



SELECTED CASES
CYNTHIA LOUISE COCHRANE

Tel: +61 2 8066 6132

Fax: +61 2 8066 6198

Email: cynthia.cochrane@5wentworth.com.au

Patents

Telecommunications Patents

Samsung ats Apple (cross claim re 3G patents): briefed by Ashurst, led by Young QC

Voxson (NSD 2436/2013): briefed for Vodafone by Allens, led by Bannon SC

Telstra Corporation ats Upaid Systems (NSD 1698/2013): See [\[2013\] 220 FCR 182](#) (dispute re adequacy of particulars of infringement).

Vringo v ZTE (Aust) (NSD 1010/2013): briefed by Allens, led by Shavin QC. See [\[2013\] FCA 1152](#) (patent amendment), [\[2014\] FCA 525](#) (Sabre order; Ms Cochrane appeared unled), [\[2014\] FCA 983](#) (confidentiality, Ms Cochrane appeared unled). Settled.

Pharmaceutical Patents

E. R. Squibb and Ono re Merck (NSD 954/2014) (concerning Merck's anti-cancer drug Keytruda): briefed by Minter Ellison, led by Caine QC and Dimitriadis SC. [\[2016\] FCA 1015](#) (discovery re experiments)

Glaxo Group re Apotex (NSD 525/2015) (abacavir hemisulphate, anti-HIV drug): briefed by Davies Collison Cave.

Sanofi-Aventis & BMS re Apotex and Commonwealth (NSD 1639/07): briefed by Allens and Jones Day, led by Walker SC, Bannon SC and Sheahan QC. See [\[2007\] 73 IPR 502](#) (injunction), [\[2008\] IPR 485](#) (trial), [\[2009\] 82 IPR 416](#) (appeal), [\[2010\] HCATrans 59](#) (special leave), [\[2013\] FCA 1425](#) (damages claim), [\[2015\] FCAFC 172](#) (Commonwealth's stated case re ss 26B-D of *Therapeutic Goods Act 1989* (Cth)).

BMS & Otsuka re Generic Health (NSD 121/2012) (method of treatment with aripiprazole): briefed by Allens, led by Bannon SC, Caine QC. See [\(2012\) 291 ALR 763](#) (interlocutory injunction), [\(2013\) 100 IPR 240](#) (leave to appeal), [\[2015\] FCA 634](#) (trial), [\[2015\] FCA 634](#) (stay) and [\[2016\] FCAFC 111](#) (appeal)

BMS & Otsuka re Apotex (NSD 1116/2009): briefed by Allens, led by Bannon SC. See [\(2012\) 298 ALR 137](#) (privilege in expert witness's notes; Ms Cochrane appeared unled against Catterns QC), [\[2012\] FCA 1433](#) (experimental proof), [\(2013\) 104 IPR 23](#) (trial), [\(2015\) 228 FCR 1](#) (full court appeal).

Otsuka re Apotex (method of treatment with aripiprazole): briefed by Davies Collison Cave. See [\[2014\] APO 28](#). (Patent Office opposition; Ms Cochrane appeared unled).

Eli Lilly re InterPharma: briefed by Clayton Utz, led by Macaw QC and Burley SC. See [\(2008\) 79 IPR 261](#) (injunction). Settled before trial.

Servier re Apotex (NSD 657/2008) (perindopril erbumine): briefed by Allens, led by Caine QC. [\(2010\) 89 IPR 219](#) (appeal, patent amendment), [\(2010\) 89 IPR 274](#) (joinder, foreign parties), [\(2011\) 199 FCR 62](#) (privilege, "without prejudice" correspondence; Ms Cochrane appeared unled against Catterns QC), [\[2012\] FCA 745](#) (stay). Settled.

Servier re Apotex (NSD 51/2012) (perindopril arginine): briefed by Allens, led by Bannon SC. See [\(2012\) 293 ALR 272](#) (service out application), [\[2013\] FCA 1426](#) (trial), [\[2016\] FCAFC 27](#) (appeal, Ms Cochrane argued the costs appeal).

Other Patents

Glaxosmithkline -ats- Reckitt (Nurofen/Panadol flat-nosed syringe). Ms Cochrane, led by Mr Shavin QC, appeared for GSK in the Full Court appeal. [\[2016\] FCAFC 90](#).

ARB Corporation -ats- Oakmoore (ownership dispute in Australian Patent Office). Ms Cochrane led Mr Larish, against Mr Crowe QC and Ms Allen. [\[2015\] APO 66](#).

InfoTrack re Encompass and SAI (computer implemented business methods) (NSD 1689/2015): Briefed by Shelston IP, led by Catterns QC

Nichia v Arrow (NSD558/2014) (LED lights comprising a phosphor): briefed by Allens, led by Catterns QC and Burley SC. [\[2015\] FCA 699](#) (separate question). The trial was heard in May 2016. Ms Cochrane argued novelty and fair basis. Judgment reserved.

Seiko Epson v Calidad (NSD 1032/2015) (ink cartridges, scope of doctrine of exhaustion): Briefed by Allens, led by Catterns QC

Cementech v Austral and Adbri (2013/225446 & NSD 132/2014) (building materials): briefed by Minter Ellison. [\[2013\] NSWSC 1888](#) (separate question, transfer to Federal Court) and [\[2014\] FCA 794](#) (security for costs). Ms Cochrane appeared unled at both hearings and cross-examined Mr Rafidi on credit at the second hearing.

Costin v Duroline. [\[2013\] FCA 501](#) (pre-action discovery; Ms Cochrane was unled)

DSM Nutritional Products v. Suntory (VID 1029/2012) (infant formula): briefed by Allens, led by Caine QC and Donaghue QC. See [\[2013\] FCA 474](#) (discovery; Ms Cochrane appeared unled against Howard SC), [\[2013\] FCA 675](#) (leave to appeal; Ms Cochrane appeared unled), [\(2013\) 216 FCR 424](#) (administrative law)

Memcor & Siemens re GE (water filtration devices): [\[2011\] FCA 641](#) (discovery; Ms Cochrane appeared unled against Dimitriadis SC), [\[2012\] FCA 1115](#) (separate question; Ms Cochrane appeared unled against Niall QC), [\[2013\] FCA 78](#) (service out application; Ms Cochrane appeared unled against Shavin QC)

Fresenius re Gambro (dialysis devices): briefed by Allens, led by Archibald QC and Burley SC. See [\[2006\] HCA Trans 129](#) (special leave)

Commercial

Insurance

Ensham Resources v Aioi Insurance (NSD1256/10): \$540m insurance claim arising from 2008 Emerald Flood, where the insurers alleged fraud. Briefed by Herbert Smith Freehills, led by Sheahan QC. See [\[2011\] FCA 1392](#) (subpoenas; Ms Cochrane appeared unled against Stevenson SC), [\[2012\] FCA 537](#) (pleadings amendment), [\[2012\] FCA 710](#) (legal professional privilege; Ms Cochrane led Mr Flecknoe-Brown

and cross-examined Mr Stockdale), [\(2012\) 17 ANZ Insurance Cases 61-942](#) (legal professional privilege appeal; Ms Cochrane appeared before the full court of the Federal Court, leading Mr Flecknoe-Brown). Matter settled before trial.

Fryer v Tower Insurance (Supreme Court NSW): income protection insurance claim, where insurers alleged fraudulent non-disclosure. Led by Taylor SC. Settled.

Isaac Plains v Zurich Insurance: \$130m insurance claim from December 2010 flood of an open cut coal mine in Queensland, briefed by Freehills, led by Sheahan QC

Trade practices, restraint of trade and confidential information

Dental Corporation v Dr Lee (Supreme Court 2015/368727, Commercial List) (restraint of trade): briefed by Minter Ellison

Genesys Wealth Advisers v Miles (restraint of trade and confidential information): Led by Neil SC. See [\(2008\) 61 ALR 200-399](#) (trial), [\(2009\) 201 IR 1](#) (appeal)

L'Oreal Australia v Brandpoint (VID 285/15) (misleading and deceptive conduct): [\[2015\] FCA 978](#) (pre-action discovery; Ms Cochrane led Ms St John at the hearing)

Primary Health Care Ltd v AGPN (NSD239/10): misleading and deceptive conduct and passing off, briefed by Herbert Smith Freehills, led by Burley SC. Settled before trial.

ICAP v Moebes: confidential information. See [\[2010\] NSWSC 738](#) (costs; Ms Cochrane appeared unled against Braham SC).

Terry Fitzgerald v 33 South: character merchandising case for professional surfer. See [\[2008\] FMCA 1132](#) (Ms Cochrane appeared unled at trial and cross-examined Mr Jones on credit), [\[2008\] FCA 1960](#) (stay and security for costs, unled)

Gibney v SE Timber Pty Ltd (doctrine of ostensible authority). Ms Cochrane appeared unled at trial and cross-examined Mr Barden. See [\[2008\] NSWCTTT 1387](#).

Class actions

Allco Finance Group (in liq): each employee class found to have been employed by and therefore priority creditors of AFGL, not a \$2 company. [\(2010\) ACSR 56](#) (trial)

Contracts

University of Sydney v ObjectiVision (NSD 385/2014) (contract and patent law): briefed by King & Wood Mallesons, led by Jackman SC

Banking - fraudulent misappropriation

Heperu v Morgan Brooks: franchisor held liable under a contract by the doctrine of ostensible authority. Led by Burton SC. See [\(2007\) 2 BFRA 419](#) (trial)

Heperu v Belle: volunteer without knowledge of fraud held liable. Led by Burton SC. See [\(2007\) 2 BFRA 419](#) (trial), [\(2009\) 76 NSWLR 230](#) (appeal), [\[2010\] NSWCA 339](#) (costs), [\[2011\] NSWSC 1151](#) (inquiry into retained benefit)

Heperu v Perpetual Trustees: conversion and restitution. Led by Burton SC. [\(2007\) 2 BFRA 419](#) (trial), [\(2009\) 76 NSWLR 195](#) (appeal). Settled before High Court decision.

Copyright

NuCoal Resources Limited v New South Wales; Cascade Coal Pty Limited v New South Wales [\[2015\] HCA 13](#): briefed by Quinn Emanuel and TressCox, led by Bannon SC

University of Sydney re ObjectiVision (NSD 2433/2013): briefed by King & Wood Mallesons, led by Jackman SC. See [\(2014\) 108 IPR 244](#) (preliminary discovery)

Qantas Airways Limited ats Megan Washington: briefed by Allens. See [\[2013\] FCCA 778](#) (discovery; Ms Cochrane appeared unled). Settled before trial.

Generate v Sea-Tech: See [\(2007\) 71 IPR 640](#) (injunction re copyright in computer software, Ms Cochrane appeared unled)

Lamb v Hog's Breath. See [\[2007\] FCA 49](#) (French J) (inter-state transfer, Ms Cochrane appeared unled)

Eagle Rock v Caisley: substantial punitive damages order. [\(2005\) 66 IPR 554](#)

Trade marks

Cantarella Bros v Modena Trading: briefed by Corrs Chambers Westgarth, led by Jackman SC. See [\(2013\) 99 IPR 492](#) (trial); [\(2013\) 99 IPR 623](#) (orders); [\(2013\) 215 FCR 16](#) (full court appeal); [\[2014\] HCATrans 157](#) (special leave); [\(2014\) 109 IPR 154](#) (HCA).

Electrolux Home Products (NSD 844/2013): briefed by King & Wood Mallesons

Mars v Sweet Rewards: briefed by Mallesons Stephen Jaques, led by Hutley SC. See [\(2009\) 84 IPR 12](#) (appeal)

Kimberly-Clark v Goulimis: appeal from Trade Marks Office, "HUGGIES" trade mark found to be notorious. See [\(2008\) 78 IPR 612](#) (Ms Cochrane appeared unled)

NEC v Punch Video: appeal from Trade Marks Office. See [\(2005\) 67 IPR 17](#)

Australian Trade Marks Office – Rob Bowra v Industrial Progress Corporation Pty Ltd: [\[2016\] ATMO 48](#). Ms Cochrane led Mr Larish in the hearing. *Paramount Intl Export* ("FIJI" water): [\(2009\) 84 IPR 631](#); *McDonald's Corp v Future Enterprise* ("MacCoffee"): [\(2006\) 70 IPR 409](#); *United Parcel Service of America Inc v United Air Lines Inc*: [\(2006\) 69 IPR 663](#). Ms Cochrane appeared unled in each of these hearings.

Designs

Roadwest Transport v Bonfiglio Holdings & Ors (FCA WAD 27/2013) (side-tipping trailers): briefed by Squire Sanders, Perth. Ms Cochrane appeared unled at the mediation, where the matter settled.