

NOTE: This order is nonprecedential.

**United States Court of Appeals  
for the Federal Circuit**

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**SCOTT TIMBER COMPANY,**  
*Plaintiff-Appellee,*

v.

**UNITED STATES,**  
*Defendant-Appellant.*

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2011-5092

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Appeal from the United States Court of Federal  
Claims in case no. 05-CV-708, Judge Charles F. Lettow.

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**ON PETITION FOR PANEL REHEARING AND  
REHEARING EN BANC**

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Before RADER, *Chief Judge*, NEWMAN, LOURIE, DYK,  
PROST, MOORE, O'MALLEY, REYNA, and WALLACH, *Circuit  
Judges.*

PER CURIAM.

WALLACH, *Circuit Judge*, dissents, without opinion,  
from the denial of the petition for rehearing en banc.

**O R D E R**

A combined petition for panel rehearing and rehearing en banc was filed by Plaintiff-Appellee, and a response thereto was invited by the court and filed by Defendant-Appellant. The petition for panel rehearing was considered by the panel that heard the appeal, and thereafter the petition for rehearing en banc, response, and brief of amicus curiae Timber Products Company were referred to the circuit judges who are authorized to request a poll of whether to rehear the appeal en banc. A poll was requested, taken, and failed.

Upon consideration thereof,

IT IS ORDERED THAT:

(1) The petition of Plaintiff-Appellee for panel rehearing is denied.

(2) The petition of Plaintiff-Appellee for rehearing en banc is denied.

(3) The mandate of the court will issue on March 1, 2013.

FOR THE COURT

February 22, 2013  
Date

/s/ Jan Horbaly  
Jan Horbaly  
Clerk

cc: Ellen M. Lynch, Esq.  
Alan I. Saltman, Esq.

**FILED**  
U.S. COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

FEB 22 2013

JAN HORBALY  
CLERK