

Wirtgen Says Road Machines Wrongly Detained At US Border

By Elise Hansen

Law360 (January 31, 2020, 7:25 PM EST) -- German manufacturer Wirtgen's road-building machines were 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, Wirtgen told the U.S. Court of International Trade.

Wirtgen's redesigned road-milling machines aren't subject to the limited exclusion order that barred other Wirtgen models from entering the country, Wirtgen America Inc. said Thursday. The Tennessee-based company is the exclusive distributor for Wirtgen Group products in the U.S., according to the complaint.

Wirtgen accused U.S. Customs and Border Protection of wrongly blocking six road-milling machines from entering the country and then rejecting Wirtgen's protest of the decision. The machines are often used for maintenance and repair of roads by grinding, or "milling," surfaces such as asphalt and concrete.

"Customs exceeded its authority by detaining and excluding from importation Wirtgen's Redesigned 1810 Series machines without providing any showing that these machines fall within the scope of the [limited exclusion order]," the complaint said.

Customs' actions have cost Wirtgen and its customers "hundreds of thousands of dollars," since the machines had already been sold and invoiced and were supposed to be delivered by the end of 2019, the complaint said. Wirtgen said its reputation was at stake if the delay continues and that it faces cancellation of the existing orders if it can't quickly deliver the machines.

Certain Wirtgen products were blocked by the U.S. International Trade Commission in July based on the commission's finding that they infringed on 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.

But Wirtgen said Thursday it has redesigned the offending 1810 Series machines, changing the so-called swing leg so that it no longer falls under the claim at issue in the patent dispute.

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

According to Wirtgen, Customs' denial stated that the underlying issues stem from the patent dispute, not from Customs' actions.

Wirtgen disagreed on Thursday. "Customs, not the [U.S. International Trade] Commission, determined to exclude Wirtgen's Redesigned 1810 Series machines as 'potentially infringing' [the patent claim]," the complaint said. "Customs does not have the authority to exclude products that fall outside the scope of a [limited exclusion order]."

The company is seeking a court order finding that its redesigned machines don't infringe on Caterpillar's patent, that the machines were wrongly detained and denied entry, and that Customs wrongly rejected Wirtgen's protest. Wirtgen also asked the court to order Customs to permit the machines' entry.

In a related suit filed Jan. 24 in D.C. district court, Wirtgen accused Customs of violating due process and committing "arbitrary and capricious" actions in interpreting and enforcing the limited exclusion order. In that suit, the company has sought a temporary restraining order to prevent Customs from continuing to detain, exclude or seize the machines.

A representative for Customs declined to comment on Friday, saying the agency "does not typically comment on litigation or court actions." The representative noted that the agency's silence did not imply agreement with the allegations.

Counsel for Wirtgen declined to 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.

--Editing by Daniel King.