



Friday, 28 June 2024

## Weekly Intellectual Property Law A Weekly Bulletin listing Decisions of Superior Courts of Australia covering Intellectual Property Law

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### Executive Summary (One Minute Read)

**Pfizer Ireland Pharmaceuticals v Samsung Bioepis AU Pty Ltd (No 4) (FCA)** - Court refused discovery of documents such as inventors notes said to be relevant to the question of inventive step, and largely allowed discovery of documents relevant to whether the patent applicant disclosed the best method known to it

## HABEAS CANEM

### First beach holiday



## Summaries With Link (Five Minute Read)

### **Pfizer Ireland Pharmaceuticals v Samsung Bioepis AU Pty Ltd (No 4) [2024] FCA 678**

Federal Court of Australia

Burley J

Discovery in patents cases - the applicants alleged infringement of a patent titled "Production of polypeptides", which concerned the manufacture and use of etanercept, a biological medicine useful in the treatment of autoimmune diseases - the respondents cross-claimed, alleging the claimed invention was invalid for: want of novelty, lack of inventive step, lack of clarity, lack of definition, insufficiency, failure to disclose best method, lack of fair basis, inutility and false suggestion and misrepresentation - the respondents sought non-standard discovery by categories - held: modern principles of discovery have superseded the "line of enquiry" from older cases, such that documents broadly referred to as inventor's notes and the like are relevant to the question of inventive step, but of secondary significance only - r20.14 and r20.15 of the *Federal Court Rules 2011* (Cth) require that documents be directly relevant to the issues raised by the pleadings or in the affidavits in order to be discoverable - the requirement in s37M of the *Federal Court of Australia Act 1976* (Cth) that the Court be astute to the quick, inexpensive, and efficient disposition of cases was also not present when the older cases were decided - the primary test under s7(2) of the *Patents Act 1990* (Cth) is whether a person skilled in the relevant art would have found the invention obvious, which is an objective test, based on the imputed skills and knowledge of a notional person, which is a remove from the steps taken by the inventors themselves - discovery refused over these documents - regarding the other category, the question of whether the patent applicant disclosed the best method known to it within s40(1)(a) of the *Patents Act* provides a safeguard against a patent applicant holding back information in its possession with a view to getting the benefit of a patent monopoly, without conferring on the public the full consideration for the grant of that monopoly - the respondents had a basis for contending an example in the patent was deficient, and that the applicant may well have information to remedy that deficiency - discovery in this category largely allowed.

[Pfizer Ireland Pharmaceuticals](#)

[From Benchmark Tuesday, 25 June 2024]

# Benchmark

## INTERNATIONAL LAW

### Executive Summary and (One Minute Read)

**United States v Rahimi** (SCOTUS) - Federal statute that prohibits individuals who are subject to a domestic violence restraining order from firearm possession does not violate the Second Amendment right to keep and bear arms

### Summaries With Link (Five Minute Read)

#### **United States v Rahimi 602 US \_\_ (2024)**

United States Supreme Court

In an 8-1 decision (Thomas, J dissenting), the Supreme Court upheld the validity of what are known as 'red flag' laws that prohibit firearm possession by domestic abusers. During a dispute with his girlfriend, Rahimi fired a gun that he kept in his car. She obtained a restraining order from a court in Texas. The Texas Court further suspended Rahimi's gun license for two years on the grounds that the violence was likely to occur again. During this period, Rahimi threatened additional women with a gun and was a suspect in an additional five shootings. When police searched his home, they found firearms, ammunition, and a copy of the restraining order. Rahimi was indicted for violating a federal statute that prohibits firearm possession while subject to a domestic violence restraining order. Rahimi claimed that the statute was unconstitutional because it established a restriction on the right to keep and bear arms that was not part of firearm regulation at the time the Second Amendment was adopted in the 18th Century. The District Court rejected this argument, but the US Court of Appeals agreed that the statute was unconstitutional. In the opinion by Roberts CJ, the Court pulled back from a purely historical approach to gun rights. The Chief Justice stated that recent court decisions expanding firearm rights 'were not meant to suggest a law trapped in amber'. By this the Court moved away from the history and tradition test and recognised that the Second Amendment permits regulations that may not have existed in 1791. The Court held that, while the right to keep and bear arms was a fundamental right, prohibitions on going armed were accepted as part of the common law at the time the Second Amendment was adopted. The Court said that the statute only prohibited possession while the restraining order was in effect and where a court had found that the individual represented a credible threat to the physical safety of others in a domestic situation.

[United States v Rahimi](#)



## Poem for Friday

### Adlestrop

By Edward Thomas (1878-1917)

Yes. I remember Adlestrop  
The name, because one afternoon  
Of heat the express-train drew up there  
Unwontedly. It was late June.

The steam hissed. Someone cleared his throat.  
No one left and no one came  
On the bare platform. What I saw  
Was Adlestrop only the name

And willows, willow-herb, and grass,  
And meadowsweet, and haycocks dry,  
No whit less still and lonely fair  
Than the high cloudlets in the sky.

And for that minute a blackbird sang  
Close by, and round him, mistier,  
Farther and farther, all the birds  
Of Oxfordshire and Gloucestershire.

**Edward Thomas**, an English poet biographer, author, essayist, and critic was born on 3 March 1878, the son of Welsh parents, a railway clerk, politician and preacher Phillip Thomas, and Mary Townsend. His connection to Wales was important throughout his life. He was described by Aldous Huxley as "*one of England's most important poets*". Thomas wrote poetry from 1914, when he was 36, encouraged by his new neighbour, the then relatively unknown Robert Frost. During his life, his only published poetry was *Six Poems* (1916) under the pseudonym Edward Eastaway. Thomas struggled with the burden of constant production of what some critics described as "hack work" to support his family, and the work he wished to produce. At times he was reviewing up to 15 books each week. He made many attempts at suicide, suffering marital disharmony and depression. Adlestrop is considered one of Thomas' finest poems. The poem describes the ordinary circumstances of Thomas' train from Paddington to Malvern, stopping at Adlestrop station at 12:15pm with images of the surrounding English countryside. However the poem elicits profound feelings in the reader through those descriptions. Thomas was killed in the Battle of Arras, in France on 9 April 1917, having enlisted for service in the British infantry in 1915. Ted Hughes described Thomas as "*the father of us*"

all’.

**Adestrop** by Edward Thomas, composed by Susanna Self- the third of six “Songs of Immortality”

<https://www.youtube.com/watch?v=2NYUdo12yfg>

Reading by Patricia Conolly. With seven decades experience as a professional actress in three continents, Patricia Conolly has credits from most of the western world’s leading theatrical centres. She has worked extensively in her native Australia, in London’s West End, at The Royal Shakespeare Company, on Broadway, off Broadway, and widely in the USA and Canada. Her professional life includes noted productions with some of the greatest names in English speaking theatre, a partial list would include: Sir Peter Hall, Peter Brook, Sir Laurence Olivier, Dame Maggie Smith, Rex Harrison, Dame Judi Dench, Tennessee Williams, Lauren Bacall, Rosemary Harris, Tony Randall, Marthe Keller, Wal Cherry, Alan Seymour, and Michael Blakemore.

She has played some 16 Shakespearean leading roles, including both Merry Wives, both Viola and Olivia, Regan (with Sir Peter Ustinov as Lear), and The Fool (with Hal Holbrook as Lear), a partial list of other classical work includes: various works of Moliere, Sheridan, Congreve, Farquar, Ibsen, and Shaw, as well as roles such as, Jocasta in Oedipus, The Princess of France in Love’s Labour’s Lost, and Yelena in Uncle Vanya (directed by Sir Tyrone Guthrie), not to mention three Blanche du Bois and one Stella in A Streetcar Named Desire.

Patricia has also made a significant contribution as a guest speaker, teacher and director, she has taught at The Julliard School of the Arts, Boston University, Florida Atlantic University, The North Carolina School of the Arts, University of Southern California, University of San Diego, and been a guest speaker at NIDA, and the Delaware MFA program.

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