

The Burger Court Opinion Writing Database

Deepsouth Packing Co. v. Laitram Corp.
406 U.S. 518 (1972)

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



2
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

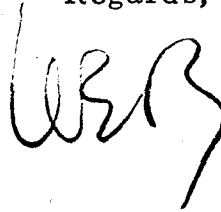
May 29, 1972

Re: No. 71-315 - Deepsouth Packing Co. v. Laitram Corp.

Dear Harry:

Please join me in your dissent.

Regards,



Mr. Justice Blackmun

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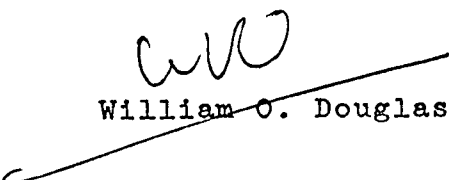
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 18, 1972

Dear Chief:

I have assigned the opinion in
No. 71-315 - Deepsouth Packing Co. v.
Laitram Corp., to Byron.


William O. Douglas

The Chief Justice

CC: The Conference

5


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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 13, 1972

Dear Byron:

In No. 71-315 - Deepsouth Packing Co.
v. Laitram Corp., please join me in your opinion.

W. O. D.


Mr. Justice White

cc: Conference

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U.S. SUPREME COURT ADVANCE

3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 15, 1972

RE: No. 71-315 - Deepsouth Packing v.
Laitram Corporation

Dear Byron:

Please join me in your fine opinion
in the above. Should "not inconsistent with"
in the last line read "consistent with" or am
I nit-picking?

Sincerely,

Bill

Mr. Justice White

c c: The Conference

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SECTION OF ADVISORY

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 15, 1972

71-315 - DeepSouth Packing Co. v. Laitram Corp.

Dear Byron,

I am glad to join your opinion for the Court
in this case.

Sincerely yours,

PS1

Mr. Justice White

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U.S. SUPREME COURT RECORDS

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
☒ Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 5-13-72

No. 71-315

Recirculated: _____

Deepsouth Packing Co., Inc., } On Writ of Certiorari to
Petitioner, } the United States Court
v. } of Appeals for the Fifth
The Laitram Corporation. } Circuit.

[May —, 1972]

MR. JUSTICE WHITE delivered the opinion of the Court.

The United States District Court for the Eastern District of Louisiana has written:

"Shrimp, whether boiled, broiled, barbecued or fried, are a gustatory delight, but they did not evolve to satisfy man's palate. Like other crustaceans, they wear their skeletons outside their bodies in order to shield their savory pink and white flesh against predators, including man. They also carry their intestines, commonly called veins, in bags (or sand bags) that run the length of their bodies. For shrimp to be edible it is necessary to remove their shells. In addition, if the vein is removed, shrimp become more pleasing to the fastidious as well as palatable."¹

Such "gustatory" observations are rare even in those piscatorily favored federal courts blissfully situated on the Nation's Gulf Coast, but they are properly recited in this case. Petitioner and respondent both hold patents on machines which devein shrimp more cheaply

¹ *The Laitram Corporation v. Deepsouth Packing Co., Inc.*, 301 F. Supp. 1037, 1040 (1969).

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OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 15, 1972

Re: No. 71-315 - DeepSouth Packing v. Laitram

Dear Byron:

Please join me.

Sincerely,


T.M.

Mr. Justice White

cc: Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

No. 71-315

Circulated: 5/18/72

Deepsouth Packing Co., Inc., } On Writ of Certiorari to
Petitioner, } the United States Court
v. } of Appeals for the Fifth
The Laitram Corporation. } Circuit.

Recirculated: _____

[May —, 1972]

MR. JUSTICE BLACKMUN, dissenting.

Because our grant of certiorari was limited, 404 U. S. 1037 (1972), the customarily presented issues of patent validity and infringement are not before us in this case. I necessarily accept, therefore, the conclusion that the Laitram patents are valid and that the Deepsouth de-veining machine, when manufactured and assembled in the United States, is an infringement. The Court so concedes. The Court, however, denies Laitram patent law protection against Deepsouth's manufacture and assembly when the mere assembly is effected abroad. It does so on the theory that there then is ~~no~~ "making" of the patented invention in the United States even though every part is made here and Deepsouth ships all the parts in response to an order from abroad.

With all respect, this seems to me to be too narrow a reading of 35 U. S. C. §§ 154 and 271 (a). In addition, the result is unduly to reward the artful competitor who uses another's invention in its entirety and who seeks to profit thereby. Deepsouth may be admisi-sive and candid or, as the Court describes it, *ante*, at 6 n. 5, "straightforward," in its sales "rhetoric," *ante*, at 9-10, but for me that rhetoric reveals the very iniquitous and evasive nature of Deepsouth's operations. I do not see how one can escape the conclusion

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OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 16, 1972

Re: No. 71-315 Deepsouth Packing Co.
v. Laitram Corp.

Dear Byron:

I would appreciate your showing at the proper time that I dissent from the Court's opinion, excellent though it be.

I do not plan to write a dissent. If none is written by other members of the Court, you might add the following for me:

"Mr. Justice Powell dissents because he believes that the Court of Appeals for the Fifth Circuit correctly decided this case."

Sincerely,

L. F. P.

Mr. Justice White

cc: The Conference.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 19, 1972

Re: No. 71-315 Deepsouth Packing Co.
v. The Laitram Corp.

Dear Harry:

Please join me in your dissent.

Sincerely,

Lewis

Mr. Justice Blackmun

cc: The Conference

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SECTION OF THE SUPREME COURT

B

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

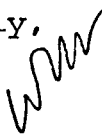
May 18, 1972

Re: 71-315 - Deepsouth Packing v. Laitram

Dear Harry:

Please join me in your dissent in this case.

Sincerely,



Mr. Justice Blackmun

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SECRETARY OF JUSTICE