

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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HUM INDUSTRIAL TECHNOLOGY, INC.

*Petitioner*

v.

AMSTED RAIL COMPANY, INC.

*Patent Owner*

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Case IPR2023-00539

Patent No. 9,981,673

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**EXHIBIT 2168<sup>1</sup>**

**DECLARATION OF RYAN N. MILLER**

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<sup>1</sup> Originally served as Exhibit 2165.

1. I, Ryan N. Miller, declare as follows.
2. I am a partner at Fox Rothschild LLP and am backup counsel in this proceeding representing Patent Owner Amsted Rail Company (“Amsted”).
3. Exhibit 2011 is a true and correct copy of a website I visited on September 29, 2023. I used the “print” function of my web browser to print the web page including headers and footers that identify the date and time of printing, and the universal resource locator (“URL”) of the website that is printed. The website printed in this document is <https://web.archive.org/web/20120504202949/https://www.merriam-webster.com/dictionary/level>. In preparing this declaration, I revisited this URL and confirm it is the same web page that is printed in Exhibit 2011. It is my understanding that this is an archived version of the website located at URL <https://www.merriam-webster.com/dictionary/level> as it existed on May 4, 2012. *See* Defining Web pages, Web sites and Web captures | Internet Archive Blogs *available at* <https://blog.archive.org/2016/10/23/defining-web-pages-web-sites-and-web-captures/> (last visited Nov. 8, 2023). According to the Web Archive web page, the website in question has been saved 107 times between April 25, 2009 and May 23, 2023 including seven captures in 2012. *See* Wayback Machine (archive.org) *available at* [https://web.archive.org/web/20120101000000\\*/https://www.merriam-webster.com/dictionary/level](https://web.archive.org/web/20120101000000*/https://www.merriam-webster.com/dictionary/level).

4. Exhibit 2012 is a true and correct copy of a website I visited on September 29, 2023. I used the “print” function of my web browser to print the web page including headers and footers that identify the date and time of printing, and the universal resource locator (“URL”) of the website that is printed. The website printed in this document is <https://web.archive.org/web/20120511011453/https://www.merriam-webster.com/dictionary/fault>. In preparing this declaration, I revisited this URL and confirm it is the same web page that is printed in Exhibit 2012. It is my understanding that this is an archived version of the website located at URL <https://www.merriam-webster.com/dictionary/fault> as it existed on May 11, 2012. *See* Defining Web pages, Web sites and Web captures | Internet Archive Blogs *available at* <https://blog.archive.org/2016/10/23/defining-web-pages-web-sites-and-web-captures/> (last visited Nov. 8, 2023). According to the Web Archive web page, the website in question has been saved 142 times between May 29, 2006 and July 27, 2023, including three captures in 2012. *See* Wayback Machine (archive.org) *available at* [https://web.archive.org/web/20120901000000\\*/https://www.merriam-webster.com/dictionary/fault](https://web.archive.org/web/20120901000000*/https://www.merriam-webster.com/dictionary/fault).

5. Exhibit 2018 is a true and correct copy of a screen shot of metadata for Exhibit 2017. I created this screenshot on October 15, 2023 by viewing the file “info” on the original document I received from Amsted on November 11, 2022, specifically from Andrew Martin who was at the time an employee of Amsted.

Exhibit 2018 demonstrates that the file was last modified on March 21, 2010 by Andrew Martin.

6. Exhibits 2015, 2016, 2019-2089, 2091, 2093-2135, 2137-2148, 2150-2154 are true and correct copies of documents received from counsel to Brent Wilson via vender Avansic on January 20, 2023 as part of discovery in the underlying district court litigation. The original emails that are printed as Exhibits 2015, 2016, 2019-2089, 2091, 2093-2135, 2137-2148, 2150-2154 were part of an archive of Amsted proprietary material and documents that Wilson retained after his termination from Amsted in 2017.

7. Exhibits 2016, 2019, 2020, 2023-2028, 2031-2034, 2036-2040, 2042, 2044, 2049-2052, 2055-2069, 2071-2073, 2075-2079, 2081-2087, 2089, 2091-2094, 2096-2108, 2110-2111, 2113-2130, 2132-2135, 2139-2154 are copies of documents that were received or sent by Andrew Martin. The original emails that are printed as Exhibits 2016, 2019, 2020, 2023-2028, 2031-2034, 2036-2040, 2042, 2044, 2049-2052, 2055-2069, 2071-2073, 2075-2079, 2081-2087, 2089, 2091-2094, 2096-2108, 2110-2111, 2113-2130, 2132-2135, 2139-2154 were also part of a separate archive I received from Amsted on October 31, 2023.

8. Exhibit 2155 is a true and correct copy of a document received from Petitioner in the underlying District Court litigation on October 13, 2022. As such, it is a statement of a party opponent and falls under a number of hearsay

exceptions. At the time of production Petitioner did not disclose nor raise any inauthenticity of the document or other issue with its providence.

9. Exhibit 2156 is a true and correct copy of a document received from Petitioner in the underlying District Court litigation on October 13, 2022. As such, it is a statement of a party opponent and falls under a number of hearsay exceptions. At the time of production Petitioner did not disclose nor raise any inauthenticity of the document or other issue with its providence.

10. Exhibit 2157 is a true and correct copy of Exhibit 15 to my declaration in Support of Amsted's Opposition to Petitioner's Motion to Stay in the underlying District Court litigation, filed on March 1, 2023. This exhibit is a redacted but otherwise true and correct copy of Petitioner's Counter-Infringement Contentions served on Amsted on December 9, 2022. As such, it is a statement of a party opponent that falls within a number of hearsay exceptions. I directed the production of the redacted copy on December 12, 2022 using identifications provided by Petitioner.

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.

Executed November 9, 2023 at Philadelphia, Pennsylvania.



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Ryan N. Miller