

US Supreme Court Upholds Consultants' Rights

George R. Whitten, Jr., Inc., d/b/a Whitten Corporation, Plaintiff-Appellant v Paddock Pool Builders, Inc., et al., Defendants-Appellees. No.74-1169 (Decided Dec. 17, 1974). Ref 424 Federal Reporter, 2d Series, pages 25-36; 376 Federal Supplement, pages 125-138; 508 Federal Reporter, 2d Series, pages 547-562.

Affirming the 1967 Decision of the U.S. District Court of Massachusetts, the Federal 1st Circuit Court in the case of Whitten v Paddock was sustained in 1974 by the U.S. Supreme Court, which refused to hear further appeals

Four Principal Rulings Regarding Specifications Came From The Supreme Courts' Landmark 1974 Decision

1. Proprietary specifications do not violate anti-trust laws. Professionals who write specifications judge what products will best suit the needs of their clients. Technically, no two products are identical and if the specifier wants to limit the specification to one source, he has the right to do so and to enforce it.
2. Other manufacturers or suppliers can qualify as OR EQUAL only when the specifier chooses. The specifier, however, is responsible for judging if a proposed substitution is an acceptable OR EQUAL product. Furthermore, if the specification doesn't include an OR EQUAL provision, it is still the specifiers decision as to what products do or do not qualify as OR EQUAL.
3. The Court stated that the specifier "... may waive specifications in order to obtain a more desirable product for the client." The implication of this is that, ultimately, only the specifier can decide if an OR EQUAL product is an acceptable substitute to the product specified and in the best interest of the client.
4. In conclusion, the Court stated, " The burden is on the supplier or manufacturer who has not been specified to convince the specifier that their product is equal for the purpose of a particular project."