

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GODBERSEN-SMITH CONSTRUCTION COMPANY
d/b/a GOMACO CORPORATION,
Petitioner,

v.

GUNTERT & ZIMMERMAN CONST. DIV. INC.,
Patent Owner.

Case IPR2020-01698
Patent No. 10,029,749

DECLARATION OF SHARI SIMMONS

I, Shari Simmons, state and declare as follows:

1. I am currently employed by GOMACO Corporation. I began working at GOMACO in 1992. My initial duties included receiving parts into stock, collecting parts for machine assembly, filling customer part orders, and updating related information in the inventory-control database.

2. In December 2004, I transitioned to GOMACO University. At that time, I became the Technical Publications Manager, which is the title I continue to hold today.

3. Among other duties, from December 2004 to today, I have sent dealers and customers operator's manuals and other information that can help them properly and safely operate the machines GOMACO sells.

4. One of the manuals I regularly sent to dealers and customers in the 2005-2007 timeframe was an operator's manual for the Commander III New Generation Trimmer/Paver. The particular version of the manual I sent in that timeframe was labeled "Form No. NGCIIIIG210802-C1."

5. The operator's manual form number encodes information about the manual. The first several characters identify the machine class described in the manual. In this instance, the operator's manual begins with NGCIII, which means that the manual pertains to a New Generation Commander III machine. Our

machines can have different control systems, so the next few characters identify the control system associated with the machine that is described in the operator's manual. In this case, the operator's manual number reflects that we describe the G21 control system. The next four characters are numbers that identify the date we originally created the manual. The date takes the form of MMYYY, where MM represents the month and YY represents the year. In this case, the code shows 0802, which means that GOMACO first produced this operator's manual in August of 2002. This is also why the manual bears a copyright date of 2002. The final characters in the operator's manual represent the company that printed the manual. One code represents that we printed the manual in-house, while other codes signify specific outside publishers. In this case, the "-C1" portion of the manual reflects that outside publisher Curtis 1000 printed the physical copy of this manual.

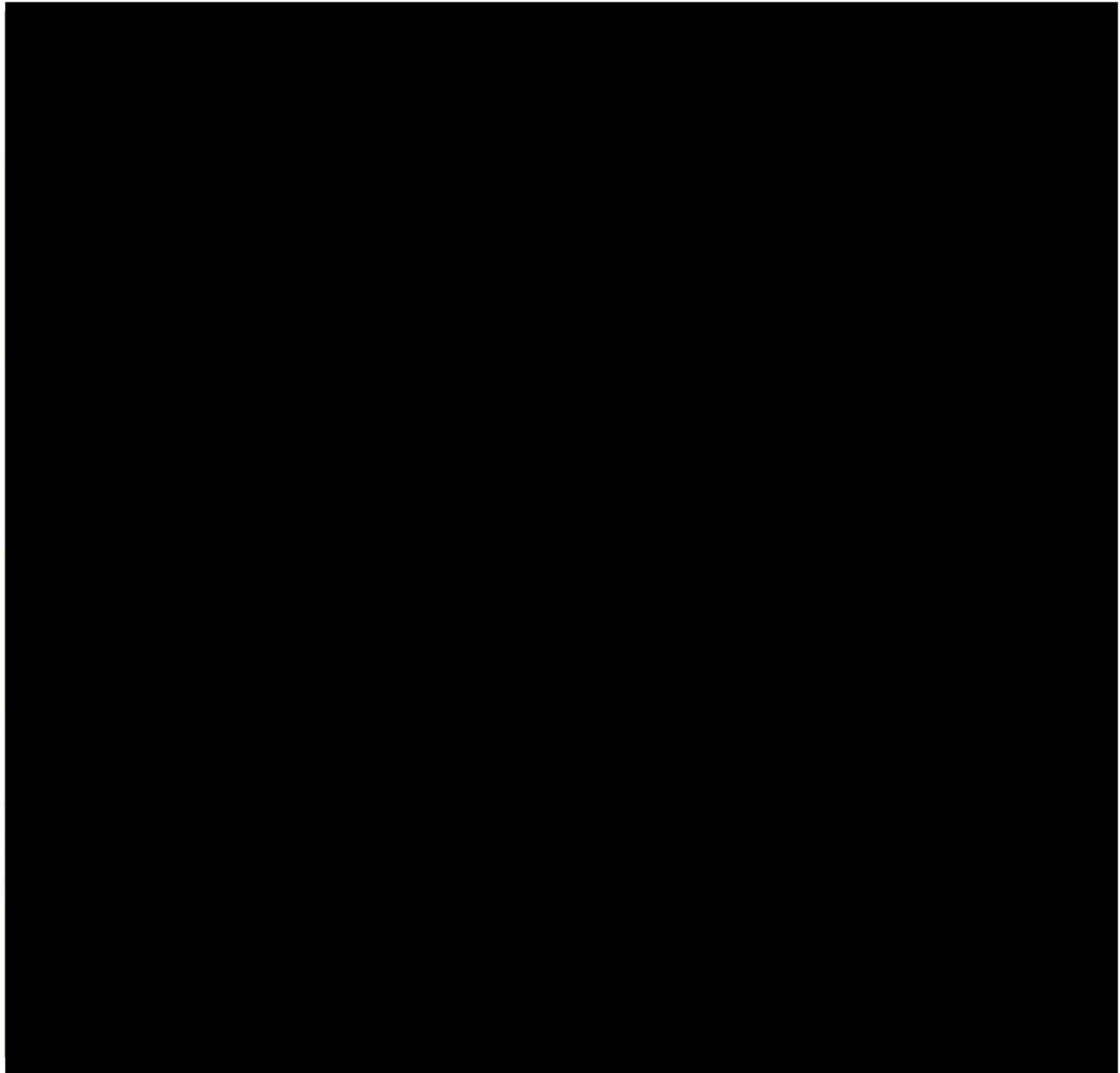
6. This operator's manual also states that it is "Revision 1.4." Although one might expect there to be earlier or later revisions of the NGCIIIG210802-C1 operator's manual (e.g., a Revision 1.0, 1.1. etc.), our revision number system does not work this way. At GOMACO, when a revised operator's manual is published, the date code within the form number is changed and the revision number is advanced simultaneously. Therefore, earlier or later revision levels of this manual also included a change in the date code in the form number for the manual.

Consequently, the only version of the NGCIIIIG210802-C1 operator's manual that exists is Revision 1.4.

7. I have reviewed the document marked Exhibit 1005. This is the version of the operator's manual that I personally distributed in the 2005-2007 timeframe.

8. In addition to my recollection of distributing this manual to several dealers and customers, I kept detailed records of the manuals I distributed. I understand that a set of these records is being filed in this proceeding in Exhibits 1100-1149.

9. Each exhibit corresponds to one of GOMACO's New Generation Commander III machines. Page 1 of Exhibit 1100 (reproduced below), for example, is a screenshot of a database entry screen that corresponds to machine serial number 900100-702. This machine serial number is listed in the upper-left corner of the screen after the designation MC#.



10. The screen identifies the dealer, who in this instance was Finkbiner Equipment Company. In some cases we sell stock machines to dealers. In those instances, we generally leave the “customer” field blank or put the word “stock” in the “customer” field. In this case, however, we knew that the customer was Walsh Construction.

11. Moving down the page, in the portion shown below, the database identifies the particular operator's manual, the number of copies I sent, the UPS tracking information, and the date the manuals were received by the dealer or customer.

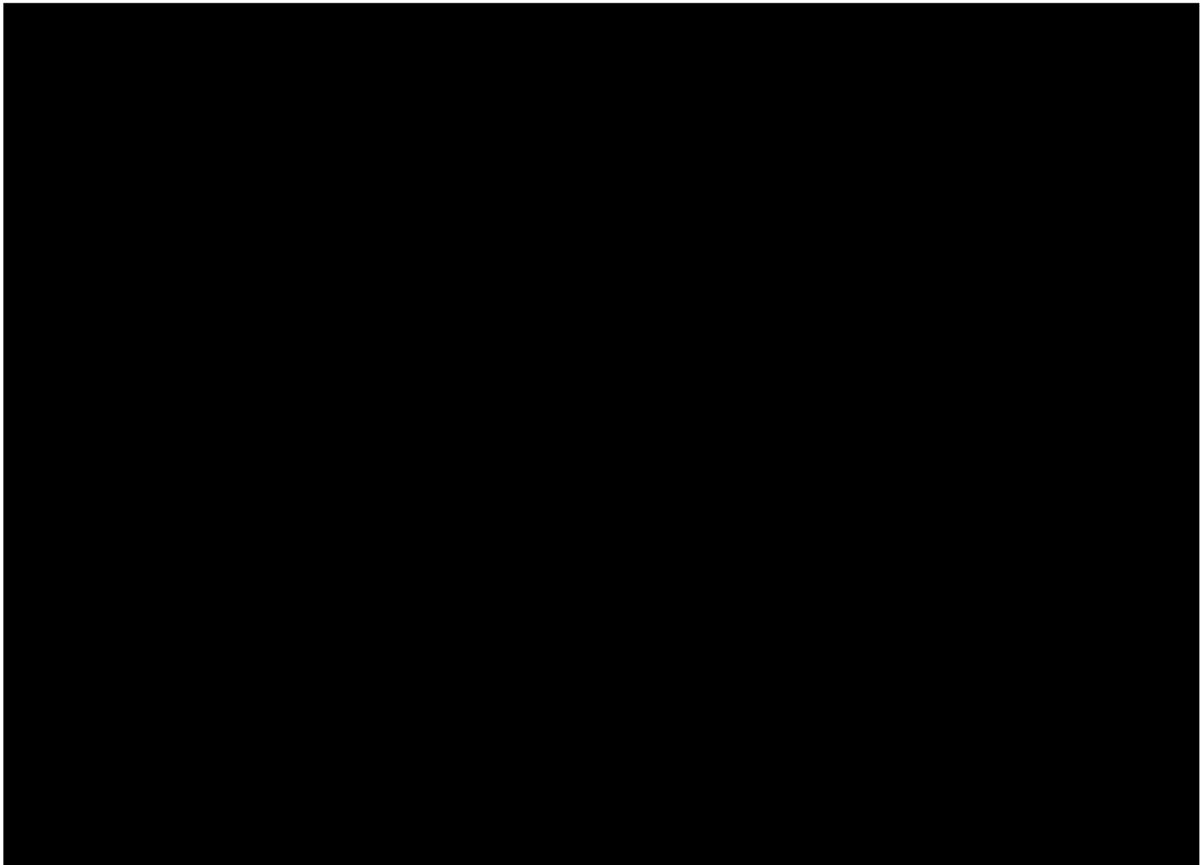


12. In the 2005-2007 timeframe, the white box below "Manual:" presented a drop-down menu when I clicked on it. The menu allowed me to select the particular operator's manuals I was sending to the dealer or customer. In this instance, I selected New Generation Commander III, and the system filled the portion of the screen that shows "Operator Manual #: NGCIIIIG210802-C1."

13. It was my standard practice to send two operator's manuals to each dealer or customer located in the United States, and this screen reflects that the "# of operator's manuals sent . . . direct:" was "2." I also prepared a cover letter to send with the manuals. An example cover letter appears on page 3 of Exhibit 1100.

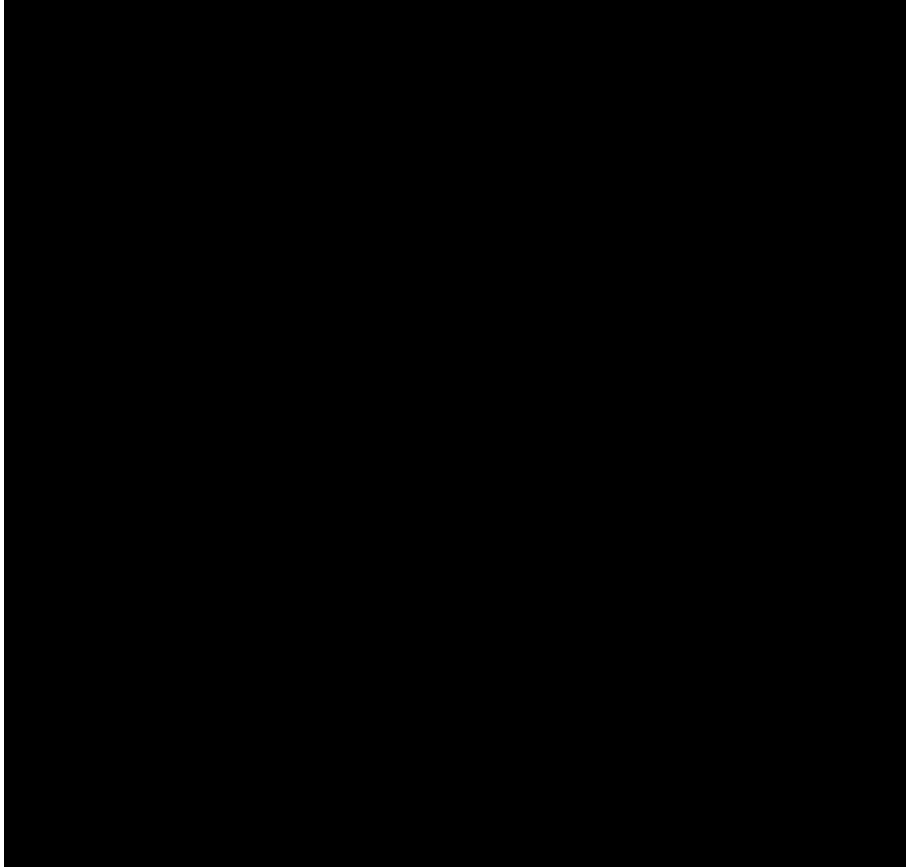
Among other things, it states: “Enclosed are two parts manuals and two operator’s manuals for the GOMACO equipment listed above.”

14. I packaged the two manuals, the cover letter, and any other materials going to the same dealer or customer, and I provided them to our shipping department with a note identifying where to send the package. Page 4 of Exhibit 1100 (reproduced below) provides an example of one of these notes that I prepared and provided to our shipping department.



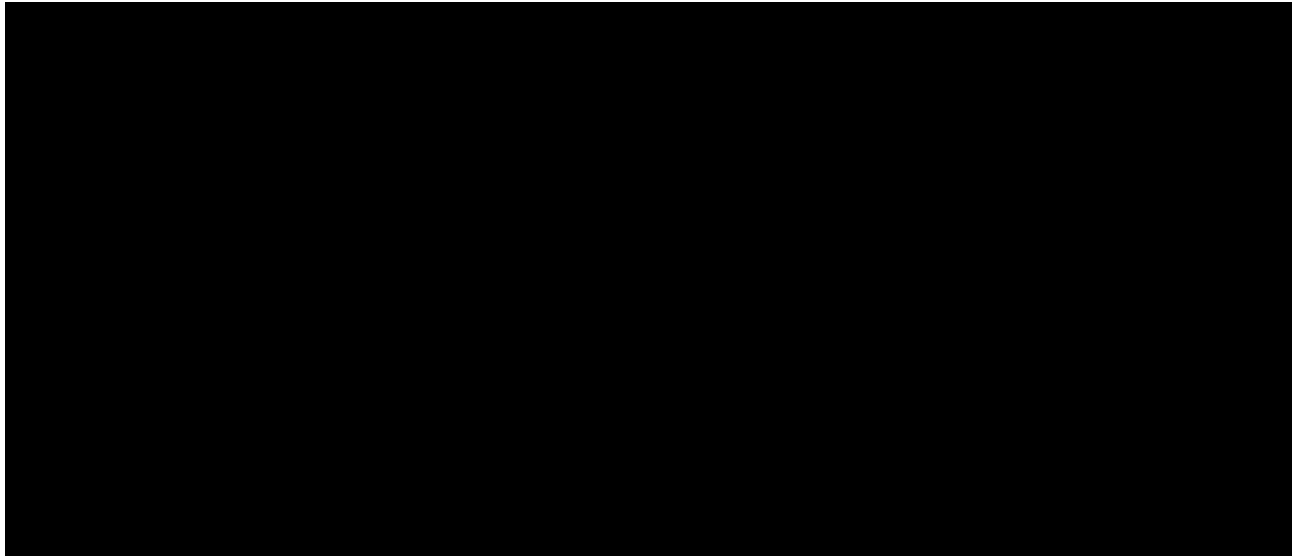
15. The database screen reflects the “Date sent to shipping,” which is the date I provided the packaged manuals to the shipping department.

16. The shipping department then reported the UPS tracking number to me. I wrote that tracking number on the machine invoice, an example of which appears on page 2 of Exhibit 1100 (reproduced in part below).



17. Above the tracking number, I wrote that I “sent . . . 2 operators,” which refers to me sending two operator’s manuals. Below the tracking number is the date the dealer or customer received the package containing the manuals. In this instance, the package was received on December 19, 2005. Below the received date, I wrote the name of the person who signed for the package at the dealer or customer. In this instance, the signer’s name was Angus.

18. I also entered this information into our database system. The database screen shows the same UPS tracking number as the one I wrote on the machine invoice. It also shows the same signer's name and the same received date.



19. In addition to providing physical copies of the manuals, it was also my standard practice to provide the manuals digitally on a CD. In this instance, the database has the "Yes" option selected next to "CD sent?" This is consistent with the notes I wrote on the invoice, which state that I provided a "CD to shipping." Ex. 1100 at 2. It is also consistent with the letter I provided to our shipping department, which states: "Please send these manuals & CD to the address above." Ex. 1100 at 4. We typically have CDs available. If one was not available at the time I sent the original shipment containing the printed operator's manuals, however, I would generally ship the CD at a later date. I would then enter the date in the white box beneath the words "CD sent?" on the database screen.

20. Each of Exhibits 1101 through 1149 follows a similar format as the one I discussed above for Exhibit 1100. I summarized some of the information contained in those exhibits in the Appendix attached to this declaration. In the Appendix, I identify 50 machines by serial number, the operator's manual version I sent for each of those machines, the dealer and/or customer who ordered the machine, the number of operator's manuals I shipped, the shipping tracking numbers for each package containing the operator's manuals, the dates the dealers and/or customers received the packages containing the operator's manuals, and the exhibit numbers containing the information corresponding to each machine.

21. The table and related exhibits reflect that I personally packaged, had shipped, and logged receipt by a dealer and/or customer of 100 printed copies of the NGCIIG210802-C1 operator's manual, which is the same operator's manual reflected in Exhibit 1005.

22. The exhibits also reflect that I generally sent a CD containing digital versions of those manuals at the same time I sent the printed copies of the manuals. In the rare instance where a CD was not available, the exhibits reflect that I later sent the CD to the dealer and/or customer. Exhibit 1143 contains an example where I noted that I still need a CD. I then noted that I sent the CD on 11/15/06 by UPS with tracking number 1Z5310790354572763. The database reflects that the CD was delivered on 11/20/06 and was signed for by "Bowen."

23. When sending operator's manuals to international buyers, it was common for me to write the machine number on the operator's manual. In Exhibit 1150, for example, the first page is a scanned copy of the cover page of an NGCIIIG210802-C1 operator's manual that we sent to a customer in Belgium. The cover page lists that the manual corresponds to machine serial number 900100-661. As the shipping documents and related documentation in that exhibit show, on April 6, 2005, we sent two English copies of the NGCIIIG210802-C1 operator's manual to the customer.

24. In Exhibit 1151, I similarly wrote the machine serial number 900100-675 on the cover page of the NGCIIIG210802-C1 operator's manual. In this example, we sent three English operator's manuals on August 26, 2005. In Exhibit 1152, I wrote the machine serial number 900100-713 on the cover page of the operator's manual and sent three English operator's manuals on February 10, 2006. In Exhibit 1153, I wrote the machine serial number 900100-762 on the cover page of the operator's manual and sent three English operator's manuals on September 1, 2006. And in Exhibit 1154, I wrote the machine serial number 900100-764 on the cover page of the operator's manual and sent two English operator's manuals on October 3, 2006.

25. The documents in Exhibits 1100-1154 are documents that GOMACO maintains in the ordinary course of its business, and I personally maintained the

files containing the documents reflected in those exhibits. Similarly, the data contained in the database shown in the screenshots in Exhibits 1100-1149 is data that GOMACO maintains in the ordinary course of its business. I personally entered the data in the fields I discussed above.

26. To my knowledge, none of the NGCIIIG210802-C1 operator's manuals I shipped were subject to any non-disclosure agreements or other secrecy obligations.

27. I declare that all statements made herein of my knowledge are true, and that all statements made on information and belief are believed to be true, and that those statements were made with the knowledge that willful false statements and the like so made are punishable by fine, imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

28. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 28th day of September, 2020.

By: Shari Simmons
Shari Simmons

Appendix

	Machine Serial Number	Operator Manual Number	Dealer and/or Customer	Operator Manuals Shipped	UPS Tracking Number	Dealer and/or Customer Received Date	Exhibit
1	900100-702	NGCIIIG210802-C1	Finkbiner Equipment Co. / Walsh Construction	2	1Z5310790354868239	12/19/05	1100
2	900100-703	NGCIIIG210802-C1	Empire Southwest L.L.C. / H.W. Johnson	2	1Z5310790352639338	12/20/05	1101
3	900100-704	NGCIIIG210802-C1	Terry Equipment, Inc.	2	1Z5310790353313984	12/22/05	1102
4	900100-705	NGCIIIG210802-C1	Terry Equipment, Inc.	2	1Z5310790352816360	1/12/06	1103
5	900100-706	NGCIIIG210802-C1	Terry Equipment, Inc. / Las Vegas Paving	2	1Z5310790352161451	1/11/06	1104

	Machine Serial Number	Operator Manual Number	Dealer and/or Customer	Operator Manuals Shipped	UPS Tracking Number	Dealer and/or Customer Received Date	Exhibit
6	900100-707	NGCIIIG210802-C1	Empire Southwest L.L.C.	2	1Z5310790353224962	12/21/05	1105
7	900100-708	NGCIIIG210802-C1	Conaggbt, Inc. / Salinas Const.	2	1Z5310790352559951	12/19/05	1106
8	900100-709	NGCIIIG210802-C1	Flagler Construction Equipment, LLC / Hardrives, Inc.	2	1Z5310790353650402	1/4/06	1107
9	900100-710	NGCIIIG210802-C1	American Construction Supply & Rental / T & S Concrete	2	1Z5310790352494440	1/11/06	1108

	Machine Serial Number	Operator Manual Number	Dealer and/or Customer	Operator Manuals Shipped	UPS Tracking Number	Dealer and/or Customer Received Date	Exhibit
10	900100-714	NGCIIIG210802-C1	Hayden Murphy Equipment Company / P.C.I.	2	1Z5310790354291030	3/15/06	1109
11	900100-715	NGCIIIG210802-C1	The Mclean Company / Armrel Byres Company	2	1Z5310790353077578	3/15/06	1110
12	900100-716	NGCIIIG210802-C1	Lone Pine Equipment L T D / Winvan Paving	2	1Z5310796852738903	3/23/06	1111
13	900100-717	NGCIIIG210802-C1	Westcon Equipment & Rentals Ltd.	2	1Z5310796853176983	3/15/06	1112
14	900100-718	NGCIIIG210802-C1	Finkbiner Equipment Co. / Walsh Construction	2	1Z5310790352755364	3/15/06	1113

	Machine Serial Number	Operator Manual Number	Dealer and/or Customer	Operator Manuals Shipped	UPS Tracking Number	Dealer and/or Customer Received Date	Exhibit
15	900100-720	NGCIIIG210802-C1	Samco Equipment, Ltd.	2	1Z5310796852913759	4/28/06	1114
16	900100-721	NGCIIIG210802-C1	American Construction Supply & Rental / Rick Lane Construction	2	1Z5310790352214877	3/3/06	1115
17	900100-725	NGCIIIG210802-C1	Empire Southwest L. L. C. / Petra Contracting	2	1Z5310790353136610	3/30/06	1116
18	900100-728	NGCIIIG210802-C1	Terry Equipment, Inc. / FCI	2	1Z5310790354576009	3/30/06	1117
19	900100-729	NGCIIIG210802-C1	Terry Equipment, Inc. / Teichert & Sons	2	1Z5310790352444011	5/4/06	1118

	Machine Serial Number	Operator Manual Number	Dealer and/or Customer	Operator Manuals Shipped	UPS Tracking Number	Dealer and/or Customer Received Date	Exhibit
20	900100-730	NGCIIIG210802-C1	Terry Equipment, Inc.	2	1Z5310790352163253	5/24/06	1119
21	900100-731	NGCIIIG210802-C1	Terry Equipment, Inc.	2	1Z5310790353075472	6/2/06	1120
22	900100-732	NGCIIIG210802-C1	American State Equipment Company	2	1Z5310790353808082	3/31/06	1121
23	900100-733	NGCIIIG210802-C1	Road Machinery & Supplies Co. / Tschiggfrie Excavating	2	1Z5310790352827429	4/18/06	1122
24	900100-737	NGCIIIG210802-C1	Samco Equipment, Ltd. / Rulam	2	1Z5310796853873434	5/24/06	1123

	Machine Serial Number	Operator Manual Number	Dealer and/or Customer	Operator Manuals Shipped	UPS Tracking Number	Dealer and/or Customer Received Date	Exhibit
25	900100-739	NGCIIIIG210802-C1	Strongco Equipment / J. Franze Concrete LTD	2	1Z5310796852830197	7/14/06	1124
26	900100-741	NGCIIIIG210802-C1	Tractor & Equipment Company / Archer Western	2	1Z5310790354695621	3/14/06	1125
27	900100-742	NGCIIIIG210802-C1	The McLean Company / Terrace Construction	2	1Z5310790352893287	5/30/06	1126
28	900100-743	NGCIIIIG210802-C1	The Mclean Company / Shelly & Sands	2	1Z5310790154852866	7/24/06	1127

	Machine Serial Number	Operator Manual Number	Dealer and/or Customer	Operator Manuals Shipped	UPS Tracking Number	Dealer and/or Customer Received Date	Exhibit
29	900100-745	NGCIIIIG210802-C1	American Construction Supply & Rental / J. B. Concrete	2	1Z5310790354194565	7/24/06	1128
30	900100-746	NGCIIIIG210802-C1	American State Equipment Company / Ptaschinski	2	1Z5310790153529888	7/24/06	1129
31	900100-747	NGCIIIIG210802-C1	Conley Lott Nichols Machinery Co. / Tiseo Concrete	2	1Z5310790353773815	6/22/06	1130
32	900100-748	NGCIIIIG210802-C1	Ring Power Corporation / Fredrick Derr & Co.	2	1Z5310790353631174	7/28/06	1131

	Machine Serial Number	Operator Manual Number	Dealer and/or Customer	Operator Manuals Shipped	UPS Tracking Number	Dealer and/or Customer Received Date	Exhibit
33	900100-749	NGCIIIIG210802-C1	Wolverine Tractor & Equipment Co. / Ajax Paving	2	1Z5310790352718305	6/29/06	1132
34	900100-750	NGCIIIIG210802-C1	Lone Pine Equipment L T D / Caribou Construction	2	1Z3510796854350229	6/5/06	1133
35	900100-754	NGCIIIIG210802-C1	American Construction Supply & Rental / Foundations LLC	2	1Z5310790352265296	8/1/06	1134
36	900100-756	NGCIIIIG210802-C1	Empire Southwest L. L. C. / K.C.R. Petra Contracting	2	1Z5310790354833007	6/21/06	1135

	Machine Serial Number	Operator Manual Number	Dealer and/or Customer	Operator Manuals Shipped	UPS Tracking Number	Dealer and/or Customer Received Date	Exhibit
37	900100-757	NGCIIIG210802-C1	Stribling Equipment, Inc.	2	1Z5310790353446713	7/14/06	1136
38	900100-758	NGCIIIG210802-C1	Empire Southwest L. L. C. / Vasquez & Sons Grading	2	1Z5310790352688151	8/22/06	1137
39	900100-759	NGCIIIG210802-C1	Conley Lott Nichols Machinery Co. / Austin Bridge & Road	2	1Z5310790353643974	8/18/06	1138
40	900100-761	NGCIIIG210802-C1	Foster Equipment Company / Gemm Homes	2	1Z5310790354796487	7/26/06	1139
41	900100-766	NGCIIIG210802-C1	Empire Southwest L. L. C.	2	1Z5310790353753739	9/7/06	1140

	Machine Serial Number	Operator Manual Number	Dealer and/or Customer	Operator Manuals Shipped	UPS Tracking Number	Dealer and/or Customer Received Date	Exhibit
42	900100-767	NGCIIIG210802-C1	Tractor & Equipment Company / C. W. Matthews	2	1Z5310790152147168	11/13/06	1141
43	900100-768	NGCIIIG210802-C1	Samco Equipment, Ltd. / Atech	2	1Z5310796652721719	8/29/06	1142
44	900100-769	NGCIIIG210802-C1	Empire Southwest L. L. C. / Nesbitt Contracting Co.	2	1Z5310790354748645	11/20/06	1143
45	900100-770	NGCIIIG210802-C1	Empire Southwest L. L. C.	2	1Z5310790354977371	11/16/06	1144
46	900100-771	NGCIIIG210802-C1	Finkbiner Equipment Company / Walsh Construction	2	1Z5310790354886997	9/28/06	1145

	Machine Serial Number	Operator Manual Number	Dealer and/or Customer	Operator Manuals Shipped	UPS Tracking Number	Dealer and/or Customer Received Date	Exhibit
47	900100-772	NGCIIIG210802-C1	Foster Equipment Company / Concrete Works of Colorado	2	1Z5310790352130967	11/17/06	1146
48	900100-773	NGCIIIG210802-C1	Empire Southwest L. L. C.	2	1Z5310790354059050	12/15/06	1147
49	900100-774	NGCIIIG210802-C1	Empire Southwest L. L. C.	2	1Z5310790153729760	2/2/07	1148
50	900100-780	NGCIIIG210802-C1	Cate Equipment Company / McNeil Construction	2	1Z3510790152238122	2/22/07	1149