

# THE THREE QUESTIONS

*Improver or Eli Lilly*

Improved Improver or Silly  
Lilly?

# THE FIRST QUESTION

- *Eli Lilly*

Notwithstanding that it is not within the literal meaning of the relevant claim(s) of the patent, does the variant achieve substantially the same result in substantially the same way as the invention, ie the inventive concept revealed by the patent?

- *Improver*

Does the variant have a material effect upon the way the invention works

# THE SECOND QUESTION

- *Eli Lilly*

Would it be obvious to the person skilled in the art, reading the patent at the priority date, but knowing that the variant achieves substantially the same result as the invention, that it does so in substantially the same way as the invention?

- *Improver*

Would this (ie that the variant had no material effect) have been obvious at the date of publication of the patent to a reader skilled in the art?

# THE THIRD QUESTION

- *Eli Lilly*

Would such a reader of the patent have concluded that the patentee nonetheless intended that strict compliance with the literal meaning of the relevant claim(s) of the patent was an essential requirement of the invention?

- *Improver*

Would the reader skilled in the art nevertheless have understood from the language of the claim that the patentee intended that strict compliance with the primary meaning was an essential requirement of the invention?