

***HIGH CONCRETE STRUCTURES V. NEW ENTERPRISE STONE
& LIME CO.***

377 F.3d 1379 (Fed. Cir. 2004)

The Federal Circuit ruled that the unintentional omission of information commonly known in the inventor's field does not violate the best mode requirement.

High Concrete Structures ("HCS") secured a patent for a loading fixture that makes it easier to secure heavy concrete pillars on truck beds, thus economizing on space and reducing the need for oversize transports. Once a crane lowered the concrete onto the loading fixture, the invention allowed the load to be positioned and secured with the minimal use of heavy equipment such as cranes. HCS sued New Enterprise Stone & Lime Company ("New Enterprise") for patent infringement. New Enterprise moved for summary judgment and claimed that it was not liable because the patent was invalid. In its patent application, HCS did not disclose that for very heavy loads, optimal stabilization is achieved through use of a crane. Section 112 of the Patent Act requires an inventor to identify the best known mode for the use of an invention. Because of the omission, the trial court held that HCS failed to disclose the best mode of using the invention, and the court granted New Enterprise's summary judgment motion.

The Federal Circuit reversed. The court stated that a best mode violation occurs if the inventor "knew of and *intentionally* concealed a better mode than was disclosed" (emphasis added). The court found that HCS's omission was not intentional because for safety purposes, the use of a crane with very heavy loads was well known in the cargo loading industry. The court stated that while HCS's invention claimed to minimize the need for such machinery, an ordinary cargo operator should still realize that the use of a crane is always an option to help stabilize heavy loads. The Federal Circuit held that "known ways of performing a known operation cannot be deemed intentionally concealed absent evidence of intent to deliberately withhold that information." Since New Enterprise did not offer evidence of intentional concealment, the Federal Circuit reversed the grant of summary judgment and remanded the case for consideration of the patent infringement claim.