

Ingenious Labs Inc ('Ingenious')

APPELLANT

v.

Erewhon Health Corporation ('EHC')

RESPONDANT

SKELETON ARGUMENT FOR THE RESPONDANT

I. Preliminary information on the infringement suit.

II. The invention is not patentable :

a). The patent claim does not concern an invention but a discovery

- Geneva Treaty on international recording of scientific discoveries 7th March 1978 (Article 1.1.1).
- Definition of a discovery by Jean-Marc Mousseron, Traité des brevets vol. 1, Litec 1984, p. 179-180.
- French Supreme Court, 26 October 1970. Champignon Mucor Boulard n°5.

b). The patent contradicts the public policy.

- EPO. Decision T356/93, Technical Board of Appeal 3.3.4, Plant Cells/Plant Genetic Systems (Feb. 21, 1995), O.J. EPO 1995, 545. [hereinafter, Decision T356/93].
- EPO. 3 April 1992, Harvard oncogenic Mouse case, V 0006/92

c). The Invention is not new.

- Article 54 §2 of the European Patent Agreement.

d). The condition of inventive step is not fulfilled.

- Paris Court of Appeal, 22 January 1980, PIBD 1980, 260. III. p. 123.
- Paris Court of Appeal, 13 November 2002, PIBD 2003, 762, III. p. 535.
- French Supreme Court, Commercial Court, 17 October 1995, "Robert Bosch v. Etablissement Guillet".

III. The patent should be revoked under the article 27(b) : the bacterium *R. erythropolis* is not described or claimed.

- *Biogen Inc v. Medeva, House of Lords, 31 October 1996.*
- *French Supreme Court, Commercial Court, 8 July 1981, PIBD 1981.III.236, ANN. Propr. Ind. 1982.61.3.*
- *EPO. Dec.T226/85 17 March 1987, JO E* 1998 p. 336.*
- *Budapest Convention of 28 April 1977 on international recognition of filing microorganisms for the purpose of obtaining a patent .*