



SELECTED CASES
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Current and recent cases

Dyno Nobel Inc v Orica Explosives Technology Pty Ltd (Burley J, Federal Court)
Validity and infringement of a patent for a method of blasting in the mining industry.

9 August 2018 (Interlocutory) Unled, leading Larish (called 2014), against Bruce Caine QC and Warwick Rothnie (called 2002) (Vic Bar). Hearing re Orica's discovery application re infringement and role of process descriptions in lieu of discovery. Ms Cochrane conducted the hearing and presented oral submissions for Dyno.

19 February 2019 (Interlocutory) Unled, leading Harris (called 2015), against Neil Murray SC and Warwick Rothnie (called 2002). Hearing re Orica's second discovery application re infringement and role of process descriptions. Ms Cochrane conducted the hearing and presented oral submissions for Dyno. [\[2019\] FCA 258](#).

31 May 2019 (Interlocutory) Unled, leading Catherine Bembrick (called 2015). Hearing re Dyno's discovery application re validity (obviousness and inutility).

9-27 September 2019 (Trial). Led by Bannon SC leading Bembrick (called 2015)

Bupa HI Pty Ltd v Andrew Chang Services Pty Ltd (Lee J, Federal Court of Australia)
Claim for misleading or deceptive conduct and in restitution in context of insurance claims made by a medical specialist using MBS items. Cross-claim for breach of contract in context of deregistration from insurers' gap scheme.

July/August 2018 (Trial) Unled, leading David Harris (called 2015) and Andrew Smorchevksy (called 2017), against Ian Jackman SC, Daniel Klineberg and Alexander Langshaw. Ms Cochrane conducted the trial for Bupa, presenting opening and closing submissions and cross-examining Dr Chang, on credit (successfully), and two experts, including in a hot tub, re technical fact and opinion. [\[2018\] FCA 2033](#)

April 2019 (Mediation to settle cross-claim). Unled, leading David Harris (called 2015), against Daniel Klineberg (called 2009). Matter did not settle.

Appeals and cross-appeal are expected to be heard in August 2019 by the Full Court.

Pfizer Ireland v Samsung Bioepis (Burley J, then Allsop CJ, Perram and Nicholas JJ)
Pre-action discovery application re infringement of a biomedicine process patent. Led by Macaw QC, Shavin QC and Dimitriadis SC. See [\[2017\] FCA 285](#) (trial), [\[2017\] FCAFC 193](#) (appeal) and [\[2018\] HCATrans 97](#) (High Court special leave, refused).

Nichia Corporation v Arrow Electronics (Yates J, then Besanko, Jagot and Nicholas JJ)
Validity and infringement of a patent concerning 'bright white' LED.

May 2016 (Trial) Led by Catterns QC leading Larish (called 2014), against Katrina Howard SC and Hamish Bevan. In relation to novelty (including establishing the prior art was a forgery) and fair basis of the patent, Ms Cochrane conducted the hearing and presented the oral submissions. [\[2017\] FCA 864](#).

February 2018 (Appeal) Led by Catterns QC leading Larish (called 2014), against Katrina Howard SC and Hamish Bevan. On the cross-appeal, Ms Cochrane conducted the hearing and presented the oral submissions for Nichia, defending the inventiveness of the patent, raising important questions of law. [\[2019\] FCAFC 2](#).

May 2019 (High Court) Ms Cochrane has been briefed with Bannon SC and Larish on the application for special leave to appeal to the High Court of Australia.

Merck Sharp and Dohme Corp & Anor v Wyeth LLC (Burley J, Federal Court)
Validity and infringement of patents for a vaccine and a formulation for a vaccine.

August 2018 (Interlocutory) Unled, leading Rob Clark (called 2014), against Howard SC and Larish. Discovery application for inventors' records Ms Cochrane conducted the hearing and presented oral submissions for Wyeth, resisting the application.

December 2018, February 2019 (Trial) Led by Tony Bannon SC leading Rob Clark. Until trial, Ms Cochrane conducted the case for Wyeth, leading Ben Mee and Rob Clark (both called 2014). At trial, in relation to the formulation (container) patent, Ms Cochrane conducted the hearing and presented the oral submissions. She also presented oral opening submissions in relation to the validity of the vaccine patents.

Encompass Corporation v InfoTrack (Perram J, then 5- member bench of Full Court)
Validity and infringement of patent for computer-implemented business method.

December 2016 (Interlocutory) Unled, leading Ben Mee (called 2014), against Angus Lang. Successful discovery application for patentee's documents. [\[2016\] FCA 1509](#).

March-April 2017 (Trial) Led by David Catterns QC leading Ben Mee (called 2014), against Shavin QC and Angus Lang. Ms Cochrane cross-examined the inventor, on credit and technical issues and a director. She conducted the hearing and presented the oral submissions for InfoTrack regarding the novelty of the patent, whether the invention had been secretly used before the filing date and whether it was the subject of an exclusive licence (including an allegation of a sham). [\[2018\] FCA 421](#).

November 2018 (Appeal) (Allsop CJ, Kenny J, Besanko J, Nicholas J and Yates J). Led by Sophie Goddard SC leading Ben Mee (called 2014), against Shavin QC and Angus Lang. In relation to the notice of contention, concerning the allegation that the patent lacked an innovative step, Ms Cochrane conducted the hearing and presented the oral submissions to the 5-member bench. She also presented oral submissions on the appeal as to the construction of the claims of the patent.

Seiko Epson v Calidad Pty Ltd (Burley J, then Greenwood, Jagot and Yates JJ)
Infringement of a patent by recycled ink cartridges raising issue of implied licences.

December 2016, April 2017 (Trial) Led by Catterns QC leading Larish (called 2014), against Dimitriadis SC and Chris Burgess. Ms Cochrane, for Seiko Epson, cross-examined a key technical witness, Mr Li, via an interpreter, and a company officer and presented oral submissions on trade mark and contract issues. [\[2017\] FCA 1403](#).

13-14 August 2018 (Appeal) Led by Tony Bannon SC leading Larish (called 2014), against Dimitriadis SC and Chris Burgess. Judgment is reserved.

Dometic Australia v Houghton Leisure Products (Rares J, then White J)
Infringement and validity of a patent for air-conditioning units.

February 2017 (Interlocutory injunction) (Rares J) Unled, leading Ben Mee (called 2014), against John Hennessey SC, Angus Lang and Frances St John. Ms Cochrane conducted the hearing and presented the oral submissions for Dometic.

July 2017 (Trial) (White J) Led by Cobden SC leading David Larish (called 2014), against Helen Rofe QC (Vic), Angus Lang and Frances St John. Until trial, Ms Cochrane had conducted the case for Dometic, leading Ben Mee, then David Larish. At trial, Ms Cochrane presented the oral submissions re patent construction and infringement and cross-examined two witnesses on technical matters. [\[2018\] FCA 1573](#).

December 2018 (Costs) (White J) Unled, against Helen Rofe QC (Vic Bar). Hearing re costs of trial and interlocutory injunction application where partial success on both sides and there was an application for indemnity costs. Ms Cochrane conducted the hearing and presented the oral submissions. [\[2019\] FCA 57](#).

Federal Treasury Enterprise (FKP) v Spirits International (Stewart J, then Perram J)
Application to amend trade marks register re owner of STOLI and other trade marks.

March 2019 (Interlocutory) Unled, against Larish (2014). Hearing concerning waiver of legal professional privilege over redacted portions of documents. Ms Cochrane conducted the hearing and presented the oral submissions. [\[2019\] FCA 337](#).

March (Spirits' application to dismiss proceeding) Led by Shavin QC (Vic Bar), against Matthew Darke SC and David Larish. Judgment is reserved.

Voxson Pty Ltd v Telstra Corporation Ltd & Ors (Perram J, Federal Court of Australia)
Validity and infringement of a patent re GPS and telecommunications technology.

February 2017 (Interlocutory) Unled, against Shavin QC. [\[2017\] FCA 267](#).

February 2018 (Interlocutory) Unled, leading Lucy McGovern (called 2017), against Shavin QC. Pre-trial hearing regarding questions to be put to experts in joint expert conclave. Ms Cochrane appeared for Vodafone, and conducted the hearing and presented the oral submissions on behalf of all respondents. [\[2018\] FCA 227](#).

March 2018 (Trial) - Led by Tony Bannon SC leading Lucy McGovern, against Shavin QC and Clare Cunliffe. Until trial, Ms Cochrane conducted the case for Vodafone, leading Lucy McGovern. At trial, Ms Cochrane presented oral submissions on non-infringement and evidentiary matters. The case settled during trial.

Coral Sea Fishing Pty Ltd v CSJ Seafoods Pty Ltd - Unled, against Laura Thomas (called 2011). Validity and infringement of patent for cold-smoking seafood. Settled.

Dental Corporation v Dr Lee & Anor (Rein J, Supreme Court NSW)

Breach of business restraint of trade concerning a corporate dental practice.

November-December 2016 (Trial). Unled, leading David Harris (called 2014) and Lucy McGovern (called 2016). Ms Cochrane conducted the trial for Dental Corporation, presenting oral opening and closing submissions. [\[2016\] NSWSC 1859](#).

Other Patent Cases

Telecommunications Patents

Voxson (NSD 2436/2013, Perram J): See above.

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

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.

Samsung ats Apple (cross claim re 3G patents): briefed by Ashurst, led by Young QC. Ms Cochrane appeared for Samsung unled at interlocutory hearings. See [articles](#).

Pharmaceutical Patents – Biological Medicines

Pfizer v Samsung Biopsis (Etanercept). See above.

Wyeth v Merck (Burley J) (NSD1382/2017) (Wyeth's Prevnar vaccine). See above.

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

Pharmaceutical Patents – Other Medicines

Glaxo Group re Apotex (NSD525/2015) (abacavir hemisulphate, anti-HIV drug): briefed by I Pascal, Davies Collison Cave. Ms Cochrane was unled. Settled.

Servier re Apotex (NSD 51/2012) (perindopril arginine): briefed by R W Hamer. Ms Cochrane appeared at interlocutory hearings against Catterns QC. At trial and on appeal, Ms Cochrane was led by Bannon SC: see [\[2013\] FCA 1426](#) (trial), [\[2016\] FCAFC 27](#) (appeal, Ms Cochrane argued the costs appeal before FFC).

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)).

Servier re Apotex (NSD 657/2008) (perindopril erbumine): briefed by R W Hamer 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 unled against Catterns QC), [\[2012\] FCA 745](#) (stay).

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, Ms Cochrane argued exclusive licence issue), [\(2015\) 228 FCR 1](#) (appeal).

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

Patents for methods of treatment

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)

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

Other Patents

Dyno Nobel v Orica (NSD 1500/2017, Burley J). See above.

Glaxosmithkline -ats- Reckitt (Nurofen/Panadol flat-nosed syringe). Ms Cochrane, led by Mr Shavin QC, appeared for GSK in the successful FFC 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](#).

Hills Holdings ats USSS (Jagot J, FCA) (Patent for solar panels): Led by J M Hennessy SC. Leading L McGovern. Briefed by P J Kerr, Allens. Settled before June 2017 trial.

Cementech v Austral and Adbri (2013/225446 & NSD 132/2014) (building materials): Ms Cochrane was unled. Briefed by Wayne McMaster, Minter Ellison. [\[2013\] NSWSC 1888](#) (separate question, transfer to Federal Court) and [\[2014\] FCA 794](#) (security for costs, where Ms Cochrane cross-examined Mr Rafidi CEO/inventor on credit).

Costin v Durolite. [\[2013\] 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). Settled.

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

Other Commercial Cases

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 Lander, Buchanan and Jagot JJ, 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

Bupa HI v Chang & ACS (insurance, misleading or deceptive conduct). See above.

Dental Corporation v Dr Lee & Anor (Rein J, Supreme Court NSW). See above.

L'Oreal v Brandpoint (Beach J, FCA) (preliminary discovery, misleading or deceptive conduct in advertising): Leading F St John. Briefed by Russells. See [\[2015\] FCA 978](#).

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

Primary Health Care Ltd v AGPN (NSD239/10): misleading or 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)

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.