UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUM INDUSTRIAL TECHNOLOGY, INC.
Petitioner

v.

AMSTED RAIL COMPANY, INC.
Patent Owner

Case IPR2023-00539
US Patent No. 9,981,673

Before JAMES P. CALVE, KEVIN W. CHERRY, and MICHAEL L. WOODS,
Administrative Patent Judges.

PETITIONER'S OBJECTIONS TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner Hum Industrial Technology, Inc. ("Petitioner") provides the following objections to evidence submitted in connection with Patent Owner's Preliminary Response (Paper 6) and Patent Owner's Sur-Reply (Paper 9) filed by Patent Owner Amsted Rail Company, Inc. ("Patent Owner").

Exhibit 2001—Declaration of Dr. Michael I. Shamos: Petitioner objects to the admissibility of Exhibit 2001 under FRE 701–703, because it contains opinions that are conclusory, that do not disclose supporting facts or data, that are based on unreliable facts, data, or methods, and that include testimony outside the scope of Dr. Shamos' specialized knowledge (to the extent Dr. Shamos has any such knowledge) that will not assist the trier of fact.

Petitioner further objects to Exhibit 2001 as containing opinions that are irrelevant, confusing, and present the danger of unfair prejudice under FRE 401–403. Specifically, Petitioner objects to Exhibit 2001 as lacking sound evidentiary basis, biased, vague, misleading, confusing the issues, and is more prejudicial than probative under FRE 403. Petitioner further objects to any paragraph in Exhibit 2001 that relies upon an exhibit objected to herein, for the reasons set forth in those objections. Any paragraph in Exhibit 2001 that relies upon any exhibit not relied upon by the Board to institute this proceeding is further objected to as not being relevant and therefore inadmissible under FRE 402.

Petitioner objects to select paragraphs of Dr. Shamos' declaration as described below:

¶¶ 37, 67, 69-72, 83, 85-86, 89-92, 95, 102-103, 108, 111, 112-115, and 118: Petitioner objects to these paragraphs under FRE 701–703 as expert testimony not based on sufficient facts or data, and not the product of reliable principles and methods. Petitioner further objects to these paragraphs under FRE 401–403 on the grounds of relevance and as more prejudicial than probative.

¶¶ 60, 64, 73, 77, 79, 81, 87, 96, 98, 100, 102, 109, 116, 119: Petitioner objects to these paragraphs as containing improper legal conclusions. Petitioner further objects to these paragraphs under FRE 701–703 as expert testimony not based on sufficient facts or data, and not the product of reliable principles and methods. Petitioner further objects to these paragraphs under FRE 401–403 on the grounds of relevance and as more prejudicial than probative.

The fact that Petitioner has not objected to certain paragraphs of Exhibit 2001 provides no indication that Petitioner agrees to the positions asserted therein.

Exhibit 2003: Petitioner objects to Exhibit 2003 under FRE 401–403 on the grounds of relevance and as more prejudicial than probative, insofar as it is a filing from the related District Court litigation, and it is not relevant to the current matter. The Board's Institution Decision (Paper 10) does not cite to or rely on Exhibit 2003.

Exhibit 2004: Petitioner objects to Exhibit 2004 under FRE 401–403 on the

grounds of relevance and as more prejudicial than probative. Exhibit 2004 was cited by Patent Owner only in arguments regarding discretionary denial of institution. The exhibit thus includes information that is not relevant to any ground upon which trial was instituted. The Board's Institution Decision (Paper 10) does not cite to or rely on Exhibit 2004.

Exhibit 2005: Petitioner objects to Exhibit 2005 under FRE 401–403 on the grounds of relevance and as more prejudicial than probative. The Board's Institution Decision (Paper 10) does not cite to or rely on Exhibit 2005.

Respectfully submitted,

Dated: August 9, 2023

By: /Daisy Manning/

Eric J. Rakestraw, Reg. No. 68,740
Daisy Manning, Reg. No. 66,369
HUSCH BLACKWELL LLP
8001 Forsyth Boulevard, Suite 1500
St. Louis, MO 63105
(314) 480-1500 Telephone
(314) 480-1505 Facsimile
PTAB-ERakestraw@huschblackwell.com
PTAB-DManning@huschblackwell.com

Andrea L. Shoffstall, Reg. No. 75,426
HUSCH BLACKWELL LLP
1801 Wewatta Street, Suite 1000
Denver, CO 80202
303.749.7200 Telephone
303.749.7272 Facsimile
PTAB-AShoffstall@huschblackwell.com

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of August, 2023, the foregoing was served via electronic mail to the attorneys of record for the '673 Patent at the following address:

Jeff E. Schwartz Reg. No. 39,019 Fox Rothschild LLP 2020 K Street N.W., Suite 500 Washington, DC 20006 Tel: 202.696.1470 Fax: 202.461.3102 Email: jeschwartz@foxrothschild.com	Gary A. Hecht Reg. No. 36,826 Fox Rothschild LLP 2000 Market Street, 20th Floor Philadelphia, PA 19103-3222 Tel: 215.299.2416 Fax: 215.299.2150 Email: ghecht@foxrothschild.com
P. Marshall Ticer Reg. No. 74,653 Fox Rothschild LLP 2020 K Street N.W., Suite 500 Washington, DC 20006 Tel: 202.794.1237 Fax: 202.461.3102 Email: mticer@foxrothschild.com	Ryan North Miller Reg. No. 68,262 Fox Rothschild LLP 2000 Market Street, 20th Floor Philadelphia, PA 19103-3222 Tel: 215.299.2901 Fax: 215.299.2150 Email: rmiller@foxrothschild.com

By: /Daisy Manning/
Daisy Manning, Reg. No. 66,369
Counsel for Petitioner