



David Ivison

Called: 2014

Practice

David's academic background is in chemistry. He completed his undergraduate degree at the University of Oxford and then went onto his PhD at the University of Bristol, where his research involved use of analytical chemistry and molecular biology techniques to investigate the way in which some biosynthetic enzyme systems are able to carry out an iterative series of reactions in an apparently pre-programmed manner.

David has developed a busy practice across a range of intellectual property disciplines. His recent work has included a medical devices patent infringement claim, a claim for copyright infringement and breach of contract relating to the application of blockchain technology, and a fashion industry design right infringement and passing off claim. He appears regularly in the High Court and other tribunals as sole counsel and led by other members of Chambers, and has appeared as sole counsel before the Court of Appeal in a jurisdictional dispute. During 2015 and 2016, David spent several months on secondment at a leading City solicitors' firm working on pharmaceutical patent litigation.

Education and Qualifications

2015	Tenancy 11 South Square
2014	Called to the Bar (Lincoln's Inn)
2014	Bar Professional Training Course (City University)
2013	Graduate Diploma in Law (College of Law)
2012	PhD, Chemistry & Molecular Biology (University of Bristol)
2009	MChem, Chemistry (Lincoln College, Oxford)
2005	A-levels (Chemistry, Mathematics, Music, Physics) (Bedales School)

Recent and reported cases

***Kohler Mira Limited v. Norcros Group (Holdings) Limited* [2025] EWCA Civ 1670**

This appeal concerned the validity and infringement of Claimant's patent concerning, *inter alia*, electric showers. Brian Nicholson KC and David Ivison appeared for the successful Appellant, Norcros, in overturning the earlier decision of HHJ Melisa Clarke sitting as a Judge of the High Court. The Court of Appeal disagreed with the trial Judge, holding that the a simple mechanical patent-in-suit was invalid for uncertainty insufficiency and, in any event, would not have been infringed by any of the defendant's products.

***Merck KGaA v Merck Sharp & Dohme LLC & Anor* [2025] EWCA Civ 343**

In the case of *Merck KGaA v Merck Sharp & Dohme LLC & Anor* [2025] EWCA Civ 343, the Court of Appeal upheld the High Court's decision that Merck Sharp & Dohme LLC and Merck & Co., Inc. breached the court order regarding the use of the name "Merck" in the UK made in previous proceedings for breach of contract and trade mark infringement. The dispute centred on the Defendants' use of "Merck" on websites and other materials targeted at the UK. The Court of Appeal confirmed that these uses constituted a breach of the order and did not fall within the exemptions provided. In doing so it rejected the submission that a declaration of "breach" was inappropriate and that Merck KGaA should have brought contempt proceedings.

***Alice Limited v Photogram Limited & ors* [2024] EWHC 3256 (IPEC)**

This was a claim for infringement of a trade mark consisting of the word ALICE registered in respect of certain

audiovisual equipment and related services. The Claimant traded as ALICE, selling equipment including amplifiers, mixing desks, and timecode distribution amplifiers. In 2021, the Defendants started advertising and selling a camera designed for use with a smartphone and incorporating AI technology, under the brand ALICE / ALICE CAMERA.

The Court dismissed the Defendants' counterclaim for revocation of the Claimant's trade mark on grounds that it had not been put to genuine use, and held that it had been infringed as alleged by the Claimant. The Court rejected the Defendants' evidence that their cameras had a different target audience from the goods for which the Claimant's trade mark was registered, holding that there was indeed a likelihood of confusion as a result of the Defendants' activities.

***Supponor Limited v AIM Sport Development AG* [2024] EWCA Civ 396**

This appeal saw Supponor seeking to overturn a judgment of Meade J which found AIM Sport's patent EP (UK) 3 295 663 B1 to be valid and infringed by Supponor's virtual overlay advertising technology. Supponor appealed on construction, obviousness, infringement, and on a procedural point which they referred to as the Promptu point.

The Court of Appeal held that Meade J had erred in his construction of the claim, holding that it was sufficiently broad to include a prior art reference called Nevatie. However, prior to trial conditional amendments had been proposed which the Judge had considered would have the effect of narrowing the claim to exclude Nevatie in the event he was wrong on construction. The Court of Appeal upheld Meade J on the construction of the claim amendment, and therefore permitted AIM Sport to amend the claim. The claim as amended was considered to be both valid and infringed.

The Court of Appeal gave specific consideration to the Promptu point, rejecting Supponor's contention that AIM Sport's procedural concession before trial regarding the validity of other independent claims of the patent had an impact on AIM Sport's ability to contend that the remaining claim was valid. Nonetheless, the Court of Appeal gives cautionary advice about the need for careful framing of procedural concessions so as to avoid issues later in proceedings.

***Abbott Diabetes Care Inc. & ors v Dexcom Incorporated & ors* [2024] EWHC 36 (Pat) – Trial A**

This is a patent case relating to continuous glucose monitoring ("CGM") technology, which now plays an important role in the management of type 1 diabetes. Abbott and Dexcom are the main players in this valuable market and are engaged in an ongoing patent dispute in which numerous patents are asserted by each side against the other in several jurisdictions. In the UK, the dispute has been case managed into a series of technical trials, of which this was the first. At trial, Abbott sought to establish that Dexcom's G6, G7, and D1 systems infringed two of its patents: EP627, relating to aspects of the user interface; and EP223, concerning the validation of safety-critical software on devices such as smartphones. Dexcom asserted that two of its patents were infringed by Abbott's Freestyle Libre 2 and 3 systems: EP159 and EP539, both relating to the way in which users are provided with alarms when high or low blood glucose is detected.

The trial took place over 6 days before Mellor J, and covered issues of infringement, novelty/obviousness in relation to six prior art documents, insufficiency, and amendment of various patents. All four of the patent in suit were held to be invalid.

***Gnat and Company Limited & anr v West Lake East Limited & anr* [2022] EWHC 319 (IPEC)**

This was a dispute between two restaurant businesses. The Claimants' group has operated the "China Tang" Cantonese restaurant at the Dorchester Hotel in London since 2005. The Defendants had operated a Chinese takeaway in Barrow-in-Furness, also under the name "China Tang", since 2009. The Claimants asserted infringement of a registered trade mark (comprising the words CHINA TANG with figurative elements) contrary to sections 10(2) and (3) of the Trade Marks Act 1994 ("the Act"), and passing off. The Defendants counterclaimed for partial revocation of the Claimants' trade mark on grounds of non-use, and asserted a defence of honest concurrent use on the basis that the name "China Tang" had been selected without knowledge of the Claimants' business and had been used by them for several years.

The Court found that the Claimants' trade mark had been infringed contrary to section 10(2) of the Act, but dismissed the claims for infringement contrary to section 10(3) of the Act and passing off. The Defendants' counterclaim was dismissed save in respect of one sub-category of services. Finding that the Defendants were not entitled to a defence of honest concurrent use, the Court focussed on the fact that when Defendants started to use the name "China Tang", they had not carried out any trade mark or internet searches which would have revealed the existence of the Claimants' trade mark and restaurant.

***Original Beauty Technology Company Ltd & ors v G4K Fashion Ltd & ors* [2021] EWHC 3439 (Ch)**

This was the damages inquiry in an unregistered design case involving two fashion brands: House of CB (the Claimants) and Oh Polly (the Defendants). A liability trial was heard towards the end of 2020: see [2021] EWHC 294 (Ch).

Oh Polly had sold 15,393 garments which infringed House of CB's unregistered UK and/or Community design

rights. House of CB claimed “standard damages” on two bases: (i) lost profits where Oh Polly’s sales had substituted for sales which would have been made by House of CB; and (ii) “user principle” damages where sales substitution had not taken place. Oh Polly accepted that it was liable to pay “user principle” damages, but not damages for lost profit. House of CB sought c. £275,000 in standard damages, while Oh Polly maintained that only c. £15,000 was due.

The liability trial had determined that House of CB was entitled to additional damages pursuant to §229(2) of the Copyright, Designs and Patents Act 1988. House of CB sought a “top up” award of additional damages to take the total to c. £500,000. Oh Polly’s position was that additional damages should be calculated as an “uplift” on standard damages of 20% (on Oh Polly’s case coming to c. £3,000).

The Court held that House of CB was entitled to standard damages under both heads claimed. It determined that 20% of Oh Polly’s infringing sales would have been made by House of CB had the infringing garments not been available, and awarded damages for lost profit accordingly; on the remainder of sales a reasonable royalty was awarded of 10% of Oh Polly’s net sales with a guaranteed minimum royalty of £4,000 per design. Standard damages totalled c. £150,000.

In relation to additional damages, the Court determined that an award of £300,000 was appropriate, having regard to the scale of the infringement and its flagrancy, and the need to punish and deter the Defendants from further infringements. This represents the largest reported UK award of additional damages in a design right (or copyright) case.

Thus total damages of c. £450,000 were awarded to House of CB.

***Promptu v Sky* [2021] EWHC 2021 (Pat)**

In these proceedings the claimant (Promptu) alleged infringement of EP(UK) 1,290,889 (“the Patent”) by the defendants (“Sky”). The Patent is concerned with the voice control of television set-top boxes, and Promptu alleged Sky’s dealings in the “Sky Q” set-top television box and operation of the associated backend system to constitute infringement. Sky denied this, asserting the patent to be addressed solely to the operation of traditional cable television systems and thus to exclude the Sky Q system, which obtains content and communicates with Sky’s servers over the public Internet. Sky counterclaimed for a declaration of invalidity on the basis that the Patent lacked novelty and/or inventive step and/or was bad for added matter.

Following a four-day trial in June 2021, Meade J held the patent in suit to have been invalid for lack of inventive step, but not added matter. Had it been valid, it would have been infringed.

***Claydon Yield-O-Meter Limited v Mzuri Limited & anr* [2021] EWHC 1007 (IPEC)**

This was a claim for infringement of two patents relating to agricultural machinery. The patents were directed to apparatus for performing one-pass “strip tillage”, in which one row of leading tines produces strips of disturbed soil in otherwise uncultivated ground, and an aligned second row of tines is used to place rows of seed into the disturbed strips of soil. The Defendants’ range of “Pro-Til” seed drills was alleged to infringe both patents.

The Defendants denied infringement and counterclaimed for invalidity on the basis of lack of novelty and obviousness, relying upon a prior use and two documentary prior art citations.

An interesting aspect of the Defendants’ invalidity case involved the prior use by the Claimant of prototype equipment in a field adjoining public roads and a footpath. It was undisputed that the prior use had taken place, and that the equipment had the features required by the relevant claims of the patent. However, the Claimant contended that nobody had in fact observed the apparatus in use, and had anybody attempted to do so steps would have been taken to conceal the operation of the apparatus from them. Thus, the Claimant maintained, no enabling disclosure of the relevant features of the prototype equipment had been made available to the public.

Following a three day trial, the Court found both patents to be invalid. One of the patents would have been infringed had it been valid, but the other would not. In relation to the prior use, the Court held that it was irrelevant that nobody did in fact observe the apparatus being used and that, on the facts, any effort to conceal the relevant features of the apparatus from a hypothetical observer would not have been successful.

***Original Beauty Technology Co Ltd & ors v G4K Fashion Ltd & ors* [2021] EWHC 294 (Ch)**

Appeared with Anna Edwards-Stuart for the claimants at trial and interim hearings in a claim for infringement of 91 unregistered garment design rights and passing off.

***The Press Association Limited v Workers of England Union* (2021)**

Appeared as sole counsel for the Claimant at an interim injunction application brought to restrain trade mark infringement and passing off.

***Fisher and Paykel Healthcare Ltd v Flexicare Medical Ltd & anr* [2020] EWHC 3282 (Pat)**

Appeared with Benet Brandreth QC for the claimant in the trial of a patent infringement action concerning

medical equipment used for ventilation of intubated patients.

***Songtradr Inc & ors v Ditto Music Ltd & ors* (2020-)**

Representing the defendants to a claim for breach of confidence and copyright infringement with Hugo Cuddigan QC. The claim concerns the application of blockchain technology to music rights licensing.

***Fit Kitchen Limited (2) Amar Lodhia v Scratch Meals Limited* [2020] EWHC 2069 (IPEC)**

Appeared as sole counsel for the Claimants at the trial of a claim for trade mark infringement and passing off.

***Slater & ors v Anglo Atlantic Media Limited* [2020] EWHC 710 (Ch)**

Appeared as sole counsel on behalf of the defendants, who were members of The Bonzo Dog Doo-Dah Band, at an application to strike out a claim brought by a company operated by the band's former promoter for unlawful means conspiracy, malicious falsehood, misrepresentation, and trade mark infringement.

***TQ Delta LLC v ZyXEL Communications UK Ltd* [2020] EWCA Civ 1277**

Appeared with Brian Nicholson QC for the appellant in an appeal concerning the English court's jurisdiction to determine (F)RAND licensing terms in circumstances where one party had waived any right to take such a licence in the United Kingdom.

***University of British Columbia v Sub Salt Solutions Limited* (2019)**

Sole counsel for the defendant in entitlement proceedings in the UK IPO brought in relation to a patent concerning seismic imaging techniques for oil and gas exploration.

***Easygroup Ltd v Easy Rent a Car Ltd & anr* [2019] EWCA Civ 477**

Appeared as sole counsel for the appellants in a jurisdictional appeal arising out of a trade mark infringement and passing off claim brought against parties domiciled in Cyprus, where related proceedings between the parties were already on foot.

***Quinn Packaging Ltd v Linpac Packaging Ltd & anr* [2019] EWHC 2119 (IPEC)**

Appeared with Anna Edwards-Stuart for the claimant at the trial of a claim for revocation of two patents relating to recyclable plastic packaging.

***Dansac A/S & anr v Medik Ostomy Supplies Ltd & ors* (2017 – 2020)**

Represented the Claimants with Mark Vanhegan QC in a claim for trade mark infringement arising from the importation of medical devices from Europe into the UK.

***TQ Delta, LLC v ZYXEL Communications Ltd & Anor* [2019] EWHC 562 (Pat)**

Appeared with Iain Purvis QC and Brian Nicholson QC for the defendants at the technical trial and various interim hearings in a claim for infringement of two patents relating to Digital Subscriber Line ("DSL") broadband internet technology.

Semtech EMEA Limited & anr v HiLight Semiconductor Limited & ors

Working with leading counsel on behalf of the claimants in a substantial claim brought by a semiconductor design company in which the defendants are alleged to have misused confidential information relating to optical communications hardware and acted in breach of contract. One of the claimants also claims entitlement to patents filed by one of the defendants.

***Saunders & Dolleymore LLP v Keter Plastics Limited* BL O/350/17**

Appeared before the UK IPO for the applicant in a claim to revoke a patent concerning wheeled plastic containers.

***Henry Martinez & anr v Prick Me Baby One More Time Limited & anr* [2018] EWHC 776 (IPEC)**

Appeared with Brian Nicholson for the Defendants, retailers of cacti, at the trial of a claim for passing off brought by the proprietors of a tattoo parlour in East London.

Scolmore International Limited v CDS (International) Limited

Appeared for the Defendant, a major homewares retailer, before the IPEC to strike out parts of the claim for damages in a trade mark infringement and passing off action.

***Neil Strain Floral Couture Limited v Kenneth Turner Limited* O/562/17**

Appeared before the trade marks registry for the applicant in a trade mark opposition based upon §5(4)(a) of the Trade Marks Act 1994.

***Swanwick v Technology Strategy Board* O-199-17**

Appeared for the Respondent in an appeal to the Appointed Person from a trade mark registry opposition decision.

***Fifth Dimension Limited v Curve 1 Limited* O-427-17**

Appeared for the trade mark applicant in trade mark registry opposition proceedings.

Ridgeback Studios Limited v Bel UK Limited

Appeared for the Defendant, a major cheese manufacturer, in a claim for damages for infringement of copyright in photographs.

Def Fret Management Limited v Sally Rushbrook

Appeared for the Defendant, a musician, at a 1-day trial in a claim for infringement of copyright, breach of contract, and unjust enrichment brought by a management company.

***easyGroup Limited v Easy Rent a Car Ltd & anr* 2017 WL 04574676**

Appeared for the Defendants before the High Court in a jurisdictional challenge under the *lis pendens* provisions of the Brussels Regulation. Obtained permission to appeal from the Court of Appeal.

***Signature Realty Ltd v (1) Fortis Developments Ltd (2) Beaumont Morgan Developments Ltd* [2016] EWHC 3583 (Ch)**

Appeared for the Claimant with Mark Vanhegan QC at trial and various interim hearings in a claim for infringement of copyright in architects' plans.

***Trinity Haircare AG v EUIPO* Case T-453/13**

Represented the intervener, Advance Magazine Publishers, Inc., proprietor of an EUTM incorporating the word "VOGUE" registered in respect of goods including beauty and personal care products, in an appeal to the General Court from a decision of the Board of Appeal of the EUIPO.

Newbran Entertainments Limited & Marlon Anthony Brown v Ashley Charles

Appeared as sole counsel for the claimant in a trial at the Central London County Court in a contractual claim concerning a dispute between a recording artist, her record label, and her former manager.

***Gary Hambyln v Jeremy Hoyer* O-211-16**

Application for cancellation of a trade mark consisting of the name of the Proprietor registered in respect of items of jewellery.

Secondment to leading City firm

A 9-month secondment to a leading City solicitors' firm, working on pharmaceutical patent litigation.

Cases during Pupillage

***Fresh Trading v Deepend Fresh Recovery* [2015] EWHC 52 (Ch)**

Trial of a claim for a declaration as to the ownership of the copyright in a logo used by a well-known drinks brand.

***IPCom v HTC* [2015] EWHC 1034 (Pat)**

Trial of a claim for infringement of a patent relating to mobile telephone network access control and counterclaim for revocation.

***Merck KGaA v Merck Sharp & Dohme* (High Court – decision pending)**

Trial of a claim for trade mark infringement and breach of contract, and counterclaim for revocation.

***Saab v Atlas* (Patents Court)**

Trial of a claim for revocation of two mechanical patents relating to underwater mine disposal, and counterclaim for infringement.

***American Science & Engineering v Rapiscan* (2015)**

A claim for infringement of a patent relating to mobile backscatter X-ray imaging devices and counterclaim for revocation.

Football Association v Davis (2015)

A claim for trade mark infringement, passing off and copyright infringement, and related interim injunction application.

Medical Innovations v Eakins & Others [2014] EWHC 4626 (Pat)

An application for summary judgment on a claim involving breach of contract, misuse of confidential information, database right and copyright.

Tech 21 v Logitech (High Court – decision pending)

An application challenging jurisdiction in a cross-border design right infringement claim.

Memberships

Intellectual Property Bar Association