

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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WIRTGEN AMERICA, INC.,  
Petitioner,

v.

CATERPILLAR INC.,  
Patent Owner.

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IPR2022-01397  
Patent No. 9,975,538

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**PETITIONER WIRTGEN AMERICA, INC.'S NOTICE OF APPEAL**

via PTAB E2E  
Patent Trial and Appeal Board

via e-mail  
Office of the General Counsel  
United States Patent and Trademark Office  
efileSO@uspto.gov

via CM/ECF  
United States Court of Appeals for the Federal Circuit

## **INTRODUCTION**

Wirtgen America, Inc.’s (“Petitioner”) appeal stems from the Patent Trial and Appeal Board’s Final Written Decision entered on March 12, 2024 (Paper 27) (the “Final Written Decision”) in the above-captioned *inter partes* review of United States Patent No. 9,975,538 (“the ’538 patent”). This notice is timely filed within 63 days of the Director’s Denial of Petitioner’s Request for Director Review (Paper 29), dated April 24, 2024. 37 C.F.R. § 90.3(b)(1).

## **PETITIONER’S APPEAL**

Please take notice that under 35 U.S.C. §§ 141(c), 142, 319; 5 U.S.C. §§ 701-706, 28 U.S.C. § 1295(a)(4)(A); 37 C.F.R. §§ 90.2(a), 90.3(a), (b)(1), and Federal Rules of Appellate Procedure/Federal Circuit Rule 4(a)(3), 15(a)(1), Petitioner hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered on March 12, 2024 (Paper 27), the Order Denying Director Review (Paper 29), and from all underlying findings, orders, decisions, determinations, rulings, and opinions adverse to Petitioner.

## **PETITIONER’S ISSUES ON APPEAL**

For the limited purpose of providing information requested in 37 C.F.R. § 90.2(a)(3)(ii), Petitioner’s issues on appeal may include at least:

- (i) the Board’s findings that claim 13 is not unpatentable under 35 U.S.C. § 103 as obvious over the combination of Willis and Xing;

- (ii) the Board's findings that claim 13 is not unpatentable under 35 U.S.C. § 103 as obvious over the combination of Willis, Xing, and Laux;
- (iii) the Order Denying Director Review; and
- (iv) all other issues decided adversely to Petitioner in any order, decision, ruling, or opinion underlying or supporting the Final Written Decision.

Simultaneously with this submission, Petitioner is filing a true and correct copy of this Notice of Appeal with the Director of the United States Patent and Trademark Office and a true and correct copy of the same, along with the required docketing fee, with the Clerk of the United States Court of Appeals for the Federal Circuit as set forth in the accompanying Certificate of Filing.

Respectfully submitted,

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**CERTIFICATE OF FILING**

The undersigned hereby certifies that, in addition to being electronically filed through PTAB E2E, a true and correct copy of the above-captioned **PETITIONER WIRTGEN AMERICA, INC.'S NOTICE OF APPEAL** is being filed and served on the Director of the United States Patent and Trademark Office, via e-mail at the following:

Office of the General Counsel  
U.S. Patent and Trademark Office  
[efileSO@uspto.gov](mailto:efileSO@uspto.gov)

The undersigned also hereby certifies that a true and correct copy of above-captioned **PETITIONER WIRTGEN AMERICA, INC.'S NOTICE OF APPEAL** and the filing fee is being filed via CM/ECF with the Clerk's Office of the United States Court of Appeals for the Federal Circuit on May 6, 2024.

Respectfully submitted,

PATTERSON INTELLECTUAL PROPERTY LAW, P.C.

/s/ Ryan D. Levy

Ryan D. Levy, Reg. No. 58,618  
Attorney for Petitioner

Date: May 6, 2024

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**CERTIFICATION OF SERVICE**

The undersigned hereby certifies that the foregoing **PETITIONER WIRTGEN AMERICA, INC.’S NOTICE OF APPEAL** was served electronically via e-mail on May 6, 2024, in its entirety on the following counsel for Patent Owner:

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