

**UNITED STATES INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C.**

**Before the Honorable David P. Shaw
Administrative Law Judge**

In the Matter of:

**CERTAIN ROAD MILLING
MACHINES AND COMPONENTS
THEREOF**

**Investigation
No. 337-TA-1067**

**COMMISSION INVESTIGATIVE STAFF'S
DISCOVERY STATEMENT**

I. ISSUES TO BE LITIGATED

A. Whether there is a violation of subsection (a)(1)(B) of section 337, as alleged by the Complainant, by the Respondents' importation into the United States, the sale for importation, or the sale within the United States after importation of certain road milling machines and components thereof ("Accused Products");

B. Whether, as alleged by the Complainant, the Respondents' Accused Products directly or indirectly infringe one or more of:

1. Claims 1–5, 7–12, and 14–17 of U.S. Patent No. 9,644,340 ("the '340 patent");
2. Claims 1, 2, 5, 6, 9–22, and 27–29 of U.S. Patent No. 9,624,628 ("the '628 patent");
3. Claims 1–7, 13–24, and 26 of U.S. Patent No. 9,656,530 ("the '530 patent");
4. Claims 1, 2, 4, 6–8, 11, 12, and 15–17 of U.S. Patent No. 7,530,641

(“the ’641 patent”);

5. Claims 1–3, 5–24, and 26–36 of U.S. Patent No. 7,828,309 (“the ’309 patent”) (collectively, the Asserted Claims”).

C. Whether there exists a Domestic Industry with respect to Complainant’s products; whether these products practice at least one claim of each asserted patent; and whether there has been significant investment in plant and equipment, significant employment of labor or capital post-importation manufacturing, repair, technical support, warranty support, and training activities in the United States.

D. Whether the Asserted Claims are invalid or unenforceable, and/or whether the Respondents have any other appropriate affirmative defense;

E. Whether, in the event a violation of section 337 is found, the Commission should issue cease and desist orders directed to Respondents; and

F. Whether, in the event a violation of section 337 is found, a bond should be imposed for imports and sales occurring during the presidential review period, and if so, the bond rate that should be imposed.

The private parties are currently discussing a stipulation relating to various discovery related procedural matters (such as an amendment to the protective order for source code protections), to be filed shortly. The Staff does not object.

II. EVIDENCE TO BE OFFERED BY THE STAFF

Evidence obtained through discovery among the parties and from non-parties may be offered at the hearing by the Staff. This evidence may include the issues outlined in the Notice of Investigation and Section I *supra*.

III. INFORMATION AND EVIDENCE THAT MAY BE SOUGHT FROM OTHER

PARTIES AND THIRD PERSONS

To the extent necessary, the Staff intends to serve written discovery requests on the private parties to elicit relevant information. The Staff may also serve additional discovery requests on third parties as necessary. In particular, the Staff may request additional discovery from the private parties or third parties after the private parties identify the documents, information, and other evidence on which they intend to rely in support of their respective positions. Further, the Staff may notice for deposition and depose persons identified by the private parties as having information relevant to this proceeding, including experts that the parties intend to call for testimony at the hearing.

The Staff will participate as appropriate in the depositions noticed by the private parties. In appropriate circumstances, the Staff may seek and serve subpoenas in order to obtain documents or testimony from third persons.

IV. PROPOSED SCHEDULE FOR EXCHANGE OF INFORMATION WITHOUT FORMAL DISCOVERY METHODS

The proposed procedural schedule includes dates for the exchange of information required by Ground Rule 6, and dates relating to disclosure of priority dates, claim terms, and domestic industry products.

V. INFORMATION AND EVIDENCE THAT CAN BE OBTAINED ONLY BY DEPOSITION, INTERROGATORY, SUBPOENA, OR REQUEST FOR ADMISSION

The Staff will endeavor to use, as much as possible, informal methods of obtaining information and evidence. Nonetheless, the formal discovery process may be the best method for efficient exchange of information among the parties. At this point, it is not known what information and evidence may be obtained only by deposition, interrogatory, subpoena, or request for admission.

VI. JOINT PROPOSED PROCEDURAL SCHEDULE

In Order No. 5, requesting the submission of discovery statements, the presiding Administrative Law Judge tentatively scheduled the hearing in this investigation for April 19-24, 2018. Accordingly, the parties have jointly proposed a schedule with hearing dates of April 19, 2018 attached hereto as Exhibit A.

Dated: September 22, 2017

Respectfully submitted,

/s/Monisha Deka

Margaret Macdonald, Director
Jeffrey T. Hsu, Supervisory Attorney
Monisha Deka, Investigative Attorney

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Certificate of Service
Investigation 337-TA-1067

I, Monisha Deka, hereby certify that on September 22, 2017, copies of the foregoing Commission Investigative Staff's Discovery Statement were served on parties as indicated below:

<u>U.S. International Trade Commission:</u>	
The Honorable David. P Shaw Administrative Law Judge U.S. International Trade Commission 500 E Street, SW, Room 317 Washington, DC 20436	One copy by Hand Delivery with electronic courtesy copy
<u>Counsel for Complainant Wirtgen America, Inc.</u>	
Daniel E. Yonan, Esq. STERNE, KESSLER, GOLDSTEIN & FOX, PLLC 1100 New York Avenue, N.W. Washington, DC 20005	One (1) copy by Electronic Mail
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