

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

**WIRTGEN AMERICA, INC.,**

*Plaintiff,*

v.

**CATERPILLAR, INC.,**

*Defendant.*

**Case No. 1:17-cv-00770-JDW-MPT**

**ORDER**

**AND NOW**, this 10th day of March, 2023, for the reasons stated in the accompanying Memorandum, it is **ORDERED** that the Court construes the following claim terms of U.S. Patent Nos. 7,946,788 ('788 Patent); 8,511,932 ('932 Patent); 8,690,474 ('474 Patent); RE48,268 ('268 Patent); 7,523,995 ('995 Patent); 9,975,538 ('538 Patent); 9,371,618 ('618 Patent); 7,828,309 ('309 Patent); 7,530,641 ('641 Patent); 8,113,592 ('592 Patent); 9,010,871 ('871 Patent); 9,656,530 ('530 Patent); 8,424,972 ('972 Patent); 9,879,390 ('390 Patent) as follows:

<b><u>Claim Term</u></b>	<b><u>Court's Construction</u></b>
<i>Disputed Terms</i>	
<b>Indication and setting devices</b> '788 Patent, Claims 1, 14 '932 Patent, Claims 9, 17 '474 Patent, Claims 19, 26	Operating parameter input and display devices

<b>Without interruption of [/interrupting] the milling operation</b> '788 Patent, Claims 1, 14, 15 '932 Patent, Claims 1, 6, 9, 17 '474 Patent, Claims 1, 19, 26, 33	Without stopping the act of milling
<b>Accommodates a lack of alignment</b> '268 Patent, Claims 1, 14, 34	Not Indefinite
<b>Spring stiffness</b> '268 Patent, Claims 1, 14, 34	Resistance to deformation
<b>Between projecting and retracted positions relative to said machine frame</b> '995 Patent, Claims 18, 45	Between positions that are farther from or closer to the machine frame
<b>Second actuatable means for rotating said at least one ground engaging unit</b> '995 Patent, Claim 45	Means-plus-function term under 35 U.S.C. § 112, ¶ 6:  Function: "rotate said at least one ground engaging unit about the lifting column axis"  Structure: "an actuator, such as a linear or rotary actuator"
<b>A variable transmission</b> '538 Patent, Claims 1, 6	Transmission that can change transmission ratios
<b>receiving a desired rotor speed"/"to maintain a desired rotor speed</b> '538 Patent, Claims 1, 6	Receiving [and/or] maintaining a rotor speed based on user inputs
<b>Predefined efficiency points</b> '538 Patent, Claims 1, 6	Engine energy efficiency values set according to an established formula
<b>Operating condition and/or operating state</b> '618 Patent, Claims 1, 8	Any information detected by the machine about then-current operation
<b>Determine a desired main spray manifold pressure based on the estimated amount of pressurized water</b> '618 Patent, Claims 1, 8	Estimate the amount of water needed to generate an intended pressure
<b>Determine [the/a] pump signal based on the desired main spray pressure</b> '618 Patent, Claims 1, 8	Determine [the/a] pump signal based on the estimated amount of water needed to generate intended pressure

<i>Agreed-Upon Constructions</i>	
<b>Are adjusted in height in the same direction and in the opposite direction</b> '309 Patent, Claim 29	Adjusted in height similarly and inversely
<b>Deviation</b> '641 Patent, Claim 11	A change, difference or departure
<b>Each lifting position measuring device being coupled with elements of one of the lifting columns, which elements are capable of being displaced relative to one another in accordance with the lifting position of the lifting column in such a manner that a path signal pertaining to the lifting position of the lifting column is continuously detectable by the measuring device</b> '592 Patent, Claim 1 '871 Patent, Claim 1	Plain and ordinary meaning
<b>A controller</b> '592 Patent, Claim 1 '871 Patent, Claims 5, 6, 8, 10, 13-15, 24 '530 Patent, Claim 2 '788 Patent, Claims 1, 14, 15 '932 Patent, Claims 1, 9, 17 '474 Patent, Claims 1, 9, 17 '972 Patent, Claims 1, 38 '390 Patent, Claims 2, 7	An electronic controller
<b>Each lifting position sensor being coupled with elements of one of the lifting columns, which elements are capable of being displaced relative to one another in accordance with the lifting position of the lifting column in such a manner that a signal including information on a current lifting position of the lifting column is produced by the lifting position sensor</b> '530 Patent, Claim 2	Each lifting position sensor is coupled to two or more components within its respective lifting column, these components are capable of being displaced relative to one another such that their displacement reflects the lifting position of the lifting column, the lifting position sensor generates a signal that contains information about the lifting position of the column based on the displacement of the components

<b>Switch over from control based upon a first selected subset of the plurality of selectable sensors to control based upon a second selected subset</b> '788 Patent, Claims 1, 14 '932 Patent, Claims 9, 17 '474 Patent, Claims 9, 17	Switch over from a first selected subset of sensors that are controlling at the time of switchover to a second selected subset
<b>Current actual value</b> '788 Patent, Claims 1, 14, 15 '932 Patent, Claims 1, 9, 17 '474 Patent, Claims 1, 19, 26	Currently measured actual value
<b>Ground engaging sensor</b> '972 Patent, Claims 1, 31, 39	A sensor that comprises a sensing element that contacts the ground and an element that produces a signal indicating a position of the sensing element
<b>Support means for supporting said machine frame</b> '995 Patent, Claim 45	Means-plus-function term under 35 U.S.C. § 112, ¶ 6:  Function: "supporting said machine frame"  Structure: "support device"
<b>First actuatable means</b> '995 Patent, Claim 45	Means-plus-function term under 35 U.S.C. § 112, ¶ 6:  Function: "moving said at least one ground engaging unit between projecting and retracted positions relative to said machine frame"  Structure: "an actuator, such as a linear or rotary actuator"
<b>Based on the engine load</b> '538 Patent, Claims 1, 6	Plain and ordinary meaning
<b>Based on the engine speed and the desired rotor speed</b> '538 Patent, Claim 1	Plain and ordinary meaning
<b>Based on the engine speed</b> '538 Patent, Claims 1, 6	Plain and ordinary meaning

<b>Estimate an amount of pressurized water that will be required to operate the [primary/first] rotor spray bank</b> '618 Patent, Claims 1, 8	Plain and ordinary meaning
<b>Activate the first control valve</b> '618 Patent, Claims 1, 8	Open the first control valve

It is **FURTHER ORDERED** that, on or before March 24, 2023, the Parties shall confer and advise the Court by letter as to whether they have an agreed upon construction of the terms "switchover device" and "switchover system" that resolves whether the term is means-plus-function because the Court cannot adopt the Parties' proposed, agreed upon construction that is conditional to whether the term is "determined to be a means-plus-function term" (D.I. 116 at 4, 5-6.)

It is **FURTHER ORDERED** that the Joint Motion For Hearing On Claim Construction (D.I. 115) is **DENIED AS MOOT**.

**BY THE COURT:**

/s/ Joshua D. Wolson

JOSHUA D. WOLSON, J.