



SELECTED CASES  
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**Selected trials and appeals**

*Bupa HI v Chang & ACS* (Lee J, Federal Court) (insurance, misleading or deceptive conduct): Trial July/August 2018, leading D Harris, against Jackman SC and Klineberg.

*Nichia v Arrow* (Patent for 'bright white' LED): Led by D K Catterns QC. Leading D Larish. At trial, Ms Cochrane gave Nichia's closing address re novelty (including allegation prior art was forged) and fair basis ([\[2017\] FCA 864](#)) and opposed evidence being given by video ([\[2016\] FCA 466](#)). On appeal, in February 2018, Ms Cochrane addressed Besanko, Jagot and Nicholas JJ in relation to obviousness. Reserved.

*Seiko Epson v Calidad* (Patents, refilled ink cartridges): Led by D K Catterns QC. Leading D Larish. Ms Cochrane cross-examined a key technical witness, via an interpreter, and a company officer, and gave Seiko's opening and closing addresses on trade mark and contract issues. [\[2017\] FCA 1403](#). Appeal August 2018.

*InfoTrack ats SAI Global* (Patent for computer business method): Led by D K Catterns QC. Leading B A Mee. At trial, Ms Cochrane gave InfoTrack's opening and closing addresses re novelty, secret use and exclusive licence (incl sham allegation) and cross-examined Encompass's CEO/inventor on credit and technical issues and cross-examined a company director of SAI Global. [\[2018\] FCA 421](#). Appeal November 2018.

*Dometic v Houghton* (White J, FCA) (Patents): In interlocutory hearings, Ms Cochrane led B A Mee against Hennessy SC, A Lang and F St John. At trial, Ms Cochrane was led by R Cobden SC and led D Larish, and addressed the court re construction and infringement and cross-examined two technical witnesses. Reserved.

*Dental Corporation v Dr Lee & Anor* (Rein J, Supreme Court NSW) (Business restraint of trade): Trial, leading D Harris and L McGovern. See [\[2016\] NSWSC 1859](#).

*Pfizer v Samsung Biopsis* (preliminary discovery, biological medicine): See [\[2017\] FCA 285](#) (trial), [\[2017\] FCAFC 193](#) (appeal). High Court special leave hearing 18 May 2018.

## **Other Patent Cases**

### ***Telecommunications Patents***

*Voxson* (NSD 2436/2013, Perram J): Briefed for Vodafone. See [\[2017\] FCA 267](#) (Ms Cochrane appeared unled). At trial, Ms Cochrane, led by Bannon SC and leading L McGovern, addressed the Court on infringement and evidentiary matters. Settled.

*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.

*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***

*Wyeth v Merck* (Burley J, FCA) (NSD1382/2017) (Wyeth's Prevnar vaccine). Briefed by R W Hamer. Leading R Clark. Trial in December 2018 (to be led by Bannon SC).

*Glaxo Group re Apotex* (NSD525/2015) (abacavir hemisulphate, anti-HIV drug): briefed by I Pascarl, 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) (Method of blasting layers of rock): Leading B A Mee and D Harris. Trial in September 2019 (to be lead by Bannon SC).

*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 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). 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.

*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.