

CURRICULUM VITAE

David Shavin

Enrolment as a legal practitioner:

Admitted as a Barrister and Solicitor of the Supreme Court of Victoria (and noted on the Register of Practitioners in the High Court): 1 March 1977

Also admitted as:

- a. a barrister in the Supreme Court of New South Wales: 6 November 1981;
- b. a barrister in Queensland: 7 October 1991;
- c. a lawyer registered to practice as a barrister sole in the Dominion of New Zealand: 15 June 1994;
- d. a barrister and solicitor in Tasmania: 2 October 1995

Appointment as Queen's Counsel or Senior Counsel:

- a. Queen's Counsel, Victoria: 22 November 1993;
- b. Queen's Counsel, Dominion of New Zealand: 23 August 1994;
- c. Senior Counsel, New South Wales: 4 November 1994

Additional professional activities:

Member of each of the Intellectual Property and Trade Practices Committees of the Law Council of Australia since in or about 1983.

Member of both the Federal Litigation Section and the Federal Court/Law Council Practice and Procedure Liaison Committee since July 1998.

Between 2004 and 2006, I led a Law Council team in the preparation of a report to the Federal Court on case management techniques which the Court might consider and then took an active role in the organisation and conduct of a Workshop in March 2008 conducted jointly by the Law Council and over 30 judges of the Federal Court to explore some of the recommendations in that Report.

Foundation member of the Federal Magistrates Court/Law Council Practice and Procedure Liaison Committee.

Lecturer with Professor Maureen Brunt and others in post graduate, multi-disciplinary courses in Advanced Trade Practices for LLM, M.Ec and MBA programs conducted successively at Monash University, Melbourne University and the Melbourne Business School from 1983 to 1992 and in 1995

Details of Some Publications:

Restrictive Trade Practices section co-editor and then section editor of the Australian Business Law Review 1978-1984.

Trade Practices section editor The Annual Survey of Law edited by Professor Baxt and Gretchen Kewley 1979-1980.

I have presented a number of papers at conferences in Australia and New Zealand and in professional development programs, some of the more recent of which include:

Competition Law and Policy Institute of New Zealand, Wellington Conference
5-6 August 2011 – Patent Law and the Commerce Act.

24th Annual IPSANZ Conference -10-12 September 2010 –Noosa “Striking the Balance between Invention and the Public Domain – Contentious Issues in Patentable subject matter”.

Paper for IPSANZ Dinner Meeting – 13 August 2009.

“Claim width – Are there real and reasonably clear limitations?”

New Zealand Bar Association Annual Conference, 16 August 2008, Sydney – “A Global Approach to Law – Life as a Barrister in 21st Century” Session 3 Part II: How to develop an international practice with particular reference to trans-Tasman legal practice – Some Notes.

“Ethics for Civil Litigation Advocates” – 17 March 2008 – Published Melbourne: Leo Cussen Institute 2008.

Law Institute of Victoria – Professional Development Program 22 February 2007 – “Current Developments, Colour Trade Marks”

Victorian Bar CLE Program 31 May 2006 – “Patents – Recent Developments in Patent Law” (with Ms H Rofe)

Competition Law and Policy Institute of New Zealand, Wellington Conference
5-6 August 2006 – “Section 98 of the *Commerce Act* 1986: Where do the Limits Lie?”.

Competition Law and Policy Institute of New Zealand, Christchurch Conference
5-7 August 2005 – “Recent Developments in s.46 of the *Australian Trade Practices Act* 1974”. (*This paper was cited by counsel for the Commerce Commission in the New Zealand Supreme Court*)

IPTA Annual Conference Brisbane 20-23 April 2005 – “Patent Attorney Privilege”

13th Commonwealth Law Conference, Melbourne, 16 April 2003 - “Protecting IP Rights”

At the request of Black CJ, Federal Court Judges Half Yearly Conference Brisbane, 29 August 2003 – “Case Management and the Individual Docket System”

16th IPSANZ Annual Conference Sydney September 2002, - “Biotechnology Patents – Patentability of a sequence – How wide can you claim?” (with Ms K Howard)

Manner of Manufacture – Does Myriad encompass the space between a ROKT and a hard place – IPSANZ Conference Noosa September 2019

Thoughts on the Issue of Delay Judgements – Federal Court Liaison Committee November 2018

Selection of Cases

1. *Aristocrat Technologies Australia Pty Ltd v Commissioner of Patents* - Appeal to the Full High Court by Aristocrat heard June 2022, decision reserved; appeared for the Appellant (2021) 286 FCR 572 Full Federal Court granted appeal; dissent Nicholas J; [2020] FCA 778 Burley J.
2. *Commissioner of Patents v Thaler* – AI as an inventor [2022] FCAFC 62 (Special leave to Appeal sought); [2021] FCA 879 (Beach J granted appeal from the decision of the Commissioner)
3. *State Street Global Advisors Trust Company v Maurice Blackburn Pty Ltd* [2022] FCAFC 57;
4. *Repipe Pty Ltd v Commissioner of Patents* [2021] FCAFC 223;
5. *Merck Sharp & Dohme Corp v Sandoz* [2022] FCAFC 40 (Patent Term Extension); [2021] FCA 947 Jagot J;
6. *Federal Treasury Enterprises (FKP) Sojuzplodoimport v Spirits International BV* [2022] FCA 150 (further conduct of proceedings); [2021] FCFCA 77 (Full Federal Court allows appeal from a permanent stay decision). Appeared for the successful appellants
7. *Chevron Global Energy Inc v Ampol Australia Petroleum* [2021] FCA 617;
8. *Pfizer Ireland Pharmaceuticals v Samsung Bioepis AU Pty Ltd* [2021] FCA 1428; (No 2) [2019] FCA 657; [2017] FCAFC 193 (for appellant granted pre-action discovery)
9. *Ariosa Diagnostics Inc v Sequenom Inc* [2021] FCAFC 101 Full Federal Court dismissed an appeal from Beach J (2019) 143 IPR 24 (appeared for the successful respondent in the Full Court and at first instance).
10. *Calidad Pty Ltd v Seiko Epson Corp* (appeared for successful appellant in the High Court) [2020] HCA 41 [2019] FCAFC 168).
11. *Rokt Pte Limited v Commissioner of Patents* [2020] FCAFC 86; (2018) 139 IPR 1.
12. *Viiv Healthcare Company v Gilead Sciences Pty Ltd* [2020] FCA 594;
13. *Encompass Corp Pty Ltd v Info Track Pty Ltd* [2019] FCAFC 161.
14. *SNF (Australia) Pty Ltd v BASF Australia Limited* (2019) 140 IPR 276.
15. *Neurim Pharmaceuticals (1991) Limited v Generic Partners Pty Ltd (No 2)* (2019) 139 IPR 424 (Trial heard December 2020, judgment reserved).
16. *Australian Meat Group Pty Ltd v JBS Australia Pty Ltd (No.2)* [2019] FCAFC 15 ; [2018] FCAFC 207 ; [2017] FCA 1611 ; [2017] FCA 1421
17. *Myosa Pty Ltd v Resmed Ltd* [2017] FCA 1187;
18. *Becton Dickinson Pty Ltd v B Braun Melsungen AG (No 2)* [2018] FCA 1987.
19. *Generic Health Pty Ltd v Bayer Pharma Aktiengesellschaft [No 2]* [2018] FCAFC 210.
20. *Becton Dickinson Pty Limited v B Braun Melsungen AG* [2018] FCA 1692.
21. *Generic Health Pty Ltd v Bayer Pharma Aktiengesellschaft* (2018) 137 IPR 1 (Full Court).
22. *Sigma Pharmaceuticals (Australia) Pty Ltd v Wyeth* (2018) 135 IPR 8.
23. *Dincel Construction Systems Pty Ltd v AFS Systems Pty Ltd* (2018) 135 IPR 197 (Full Court).
24. *Neurim Pharmaceuticals (1991) Limited v Generic Partners Pty Ltd* (2018) FCA 1082 (Legal Professional Privilege and Waiver).

25. *Grasslanz Technology Limited v Agricultural Victoria Services Pty Limited* (2018) 143 IPR 325.
26. *GlaxoSmithKline Consumer Healthcare Investments (Ireland) (No 2) Limited v Generic Partners Limited (No 2)* (2018) 131 IPR 384 (Full Court).
27. *SNF (Australia) Pty Limited v BASF Australia Limited* (2018) 136 IPR 478.
28. *Encompass Corp Pty Limited v Info Track Pty Limited* (2018) 130 IPR 387.
29. *Voxson Pty Ltd v Telstra Corp Limited (No 10)* (2018) 134 IPR 99.
30. *Sanofi v Amgen Inc* (2018) 134 IPR 150.
31. *Bayer Pharma Aktiengesellschaft ats Generic Health Pty Limited* (2017) 124 IPR 23.
32. *SNF (Australia) Pty Limited v BASF Australia Limited* (2017) 126 IPR 52.
33. *Spark New Zealand Trading Limited v Commerce Commission, Sky Network Television Limited, Vodafone New Zealand Limited and Vodafone Europe BV* [2017] NZHC 238;
34. *SNF (Australia) Pty Limited v Ciba Speciality Chemicals Water Treatments Limited* (2016) 124 IPR 392.
35. *SNF (Australia) Pty Limited v Ciba Speciality Chemicals Water Treatments Limited* (2016) FCAFC 112.
36. *Voxson Pty Ltd v Telstra Corp Limited (No 4)* [2016] FCA 915.
37. *CQMS Pty Ltd v Bradken Resources Pty Ltd* (2016) 120 IPR 44.
38. *GlaxoSmithKline Australia Pty Ltd v Reckitt Benckiser Healthcare (UK) Limited* (2016) 120 IPR 405 (Full Court).
39. *GlaxoSmithKline Consumer Healthcare Investments (Ireland) No 2 Limited v Apotex Pty Ltd* (2016) 119 IPR 1.
40. *Multigate Medical Devices Pty Limited v B Braun Melsungen AG (No 2)* (2016) 117 IPR 1 (Full Court).
41. *Commonwealth of Australia v Sanofi; Commonwealth v Wyeth* (2015) 237 FCR 483.
42. *D'Arcy v Myriad Genetics Inc* (2015) 258 CLR 334.
43. *SNF (Australia) Pty Ltd v Ciba Specialty Chemicals Water Treatments Ltd* (2015) 114 IPR 231.
44. *Sunesis Pharmaceuticals Inc v Commissioner of Patents* (2015) 228 FCR 448 (Full Court).
45. *Vringo Infrastructure Inc v ZTE (Australia) Pty Ltd (No 4)* (2015) 110 IPR 568.
46. *B Braun Melsungen AG v Multigate Medical Devices Pty Ltd* [2014] FCA 1110.
47. *D'Arcy v Myriad Generics Inc* (2014) 224 FCR 479 (Full Court).
48. *Major Electricity Users Group Inc v Commerce Commission, Transpower New Zealand Limited and ors* [2014] NZHC 1765;
49. *Generic Health Pty Ltd v Bayer Pharma Aktiengesellschaft* (2014) 222 FCR 336.
50. *Gunns Plantations Ltd (In Liq) (recs and mgrs. Appted) (No. 4)* [2014] VSC 369; [104] VSC 239;
51. *ACCC v Koyo Australia Pty Ltd* (2013) FCA 1051;
52. *APT Projects Ltd. Re* [2013] VSC 471;
53. *Pipe Networks Pty Ltd v Commonwealth Superannuation Corp* [2013] FCA 608; [2013] FCA 444;

54. *Tivo Inc v Vivo International Corp Pty Ltd* [2013] FCA 1340; [2013] FCA 797; [2012] FCAFC 159; [2012] FCA 336 ; [2012] FCA 252; contempt [2013] FCA 1340 ; remedy interlocutory appln [2013] FCA 797;
55. *Elders Forestry Management Ltd: Re* [2013] VSC 747; [2012] VSC 373; [2012] VSC 287;
56. *Chia Khim Lee Food Industries Pte Ltd v Red Bull Gmbh (No.1)* [2012] FCA 1184
57. *ACCC v Metricon Homes QLD Pty Ltd* [2012] FCA 797;
58. *Sekisui Rib Loc Australia v Rocla Pty Ltd* [2012] SASCFC 21;
59. *Manderson M & F Consulting (A Firm) v Incitec Pivot Ltd* [2011] VSC 444; [2011] VSC 441; [2011] VSC 205;
60. *ACCC v Japan Airlines Int Co Ltd* [2011] FCA 365;
61. *SNF (Australia) Pty Ltd v CIBA Specialty Chemicals Water Treatments Ltd and Anor* – [2011] FCA 656; retained judgment on appeal [2012] FCAFC 95; Special Leave to the High Court refused [2013] HCATrans 54; Re-opening application resisted [2015] FCA 787; Application for leave to appeal rejected [2016] FCAFC 88;
62. *Albany Molecular Research Inc v Arrow Pharmaceuticals Pty Ltd (No.2)* [2011] FCA 426; [2011] FCA 252; [2011] FCA 120;
63. *Sigma Pharmaceuticals v Wyeth and Ors* – [2010] FCA 1258; appeal allowed [2011] FCAFC 132; (No.2) [2011] FCAFC 143; (No.3) [2011] FCAFC 165; Special Leave to Appeal to the High Court refused [2012] HCATrans 116
64. *Commerce Commission v Telecom Corporation of New Zealand Ltd* [2010] NZSC 111; [2011] 1 NZLR 577 (Sup Ct); [2009] NZCA 388 (Court of Appeal); [2009] NZHC 1397 (High Court);
65. *Commerce Commission v Telecom Corporation of New Zealand Ltd* [2008] NZHC 545;
66. *CSL and anor v Novo Nordisk interlocutory judgment on amendment of the patent* [2010] FCA 1251; [2010] FCA 1279; [2010] FCA 1251;
67. *Kelly Services Inc v Ford Kelly Executive Connection Pty Ltd* [2010] 89 IPR 380;
68. *ACCC v Cabcharge Australia Ltd* [2010] FCA 1261; [2010] FCAFC 111;
69. *Timbercorp Securities Ltd (in liq) Re* [2010] VSC 50;
70. *Arbitron Inc v Telecontrol Aktiengesellschaft* [2010] FCA 302; [2009] FCA 1438;
71. *Nokia Corp v Liu* [2009] FCAFC 138;
72. *GE BetzDearborn Canada Coy v Memcor Australia Ltd* Appeal on the opposition [2009] FCA 507; By leave, appeal to the Full Court [2009] FCAFC 163; Service out of the jurisdiction [2013] FCA 78;
73. *Memcor Australia Pty Ltd v GE BetzDearborn Canada Co Jagot J* (2009) FCA 507; Full Court (2009) FCAFC 163, 20 November 2009;
74. *Adnurat Pty Ltd v ITW Construction Systems Australia Pty Ltd* [2009] FCA 499;
75. *Great Southyern Managers Australia Ltd, RE (recs nd mngrs apptd) (in liq)* [2009] VSC 627; [2009] VSC 557;
76. *Peter Bodum A/S v DKSH Australia Pty Ltd* [2008] FCA 1854;
77. *Gardena (Australia) Pty Ltd Nylex Corp Pty Ltd* [2008] FCA 1846;

78. *Cadbury UK Ltd v Registrar of Trade Marks* [2008] FCA 1126 ;
79. *Cadbury Ltd v Darrell Lea Chocolate Shops Pty Ltd* (2008) 75 IPR 581;
80. *Louis Vuitton Malletier SA v Toea v Pty Ltd* (2007) 70 IPR 307; (2006) 69 IPR 386 ;
81. *Cadbury v Darrell Lea* (2006) 69 IPR 386 opposition dismissed in AIPO; [2008] FCA 1126;
82. *Vans Inc v Offprice.com.au Pty Ltd* [2006] FCA 137;
83. *Monsanto v Syngenta Seeds Pty Ltd* [2006] FCA 228;
84. *H Lundbeck A/S v Alphapharm and ors* [2006] 67 IPR 654 (Validity of Reg 10.7(7)); (2008) 76 IPR 618 (FCA) (trial judgment on validity, infringement and extension of term); Full Court (2009) FCAFC 70, No.2 [2009] FCAFC 118 ; December 2009 Special Leave to Appeal to the High Court refused;
85. *Pfizer v Ely Lilly & Co & Bayer AG* - (2005) 218 ALR 408 (FCA); (2005) 225 ALR 416 (FCAFC); (2006) HCA Trans 271; (in Aust) and interlocutory fights in New Zealand (2005) 66 IPR 661 (NZ H Ct); (2005) 68 IPR 207 (NZCofA) - the New Zealand matter settled before trial;
86. *Woolworths v BP plc* (2004) 212 ALR 79 (FCA); three Full Court decisions - (2006) 150 FCR 134; then (2006) 235 ALR 698 and (2006) 70 IPR 270; (2007) HCA Trans 249;
87. *Crazy Ron's Communications Pty Ltd v Mobileworld Communications Pty Ltd* (2004) 61 IPR 212 (FCAFC);
88. *Alstom Power Ltd v Eraring Energy* [2004] FCA 706;
89. *Ford Motor Co of Australia Ltd v ArrowcrestGroup Pty Ltd* [2003] FCAFC 313; [2002] FCA 1618; [2002] FCA 1450;
90. *Mobileworld Communications Pty Ltd v Q & Q Global Enterprises* (2003) 59 IPR 107 (FCA); (2003) 61 IPR 98 (FCA); [2004] FCA 1200 (Contempt of Court);
91. *Boral Besser Masonry Ltd v ACCC* (2003) 215 CLR 374; (2001) 106 FCR 328; (No.2) [1999] FCA 1641; [1999] FCA 1318; [1999] FCA 889;
92. *ACCC v Sensis Pty Ltd* [2002] FCA 1571;
93. *NufarmAustralia Ltd v Parmenter* [2002] FCA 902;
94. *ACCC v ABB Transmission and Distribution Ltd (No.2)* [2002] FCA 559;
95. *Telstra Corp Ltd v Von Doussa* [2002] FCA 108;
96. *Mycogen Plant Science In v Monsanto Australia Ltd* [2002] FCA 613; (2001) 51 IPR 364
97. *Telstra Ltd v Desktop Marketing Pty Ltd* (2001) 51 IPR 257 (FCA) copyright in telephone directories; [2001] FCA 814;
98. *Catepillar Inc v John Deere Ltd* [2001] FCA 306; (No.2) (2000) 181 ALR 108; [2000] FCA 712; (1999) 48 IPR 1; [1999] FCA 723;
99. *McCormick & Co. Inc. v Mary McCormick* (2000) 51 IPR 102 (FCA);
100. *Geographical Indications Committee v O'Connor* [2000] FCA 1877;
101. *Caterpillar & Co Inc v John Deere & Co* (1999) 48 IPR 1 (FCAFC) appeal to the Full Court to join a US company; [1999] FCA 723 discovery issues in patent cases; (2000) FCA 716 (Particulars of non-infringement); (2000) FCA 1903 (FCA) - Letters of request executed in a deposition style hearing in Chicago before ultimate settlement pre-trial; (2000) 181 ALR 108 (FCA) – admissibility of US deposition transcripts;

102. *CA Henschke Co v Rosemount Estates Pty Ltd* (1999) 47 IPR 63; (2000) 52 IPR 42; (1999) 48 IPR 621;
103. *Genetics Institute v Kirin-Amgern Inc* (1999) 44 IPR 257; (1999) 43 IPR 189;
104. *Koninklijke Phillips Electronics NV v Remington Products Australia Pty Ltd* (1999) 44 IPR 551; (1999) 45 IPR 634 (FCA); (2000) 177 ALR 167 (FCAFC); (2001) 22(8) Leg Rep SL1(HCA Special Leave);
105. *Comite Interprofessionnel des vins des Cotes de Provence v Bryce (No.2)* [1999] FCA 1838;
106. *Veuve Cliquot Ponsardin, Maison Fondee En 1772, Re appln by* (1999) 45 IPR 525;
107. *Telstra Corp Ltd v Optus Communications Lty Ltd and anor* (1997) 75 FCR 171;
108. *ACCC v Mobil Oil Australia Ltd* [1997] FCA 480;
109. *Caterpillar Inc v Sun Forward Pty Ltd* (1996) 36 IPR 411 (partially successful summary judgment);
110. *CIVC & INAO v. Bryce* (1996) 35 IPR 170 (FCA);
111. *Patent Gesellschaft AG v Saudi Livestock and Trading Co* (1996) 33 IPR 426 (FCA); (1997) 37 IPR 523 (FCAFC); (1997) 9 Leg Rep SL 1b (HCt);
112. *Telstra Corp Ltd v Australian Telecommunications Authority* (1995) 133 ALR 417;
113. *Constantine v TPC* (1994) 48 FCR 141;
114. *Amarillo Cell Culture Co. Inc. v Fernz Corporation*; CL52-93 3 October 1994, NZ High Court per Barker J
115. *Musidor BV v Tansing* (1994) 29 IPR 203 (FCAFC)
116. *Re Polo Textile Industries Pty Ltd and anor v Domestic Textile Corporation Pty Ltd and anor* (1993) 114 ALR 157 (FCA);
117. *TPC v Santos Ltd* (1993) 42 FCR 203; (1992) 38 FCR 382;
118. *Linter Group v Goldberg* (1992) 7 ACSR 580;
119. *Fisher & Paykel Healthcare Pty Ltd v Avion Engineering Pty Ltd* (1991) 22 IPR 1;
120. *Fisher & Pykel Heathcare Pty Ltd v Avion Engineering Pty Ltd* (1991) 103 ALR 239 (FCAFC);
121. *Devenish v Jewel Food Stores Pty Ltd* (1991) CLR 32;
122. *Oxford University Press v Registrar of Trade Marks* (1990) 24 FCR 1;
123. *Prestige Group Australia Pty Ltd v Dart Industries Inc* (1990) 26 FCR 197;
124. *Paul Dainty Corp Pty Ltd v National Tennis Centre Trust* (1990) 22 FCR 495;
125. *Perpetual Trustees Co Ltd v Bell Resources Ltd* (1990) 2 ACSR 337;
126. *The Registrar of Trade Marks v Oxford University Press* (1989) 15 IPR 646 (Vic Sup Ct); (1990) 94 ALR 369 (FCAFC);
127. *Queensland Wire Industries Pty Ltd v Broken Hill Proproety Co Ltd* (1989) 167 CLR 177;
128. *Riv-Oland Marble Co. (Vic) Pty. Ltd. v Settef SpA* (1988) 19 FCR 569 (FCAFC); (1989) 63 ALJR 519 (HCA Special Leave)
129. *Carlton United Breweries (NSW) Pty Ltd v Bond Brewing New Souty Wales Ltd* (1987) 76 ALR 633; (1986) 7 IPR 581;

130. *News Corp Ltd, Re* (1987) 15 FCR 227;
131. *SCI Operations Prty Ltd v TPC; Visy Board v A-G(Cth) v TPC; APM Investments* (1984) 2 FCR 113; (1983) 49 ALR 475; (1983) 51 ALR 365;
132. *Pyneboard Pty Ltd v TPC* (1983) 152 CLR 328; (1982) 39 ALR 565;
133. *Adamson v WANFL* (1978) 20 ALR 191;
134. *Tradestock Pty Ltd v TNT (Management) Pty Ltd* (1977) 14 ALR 52.