

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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Caterpillar, Inc.

Petitioner

v.

Wirtgen America, Inc.

Patent Owner

Patent No. 9,879,390

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Case No. IPR2022-01264

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**DECLARATION OF MICHAEL W. NETKA**

I, Michael W. Netka, declare as follows:

## **I. BACKGROUND**

1. I attended the University of Minnesota School of Business Accounting from 1970 to 1973 and the Elkins Electronic Institute from 1976 to 1977. At the Elkins Electronic Institute, I obtained a certification of completion for coursework in electronics theory, components, and servicing.

2. I attended Hennepin Vocational Technical College from 1987 to 1990, where I took courses in practical inspection and gauging, precision measurement, geometric dimensioning and tolerancing, and design print interpretation, among others.

3. I attended Metropolitan State University from 1994 to 1999, where I received a B.A. in Business Management.

4. I worked at Raygo Machine Assembly from 1984 to 1988, where I was responsible for machine sub-assembly for all Raygo products, including vibratory soil compactors, vibratory asphalt compactors, asphalt pavers, asphalt reclaimers, soil stabilizers, and profilers/cold planers. I joined Caterpillar Paving Products Inc. (“Caterpillar”) in 1988 and worked there until 2013.

5. At Caterpillar, I worked as a Quality Control Inspector from 1988 to 1990. In this position, I was responsible for in-process inspections during machine assembly, test inspections, final inspections after paint, and final inspections before

shipment. These inspections covered vibratory soil compactors, vibratory asphalt compactors, asphalt pavers, asphalt reclaimers, and profilers/cold planers. In 1990, I became a Supervisor, Quality Control and worked in that position until 1993. As a Supervisor, Quality Control, I oversaw Caterpillar's Quality Control Group in Minneapolis, Minnesota. This included overseeing inspections of incoming parts for assembly, auditing matters, machine conformance tests, and final inspections performed just before products were released for shipment. The Quality Control Group in Minneapolis was responsible for Caterpillar's vibratory asphalt compactors, asphalt pavers, asphalt reclaimers, soil stabilizers, and profilers/cold planers.

6. During my employment in the quality control department at Caterpillar (from 1988 to 1993), I was involved in the build process of cold planers and other machines. In this capacity, I often provided the final signoff before a machine was shipped from the Minneapolis plant. As part of this process, I ensured that Caterpillar shipping requirements were met. This involved relying on Caterpillar Factory Notification Lists (FNLs), which were standard-issued Caterpillar documents that listed the manuals that had to be shipped with a particular Caterpillar machine. I provide more detail on FNLs below. The types of manuals listed on the FNLs included parts manuals and operation and maintenance manuals. As part of my ordinary employment responsibilities, I would check the

cold planers before shipment to ensure that the manuals listed in the FNL were in fact placed on the machine.

7. I left my role as a Supervisor, Quality Control in 1993 and became an Applications Engineer at Caterpillar, where I worked until 1996. I then served as a Marketing and Sales Engineer from 1996 to 2000. In this position, I provided operator and service training for Caterpillar's PM-465 cold planer machines, as well as other products. I also trained dealer personnel at dealerships and machine operators at jobsites.

8. From 2000 to 2007, I worked at Caterpillar as a Product Support Manager. From 2007 to 2013, I served as Caterpillar's Worldwide Product Support Manager. Between 2000 and 2013, I oversaw the development of service publications, training manuals, and owners/parts manuals for Caterpillar's cold planers, including the PM-465 machines. I was also responsible for post-sale service and support for various Caterpillar products, including Caterpillar's PM-465 machines. Although I was no longer involved in the day-to-day activities of the Quality Control group, I continued to interact with the Quality Control group and was fully aware of their practices during this time period.

9. During my employment at Caterpillar, I have personally delivered numerous Caterpillar machines, including PM-465 cold planers, to Caterpillar dealers throughout the United States. I have also assisted numerous Caterpillar

dealers with delivering Caterpillar machines, including PM-465 cold planers, to their customers.

10. Additionally, I have operated PM-465 units at customer demonstrations, trade shows, and on job sites. During my visits to the customer demonstrations, trade shows, and customer/dealer job sites across the United States, I often saw the Caterpillar manuals that were shipped with the PM-465 machines (i.e., the manuals listed in the FNLs that were placed in the operator's console before shipment). I have also provided service support throughout the United States for numerous PM-465 units.

11. Through my roles at Caterpillar involving training, product support, and oversight of product manuals, I gained intimate knowledge about which manuals were available to customers and how those manuals were made available. For example, the PM-465 had an Operation and Maintenance manual called the PM-465 Cold Planer Operation & Maintenance Manual No. KEBU6879-01 ("PM-465 OMM," Ex. 1002). This manual was not confidential. As explained in more detail below, from 2000 to 2003, the PM-465 OMM would have been placed in the console of every PM-465 shipped from our Minnesota manufacturing facility.

12. The PM-465 also had a new sensor-driven, grade-and-slope control system designed in house by Caterpillar. Until that time, cold planer manufacturers

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