

Feds Can't Escape Suit Over Wirtgen Machines Barred In US

By **Amanda James**

Law360 (March 5, 2020, 10:15 PM EST) -- The federal government must face a lawsuit from a German manufacturer alleging that its road-building machines were unlawfully blocked at the United States border after the U.S. Court of International Trade ruled Wednesday that it has the authority to hear the case.

The case centers around a U.S. Customs and Border Inspection decision to exclude Wirtgen America Inc.'s machines from entering the country because the U.S. International Trade Commission has excluded the company's patent-infringing products.

CIT Chief Judge Timothy C. Stanceu on Wednesday rejected the government's claim in its motion to dismiss that the case falls outside the court's jurisdiction on the grounds that Customs was merely following instructions and ruled that the court can hear cases when a company has redesigned its machines so as not to violate the exclusion order.

"Wirtgen is not contesting the limited exclusion order in this action. Rather, it claims that Customs excluded merchandise to which the [limited exclusion order] did not apply," Judge Stanceu said.

The government had tried to argue that the court can't hear cases when customs officials are following the ITC's exclusion order.

The court acknowledged that the government's argument is correct, but said that in Wirtgen's case, Customs went beyond the scope of the limited exclusion order in blocking six of Wirtgen's redesigned imports.

Wirtgen argued in January that its redesigned machines, often used for maintenance and repair of roads by grinding, or "milling," surfaces such as asphalt and concrete, aren't subject to the limited exclusion order that barred other Wirtgen models from entering the country.

The ITC had blocked certain Wirtgen products in July based on its finding that they infringed a patent owned by Caterpillar Inc. The limited exclusion order centered on machines and components that infringe a claim of a milling machine patent, U.S. Patent No. 7,140,693.

The company then redesigned the offending 1810 Series machines, changing a part known as a swing leg so that it no longer fell under the claim at issue in the patent dispute, according to the opinion.

But in late November and early December, Customs detained a total of six of the machines entering ports in Georgia and Maryland. When Wirtgen protested, Customs denied the protests on the grounds that Wirtgen hadn't raised a protestable issue, the opinion said.

In a complaint filed in January, Wirtgen said the new model of its road-building machines was wrongly denied entry into the U.S., since the latest model isn't subject to an earlier ban on Wirtgen products that infringed on rival Caterpillar's patent.

In its decision Wednesday, the CIT also denied the ITC's motion to intervene, saying that no person can intervene in a civil action under the Tariff Act.

Representatives for Wirtgen and for the ITC did not immediately respond to request for comment.

Wirtgen America is represented by Daniel E. Yonan and Dallin G. Glenn of Sterne Kessler Goldstein & Fox PLLC.

The U.S. is represented by Guy R. Eddon, Edward Francis Kenny and Marcella Powell of the U.S. Department of Justice's International Trade Field Office.

The case is Wirtgen America Inc. v. United States of America et al., case number 1:20-cv-00027, in the U.S. Court of International Trade.

--Additional reporting by Elise Hansen. Editing by Michael Watanabe.