



SKIP GIBBS COMPANY

Newspan® & Railsan® Steel Bridges
949 School Way • PO Box 260
Redwood Valley, CA 95470-0260
707 485-5822 • 707 485-0860 *fax*

web: www.skipgibbs.com
email: bridge.sales@skipgibbs.com

One of our unique products, the Railsan® bridge, is alone in its field, with no actual “or equal” competing product. A federal court ruling, now allows specifiers to name our firm only in specifications.

FEDERAL COURT RULING ON “OR EQUAL”

Affirming a decision handed down by the U.S. District Court of Massachusetts, the Federal 1st Circuit Court in the case of Whitten Corp. vs. Paddock, Inc., was backed up by the U.S. Supreme Court which refused to hear further appeals. The decision, unique in that it defines the specifying party’s clear authority at the federal level where previous decisions have been in lower courts.

Four major rulings regarding specifications come from this landmark decision:

1. The court ruled that proprietary specifications are not a violation of anti-trust laws. Further, the court stated that trained professionals, i.e. specifiers, make informed judgments on products which they feel best serve their client’s needs. Technically, few brands of materials or equipment are exactly alike, and if the specifier wants to limit the specification to one source he has the right to do so and enforce it.

2. The court ruled that other suppliers or manufacturers can qualify as “Or Equal” only when the specifier chooses to waive specifications or permit those suppliers or manufacturers to bid.

However, it clearly stated that the specifying source is charged with the responsibility and judgment for determining whether a proposed substitution is an “Or

Source: Water & Wastewater Equipment Manufacturers Association, Inc. Memorandum March, 1993

Equal.” Further, where “Or Equal” is not stated in the specifications, it is still the specifying source’s decision as to what products do or do not qualify as “Or Equal.”

3. The court stated that the specifier “...may waive specifications in order to obtain a more desirable product for the client.” The implication is again that only the specifier (from start to finish of the construction process) can ultimately decide that another desirable product is available in lieu of the product originally specified in the client’s best interest.

4. The court concluded “the burden is on the supplier or manufacturer who has not been specified to convince the specifier that their product is equal for the purpose of a particular project.”

This is probably one of the most powerful court judgements in construction law history to come down the road - in that the judgment now establishes the specifier’s legal right toward brand selection. It should also merit very important consideration for those manufacturers that desire to make a better quality product and thereby get paid the necessary price to stay viable with it.

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SKIP GIBBS COMPANY
Newspace® & Railspan® Steel Bridges

FOR YOUR RAILSPAN® BRIDGE PROJECT, YOU MAY USE THE BELOW MINIMAL SET OF SPECIFICATIONS TO INDICATE OUR FIRM.

“Railspan® bridges for use in this project shall be prepared for use by:

Skip Gibbs Company, Inc.
949 School Way
P.O. Box 260
Redwood Valley, CA 95470-0260
707 485-5822

Skip Gibbs Company, Inc. is in the regular business of providing Railspan® flatcar structures, and has been in the business of supplying and preparing railroad flatcars as bridges similar to the present project, including fabrication, transportation, handling, and installation since 1983.”

Should you require more comprehensive and specific specifications tailored to your project please contact our offices and we will be glad to accommodate your needs.