

The Burger Court Opinion Writing Database

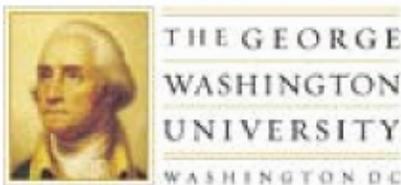
Anderson's-Black Rock, Inc. v. Pavement Salvage Co.

396 U.S. 57 (1969)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

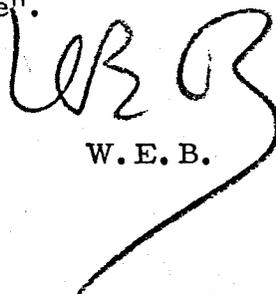
CHAMBERS OF
THE CHIEF JUSTICE

December 4, 1969

Re: No. 45 - Anderson's-Black Rock, Inc.
v. Pavement Salvage Co., Inc.

Dear Bill:

Will you show me as "taking no part
in the decision of this case".



W. E. B.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

November 21, 1969

Dear Bill,

Re: No. 45- Anderson's-Black Rock, Inc.
v. Pavement Salvage Co., Inc.

I agree.

Sincerely,



H. L. B.

Mr. Justice Douglas

cc: Conference

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23
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

November 25, 1969

Dear Bill,

Re: No. 45- Andersons-Black Rock,
Inc. v. Pavement Salvage Co.

The changes in your 11/24 circula-
tion are O.K. with me.

Sincerely,


Hugo

Mr. Justice Douglas

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

1

SUPREME COURT OF THE UNITED STATES Douglas, J.

No. 45.—OCTOBER TERM, 1969

circulated: 11/21/69

Anderson's-Black Rock, Inc., } On Writ of Certiorari to
Petitioner, } the United States Court
v. } of Appeals for the
Pavement Salvage Co., Inc. } Fourth Circuit.

[November —, 1969]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Respondent brought this action against petitioner for infringement of United States Patent No. 3,055,280 covering "Means for Treating Bituminous Pavement." The patent was assigned to respondent by one Neville.

Bituminous concrete—commonly called asphalt or "blacktop"—is often laid in strips. The first strip laid usually has cooled by the time the adjoining strip is to be laid, creating what is known as a "cold joint." Because bituminous concrete is pliable and capable of being shaped only at a temperature of 250 to 290 degrees Fahrenheit, the cold joint results in a poor bonding between the strips. Water and dirt enter between the strips, causing deterioration of the pavement.

Respondent's patent sought to solve the problem of the "cold joint" by combining on one chassis (1) a radiant heat burner for heating the exposed edge of the "cold" strip of pavement; (2) a spreader for placing bituminous material against that strip; and (3) a tamper, screed, and leveler for shaping the newly placed material to the desired contour and surface.

The standard paving machine in use prior to respondent's claimed invention combined on one chassis the equipment for spreading and shaping the asphalt,

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Long
throughout

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

SUPREME COURT OF THE UNITED STATES *Dr. St. J.*

No. 45.—OCTOBER TERM, 1969

circulated

11	24	69
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Anderson's-Black Rock, Inc., } On Writ of Certiorari to
Petitioner, } the United States Court
v. } of Appeals for the
Pavement Salvage Co., Inc. } Fourth Circuit.

[November —, 1969]

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Bituminous concrete—commonly called asphalt or "blacktop"—is often laid in strips. The first strip laid usually has cooled by the time the adjoining strip is to be laid, creating what is known as a cold joint. Because bituminous concrete is pliable and capable of being shaped only at a temperature of 250 to 290 degrees Fahrenheit, the cold joint results in a poor bonding between the strips. Water and dirt enter between the strips, causing deterioration of the pavement.

Respondent's patent sought to solve the problem of the cold joint by combining on one chassis (1) a radiant heat burner for heating the exposed edge of the "cold" strip of pavement; (2) a spreader for placing bituminous material against that strip; and (3) a tamper, screed, and leveler for shaping the newly placed material to the desired contour and surface.

The standard paving machine in use prior to respondent's claimed invention combined on one chassis the equipment for spreading and shaping the asphalt, and it is unquestioned that this combination alone does

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pp. 3, 4

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Thomas~~
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 45.—OCTOBER TERM, 1969

Circulated: _____

Anderson's-Black Rock, Inc., } On Writ of Certiorari
Petitioner, } the United States Court
v. } of Appeals for the
Pavement Salvage Co., Inc. } Fourth Circuit.

Circulated: 11-26

[November —, 1969]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Respondent brought this action against petitioner for infringement of United States Patent No. 3,055,280 covering "Means for Treating Bituminous Pavement." The patent was assigned to respondent by one Neville.

Bituminous concrete—commonly called asphalt or "blacktop"—is often laid in strips. The first strip laid usually has cooled by the time the adjoining strip is to be laid, creating what is known as a cold joint. Because bituminous concrete is pliable and capable of being shaped only at a temperature of 250 to 290 degrees Fahrenheit, the cold joint results in a poor bonding between the strips. Water and dirt enter between the strips, causing deterioration of the pavement.

Respondent's patent sought to solve the problem of the cold joint by combining on one chassis (1) a radiant heat burner for heating the exposed edge of the cold strip of pavement; (2) a spreader for placing bituminous material against that strip; and (3) a tamper, screed, and leveler for shaping the newly placed material to the desired contour and surface.

The standard paving machine in use prior to respondent's claimed invention combined on one chassis the equipment for spreading and shaping the asphalt, and it is unquestioned that this combination alone does

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

4

4
SUPREME COURT OF THE UNITED STATES Douglas, J.

No. 45.—OCTOBER TERM, 1969

Anderson's-Black Rock, Inc., } On Writ of Certiorari to
Petitioner, } the United States Court
v. } of Appeals for the
Pavement Salvage Co., Inc. } Fourth Circuit.

12/4/69

[November —, 1969]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Respondent brought this action against petitioner for infringement of United States Patent No. 3,055,280 covering "Means for Treating Bituminous Pavement." The patent was assigned to respondent by one Neville.

Bituminous concrete—commonly called asphalt or "blacktop"—is often laid in strips. The first strip laid usually has cooled by the time the adjoining strip is to be laid, creating what is known as a cold joint. Because bituminous concrete is pliable and capable of being shaped only at a temperature of 250 to 290 degrees Fahrenheit, the cold joint results in a poor bonding between the strips. Water and dirt enter between the strips, causing deterioration of the pavement.

Respondent's patent sought to solve the problem of the cold joint by combining on one chassis (1) a radiant heat burner for heating the exposed edge of the cold strip of pavement; (2) a spreader for placing bituminous material against that strip; and (3) a tamper, screed, and leveler for shaping the newly placed material to the desired contour and surface.

The standard paving machine in use prior to respondent's claimed invention combined on one chassis the equipment for spreading and shaping the asphalt, and it is unquestioned that this combination alone does

November 26, 1969

Re: No. 45 - Anderson's-Black Rock v.
Pavement Salvage Co.

Dear Bill:

I am glad to join your opinion, as recirculated
November 24.

One minor point: In the forepart of your
opinion you refer to the "combination" as being composed
of three elements (p. 1), whereas in what follows you refer
to four elements (e.g., p. 3). Maybe there is good reason
for this, but the inconsistency I think would bother at least non-
patent lawyers like myself.

Sincerely,

J. M. H.

Mr. Justice Douglas

CC: The Clerk

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 25, 1969

RE: No. 45 - Anderson's Black Rock v.
Pavement Salvage Company

Dear Bill:

I agree with your opinion in the
above case.

Sincerely,


W.J.B. Jr.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 25, 1969

No. 45 - Anderson's-Black Rock v. Pavement Salvage

Dear Bill,

I am glad to join the opinion you have
written for the Court in this case.

Sincerely yours,

P.S.
/

Mr. Justice Douglas

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

November 22, 1969

Re: No. 45 - Andersen's-Black Rock,
Inc. v. Pavement Salvage Co.
Inc.

Dear Bill:

Please join me,

Sincerely,

S.R.V.

Mr. Justice Douglas

U.S. Supreme Court

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 3, 1969

No. 45 - Anderson's Black Rock, Inc. v.
Pavement Salvage Co., Inc.

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Douglas

cc: The Conference