

# THREE NEW SQUARE

INTELLECTUAL PROPERTY



**TIM AUSTEN**

Year of Call: 2012

## **PRACTICE AREA**

Tim practises in all aspects of intellectual property law, with a particular focus on patents, trade marks, copyright and confidential information. He has worked on cases across many sectors, most notably in healthcare, life sciences, industrials and financial services.

Tim is a tough and persuasive advocate, and an analytical and rigorous junior barrister. He regularly appears before the Intellectual Property Enterprise Court and the High Court, both led and unled, and has appeared before the Court of Appeal and the Supreme Court (the latter in *Warner-Lambert v Actavis*).

Tim was originally a solicitor at Allen & Overy where he qualified in 2007. At Allen & Overy, Tim acted for Warner-Lambert in the well-known Atorvastatin patent litigation, for Novartis in the Lucentis litigation against MedImmune's phage display patents, for Honda in several cases in relation to their trade marks and registered designs, and for BSKyB in relation to copyright in foreign decoder cards.

Tim was called to the Bar in 2012 and began practice at Three New Square. In addition to Court trials and inquiries, Tim is able to assist with mediations, hearings before the UK Intellectual Property Office (patents and trade marks) and proceedings before the European Patent Office. A selection of Tim's current and past cases as a barrister are shown below.

## **CASES AND EXPERIENCE**

### **PATENTS**

*Warner-Lambert v Actavis Group* ([2015] EWHC 72, [2015] RPC 25, [2016] RPC 3, [2017] RPC 1, [2018] UKSC 56)

Acting (led by Justin Turner QC, Charlotte May QC, Tom Mitcheson QC, Richard Miller QC and Richard Boulton QC) in high profile patent litigation on the hot topic of infringement of second medical use claims to new uses of a medicine, and further proceedings in the damages inquiry under various cross-undertakings and in light of unjustified threats. Acted in interim injunction proceedings before the High Court and the Court of Appeal, and then junior at trial before the High Court, then the Court of Appeal and the Supreme Court. Now acting in the damages inquiry before the High Court against multiple claimants.

*Anan Kasei & Rhodia v Neo Chemicals* ([2021] EWHC 1035 (Ch))

Acting (led by Thomas Mitcheson QC) for Rhodia in applications by the defendants for permission to withdraw admissions, and for summary judgment as to whether keeping goods in transit was an infringing act in the UK.

*Coloplast A/S v Salts Healthcare* ([2021] EWHC 3 (Pat); [2019] EWHC 1979 (Pat))

Acting (led by Douglas Campbell QC) for Salts Healthcare in patent litigation concerning colostomy bags and textiles, including an application to stay proceedings pending the EPO.

*Edwards Lifesciences v Meril GmbH* ([2020] EWHC 2562 (Pat))

Acting (led by Justin Turner QC) for Meril in patent litigation before the High Court in relation to prosthetic heart valves and insertion devices.

*JC Bamford v Manitou* ([2019] EWHC 3071 (Pat))

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Acting (led by Michael Silverleaf QC) in patent litigation in relation to telehandlers and JCB's patents for stability control technology. Appeared at the CMC unled and in relation to applications for confidentiality club and collateral use of confidential information.

Price v Flitcraft Ltd ([2019] EWHC 2772 (Pat); [2019] EWHC 2476 (Pat))

Acting in proceedings for contempt of Court arising from failure to comply with an order for summary judgment restraining patent and copyright infringement.

Coloplast A/S v MacGregor Healthcare ([2018] EWHC 3720 (IPEC))

Acting (led by Tom Mitcheson QC) in patent litigation concerning catheter technology, including an unled application to stay proceedings pending EPO proceedings, and subsequent lifting of the stay.

Amgen Inc v Accord Healthcare ([2017] EWHC 2268)

Acted (led by Andrew Waugh QC) in patent litigation in relation to cinacalcet, a blockbuster medicine for the treatment of secondary hyperparathyroidism and hypercalcaemia.

TF3 and Conair v Philips (HP-2017-000017)

Acting (led by Douglas Campbell QC) in claims for patent infringement and unregistered design infringement in relation to automatic hair curling devices.

GlaxoSmithKline v Wyeth ([2017] EWHC 91 (Pat))

Acted (led by Tom Mitcheson QC) in an application in an inquiry as to damages and account of profits as to the basis on which relief would be assessed.

Warner-Lambert v Sandoz ([2016] EWHC 3317)

Acted (led by Richard Miller QC) in interim injunction proceedings against Sandoz in relation to the patent for new uses of pregabalin.

Nicocigs v Fontem Holdings 1 BV ([2016] EWHC 2161 (Pat))

Acted (led by Andrew Lykiardopoulos QC) at trial of patents for electronic cigarettes, involving issues of claim construction, priority and added matter.

Actavis Group v Eli Lilly ([2016] EWHC 1955 (Pat))

Acted in the trial of patents for formulations and dosage regimen of tadalafil (Cialis).

## TRADE MARKS AND PASSING OFF

Cormeton Fire Protection v Cormeton Electronics [2021] EWHC 11 (IPEC)

Acted unled in IPEC proceedings concerning the scope of permitted use of the Cormeton brand name, including whether licensed use rendered the mark misleading.

FIL Limited v Fidelis ([2018] EWHC 1097 (Pat))

Acted (led by Simon Malynicz QC) for well-known financial services group Fidelity in trade mark infringement and validity proceedings against Fidelis before the High Court.

The Military Mutual v Police Mutual ([2018] EWHC 1575 (IPEC))

Acting for Police Mutual (led by Simon Malynicz QC) in an extended form passing off case concerning goodwill in "mutual", before the Intellectual Property Enterprise Court.

Pooja Sweets & Savouries (O/384/13, O/447/13 and O/195/15)

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Acted for Pooja Sweets & Savouries in Trade Mark Registry proceedings and on appeal to the Appointed Person concerning allegations of bad faith and deceptive registration.

Yellow Van London v John Driver ([2014] EWHC 3094 (Ch))

Obtained an order for committal for contempt of court on the part of the defendant.

Fine & Country v Spicerhaart (HC10CO2726)

Acted in damages inquiry proceedings following a finding of trade mark infringement.

Bauer Consumer Media Limited v Land Rover (O/002/14)

Acted for Bauer Consumer Media, a large magazine publisher, in proceedings before the Trade Marks Registry and obtaining successful registration of "Land Rover Owner International" in the face of opposition from Land Rover.

## COPYRIGHT AND DATABASE RIGHT

Cormeton Fire Protection v Cormeton Electronics [2021] EWHC 11 (IPEC)

Acted unled in IPEC proceedings concerning the scope of permitted use of various copyright works.

The Racing Partnership, Arena Leisure v Sports Information Services (HC-2017-000093 & 94)

Acted (led by Michael Bloch QC) for SIS, a major provider of sports data, in database right, copyright and confidential information claims brought in respect of on-course horseracing data.

Martin Coward v Phaestos Limited ([2013] EWHC 1292)

Acted (led by Michael Bloch QC) for Martin Coward in a dispute as to the ownership of hedge fund technology, misuse of confidential information and copyright and database right infringement.

## CONFIDENTIAL INFORMATION

Salt Ship Design v Prysman Powerlink ([2019] EWHC 2308 (Comm))

Acted (led by Michael Ashcroft QC) for Salt Ship in proceedings in the Commercial Court for breach of confidence in relation to cable laying ship design. Also claims for conspiracy to injure by unlawful means, flagrancy and breach of contract, together with assessment of damages for breach. Appeared unled in Salt Ship's application to amend pleadings to introduce claims for breach of confidence.

The Racing Partnership, Arena Leisure v Sports Information Services (HC-2017-000093 & 94)

Acted (led by Michael Bloch QC) for SIS, a major provider of sports data, in database right, copyright and confidential information claims brought in respect of on-course horseracing data and the ability to use such data off-course.

Martin Coward v Phaestos Limited ([2013] EWHC 1292)

Acted (led by Michael Bloch QC) for Martin Coward in a dispute as to the ownership of hedge fund technology, misuse of confidential information and copyright and database right infringement.

## DESIGN RIGHT

TF3 and Conair v Philips (HP-2017-000017)

Acted (led by Douglas Campbell QC) in claims for patent infringement and unregistered design infringement in relation to automatic hair curling devices.

Anthony Peters v FPL Group (IP-2016-000078)

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Year of Call: 2012

Acted in proceedings for infringement of unregistered design right before the Intellectual Property Enterprise Court.

## **CONTRACT**

**Salt Ship Design v Prysman Powerlink ([2019] EWHC 2308 (Comm))**

Acted (led by Michael Ashcroft QC) for Salt Ship in proceedings in the Commercial Court for breach of confidence in relation to cable laying ship design. Also claims for conspiracy to injure by unlawful means, flagrancy and breach of contract, together with assessment of damages for breach. Appeared unled in Salt Ship's application to amend pleadings to introduce claims for breach of confidence.

**One Money Mail v Ria Financial Services (A10CL003 and [2015] EWCA Civ 1084)**

Acted for Ria Financial in this case concerning exclusive agency agreements and inducing breach of contract. Having appeared unled at trial over 4 days, Tim was led by Joanna Smith QC before the Court of Appeal.

## **EDUCATION AND CAREER**

- Diploma in Intellectual Property Law & Practice, University of Oxford (2009-2010)
- Seconded at Fenwick & West, San Francisco, California (2008-2009)
- Associate Solicitor at Allen & Overy LLP, London (2007-2012)
- Admitted as Solicitor of the Senior Courts of England & Wales (2007)
- Legal Practice Course, University of Oxford (2004-2005)
- Graduate Diploma in Law, College of Law (2003-2004)
- Molecular and Cellular Biochemistry at Somerville College, University of Oxford (1998-2002)

## **PROFESSIONAL MEMBERSHIPS**

- Contributing author to Terrell on the Law of Patents (19th edition)
- Member of the Intellectual Property Bar Association
- Member of AIPPI

## **PERSONAL**

Tim is a keen footballer and played in the Amateur Football Combination league. He also appeared on several television quiz shows.

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