

NOTE: This order is nonprecedential.

# United States Court of Appeals for the Federal Circuit

2010-5028

WALTER ROSALES and KAREN TOGGERY,

Plaintiffs-Appellants,

v.

UNITED STATES,

Defendant-Appellee.

Appeal from the United States Court of Federal Claims in case no.  
08-CV-512, Judge Lawrence J. Block.

ON MOTION

Before LINN, Circuit Judge.

## ORDER

The appellants move to take judicial notice of certain documents. The United States opposes.

Rule 10(a) of the Rules Federal Rules of Appellate Procedure provides that the record on appeal is generally limited to the original papers and exhibits filed in the trial court. See also Wegner Mfg., Inc. v. Coating Mach. Sys., Inc., 239 F.3d 1225, 1236, n. 2 (Fed. Cir. 2001) (refusing to consider a reference that was not evidence before the trial court and not part of the record on appeal). Although the Rules of Evidence authorize judicial notice of certain facts outside of the record, the court is not persuaded that such action is warranted here.

Because the parties make arguments concerning the documents and because the appellant cites to the documents in the briefs, the court determines that new briefs must be filed that do not discuss or cite to the documents.

Accordingly,

IT IS ORDERED THAT:

(1) The motion is denied.

(2) The previously filed briefs are rejected. The appellants are directed to file a corrected opening brief within 21 days of the date of filing of this order. The United States is directed to file a corrected brief in response to the appellants' corrected brief within 21 days of service of the appellants' corrected opening brief. The due date for the reply brief and joint appendix should be calculated from the date of filing of the United States' corrected brief.

FOR THE COURT

MAR 19 2010

Date

/s/ Jan Horbaly

Jan Horbaly  
Clerk

cc: Patrick D. Webb, Esq.  
Robert P. Stockman, Esq.

s19

**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

MAR 19 2010

JAN HORBALY  
CLERK