

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.

ERNIE BROOKINS,  
Patent Owner.

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Case IPR2017-01020  
Patent 7,824,290 B1

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Record of Oral Hearing  
Held: June 5, 2018

Before JILL D. HILL, BEVERLY M. BUNTING (via videoconference), and  
TIMOTHY J. GOODSON (via phone), *Administrative Patent Judges*.

Case IPR2017-01020  
Patent 7,824,290 B1

APPEARANCES:

ON BEHALF OF THE PETITIONER:

ROLAND McANDREWS, ESQUIRE  
Bookoff McAndrews, PLLC  
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Washington, DC 20006

ON BEHALF OF THE PATENT OWNER:

ERNIE BROOKINS, PRO SE  
GAIL BROOKINS  
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The above-entitled matter came on for hearing on Tuesday, June 5, 2018, commencing at 1:19 p.m., at the U.S. Patent and Trademark Office, Madison Building, 600 Dulany Street, Alexandria, Virginia 22314.

P R O C E E D I N G S

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JUDGE HILL: Good afternoon, please be seated. This is the final hearing in IPR2017-01020 involving US Patent No. 7824290. The Petitioner is Caterpillar Incorporated, and the Patent Owner is Ernie Brookins, the sole inventor of the 290 patent.

I'm Judge Hill and I'll be presiding today from the Alexandria office. Judge Bunting is via video from the Midwest regional office, and Judge Goodson is participating via audio. May I have the appearances of each party please. Approach the microphone and state your name.

MR. McANDREWS: Roland McAndrews for Caterpillar.

(Inaudible whispering.)

MR. BROOKINS: Ernie Brookins.

JUDGE HILL: Okay.

JUDGE BUNTING: Excuse me, Mr. Brookins, unless you step up to the microphone, we can't hear you.

JUDGE HILL: So let's use the center microphone.

MR. BROOKINS: Oh, okay. Ernie Brookins.

JUDGE HILL: Thank you.

JUDGE BUNTING: Thank you.

JUDGE HILL: Okay, I'd like to go over how we're going to proceed today. Each party will have 30 minutes to present its arguments. Petitioner has the burden, so the Petitioner will go first and can save time for rebuttal.

1 Following the Petitioner, the Patent Owner will also have 30  
2 minutes. The Patent Owner, because they're going second,  
3 does not reserve rebuttal time.

4 Okay, so, as I informed you earlier, Judge Bunting  
5 and Judge Goodson are participating via video and audio  
6 respectively, and they can't see any demonstratives that  
7 you're putting up on the screen. So if you are presenting  
8 your demonstratives, give a description of where you are so  
9 that they can follow along. They each have printed out  
10 copies of your demonstratives so that they can follow along  
11 from where they are.

12 The parties are reminded that during this oral  
13 argument, they can rely only on evidence that was previously  
14 submitted in this proceeding and may only present arguments  
15 relied upon in previously submitted papers. Demonstrative exhibits are not  
16 themselves evidence and are  
17 intended only to assist the parties in presenting  
18 their oral argument to the panel.

19 As you go through your arguments, I will try to give  
20 you a reminder or let you know when you have five minutes  
21 left and three minutes left so that you can time yourselves  
22 properly.

23 This hearing is open to the public, and a full  
24 transcript of the proceeding, of the hearing, will be made  
25 part of the record.

26 Does anyone have questions? Okay. Petitioner, are

1 you -- would you like to reserve rebuttal time?

2 MR. McANDREWS: I would. May I reserve ten minutes?

3 JUDGE HILL: Ten minutes. Okay, thank you. Okay,  
4 you can proceed.

5 ORAL ARGUMENT OF ROLAND McANDREWS

6 ON BEHALF OF THE PETITIONER, CATERPILLAR INC.

7 MR. McANDREWS: Thank you. Your Honors, may it  
8 please the Court.

9 Inventions can be found basically with an  
10 inventive story, sort of a problem and a solution. It's  
11 unfortunate here for the Patent Owner that there's simply --  
12 the prior art is very, very compelling. There simply is not  
13 this problem and new solution. The 290 patent simply does  
14 not provide a new solution or improvement over the prior art,  
15 as I will show.

16 The prosecution history is clear that the 290 patent was allowed based  
17 on a mere byproduct of the  
18 type of pump that was used in the system. Both the 290  
19 patent and the prior art expressly agree that the particulars  
20 of the pump are not important and that any pump can be used  
21 in this system.

22 Going to slide 2, Instituted Grounds, there are three  
23 instituted grounds or three sets of instituted  
24 grounds. The first one is anticipation, based on Keiser.  
25 The second one is obvious, in view of Keiser. And the third  
26 one takes the position that all the claims are invalid

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