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Standard Industries, Inc. v. Tigrett Industries, Inc.

397 U.S. 586 (1970)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



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10/17/69

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SUPREME COURT OF THE UNITED STATES

October Term, 1969.

**STANDARD INDUSTRIES, INC. v. TIGRETT
INDUSTRIES, INC., ET AL.**

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 445. Decided October —, 1969.

MR. JUSTICE BLACK, dissenting.

In this case respondent sued petitioner for payments alleged to be due under a patent licensing agreement. At trial and on appeal petitioner defended primarily on the ground that its product did not involve any use of the respondent's patent. Petitioner did not at any time attack the validity of the patent itself, and apparently conceded that controlling law prevented it from doing so. The District Court found that the product did utilize the patented invention and awarded damages. The Court of Appeals for the Sixth Circuit affirmed in an opinion delivered May 27, 1969.

On June 16, 1969, this Court decided in *Lear, Inc. v. Adkins*, 395 U. S. 653, that a patent licensee could attack the validity of a patent. That case specifically overruled the "patent licensee estoppel doctrine" of *Automatic Radio Manufacturing Co. v. Hazeltine Research, Inc.*, 339 U. S. 827 (1950), a doctrine that was the controlling law at all times in the proceedings below. Petitioner now seeks to attack the validity of respondent's patent, but respondent argues that since the issue was never raised below, it cannot now be litigated.

I cannot agree with the majority's denying petitioner the opportunity to have a court determine the validity of this patent. Since a clear rule of law precluded assertion of invalidity in the courts below, petitioner should not be deemed to have waived this issue. I do not think

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October 17, 1969

Dear Chief,

Re: No. 445 - Standard Industries,
Inc. v. Tigrett Industries

I would like this case to go over
for a week in order that I might have my
dissent from the denial of certiorari changed
and reprinted. It will be recirculated next
week.

Sincerely yours,

H. L. B.

The Chief Justice

Clerk forwarded
10-17-69

SUPREME COURT OF THE UNITED STATES

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MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS
and MR. JUSTICE WHITE join, dissenting.

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The failure to assert invalidity below cannot, in these circumstances, be deemed a waiver of that defense. The Court has recognized that to be effective a waiver must be "an intentional relinquishment or abandonment of a known right or privilege," *Johnson v. Zerbst*, 304 U. S.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

From: Black, J.

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Recirculated: _____

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U. S. DEPARTMENT OF JUSTICE

To: The
Mr. Justice Douglas
Mr. Justice Harlan
✓ Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 445.—OCTOBER TERM, 1969

From: Black, J.

Circulated: MAR 28 1970

Standard Industries, Inc.,
Petitioner,
v.
Tigrett Industries, Inc.,
et al.

On Writ of Certiorari to the
United States Court of Ap-
peals for the Sixth Circuit.

Recirculated: _____

[March —, 1970]

MR. JUSTICE BLACK, dissenting.

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SUPREME COURT OF THE UNITED STATES

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[April —, 1970]

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To: The Chief Justice
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Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
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Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

October Term, 1969.

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 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Fortas
 Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

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Recirculated: _____

[March —, 1970]

MR. JUSTICE BLACK, *with whom Mr. Justice Douglas joins* dissenting.

*Done
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U.S. SUPREME COURT MANUSCRIPT DIVISION

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

March 17, 1970

MEMORANDUM TO THE CONFERENCE

Re: No. 445 - Standard Industries v. Tigrett Industries

This case was assigned to me for per curiam disposition. Although the assignment indicates that the case was to be dismissed as improvidently granted, my notes indicate that our ultimate conclusion at the Conference was that the case should be affirmed by an equally divided Court. Accordingly, I have prepared and herewith circulate a proposed statement reflecting that disposition of the case.

P.S.
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No. 445, O. T. 1969

STANDARD INDUSTRIES v. TIGRETT INDUSTRIES

PER CURIAM

The judgment is affirmed by an equally divided Court.

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U.S. SUPREME COURT

White
Hep - Please join me
Byron

SUPREME COURT OF THE UNITED STATES

October Term, 1969.

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