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# RESEARCH WORKSHOP ABSTRACT

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## **Lord Hoffmann and the Dane particle: Gene Patent Scope**

*Biogen v Medeva (1997)* concerned the inventive activities of Professor Sir Kenneth Murray of Edinburgh University. Murray had deduced that part of the DNA of the hepatitis B virus (the Dane particle) which encoded for the viral antigen, and from that deduction he was able to make a hepatitis B vaccine. He achieved this without first sequencing the viral DNA. Did his patent rights extend to those who then made hepatitis B antigens (and thereby vaccines) by relying upon subsequently available viral gene sequence information for hepatitis B? The answer from the House of Lords was that because Murray's patent claim was to all ways of producing hepatitis B antigens when he had merely invented one way, his patent was invalid; his invention was insufficient to support the breadth of what he claimed. Biogen insufficiency was born.

*Biogen* insufficiency thus arose from the challenge faced by patent law to strike a principled and economically responsible position of providing incentives for inventive activity without creating patent property rights of undue breadth. However the legal back-story to *Biogen* insufficiency involves the very murky terrain of the conceptual foundation of validity rules concerning unduly broad patents and the machinations that led UK law (by virtue of the European Patent Convention) to remove the courts' jurisdiction to revoke patents of unduly broad scope. This seminar will explore that murky terrain and delve into those machinations.