

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CATERPILLAR INC.

Petitioner

v.

WIRTGEN AMERICA, INC.,

Patent Owner

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Case No. IPR2017-02185

Patent No. 7,828,309 B2

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**PETITIONER'S NOTICE OF APPEAL**

Pursuant to 35 U.S.C. §§ 141(c) and 319 and 37 C.F.R. § 90.2(a), Petitioner hereby provides notice that it appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision entered July 11, 2019, (Paper 49)<sup>1</sup> and from all underlying orders, decisions, rulings, and opinions regarding U.S. Patent No. 7,828,309 B2 (“the ’309 patent”) set forth in *Inter Partes* Review

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<sup>1</sup> A public version of the Revised Final Written Decision was entered July 17, 2019, (Paper 51).

IPR2017-02185.

In accordance with 37 C.F.R. § 90.2(a)(3)(ii), the issues on appeal include, but are not limited to:

- the Board's failure to find that claims 10, 17–20, and 29–32 of the '309 patent are unpatentable under 35 U.S.C. § 103 as obvious over the combination of Swisher and Neumeier;
- the Board's violation of the Administrative Procedure Act by failing to properly consider evidence proving that claims 10, 17–20, and 29–32 of the '309 patent are unpatentable;
- the Board's reliance on evidence, arguments, and/or theories not articulated at all or with particularity by Patent Owner; and
- all other issues decided adversely to Petitioner in any order, decision, ruling, or opinion underling or supporting the Final Written Decision.

Pursuant to 35 U.S.C. § 142 and 37 C.F.R. § 90.2(a), this Notice is being filed with the Director of the United States Patent and Trademark Office, and a copy of this Notice is being concurrently filed with the Patent Trial and Appeal Board. In addition, a copy of this Notice and the required docketing fees are being filed with the Clerk's Office for the United States Court of Appeals for the Federal Circuit via CM/ECF.

Dated: August 15, 2019

By: /Joshua L. Goldberg/  
Joshua L. Goldberg, Lead Counsel  
Reg. No. 59,369

**CERTIFICATE OF SERVICE AND FILING**

I hereby certify that on this 15<sup>th</sup> day of August 2019, in addition to being filed and served electronically through the Board's E2E System, a true and correct copy of the foregoing "**PETITIONER'S NOTICE OF APPEAL**," was filed and served with the Director of the United States Patent and Trademark Office, via hand delivery at the following address:

Office of the General Counsel  
U.S. Patent and Trademark Office  
Madison Building East, Room 10B20  
600 Dulany Street  
Alexandria, VA 22314

I also hereby certify that on this 15<sup>th</sup> day of August 2019, a true and correct copy of the foregoing "**PETITIONER'S NOTICE OF APPEAL**," and the filing fee, were filed with the Clerk's Office of the United States Court of Appeals for the Federal Circuit, via CM/ECF.

I also hereby certify that on this 15<sup>th</sup> day of August 2019, a true and correct copy of the foregoing "**PETITIONER'S NOTICE OF APPEAL**," was served, by electronic mail, upon the following:

Ralph W. Powers III  
tpowers-PTAB@skgf.com

Ryan D. Levy  
rdl@iplawgroup.com

Jon E. Wright  
jwright-PTAB@skgf.com

Kyle E. Conklin  
kconklin-PTAB@skgf.com

Steve Merrill  
smerrill-PTAB@skgf.com

Daniel E. Yonan  
dyonan-PTAB@skgf.com

John F. Triggs  
jft@iplawgroup.com

Seth R. Ogden  
sro@iplawgroup.com

Dated: August 15, 2019

By: /Lisa C. Hines/  
Lisa C. Hines  
Litigation Legal Assistant

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, LLP