

IPR2026-00133
U.S. Pat. No. 9,517,782

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION,
Petitioner,

v.

RAILWARE, INC.,
Patent Owner.

Case IPR2026-00133
U.S. Patent No. 9,517,782

**PATENT OWNER'S SUR-REPLY IN SUPPORT OF ITS PATENT OWNER
PRELIMINARY RESPONSE**

Petitioner's arguments in its Reply (Paper 14) are without merit.

First, Petitioner asserts that Patent Owner “misstates” Petitioner’s claim construction positions by arguing that Petitioner asserts that the claim term “release code” is ***both*** indefinite ***and*** obvious. Petitioner is incorrect. In its Petition, Petitioner asserts—in no uncertain terms—that it “has explained herein how the prior art satisfies even Railware’s (***and SEPTA’s***) ***proposed constructions*** in the SEPTA litigation.” Pet. at 8 (emphasis added). Petitioner then notes that SEPTA’s proposed construction for “release code” is “***indefinite.***” *Id.* at 9 (emphasis added). Thus, Petitioner indeed asserts that the prior art “satisfies” SEPTA’s “***indefinite***” construction, which is legally untenable. This is precisely what Patent Owner asserts in its POPR. *See, e.g.*, POPR at 13.

While Petitioner maintains that it is not allegedly asserting indefiniteness in the Grounds themselves, this is a distinction without a difference, given Petitioner’s assertions noted above. Petitioner’s arguments are further undermined by its reliance on isolated and misleadingly altered statements from the Board’s prior denial and Patent Owner’s expert regarding the construction of “release code” to imply that the term is indefinite. Pet. at 9. Petitioner even uses part of the legal test for indefiniteness in (mis)characterizing the Board’s prior denial. *Compare* Pet. at 9 with *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014) (both using

phrase “fail[ing] to inform”). Petitioner cannot have it both ways; this violates *Revvo Techs., Inc. v Cerebrum Sensor Techs., Inc.*, IPR2025-00632, paper 36 at 3 (PTAB Jan. 26, 2026), and is fatal to the Petition.

Second, Petitioner asserts that Patent Owner “misstates” the Board’s decision in the -1179 IPR by asserting that the Board’s prior denial supports Railware’s construction of “release code.” Specifically, Petitioner argues that the Board “cautioned” Railware regarding its construction. In doing so, Petitioner ignores the context of the alleged “caution,” as well as the Board’s full analysis. Notably, the alleged “caution” that Petitioner points to was not an issue before the Board in the -1179 IPR, and the statement was dicta in a footnote. The Board in the -1179 IPR resolved the claim construction issue only to the extent necessary to rule on the Petition. Consistent with Railware’s arguments and construction, the Board’s resolution of that issue makes clear that the “release code” must have restrictions on its accessibility, particularly from the dispatcher. EX2002 at 20. In doing so, the Board appreciated such restrictions (*e.g.*, availability to the dispatcher) reflected in Railware’s construction.

Third, Petitioner asserts that the POPR presents “inconsistent and irreconcilable” claim constructions. Petitioner is incorrect. Patent Owner presents only a single claim construction for “release code.” POPR at 14-23. The statement

that Petitioner identifies in the POPR is not a claim construction, but rather an argument regarding how the “release code” is used in the context of particular claim elements that expressly recite, for example, “remov[ing]” a block “upon receiving the release code.” Nevertheless, Petitioner’s unexplained assertion that the alleged “constructions” have “different [] wording and scope” is without merit; it does not establish any inconsistency or irreconcilability, let alone fix the Petition’s failings.

Fourth, Petitioner asserts that the POPR “mischaracterizes” the Petition in asserting that the Petition lacks citations to Macey in Grounds 2 and 4. Petitioner is incorrect. The Reply confirms that the POPR’s assertions are correct. As an initial matter, the Reply points to a single generic “cross-reference” within the Petition, not to a citation to Macey itself. Further, even if the Petition’s generic “cross-reference” counts as a citation “to Macey” (it does not), the Reply concedes that the “cross-reference” is unexplained in Grounds 2 and 4. As such, “Patent Owner and the Board are left to ‘divin[e] where [Macey] might possibly disclose the claim element at issue.’” POPR at 54 (internal citation omitted). Appreciating these failings, the Reply confusingly asserts that Patent Owner “cannot simply ignore citations.” But Patent Owner is not ignoring citations at all, as explained above and in the POPR. More, it is *Petitioner* that bears the burden of *explaining* its Grounds, not Patent Owner. 37 C.F.R. § 42.104(d); 37 C.F.R. § 42.22(a)(2). Petitioner does not satisfy

this burden, particularly failing to contest or rebut its improper and unexplained citation to the “overview” of Macey (*see* POPR at 54-55). These failures are fatal to the Petition.

Further appreciating the failings of the Petition, Petitioner additionally argues that it allegedly compensated for these failings by citing to “17 pages” of its expert’s declaration “at the end of nearly each section.” However, a string citation to “17 pages” of an expert declaration “at the end” of a section plainly fails to satisfy Petitioner’s burden. 37 C.F.R. § 42.104(d); 37 C.F.R. § 42.22(a)(2). Notably, it is improper to incorporate by reference “17 pages” of an expert declaration into the Petition. C.F.R. § 42.6(a)(3). This is again fatal to the Petition.

Fifth, Petitioner asserts that Patent Owner argued against the references “individually,” rather than as a “combination.” Petitioner’s assertion misses the mark. Importantly, the Petition is clear that it is relying *solely* on the secondary references (*i.e.*, Kruijswijk, Schmitz, Byford) as providing the claimed “release code.” Pet. at 37-38 (“***Kruijswijk supplies the ‘release code’*** such that the dispatcher in FRA-Report operates the track display via the railway control apparatus and blocks the track as well as generates . . . and transmits the ‘release code’ (*as taught in Kruijswijk*) to a worker’s electronic contact address.”) (emphasis added); *see also id.* at 59 (similar for Ground 3 (Schmitz)); *id.* at 68 (similar for Ground 4 (Byford)).

In view of the Petition's reliance, it makes sense for the POPR to address these secondary references as it did: addressing the "release code" "as [allegedly] taught in" the secondary references. *Id.* at 38.

Nevertheless, contrary to Petitioner's assertion, the POPR addresses the proposed combinations of references. Indeed, as to Ground 1, the POPR states "***even if combined***, the FRA-Report and Kruijswijk fail" because, *inter alia*, the combination "would only provide a system to confirm that two workers are in the same physical location." POPR at 48-49 (emphasis added). Further, as to Ground 2, this Ground simply adds Macey to Ground 1, and therefore fails for the same reasons. POPR at 52-53. More, as to Ground 3, the POPR states "***even if combined***, the FRA-Report and Schmitz fail . . . because the combination of the FRA-Report and Schmitz's 'TAN' would not be used for the purpose of removing a block on a track, let alone only after receiving Schmitz's 'TAN.'" POPR at 58 (emphasis added). Finally, as to Ground 4, the POPR states "[n]owhere does Byford disclose or imply that the 'cipher lock code' can be used as the claimed 'release code' ***for the purpose of removing a block on a railway track***." POPR at 64 (emphasis added). This statement addresses the proposed combination of Byford's "cipher lock code" with the FRA-Report in the context of railway track blocks.

Accordingly, institution of *inter partes* review should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2026, I caused a true and correct copy of this Patent Owner's Sur-Reply in Support of its Patent Owner Preliminary Response has been served in its entirety via e-mail on Attorneys for the Petitioner at the following e-mail addresses:

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