, and abstract ideas to the products of nature that the present case involves is unexplained—indeed, slurred over. It is unclear that the same public policy factors apply to both the former and the latter—they may well differ. Historically, the principle against patents on products of nature is more one against removing “old” things from, or raiding, the public domain than one of avoiding raising obstacles to future innovation, as it is in the case of patenting laws of nature, natural phenomena, and abstract ideas.

What is old?

The inverted commas around “old” in the preceding sentence point to the unaddressed issue whether a trivial variation on or modification of a long-known and used article is the same article or a new, albeit obvious, different article. Until the last two decades of the 20th century, US patent law often assimilated the two things to one another simply as “old” or “anticipated.” Since about 1982, however, decisions by the Federal Circuit under the 1952 patent act have tended to limit the old to what is strictly, absolutely identical to that which was previously known while relegating what is very similar to an obviousness inquiry under 35 USC §103.

The Myriad opinion finds DNA old, nevertheless, despite the existence of trivial purification processes and slight chemical modifications involved in isolating it from surrounding genetic material. It thus revives the previous, more expansive concept of what is same and what is old as contrasted with what is new and different under the product of nature doctrine—not strict or technical novelty but novelty in terms of like functionally and substantial similarity.

Fact v law

As the court’s final footnote on obviousness suggests, sub silentio, the question is largely one of deciding what to handle as a matter of law (i.e. patent ineligibility) and what to leave to an inquiry based on underlying facts (obviousness). Clearly, the Supreme Court and the lower courts that it affirmed are right in considering BRCA DNA patent-ineligible, because it is sieved uncreatively from pre-existing material by conventional and familiar processes. But BRCA cDNA is more problematic. Arguably, the court’s distinction based on whether useless introns are edited out in a known and conventional manner is just artificial and irrational, for that too is done by trivial means. On the other hand, leaving that determination to a factual obviousness inquiry is not terribly misguided on its face. Also, it may be a reasonable compromise, and could have been the price of unanimity of opinion. It is different, however, from the result that the court previously reached for principles of nature: trivial and uncreative implementations of natural principles are patent-ineligible as a matter of law, as the court held in the Flook 437 U.S. 584 (1978) and
particular whether an actionable threat must be found DNA patent-ineligible or instead interpreting the statute to grant patents to inventions of inventors. It is thus unclear whether the opinion is interpreting the statute thus unclear whether Congress can constitutionally amend the patent act to allow DNA patents.

Statutory or constitutional?

Finally, the court’s opinion from time to time observes, without elaboration, that one cannot patent a product of nature because finding it is not an act of invention. It is therefore questionable whether the opinion is interpreting the statute to find DNA patent-ineligible or instead interpreting the Constitution: the Constitution limits congressional power to grant patents to inventions of inventors. That raises the question, although it is probably only academic, whether Congress can constitutionally amend the patent act to allow DNA patents.

When is a Threat Unjustified? Sudarshan Chemical Industries Ltd v Clariant Produkte (Deutschland) GmbH

Patrick Gearon
Charles Russell LLP, Head of IP, Partner

Groundless threats; Infringement; Patents; Third parties

The article explores the Court of Appeal’s recent decision in the case of Sudarshan Chemical Industries Ltd v Clariant Produkte (Deutschland) GmbH, which addressed the wrongful threats regime in patent cases and in particular whether an actionable threat must be communicated to the person threatened or whether such a threat remained actionable in circumstances where the threat had only been communicated to a third party.

Increasingly in modern patent litigation a claim of patent infringement will be met with a response that the threat of infringement is itself actionable as being a groundless threat pursuant to s.70 Patents Act 1977. If it could be established that the threat was made, and was unjustified (which it generally would be if the patent owner could not prove infringement), anyone aggrieved by the threat (which could range from the manufacturers of the products in dispute to their customers) could ask for an injunction to be granted to stop the threats and could claim damages for any loss sustained by the threats. Thus making threats can be an expensive exercise and might result in the patent owner losing the initiative in patent infringement proceedings.

The Law Commission has recently consulted on the issue of wrongful threats and as such the issues relating to threats are live ones. In addition to the matters which have engaged the attention of the Law Commission, such as whether or not the current statutory threats regime is fit for purpose and whether or not legal advisers should have immunity within the wrongful threats regime, the issue of to whom an actionable threat must be made has recently been argued before the English Court of Appeal.

On July 30, 2013 the Court of Appeal handed down judgment in the case of Sudarshan Chemical Industries Ltd v Clariant Produkte (Deutschland) GmbH. One of the issues before the Court of Appeal was whether an actionable (unjustified or wrongful) threat must be communicated to the person threatened or whether it remained actionable in circumstances where the threat had only been communicated to a third party.

A law relating to groundless or unjustified threats has been in place in England and Wales since 1883 (s.32 Patents, Designs and Trade Marks Act 1883). Within a few years of enactment the scope of the threats regime was tested before the Court of Appeal. In particular the question of whether an actionable threat must be communicated to the person threatened had to be decided in Skinner & Co v Perry. Bowen L.J. held:

“If I threaten a man that I will bring an action against him, I threaten him none the less because I address that intimidation to a third person, and I threaten him none the less because I address the intimidation to a third person.”

Thus the Court of Appeal determined that s.32 did not limit actionable threats to those made expressly to the person intended to be threatened; an actionable threat could be made to a third party.

Section 32 of the 1883 Act was re-enacted with minor modifications in the Patents and Designs Acts of 1907, 1919 and 1932.

34 e.g., Myriad 133 S. Ct 2107, 2116 (“[s]eparating that gene from its surrounding genetic material is not an act of invention.”).
36 It is doubtful in the extreme that political support could be mustered for such legislation.
37 Charles Russell LLC acted for Sudarshan Chemical Industries Ltd.
38 Sudarshan Chemical Industries Ltd v Clariant Produkte (Deutschland) GmbH [2013] EWCA Civ 919.
39 Skinner & Co v Perry (1893) 10 R.P.C. 1 CA.