

Paper No. \_\_\_\_\_  
Filed: March 28, 2023

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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Case No. IPR2022-01397  
Patent No. 9,975,538

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**PATENT OWNER'S OBJECTIONS TO EVIDENCE**

## **I. INTRODUCTION**

Pursuant to 37 C.F.R. § 42.64(b)(1), Caterpillar, Inc. (“Patent Owner”) submits the following objections to Wirtgen America, Inc.’s (“Petitioner”) EX1003, EX1007, EX1009-EX1011, EX1014-EX1016, EX1018-EX1027, and any reference to or reliance on the foregoing Exhibits in the Petitioner’s Petition for *Inter Partes* Review, or future filings by Petitioner. Patent Owner’s objections are made pursuant to the Code of Federal Regulations governing this proceeding, including without limitation 37 C.F.R. §§ 42.61-42.65 and 42.6(a)(3). As required by 37 C.F.R. § 42.62, Patent Owner’s objections below apply the Federal Rules of Evidence (“FRE”).

## **II. OBJECTIONS**

### **A. Objections to EX1003 and any Reference to/Reliance Thereon**

Evidence objected to: EX1003, “Declaration of Jeffrey L. Stein, Ph.D., P.E.”

Grounds for objections: FRE 401-403.

Paragraphs 32-46, 49, 51-52, 64, 77, 88-89, 92-93, 98-100, 104-105, 108-111, 125-126, 128-130, 134-135, 138-149, 153-154, 156, 158-160 of EX1003 are objected to under FRE 401-402 because the petition does not cite to or rely upon these paragraphs in support of its grounds of challenge, making these paragraphs irrelevant. Further, to the extent the uncited portions of EX1003 are deemed relevant, their admission would be unduly prejudicial, confusing, misleading, and a waste of time because they are not cited in the petition.

**B. Objections to EX1007, EX1009-EX1011, EX1014-EX1015, EX1018 and any Reference to/Reliance Thereon**

Evidence objected to: EX1007, EX1009, EX1010, EX1011, EX1014, EX1015, and EX1018.

Grounds for objections: FRE 401-403.

Each of EX1007, EX1009-EX1011, EX1014-EX1015, and EX1018 is objected to under FRE 401-402 because the petition does not cite to or rely upon these exhibits in support of its grounds of challenge, making these exhibits irrelevant. Further, to the extent EX1007, EX1009-EX1011, EX1014-EX1015, and EX1018 are deemed relevant, their admission would be unduly prejudicial, confusing, misleading, and a waste of time because they are not cited in the petition.

**C. Objections to EX1016 and any Reference to/Reliance Thereon**

Evidence objected to: EX1016, “U.S. Patent Pub. 2015/0091363 to Reuter *et al.* (‘Shomaker’).”

Grounds for objections: FRE 401-403, 901.

EX1016 is objected to under FRE 901 because Petitioner has not produced evidence sufficient to support a finding that the item is what Petitioner claims it is, specifically with respect to Petitioner’s claim that EX1016 shares its disclosure with German language patent applications. For the same reason, EX1016 is objected to under FRE 401-402 because Petitioner has not shown that the exhibit is

relevant to any ground of challenge. Further, to the extent EX1016 is deemed relevant, its admission would be unduly prejudicial, confusing, misleading, and a waste of time because Petitioner has not shown it shares its disclosure with the cited German language patent applications.

**D. Objections to EX1019-EX1027 and any Reference to/Reliance Thereon**

Evidence objected to: EX1019, EX1020, EX1021, EX1022, EX1023, EX1024, EX1025, EX1026, and EX1027.

Grounds for objections 401-403.

Each of EX1019-EX1027 are objected to under FRE 401-402 because these exhibits are cited in support of Petitioner's arguments against discretionary denial, making them not relevant to any contested issue in the instituted proceeding. To the extent EX1019-EX1027 are deemed relevant, their admission would be unduly prejudicial, confusing, misleading, and a waste of time because they do not relate to any instituted ground of challenge.

**III. CONCLUSION**

The aforementioned exhibits were filed together with Petitioner's Petition for *Inter Partes* Review on August 10, 2022. Trial was instituted on March 14, 2023. These objections are made within 10 business days of institution pursuant to 37 C.F.R. § 42.64.

Respectfully submitted,

Dated: March 28, 2023

/ Matthew A. Argenti /

Matthew A. Argenti, Lead Counsel

Reg. No. 61,836

## **CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing Patent Owner's Objections to Evidence was filed and served on March 28, 2023, at the following electronic service addresses:

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Respectfully submitted,

Dated: March 28, 2023

/ Matthew A. Argenti /

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