Filed January 7, 2026

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Sandvik Mining and Construction USA LLC,
Petitioner

v.

CMS Cepcor Limited and CMS Cepcor Americas LLC
Patent Owner

IPR2024-01380
US Patent 9,827,568

FOURTH DECLARATION OF DAVID G. SMITH, IN SUPPORT OF PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT 9,827,568

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I. INTRODUCTION

1. I, David G. Smith, submit this declaration on behalf of CMS Cepcor Limited and CMS Cepcor Americas LLC (hereafter CMS, or Petitioners), regarding a Petition for *Inter Partes* Review of U.S. Patent No. 9827568 ('568 patent or Pat '568).

2. The subject of my declaration is the invalidity of the '568 patent. This declaration is provided after my review and analysis of the '568 patent, file history, the prior art, relevant background technology, and is also based on my education and experience, as well as additional materials identified herein.

3. This is the fourth declaration I have submitted in this matter. The first declaration addressed the invalidity of all of the original asserted claims of the '568 patent. The second declaration addressed the invalidity of the amended claims as outlined in Patent Owner's Non-Contingent Motion to Amend. The third declaration addressed the invalidity of the further claim amendments outlined in Patent Owner's Revised Non-Contingent Motion to Amend. This declaration addresses comments and arguments made against the analysis presented in my third declaration.

II. BACKGROUND AND QUALIFICATIONS

4. Counsel for CMS Cepcor has retained me as a technical expert in this action. I have attached, as Exhibit 1, a copy of my Curriculum Vitae, which

outlines my educational and employment history. I received a Bachelor's degree in Mechanical Engineering from Brigham Young University - Idaho. I received a Master's of Science degree in Mechanical Engineering from Brigham Young University (BYU), and a Masters of Business Administration from Brigham Young University (BYU) with an emphasis in Product Development. I am a licensed professional engineer (PE) and a certified safety professional in comprehensive practice (CSP).

5. I have experience in the fields of mechanical engineering, structural design, new product development, the design of equipment, machinery, safety and consumer products. In my role as a consultant, I have consulted on numerous products and custom testing devices. Among the products I have consulted on are drill rigs, pipe breakers, brick saws, auger conveyors, belt conveyors, dry bulk trailers, rock slingers and dump trailers.

6. I am a named inventor on seven U.S. Patents. I believe that my credentials as set forth above and, in my Curriculum Vitae, demonstrate that I am an expert in the fields of mechanical design, structural design, product design, design of equipment, and design safety.

7. I have attached as Exhibit 2 a list of all my deposition or trial testimony in the last four years.

8. I have attached as Exhibit 3 a list of all of the references and materials

I have considered and/or relied on in coming to my opinions in this matter.

III. LEGAL PRINCIPLES

9. I am not a lawyer. Therefore, in formulating my opinions and conclusions in this proceeding, I have been provided with an understanding of the relevant aspects of U.S. patent law that govern the issues of patent validity.

Prior Art

10. I understand that, in this IPR proceeding, the prior art to the '568 patent includes patents and printed publications in the relevant field(s) that predate the respective patent's priority date. I am informed that the effective filing date for this analysis is August 2, 2012.

Obviousness

11. I understand that a claim of a patent may be obvious to a person of ordinary skill in the art if the differences between the subject matter set forth in the patent claim and the prior art are such that the claimed subject matter as a whole would have been obvious at the time of the invention.

12. I understand that obviousness is a determination of law based on various underlying determinations of fact. In particular, these underlying factual determinations include (1) the scope and content of the prior art; (2) the level of ordinary skill in the art at the time the claimed invention was made; (3) the differences between the claimed invention and the prior art; and (4) the extent of

any proffered objective "indicia" of non-obviousness. I understand that the objective indicia, also known as secondary considerations, which may be considered in such an analysis include, among other factors: the commercial success of the patented invention (including evidence of industry recognition or awards), the existence of a long-felt but unmet need in the field satisfied by the invention, the failure of others to arrive at the invention, industry acquiescence and recognition of the invention, initial skepticism of the invention by others in the field, the extent to which the inventors proceeded in a direction contrary to the accepted wisdom of those of ordinary skill in the art, and licensing of the patent.

13. In determining the scope and content of the prior art, I understand a reference is considered prior art for the obviousness analysis if it falls within the inventors' field of endeavor. Additionally, a reference is prior art for the obviousness analysis, even if from a different field of endeavor, if it is reasonably pertinent to the particular problem for which the invention was made. A reference is reasonably pertinent if it is something a person of ordinary skill in the art would have looked to when attempting to solve the problem.

14. While multiple prior art references or elements may be combined to render a patent claim obvious, I understand that a patent claim composed of several elements is not proven obvious merely by demonstrating that each of its elements was, independently, known in the prior art. I understand that I should consider

whether there is an "apparent reason" or motivation to combine the prior art references or elements in the way the patent claims. It is my further understanding that the law recognizes several rationales for combining references or modifying a reference to show obviousness of claimed subject matter. Some of these rationales include: combining prior art elements according to known methods to yield predictable results; simple substitution of one known element for another to obtain predictable results; a predictable use of prior art elements according to their established functions; applying a known technique to a known method or product ready for improvement; and choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success.

Analogous Art

15. I understand that art can be used in an obviousness determination only when it is analogous to the claimed invention. Whether a reference in the prior art is analogous is a question of fact.

16. I understand that two criteria are used to determine whether art is from the same field of endeavor: (1) whether the art is from the same field of endeavor, regardless of the problem addressed; and (2) if the reference is not within the field of the inventor's endeavor, whether it still is reasonably pertinent to the particular problems with which the inventor is involved.

17. I understand that if a reference disclosure has the same purpose as the

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claimed invention, the reference relates to the same problem, and that fact supports the use of the reference to determine obviousness. If it is directed to a different purpose, the inventor would accordingly have had less motivation or occasion to consider it.[1]

18. It is my understanding that art is not analogous where an inventor considering the problem addressed by the claimed invention would not have been motivated to consider the cited references when making his invention, particularly when none of the references addresses the problem solved by the invention.[2]

19. It is my understanding that the hypothetical PHOSITA is presumed to have the ability to select and utilize knowledge from other arts that are reasonably pertinent. Thus, teachings of references from an analogous field properly may be combined with those from the specific field of endeavor in which the inventor is working.[3]

20. I also understand that it is extremely difficult to argue that a particular field is not the relevant art when one uses an expert in that field.[4]

21. I understand that "In a simple mechanical invention a broad spectrum of prior art must be explored and it is reasonable to permit inquiry into other areas

[1] Scientific Plastic Prods., Inc. v. Biotage AB, 766 F.3d 1355, 112 USPQ2d 1226 (Fed. Cir. 2014). ("The analogous art inquiry is a factual one, requiring inquiry into the similarities of the problems and the closeness of the subject matter as viewed by a person of ordinary skill"); In re Clay, 966 F.2d 656, 23 USPQ2d 1058 (Fed. Cir. 1992).
[2] In re Klein, 647 F.3d 1343, 98 USPQ2d 1991, 1995-96 (Fed. Cir. 2011) (reversing obviousness rejection because all of the prior art relied on by the Board and the Examiner was non-analogous).
[3] Cable Elec. Prods. Inv. v. Genmark Inc., 770 F.2d 1015, 226 USPQ 881 (Fed. Cir. 1985)
[4] Orthopedic Equip. Co. v. United States, 702 F.2d 1005, 217 USPQ 193 (Fed. Cir.1983)

where one of ordinary skill in the art would be aware that similar problems exist."[5] For example, a patent application that claimed a "hair brush" having a specific bristle configuration. The Board affirmed the examiner's rejection of the claims as being obvious in view of prior art patents disclosing toothbrushes.[6]

22. In another example, a reference in the **clutch art** was held reasonably pertinent to the friction problem faced by the inventor, whose claims were directed to a **braking material**, because brakes and clutches utilize interfacing materials to accomplish their respective purposes.[7]

23. Analogous arts in patent examination refer to fields of invention that are related to the claimed invention, **even if they are not directly within the same classification**. The Manual of Patent Examining Procedure (MPEP) states:

> Not only must the art be searched within which the invention claimed is classifiable, but also all analogous arts must be searched regardless of where the claimed invention is classified. (MPEP 904.01(c))

24. In the end, analogous art is simply that which is not too remote to be treated as prior art, and so labeling it merely connotes that it is relevant to a consideration of obviousness under §103.[8]

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[5] Stevenson v. Int'l Trade Comm., 612 F.2d 546, 550, 204 USPQ 276, 280 (CCPA 1979),
[6] In re Bigio, 381 F.3d 1320, 1325-26, 72 USPQ2d 1209, 1211-12 (Fed. Cir. 2004). Id. at 1323, 72 USPQ2d at 1210
[7] Ex parte Goodyear Tire & Rubber Co., 230 USPQ 357 (Bd. Pat. App. & Inter. 1985)
[8] [140]*In re Sovish*, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985).

IV. THE LEVEL OF ORDINARY SKILL IN THE ART

25. I have been advised by counsel that the Federal Circuit has noted a list of six factors that may be considered when determining the level of ordinary skill in the art. The factors are listed below. I have used the factors in combination with the available information in determining the level of ordinary skill in the art.

A. The education level of the inventor.

B. The type of problems encountered in the art.

C. Prior art solutions to those problems.

D. The rapidity with which innovations are made.

E. The sophistication of the technology.

F. The education level of active workers in the field.

26. Considering the above factors, it is my opinion that at the time of the invention and the Challenged Claims of the ’568 patents, a person having ordinary skill in the art would be a person who has a bachelor’s degree in mechanical engineering or a related field, and at least 2 years of experience with industrial equipment design and development. A POSITA may also have a combination of more formal education and less work experience or a combination of less/different formal education and more work experience. I use that level of skill in forming my opinions and reaching my conclusions herein, unless otherwise stated. As a result of my education and experience, I am qualified to testify as a person of ordinary skill

in the art (POSITA) in this case. I further note that Dr. Kytoma, the expert for Patent Owner does not object to this definition.[9] This is the same level or ordinary skill applied in all four of my declarations in this matter.

V. SUBSTITUTE CLAIMS NOT SUPPORTED BY ORIGINAL DISCLOSURE

27. As discussed in my third declaration in this matter, Patent Owners have added the limitation that the main shaft is "rotating eccentrically and freely rotatable." The rely on the drawings and figures to show written description and support in the '568 patent.[10] Indeed there are no words in the specification that describe that the shaft is freely rotatable.

28. Further as discussed in my Third Declaration, whether there is sufficient written description for this new limitation or not is inconsequential as this limitation is shown both in US Patent 2,833,486 to MacLeod as well as in US Patent No 3,813,047 Torrence. Here, Patent owner is claiming a limitation that is a well-known and common operational feature of gyratory crushers, in an attempt to differentiate over the prior art.

VI. NO OPINIONS THAT NEW GROUNDS DO NOT DISCLOSE ALL ELEMENTS

29. In the Third Kytomaa Declaration, Dr. Kytomaa does not opine, and

[9] EX2020- Second Declaration of Harri Kytomaa, PH.D. Pp. 4-5
[10] Second Declaration of Harri Kytoma Pp. 9-12

thus appears to agree that all of the elements of the further amended claims are shown in the prior art. Rather, in his third declaration he argues that the new grounds for obviousness rely on non-analogous art, that there is no motivation to combine, and that there are secondary considerations of non-obviousness. I disagree. Each of these will be addressed below.

VII. ANALOGOUS ART IN NEW GROUNDS

30. Section V of the Third Kytomaa Declaration is titled "The New Grounds Rely on Non-Analogous Art." He then proceeds to discuss why he believes that the US Patent 6,270,026 to Piepho (Exhibit 1016) is not analogous. Even going as far as stating that "no POSITA would consider Piepho as pertinent art." While the ground is new, the use of Piepho in obviousness grounds is not. Dr. Kytomaa does not appear to have a problem with the use of the new reference (Torrence) in the ground, but now opines that Piepho is not analogous.

Piepho is not new art

31. As noted above, this is my 4th declaration in this proceeding. The first declaration was submitted in August 2024, well over a year ago. The Piepho reference was used in my original grounds, as well as in the grounds in my second and third declarations. Neither of Kytomaa's first or second declarations suggested that he did not consider Piepho to be analogous art. It is curious that if Piepho is so clearly and blatantly in another field of art, that such an argument was not raised

for over a year after the Piepho reference was introduced. Indeed, as will be shown, Piepho is analogous art.

Piepho is in the field of endeavor

32. Dr. Kytomaa appears to argue that the field of endeavor is restricted to gyratory crushers and gyratory crushers only.

33. Undoubtedly, both the '568 and Piepho are rock crushers. Dr. Kytomaa agreed that coal is a specific kind of rock.[11] He acknowledges that the purpose of the coal crusher references in Piepho is to reduce the size of coal from .075- 1" diameter rocks to a 0.003-0.012 inch rock powder.[12]

34. Dr. Kytomaa argues that Piepho, which relates to a coal pulverizer, is so different from the operation of the gyratory crusher of the '568 patent that they should not be considered to be in the same field.

35. However, both the '568 Patent and Piepho address the same problems, one of which is preserving the main shaft (preventing it from needing to be replaced), which is expensive as well as difficult and time consuming to remove. Piepho states that "Pulverizer vibration usually results in high shaft stress levels and may have a role in main shaft failure."[13] And continues that "Because of the foregoing, there have been many attempts to correct main shaft failure

[11] 2nd Kytomaa Deposition Pg. 7
[12] Third Kytomaa Declaration Pg. 9
[13] Piepho 1:60-62

frequency."[14] The second problem, related to the first, is how to minimize the down time, and thus the opportunity cost of not running the rock crushing machines. The '568 patent addresses these problems by using a wear sleeve on the shaft, which can be replaced when worn out. Replacing the wear sleeve is less expensive, easier and faster than replacing the entire main shaft. The main shaft and sleeve are also formed with a tapered interference fit to further increase the speed with which the wear sleeve can be replaced. Piepho, addresses the problem by use of a coating for the shaft that reduces fretting, stress, fatigue and ultimately the failure of the main shaft. Fewer main shaft failures, means fewer main shafts need to be replaced. Piepho further teaches that "another aspect of the present invention is to provide an improved main shaft that is simple in design, rugged in construction and economical to manufacture."[15] A POSITA would recognize that a design that is economical to manufacture would include assembly time. Further, a POSTIA would recognize that fretting, is also a consideration for the design of the shaft and wear sleeve of the '568 patent. The main shaft of Piepho on which the coating is applied, can be cylindrical but Piepho points out that it is preferably tapered with a tapered bearing interference fit on the end.

36. While it is true that the invention of Piepho is not the tapered

[14] Piepho 1:66-67
[15] Piepho 2:29-31

interference fit on the end of the main shaft, Piepho does teach and show that, not only were tapered interference fits between shafts and bushings/wear sleeves known, they were in fact preferrable. That is, Piepho highlights what was already well known in the art – that tapered shafts with tapered bushings/wear sleeves were known and preferable. In my first and third declarations I highlighted multiple patents and prior art examples that show tapered shafts with tapered interference fit bushings. I have listed them again, below, for convenience. Further, Dr. Kytomaa agreed that tapered friction fit shafts and sleeves were known in the comminution field (rock crushing field) as well as generally in the mechanical arts.[16]

- US 4,019,344
- US 3,343,376
- US 2,840,399
- US 3,228,102
- US 4,829,718
- SAE J755
- SAE J1419
- ASME B18.8.2
- Machine Design Data Handbook, K. Lingaiah, c1994
- https://www.cgtk.co.uk/metalwork/data/morse

[16] 2nd Kytomaa Deposition Pp. 19-20

- https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3779551/
- https://web.archive.org/web/20101027092713/https://pbase.com/mainecruising/fitting_a_prop
- https://surpluscenter.com/2-32-cu-in-hyd-clutch-pump-only-9510-390-139/
- https://img.directindustry.com/images_di/photo-g/20030-2339083.jpg
- https://www.brandnewengines.com/cdn/shop/products/SAM_3681_1024x.jpg
- https://ashdowntooling.co.uk/products/1-5mm-13mm-lathe-tailstock-drill-chuck-morse-taper-3-mt3-to-b16-arbor

37. Both sides are in agreement that a POSITA would be aware of tapered shafts with tapered interference fit bushings both generally in the mechanical arts, as well as in the specific field of rock crushing equipment. A POSITA would also be aware that tapered shafts are preferable (as taught by Piepho) as they improve the ease of removal and prevent damage to the shaft,[17] they are able to be used in more locations as they do not require presses and gear pullers,[18] and they make removing components on a tapered shaft particularly easy,[19] particularly when combined with known hydraulic systems for making and breaking the interference fit. Piepho teaches that a tapered shaft and bushing are preferable, and a POSITA would recognize that it is preferable for at least the above reasons. All of these known benefits directly relate to the problem of reducing down time of rock

[17] Behm 1:13-15, 1:35-42
[18] Sillett 1:15-24
[19] Harless 3:15-22

crushing machinery. Piepho and the '568 Patent are directed to solving the same problems and are analogous art.

38. Further, it is well known that rock crushing and pulverizing is a multi-stage process. There are primary crushers, of which a gyratory crusher may be one, and there can be secondary and tertiary crushers or pulverizers that are used, of which the pulverizer referenced in Piepho would be one.

39. Dr. Kytomaa testified that "depending on the mining operation, you'll start with a broad range of sizes, and there may be sort of a, let's say, a coarse size classification that allows smaller components to – let's say, smaller pieces of rock to move on, and larger ones may get crushed by some kind of crusher that accommodates large rocks."[20]

40. Dr. Kytomaa continued to testify that "ultimately, the coal has to be reduced in size small enough for the pulverizer to accept… So there will be multiple steps, typically two or three, that also includes a classification of size. So larger rocks will need to be crushed by a different kind of equipment than the smaller rocks, and the classification will direct different sizes to different pieces of equipment."[21]

41. In the Third Kytomaa Declaration, Dr. Kytomaa explains that the

[20] 2nd Kytomaa Deposition Pg. 26
[21] 2nd Kytomaa Deposition Pp. 26-27

"Sandvick CH440 cone crusher accepts rocks up to 9.8 inches wide and has an adjustable output size of 0.3 to 1.8 inches."[22] Not uncommon for a primary crusher. Dr. Kytomaa further explains that the input for the coal pulverizer "should ideally be 0.75 to 1 inch."[23] It follows that the output from the gyratory cone crusher could be appropriately sized to be fed into the coal pulverizer.

42. While primary crushers may have different designs and operate differently than other crushers in the stream of production (Dr. Kytomaa highlights these differences in his Third Declaration), a POSITA to be aware of and understand the different machines, the different types of crushers that are used at different stages of processing rocks and coal, and be able to incorporate teachings, designs and principles from one type of crusher into another crusher. This is true even if there are differences in how the crushers operate, how the crushers are loaded, if the wear environment is different and how often and in what ways the different crushers are assembled and disassembled. Thus, Piepho and the '568 can be used sequentially while processing coal and are in the same field of endeavor.

Piepho has same patent classification as the '568 Patent

43. It is my understanding that the USPTO uses the cooperative patent classification (CPC) system for organizing patents and other technical documents

[22] Third Kytomaa Declaration Pg. 10
[23] Third Kytomaa Declaration Pg. 9

into specific technology groupings based on common subject matter. The classification system has a main section, the broadest category, identified by a single letter. There is then a class of the main section identified by two digits. They are then broken down into subclasses identified by one letter. And finally, into sub groups identifying the most specific levels that identify particular technical features.

44. Both the ’568 patent and Piepho have the same section, class, and subclass CPC identifier as **B02C** which represents CRUSHING, PULVERIZING OR DISINTEGRATING IN GENERAL.

45. While the most specific sub groups which identify the most specific levels are different, the same main classification supports that Piepho and the ’568 patent are in the same field of endeavor.

Patent Owner’s expert is experienced in field of coal pulverizers

46. I understand that it is extremely difficult to argue that a particular field is not the relevant art when one uses an expert in that field.[24]

47. Patent Owner’s Expert, Dr. Hari Kytomaa, explained in his relevant experience in his first deposition, stating: “specifically, I have worked on coal pulverizers and b[all] mills, as well as a crusher. These were in the context of two or three projects that I worked that were associated with coal mines and coal fired

[24] Orthopedic Equip. Co. v. United States, 702 F.2d 1005, 217 USPQ 193 (Fed. Cir. 1983).

power plants."[25] Dr. Kytomaa did not testify that he had direct experience with gyratory crushers.

48. As Dr. Kytomaa was likely selected as an expert due to his experience with coal pulverizers in the context of coal fired power plants, it is difficult for Patent Owner to now argue that Piepho, which teaches a main shaft for a coal pulverizer, is not analogous or relevant art.

File History Does Not Overcome Obviousness

49. Dr. Kytomaa notes that "during prosecution, the Examiner cited Torrence and applied Coxhill '800 (Ex. 1039)… Yet she allowed the (broader) issued claims over them. This indicates to me that the Examiner viewed Torrence as deficient. Petitioner is simply recycling considered art and arguments."[26] However, in my obviousness grounds, Torrence is combined with Piepho. Piepho (nor any of the other tapered shaft and tapered sleeve references) was not before the examiner. Thus, the arguments are clearly different. Not only is the art cited different, the claims themselves have been amended twice. Thus, neither the claims nor the combinations of art that show them obvious were before the examiner during the original prosecution, and the examiners conclusions related to a different analysis. These are not recycled arguments.

[25] 1st Kytomaa Deposition Pg. 5
[26] Third Kytomaa Declaration Pg. 22

VIII. MOTIVATIONS TO COMBINE

50. Dr. Kytomaa notes that when an invention is directed to a different purpose, the inventor would accordingly have less motivation or occasion to consider it in an obviousness analysis. However, Piepho similar to the ’568 is directed to increasing the lift of the main shaft of a rock crusher, and would lend itself to consideration in solving that problem. Further, Piepho teaches that a tapered shaft is preferable, and a POSITA would understand that the tapered shaft is preferable because it makes it easier and faster to replace a bushing, with less damage to the main shaft. For that reason, Piepho also lends itself to consideration and solving the problem addressed by the ’568 patent.

51. It is my understanding that "motivation to combine may be found explicitly or implicitly in market forces; design incentives; the ‘interrelated teachings of multiple patents’; ‘any need or problem known in the field of endeavor at the time of invention and addressed by the patent’; and the background knowledge, creativity, and common sense of the person of ordinary skill."[27]

52. A POSITA trying to increase the life of a main shaft, and/or reduce down time when performing maintenance on a main shaft assembly would be motivated to combine the straight shaft and wear sleeve of Torrence with the preferable tapered shaft and tapered sleeve of Piepho as tapered shafts improve the

[27] https://www.bitlaw.com/source/mpep/2143-01.html

ease of removal and prevent damage to the shaft,[28] they are able to be used in more locations as they do not require presses and gear pullers,[29] and they make removing components on a tapered shaft particularly easy,[30] particularly when combined with known hydraulic systems for making and breaking the interference fit.

IX. CONCLUSION

53. For these reasons, and the reasons described in my third declaration, it is my opinion that Piepho is analogous art to the '568 Patent and the amended claims of the '568 patent would have been obvious to a person of ordinary skill in the art as all of the elements are taught in the art and there are sufficient motivations to combine references.

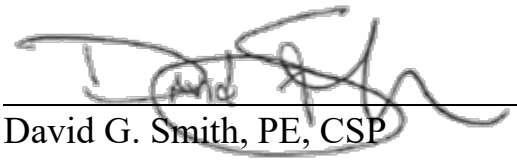
54. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment,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

[28] Behm 1:13-15, 1:35-42

[29] Sillett 1:15-24

[30] Harless 3:15-22

Executed on January 7, 2026 in Meridian, ID.



David G. Smith, PE, CSP

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