

**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 A COMMISSION DETERMINATION TO REVIEW AN INITIAL  
DETERMINATION GRANTING RESPONDENTS' MOTION FOR SUMMARY  
DETERMINATION THAT CLAIMS 1-5, 8, 9, AND 12-17 OF U.S. PATENT NO.  
9,045,871 ARE DIRECTED TO INELIGIBLE SUBJECT MATTER UNDER 35 U.S.C. §  
101**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review an initial determination ("ID") (Order No. 18) of the presiding administrative law judge ("ALJ") granting respondents' motion for summary determination that claims 1-5, 8, 9, and 12-17 of U.S. Patent No. 9,045,871 ("the '871 patent") are directed to ineligible subject matter under 35 U.S.C. § 101.

**FOR FURTHER INFORMATION CONTACT:** Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-3115. 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, S.W., 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 under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337 ("section 337"), on November 29, 2017, based on a complaint filed by Caterpillar Inc. of Peoria, IL, and Caterpillar Paving Products, Inc. of Minneapolis, MN (collectively, "Caterpillar," or "Complainants"). 82 *Fed. Reg.* 56625-26 (Nov. 29, 2017). The complaint alleges a violation of section 337 by reason

of infringement of certain claims of U.S. Patent Nos. 7,140,693; 7,641,419; and the '871 patent. The complaint named Wirtgen GmbH of Windhagen, Germany; Joseph Voegle AG of Ludwigshafen, Germany; Wirtgen Group Holding GmbH of Windhagen, Germany; and Wirtgen America, Inc. of Antioch, Tennessee (collectively, "Wirtgen," or "Respondents") as respondents. *Id.* at 56626. The Office of Unfair Import Investigations is not a party in this investigation. *Id.*

On January 9, 2018, Respondents Wirtgen moved for summary determination that claims 1-5, 8, 9, and 12-17 of the '871 patent are directed to ineligible subject matter under 35 U.S.C. § 101. On January 26, 2018, Complainants Caterpillar filed their opposition, and on February 7, 2018, Wirtgen filed its reply brief.

On May 24, 2018, the ALJ issued the subject ID (Order No. 18). The ALJ found that the '871 patent discloses the abstract idea of collecting, analyzing, storing and displaying information about a paving machine so that the information can be reproduced, accurately and efficiently, for use in future paving, and that this type of activity is in essence a memory exercise which remains just an idea. Order No. 18 at 15. The ALJ found the claims at issue merely describe abstract ideas that use computers as tools instead of "an improvement in computers as tools." *Id.* at 19 (citations omitted). The ALJ further found that the '871 patent lacks any technological innovation. *Id.* at 21. Based on the foregoing, the ALJ granted Respondents' motion. *Id.*

On June 4, 2018, Complainants filed a petition for review of Order No. 18. On June 11, 2018, Respondents filed a timely response to Complainants' petition opposing review.

Having examined the record in this investigation, including the ID, the petition for review, and the response thereto, the Commission has determined to review the subject ID. The parties are requested to brief their positions on the following issue only, with reference to the applicable law and the evidentiary record:

Please comment with citation to the record whether Respondents have shown by clear and convincing evidence that the claim elements of each asserted claim of the '871 patent "as an ordered combination" were well-understood, routine and conventional to a skilled artisan in the relevant field. *See Berkheimer v. HP Inc.*, 881 F.3d 1360 (Fed. Cir. 2018). In particular, when responding please address the claim elements directed to "automatically" "adjust[ing]" "the adjustable components of the screed assembly" in the context of the claimed invention as a whole.

**WRITTEN SUBMISSIONS:** The parties to the investigation are requested to file written submissions on the issues identified in this notice. The written submissions must be filed no later than the close of business on July 17, 2018. Reply submissions must be filed no later than the close of business on July 24, 2018. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Party submissions should not exceed 25 pages for the main submissions and 15 pages for the reply submissions.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA-1088") in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, [https://www.usitc.gov/secretary/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/secretary/documents/handbook_on_filing_procedures.pdf)*). Persons with questions regarding filing should contact the Secretary (202-205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

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 C.F.R. Part 210).

By order of the Commission.



Lisa R. Barton  
Secretary to the Commission

Issued: July 3, 2018