

# Hamish Bevan SC

Barrister-at-law, Nigel Bowen Chambers

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## Background and qualifications

Hamish was called to the Bar in May 2006 and was appointed Senior Counsel in October 2021. He has a strong practice, principally in the areas of intellectual property and administrative law.

Hamish is a graduate of the University of Sydney with a Bachelor of Arts (Honours Class I) (English Literature) and a Bachelor of Laws (First Class Honours).

He was the Associate to the Hon Justice A R Emmett (then of the Federal Court of Australia), following which he practised as a solicitor in litigation and dispute resolution at Allens Arthur Robinson (now Allens) before coming to the Bar.

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## Experience at the Bar and notable cases

Hamish's practice at both trial and appellate levels in intellectual property extends to all areas of that field: trade marks, copyright, patents and designs, as well as passing off and related consumer law and confidential information. He frequently advises and represents diverse clients, including from the pharmaceutical and healthcare sectors, as well as those in mining, telecommunications, technology and gaming, and fast-moving consumer goods and luxury brands. In this, he draws on his broader experience in commercial law, contract and equity, in both advisory and appearance roles.

His experience and expertise has earned him consistent recognition in directories such as Doyle's Guide, Chambers and Partners (Global and Asia-Pacific), World Trade Mark Review, Best Lawyers in Australia (Intellectual Property) and The Legal 500 Asia Pacific.

In administrative law, Hamish has particular distinction in migration cases, appearing regularly on behalf of the Minister for Immigration, as well as applicants (often pursuant to the Courts' referral schemes for legal assistance).

Hamish appears regularly in the Federal Court of Australia and the Federal Circuit and Family Court of Australia (Division 2), and also has experience in the Supreme Court of New South Wales and at hearings at IP Australia.

Selected cases of interest include:

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## Patents

*Thaler v Commissioner of Patents* [2021] FCA 879 (Beach J) and *Commissioner of Patents v Thaler* (2022) 289 FCR 45, [2022] FCAFC 62 (Allsop CJ, Nicholas, Yates, Moshinsky and Burley JJ) and *Thaler v Commissioner of Patents* [2022] HCATrans 199 (Gordon, Edelman and Gleeson JJ)

*Vehicle Monitoring Systems Pty Ltd v SARB Management Group Pty Ltd trading as Database Consultants Australia and City of Melbourne (No 2)* (2020) 150 IPR 554, [2020] FCA 447 (Yates J), *(No 4)* [2021] FCA 819 (Yates J) and *(No 8) (Liability)* [2023] FCA 182 (Besanko J)

Meat & Livestock Australia Ltd v Cargill, Inc (No 2) (2019) 139 IPR 47, [2019] FCA 33 (Beach J) and Meat and Livestock Australia Ltd v Branhaven LLC (2020) 154 IPR 402, [2020] FCAFC 171 (Kenny, Nicholas and Burley JJ)

Nichia Corp v Arrow Electronics Australia Pty Ltd [2015] FCA 699, (No 3) (2017) 240 FCR 13, [2017] FCA 864 and (No 4) [2017] FCA 864 (Yates J) and Nichia Corp v Arrow Electronics Australia Pty Ltd [2019] FCAFC 2 (Besanko, Jagot and Nicholas JJ) and Nichia Corp v Arrow Electronics Australia Pty Ltd [2019] HCASL 221

CQMS Pty Ltd v Bradken Resources Pty Ltd (2016) 120 IPR 44, [2016] FCA 847 (Dowsett J)

Warner-Lambert Co LLC v Apotex Pty Ltd (2014) 311 ALR 632, 106 IPR 281, [2014] FCAFC 59 (Allsop CJ, Jagot and Nicholas JJ)

Aristocrat Technologies Australia Pty Ltd v Konami Australia Pty Ltd (2015) 114 FCR 28, [2015] FCA 735 (Nicholas J on liability) and Konami Australia Pty Ltd v Aristocrat Technologies Australia Pty Ltd (2016) 119 IPR 402, [2016] FCAFC 103 (Besanko, Perram and Jagot JJ) and Aristocrat Technologies Australia Pty Ltd v Konami Australia Pty Ltd (No 3) (2022) 170 IPR 42, [2022] FCA 1373 (Nicholas J on account of profits and damages)

Konami Gaming Inc v Aristocrat Technologies Australia Pty Ltd (2015) 110 IPR 524, [2015] FCA 92 (Bennett J)

Reckitt Benckiser Healthcare (UK) Ltd v GlaxoSmithKline Australia Pty Ltd (2013) 103 IPR 405, [2013] FCA 583 and (No 2) (2013) 103 IPR 472, [2013] FCA 736 (Rares J) and GlaxoSmithKline Australia Pty Ltd v Reckitt Benckiser Healthcare (UK) Ltd (2013) 305 ALR 363, 103 IPR 487, [2013] FCAFC 102 (Bennett, Jagot and Griffiths JJ) and [2013] FCAFC 150 (Allsop CJ, Middleton and Katzmann JJ)

Beadcrete Pty Ltd v Fei Yu trading as Jewels 4 Pools (No 2) (2013) 100 IPR 188, [2013] FCA 187 (Jagot J) and Fei Yu trading as Jewels 4 Pools v Beadcrete Pty Ltd (2014) 107 IPR 516, [2014] FCAFC 117 (Dowsett, Middleton and Robertson JJ)

DSI Australia (Holdings) Pty Ltd v Garford Pty Ltd (2013) 100 IPR 19, [2013] FCA 132 (Yates J) and Garford Pty Ltd v DYWIDAG Systems International Pty Ltd (2015) 110 IPR 30, [2015] FCAFC 6

Esco Corp v PAC Mining Pty Ltd (2008) 76 IPR 191, [2008] FCA 640 (Tamberlin J) and PAC Mining Pty Ltd v Esco Corp (2009) 80 IPR 1, [2009] FCAFC 18 (Sundberg, Jessup and Middleton JJ) and Esco Corp v PAC Mining Pty Ltd [2009] HCATrans 176 (High Court)

Mont Adventure Equipment Pty Ltd v Phoenix Leisure Group Pty Ltd (2009) 176 FCR 575, [2015] FCAFC 84 (Emmett, Bennett and Jagot JJ) (for the Institute of Patent and Trade Mark Attorneys as interveners)

Memcor Australia Pty Ltd v GE Betzdearborn Canada Co (2009) 84 IPR 1, [2009] FCAFC 163 (Emmett, Stone and Bennett JJ)

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## Trade marks

Self Care IP Holdings Pty Ltd v Allergan Australia Pty Ltd [2023] HCA 8 (Kiefel CJ, Gageler, Gordon, Edelman and Gleeson JJ)

In-N-Out Burgers, Inc v Hashtag Burgers Pty Ltd (2020) 377 ALR 117, 150 IPR 73, [2020] FCA 193 (Katzmann J) and Hashtag Burgers Pty Ltd v In-N-Out Burgers, Inc (2020) 385 ALR 514, [2020] FCAFC 235 (Nicholas, Yates and Burley JJ)

Fairfax Media Publications Pty Ltd v Network Ten Pty Ltd [2018] FCA 2003 (Yates J)

Accor Australia & New Zealand Hospitality Pty Ltd v Liv Pty Ltd (2017) 345 ALR 205, 124 IPR 264, [2017] FCAFC 56 (Greenwood, Besanko and Katzmann JJ)

Bavaria NV v Bayerischer Brauerbund eV (2009) 177 FCR 300, [2009] FCA 428 (Bennett J)

Pioneer Computers Australia Pty Ltd v Pioneer KK (2009) 176 FCR 300, [2009] FCA 135 (Bennett J)

Mars Australia Pty Ltd v Sweet Rewards Pty Ltd (2009) 81 IPR 354, [2009] FCA 899 (Perram J) and (2009) 84 IPR 12, [2009] FCAFC 174 (Emmett, Bennett and Edmonds JJ)

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## **Designs, copyright and confidential information**

realestate.com.au Pty Ltd v Hardingham (2022) 96 ALJR 40, 406 ALR 678, [2022] HCA 39 (Kiefel CJ, Gageler, Gordon, Edelman and Steward JJ) from Hardingham v R P Data Pty Ltd and realestate.com.au Pty Ltd (2019) 147 IPR 489, [2019] FCA 2075 (Thawley J) and on appeal (2021) 395 ALR 643, [2021] FCAFC 148 (Greenwood, Rares and Jackson JJ)

Real Estate Tool Box Pty Ltd v Campaigntrack Pty Ltd [2023] HCATrans 13 (Gageler, Edelman and Steward JJ) from Campaigntrack Pty Ltd v Real Estate Tool Box Pty Ltd (2021) 160 IPR 361, [2021] FCA 809 (Thawley J) and on appeal (2022) 292 FCR 512, [2022] FCAFC 112 (Greenwood, Cheeseman and McElwaine JJ)

JWR Productions Australia Pty Ltd v Duncan Watt (No 2) (2020) 377 ALR 467, 149 IPR 400, [2020] FCA 236 (Thawley J)

Apple Inc v Samsung Electronics Co Ltd (NSD 308 of 2013) (Yates J) (case settled before judgment)

Iseek Communications Pty Ltd v Jones [2017] NSWSC 251 (Emmett A-JA)

Elecon Australia Pty Ltd v PIV Drives GmbH (2010) 93 IPR 174, [2010] FCAFC 56 (Emmett, Perram and Yates JJ)

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## **Trade Practices / Australian Consumer Law**

GlaxoSmithKline Australia Pty Ltd v Reckitt Benckiser (Australia) Pty Ltd [2018] FCA 1 (Foster J) and Reckitt Benckiser (Australia) Pty Ltd v GlaxoSmithKline Australia Pty Ltd [2018] FCAFC 138 (McKerracher, Yates and Gleeson JJ)

Australian Competition and Consumer Commission v GlaxosmithKline Consumer Healthcare Australia Pty Ltd (2019) 371 ALR 396, [2019] FCA 676 and (No 2) [2020] FCA 724 (Bromwich J)

Specsavers Pty Ltd v The Optical Superstore Pty Ltd (No 3) (2012) 290 ALR 263, [2012] FCA 504 and (No 4) (2012) ATPR ¶42-403, [2012] FCA 652 (Katzmann J) and Specsavers Pty Ltd v The Optical Superstore Pty Ltd (2012) 208 FCR 78, [2012] FCAFC 183 (Foster, Barker and Griffiths JJ)

Luxottica Retail Australia Pty Ltd v Specsavers Pty Ltd (2010) 89 IPR 316, [2010] FCA 1344 (Katzmann J)

Nick Scali Pty Ltd v Super A-Mart Pty Ltd (2010) 189 FCR 550 (Yates J)

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## **Public and Administrative Law**

DVO16 v Minister for Immigration and Border Protection (2019) 271 FCR 342, [2019] FCAFC 157 (Greenwood, Flick and Stewart JJ) and DVO16 v Minister for Immigration and Border Protection [2020] HCATrans 051 (Nettle and Gordon JJ) and DVO16 v Minister for Immigration and Border Protection (2021) 95 ALJR 375, [2021] HCA 12 (Kiefel CJ, Gageler, Gordon, Edelman and Steward JJ)

ZMBZ v Minister for Home Affairs [2019] FCA 455 (Flick J) and [2019] FCAFC 195 (Perram, Stewart and Abraham JJ)

Kraues v Office of the Migration Agents Registration Authority (2018) 158 ALD 493, [2018] FCA 664 (Perry J) and (2019) 269 FCR 404, [2019] FCAFC 52 (Markovic, Thomas and Thawley JJ)

Minister for Immigration and Border Protection v EEI17 [2018] FCAFC 166 (McKerracher, Gleeson and Burley JJ)

SZVMA v Minister for Immigration and Border Protection [2016] FCA 1058 (Farrell J) and [2017] FCAFC 85 (Barker, Robertson and Burley JJ)

Rawsthorne v Minister for Immigration and Citizenship [2012] FCA 1211 (Perram J) and (2013) 140 ALD 524, [2013] FCAFC 39 (Cowdroy, Katzmann and Farrell JJ)

SZMGX v Minister for Immigration and Citizenship [2009] FCAFC 67 (Bennett, Reeves and Foster JJ)

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## Memberships and recommendations

- New South Wales Bar Association
- Intellectual Property Association of Australia and New Zealand (IPSANZ); AIPPI; Copyright Society
- Australian Institute of Administrative Law
  
- Doyle's Guide 2022 (Recommended Senior Counsel in Intellectual Property). As junior counsel, Hamish was recognised since 2012 in the "*Leading Intellectual Property Barristers*" category for Australia and New South Wales, with nominations as "*Leading*" (NSW 2018 and Australia 2018, 2019 and 2020) and "*Preeminent*" (NSW 2019, 2020, 2021 and Australia 2021), and since 2018 as "*Recommended*" in the "*Leading Media & Telecommunications Barristers*" category
  
- Chambers and Partners (Global and Asia-Pacific) in 2022 ("*handle[s] matters arising from an impressively varied range of business sectors*" and "*has an excellent grasp of IP and provides practical and considered advice*") and 2021 ("*a true IP specialist, 'highly skilled in all areas of IP law' and possessing 'a lot of experience in the space'. [He is] [p]articularly well regarded for his work in the trade mark sphere, where he is noted for handling prominent litigation unled*")
  
- World Trademark Review in 2013 ("*grasps the key issues immediately, provides clear guidance and accurately anticipates likely decisions from the judiciary*"), 2014 ("*quick study and well prepared for contingencies*"), 2015 ("*firm grasp of the legal and commercial issues in a case*"), 2016 ("*a great orator with deep IP knowledge*"), 2017 ("*an excellent advocate and lateral thinker*"), and 2018 ("*far-ranging IP practice benefits from a wealth of administrative law knowledge*")
  
- Best Lawyers in Australia (Intellectual Property) in the 2019 to 2024 editions
  
- The Legal 500 Asia Pacific 2022 (TMT and Intellectual Property) (recognised for having "*strong knowledge of the law of intellectual property*")