

WASH WORLD INC. v. BELANGER INC., Appeal No. 2023-1841 (Fed. Cir. March 24, 2025).
Before Lourie, Prost and Stark. Appealed from E.D. Wis. (Judge Griesbach).

Background:

Belanger sued Wash World for infringement of a patent covering a car wash system with spray arms. Wash World argued for non-infringement because its spray arm did not have the claimed "outer cushioning sleeve," for which Wash World proposed the construction of "thick sleeve of extruded foam plastic that acts as a protective cushion." Wash World's spray arm was made of a hard material without a cushioning function. Wash World also argued that its spray arm did not move with respect to the claimed "predefined wash area," which it interpreted as "substantially centrally within a wash area." Instead, Wash World's spray arm moved relative to the car location detected in real-time by sonars. The district court did not adopt Wash World's constructions, believing them to unfairly narrow the plain meaning. A jury ultimately found infringement and awarded \$9.8 million in lost profits damages. Wash World moved for judgment as a matter of law (JMOL) for non-infringement based on the above positions, and alternatively, for a new trial or remittitur of damages based on convoyed sales. The district court denied the motion entirely. Wash World appealed to the Federal Circuit.

Issues/Holdings:

Did the district court err in its claim construction of "outer cushioning sleeve" and "predefined wash area" and in its denial of remittitur? No and Yes. Affirmed on claim constructions, and remanded with an order of remittitur.

Discussion:

On appeal, Wash World dropped the original constructions and proposed substantially different constructions for the disputed terms. For the "outer cushioning sleeve," it dropped the requirements of "thick" and "extruded foam" and instead proposed requiring "soft and resilient" material that "can be compressed and spring back into shape." For the "predefined wash area," it dropped the central-positioning definition entirely and instead proposed requiring it to be "defined before the vehicle enters the car wash and does not change after the vehicle enters the car wash." The Federal Circuit noted that these new constructions were never fairly presented in the district court and thus considered to have been forfeited. Wash World pointed to several places where it mentioned "soft and resilient" in the trial record, but the Federal Circuit noted, where there is no indication that the district court was aware of the supposed claim construction dispute, a party is considered to have forfeited it and cannot resurrect its argument on appeal by pointing to ambiguous statements in the record. The Federal Circuit also noted that the new construction of "predefined wash area" has a timing-related constraint which was never even mentioned to the district court.

Wash World did not forfeit the remittitur argument because it indisputably objected to Belanger obtaining any lost profit damages for convoyed sales (primarily for auxiliary dryers not covered by the patent), even though Wash World did not specify an exact amount for remittitur in the district court. The Federal Circuit then held that the trial record is not sufficient to prove Belanger's entitlement to lost profits on convoyed sales and remanded the case with an order of remittitur of about \$2.5 million in damages as specified on appeal.