**IN THE UNITED STATES DISTRICT COURT**
**FOR THE EASTERN DISTRICT OF MISSOURI**

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| AMSTED RAIL COMPANY, INC.,<br><br>Plaintiff,<br><br>v.<br><br>HUM INDUSTRIAL TECHNOLOGY, INC., and BRENT WILSON,<br><br>Defendant. | CIVIL ACTION NO.: _____<br><br>JURY TRIAL DEMANDED |

**VERIFIED COMPLAINT**

Plaintiff, Amsted Rail Company, Inc ("Plaintiff" or "Amsted"), by and through its attorneys, Fox Rothschild LLP, hereby files the following complaint for misappropriation of trade secrets, tortious interference with business relationships, breach of contract, and patent infringement, and in support thereof, avers as follows:

**INTRODUCTION**

1. This dispute arises out of Defendant Brent Wilson's former employment with Amsted and his appropriation of proprietary information upon his termination from employment. During the course of Mr. Wilson's employment at Amsted, he contributed to the development of remote sensor technology used to monitor the GPS location and the conditions of rail cars and to predict bearing and wheel failures before the occur. Mr. Wilson's contributions resulted in his co-inventorship of U.S. Patent No. 9,365,223 (the "'223 Patent") (attached as Exhibit A) and U.S. Patent No. 9,981,673 (the "'673 Patent") (attached as Exhibit B). Some of Mr. Wilson's co-inventors also contributed to the development of additional remote sensing methods, including the

invention claimed in U.S. Patent No. 10,137,915 (the "'915 Patent") (attached as Exhibit C). Mr. Wilson was terminated on October 10, 2017 as a result of performance and behavioral issues.

2. Mr. Wilson later founded Defendant Hum Industrial Technology, Inc. ("Hum") which utlized Amsted's proprietary and patented technologies to impermissibly develop and market a product in direct competition with Amsted. Mr. Wilson and Hum are collectively referred to herein as "Defendants."

**PARTIES**

3. Amsted is a railcar component manufacturer and service company organized under the laws of Delaware with a principal place of business at 311 S. Wacker Drive, Suite 5300 Chicago, Illinois 60606.

4. Upon information and belief, Hum is a railcar service company incorporated under the laws of Delaware with a principal place of business at 911 Washington Avenue, Suite 501, St. Louis, Missouri 63101.

5. Upon information and belief, Mr. Wilson is Chief Technology Officer of Hum and has a last known address at 667 Notre Dame Ave, Edwardsville, Illinois 62025.

**JURISDICTION**

6. This Court has subject matter jurisdiction over the trade secret misappropriation claims presented in this action under 28 U.S.C. §1331 as this action arises under The Defend Trade Secrets Act of 2016, 18 U.S.C. §1836. This Court has subject matter jurisdiction over the patent infringement claims presented in this action pursuant to 28 U.S.C. §§1331 and 1338(a) because the action arises under the patent laws of the United States. This Court has supplemental jurisdiction over the controversy for all other claims asserted herein pursuant to 28 U.S.C. §1367.

7. This Court has personal jurisdiction over Hum because it resides in the State of Missouri and maintains a principal place of business here.

8. On information and belief, the Court has personal jurisdiction over Mr. Wilson under at least MO Rev Stat §506.500(1)-(3) (2021), because he works as CTO of Hum in the St. Louis, Missouri. Specifically, Mr. Wilson has (1) transacted business within the State of Missouri as a function of his employment; (2) made a contract within the State of Missouri as a function of his employment; and (3) has committed tortious acts against Amsted within the State of Missouri as a function of his employment.

9. Venue is proper with regard to Hum in the Eastern District of Missouri pursuant to 28 U.S.C. §1400(b), because Hum resides in the District, as committed acts of infringement in this district, and has a principle place of business here.

10. Venue is proper with regard to Mr. Wilson in the District pursuant to 28 U.S.C. §1400(b), because Mr. Wilson is an officer of Hum and therefore has committed acts of infringement in this district and has a principle place of business here.

## FACTUAL ALLEGATIONS

### A. Mr. Wilson's Employment at Amsted

11. Mr. Wilson was employed at Amsted for more than nine years. He began his employment in June of 2008 as Director, Research and Development. He agreed to and signed an employment agreement on June 2, 2008. The agreement is attached as Exhibit D (hereinafter the "Employment Agreement"). Among other things, Mr. Wilson agreed to the following:

> a. Any and all trade secrets and confidential information belonging to or in the possession of Amsted which I acquire, about which I learn, to which I have access or which I use during and through, or as a consequence of, my employment by Amsted, are, shall be and shall remain Amsted's valuable and proprietary trade secrets and confidential information. … During and after my employment by Amsted, I shall safeguard and not in any way use or misappropriate, copy, reproduce, expose, disclose, make accessible or available, reveal, disseminate,

publish, lecture on, discuss or distribute any such trade secret or confidential information, except in performance of my duties and responsibilities as an employee of Amsted and with, for or to an authorized Amsted employee or agent, unless otherwise consented to in writing by Amsted. (Exhibit D at 1).

b. I shall not copy, reproduce, expose, disclose, make accessible or available, reveal, disseminate or distribute any Amsted file or Amsted information stored on any computer or on my memory data storage device, including any Amsted issued or approved flash or jump drive or similar device, except in performance of my employee duties and responsibilities. (Exhibit D at 2).

c. Upon termination of my employment, or whenever requested by Amsted, I shall immediately return to Amsted my Amsted issued computer and my Amsted issued or approved memory data storage device and all documents, including, without limitation, all drawings, notes, notebooks and memoranda, and all copies and reproductions thereof, electronic or otherwise, which are in my possession or control and which contain, relate to or involve any trade secret or confidential information belonging to, or in the possession of Amsted. (Exhibit D at 2).

d. During and after my employment with Amsted, I shall not directly or indirectly impair, damage, disrupt or interfere with Amsted's actual, actively contemplated or demonstratively anticipated business, business interest(s), research, development or investigation by directly or indirectly impairing, damaging, disrupting, interfering with or inducing, contributing to, aiding in or assisting in a breach of Amsted's contractual relations: (a) with its employees, customers, consultants, advisors, suppliers, vendors, subcontractors, agents or representatives and (b) that relate to or involve any trade secret or confidential information belonging to or in the possession of Amsted. (Exhibit D at 2)

12. In the course of Mr. Wilson's employment at Amsted, he was part of an inventive team that developed the technology that underlies the '223 Patent and the '673 Patent. Mr. Wilson also agreed to assign all intellectual property to Amsted, including his contributions to the '223 and '673 Patents. *See* Exhibit D at 1.

13. Mr. Wilson affirmativly executed an assignment of the '223 Patent to Amsted on March 10, 2016. This assingment was recorded with the United States Patent and Trademark Office on March 28, 2016.

14. Mr. Wilson affirmatively executed an assignment of the ’673 Patent to Amsted on March 10, 2016. This assignment was recorded with the United States Patent and Trademark Office on March 31, 2016.

15. Mr. Wilson’s behavior throughout his employment fell below the standards Amsted demands from its employees. This behavior culminated in an incident in the Amsted parking lot that resulted in damage to company property and that of another employee. In the course of the investigation of this incident, Amsted discovered that he had been downloading company files in violation of the Employment Agreement.

16. Combined with other behavioral and performance issues, this incident lead Amsted and Mr. Wilson to enter into a “Last Chance Agreement” which Mr. Wilson signed on May 23, 2017. In the agreement, Mr. Wilson acknowledged his unacceptable behavior and agreed to not download any material from Amsted. This agreement is in addition to the terms of the Employment Agreement attached as Exhibit D.

17. Mr. Wilson’s employment at Amsted continued until his termination on October 10, 2017. On that date, Mr. Wilson accepted a severance package in exchange for a general release of Amsted.

**B. <u>Amsted’s Patented Technology</u>**

18. Amsted owns numerous patents, in the United States and abroad, covering various railcar and train consist monitoring and analysis technologies. One such technology is a railcar monitoring system, developed in part with contributions from Mr. Wilson when he was an Amsted employee, that can detect various operational parameters of a rail car wheelset, including but not limited to temperature, vibration, acceleration, et cetera. This technology is described in the shared specification of the ’223 and ’673 Patents and the specification of the ’915 Patent.

19. The ’223 and ’673 Patents generally describe sensor units (referred to as “motes” in the ’223/’673 Patents) that include a housing, a sensor, electronic circuitry, wireless communications components, and a power source. *See* Exhibit A at 4:1-5:29, Figs. 1, 2. The sensor units can be mounted to a rail car in various ways including as shown in Figures 3, 3A, and 4. The ’915 Patent refers to sensor units as wireless sensor nodes (“WSNs”) and incorporates the specification of the ’223 patent. *See* Exhibit C at 4:47-63.

20. Also described in the ’223 and ’673 Patents are communication management units (“CMUs”), also mounted on the rail car, that collects data sent from the individual sensor units. *See* Exhibit A at 6:65-8:4, Fig. 6. The CMU described in the ’223 and ’673 Patents is capable of performing advanced data analysis and may apply any number or combination of heuristics to analyze data received from the sensor units. *See id.* at 8:5-11:45, Fig. 6. A number of algorithms performed by the CMU are also described. *See id.* at 11:46-15:17.

21. The ’915 Patent describes multiple CMUs mounted on railcars each communicating with sensor units mounted on the railcars (wireless sensor nodes or “WSNs”) and with a powered wireless gateway (“PWG”) to form an onboard network. *See* Exhibit C at 3:22-4:63, Figs. 1, 2. The ’915 Patent describes algorithms for analyzing sensor data to detect operational anomalies, for example, wheel damage. *See id.* at 10:4-28, 38-54, Fig. 10.

22. Amsted has properly virtually marked its products embodying the ’223, ’673, and ’915 Patents with the appropriate patent numbers.

**C. <u>Hum’s Infringing Products</u>**

23. On information and belief, Mr. Wilson founded Hum for the purpose of manufacturing, marketing, and selling systems and devices that infringe Amsted’s patented technology.

24. Mr. Wilson personally marketed the Hum Boomerang system at tradeshows, for example at the 2021 meeting of the National Coal Transportation Association ("NCTA") and the 2021 semi-annual meeting of the Southwest Association of Rail Shippers ("SWARS"). The presentation slides used by Mr. Wilson at the NCTA meeting included images and graphs that are identical to images and graphs used in documents prepared, by Mr. Wilson and others, for internal Amsted use nearly a decade prior to 2021.

25. Hum has produced and distributed marketing material that describes the functional features of this system. A copy of one such marketing document is attached as Exhibit E. In Exhibit E, Hum describes a "proprietary bearing condition algorithm … developed over 15 years of research." Exhibit E was distributed at least at the SWARS event in 2021.

26. Hum advertises a Hum Boomerang, which it describes as a sensor device for use on railcar wheelsets, and a Hum Gateway (the "Accused Products"). *See* Exhibit E at 2 (reproduced below).

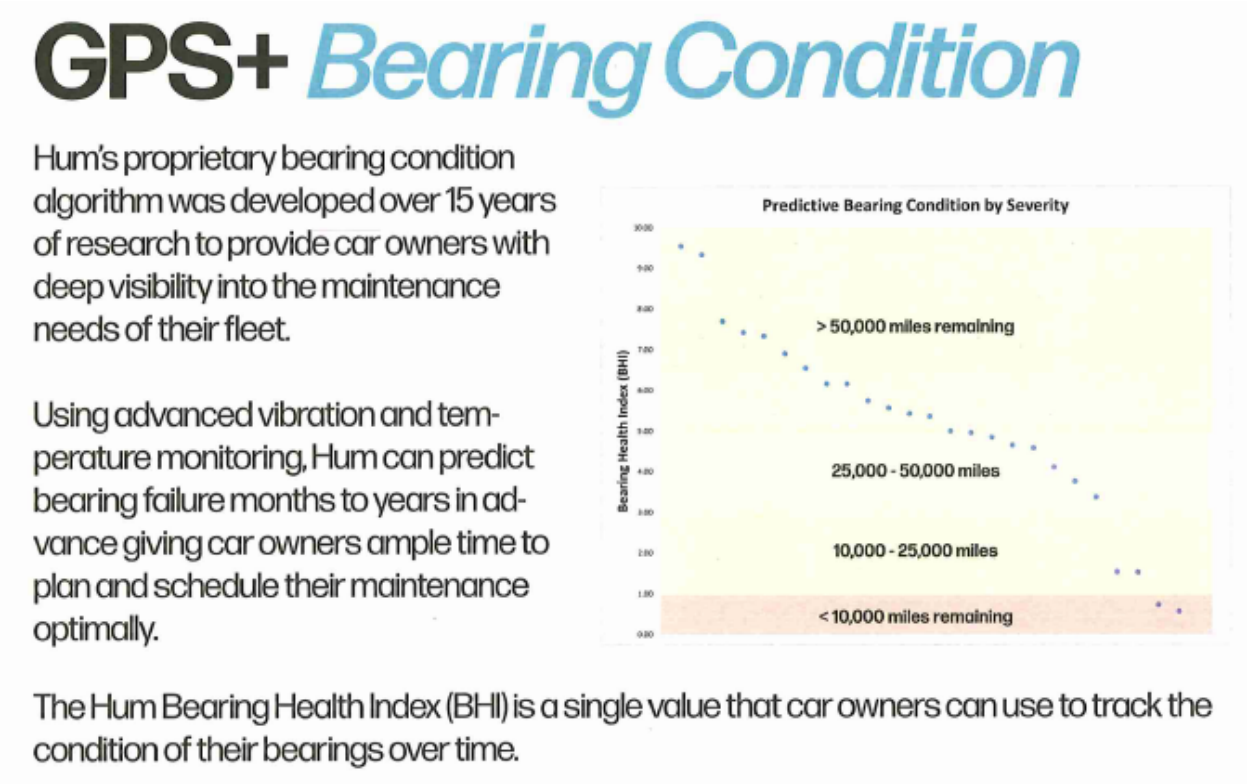
**The Hum Boomerang**

**Product Specifications**

- Vibration and temperature sensing for railcar wheels and bearings
- First-of-its-kind Hum Algorithm identifies wheel and bearing failure months to years in advance
- High bearing temperature alerts
- 7+ year battery life
- Pairs with the Hum Gateway

27. Among the features described in Hum's marketing material, the Boomerang is described as including a "first-of-its-kind Hum Algorithm [that] identifies wheel and bearing

failure months to years in advance." *Id*. Hum states that this algorithm has been "developed over 15 years." *Id.* at 1. Through the use of the Hum Bearing Health Index, the Boomerang system generates "a single value that car owners can use to track the condition of their bearings over time." *Id.*




28. Similar heuristics can be used to identify defects and degradation of railcar wheels. *See id.*

**GPS+ *Wheel Condition***

Hum's proprietary algorithm is also capable of identifying high wheel impacts independent of any WILD detectors. Just like the Hum BHI, wheels condition monitoring allows car owners to track the degradation of their wheels over time.

Car owners who have equipped the Hum Boomerang have identified and removed wheelsets at the time and place that allows them to minimize their costs.

29. Similar heuristics can be used to identify defects and degradation of railcar wheels. *See id.*; *see also Running Away With Repairs: How Railroads Own the Biggest Piece of the Maintenance PIe*[sic], dated August 2, 2021 (available at https://www.humindustrial.com/post/running-away-with-repairs) (last visited April 12, 2022) (attached hereto as Exhibit K).

30. Amsted sent a demand letter to Hum on October 28, 2021 detailing Hum's alleged infringement of the '223 patent. The letter is attached as Exhibit F (hereinafter the "October 28 Letter"). As a result of the inclusion in the letter and certain exhibits of Amsted confidential and other information that Mr. Wilson misappropriated from Amsted in violation of his contract, the letter is attached in redacted form. The letter provided Hum with notice of Amsted's patent infringement claims and October 28, 2021 is the latest date at which Hum had actual knowledge of the claims of the '223 patent and the acts that infringement said claims. Amsted's October 28 Letter included a reservation of rights.

31. Hum responded to the October 28 Letter with a general denial and did not include any specific assertions that would mitigate or contradict Amsted's allegations of infringement. In that letter Hum failed to point to any particular or specific aspect of the Hum accused system, or

any element of the ’223 patent claim, that was missing from the Hum system. Hum also failed to identify any specific prior art that could or would invalidate the ’223 patent claim. Hum merely made a general denial without any specifics to support that general denial. Amsted responded by letter on January 25, 2022. This letter is attached as Exhibit G (hereinafter the “January 25 Letter”). The January 25 Letter requested confirmation of Hum’s ceasing of its infringing activities within two weeks. As of the date of filing of this complaint, Amsted has not received the requested confirmation from Hum that it ceased infringement in response to the January 25 letter.

32. Hum also had knowledge and notice of the ’223 and the ’673 Patents through the direct, actual knowledge of Mr. Wilson. Mr. Wilson is a co-inventor of the ’223 and ’673 Patents and affirmatively assigned both to Amsted. Both applications that issued as the ’223 and ’673 Patents were filed during the term of Mr. Wilson’s employment at Amsted.

33. On information and belief, Mr. Wilson had actual knowledge of the conception and reduction to practice of the invention described and claimed in the ’915 Patent. Although Mr. Wilson is not a co-inventor of the ’915 Patent, the inventorship of the ’223 and ’673 Patents overlaps with the inventorship of the ’915 Patent. Specifically, Andrew Martin and William LeFebvre are co-inventors of all three patents. The development of the underlying technology of the ’915 Patent occurred during the term of Mr. Wilson’s employment at Amsted as Director, Research and Development.

34. During all times relevant to Amsted’s patent infringement claims, Mr. Wilson has been the CTO of Hum. As an officer, and one of only two employees, of Hum, Mr. Wilson’s knowledge of the ’223, ’673, and ’915 Patents is imputed to Hum for all purposes and for the entirety of its existence.

**D. Mr. Wilson's Misappropriation of Protected Trade Secrets**

35. On information and belief, Mr. Wilson downloaded and/or otherwise obtained, without authorization, sensitive and secret information and code associated with the onboard monitoring sensor and gateway technology during his employment at Amsted as well as other documents, data, and information that he had access to during his employment at Amsted.

36. Mr. Wilson admitted in the Last Chance agreement to downloading digital files from Amsted equipment without authorization.

37. The presentation slides that Mr. Wilson used to promote the Accused Products included images and data that appears, in identical form, in documents created within Amsted as much as a decade earlier.

38. Hum promotional material describes its algorithm as being "developed over 15 years of research." *See* Exhibit E at 1. Assuming that statement to be true, a substantial portion of the development of Hum's algorithm occurred when Mr. Wilson was employed by Amsted.

39. On information and belief, Mr. Wilson accessed and acquired non-public, proprietary and confidential data and code associated with the algorithm Amsted developed for use in its railcar monitoring systems. This non-public, proprietary and confidential data and code comprise the Amsted Trade Secrets.

40. The Amsted Trade Secrets were stored on restricted access servers. Mr. Wilson, by virtue of his position, had nominal access to these servers as a function of his employment at Amsted. However, he was explicitly forbidden by the Employment Agreement and the Last Chance Agreement from downloading or accessing any company data or code, including the Amsted Trade Secrets without prior authorization.

41. The Amsted Trade Secrets comprise highly valuable assets of Amsted and may be summarized as including, but not necessarily limited to, the following techniques and data:

a. Research and development conducted for use in the development of Amsted's technology;

b. Algorithms and data relating temperature and vibration parameters with a predicted bearing failure rate and probability;

c. Algorithms and data relating temperature and vibration parameters with a predicted wheel failure rate and probability;

d. Algorithms and data using temperature and vibration parameters to determine the severity of a detected condition.

42. The above stated methods, processes, and techniques comprising the Amsted Trade Secrets were in fact viewed, accessed, and sufficiently understood by Mr. Wilson during the course of his employment. On information and belief, Mr. Wilson accessed, viewed, copied, and downloaded the Amsted Trade Secrets, without authorization and then incorporated or directed the incorporation of the Amsted Trade Secrets into the Hum algorithm, including the Hum Bearing Index.

43. The above stated methods, processes and techniques comprising the Amsted Trade Secrets are based on underlying software algorithms which themselves also comprise Amsted Trade Secrets. By accessing, viewing, copying, and downloading the Amsted Trade Secrets as described above, Defendants were able to misappropriate the software algorithms, in whole or in part and in various combinations thereof, by and through Mr. Wilson's downloading, installation, accessing, use, investigation, dissection, manipulation, reverse engineering, and disassembly of the Amsted Trade Secrets, and then incorporating the Amsted Trade Secrets into the Accused Products.

44. Amsted is the sole owner and proprietor of all right, title, and interest in and to the Amsted Trade Secrets. Mr. Wilson's downloading, accessing, and use of the Amsted Trade Secrets was unauthorized. Defendants, therefore, lacked authorization or permission to download, access, and use the Amsted Trade Secrets in the Accused Products.

45. Amsted undertook responsible steps to safeguard the Amsted Trade Secrets. Amsted stored them in a secure location and restricted access only to individuals having a need to know or otherwise legally obligated to maintain confidence, not disclose them, and not use them other than for the purpose for which the disclosure is made, such as development in the course of Mr. Wilson's employment.

46. Amsted implemented protective measures to prevent the Amsted Trade Secrets from unauthorized use, so that others could not unjustifiably reap the benefits of Amsted's extensive investment in labor and innovation of the Amsted Trade Secrets.

47. The Amsted Trade Secrets have independent economic value from not being generally known to, and not readily ascertainable through proper means, by another person. The Amsted Trade Secrets are crucial to business growth, efficiency, profit generation, increased market share, increased customer interaction, goodwill creation and growth, increased technological efficiencies, cost savings and other increased customer interaction and revenue.

**COUNT I**
**MISAPPROPRIATION OF TRADE SECRETS (18 U.S.C. §1836)**

48. Plaintiff incorporates, by reference, paragraphs 1 through 47 as though fully set forth at length herein.

49. Defendants' conduct constitutes a violation of The Defend Trade Secrets Act, 18 U.S.C. §1836 (the "DTSA").

50. The DTSA specifically defines "trade secrets" as comprising:

> all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if— (A) the owner thereof has taken reasonable measures to keep such information secret; and (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information.

18 U.S.C. §1839(3).

51. The Trade Secrets derive "independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information." 18 U.S.C. §1839(3).

52. Plaintiff has taken reasonable measures to keep the Trade Secrets secret.

53. Plaintiff only allowed access to and disclosure of the Trade Secrets subject to confidentiality, non-use, and nondisclosure restrictions in the Confidentiality Agreement.

54. Mr. Wilson's access to the Trade Secrets at the time of the misappropriation was unauthorized.

55. Defendants misappropriated, as that term is defined in the DTSA at 18 U.S.C. §1839(5), the Trade Secrets by knowingly acquiring the Trade Secrets through improper means, namely, by making false statements and breaching contractual obligations to maintain the confidentiality of the Trade Secrets, not to use or disclose same, and/or fraudulently inducing Plaintiff to disclose the Trade Secrets in a manner inconsistent with Plaintiff's reasonable measures to keep the Trade Secrets secret and maintain confidentiality and secrecy of same.

56. Defendants further misappropriated the Trade Secrets by using the Trade Secrets without Plaintiff's express or implied consent.

57. The Trade Secrets have substantial economic value and have conferred an unfair, wrongful competitive advantage to Defendants.

58. Defendants have and will continue to recklessly and maliciously misappropriate and the Trade Secrets through their continued use of same.

59. As a direct and proximate cause of Defendants' current and continued misappropriation of the Trade Secrets, Plaintiff will suffer imminent and irreparable harm and, alternatively, has suffered substantial damages.

60. Plaintiff has no adequate remedy at law. Unless enjoined by this Court, Defendants' acts of misappropriation will continue, and Plaintiff will continue to suffer irreparable harm.

**COUNT II**
**MISSOURI UNIFORM TRADE SECRETS ACT, MO REV STAT § 417.450, ET SEQ.**

61. Plaintiff incorporates, by reference, paragraphs 1 through 60 as though fully set forth at length herein.

62. Defendants' misappropriation of Plaintiff's Trade Secrets as described herein constitutes a violation of the Missouri Uniform Trade Secrets Act, MO Rev Stat §§ 417.450 to 417.467 (the "MUTSA")

63. The Amsted Trade Secrets are protectable trade secrets under the MUTSA.

64. Defendants have misappropriated the Amsted Trade Secrets.

65. As a direct and proximate cause of Defendants' current and continued willful and malicious misappropriation of the Trade Secrets under the MUTSA, Plaintiff will suffer imminent and irreparable harm and, alternatively, has suffered substantial damages.

66. Plaintiff has no adequate remedy at law. Unless enjoined by this Court, defendants' acts of misappropriation will continue and Plaintiff will continue to suffer irreparable harm.

**COUNT III**
**BREACH OF CONTRACT BY MR. WILSON**

67. Plaintiff incorporates, by reference, paragraphs 1 through 66 as though fully set forth at length herein.

68. Mr. Wilson's Employment Agreement is expressly governed by Illinois law.

69. Through the Employment Agreement attached as Exhibit D, Mr. Wilson and Amsted assented and formed a written contract on June 2, 2008, in exchange for his compensation paid by Amsted in connection with Mr. Wilson's employment with Amsted, Mr. Wilson agreed to the following terms:

e. assign all rights to Intellectual Property (as defined in section 1 of Exhibit D) conceived, made, developed, written, prepared, or acquired during his employment or within one (1) year after termination of such employment relating or involving:

    i. any work, responsibilities, duties, tasks, projects, or assignments in connection with this employment at Amsted;

    ii. any matter that is known to him to may be the subject of or part of Amsted's actual, actively contemplated or demonstratively anticipated business, business interest, research, development, investigation, sales, or manufacturing; or

    iii. any Intellectual Property that is known to him to have been, be, or hereafter may be or are owned, researched, developed, investigated, tested, used, sold or manufactured by Amsted;

f. safeguard and not in any way use or misappropriate, copy, reproduce, expose, disclose, make accessible or available, reveal, disseminate, publish, lecture on, discuss or distribute any trade secret or confidential information without authorization;

g. refrain from unauthorized copying, reproducing, exposing, disclosing, making accessible or available, revealing, disseminating or distributing any Amsted file or Amsted information stored on any computer or on my memory data storage device;

h. upon termination, immediately return to Amsted any Amsted issued devices and all documents, including, without limitation, all drawings, notes, notebooks and memoranda, and all copies and reproductions thereof, electronic or otherwise, which are in my possession or control and which contain, relate to or involve any trade secret or confidential information belonging to, or in the possession of Amsted.

70. At least as a result of the actions described in this complaint, Mr. Wilson breached one or more of the above terms and failed to comply with his obligations under the employment agreement.

71. Mr. Wilson's breach of the Employment Agreement was material and substantial because the terms breached were central to the interest Amsted sought to protect through its participation in the Employment Agreement, namely the protection, safeguarding, and enforcement of its Intellectual Property (as defined in the Employment Agreement) and any other trade secret or confidential information owned and protected by Amsted.

72. Amsted has complied with all of its obligations under the employment agreement.

73. As a direct and proximate cause of the foregoing, Amsted has suffered and continues to suffer and incur substantial damages.

**COUNT IV**
**TORTIOUS INTERFERENCE**

74. Plaintiff incorporates, by reference, paragraphs 1 through 73 as though fully set forth at length herein.

75. Amsted has a valid and enforceable contract with Mr. Wilson. Amsted also has contractual and/or business relationships with various customers.

76. On information and belief, Hum, through Mr. Wilson, had knowledge of those contracts

77. On information and belief, Hum induced Mr. Wilson to breach his agreement with Amsted and to misappropriate the Amsted Trade Secrets and other confidential information Mr. Wilson obtained from Amsted without authorization.

78. On information and belief, Hum lacked any justification for inducing Mr. Wilson's breach.

79. As a direct and proximate cause of the foregoing, Amsted has suffered and continues to suffer and incur substantial damages.

**COUNT V**
**HUM'S INFRINGEMENT OF U.S. PATENT NO. 9,365,223**

80. Plaintiff incorporates, by reference, paragraphs 1 through 79 as though fully set forth at length herein.

81. The '223 Patent (Exhibit A), titled "System and Method For Monitoring Railcar Performance," was duly and legally issued by the United States Patent and Trademark Office on June 14, 2016 from U.S. Patent Application Serial No. 13/842,427 (the "'427 Application") filed on March 15, 2013. The '427 Application is a continuation-in-part of U.S. Patent Application Serial No. 12/861,713 (the "'713 Application") filed on August 23, 2010. The '713 Application subsequently issued as U.S. Patent No. 9,026,281. The '223 Patent claims priority to U.S. Provisional Patent Application Serial No. 61/661,661 filed on June 19, 2012.

82. The claims of the '223 Patent are valid, enforceable, not expired and have an effective filing date no later than June 19, 2012.

83. Claim 2 of the '223 Patent is directed to a system for monitoring a railcar and recites the following features of the claimed system:

a. a plurality of sensor devices located on the railcar for monitoring parameters or conditions of the railcar, each of said sensor devices being separate from one another and including a sensor for monitoring one of said parameters or conditions of the railcar;

b. said plurality of sensor devices including at least one temperature sensor device having:

i. a housing;

ii. a temperature sensor in thermal communication with an item of the railcar for which the temperature is being monitored, which item is external to said housing;

iii. electrical circuitry in communication with said temperature sensor for obtaining information regarding the temperature being sensed, said electrical circuitry positioned within said housing;

iv. a power source electrically connected to said electrical circuitry for providing power thereto, said power source positioned within said housing;

v. a communication device capable of broadcasting information regarding the temperature sensed via wireless communication, said communication device positioned within said housing; and

c. a communication management unit, mounted on the railcar, capable of two way wireless communication with each of said plurality of sensor devices for receiving information therefrom, said communication management unit having a wireless communication device for broadcasting information about the parameter or condition being monitored.

84. On information and belief, Hum is manufacturing and marketing a system for monitoring a rail car that directly infringes at least claim 2 of the ’223 Patent under 35 U.S.C. §271(a), literally and/or under the doctrine of equivalents. Hum’s system includes a sensor device, known as a “Hum Boomerang” and a communication management unit, known as a “Hum Gateway.”

85. On information and belief, which will likely be further established after a reasonable opportunity for further investigation and discovery, including but not limited to the opportunity to obtain or inspect product samples, the Accused Products infringe at least claim 2 of the ’223 Patent at least as shown in Exhibit H.

86. In addition or in the alternative, Hum has indirectly infringed at least claim 1 of the ’223 Patent, literally and/or under the doctrine of equivalents, by, on information and belief, by

Hum's making, using, selling, offering to sell, and/or importing the Accused Products in the United States, actively inducing its customers to configure and/or use the Accused Products in an infringing manner, and possessing knowledge of the '223 Patent or willful blindness to the '223 Patent, with intent and knowledge that the Accused Products would be sold and used in an infringing manner in the United States.

87. Hum's acts of infringement of the '223 Patent have caused, and will continue to cause, irreparable harm to Amsted. Amsted's patented technology is a key driver of the success of Amsted's railcar monitoring systems. Hum's infringement has resulted in diminished reputation related to Amsted's exclusive source of railcar monitoring systems and related Amsted products and services and/or lost business opportunities related to these systems and other harm that cannot be quantified.

88. On information and belief, Hum's infringement of the '223 Patent has been and is intentional, knowing, and willful.

**COUNT VI**
**HUM'S INFRINGEMENT OF U.S. PATENT NO. 9,981,673**

89. Plaintiff incorporates, by reference, paragraphs 1 through 88 as though fully set forth at length herein.

90. The '673 Patent (Exhibit B), titled "System and Method For Monitoring Railcar Performance," was duly and legally issued by the United States Patent and Trademark Office on May 29, 2018 from U.S. Patent Application Serial No. 15/158,018 (the "'018 Application") filed on May 18, 2016. The '018 Application is a continuation of the '427 Application filed on March 15, 2013. The '427 Application is a continuation-in-part of U.S. Patent Application Serial No. 12/861,713 (the "'713 Application") filed on August 23, 2010. The '713 Application subsequently

issued as U.S. Patent No. 9,026,281. The '673 Patent claims priority to U.S. Provisional Patent Application Serial No. 61/661,661 filed on June 19, 2012.

91. The claims of the '673 Patent are valid, enforceable, not expired and have an effective filing date no later than June 19, 2012.

92. Claim 1 of the '673 Patent recites a method of monitoring the operational characteristics of a railcar and recites the following steps:

a. receiving data or processed information regarding said operational characteristic from one or more sensing units on said railcar, said sensing units monitoring an operational characteristic of said railcar;

b. applying a heuristic to said received data to determine deviations from nominal operating conditions;

c. assigning a severity level to said deviations from nominal operating conditions; and

d. determining an alarm condition based on said assigned severity level.

93. On information and belief, Hum is manufacturing and marketing a system for monitoring a rail car that directly infringes at least claim 1 of the '673 Patent under 35 U.S.C. §271(a), literally and/or under the doctrine of equivalents. Hum's system includes a sensor device, known as a "Hum Boomerang" and a communication management unit, known as a "Hum Gateway."

94. On information and belief, which will likely be further established after a reasonable opportunity for further investigation and discovery, including but not limited to the opportunity to obtain or inspect product samples, the Accused Products infringe at least claim 1 of the '673 Patent at least as shown in Exhibit I.

95. In addition or in the alternative, Hum has indirectly infringed at least claim 1 of the '673 Patent, literally and/or under the doctrine of equivalents, by, on information and belief, by Hum's making, using, selling, offering to sell, and/or importing the Accused Products in the United

States, actively inducing its customers to configure and/or use the Accused Products in an infringing manner, and possessing knowledge of the ’673 Patent or willful blindness to the ’673 Patent, with intent and knowledge that the Accused Products would be sold and used in an infringing manner in the United States.

96. Hum’s acts of infringement of the ’673 Patent have caused, and will continue to cause, irreparable harm to Amsted. Amsted’s patented technology is a key driver of the success of Amsted’s railcar monitoring systems. Hum’s infringement has resulted in diminished reputation as the exclusive source of Amsted’s proprietary railcar monitoring systems and related Amsted products and services and/or lost business opportunities related to these systems.

97. On information and belief, Hum’s infringement of the ’673 Patent has been and is intentional, knowing, and willful.

**COUNT VII**
**HUM’S INFRINGEMENT OF U.S. PATENT NO. 10,137,915**

98. Plaintiff incorporates, by reference, paragraphs 1 through 97 as though fully set forth at length herein.

99. The ’915 Patent (Exhibit C), titled “System and Method For Detecting Operational Anomalies In Train Consists and Railcars,” was duly and legally issued by the United States Patent and Trademark Office on November 27, 2018 from U.S. Patent Application Serial No. 15/108,065 (the “’065 Application”) filed on June 24, 2016 as a U.S. national phase application of International Patent Application No. PCT/US2014/072380 (the “’380 PCT”) filed on December 24, 2014. The ’380 PCT claims priority to U.S. Provisional Patent Application Serial No. 61/920,700 filed on December 24, 2013.

100. The claims of the ’915 Patent are valid, enforceable, not expired and have an effective filing date no later than December 24, 2013.

101. Claim 1 of the ’915 Patent is directed to a system for detecting operational anomalies on a train consist or railcar and recites the following features of the claimed system:

a. one or more communication management units mounted on one or more railcars;

b. one or more sensors located on said one or more railcars configured to sense an operational parameter of said one or more railcars, said sensors being in communication with said one or more communication management units, wherein the one or more sensors comprise one or more sensors configured to measure accelerations of the railcar; and

c. one or more filters configured to filter at least a portion of the accelerations,

wherein said communication management units perform the functions of:

i. collecting data regarding said one or more railcar operational parameters;

ii. analyzing said collected data for trends or events indicative of an anomalous operational condition; and

iii. communicating a message to a remote receiver when said trend or event is detected.

102. On information and belief, Hum is manufacturing and marketing a system for monitoring a rail car that directly infringes at least claim 1 of the ’915 Patent under 35 U.S.C. §271(a), literally and/or under the doctrine of equivalents. Hum’s system includes a sensor device, known as a “Hum Boomerang” and a communication management unit, known as a “Hum Gateway.”

103. On information and belief, which will likely be further established after a reasonable opportunity for further investigation and discovery, including but not limited to the opportunity to obtain or inspect product samples, the Accused Products infringe at least claim 1 of the ’915 Patent at least as shown in Exhibit J.

104. In addition or in the alternative, Hum has indirectly infringed at least claim 1 of the ’915 Patent, literally and/or under the doctrine of equivalents, by, on information and belief, by Hum’s making, using, selling, offering to sell, and/or importing the Accused Products in the United

States, actively inducing its customers to configure and/or use the Accused Products in an infringing manner, and possessing knowledge of the '915 Patent or willful blindness to the '915 Patent, with intent and knowledge that the Accused Products would be sold and used in an infringing manner in the United States.

105. Hum's acts of infringement of the '915 Patent have caused, and will continue to cause, irreparable harm to Amsted. Amsted's patented technology is a key driver of the success of Amsted's railcar monitoring systems. Hum's infringement has resulted in diminished reputation as the otherwise exclusive source of Amsted's proprietary railcar monitoring systems and related Amsted products and services and/or lost business opportunities related to these systems.

106. On information and belief, Hum's infringement of the '915 Patent has been and is intentional, knowing, and willful.

**COUNT VIII**
**MR. WILSON'S INFRINGEMENT OF U.S. PATENT NO. 9,365,223**

107. Plaintiff incorporates, by reference, paragraphs 1 through 106 as though fully set forth at length herein.

108. On information and belief, Mr. Wilson directly infringes at least claim 2 of the '223 Patent under 35 U.S.C. §271(a), literally and/or under the doctrine of equivalents through exercising a high level of personal participation and control over the infringing acts of Hum as Chief Technology Officer of Hum. Hum's system includes a sensor device, known as a "Hum Boomerang" and a communication management unit, known as a "Hum Gateway."

109. In addition or in the alternative, Mr. Wilson has indirectly infringed at least claim 2 of the '223 Patent, literally and/or under the doctrine of equivalents, by, on information and belief, exercising control and actively managing Hum's making, using, selling, offering to sell, and/or importing the Accused Products in the United States, and by extension inducing Hum's

customers to configure and/or use the Accused Products in an infringing manner, and possessing knowledge of the ’223 Patent or willful blindness to the ’223 Patent, with intent and knowledge that the Accused Products would be sold and used in an infringing manner in the United States.

110. On information and belief, which will likely be further established after a reasonable opportunity for further investigation and discovery, including but not limited to the opportunity to obtain or inspect product samples, the Accused Products infringe at least claim 2 of the ’223 Patent at least as shown in Exhibit H.

111. Mr. Wilson’s acts of infringement of the ’223 Patent have caused, and will continue to cause, irreparable harm to Amsted. Amsted’s patented technology is a key driver of the success of Amsted’s railcar monitoring systems. Hum’s infringement has resulted in diminished reputation and the otherwise exclusive source of Amsted’s proprietary railcar monitoring systems and related Amsted products and services and/or lost business opportunities related to these systems.

112. On information and belief, Mr. Wilson’s infringement of the ’223 Patent has been and is intentional, knowing, and willful.

**COUNT XI**
**MR. WILSON’S INFRINGEMENT OF U.S. PATENT NO. 9,981,673**

113. Plaintiff incorporates, by reference, paragraphs 1 through 112 as though fully set forth at length herein.

114. On information and belief, Mr. Wilson directly infringes at least claim 1 of the ’673 Patent under 35 U.S.C. §271(a), literally and/or under the doctrine of equivalents through exercising a high level of personal participation and control over the infringing acts of Hum as Chief Technology Officer of Hum. Hum’s system includes a sensor device, known as a “Hum Boomerang” and a communication management unit, known as a “Hum Gateway.”

115. In addition or in the alternative, Mr. Wilson has indirectly infringed at least claim 1 of the ’673 Patent, literally and/or under the doctrine of equivalents, by, on information and belief, exercising control and actively managing Hum’s making, using, selling, offering to sell, and/or importing the Accused Products in the United States, and by extension inducing Hum’s customers to configure and/or use the Accused Products in an infringing manner, and possessing knowledge of the ’673 Patent or willful blindness to the ’673 Patent, with intent and knowledge that the Accused Products would be sold and used in an infringing manner in the United States.

116. On information and belief, which will likely be further established after a reasonable opportunity for further investigation and discovery, including but not limited to the opportunity to obtain or inspect product samples, the Accused Products infringe at least claim 1 of the ’673 Patent at least as shown in Exhibit I.

117. Mr. Wilson’s acts of infringement of the ’673 Patent have caused, and will continue to cause, irreparable harm to Amsted. Amsted’s patented technology is a key driver of the success of Amsted’s railcar monitoring systems. Hum’s infringement has resulted in diminished reputation as the otherwise exclusive source of Amsted’s proprietary railcar monitoring systems and related Amsted products and services and/or lost business opportunities related to these systems.

118. On information and belief, Mr. Wilson’s infringement of the ’673 Patent has been and is intentional, knowing, and willful.

**COUNT X**
**MR. WILSON’S INFRINGEMENT OF U.S. PATENT NO. 10,137,915**

119. Plaintiff incorporates, by reference, paragraphs 1 through 118 as though fully set forth at length herein.

120. On information and belief, Mr. Wilson directly infringes at least claim 1 of the ’915 Patent under 35 U.S.C. §271(a), literally and/or under the doctrine of equivalents through

exercising a high level of personal participation and control over the infringing acts of Hum as Chief Technology Officer of Hum. Hum's system includes a sensor device, known as a "Hum Boomerang" and a communication management unit, known as a "Hum Gateway."

121. In addition or in the alternative, Mr. Wilson has indirectly infringed at least claim 1 of the '915 Patent, literally and/or under the doctrine of equivalents, by, on information and belief, exercising control and actively managing Hum's making, using, selling, offering to sell, and/or importing the Accused Products in the United States, and by extension inducing Hum's customers to configure and/or use the Accused Products in an infringing manner, and possessing knowledge of the '915 Patent or willful blindness to the '915 Patent, with intent and knowledge that the Accused Products would be sold and used in an infringing manner in the United States.

122. On information and belief, which will likely be further established after a reasonable opportunity for further investigation and discovery, including but not limited to the opportunity to obtain or inspect product samples, the Accused Products infringe at least claim 1 of the '915 Patent at least as shown in Exhibit J.

123. Mr. Wilson's acts of infringement of the '915 Patent have caused, and will continue to cause, irreparable harm to Amsted. Amsted's patented technology is a key driver of the success of Amsted's railcar monitoring systems. Hum's infringement has resulted in diminished reputation as the exclusive source of Amsted's proprietary railcar monitoring systems and related Amsted products and services and/or lost business opportunities related to these systems.

124. On information and belief, Mr. Wilson's infringement of the '915 Patent has been and is intentional, knowing, and willful.

WHEREFORE, Plaintiff Amsted, respectfully requests that this Honorable Court enter judgment in its favor and against Defendants Hum and Brent Wilson and award Amsted:

(1) Equitable relief in the form of declaratory judgment that the Trade Secrets, as same are identified and defined in this First Amended Complaint, and as further established by and through discovery in this litigation, are the sole and exclusive property of Plaintiff;

(2) Temporarily, preliminarily, and permanently enjoining and restraining each of the Defendants and their respective employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries and assigns, and all those in active concert and participation with each of them, from using the Amsted Trade Secrets, in whole or in part, and directing each ofthe Defendants to recall and destroy any and all copies and versions of the Amsted Trade Secrets and any product that was created as a result of Defendants' misappropriation of the Amsted Trade Secrets;

(3) Finding that Defendants have engaged in unfair competition in violation of The Defend Trade Secrets Act;

(4) Finding that Defendants have engaged in unfair competition in violation of the Missouri Uniform Trade Secrets Act;

(5) Finding that Defendant Wilson breached his contract with Amsted through his unauthorized accessing, copying, and misappropriation of the Amsted Trade Secrets and confidential information.

(6) Finding that Defendants tortiously interfered with Amsted's contractual relationships

(7) Finding that Defendants are liable to Plaintiff on all counts of this Complaint;

(8) Awarding to Amsted its actual losses; monetary damages; reliance damages; incidental damages; consequential damages; punitive damages; disgorgement of Defendants' illgotten profits; treble damages; an accounting; restitution; the reasonable value of goods and services; specific performance; equitable relief; attorneys' fees, including under 18 U.S.C. § 1836(3)(D); exemplary damages under 18 U.S.C. § 1836(3)(C); a reasonable royalty under 18 U.S.C. § 1836(3)(B); constructive trust; prejudgment interest; post judgment interest; costs; and such other and further relief as the court deems just and proper.

(9) Equitable relief in the form of a declaratory judgment that the '223, '673, and '915 Patents are each valid and enforceable;

(10) Equitable relief in the form of a declaratory judgment that Defendants Hum and Wilson, each and both of them, have infringed each of the '223, '673, and '915 Patents;

(12) A preliminary and permanent injunction against Defendants Hum and Wilson, each and both of them, and each of their respective officers, agents, servants, employees, and attorneys, all parent and subsidiary corporations, their assigns and successors in interest, and those persons acting in active concert or participation with them, including distributors and customers, enjoining and restraining them from continuing acts of infringement of each of the '223, '673, and '915 Patents;

(13) An accounting for damages under 35 U.S.C. §284 from each of Defendants Hum and Wilson for their respective infringement of each of the '223, '673, and '915 Patents, and the award of damages ascertained against each of the Defendants Hum and Wilson in favor of Plaintiff, together with interest as provided by law;

(14) A finding that Defendants' infringement of the '223, '673, and '915 Patents was knowing, intentional, and/or willful.

(15) A finding that this is an exceptional case an award of reasonable attorneys' fees under 35 U.S.C. §285

(16) Award of the Plaintiff's costs and expenses; and

(17) Such other and further relief as this Court may deem proper, just and equitable.

**DEMAND FOR A JURY TRIAL**

Plaintiff Amsted Rail Company, Inc. hereby demands a jury trial on all issues triable by a jury.

Respectfully submitted,

**FOX ROTHSCHILD LLP**

BY: **/s/** Michael J. Rudd

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**ATTORNEYS FOR PLAINTIFF AMSTED RAIL COMPANY, INC.**

Dated: April 18, 2022

**VERIFICATION**

Brad Myers states that he is the Executive Vice President and Chief Operating Officer of Amsted Digital Solutions, an Amsted Rail company. He has read the Verified Complaint and, based on the information available to Plaintiff, attests that the facts alleged therein are true and correct to the best of his knowledge, information and belief.

I make this statement subject to the penalties of perjury pursuant to 18 U.S.C. § 1746.

Brad A. Myers

Date: 04/14/2022

Brad Myers