

No Fuel For Games: Federal Circuit Rejects Shifting Litigation Tactics

Magēmā Technology LLC v. Phillips 66, No. 24-1342 (Fed. Cir. Sept. 8, 2025)

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On September 8, 2025, the Federal Circuit reversed and remanded a judgment in *Magēmā Technology LLC v. Phillips 66*, which held that the district court erred in allowing Phillips 66 (“Phillips”) to present an improper noninfringement theory to the jury. The Federal Circuit found that Phillips’ infringement theory was “improper and prejudicial,” and because the jury’s general verdict did not disclose whether it relied on that theory, the error could not be considered harmless. The case was remanded for a new trial.

Magēmā Technology (“Magēmā”), a technology company, patented a solution to desulfurize (HMFO) through hydroprocessing to bring it into compliance with the International Maritime Organization (IMO) Sulfur Cap. Magēmā marketed its technology to refiners, including Phillips, an energy company. Magēmā and Phillips met in 2017 and 2018 to discuss implementing Magēmā’s invention, but the parties never reached a licensing agreement. Instead, Phillips proceeded with refinery modifications at its facilities to produce low-sulfur HMFO. Believing that Phillips had adopted its patented method without permission, Magēmā sued for infringement of its patents.



In the district court, Magēmā moved to compel Phillips to produce its flash-point testing data. Phillips argued it was unsafe to collect samples and successfully persuaded the court that Magēmā could instead rely on formula-based estimates. Yet at trial, Phillips reversed its position, telling the jury that actual testing (not estimates) was required to prove infringement. Phillips argued that Magēmā could not meet its burden of demonstrating that the Bayway Refinery feedstock was compliant with ISO 8217 because ISO 8217 required actual testing data of Table 2 properties like flashpoint. Phillips made this argument throughout trial at opening and closing statements and on cross examinations. Although Magēmā objected and filed a motion for a curative instruction, the district court determined that the jury did not need a curative instruction because it was unlikely to remember “a three-minute discussion” about ISO 8217 requiring actual testing and denied Magēmā the opportunity to put in context for the jury why it was using the Riazi Formula instead of actual testing data. The jury found for Phillips on all claims.

Magēmā moved for a new trial. While the district court acknowledged Phillips’ tactics were “improper and prejudicial,” it denied Magēmā’s motion for a new trial, concluding that any error was harmless and that Magēmā did not need flashpoint testing samples because it could meet its infringement burden by using Riazi Formula estimates calculated from otherwise available data. On appeal, however, the Federal Circuit disagreed, holding that Phillips’ strategy tainted the proceedings and that it was not clear from the general verdict form what the basis of the jury’s answers were. Accordingly, the court ordered a new trial and remanded to the district court.

This case showcases the risks of permitting shifting litigation tactics that undermine fair trial preparation. By putting forth one standard during discovery and arguing a contradictory one at trial, Phillips created an unfair prejudice that the Federal Circuit would not overlook. This decision highlights the importance of consistent litigation positions and the risks of general verdict forms.