



SELECTED CASES
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Trials in 2016/2017

Dental Corporation v Dr Lee & Anor (Rein J, Supreme Court NSW) (Restraint of trade in relation to a business): Leading D Harris and L McGovern. Briefed by S Chesterman, Minter Ellison. Trial December 2016. See [\[2016\] NSWSC 1859](#).

Nichia v Arrow (Yates J, FCA) (Patent for LED lights comprising a phosphor): Led by D K Catterns QC. Leading D Larish. Briefed by P J Kerr, Allens. 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 by video [\[2016\] FCA 466](#).

InfoTrack ats SAI Global (Perram J, FCA) (Patent for computer business method): Led by D K Catterns QC. Leading B A Mee. Briefed by M Vincent, Shelston IP. At the March 2017 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 a company director of SAI Global.

Seiko Epson v Calidad (Burley J, FCA) (Patent for ink cartridge): Led by D K Catterns QC. Leading D Larish. Briefed by P J Kerr, Allens. At the April 2017 trial, 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.

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.

Dometic v Houghton (White J, FCA) (Patent for air conditioning): Ms Cochrane led B A Mee at interlocutory hearings against Hennessy SC, A Lang and F St John. Briefed by K O'Connell, Mallesons. At the July 2017 trial, Ms Cochrane and was led by R Cobden SC and led D Larish, and gave Dometic's opening and closing addresses re construction and infringement and cross-examined two technical witnesses,.

Other Patent Cases

Telecommunications Patents

Voxson (NSD 2436/2013) (Perram J, FCA): Briefed for Vodafone by Philip Kerr, Allens. See [\[2017\] FCA 267](#) (Ms Cochrane appeared unled). At the 6 week trial in March-April 2018 Ms Cochrane will be led by Bannon SC and will lead L McGovern.

Telstra Corporation ats Upaid Systems (NSD 1698/2013): 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

Pharmaceutical Patents – Biological Medicines

Pfizer v Samsung Biopsis (Burley J, FCA) (Preliminary discovery, process patent for etanercept). Briefed by N Tyacke, DLA Piper. At the trial in February 2017, Ms Cochrane was led by Macaw QC and Dimitriadis SC. See [\[2017\] FCA 285](#). At the appeal in August 2017, Ms Cochrane was led by Shavin QC and Dimitriadis SC.

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) (Composition and container patents for Wyeth's Prevnar vaccine). Briefed by R W Hamer, Allens. Leading B A Mee.

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). Ms Cochrane is briefed in Apotex's claim on the undertaking as to damages, leading B A Mee.

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) (Method of blasting layers of rock): briefed by M Vincent, Shelston IP. Led by Bannon SC. Leading B A Mee.

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](#).

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)

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 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

BUPA re Andrew Chang Services (NSD1870/2016) (Lee J, FCA) (insurance claim, misleading and deceptive conduct): At trial, Ms Cochrane will lead Mr D Harris.

L'Oreal v Brandpoint (Beach J, FCA) (Preliminary discovery, misleading and 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 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.