



SELECTED CASES
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Current and recent cases

Watson v Commissioner of Patents – Full Court of the Federal Court of Australia

Appeal in relation to whether a claim to a business method is patentable subject-matter, based upon the law of manner of manufacture.

Full Court appeal – February 2020 - Ms Cochrane appeared unled, leading Bembrick (called 2015), for the Commissioner, before a Full Court comprising Greenwood, McKerracher and Yates JJ. [\[2020\] FCAFC 56](#).

De novo appeal before Rares ACJ – Ms Cochrane appeared unled, leading Bembrick (called 2015), for the Commissioner, against Franklin SC. [\[2019\] FCA 1015](#).

Seiko Epson v Calidad Pty Ltd – High Court of Australia

Appeal as to the legal doctrine applicable to the question of whether a remanufactured printer ink cartridge infringes a patent.

Appeal to High Court of Australia. Led by Bannan SC leading Larish (called 2014), against Shavin QC and Dimitriadis SC. Special leave was granted: [\[2019\] HCATrans 225](#). In 2020 the High Court will consider whether to adopt the US doctrine of exhaustion of patent rights as opposed to the UK doctrine of implied licences.

Appeal - 13-14 August 2018 - Led by Bannan SC leading Larish (called 2014), against Dimitriadis SC and Burgess. [\[2019\] FCAFC 115](#); [\[2019\] FCAFC 168](#).

Trial - December 2016, April 2017 - Led by Catterns QC leading Larish (called 2014), against Dimitriadis SC and 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](#).

Merck v Wyeth LLC (“Pevnar 1”) – Federal Court of Australia (Burley J)

Validity and infringement of patents for a conjugate vaccine and its formulation, covering Wyeth’s Pevnar 13 pneumococcal vaccine and Merck’s 15-valent vaccine.

Reopened trial – March 2020 – Ms Cochrane appeared for Wyeth, led by Bannan SC leading Clark. Ms Cochrane addressed the Court in relation to the patent invalidity grounds of manner of manufacture, utility and fair basis in answer to submissions made by Katrina Howard SC. Trial judgment is reserved.

Interlocutory dispute re waiver of privilege – Sept 2019 – Ms Cochrane appeared unled, leading Mee (called 2014), against Howard SC and Larish. [\[2019\] FCA 1615](#).

Interlocutory dispute re notices to produce – August 2019 – Ms Cochrane appeared unled, leading Clark (called 2014), against Howard SC and Larish. [\[2019\] FCA 1421](#).

Trial – 2018/2019 - Led by Bannon SC leading Clark. Until trial, Ms Cochrane conducted the case for Wyeth, leading Mee and Clark, against Howard SC. At trial, Ms Cochrane conducted the part of the case concerning the formulation (container) patent and also addressed the court as to the validity of the vaccine patents.

Interlocutory discovery dispute (inventors records) - August 2018 – Ms Cochrane appeared, unled, leading Rob Clark (called 2014), against Howard SC and Larish.

F45 Training v Body Fit Training – Federal Court of Australia (Nicholas J)

Pre-action discovery in relation to a patent for a computer-implemented business method. Ms Cochrane appeared for F45, leading Ms Evetts. [\[2019\] FCA 1911](#).

F45 has now commenced proceedings against Body Fit for patent infringement.

Biomerics v Diros Technology and M Medical – Federal Court (Nicholas J)

Validity and infringement of patents for medical devices. Proceeding ongoing.

Interlocutory discovery dispute (inventors records) – October 2019 – Ms Cochrane appeared, unled, leading Evetts (called 2019), against Dimitriadis SC and Hughes.

Pfizer Ireland & Ors v Samsung Bioepis – Federal Court of Australia

Pre-action discovery application in relation to potential infringement of process patents for Etanercept, a biological medicine used to treat autoimmune diseases. See [\[2017\] FCA 285](#) (trial, Burley J), [\[2017\] FCAFC 193](#) (appeal, Allsop CJ and Perram and Nicholas JJ) and [\[2018\] HCATrans 97](#) (High Court special leave, refused). The proceeding is ongoing because the scope of discovery is unresolved.

Pfizer Ireland & Ors v Sandoz - Federal Court of Australia (Burley J)

Pre-action discovery application in relation to the potential infringement of process patents for Etanercept, a biological medicine. Hearing scheduled for April 2020.

FKP v Spirits – Full Federal Court (ownership of STOLI and other trade marks)

Appeals re (1) permanent stay of proceeding due to discovery issues, (2) whether trial can proceed based upon issue estoppels arising from Dutch decisions.

The appeals are due to be heard by the Full Court in August 2020.

Orders consequent upon reasons, whether determination of issue estoppels arising from Dutch decisions can be carved out from permanent stay. [\[2019\] FCA 1772](#).

Application for permanent stay of proceeding – March 2019. [\[2019\] FCA 802](#).

Interlocutory dispute re waiver of privilege - March 2019 – Ms Cochrane appeared, unled, against Larish (2014). [\[2019\] FCA 337](#).

Other Patent Cases

Pharmaceutical Patents – Vaccines and biological medicines

Wyeth vs Merck (“Pevnar 2”) (Burley J) Patent for 22F pneumococcal serotype, contained in Merck’s 15-valent pneumococcal vaccine, which is proposed as a substitute for Wyeth’s Pevnar 13 vaccine. Ms Cochrane, leading Clark (called 2014), appears for Wyeth against Howard SC and Larish. Trial in March 2021.

E. R. Squibb and Ono v Merck (Yates J) Patent for pembrolizumab, a biological medicine and the active ingredient in Merck's anti-cancer medicine, Keytruda. [\[2016\] FCA 1015](#) (discovery re experiments). Settled before trial.

Patentable subject matter, including computer-implemented business methods

Encompass Corporation v InfoTrack – Full Court of the Federal Court

Validity and infringement of patent for a computer-implemented business method.

Appeal - Nov 2018 – 5 member bench (Allsop CJ, Kenny J, Besanko J, Nicholas J and Yates J). Led by Goddard SC leading Mee, against Shavin QC and Lang. Ms Cochrane conducted the hearing and addressed the 5-member bench re innovative step and claim construction, against Shavin QC. [\[2019\] FCAFC 161](#).

Trial - March-April 2017 - Led by Catterns QC leading Mee (called 2014), against Shavin QC and Lang. Ms Cochrane cross-examined the inventor, on credit and technical issues, and a director. Ms Cochrane conducted the trial and addressed the court 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, against Shavin QC. [\[2018\] FCA 421](#).

Interlocutory discovery dispute - December 2016 – Ms Cochrane appeared unled, leading Mee (called 2014), against Lang (called 2006). [\[2016\] FCA 1509](#).

Grant v Commissioner of Patents. Business method. [\[2005\] FCA 1100](#).

Pharmaceutical Patents – Other Medicines

Glaxo Group re Apotex (NSD525/2015) (abacavir hemisulphate, anti-HIV drug): Ms Cochrane appeared unled, briefed by I Pascal, Davies Collison Cave. Case 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): 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): briefed by Davies Collison Cave. See [\[2014\] APO 28](#). (Patent Office opposition; Ms Cochrane appeared unled).

Telecommunications Patents

Voxson Pty Ltd v Telstra Corporation Ltd & Ors:

Validity and infringement of a patent re GPS and telecommunications technology.

Interlocutory dispute re limitations of actions – Feb 2017 – Ms Cochrane appeared unled, leading McGovern (2014), for Vodafone against Shavin QC. [\[2017\] FCA 267](#)

Interlocutory dispute re questions for expert witness conclave – February 2018 – Unled, leading McGovern (2014), for Vodafone against Shavin QC. [\[2018\] FCA 227](#)

Trial - Led by Bannon SC leading McGovern, against Shavin QC and Cunliffe. Until trial, Ms Cochrane conducted the case for Vodafone, leading McGovern. At trial, Ms Cochrane addressed the court on non-infringement and evidentiary matters, including the Wayback Machine: [\[2018\] FCA 376](#). The case settled during trial.

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](#).

Other Patents

Dyno Nobel v Orica Explosives – Federal Court of Australia (Burley J)

Validity and infringement of a patent for a method of blasting in the mining industry.

Trial - 9-27 September 2019. Matter settled during trial.

Interlocutory discovery dispute – May 2019 – Ms Cochrane appeared, unled, leading Bembrick (called 2015), against Caine QC and Rothnie (called 2002) (Vic Bar).

Interlocutory discovery dispute – Feb 2019 – Ms Cochrane appeared, unled, leading Harris (called 2015), against Murray SC and Rothnie (called 2002). [\[2019\] FCA 258](#).

Interlocutory dispute re discovery and product/process descriptions under FCA practice note – August 2018 – Ms Cochrane appeared unled, leading Larish (called 2014), against Caine QC and Rothnie (called 2002) (both Vic Bar).

Nichia Corporation v Arrow Electronics – Full Court of the Federal Court

Validity and infringement of a patent concerning ‘bright white’ LED.

Appeal - February 2018 - Led by Catterns QC leading Larish (called 2014), against Howard SC and Bevan. Ms Cochrane conducted the hearing and addressed the court re inventiveness/obviousness of the patent, against Howard SC. [\[2019\] FCAFC 2](#).

Trial - May 2016 - Led by Catterns QC leading Larish (called 2014), against Howard SC and Bevan (called 2006). Ms Cochrane conducted the trial and addressed the court for Nichia in relation to novelty (including establishing the prior art was a forgery) and fair basis of the patent, against Howard SC. [\[2017\] FCA 864](#).

Dometic Australia v Houghton Leisure Products – Federal Court (White J)

Validity and infringement of a patent for air-conditioning units.

Interlocutory injunction dispute - February 2017 – Ms Cochrane appeared unled, leading Mee (called 2014), against Hennessey SC, Lang and St John.

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

Costs dispute - December 2018 – Ms Cochrane appeared unled, leading Larish (called 2014), against Rofe QC. [\[2019\] FCA 57](#).

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.

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

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

Hills Holdings ats USSS (Jagot J, FCA) (Patent for solar panels): Led by Hennessy SC leading L McGovern. Settled before June 2017 trial.

Cementech v Austral and Adbri (patent for building materials): Ms Cochrane appeared unled for Adbri. [\[2013\] 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 (patent for infant formula): 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](#) (admin law). Settled.

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)

Competition, trade practices, restraint of trade and confidential information

Examinations for the Australian Competition and Consumer Commission – November 2019 – Ms Cochrane conducted confidential examinations for the ACCC.

Bupa HI Pty Ltd v Andrew Chang Services Pty Ltd – Federal Court (Lee J)

Misleading or deceptive conduct, restitution, breach of contract.

Quantum trial – Claim for more than \$14 million - Unled, leading Harris (called 2015), against Jackman SC, Klineberg (called 2009) and Langshaw. Case settled.

Appeal - August 2019 - Led by Hutley SC leading Harris. [\[2019\] FCAFC 180](#).

Liability Trial - August 2018 – Ms Cochrane appeared unled, leading Harris (called

2015) and Smorchevsky (called 2017), against Jackman SC, Klineberg and Langshaw. Ms Cochrane conducted the trial for Bupa, including cross-examining Dr Chang, on credit (successfully), and two experts, re technical fact and opinion. [\[2018\] FCA 2033](#)

Mediation - April 2019 – Ms Cochrane appeared unled, leading Harris (called 2015), against Klineberg (called 2009). Matter did not settle.

Dental Corporation v Dr Lee & Anor (Rein J, Supreme Court NSW, Commercial List)
Breach of business restraint of trade concerning a corporate dental practice.

Trial - December 2016 – Ms Cochrane appeared unled, leading Harris (called 2014) and McGovern (called 2016), for Dental Corporation. [\[2016\] NSWSC 1859](#).

L'Oreal v Brandpoint (Beach J, FCA) (preliminary discovery, misleading or deceptive conduct): Ms Cochrane appeared unled, leading St John. [\[2015\] 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](#).

Insurance Cases

Ensham Resources v Aioi Insurance (NSD1256/10): \$540m insurance claim arising from 2008 Emerald Flood, where the insurers alleged fraud. See [\[2011\] FCA 1392](#) (subpoenas; Ms Cochrane appeared unled against Stevenson SC and Whittaker SC), [\[2012\] FCA 537](#) (pleadings amendment), [\[2012\] FCA 710](#) (legal professional privilege; Ms Cochrane unled, leading Flecknoe-Brown, against Whittaker SC and Klineberg, and cross-examined Mr Stockdale, solicitor), [\(2012\) 17 ANZ Insurance Cases 61-942](#) (legal professional privilege appeal; Ms Cochrane appeared unled, leading Flecknoe-Brown, against Whittaker SC and Klineberg). Case 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

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/equity - 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 NSW; Cascade Coal Pty Limited v NSW [\[2015\] 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, where Ms Cochrane appeared unled against Mr Green SC); [\(2013\) 215 FCR 16](#) (full court appeal); [\[2014\] HCATrans 157](#) (special leave); [\(2014\) 109 IPR 154](#) (HCA).

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

Mars v Sweet Rewards: 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 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, against four separate respondents, where the matter settled.