SUPREME COURT
OF THE UNITED STATES

In the Matter of:

CHARLES R. CHRISTIANSON, ET AL., NO. 87-499

Petitioner,

v.

COLT INDUSTRIES OPERATING CORP.

Pages: 1 through 51

Place: Washington, D.C.

Date: April 18, 1988

HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, N.W., Suite 600
Washington, D.C. 20005
(202) 628-4888

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES R. CHRISTIANSON, ET AL., Petitioners, v. COLT INDUSTRIES OPERATING CORP. : No. 87-499

Washington, D.C.

Monday, April 18, 1988

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:03 a.m.

APPEARANCES:

STUART R. LEFSTEIN, ESQ., Rock Island, Illinois; on behalf of the Petitioners.

ANTHONY M. RADICE, ESQ., New York, New York; on behalf of the Respondent.

C O N T E N T S

P R O C E E D I N G S

CHIEF JUSTICE REHNQUIST: We'll wait just a moment, Mr. Lefstein, till the court clears.

(Pause)

CHIEF JUSTICE REHNQUIST: Very well. You may proceed whenever you're ready.

ORAL ARGUMENT OF STUART R. LEFSTEIN, ESQ.

ON BEHALF OF THE PETITIONERS

MR. LEFSTEIN: Mr. Chief Justice, and may it please the Court:

This is an anti-trust case and a state law tortious interference with business expectancies case that was filed in the United States District Court in Rock Island, Illinois.

Summary judgment was granted for the Plaintiffs, Charles Christianson, and his business, International Trade Service.

The Defendant, Colt, then took an appeal to the United States Court of Appeals for the Federal Circuit. The Federal Circuit, pursuant to the Plaintiffs' motion, transferred the case to the Seventh Circuit on the ground it did not have jurisdiction.

The Seventh Circuit, after hearing arguments on the merits, briefing and oral arguments, sua sponte, wrote an opinion saying it did not have jurisdiction but that, indeed, the Court of Appeals for the Federal Circuit had jurisdiction.

QUESTION: Do you mean the opinion was written sua sponte or the holding was that it had no jurisdiction sua sponte? Courts write opinions sua sponte.

MR. LEFSTEIN: Okay. I'll accept the correction.

The case was then sent back to the Federal Circuit. The Federal Circuit then wrote a lengthy opinion, most of which dealt with the subject of jurisdiction. It explained very carefully why it was right the first time, why it did not have jurisdiction. It specifically held, as it said in its first order, it had no jurisdiction pursuant to congressional enactment, and then it said, nonetheless, despite the lack of a statutory grant of jurisdiction, it was going to decide the merits, and in deciding the merits, it reversed the judgment below that was in favor of the Plaintiff and, of course, then after that, this Court granted certiorari.

The certiorari petition had actually submitted the question of jurisdiction and the question was phrased whether the United States Court of Appeals may rule on the merits of an appeal when it expressly rules that it does not have subject matter jurisdiction pursuant to statute.

That question was granted and the Court directed the parties to brief and argue a second question, which it did, in fact, the Federal Circuit have jurisdiction from the appeal.

Now, with respect to the first question, --

QUESTION: Mr. Lefstein, before you get to that, what

exactly do you want us to do with this?

MR. LEFSTEIN: What we are actually asking, the relief we're asking for at this particular time is that the appeal be dismissed.

QUESTION: No more than that?

MR. LEFSTEIN: That's what we're asking for.

QUESTION: What happens then?

MR. LEFSTEIN: Well, then, it would be remanded to the District Court for further proceedings.

QUESTION: Wouldn't we have to say that? Wouldn't we have to say that?

MR. LEFSTEIN: If that was the Court's order, yes.

QUESTION: Because I just don't know what position the case is in.

MR. LEFSTEIN: Well, the case --

QUESTION: We have a court that says I don't have jurisdiction, but I decide, and I am at a loss as to what you do with a decision like that.

MR. LEFSTEIN: Well, we are requesting for reasons that we've placed in our brief that if we are correct and that is and if the Federal Circuit is correct, that it did not have jurisdiction, that, therefore, the remedy is dismissal, and we've said that actually for a couple of reasons, and one of the reasons is that Colt did not cross petition and, therefore, they're not entitled under prior holdings of this Court, which

we've cited, to obtain the remedy of transfer and, of course, the remedy of transfer pursuant to Section 1631 may only be granted if it is in the interest of justice.

We've cited reasons why we believe it is not in the interest of justice to bring about a transfer, and that is because we believe that Colt, in its briefing on the jurisdictional question, which was presented to both courts, and even in its brief to the Seventh Circuit, made statements in it which we believe actually misled the Seventh Circuit into coming to the conclusion that the Federal Circuit and not the Seventh Circuit had jurisdiction.

QUESTION: What if we decide that the Court of Appeals shouldn't have decided the merits? Why shouldn't we just remand the case to them?

MR. LEFSTEIN: To the Court of Appeals?

QUESTION: Yes.

MR. LEFSTEIN: Well, you might remand it to the Court of Appeals, but I assume that you would then have to give directions as to what would have to be done.

QUESTION: Well, I guess the Court of Appeals would have some sense of its own about what ought to be done.

MR. LEFSTEIN: Well, that's obviously one of the options that this Court could exercise.

QUESTION: Well, your motives and ours may be somewhat different. I think probably this Court's interest is

to see which of the two Courts of Appeals was correct as to where this appeal should have gone to, and your motive is obviously to obtain a victory for your client, just like any good lawyer.

But your appeal has -- it was not heard on the merits in the Seventh Circuit, was it?

MR. LEFSTEIN: That's correct, Your Honor.

QUESTION: And was it heard on the merits -- it was heard on the merits --

MR. LEFSTEIN: Well, wait a minute. I want to back off that answer for just a second.

QUESTION: Okay.

MR. LEFSTEIN: It was argued on the merits. It was briefed on the merits. An oral argument was presented on the merits. But the Court of Appeals for the Seventh Circuit did not decide the merits. They didn't reach the question. They said we don't have jurisdiction.

QUESTION: And it was your client -- well, no. It was your opponent who took the appeal -- was it you or your opponent that took the appeal originally from the Rock Island court?

MR. LEFSTEIN: The -- it was our opponent, Colt, the Defendant, who had a summary judgment entered against it by the District Judge, who took the appeal initially to the Federal Circuit, and then the Plaintiff, Charles Christianson, moved to

transfer the case to the Seventh Circuit on the ground that the Federal Circuit did not have jurisdiction, and at that point, the Federal Circuit, after receiving briefs on that question, and presumably considering the whole issue, entered an order which specifically said that we don't -- I think the language was probably a three-line order, which said we see no basis for any jurisdiction in our court, and accordingly, and I'm paraphrasing now, we transfer the case to the United States Court of Appeals for the Seventh Circuit.

QUESTION: Yes, but the only question for us to decide, I gather, is which of the courts was the proper court for which the appeal should have been taken.

MR. LEFSTEIN: Well, that's obviously one of the questions.

QUESTION: But if we were to decide that, then can't we send back the merits to whichever court we think should have had the appeal?

MR. LEFSTEIN: That's obviously one option, but --

QUESTION: If you decide the Federal Circuit had jurisdiction, the Federal Circuit has already decided the merits.

MR. LEFSTEIN: Well, if that's your answer, that's one of the approaches that you could take. I might just mention that we have presented -- the first question actually states "may a court rule on the merits after it expressly

states that it has no jurisdiction", and I suppose, technically, if you answer that question in the negative, and if you viewed that question as dispositive, then I think you could actually say that the Federal Circuit should not have decided it also.

QUESTION: Well, yes, but we told you to brief and argue the second question, the question of jurisdiction.

MR. LEFSTEIN: That's right, Your Honor. That's correct. And if you view that one as dispositive --

QUESTION: If we decided that first and agreed with the Federal Circuit as to jurisdiction, we could just say then that they shouldn't have decided the merits.

QUESTION: But then where does that leave the case?

MR. LEFSTEIN: Okay. If you agree --

QUESTION: There is no question presented as to the correctness of the decision on merits.

MR. LEFSTEIN: Well, there was a question --

QUESTION: There is none here.

MR. LEFSTEIN: At the present time, there is not such a question. In our prayer for relief at the conclusion of our briefs, we have suggested that if the Court should decide that the Federal Circuit was wrong in saying it did not have jurisdiction and, in fact, had jurisdiction, we have renewed our request that you accept certiorari on the merits. I realize that's strictly up to this Court.

QUESTION: There has never been an appellate opinion on the merits in this case, is that correct?

MR. LEFSTEIN: No, that's incorrect. The Federal Circuit gave an opinion on the merits.

QUESTION: You do not question that if we decide that the Federal Circuit did not have jurisdiction, an available form of relief would be for us to simply send the case back to the Seventh Circuit? Could we do that?

MR. LEFSTEIN: That is one of the options. I've always assumed this Court in exercising --

QUESTION: Could do any type -- oh, I see.

QUESTION: We like to think there's some statutory policy.

QUESTION: Right.

MR. LEFSTEIN: Well, the statutory power is under Section 1631, which indicates a transfer if it is in the interests of justice, and, so, we've made some arguments concerning the matter of whether it is in the interest of justice.

QUESTION: I renew my question. What do you want us to do with it?

MR. LEFSTEIN: Our preference is that you dismiss the appeal. That you send it back to the Federal Circuit with directions that the appeal be dismissed.

QUESTION: In other words, you don't want us to let

the Seventh Circuit hear the merits if the Federal Circuit had no jurisdiction?

MR. LEFSTEIN: If you agree with us that it's not in the interest of justice to retransfer it, --

QUESTION: And the reason you say it's not in the interest of justice is because Colt made some misleading statements in characterizing your complaint?

MR. LEFSTEIN: That's correct, Your Honor.

QUESTION: But this was the same complaint that two circuits was inartfully drafted?

MR. LEFSTEIN: That's correct, Your Honor.

QUESTION: Well, you also make a point they didn't cross petition.

MR. LEFSTEIN: That's correct, and I think that that's a highly significant point, and because what Colt is really seeking is a form of remedy which is a transfer back to the Seventh Circuit which could get Colt more or less relief than what they received from the Federal Circuit. They could get more relief because they also had a claim for a cross motion for summary judgment.

The Federal Circuit did not give them that relief, but, arguably, the Seventh Circuit could, so a transfer could get them more relief than, of course, under one of the cases we cite, I think the Federal Energy case. Even if there's going to be a modification which would give less relief, there's a

duty to cross petition.

QUESTION: May I ask, though? There a lot of things that can be done here, but would you tell me which court you think had jurisdiction and why?

MR. LEFSTEIN: I certainly will. The court that we say had jurisdiction is the Federal Circuit, and -- I'm sorry. Is the Seventh Circuit, and the reason for that is that we're dealing with the well-pleaded complaint doctrine. We're dealing with the traditional concepts of arising under jurisdiction.

The Seventh Circuit had jurisdiction if the Federal Circuit did not. The Federal Circuit only has jurisdiction of those cases that "arise under Section 1338".

QUESTION: Let me ask. You basically agree with Judge Markey's discussion on the jurisdiction issue, I gather?

MR. LEFSTEIN: Oh, yes. Yes.

QUESTION: What would you say if half way through the trial, you had filed an amended complaint which clearly was predicated on the patent laws and the section that they construed in this case, would there -- which court would have jurisdiction then? Not the original complaint, but you amended your complaint. Didn't wait to conform to the rules, but -- and then, from then on, that's all the Court did, was resolve the issues raised by your amended complaint, who would have jurisdiction?

MR. LEFSTEIN: I think under the well-pleaded complaint doctrine, the Seventh Circuit would still have jurisdiction.

QUESTION: You look at the original complaint and you don't even look at any substantive amendments?

MR. LEFSTEIN: Even if, arguably, you look at subsequent amendments, I think you still have to, under the well-pleaded complaint doctrine, and I think this is explained very careful in the Franchise Tax Board case, you're still dealing with what is the Plaintiff's cause of action.

QUESTION: Yes, but those cases really dealt with the question of whether the trial court had federal jurisdiction. Here, the question is whether an appellate court has jurisdiction, and why does it make a lot more sense to say at the time of the appeal, let's see what was decided in the trial court and what is a fair constructive complaint at that time.

MR. LEFSTEIN: Okay. And the simple reason for this is that when Congress set up the jurisdiction of the Federal Circuit, Congress didn't create some new standard for the Federal Circuit. What Congress said was the Federal Circuit's appellate jurisdiction is going to hinge precisely on the jurisdiction of the District Court.

So, your question seemingly assumes that there's some different standard under Section 1295 which relates to the Federal Circuit, but 1295 jurisdiction hinges on whether there

was a rise in under-jurisdiction in the District Court, and if --

QUESTION: So that your answer is basically that even thought it might make a lot of sense, that's not what the statute does.

MR. LEFSTEIN: That's a good answer. I think Congress has spoken on this, and if you read the reports which have been cited, and I might say, with all the disagreements that Colt and Christianson have in this case, right in their brief, they agree right at the outset that what we're dealing with are the traditional concepts of arising under jurisdiction and they cite the same congressional report that we cite, and that Congress specifically rejected some form of issue jurisdiction for the Federal Circuit as opposed to case jurisdiction because case jurisdiction is the standard under the arising understanding.

QUESTION: Well, sometimes it's hard to know the answer under the arising under standard. Should any special presumption or expertise be given to the Court of Appeals for the Federal Circuit in deciding those questions of its own jurisdiction or not?

MR. LEFSTEIN: I think the concepts of arising under, although we have a hundred years of history with respect to those concepts, nonetheless, I think they are tests which probably any court is competent or should be competent to

decide.

I might say this, this issue arose for the first time in the Federal Circuit. It didn't arise in the Seventh Circuit, and what we have is a situation where the Seventh Circuit clearly has jurisdiction if the Federal Circuit did not, and, therefore, what we were really dealing with was the jurisdiction of the Federal Circuit, even though it impacts on the Seventh Circuit.

And it simply seems to us that the Federal Circuit having examined whether it had jurisdiction and having heard briefs on the matter and having entered an order that that order should have been given respect by the Seventh Circuit. In fact, there's an argument in both briefs on the law of the case doctrine.

QUESTION: If we went off on that ground, we would settle nothing except this case.

MR. LEFSTEIN: Well, that's certainly so, but I've read several opinions where this Court has said that they decide matters on narrow grounds, but if the Court is going to fashion a decision which is going to address the matter of which Court, in fact, had jurisdiction, then obviously you couldn't go on some type of law of the case argument.

But what I would like to emphasize, I suppose, and I think Justice Stevens just a few minutes ago asked me to explain why the Federal Circuit did not have jurisdiction and

the Seventh Circuit did, simply is that we had an anti-trust complaint. We made no allegation, except there was one reference in one paragraph that even mentioned this patent issue, this so-called 112 issue, and that paragraph didn't say, didn't make any claim at all that there were invalid patents.

QUESTION: Well, the claim is that the case went forward in the District Court solely or principally on the patent issues.

MR. LEFSTEIN: Well, the case on --

QUESTION: And, so, it's as though the complaint hadn't been amended.

MR. LEFSTEIN: Well, but, of course, using that analysis would contravene all of the years of teaching on this subject and as it culminated in Franchise Tax Board, which is that we look at the complaint, and the posture in which that issue arose --

QUESTION: What I'm saying is it's just as though there's an amended complaint filed because if the patent issues, we're predominated.

MR. LEFSTEIN: Well, if that was the case, then we could have had that resolved in Franchise Tax Board because the clear holding in the language of Franchise Tax Board is that even where the only issue truly at issue in the case is the matter that's decided, if that didn't arise in the complaint, if that was a defense, then we don't have jurisdiction, and

what we had here was an anti-trust --

QUESTION: Mr. Lefstein, suppose there are cases in which there is a tradition of construing federal jurisdiction narrowly, as the federal courts are courts of limited jurisdiction, but here Congress was concerned about creating a specialized tribunal who would decide patent issues because there was expertise there that wasn't share by the courts around the country.

So, is it really compulsory that we follow the same strict analysis that would apply in the federal jurisdiction cases in a case like this? I think we're talking about appellate jurisdiction, too.

MR. LEFSTEIN: I understand. I can only answer that by saying that Congress has spoken in this particular area.

QUESTION: You think they considered this problem of amended complaints and maybe a case does change its posture as it develops in the trial?

MR. LEFSTEIN: I think they did, and what I base that on --

QUESTION: What's the most illuminating discussion of this particular aspect of it that you can point me to?

MR. LEFSTEIN: There is a statement and it's cited in both briefs, and we didn't tag on one further statement to it, but the statement in the congressional reports -- I think -- I'm not sure if it's the Senate or the House, it states that

the test of appellate jurisdiction depends on District Court jurisdiction and that there is arising under jurisdiction in the District Court in the same sense that there is arising under, and I'm paraphrasing now, that there is arising under jurisdiction with federal question jurisdiction.

QUESTION: Well, I understand that. That's right. That's in the legislative history, but I'm asking you is there any discussion in the legislative history that you're aware of of the problem of a case during the process of trial changing its character somewhat from what it looked like on the complaint to what it looks like after you get into the evidence and perhaps amend the pleadings and that.

I don't think that's even discussed in the history.

MR. LEFSTEIN: I don't recall anything directed to that, and I might add that with the statement I just paraphrased from the congressional record, they then state contrast Coastal States which was a case of the temporary emergency Court of Appeals, which went off on issue jurisdiction.

So, the congressional record was clearly saying we're not going to do that here.

QUESTION: Mr. Lefstein, you think the majority of members in Congress and the President understood the well-pleaded complaint doctrine?

MR. LEFSTEIN: I hesitate to speak for them all.

QUESTION: This is all very fanciful, isn't it?

MR. LEFSTEIN: I can't speak to that. I assume Congress has some lawyers. Maybe they understand it, maybe they don't.

QUESTION: They wrote something that reads very much like 1331, though, doesn't it?

MR. LEFSTEIN: I'm sorry?

QUESTION: They wrote something that reads very much like the provision of the statute that uses the well-pleaded complaint doctrine. That's what they enacted, isn't it?

MR. LEFSTEIN: Yes, yes. Well, actually, --

QUESTION: You don't know if they understood the well-pleaded complaint doctrine?

MR. LEFSTEIN: I obviously can't speak to that.

QUESTION: You think -- you want to make a guess about it?

MR. LEFSTEIN: It depends what the experience of the lawyers were, who were on these committees. If they had occasion to go into the well-pleaded complaint doctrine. I think, though, on that statute, what I should emphasize is they didn't enact a new District Court jurisdictional statute. They left Section 1338 just as it was, and they said, we're going to peg the appellate jurisdiction to what the jurisdiction -- to what 1338 says.

QUESTION: Would it make a whole lot of sense in

terms of the theory of the Federal Circuit jurisdiction to say that if a case turns solely on a patent issue, that except for the well-pleaded complaint rule, would be appealable to the Federal Circuit?

Does it make much sense to apply the well-pleaded complaint rule to that, and in this case, say that the Court of Appeals for the Seventh Circuit should dispose of the patent issue on which the case turns?

MR. LEFSTEIN: Well, I think it does make sense, even if we want to ignore what Congress seemingly said, and even if we want to look at mere policy because what we have is a situation where Congress also said we want to avoid undue specialization.

There is discussion of that in the congressional reports. That we don't want one court that's just going to be deciding one particular thing, and I might also point out that in this particular area, what we're doing here with the 112 issue as it arose in this case, it is a federal pre-emption question, and the irony of the case is that the Federal Circuit has specifically said, and we cite the case, Cable Electric, that federal pre-emption questions, which this Section 112 issue is, we do not believe that we have a mandate from Congress to unify the law on questions of federal pre-emption, and that we're going to follow the law of the regional circuit.

So that had the Court of Appeals for the Federal

Circuit actually come out with a different result on the merits, they would have looked to Seventh Circuit law to the extent that they could have divined it to determine whether or not there was federal pre-emption under the patent laws and, of course, this particular case is going to mean that if the result was different because of the exclusivity provision in Section 1338, which means that the states must hear -- where the states now have a right to hear cases involving patent issues, but not patent cases, that any decision in a case such as this, and the Federal Circuit gave an example, if there was a state law anti-trust case brought, that that would mean even though they've heard these cases for a hundred years because of that exclusivity provision, they would have to come out of the state courts and into the federal courts.

So, I think an answer to the question that as a matter of policy, the arising under concept makes sense because I don't think it's beneficial to bring all of the traditional cases that the states have held and bring them into the federal courts.

QUESTION: May I ask another question? The language of 1295(a)(1) is that there's jurisdiction in the Federal Circuit if the claim was one that arose in whole or in part under 1338.

MR. LEFSTEIN: Right.

QUESTION: Does that mean that if there's a single

allegation in your complaint, and I know you deny that there is, but under the patent, that that would be enough to -- that would be -- satisfy in part and, therefore, there would be a federal jurisdiction?

MR. LEFSTEIN: No. I think that has to do with specific claims. In other words, we've got one anti-trust count. In other words, the in whole or in part language is not in Section 1338. The in whole or in part language is in Section 1295.

QUESTION: Correct.

MR. LEFSTEIN: So that you still have to have a genuine arising under case in your complaint, and I think we touch that in our reply brief, but, basically, we have a situation where we have solely an anti-trust case.

So, there's no count at all that's based on the patent laws.

QUESTION: Counsel, what should the Federal Circuit have done here in your view when it gets this case back a second time?

MR. LEFSTEIN: We think they should have dismissed it and then Colt could have sought certiorari or they could have sought mandamus against one or both of the Courts of Appeals.

QUESTION: Not sent it back to the Seventh Circuit?

MR. LEFSTEIN: No. I think that would have been unseemingly.

QUESTION: Not certified?

MR. LEFSTEIN: I think they could have certified it. I think that would have been appropriate.

I'd like to reserve my time.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Lefstein.

Mr. Radice, we'll hear now from you.

ORAL ARGUMENT OF ANTHONY M. RADICE, ESQ.

ON BEHALF OF THE RESPONDENT

MR. RADICE: Thank you, Mr. Chief Justice, and may it please the Court:

The issue is whether the appeal of a judgment which invalidates nine patents, disgorges trade secrets, and imposes other liability as a remedy for patent law violations belongs in the Federal Circuit, Court of Appeals, or a regional circuit.

In short, is this a case that arises under the patent laws?

The District Court's decision and judgment on liability held Colt liable for patent violations, specifically that it failed to comply with Section 112 of the Patent Act in failing to disclose all of the M-16's manufacturing specifications in connection with certain -- I'm sorry?

QUESTION: Why did it reach those issues?

MR. RADICE: It reached those issues because those are the issues presented to the District Court for summary

judgment.

QUESTION: By?

MR. RADICE: By the Plaintiff, by Christianson.

QUESTION: Well, didn't the Defendant rely on the patents?

MR. RADICE: In the summary judgment motion, the argument was made that --

QUESTION: Well, what about in the answer to the complaint?

MR. RADICE: In the answer to the complaint, we did allege patent invalidity in response to paragraph 18. In paragraph 18 of the complaint, which is the critical one as both the Seventh and Federal Circuits have recognized, is not well drafted. It's confusing, and essentially Colt appears to allege patent validity and the patent invalidity.

We responded with a denial and then a specific allegation of patent invalidity, but we understood the complaint at that time, Your Honor, to be alleging patent invalidity and trade secret invalidity based on 112, and we understood it that way because this was not the first time we had seen that theory.

The action began when --

QUESTION: Was there a pre-trial conference or was there just a motion for summary judgment?

MR. RADICE: I believe our adversaries have announced

a desire to make a motion for a summary judgment at a conference at which we discussed the scheduling of a trial, and, so, --

QUESTION: Well, had there been a pre-trial conference outlining the issues?

MR. RADICE: There had been conferences. Not a conference where the issues were outlined or where there was a pre-trial order, Your Honor.

QUESTION: Is that in the record? I suppose it is somewhere.

MR. RADICE: It's certainly a notation in the docket of the conference, but I'm not sure whether there was a transcript made. Certainly not a pre-trial order outlining the issues.

The District Court on the summary judgment motion held Colt liable for violating the patent laws and the relief or the remedy was the declaration of invalidity of nine patents and all of the trade secrets. There were no independent anti-trust findings by the District Court or any trust questions analyzing it.

The District Court decision thus contains the actual basis of liability imposed and defines the well-pleaded complaint. Whether or not the allegations are well expressed in the complaint, we say, the District Court --

QUESTION: You say the District Court judgment

defines the well-pleaded complaint?

MR. RADICE: In setting forth the elements of liability that were imposed, Your Honor, particularly important here because the complaint was so incomplete and poorly drafted.

QUESTION: 1338, I think as your opponent points out, it talks about having original jurisdiction of any civil action arising under any act of Congress relating to patents.

Now, you say you can simply rely on the judgment?

MR. RADICE: We are saying that -- two things, Your Honor.

First, that you can use the decision, the judgment, the summary judgment motion to determine what are the necessary allegations of the complaint.

QUESTION: But ordinarily you think of 1338 as a grant of jurisdiction, and that people should know when the complaint is filed whether the Court has jurisdiction or not.

MR. RADICE: Ordinarily, and it would be the first issue if the question were state versus federal jurisdiction, but the alternative basis for jurisdiction here would be under the anti-trust laws.

So, there's no question of federal jurisdiction per se. So, the question didn't come up at that time. It was either, you know, patent --

QUESTION: Yes, but if you take your view, you would

never know whether a case was one arising under an act of Congress until you saw the judgment.

MR. RADICE: I use the judgment as just one way to interpret the complaint, Your Honor. The summary judgment motion itself, the theory of the summary judgment motion helps to interpret the complaint.

QUESTION: But lots of times, the theory of a case changes entirely from the time a complaint is filed, and this may have been one of them, till the time judgment is entered. So, you really got to address yourself as to what point in the litigation does the arising under business apply.

MR. RADICE: This is similar to Justice Stevens' question that an amendment, for example, of a complaint is something that comes after the complaint and would change, could change the jurisdiction of the District Court. A case that has no patent element in it could be amended -- amended complaint filed in the jurisdiction of the District Court at that point. After the beginning of the case, would be based, in part, on Section 1338, and the Federal Circuit has interpreted its jurisdiction in response to a question asked to my adversary, has interpreted its amendment jurisdiction this way.

It has recognized amendments that either add a patent claim or delete a patent claim as effecting its jurisdiction and has very recently interpreted consolidation to have the

same effect. Those cases are cited, I believe, --

QUESTION: What was the ultimate relief granted by the District Court? It wasn't just to invalidate the patents, was it?

MR. RADICE: No. It went beyond that. It declared the patents invalid, first.

QUESTION: And wasn't that just a threshold step toward assessing liability under boycott and anti-trust theory?

MR. RADICE: Perhaps a threshold step, but, nevertheless, the result was --

QUESTION: But the relief --

MR. RADICE: -- the validity which we could no longer enforce those patents.

QUESTION: But the ultimate relief the Plaintiff was seeking and that the District Court was driving toward was damages under the anti-trust law and boycott theories, was it not?

MR. RADICE: The -- well, can I answer that question first with respect to the District Court?

The District Court, in its decision, granted first the patent invalidity relief; second, the trade secret invalidity and disgorgement relief; and, then, third, imposed damage liability with a trial to be held at another time. So, it didn't reach the amount of damages. But all of that relief flowed, and this is inescapable from reading the District

Court's decision, flowed from the patent violations.

There were no independent anti-trust issues --

QUESTION: Are you saying that this case could not have been brought in state court under a state anti-trust law?

MR. RADICE: It could not in the present form. Perhaps the best analogy would be --

QUESTION: I don't know Illinois law, but suppose under New York, the Little-Sherman Act, could this be brought in state court? Same complaint?

MR. RADICE: This case as liability was imposed could not. This case would be a patent case because, fundamentally, liability was imposed solely as a basis --

QUESTION: No jurisdiction in the state court from the outset?

MR. RADICE: Because it is a patent case and, therefore, --

QUESTION: That's your position?

MR. RADICE: Yes, it is.

QUESTION: It wasn't your position, though, when you got the complaint because, in fact, your answer to the complaint indicated that you didn't think there was a patent issue.

MR. RADICE: I think it's fair to say we didn't think about it at the time, Your Honor.

QUESTION: Well, that's what -- I mean, there you

are. You say you admitted that Colt patents are valid until the end of each of their respective lifetimes. You regarded the complaint as not raising a patent issue.

MR. RADICE: Well, we also had -- if you're reading our response to paragraph 18, we also denied the allegation which we interpreted in paragraph 18 to be an assertion of patent and trade secret invalidity. So, we began by denying that allegation.

QUESTION: Denying what? Denying what? The allegation generally, but when you come to talk specifically about patents, you admit that the patents are valid.

In other words, you're saying there's no patent issue in this case. That's what your answer says.

MR. RADICE: I think that the allegations may not match each other, Your Honor. Perhaps it's poor draftsmanship. It perhaps should have read as an averral of patent validity.

Paragraph 18 is a confusing paragraph, and we would all have been better served had, as Judge Nichols said in his dissent, we called for an amended complaint at the time or a more definite statement of what the complaint was, but we did not, and now we must try to interpret what that complaint means, and it's our position that the way that one can -- the best way, the most reliable way to determine what the necessary allegations are of Plaintiff's real case is to look at the summary judgment motion, to look at the claim that was actually

litigated and actually adjudicated.

Whether we do that under the -- following the principles of the well-pleaded complaint rule, there are cases that go beyond the four corners of the bare words of the complaint to try to interpret what are the necessary allegations of the complaint, or whether we apply Rule 15(b) of the Federal Rules of Civil Procedure, we come to the same conclusion.

Rule 15(b), even without a formal amendment, requires that the pleadings be treated as amended to conform to the proof.

QUESTION: Well, that's the end of the well-pleaded complaint doctrine then, isn't it?

MR. RADICE: I don't think so, Your Honor.

QUESTION: We could call it the well-tried case doctrine because whatever comes out automatically is considered to amend the complaint and whatever the case shows is determined by federal jurisdiction.

MR. RADICE: If it comes up under 1295, only as regards the Federal Circuit's jurisdiction versus another appellate court's jurisdiction, and it's only at that stage that you have a record in between --

QUESTION: Under 1331?

MR. RADICE: I think it's consistent, Your Honor. The cases -- I'm sorry. The Federated Department Store case, for

example, looked at matters outside the bare pleadings. It looked at the belated litigation to determine -- that was the case where a state anti-trust action was brought, but there had been a prior action, the Plaintiffs had discontinued their action and tried to file the same action in state court, and the courts below and the Supreme Court affirmed, looked at the related litigation to determine what the real cause of action was, and, so, I think what we're saying is really consistent with the well-pleaded complaint rule, but it operates -- it certainly does not change the inquiry that must be addressed when the question is federal jurisdiction per se.

That question must be addressed at the outset of the case where virtually all you have is the complaint. Perhaps a removal petition.

QUESTION: Do you have any -- I mean, looking to other litigation is really just trying to find out what the complaint historically meant. You can perhaps give it some clarity by looking at other litigation that was there at the same time, but that's quite different from saying we're going to look at the way the case developed.

The way the case develops does not necessarily have anything to do with what the complaint meant. It seems to me the best indication if you're going to look outside its face of what the complaint meant is what kind of an answer did it provoke from the defendant.

And here you admit that there's no patent issue.

MR. RADICE: But a case can change, particularly complex litigation, and, therefore, the jurisdictional basis can change.

QUESTION: Yes. You are relying on the fact that a case can change while it's being tried.

MR. RADICE: That's one thing, Your Honor.

QUESTION: So, you don't think that whether there's federal jurisdiction or not is fixed when the complaint is filed. So, you're not looking for historical fact what the complaint meant.

MR. RADICE: It is fixed. Number one, it can change. Number two, we do read this complaint as a patent complaint and we did so at the time, and one of the reasons we did was because this was not the first time we had seen this issue.

In the Springfield litigation, which we brought Mr. Christianson into the Springfield litigation as a defendant, in that action, we were also seeking to enforce trade secrets. The defense in that action was this Section 112 theory that our trade secrets and patents were invalid because of 112.

The action went up on appeal, got a preliminary injunction, and we were upheld. The preliminary injunction was upheld. So that when we drop Christianson after we went back to the District Court, he turned around and filed this complaint, the instant complaint. We interpret it as turning

the defense into an offense. We had seen the issue before. That's the way we understood it at the time.

I certainly recognize this is not an easy complaint to read. It's not a model of draftsmanship, and that's why I suggest that looking at the subsequent proceedings assists the District Court or the appellate court in determining what the complaint really means.

QUESTION: Well, counsel, aren't there motions that you might have made during the course of the proceedings to force an amendment of the complaint or force a more definite statement?

MR. RADICE: Those motions were available to us. We did not make them.

QUESTION: And you didn't make them, and, yet, you want to rely on it as though those things had been done, and I'm not sure that's the way the system is supposed to work.

MR. RADICE: Well, I think Rule 15(b) was written precisely for this situation, that where the parties had not recognized or the Court has not recognized the change in the theory between pleading and trial, that one -- de facto, it should be recognized and considered an amended pleading.

We -- and the course of events was only about four or five months between this complaint and the bringing of the summary judgment motion, we cross moved for summary judgment motion, but it really just met the Section 112 theory. The

motions didn't go beyond that.

QUESTION: Wouldn't damages at the end of the line be calculated on an anti-trust theory no matter what happened to the patent?

MR. RADICE: Well, they could be. They could be.

QUESTION: Wouldn't they have to be?

MR. RADICE: Yes. We've never reached that stage. We're not -- it seems to me that there are two ways because of the diversity between the -- the divergence between the original complaint and what we were held liable for.

There's two ways of looking at this action. One is that it's solely a patent action, that it was brought as an action to declare patents invalid, which is a recognized action that arises under the patent laws, and that the relief went too far. The judge took the unprecedented step of patent violations and disgorged trade secrets.

Secondly, to try to reconcile the original complaint, for example, with the decision, if it's an action that arises under the anti-trust laws, the closest analogy that we could use would be the Walker Process kind of case. The Plaintiffs' complaint here arises -- it's -- I'm sorry. The action created by the anti-trust laws would be under Section 2 of the Sherman Act. The Plaintiff is proceeding to show that our patents are invalid and that the enforcement of those patents plus all the other elements of Section 2 would.

Viewed that way, we must come to the same conclusion, though. The Walker Process teaches and the related cases that fundamental to such an anti-trust claim is that the patents must not only be invalid, technically invalid, they must be obtained by fraud from the Patent Office. So, inherent in Plaintiffs' claim, not a defense, is the invalidity element, and this law has been applied in the trade secret area, too.

QUESTION: The Federal Circuit has not granted jurisdiction in any such case or has it?

MR. RADICE: In the Walker Process case, it's never come up. Certainly not at the Federal Circuit level.

QUESTION: And, in fact, the other circuits have retained jurisdiction in themselves, have they not? Ethicon.

MR. RADICE: The closest case -- the only case that I'm aware of is the Handgards case, but -- I'm sure Your Honor is familiar with that one. I believe you were on one of the panels.

At the time that issue was considered and the regional circuit kept the case, it appears to me from the decision that there was no longer a patent question in the case.

It's our position that where there is a patent invalidity issue at the heart of the Plaintiffs' anti-trust case, the issue, the case arises under the patent laws and the appeal would still go to the Federal Circuit, and I believe

what little there is in the statutory history is consistent with this.

There is very little devoted in the Senate report to the hybrid-kind of patent anti-trust case, but there's a couple of things that are notable. There's a couple of statements in the Senate report, for example, that says specifically that they expect that all patent appeals to go to the Federal Circuit.

They were more concerned -- there was some concern expressed that a frivolous patent appeal be attached to an anti-trust complaint and that the District Court should be able to deal with this, to prevent that steering jurisdiction to the Federal Circuit.

But probably the most that is said on the subject is attached to the Senate Report. I think it's Appendix B, which is a letter from -- to Senator Dole from the Office of Court Administration that deals with the kind of mixed anti-trust and patent questions, and it characterizes most of these kinds of patent abuse claims, including the Walker Process claim, as fundamentally patent issues that it expected would go to the patent court, to the Federal Circuit.

QUESTION: Mr. Radice, could I ask about -- I don't understand how you expect your Rule 15(b) argument to work when the proof shows that there is a patent claim the complaint is deemed amended to conform to that proof.

Let's assume I'm sitting on the Seventh Circuit and half way -- I think I have jurisdiction because it doesn't seem to me that there's any patent limit and deep into the trial, it appears that we're getting into a patent issue and, boy, this case is really going to boil down, what do I do then. I transfer to the Federal Circuit.

MR. RADICE: If you are on the Seventh Circuit, you don't get the case until the trial is over and a judgment has been written.

QUESTION: And it doesn't arise at the District Court level? Why doesn't it arise at the District Court level insofar as the --

MR. RADICE: The District Court I do not believe either has the power nor is there a procedure for the District Court to determine the appellate court's jurisdiction. The next thing that would happen after the trial and the judgment is one of the parties has to file a notice of appeal, and the issue would come up if the other party questioned where that notice of appeal was directed.

QUESTION: You say there's a constantly shifting jurisdictional basis in the District Court, but it doesn't make any difference.

MR. RADICE: Not constantly shifting. This is a pretty rare case.

QUESTION: Well, what if it started in a state court?

You wouldn't have the luxury of letting the District Court resolve it. You'd be in the middle of the trial and you'd have to figure out where it belonged under your theory.

MR. RADICE: Whether --

QUESTION: Doesn't the District Court have to know what law it's going to be governed by? Let's assume the Federal Circuit and the Seventh Circuit have quite different resolutions of a particular issue. As the trial proceeds, the district judge says, oh, I'm back to the Federal Circuit now, and then the evidence changes, whoops, I'm back at the Seventh Circuit. This goes back and forth during the whole trial.

MR. RADICE: On the choice of law question, at least the way the law seems to be developing, the Federal Circuit has taken the position that in areas outside its specialty, non-patent areas, it would apply the law of the circuit. So, on the anti-trust issues, and this would be on an issue-by-issue basis, the theory would be that the -- whether in the regional circuit or the Federal Circuit, the federal -- I'm sorry. The regional circuit's anti-trust law should apply.

QUESTION: Would apply anyway. So, it wouldn't matter.

MR. RADICE: Consistent with that principle is that, and I don't know that there has been a holding to this effect, is that if a regional circuit got a patent issue is it should defer, there's a difference, because it has all the precedent.

QUESTION: Counsel, --

MR. RADICE: Contrary to the Federal Circuit's precedent on patent law, and that's --

QUESTION: Counsel, I might have missed it. Are you defending the Court's decision that it did not have jurisdiction?

MR. RADICE: No. We are --

QUESTION: It's easy. Yes or no?

MR. RADICE: We are defending that the Federal Circuit had jurisdiction and the rational --

QUESTION: That it did not have it?

MR. RADICE: That it had jurisdiction, but we say the proper rationale for its jurisdiction was best expressed in the Seventh Circuit's decision.

QUESTION: Cross appeal?

MR. RADICE: We did not because we did not submit a cross motion.

QUESTION: So, my question is, you're not defending it?

MR. RADICE: We are defending the result. We are not seeking any relief different from what --

QUESTION: You defend the judgment. That's all you're defending.

MR. RADICE: We are defending the judgment. We are not seeking relief or result different from what the Federal

Circuit did. We do defend the jurisdictional basis on a different ground than what the Federal Circuit expressed. We think it had expressly under the statute jurisdiction because this was the patent case.

QUESTION: And you must establish both that the -- if you're supporting this particular judgement before us now, you have to say that the Federal Circuit did not have jurisdiction of the appeal in the first place, but it was justified in going on to decide the case under the interest of justice?

MR. RADICE: No, Your Honor. We don't defend the interest of justice basis of jurisdiction. That, on the face of the statute, appears to just provide a transfer where a court lacks jurisdiction.

What we defend is the court's exercise of jurisdiction. We say it had jurisdiction to reach the merits and it had jurisdiction for the basis expressed in the Seventh Circuit.

QUESTION: So, the Seventh Circuit was right on jurisdiction.

MR. RADICE: Exactly.

QUESTION: The Federal Circuit was wrong, but since the Federal Circuit decided it and since you feel it had jurisdiction, then you support the judgment.

MR. RADICE: That is precisely our position.

QUESTION: Do we have to rule on both of them?

MR. RADICE: I think --

QUESTION: You rely on the Seventh in that. Do you want us to rule that both of them are correct?

MR. RADICE: I think whichever way you rule, you necessarily rule on the other position because if the Federal Circuit had jurisdiction here, the Seventh --

QUESTION: Confusion. That's what you want.

MR. RADICE: No. We try to --

QUESTION: You want us to say the reasons given by the Seventh Circuit are correct, but the judgment entered by the Federal Circuit was correct.

MR. RADICE: That's correct.

QUESTION: You have suggested the case, and I'm curious and I don't know if this is the law, but in your brief, you cite a case in which there was a patent claim asserted in the complaint, and then, during the course of the trial, the patent theory was abandoned, and the Federal Circuit held in that case that it would look at the later -- would not look at the original complaint and they declined jurisdiction.

Is that the general rule that's accepted, that they will -- when it will deprive them of jurisdiction to look at later amendments, they will not just look at the well-pleaded complaint, they will look at the latest.

MR. RADICE: I believe because there's been several cases on the subject in the Federal Circuit that's

inconsistent.

QUESTION: Your opponent didn't discuss those cases, as I read the brief.

MR. RADICE: They cited two or three, maybe both of those go the same way, but I think they have been consistent in recognizing that the amendment affects their jurisdiction.

QUESTION: What was the -- the Atari case, which was heard en banc, was one that also looked at subsequent developments, was it not?

MR. RADICE: Well, it looked at subsequent developments and in Atari, there was an attempt after the decision to separate the copyright case from which there had been a judgment and the patent part of the complaint and the Federal Circuit essentially held that that attempted separation was not affected.

It's kind of a unique set of facts. Typically, a severance would occur much earlier. It really didn't reach the question of if there was an effective severance that resulted in separate trials and separate judgments, how that would affect its jurisdiction.

QUESTION: But in that case, at least you quote something your brief, that says they looked at the situation at the time of the appeal rather than the time of the complaint, which is also consistent with your view that you start out with a complaint alleging a patent violation and then later amend it

to abandon it, they wouldn't have jurisdiction.

MR. RADICE: They did look at subsequent events, and I think that's -- I don't think that does violence to the well-pleaded complaint rule, Justice Stevens. I think that that's what courts have done where they are confronted with either a poorly-drafted complaint or a changed theory, and I think the opposite result being wedded to the complaint would do violence to the congressional purpose here because you could manipulate the jurisdiction by attaching a federal patent claim in your complaint, abandon it, and throughout the history of the case, all appeals would go to the Federal Circuit.

QUESTION: Well, even if you say that you can use it as a practical matter in this area, you certainly couldn't apply the well-pleaded complaint doctrine generally as far as federal versus state jurisdiction goes in that fashion, could you, because then a federal court would not know during the course of a trial whether it had jurisdiction or not?

So, you're arguing for a different well-pleaded complaint rule here --

MR. RADICE: I don't think there's been any inconsistency. If a patent claim was attached, let's say, to a state claim and the court assumed jurisdiction and then determined that the patent claim was frivolous, I don't believe the District Court is supposed to proceed with jurisdiction.

QUESTION: Well, let's leave patent claims out of it.

The issue is just whether this is a federal case or not before a federal district court. No patent issue. Just another federal issue and during the course of the trial, sometimes it seems there is and sometimes it seems there isn't. You're saying that you can look to the end of the trial to determine whether the federal court has jurisdiction.

MR. RADICE: I'm saying that that is the most advisable rule to determine appellate jurisdiction.

QUESTION: The well-pleaded complaint rule does not apply to appellate jurisdictions. It applies to District Court jurisdiction as well, doesn't it?

MR. RADICE: It does. It does.

QUESTION: And you're asserting that the principle you're now espousing is what is used in determining whether a federal court has jurisdiction, that you look at how the trial goes, and if the decision is ultimately based on a federal question, it had jurisdiction, and if it isn't, it didn't. Is that really --

MR. RADICE: I'm saying it's not something that changes minute-by-minute. This is a rather unique case where the District Court --

QUESTION: I'm talking generally and never mind the changing. At the end of the trial, it appears that there was a federal claim because of new evidence brought in, although the complaint clearly on the face of the complaint there wasn't

any. You're saying that there would be federal jurisdiction under standard well-pleaded complaint doctrine.

MR. RADICE: The Court tried a federal question case, in this case, a patent question case, yes, we should look to that to determine appellate jurisdiction.

QUESTION: Do you have any cases, aside from this patent area?

MR. RADICE: Not specifically.

QUESTION: Any case at all that does --

MR. RADICE: By operation of Rule 15(b).

QUESTION: You have cases that you think the case would say that?

MR. RADICE: The language of Rule 15(b) amends the complaint, but this situation I don't think could come up under normal federal jurisdiction per se because jurisdiction is determined at the outset. It could only come up when one has the advantage of a retrospective analysis.

In the Coastal States case, I believe, which determined the jurisdiction of the temporary emergency Court of Appeals and Judge Newman, which ultimately determined that it was issued jurisdiction, said that the appellate court should take the advantage of looking in retrospect and not deal just with the frozen words of the original complaint because it is better able to determine whether that is the kind of case that should go to one Circuit Court of Appeals or the other.

QUESTION: I agree with you that the Federal Circuit has jurisdiction. What about the decision on the merits? Do you concede have reason to seek cert here for review of the merits?

MR. RADICE: I do not think so. It's a decision that I think is, of course, on the merits, eminently correct. It applies traditional patent law.

QUESTION: Yes, but we have not had any appellate review of that decision, have we?

MR. RADICE: Has had -- we both have had appellate review in the Federal Circuit. The Federal Circuit reached the merits and it's been fully briefed and argued.

Obviously, the Court can accept certiorari on the merits. We think the related point is that, you know, the question as to my adversaries, what does the Court do when it finds that the Seventh Circuit really had jurisdiction, and there's no support for a dismissal.

In fact, the Harley-Davidson v. Buffington case that we cited in our briefs says that our right to an appellate -- right to an appeal means a right to have an appellate determination.

There is precedent for what this Court could do in at least three cases as recently as U.S. v. Hohri, where the Court determined that the D.C. Circuit did not have jurisdiction, but the Federal Circuit did. It simply remanded and directed a

transfer under the transfer section of 1631.

That is the, we say, appropriate remedy and unless the Court does want to reach the merits of the patent question.

QUESTION: Counsel, help is at hand.

MR. RADICE: I think it raises more questions.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Radice.

Mr. Lefstein, you have three minutes remaining.

ORAL ARGUMENT OF STUART R. LEFSTEIN, ESQ.

ON BEHALF OF THE PETITIONERS - REBUTTAL

MR. LEFSTEIN: Mr. Chief Justice, U.S. v. Hohri, which was just cited by Mr. Radice, is a case where there was a transfer, but there was a cross petition. Both parties petitioned in that particular case, and there was no discussion of the interest of justice question.

QUESTION: Mr. Lefstein, let me ask you one more question about the basic issue we're most interested in rather than what we do with the case.

Do you think that the Federal Circuit was correct in the case in which it held that when there is in the complaint itself a clear patent claim, but then, during the course of the trial, that claim is dismissed, that it had no jurisdiction of that appeal?

MR. LEFSTEIN: Yes.

QUESTION: How do you reconcile that with the arising under doctrine?

MR. LEFSTEIN: Well, because the arising under doctrine simply has to do with our --

QUESTION: Is that the time the complaint was filed it clearly did arise under the patent laws.

MR. LEFSTEIN: Okay. Let me say this first.

QUESTION: Because you don't discuss that case in your reply brief, I don't think.

MR. LEFSTEIN: No. Okay. I think what's significant here, we don't agree at all that this complaint was ever amended. We don't agree that anything ever changed, and I think it's important to stress that the complaint was understood by Mr. Radice and Colt to the effect when he admitted patent validity and he did nothing, there's nothing in their answer that raised a 112 issue.

QUESTION: Well, I'm interested in your answer to the theoretical problem. If you have a complaint which clearly does make a patent claim, then in the course of the trial it's dismissed, so there are no patent claims in it, for determining appellate jurisdiction, do you look at what happened after the dismissal or at the time the original complaint was filed?

MR. LEFSTEIN: Well, I think that they were looking at what happened when the complaint was filed.

QUESTION: But they dismissed the appeal. They would not take the appeal in that case. I don't understand how you reconcile your theory with the Gronholz and Schwarzkopf cases

that they cite in their brief.

MR. LEFSTEIN: Well, there's nothing different about our theory than every case. I mean, if you're going to say that in our case, you could have said that in Franchise Tax Board, and, of course, what happened here in our particular case was that the Section 112 issue was in the pleadings. It was in our reply to Colt's counter claims.

So, this whole business about Section 15(b) -- by the way, Section 15(b) doesn't say that the complaint is amended, it said that the pleadings can be so, and what we have in this particular situation, we had the 112 issue, but it came up way down stream from the complaint.

So that we really had no patent issue in this case until Colt in its answer said we're justifying our anti-competitive conduct with a claim of state law protected trade secrets, and then, in an argument and in a reply to that claim of state law trade secrets, we injected the patent pre-emption issue for the first time, and that's the way it stayed through the end of this lawsuit.

CHIEF JUSTICE REHNQUIST: Thank you, Mr. Lefstein.

The case is submitted.

(Whereupon, at 12:03 o'clock p.m., the case in the above-entitled matter was submitted.)

REPORTERS' CERTIFICATE

DOCKET NUMBER: 87-499

CASE TITLE: Charles R. Christianson v. Colt Industries Operating Corp.

HEARING DATE: April 18, 1988

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Supreme Court of the United States, and that this is a true and accurate transcript of the case.

Date: April 18, 1988

Margaret Daly

Official Reporter

HERITAGE REPORTING CORPORATION
1220 L Street, N.W.
Washington, D. C. 20005