

UNITED STATES INTERNATIONAL TRADE COMMISSION  
WASHINGTON, DC

Honorable David P. Shaw  
Chief Administrative Law Judge

In the Matter of

CERTAIN ROAD MILLING MACHINES  
AND COMPONENTS THEREOF

Investigation No. 337-TA-1067

**WIRTGEN AMERICA'S DISCOVERY STATEMENT**

Pursuant to Order No. 5, Complainant Wirtgen America, Inc. ("Wirtgen America") submits this discovery statement.

**1. The issues that Wirtgen America proposes to be litigated and any stipulations**

- a) Infringement: whether Respondents' Accused Products infringe one or more of claims 1–5, 7–12, and 14–17 of U.S. Patent No. 9,644,340; claims 1, 2, 5, 6, 9–22, and 27–29 of U.S. Patent No. 9,624,628; claims 1–7, 13–24, and 26 of U.S. Patent No. 9,656,530; claims 1, 2, 4, 6–8, 11, 12, and 15–17 of U.S. Patent No. 7,530,641; and claims 1–3, 5–24, and 26–36 of U.S. Patent No. 7,828,309 (the "Asserted Patents"); either literally or under the doctrine of equivalents;
- b) Importation: whether each Respondent has engaged in unfair competition or unfair acts in the sale of Accused Products for importation into the United States, in the importation of Accused Products into the United States, or in the sale of Accused Products in the United States; Wirtgen America proposes that the issue of importation may be resolved by stipulation;

- c) Domestic Industry: whether a domestic industry exists with respect to the Asserted Patents; Wirtgen America proposes that the issue of the economic prong of domestic industry may be resolved by stipulation;
- d) Remedy: the form and scope of the limited exclusion orders and cease-and-desist orders to be issued should a violation of section 337 be found;
- e) Bond: the amount of any bond to be required during any Presidential review period;
- f) Other Stipulations: The parties are discussing stipulations with regard to procedural matters including the discovery of source code and electronic documents, service of documents, and depositions.

## **2. Information and evidence that Wirtgen America intends to submit**

- a) Infringement: Documents and testimony, including fact and expert witness testimony, regarding the development, composition, functionality, and use of the Accused Products, including publicly available documents and documents sought from the Respondents through discovery.
- b) Importation: Documents and testimony showing the importation into the United States, the sale for importation, or the sale within the United States after importation of the Accused Products;
- c) Domestic Industry: Documents and testimony showing Wirtgen America's domestic activities and investments with respect to its products that are covered by the Asserted Patents (the "Domestic Industry Products"), and the development, composition, functionality, and use of those products;

- d) Remedy: Documents and testimony showing that the Commission should issue limited exclusion orders and cease-and-desist orders should a violation of section 337 be found, and the appropriate scope of those orders;
- e) Bond: Documents and testimony showing the amount of any bond that the Commission should require during any Presidential review period;
- f) Rebuttal evidence: Documents and testimony rebutting any affirmative defenses that the Respondents might properly raise.

### **3. Information and evidence that Wirtgen America intends to seek from Respondents and third parties**

On August 28, 2017, Wirtgen America served interrogatories and requests for production on each Respondent. Respondents responded to this discovery on September 18, 2017, but have yet to produce documents. On September 19, 2017, Wirtgen America served requests for admissions on each Respondent. Wirtgen America anticipates that it will make additional discovery requests and will seek expert and fact depositions, additional interrogatories, additional document requests, and additional requests for admission.

The information sought by Wirtgen America includes technical documents and reference manuals specific to each Accused Product, as well as source code pertinent to specific features of the Accused Products. Wirtgen America also seeks information concerning the design and development of the Accused Products and the persons' involved in this process. Wirtgen America also seeks information related to the sales of the Accused Products, as well as information related to promotion, pricing, manufacturing, and importation. This information and evidence will be sought from Respondents and possibly from third parties, some of whom may

reside abroad. Wirtgen America also seeks to inspect the Accused Products as well as the facilities in which they are manufactured.

**4. Information and evidence that Wirtgen America proposes exchanging among the parties without the use of formal discovery methods**

Wirtgen America proposes that the parties exchange product marketing materials, user manuals, and service and repair manuals of each of the Accused Products and the Domestic Industry Products on September 29, 2017.

Wirtgen America also proposes that the parties' respective document productions should be substantially complete by November 20, 2017.

Wirtgen America also proposes that the parties stipulate as to the source code needed to evaluate the presence of the patented functionality of both the Accused Products and the Domestic Industry products. Wirtgen America proposes that the parties exchange this source code on November 1, 2017.

Wirtgen America also proposes that the parties agree to complete inspections of the Accused Products and Domestic Industry Products before any final contentions are exchanged.

Wirtgen America proposed the mutual exchange of these relevant documents and things during a meet and confer with Respondents on September 21, 2017. Respondents refused. If a date certain is not set for the mutual exchange of these relevant documents and things, Wirtgen America is concerned that it will not timely receive the information it needs for its case—leading to unnecessary, time-consuming, and costly motions practice.

**5. Information and evidence that Wirtgen America believes can be obtained only by deposition, interrogatory, subpoena, or request for admission**

The following topics might only be obtainable through formal discovery: information concerning the design and development of the Accused Products, certain aspects of the

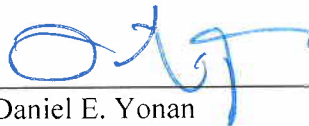
functionality of the Accused Products, and information concerning the importation of the Accused Products. There is likely other such information and evidence that Wirtgen America expects to learn of through discovery in this investigation.

#### 6. Proposed procedural schedule

The parties have jointly proposed a procedural schedule attached hereto as Exhibit A.

Dated: September 22, 2017

Respectfully submitted,



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