

1983 July 30

[TRIANTAFYLLOIDES, P.]

F. HOFFMANN-LA ROCHE AND COMPANY,

*Plaintiffs.*

v.

THE ATTORNEY-GENERAL OF THE REPUBLIC,

*Defendant.*

(Patent Action No. 20/78).

*Patents—Section 46 of the Patents Act, 1949 does not form part of our Patents Law, Cap. 266—Decision in Christodoulides v. Republic (1971) 3 C.L.R. 164 and (1972) 3 C.L.R. 71 to the same effect, which is not merely an obiter dictum, followed—Republic not entitled to import or authorise the import of patented drugs, from persons other than patent-holders or their licensees, for use by patients of Government Hospitals.* 5

*Decided cases—Obiter dictum—Meaning and weight of.*

The plaintiffs who were the registered proprietors in Cyprus of a patent in respect of an invention relating to a certain drug brought an action against the defendant for infringement of patent in that the Republic purchased from abroad and disposed of in Cyprus drugs prepared and manufactured in accordance with the invention of the plaintiffs which was covered by the above patent. 10 15

*On the questions whether the decision in Christodoulides v. Republic (1971) 3 C.L.R. 164 and (1972) 3 C.L.R. 71 where it was decided that “section 9(1) of Cap. 266 has not introduced into our law the whole of the United Kingdom law of patents—including statutory provisions related to compulsory licences—but only that part of it which relates to the power to grant appropriate judicial remedies, as it is expressly stated in section 9(1)” is binding on this Court or whether it was an obiter dictum.* 20

*Held, that what was said in the Christodoulides case about the introduction in Cap. 266 of the United Kingdom Patents Act.* 25

1949, was not merely an obiter dictum, but an absolutely necessary pronouncement regarding matters which had to be determined in that case; that on the basis, therefore, of the *Christodoulides* case which is regarded as binding on this Court, section 46 of the Patents Act, 1949, above, does not form part of Cap. 266, and, therefore, as no other provision exists in our Cap. 266 empowering the Republic to act as complained of by the plaintiffs the contention of counsel for the defendant, that the Republic is in law entitled to import or authorize the import of patented drugs, from persons other than patent-holders or their licensees, for use by patients of Government Hospitals, cannot be upheld and has to be dismissed.

*Order accordingly.*

Cases referred to:

- 15 *Christodoulides v. Republic* (1971) 3 C.L.R. 164; (1972) 3 C.L.R. 71;  
*Flower v. Ebbw Vale Steel, Iron and Coal Co. Ltd.* [1934] 2 K.B. 132 at p. 154.

**Patent Action.**

20 Patent action for an injunction restraining the Republic from infringing patent No. 414.

*A. Triantafyllides* with *Chr. Triantafyllides*, for the plaintiffs.

25 *A. Frangos*, Senior Counsel of the Republic, for the defendant.

*Cur. adv. vult.*

30 TRIANTAFYLLIDES P. read the following judgment. The plaintiffs were at all material to these proceedings times the registered proprietors in Cyprus of patent No. 414 in respect of an invention relating to a certain drug (Chlordiazepoxide with clidinium bromide). Such patent expired on 10th October 1978.

35 By means of the present action they complain, in effect, that the Republic has awarded a tender to an Italian firm from which it has purchased and disposed in Cyprus in 1977 and 1978 drugs prepared and manufactured in accordance with the invention of the plaintiffs which was covered by the aforesaid patent No. 414, thus infringing such patent.

The plaintiffs further complain that the Republic purchased from the World Health Organisation in Geneva and disposed in Cyprus from 1975 to 1978 drugs prepared and manufactured in accordance with the invention of the plaintiffs which was covered by the aforementioned patent No. 414, thus again infringing the patent in question. 5

After hearing counsel I decided that this case should be heard initially only as regards the legal issue raised by paragraph 2 of the statement of defence, namely that the Republic is in law entitled to import or authorize the import of patented drugs, from persons other than patent-holders or their licensees, for use by patients of Government Hospitals. 10

As no provision exists in our Patents Law, Cap. 266, allowing the Republic to act as aforesaid counsel for the defendant relied on section 46 of the Patents Act, 1949, in England, regarding use of patented inventions for services of the Crown, and he has submitted that it should, by virtue of section 9(1) of Cap. 266, be treated as forming part of Cap. 266. 15

Counsel for the plaintiffs has contended that section 46, above, does not form part of Cap. 266 by virtue of section 9(1) of Cap. 266, and that the 1949 Act in England is incorporated into Cap. 266 only in so far as judicial remedies are concerned. He relied, in this respect, on the case of *Christodoulides v. The Republic*, (1971) 3 C.L.R. 164 and (1972) 3 C.L.R. 71, where there was examined both in the first instance and on appeal the question whether section 9(1) of Cap. 266 has introduced into Cap. 266 the English law relating to patents, including in relation to compulsory licences section 41 of the United Kingdom Patents Act, 1949, and where it was decided that “section 9(1) of Cap. 266 has not introduced into our law the whole of the United Kingdom law of patents—including statutory provisions related to compulsory licences—but only that part of it which relates to the power to grant appropriate judicial remedies, as it is expressly stated in section 9(1)”. 20  
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Counsel for the defendant submitted that the *Christodoulides* case, *supra*, is not binding on this Court in the present case, as anything which was said there beyond what was necessary in relation to the matter of compulsory licences was stated obiter 35

and he relied, in this respect, as regards the weight of obiter dicta, on, inter alia, the case of *Flower v. Ebbw Vale Steel, Iron & Coal Company, Limited*, [1934] 2 K.B. 132, where Talbot J. said the following (at p. 154):

5            "I should like to say a word regarding a point which was  
taken by the learned counsel for the appellant when he  
was discussing the case of *Dew v. United British Steamship*  
*Co.*<sup>1</sup> There is no question that the three learned judges  
10            who decided that case stated in emphatic and unambiguous  
language that contributory negligence is a good defence  
to an action of this class; but it is said that that expression  
of opinion can be disregarded in this Court because it was  
not necessary for the purpose of deciding that case that  
15            opinion should be expressed. I do not agree, any more  
than the other members of this Court, that that expression  
of opinion was in fact unnecessary, and it appears to me  
that it is not legitimate to say that it should be disregarded.  
It is of course perfectly familiar doctrine that obiter dicta,  
20            though they may have great weight as such, are not  
conclusive authority. Obiter dicta in this context means  
what the words literally signify—namely, statements by the  
way. If a judge thinks it desirable to give his opinion on  
some point which is not necessary for the decision of the  
25            case, that of course has not the binding weight of the  
decision of the case and the reasons for the decision. It  
seems to me, however, to be an abuse of language to describe  
as obiter dicta the deliberate pronouncements in  
*Dew's* case (1), which were all made expressly as reasons  
30            for the decision to which the Court there came, and even  
if I did not assent to them, I should certainly regard these  
pronouncements as authoritative".

In view of the issues which were raised in the *Christodoulides*  
case, supra, and bearing duly in mind the aforementioned passage  
from the *Flower* case, supra, I am clearly of the opinion that  
35            what was said in the *Christodoulides* case about the introduction  
in Cap. 266 of the United Kingdom Patents Act, 1949, was not  
merely an obiter dictum, but an absolutely necessary pronounce-

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1. 139 L.T. 628.

ment regarding matters, which had to be determined in that case.

On the basis, therefore, of the *Christodoulides* case, supra, which I regard as binding on this Court, I am of the opinion that section 46 of the Patents Act, 1949, above, does not form part of Cap. 266, and, therefore, as no other provision exists in our Cap. 266 empowering the Republic to act as complained of by the plaintiffs the contention of counsel for the defendant which is set out in paragraph 2 of the statement of defence cannot be upheld and has to be dismissed. 5  
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This case will now have to be heard further as regards its other aspects.

*Order accordingly.*