

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

In the Matter of

**CERTAIN ROAD CONSTRUCTION
MACHINES AND COMPONENTS
THEREOF**

Investigation No. 337-TA-1088

**NOTICE OF COMMISSION DECISION TO DENY RESPONDENTS'
RENEWED MOTION TO STAY THE REMEDIAL ORDERS PENDING APPEAL**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to deny respondents' renewed motion to stay the remedial orders pending appeal.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone (202) 708-2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 29, 2017, based on a complaint, as supplemented, filed by Caterpillar Inc. of Peoria, Illinois and Caterpillar Paving Products, Inc. of Minneapolis, Minnesota (collectively, "Caterpillar"). *See* 82 *Fed. Reg.* 56625-26 (Nov. 29, 2017). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) ("section 337"), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain road construction machines and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,140,693 ("the '693 patent"); 9,045,871; and 7,641,419. *See id.* The notice of investigation identifies the following respondents: Wirtgen GmbH of Windhagen, Germany; Joseph Vögele AG of Ludwigshafen, Germany; Wirtgen Group Holding GmbH ("Wirtgen Group") of Windhagen, Germany; and Wirtgen America, Inc. ("Wirtgen America") of Antioch, Tennessee (collectively, "Wirtgen"). *See id.* The Office of Unfair Import Investigations is not a party to this investigation. *See id.*

On February 14, 2019, the ALJ issued a final initial determination (“FID”) finding a violation of section 337 by reason of infringement of claim 19 of the ’693 patent. Specifically, the FID finds that: (1) certain accused products, namely the Wirtgen W 100 CFi, W 120 CFi, and W 130 CFi road milling machines (collectively, “the series 1810 machines”), infringe the asserted claims of the ’693 patent, but an older series of milling machines, namely, the series 1310 machines, do not infringe the patent claims; (2) all of the asserted claims, except claim 19 of the ’693 patent, are invalid as anticipated and/or obvious over certain asserted prior art; and (3) the domestic industry requirement is satisfied by Complainants’ PM3XX domestic industry products.

On April 12, 2019, the Commission determined to review the FID in part. *See* 84 *Fed. Reg.* 16282-83 (Apr. 18, 2019). On June 27, 2019, the Commission determined to affirm with modification the FID’s finding of a section 337 violation with respect to claim 19 of the ’693 patent. *See id.* In addition, the Commission issued a limited exclusion order (“LEO”) against Wirtgen GmbH, Wirtgen Group, and Wirtgen America, and a cease and desist order (“CDO”) against Wirtgen America. *See id.* The Commission determined that the public interest does not preclude the issuance of the LEO and CDO and set the bond during the period of Presidential review at zero percent of the entered value of the infringing products. *See id.*

On August 9 and 27, 2019, respectively, Wirtgen filed a motion with the Commission and with the Federal Circuit requesting a stay of the Commission’s remedial orders pending appeal. On September 12 and October 10, 2019, respectively, the Commission and the Federal Circuit denied Wirtgen’s motion to stay.

On December 31, 2019, Wirtgen filed a renewed motion with the Commission requesting that the Commission stay the remedial orders pending appeal. Wirtgen also requests that the Commission clarify that the remedial orders do not apply to its redesigned 1810 series machines. On January 6, 2020, Wirtgen also filed a renewed motion to stay with the Federal Circuit. On January 21, 2020, Caterpillar filed a response in opposition to Wirtgen’s renewed motion to stay.

On January 16, 2020, the Commission determined to institute a modification proceeding to clarify whether the remedial orders cover Wirtgen’s redesigns. *See* 85 *Fed. Reg.* 3944 (Jan. 23, 2020). In addition, for the reasons discussed in the Commission Order issued concurrently herewith, the Commission has determined to deny Wirtgen’s renewed motion to stay the remedial orders pending appeal.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.



Lisa R. Barton
Secretary to the Commission

Issued: January 31, 2020