

No. 21-1371, 21-1372

**United States Court of Appeals
for the Federal Circuit**

WESTERN PLASTICS, INC.

Plaintiff-Cross-Appellant,

v.

DUBOSE STRAPPING, INC.

Defendant-Appellant.

Appeal from the United States District Court for the Eastern District of North
Carolina, No. 5:15-CV-00294, Judge James C. Dever

DEFENDANT-APPELLANT'S PETITION FOR REHEARING EN BANC

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Date: January 18, 2022

CERTIFICATE OF INTEREST

FORM 9, Certificate of Interest

Form 9 (p. 1)
July 2020

UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

CERTIFICATE OF INTEREST

Case Number 21-1371, 21-1372

Short Case Caption Western Plastics, Inc. v. DuBose Strapping, Inc.

Filing Party/Entity DuBose Strapping, Inc.

Instructions: Complete each section of the form. In answering items 2 and 3, be specific as to which represented entities the answers apply; lack of specificity may result in non-compliance. **Please enter only one item per box; attach additional pages as needed and check the relevant box.** Counsel must immediately file an amended Certificate of Interest if information changes. Fed. Cir. R. 47.4(b).

I certify the following information and any attached sheets are accurate and complete to the best of my knowledge.

Date: 01/18/2022

Signature: /s/ G. Thomas Williams

Name: G. Thomas Williams

FORM 9. Certificate of Interest

Form 9 (p. 2)
July 2020

1. Represented Entities. Fed. Cir. R. 47.4(a)(1).	2. Real Party in Interest. Fed. Cir. R. 47.4(a)(2).	3. Parent Corporations and Stockholders. Fed. Cir. R. 47.4(a)(3).
Provide the full names of all entities represented by undersigned counsel in this case.	Provide the full names of all real parties in interest for the entities. Do not list the real parties if they are the same as the entities. <input checked="" type="checkbox"/> None/Not Applicable	Provide the full names of all parent corporations for the entities and all publicly held companies that own 10% or more stock in the entities. <input checked="" type="checkbox"/> None/Not Applicable
DuBose Strapping, Inc.		

Additional pages attached

FORM 9. Certificate of Interest

Form 9 (p. 3)
July 2020

4. Legal Representatives. List all law firms, partners, and associates that (a) appeared for the entities in the originating court or agency or (b) are expected to appear in this court for the entities. Do not include those who have already entered an appearance in this court. Fed. Cir. R. 47.4(a)(4).

None/Not Applicable Additional pages attached

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5. Related Cases. Provide the case titles and numbers of any case known to be pending in this court or any other court or agency that will directly affect or be directly affected by this court's decision in the pending appeal. Do not include the originating case number(s) for this case. Fed. Cir. R. 47.4(a)(5). See also Fed. Cir. R. 47.5(b).

None/Not Applicable Additional pages attached

Western Plastics, Inc. v. DuBoise Strapping, Inc. E.D. North Carolina, 5:19-cv-00610		

6. Organizational Victims and Bankruptcy Cases. Provide any information required under Fed. R. App. P. 26.1(b) (organizational victims in criminal cases) and 26.1(c) (bankruptcy case debtors and trustees). Fed. Cir. R. 47.4(a)(6).

None/Not Applicable Additional pages attached

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INTRODUCTION

A panel of this court issued a Rule 36 affirmance on the validity of a patent that is a known combination of components combined in a known way that accomplished a known result, in contravention of *KSR*. The panel decision improperly confirmed enforceability of the '304 Patent that was obtained through false statements made by the patent owner with the clear intent to deceive the PTO to grant the patent, in contravention of *Therasense* (and in which the brother-in-law of a panel member testified as an expert on behalf of the Appellee). Finally, the decision also confirmed the award of lost profits to the Appellee, despite the patent holder's own products being replaced by customers in the field with acceptable, non-infringing alternatives, a decision that flies in the face of *Panduit*. The panel's decision affirms a trial court that provided no analysis on these issues. DuBose asks this Court to review en banc the decision of the panel, or to grant a panel rehearing with the familial relation to the panel member recused.

This case originated in 2003, when DuBose's future COO Jeffrey Kellerman was working at the third-party company ITW to create variations of reinforced wraps for steel coils. The variations involved known technology, laminating strings or mesh between film layers. One of the prototypes ITW developed used a third-party mesh called TamaNet® between two layers of film. They called the prototype 5GF-TamaNet®, and ultimately commercialized a variation called 5G.

ITW applied for and was granted a patent U.S. Patent No. 6,942,909 ("Shirrell '909") directed to the wraps. Kellerman and his fellow inventors disclosed as one embodiment the 5G-TamaNet® wrap reinforced with mesh netting. Shirrell '909", col. 6, lines 5-14. [Appx4002]

In 2006, Appellee Western Plastics ("WP") applied for and was granted U.S. Patent No. 8,080,304, that claimed the identical prior art 5G-TamaNet® wrap. Appellee was well familiar with ITW and their 5G product, and ITW's 5G-TamaNet® wrap was developed at Appellee's sister corporation "Western Plastics" in Georgia. When ITW's lead inventor, Jack Shirrell, discovered Appellee's PANACEA branded wrap, he wrote to Appellee asserting "'PANACEA' copies the very 'pith and marrow'" of his invention. [Appx4314] Subsequently, during prosecution of the '304 Patent, Appellee deceived the PTO, representing that Shirrell intended to make a very different wrap and that Shirrell's 5G wrap was a commercial failure. Appellee falsified drawings from Shirrell '909 during prosecution to distinguish the application for the identical wrap. ITW's 5G wrap was not a commercial failure and it is undisputedly still being sold to this day. Through much deception, Appellee ultimately secured the '304 Patent and then sued DuBose.

In its defense, DuBose claimed the '304 Patent was obtained through inequitable conduct and fails the requirements of 35 U.S.C. §§ 102 and 103 in view

of the '909 Patent. DuBose's accused product is identical to the prior art 5G-TamaNet® wrap. Regardless, the trial court entered summary judgment against the inequitable conduct claim, finding that DuBose failed to show "that the most reasonable inference that may be drawn from WP's conduct is that WP intended to deceive the PTO." [Appx79] The trial court concluded that absent clear and convincing evidence of a specific intent to deceive, summary judgment was appropriate. [Appx79]

The trial court's obviousness analysis under 35 U.S.C. §103 was similarly terse:

Viewing the record in the light most favorable to WP, genuine issues of material fact exist concerning obviousness. Thus, the court denies DuBose's motion for summary judgment concerning obviousness.

[Appx94] The trial court did not acknowledge or assess any of the prior art in its holding. At trial, the jury found in favor of Appellee on the issue of patent invalidity. In response to DuBose's subsequent motion for judgment as a matter of law, the trial court rehashed its summary judgment order, stating it left validity for the jury. Again, the trial court did not acknowledge or assess the Shirrell '909 Patent, TamaNet®, the 5G product or any of the other prior art, all of which were in evidence at the trial. [Appx26]. The panel acknowledged that DuBose had a meritable § 103 defense, but entered a Rule 36 affirmance, again without acknowledging or assessing the prior art. The trial court and the panel took the

same approach to WP's claim for lost profits—ignoring the uncontradicted, abundant evidence of alternative products.

DuBose has litigated for years against WP, and has vigorously asserted that the claims of the '304 Patent are invalid. In those years, not a single judge, including the Federal Circuit panel, has put pen to paper to tell DuBose *why* its invalidity, lost profits and inequitable conduct claims have, or do not have, merit.

In addition, one of the panel members, Judge Stoll, is the sister-in-law of Robert Stoll, WP's expert witness on the issue of inequitable conduct, and who has received more than \$30,000 in fees for his testimony on behalf of WP in this case. While the Federal Circuit's practice of revealing panel members a shortly before oral argument kept DuBose from evaluating the situation at that time, there can be no doubt that a panel member on an appellate court whose brother-in-law is the adverse party's expert witness provides an appearance of impropriety that should not be overlooked.

DuBose requests that the Federal Circuit grant rehearing en banc or assign to a new panel on the issues of inequitable conduct, invalidity pursuant to 35 U.S.C. § 103, and whether WP satisfied the causality requirements of *Panduit* in support of its lost profits award.

ARGUMENT

I. A Panel Conflict of Interest Justifies Rehearing this Appeal.

Under 28 U.S.C. § 455(b)(5)(iv), any judge "shall" disqualify herself if she or her spouse, or a person within the third degree of relationship to either of them is, to the judge's knowledge, likely to be a material witness in the proceeding. In this case, Judge Stoll's brother-in-law, Robert Stoll, was WP's expert witness on the issue of inequitable conduct, an issue DuBose asked this Court to review.

Mr. Stoll was identified in the trial court's summary judgment opinion and in numerous docket entries. [Appx84, Appx113-114; Appx116; Appx119-120; Appx128.] Given the fact Mr. Stoll was a material witness and did testify on an issue appealed to this Court, Judge Stoll had a conflict of interest that required recusal. For this reason alone, this appeal should be reheard en banc or assigned to a new panel for rehearing.

II. Perfunctory Dismissal without Explanation of Supreme Court and Federal Circuit Precedent is Fundamentally Unfair and Violates Due Process.

"It is emphatically the province of the judicial department to say what the law is," the Supreme Court explained more than two hundred years ago. *Marbury v. Madison*, 5 U.S. 137, 177 (1803). "Those who apply the rule to particular cases, *must of necessity expound and interpret that rule.*" *Id.* (emphasis added). The Supreme Court noted, in the context of non-dispositive issues like attorney fee

awards, that "[i]t is essential that the judge provide a reasonably specific explanation for all aspects of a fee determination, including any award of an enhancement." *Perdue v. Kenny A.*, 559 U.S. 542, 558-59 (2010). "Unless such an explanation is given, adequate appellate review is not feasible, and without such review, widely disparate awards may be made, and awards may be influenced (or at least, may appear to be influenced) by a judge's subjective opinion regarding particular attorneys or the importance of the case." *Id.*

This Court has similarly noted "that a trial court's failure to explain the basis for its ongoing royalty rate precludes this court from reviewing the decision for an abuse of discretion." *Whitserve, LLC v. Computer Packages, Inc.*, 694 F.3d 10, 36 (Fed. Cir. 2012). "While a trial court is not required to grant a compulsory license even when an injunction is denied, the court must adequately explain why it chooses to deny this alternative relief when it does so." *Id.*; *see also Oakley, Inc. v. Int'l Tropic-Cal, Inc.*, 923 F.2d 167, 168 (Fed. Cir. 1991) ("[T]he court's findings in this proceeding are so limited and conclusory that meaningful appellate review is not possible.")

The trial court and panel both failed to give a reasoned explanation of their rejection of DuBose's invalidity case. The trial court's analysis of DuBose's substantial §103 obviousness case amounted to two sentences, devoid of any analysis. *Western Plastics, Inc. v. Dubose Strapping, Inc.*, 334 F. Supp. 3d 744,

758 (E.D.N.C. 2018). The trial court did not analyze the prior art or explain how the '304 Patent is novel and non-obviousness in view of the prior art. Instead, the trial court dismissed these issues in a single sentence, ruling that "genuine issues of material fact exist concerning obviousness," *id.* at 758, deferring to the jury even though "the ultimate question of patent validity is one of law," *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17 (1966). The panel in this case compounded the trial court's silence by dismissing this case under Rule 36, without explanation. Not only does such perfunctory treatment fail basic standards of fairness and process, in this case, it has resulted in this Court ignoring controlling Supreme Court and its own precedent.

III. This Court's Wordless Affirmance of Patent Validity Ignores the Holding and Teachings of *KSR Int'l Co. v. Teleflex*

Thomas Jefferson warned against overextending patent rights. *Graham*, 383 U.S. at 9-12. Repeatedly over the past century, the Supreme Court has had to remind practitioners and the courts that the monopoly power of patents is not to be freely given, particularly for obvious improvements. In *KSR Int'l Co. v. Teleflex*, 550 U.S. 398, 416 (2007), the Court again instructed that "a court must ask whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.* 550 U.S. at 417. Using known technology to obtain predictable results to solve problems is the hallmark of the ordinary mechanic; it does not warrant the grant of a patent monopoly.

In this case, WP argued that Shirrell '909 taught sandwiching a reinforcing mesh between film layers, where the mesh stretched as much as the film layers. Even if Shirrell and Kellerman's unequivocal testimony that Shirrell '909 *did not* teach this is ignored entirely, that means the *only difference* between the prior art Shirrell '909 Patent and the '304 Patent is that the mesh stretches *less* than the film layers to avoid overstretching and potential perforations.

Three things regarding the prior art are undisputed. First, the strands in the ITW 5G wrap stretch less than the film layers. Second, TamaNet® stretches less than stretch film. Third, TamaNet® and 5G wrap are prior art to the '304 Patent. WP took known technology—mesh that stretches less than the film—and combined them for the anticipated result: a reinforced wrap where the mesh restricted the stretching of the film. *KSR* compels a holding that the '304 Patent is invalid.

At oral argument, the panel appeared concerned about WP's secondary considerations of non-obviousness evidence. In *Graham*, the Court explained that secondary, non-technical considerations "*might* be utilized to give light to the circumstances surrounding the original of the subject matter sought to be patented." *Graham*, 383 U.S. at 18, 86 S. Ct. at 694 (emphasis added). For the first patent analyzed in *Graham*, the spring-loaded plow blade, the Court simply ignored such secondary considerations in finding the device obvious in view of the

prior art. *See id.* at 24-26. For the second patent analyzed, the pump sprayer, the Court acknowledged evidence of long felt need and commercial success, but held "these factors do not, in the circumstances of this case, tip the scales of patentability." *Id.* at 35-66. This Court's precedent since has regularly recognized that secondary considerations simply cannot overcome a strong prima facie case of obviousness such as the case made here. *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1247 (Fed. Cir. 2010) (see also cases cited therein); *Western Union Co. v. MoneyGram Payment Systems, Inc.*, 626 F.3d 1361, 1373 (Fed. Cir. 2010) (see also cases cited therein); *Perfect Web Techs., Inc. v. InfoUSA, Inc.*, 587 F.3d 1324, 1332 (Fed. Cir. 2009).

IV. The Trial Court and Panel Ignored *Therasense's* Teachings of Inferring Intent from Indirect and Circumstantial Evidence.

The trial court must make "factual findings regarding what reasonable inferences may be drawn from the evidence" in order to allow for this Court's review. *Therasense, Inc. v. Becton, Dickinson and Co.*, 649 F.3d 1276, 1291 (2011); *accord Precision Instrument Mfg. v. Auto. Maint. Mach.*, 324 U.S. 806, 808 (1945). The trial court did not make such findings, and the panel thus could not and did not conduct an appropriate review.

The trial court's conclusory holding at summary judgment that intent to deceive was not the single most reasonable inference based on clear and convincing evidence fails for two reasons. First, the trial court's holding was a

mere recitation of the legal standard established by this Court. It was bereft of what other reasonable inferences could be drawn from the evidence as well as how the evidence failed the clear and convincing standard. This Court's silent per curiam affirmance continues the lack of explanation.

Second, the evidence before the trial court was sufficient for a reasonable jury to conclude that there was clear and convincing evidence of an intent to deceive. WP President Tom Clarke, in possession of Shirrell's letter accusing WP of copying "the pith and marrow" of the 5GF-TamaNet® wrap with Panacea, vigorously responded to the Examiner that Shirrell '909 teaches away from his wrap, because Shirrell '909 stated the mesh in his wrap did not impede the stretching of the film. [Appx3441-3444] According to Clarke, using a mesh that would in any way limit the stretchability of the assembled wrap would "destroy" the very purpose of Shirrell's invention. Clarke went so far as to characterize Shirrell '909 as using a "stretch enhancing" mesh. [Appx3444]

The Examiner was unpersuaded and again rejected Clarke's claims under § 103 based primarily on Shirrell in light of Orpen. [Appx3432-3435] In May 2010, Clarke doubled down and filed a disclosure where he for the first time told the PTO that he had received correspondence from Shirrell in 2003 about an "alleged" stretch wrap product. [Appx3414] Clarke included the pictures of the 5GF TamaNet® wrap and told the Examiner, "My understanding is that the 5GF

Tamanet product was a failed experiment ... it is my understanding this prototype product was a failure in that it often broke or was torn apart under normal loads" [Appx3416] Clarke did not disclose Shirrell's letter nor Shirrell's characterization of Panacea being a copy of Shirrell's 5GF-TamaNet® wrap developed at Western Plastics in Georgia.

In the same disclosure, Clarke divulged to the PTO ITW's 8-stranded cling wrap product, which was sold as 6G and is also admitted prior art. Clarke told the PTO the 6G was also a "commercial failure." [Appx3416] WP's patent attorney repeated this false claim [Appx3405], and the fabricated assertion that "Shirrell's mesh allowed the cling films to stretch as much as they normally would without the mesh." [Appx3406] According to Clarke, Shirrell designed a wrap that could stretch up to 200%, much further than was advisable for wrapping coils.

[Appx3406]

It is *unreasonable* to infer that Clarke did not know he was not telling the truth. Foremost, Shirrell told Clarke in 2006 that Clarke's Panacea invention "copied the pith and marrow" of what Shirrell had made in 2003 at WP.

[Appx4314] Shirrell suggested Clarke would be engaging in "fraud" if Clarke attempted to patent what Shirrell had made. [Appx4314] While vigorously arguing that his wrap was accomplishing the opposite of Shirrell's wrap, Clarke did not

disclose to the Examiner the letter that accused Clarke's wrap of being an exact copy.

Second, Clarke had to have known it was false to argue that Shirrell used 200% stretchable mesh and mesh that stretched as much as the wrap. No such mesh existed, i.e. no mesh stretches co-extensively with cling wrap. Further, Clarke knew and referenced that Shirrell was using TamaNet® for the mesh. In 2003, and even in 2010, there was no such thing as a TamaNet® that stretched 200%. [Appx5622 (22:6-12); Appx5627 (27:7-20)] Clarke even tested TamaNet® netting and discarded it, paradoxically, because the TamaNet® did not stretch enough. [Appx1697 (159:4-25)] Shirrell also testified that they never expected mesh to stretch as much as the cling wrap. [Appx (42:21-43:43)]

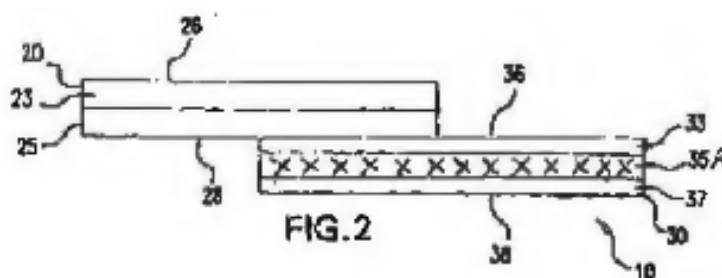
Third, contrary to striving for a mesh that stretched less than Shirrell '909, Clarke's product development notes demonstrated exactly what Shirrell '909 taught: mesh layers typically did not stretch enough to allow wrapping of steel coils with cling wrap. Clarke's product notes predating his statements to the PTO show him attempting to find a mesh that stretched *more* and did not shred when sandwiched between cling wrap and used on steel coils. [Appx2082-2083 (74:1-77:11); Appx4337 ("Mesh—not enough elongation or elasticity—makes product too stiff"); Appx4339 ("Netting kept breaking or shattering, clearly did not have enough elongation")]

Any of these three things should have been sufficient to withstand summary judgment on inequitable conduct, but WP's deception did not end there. Clarke also lied to the PTO that the 6G product was a commercial failure despite knowing full well that product was also still offered for sale. [Appx4359-4362, Appx3414-3418, Appx3406-3407, Appx3357-3387, Appx3301-3344] Indeed, those products are still on sale today. [Appx4330-4331]

For the next few years, Clarke continued to misrepresent both Shirrell '909 and file false statements claiming current products had failed in the marketplace. [Appx3364-3369; Appx3393-3398] WP's patent attorney told the Examiner they were unable to get a declaration from Kellerman. [Appx3358-3362] In fact, Clarke had asked Kellerman to write a letter saying that he was not familiar with any netted product or reinforced product in the market prior to Panacea. Kellermann refused because he had personally been involved in offering such a product to the market with ITW. [Appx1417-1418 (149:10-151:15)]

In August 2010, the Examiner responded with his fifth office action rejection, relying again on Shirrell '909 in light of Orpen. [Appx3347-3351.] The Examiner repeated his correct assessment that Shirrell '909's teaching that the mesh did not impede the stretch film had to be read to mean that it did not impede the stretch film from being stretched around coils. [Appx3350-3351] WP's patent attorney filed a lengthy response that repeated and compiled the multiple prior

falsehoods, but went further yet. [Appx3301-3309] The attorney represented "Orpen does not teach two materials 'clingly engaging' one another" but instead only heat fused layers. [Appx3303] But that was not true. Orpen taught "[t]he reinforced sheet can stick to itself by stiction (friction) or electrostatic forces, in the manner that cling film sticks to itself, by self-adhesion" [Appx3569] WP's patent attorney then constructed an entirely false narrative why the Shirrell '909 wrap failed: delamination of the wrap layers. [Appx3305] In furtherance of his made-up theory, WP's patent attorney doctored a Shirrell '909 drawing, adding Xs and new reference "35A" and inserted it into his argument, stating "[t]he passing reference in column 6 of Shirrell would be construed by the skilled practitioner to include the mesh in one of these films. For example, a modified version of Fig. 2 of Shirrell '909 is set forth below where the mesh is shown at 35A:"



[Appx3305] WP's patent attorney claimed that this modified drawing demonstrated why the Shirrell '909 wrap failed—because the mesh being placed within a film layer caused delamination.

Shirrell '909 did not teach mesh within film. Reference 35 of Shirrell '909 is a second layer of a second film ply 30 and does not have an exposed surface. [Appx4002 col. 5, ll. 4-5]. Shirrell '909 clearly taught that the "first and second (outer) plies have facing cling layers and a third ply provided *between them* is a reinforcing mesh or scrim that need not have cling properties." [Appx4002 (emphasis added)] Figure 2 showed overlapping multi-layer laminate films and had nothing to do with the mesh reinforced embodiment. If it had, the mesh would have been placed *between* the layers, not *within* a layer, i.e. between 28 and 36. Contrary to what WP's patent attorney represented, the mesh could not cause one of the film layers to de-laminate. Further, the surface areas 28 and 36 cling to each other between the strands of the mesh.¹

Now entering in its fifth year of prosecution, and in response to the torrent of false statements and arguments, the Examiner finally allowed Clarke's patent. [Appx3294] There is no reasonable explanation for WP's multiple false statements, other than an intent to deceive the Examiner regarding the non-obviousness of Clarke's film and mesh wrap. When viewing this evidence in a light favorable to DuBose, this evidence supported a claim for inequitable conduct. The trial court

¹ DuBose did not raise WP's fabricated drawing at the summary judgment stage, but raised it in its JNOV arguments.

erred in entering summary judgment against the claim, and the panel erred in its silent affirmance.

V. The Trial Court and the Panel Simply Ignored Panduit's Causality Requirement, Without Explanation.

When, as here, the *Panduit* framework is used to pursue lost profits, the presence of at least one acceptable, non-infringing alternative bars recovery.

Presidio Components, Inc. v. Am. Tech. Ceramics Corp., 875 F.3d 1369, 1380-82 (Fed. Cir. 2017) (reversing denial of JMOL motion as to lost profits).

Not only did Western Plastics fail to show an absence of acceptable non-infringing substitutes, there was uncontroverted testimony from both parties at trial that customers purchased other non-infringing products to use instead of WP's patented product. [Appx5803 (22:6-13); Appx5285 (73:11-16); Appx5491-5500 (158:16-167:11); Appx5577 (244:2-16)] Indeed, 13 out of 20 steel mills with wrapping machines supplied by WP's distributor do not use Panacea. [Appx5491-5500 (158:16-167:11) (additional steel mills also identified)] The evidence was uncontradicted that several of those mills switched from Panacea to non-infringing, non-reinforced films. [Appx5491-5500 (158:16-167:11)]

The trial court repeatedly ignored this evidence and DuBose's arguments about the impropriety of allowing lost profits in this case. This Court's silent affirmance only exacerbates DuBose's exasperation in trying to apply clear

precedent to its case, or at the very least, a reasoned explanation why DuBose's arguments regarding the same are denied.

CONCLUSION

Rehearing en banc or reassignment to a new panel should be granted.

Respectfully submitted,

Date: January 18, 2022 By: /s/ Anthony J. Biller

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ADDENDUM

NOTE: This disposition is nonprecedential.

**United States Court of Appeals
for the Federal Circuit**

WESTERN PLASTICS, INC.,
Plaintiff-Cross-Appellant

v.

DUBOSE STRAPPING, INC.,
Defendant-Appellant

2021-1371, 2021-1372

Appeals from the United States District Court for the Eastern District of North Carolina in No. 5:15-cv-00294-D, Chief Judge James C. Dever, III.

JUDGMENT

GLENN E. FORBIS, Harness, Dickey & Pierce, P.L.C., Troy, MI, argued for plaintiff-cross-appellant. Also represented by JAMES BRADLEY LUCHSINGER.

GEORGE THOMAS WILLIAMS, III, McGarry Bair PC, Grand Rapids, MI, argued for defendant-appellant. Also represented by ANTHONY J. BILLER, Envisage Law, Raleigh, NC.

THIS CAUSE having been heard and considered, it is

ORDERED and ADJUDGED:

PER CURIAM (NEWMAN, HUGHES, and STOLL, *Circuit Judges*).

AFFIRMED. See Fed. Cir. R. 36.

ENTERED BY ORDER OF THE COURT

December 17, 2021
Date

/s/ Peter R. Marksteiner
Peter R. Marksteiner
Clerk of Court

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS

Case Number: 21-1371, 21-1372

Short Case Caption: Western Plastics, Inc. v. DuBose Strapping, Inc.

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- the filing contains _____ pages / _____ words / _____ lines of text, which does not exceed the maximum authorized by this court's order (ECF No. _____).

Date: 01/18/2022

Signature: /s/ Anthony J. Biller

Name: Anthony J. Biller