

IPR2025-00134
U.S. Patent No. RE47,835

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 IPR2026-00134
U.S. Patent No. RE47,835

**PATENT OWNER'S MEMORANDUM
IN SUPPORT OF DISCRETIONARY DENIAL**

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Ex. 2003	<i>National Railroad Passenger Corporation d/b/a Amtrak v. Railware, Inc.</i> , IPR2023-01179, Paper 8
Ex. 2004	<i>National Railroad Passenger Corporation d/b/a Amtrak v. Railware, Inc.</i> , IPR2023-01181, Paper 8
Ex. 2005	Press Release: Wabtec Acquires Collins Aerospace's ARINC Rail Solutions Business to Extend Rail Optimization Portfolio, Wabtec (June 16, 2022)
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Ex. 2019	Web Printout: http://railware.net/dispatchx.html (January 22, 2026)
Ex. 2020	Web Printout: http://railware.net/grandcentral.html (January 22, 2026)
Ex. 2021	Web Printout: http://railware.net/eeeps.html (January 22, 2026)
Ex. 2022	Press Release: Wabtec Units Awarded Contract to Provide Components for Amtrak Passenger Cars, Wabtec (March 8, 2012)
Ex. 2023	U.S. Patent Publication No. 2011/0278401
Ex. 2024	U.S. Patent Publication No. 2012/0176217
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I. INTRODUCTION

The Director should discretionarily deny institution of Petitioner Westinghouse Air Brake Technologies Corporation’s (“Wabtec”) request for *inter partes* review of U.S. Patent No. RE47,835 (the “’835 patent”). Railware has strong settled expectations that the ’835 patent would not be challenged (yet again). *First*, the ’835 patent has been in force for almost six years (having reissued from U.S. Pat. No. 9,403,545 (the “’545 patent”) on February 4, 2020). This alone is sufficient to strongly support discretionary denial.

Second, Wabtec’s long delay in challenging the ’835 patent, despite its extensive knowledge of the ’835 patent (and its parent, the ’545 patent), further supports Railware’s strong settled expectations. Indeed, Wabtec has had actual knowledge of the ’835 patent’s parent since at least April 18, 2017—over eight years—when an Examiner cited the ’545 patent against Wabtec’s own patent application. Further, Railware has been in active litigations with several of Wabtec’s customers since June 15, 2022—over three and a half years—regarding infringement of, *inter alia*, the ’835 patent, including with Wabtec’s long-time customers National Railroad Passenger Corporation d/b/a Amtrak (“Amtrak”), Southeastern Pennsylvania Transportation Authority (“SEPTA”), New Jersey Transit (“NJT”), and Peninsula Corridor Joint Powers Board d/b/a Caltrain (“Caltrain”). On October 11, 2024, Railware even served Wabtec with a subpoena regarding Wabtec’s supply

of the infringing systems at issue in the *SEPTA* case. EX2001. Despite this extensive knowledge going back over eight years, Wabtec did not challenge the '835 patent until late-2025.

Third, Amtrak, who was represented by the same counsel as Wabtec and Caltrain here, filed IPR2023-01180 against the '835 patent over two years ago. That petition was denied by the Board on the merits, and relied on the same primary art that Wabtec relies on here. *See National Railroad Passenger Corporation d/b/a Amtrak v. Railware, Inc.*, IPR2023-01180, Paper 8 at 9 (PTAB Jan. 22, 2024) (EX2002). Notably, two of Wabtec's other customers, SEPTA and NJT, forewent filing IPR petitions in the wake of Amtrak's denied petition, and are now time barred.

Finally, Wabtec attempts to use Amtrak's denied petition as a roadmap to bring a serial challenge to the '835 patent. Such tactics have long been disfavored by the Board and are strong grounds for discretionary denial. *See Conopco, Inc. v. Procter & Gamble Co.*, No. IPR2014-00506, Paper 25 at 4-5 (PTAB Dec. 10, 2014). Despite this, Wabtec's allegedly "new" art is substantively unrelated to the claimed inventions of the '835 patent's claims. More, Wabtec's allegedly "new" art is, at best, duplicative of art previously considered and rejected by the Board and the Examiner. Yet, Wabtec never addresses, let alone satisfies, its burden of showing that the Office erred in a manner material to the patentability of challenged claims. And Wabtec relies heavily on "gap filling" through extensive expert testimony, which is improper

and subject to credibility challenges better suited for resolution in district court. The risk of duplication with the pending district court litigations, where any validity challenges can be effectively resolved, is substantial. It would be a waste of the Board's resources to re-analyze the '835 patent (yet again) when incentivized defendants are perfectly capable of bringing forth any challenges in district court.

Accordingly, Railware respectfully requests that the Director exercise discretion and deny Wabtec's request for *inter partes* review of the '835 patent.

II. BACKGROUND

The Petition is one of three petitions brought by Wabtec against three of Railware's patents: the '835 patent (at issue here), as well as U.S. Patent No. 9,517,782 (the "'782 patent") and US Patent No. RE49,115 ("'115 patent") (collectively, "Railware Patents"). *See* IPR2026-00133; IPR2026-00135. The Board previously denied petitions against all of the Railware Patents brought by Wabtec's long-time customer, Amtrak, and by the same counsel representing Wabtec and Caltrain here. *See* IPR2023-01179, Paper No. 8 (EX2003); IPR2023-01180, Paper No. 8 (EX2002); IPR2023-01181, Paper No. 8 (EX2004).

In addition to IPR history, the '835 patent also has substantial district court litigation history, including against Wabtec's long-time customers Amtrak, SEPTA, NJT, and Caltrain. Indeed, on June 15, 2022, Railware sued Amtrak for infringement of the Railware Patents, based on, *inter alia*, Amtrak's implementation and usage of

certain systems provided by Wabtec (formerly Collins Aerospace’s ARINC rail business).¹ *Railware, Inc. v. National Railroad Passenger Corporation d/b/a Amtrak*, No. 1:22-cv-5013 (S.D.N.Y.), Dkt. 1 (“*Amtrak* case”) (EX2006). Amtrak was represented by Venable LLP in that case, the same counsel that represents Wabtec and Caltrain here. EX2007. Amtrak, through its Venable counsel, also filed an IPR petition against the ’835 patent, which the Board denied institution of on the merits. EX2003. The *Amtrak* case ultimately settled with Amtrak taking a limited license to the Railware Patents. EX2008.

Further, on July 8, 2024, Railware sued SEPTA for infringement of the Railware Patents based on, *inter alia*, SEPTA’s implementation and usage of certain systems provided by Wabtec. *Railware, Inc. v. Southeastern Pennsylvania Transportation Authority*, No. 2:24-cv-02963 (E.D. Pa.), Dkt. 1 (“*SEPTA* case”) (EX2009). Soon after, SEPTA informed Wabtec of the ’835 patent as part of its investigation into Wabtec’s indemnification obligations. EX2018 at 9. More, Wabtec was publicly substantively involved in that case because on October 11, 2024, over a year ago, Railware subpoenaed Wabtec for documents related to its infringing

¹ Wabtec acquired Collins Aerospace’s ARINC rail business on June 16, 2022, one day after Railware sued Amtrak for patent infringement. EX2005.

systems. *See Railware, Inc. v. Southeastern Pennsylvania Transportation Authority*, Misc. Case No. 2:24-mc-01283-MRH (W.D. Pa.). *See* EX2010; EX2001. Wabtec was represented in the *SEPTA* case by the same Venable counsel that represented Amtrak. EX2010. SEPTA never filed an IPR petition against the '835 patent and is time-barred from doing so. The *SEPTA* case ultimately settled with SEPTA taking a limited license to the Railware Patents. EX2011.

Even further, on July 22, 2024, Railware sued NJT for infringement of the Railware Patents based on, *inter alia*, NJT's implementation and usage of certain systems provided by Wabtec. *Railware, Inc. v. New Jersey Transit Corporation*, No. 1:24-cv-05537 (S.D.N.Y.) ("*NJT* case"), Dkt. 1 (EX2012).² NJT never filed an IPR petition against the '835 patent and is time-barred from doing so.

Finally, on July 8, 2025, Railware sued Caltrain for infringement of the Railware Patents based on, *inter alia*, Caltrain's implementation and usage of certain systems provided by Wabtec. *Railware, Inc. v. Peninsula Corridor Joint Powers Board d/b/a Caltrain*, No. 5:25-cv-05725 (N.D. Cal.) ("*Caltrain* case"), Dkt. 1 (EX2014). Caltrain is represented by the same Venable counsel that represented Amtrak in the *Amtrak* case and Wabtec in the *SEPTA* case. EX2015. Trial in the

² This case is currently stayed. EX2013.

Caltrain case is scheduled for November 8, 2027. EX2016.

III. ARGUMENT

Institution of *inter partes* review is a matter of discretion. *Cuozzo Speed Techs. v. Lee*, 579 U.S. 261, 273 (2016). Where institution does not align with the AIA’s objective “to provide an effective and efficient alternative to district court litigation,” it should be denied. *Gen. Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 at 16-17 (PTAB Sept. 6, 2017) (precedential).

The Director may consider “all relevant considerations,” including (i) “[w]hether the PTAB or another forum has already adjudicated the validity or patentability of the challenged patent claims”; (ii) “[w]hether there have been changes in the law or new judicial precedent issued since issuance of the claims that may affect patentability”; (iii) “[t]he strength of the unpatentability challenge”; (iv) “[t]he extent of the petition’s reliance on expert testimony”; (v) “[s]ettled expectations of the parties, such as the length of time the claims have been in force”; (vi) “[c]ompelling economic, public health, or national security interests”; and (vii) “[a]ny other considerations bearing on the Director’s discretion.” March 26, 2025 Memorandum titled “Interim Processes for PTAB Workload Management” (“Interim Processes Memorandum”) at 2-3. The Acting Director has given significant weight to a patent owner’s settled expectations. *E.g., Irhythm Techs., Inc. v. Welch Allyn, Inc.*, No. IPR2025-00363, Paper 10 at 3 (PTAB June 6, 2025). On balance, these

factors weigh strongly in favor of the Director exercising discretion to deny institution of the Petition.

A. Railware Has Strong Settled Expectations that the '835 Patent Would Not Be Challenged (Yet Again).

1. Railware has strong settled expectations because the '835 patent has been in force for approximately six years.

“Although there is no bright-line rule on when expectations become settled, in general, the longer the patent has been in force, the more settled expectations should be.” *Dabico Airport Sols. Inc. v. Axa Power Aps*, No. IPR2025-00408, Paper 21 at 3 (PTAB. June 18, 2025) (informative). Two days from the date of this filing, the '835 patent will have been in force for six years, having reissued on February 4, 2020. This alone creates “strong settled expectations” for Railware, as the Director (and Acting Director) have routinely found that a patent that has been in force for at least six years creates a presumption of strong settled expectations. *E.g., Dabico Airport Solutions, Inc.*, IPR2025-00408, Paper 21 at 2; *Intel Corp. v. Advanced Cluster Sys., Inc.*, No. IPR2025-00794, Paper 13 at 2 (PTAB Aug. 14, 2025); *Kahoot! As v. Interstellar Inc.*, No. IPR2025-00696, Paper 12 at 2 (PTAB July 31, 2025); *Yangtze Memory Techs. Co., Ltd. v. Micron Tech., Inc.*, No. IPR2025-00498, Paper 11 at 2 (PTAB Aug. 14, 2025).

A patent owner may also have strong settled expectations for patents under

six years old. *See Apple Inc. v. Apex Beam Technologies LLC*, IPR2025-00896, Paper 10 at 3 (PTAB September 3, 2025). “Good reasons” for settled expectations to exist for a patent under six years old include that (1) the patent challenger had longstanding knowledge of the challenged patent (or the patent that the challenged patent reissued from) but failed to seek diligent review, *see, e.g., NVIDIA Corp. v. Neural AI, LLC*, IPR2025-00608, Paper 16 at 3 (PTAB July 31, 2025), (2) the patent owner has licensed the challenged patent, *see, e.g., Alliance Laundry Sys., LLC v. PayRange LLC*, IPR2025-00950, Paper 11 at 3 (PTAB September 19, 2025), or (3) the patent owner has made substantial investments into the invention(s), *see, e.g., Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00601, Paper 9 at 2 (PTAB July 24, 2025) (informative). Each of these reasons support discretionary denial.

2. Wabtec knew of the ’835 patent over three years prior to filing the Petition.

Wabtec’s longstanding knowledge of the ’835 patent and its “failure to seek early review of the patent[]” further strongly support Railware’s settled expectations and discretionary denial. *See Irhythm*, No. IPR2025-00363, Paper 10 at 3 (“Petitioner’s awareness of Patent Owner’s applications and failure to seek early review of the patents favors denial”); *see also Aquestive Therapeutics, Inc. v. Iono Pharma, LLC*, IPR2025-00874, Paper 11 at 2 (PTAB Oct. 3, 2025); *NVIDIA Corp. v. Neural AI, LLC*, IPR2025-00606, Paper 18 (PTAB July 31, 2025).

First, Wabtec has known about the parent patent of the '835 patent for over eight years. The '835 patent is a reissue from the '545 patent. The '545 patent, itself, issued on August 2, 2016. On April 18, 2017, during prosecution of Wabtec's U.S. Pat. App. No. 15/726,446, the Examiner identified the '545 patent, as well as Pub. No. US 2015/0108284 A1 (*i.e.*, the publication of application giving rise to the '545 patent), in a Notice of References Cited in Wabtec's patent application. EX2017 at 11-12. Wabtec's longstanding knowledge of '545 patent, which the '835 patent is a reissue of, gives rise to strong settled expectations. *See NVIDIA Corp.*, IPR2025-00608, Paper 16 at 3 (discretionarily denying institution of three year old reissue patent based on the petitioner's actual knowledge of the original patent).

Second, Wabtec has had additional extensive knowledge of the '835 patent since at least June 2022 through Railware's litigations against Wabtec's long-time customers—Amtrak, SEPTA, and NJT. Indeed, Wabtec's systems were at issue in litigations regarding, *inter alia*, the '835 patent in the *Amtrak* case (filed June 15, 2022) and the *SEPTA* case (filed July 8, 2024), and Wabtec's systems are also at issue in the *NJT* case (filed July 22, 2024). SEPTA informed Wabtec of the '835 patent as part of its investigation into Wabtec's indemnification obligations shortly after suit was filed. EX2018 at 9. More, Railware even served a subpoena on Wabtec in connection with the *SEPTA* case on October 11, 2024. EX2001. Yet, Wabtec waited over three years from its first knowledge of the *Amtrak* case, over two years

from its first knowledge of the *SEPTA* and *NJT* cases, and over a year after being served with a subpoena in the *SEPTA* case, to file the Petition. Wabtec provides no explanation for its delay in filing the Petition. Wabtec's delay strongly weighs in favor of discretionary denial. *Cf.* 35 U.S.C. § 315 (party is time-barred if IPR brought over a year after learning of infringement via service of complaint).

3. The '835 patent has been well-known in the industry and commercialized for over ten years.

Railware has not kept the '835 patent secret. Railware has been active and known in the industry through its commercialization of technology covered by the '835 patent since 2014, over ten years. Railware's long-time commercialization of the '835 patent without challenge strongly supports Railware's settled expectations. *See Intel Corp. v. Proxense LLC*, No. IPR2025-00327, Paper 12 at 2 (PTAB June 26, 2025); *Belden Inc. v. CommScope, Inc. of N.C.*, IPR2025-00833, Paper 13 at 2 (PTAB Sept. 12, 2025). *Belden* is informative. In *Belden*, the Acting Director found that discretionary denial was further appropriate because the patent owner had commercialized the patent years before the petition, and had provided evidence of marking. *Belden Inc.*, IPR2025-00833, Paper 13 at 2. The same is true here. Railware has commercialized the technology described and claimed in the '835 patent since 2014 and has evidence of marking. For example, Railware has advertised that it's Dispatch X safety technology, with Enhanced Employee Protection System or

EEPS® practices the '835 patent since at least 2020. *See* EX2019. Railware has also licensed the '835 patent to Amtrak and SEPTA. EX2008; EX2011. Further, it is known throughout the industry that Metro-North uses and has used Railware's Dispatch X with EEPS® since 2014, and does so out of New York's Grand Central Terminal, one of the busiest transit systems in the United States. *See* EX2020. More, the Federal Railroad Administration (FRA) has recognized the immense contribution Railware's EEPS® has had on the industry, including via various industry awards and recommendations. *See* EX2021. Accordingly, the '835 patent's long life, commercialization, and publicity throughout the industry all provide strong support for Railware's settled expectations, supporting discretionary denial.

B. The Board Has Already Upheld the Validity of the Claims of the '835 Patent in IPR2023-01180 over the Same or Similar Art, and Wabtec's Supposed Justifications for a Second Bite at the Apple Are Without Merit.

“[R]epeated prior challenges weigh against institution.” *Advanced Cluster*, No. IPR2025-00794, Paper 13 at 3. Wabtec admits that the Board already denied institution on the merits in IPR2023-01180. Pet. at 4-5. Wabtec also admits that it relies on the same art asserted in that prior challenge. *Id.* Specifically, Wabtec admits that the “FRA-Report” in Wabtec's Petition is simply a combination of “Oriol” and “Masquelier” relied on by Amtrak in its failed IPR. *Id.* at 5, 14. This is fatal.

Wabtec offers two reasons to allegedly justify its serial challenge to the '835

patent. *First*, Wabtec asserts that Amtrak is “wholly unrelated” to Wabtec. Pet. at 5. *Second*, Wabtec asserts that the Petition uses the FRA-Report “in a different manner” than Amtrak. Both reasons are without merit. *Id.* As to Wabtec’s first assertion that Amtrak is “wholly unrelated,” Wabtec ignores the facts. In 2022, Railware sued Amtrak, a long-time customer of Wabtec, for its infringement of the ’835 patent based on, *inter alia*, Amtrak’s implementation and use of systems provided by Wabtec. EX2006. Further, Wabtec is represented here by the same counsel that represented Amtrak. Thus, there is a significant relationship and overlap between Wabtec and Amtrak. The two share a longstanding business relationship concerning the implementation and use of the infringing systems at issue in Railware’s litigations, and they also share the same counsel. *See* EX2005; EX2022.

As to Wabtec’s second assertion that it is using the FRA-Report “in a different manner,” Wabtec misstates the facts. Like Amtrak, Wabtec relies on the FRA-Report for the same citations for nearly every claim limitation of the ’835 patent. *E.g.*, Pet. at 23-25, 33, 35, 45, 52, 53, 58, 59, 61-63, 66-68, 72, 75-77, 80, 83-84. Only now, Wabtec attempts to use the Board’s prior denial as a roadmap to backfill Amtrak’s failures with allegedly “new” art. This is fatal to the Petition and strongly supports discretionary denial. *General Plastic*, IPR2016-01357, Paper 19 at 17-18.

Separately, Wabtec asserts that it “deserves to advance its own challenge” because the *Amtrak* case was filed “over three years before suing Caltrain.” Pet. at

5. This fact supports discretionary denial, not institution. As discussed above, Amtrak is a long-time customer of Wabtec, and Wabtec had extensive knowledge of the parent patent of the '835 patent for over eight years, and the '835 patent itself for over three years (considering the litigation history). This knowledge included the Examiner citing the parent patent of the '835 patent against Wabtec's own patent application, as well as multiple lawsuits against Wabtec's long-time customers regarding infringing systems Wabtec itself supplied to those customers. Wabtec does not and cannot reconcile this extensive knowledge and its unreasonable delay in filing the Petition. Further, Wabtec's customers SEPTA and NJT—and Wabtec itself—did not file IPR petitions in the wake of those early litigations. Wabtec's extensive delay should not be accepted, particularly after Railware has spent significant time, money, and resources enforcing and defending its patent rights and after the Board already denied institution on the merits in IPR2023-01180.

In sum, there is no credible basis for the Director to allow Wabtec another bite at the apple to challenge the '835 patent. Discretionary denial is appropriate.

C. The Allegedly “New” Art Is Substantively Unrelated to the Claimed Inventions of the '835 Patent.

Wabtec impermissibly attempts to use the Board's prior denial of institution on the merits in IPR2023-01180 as a roadmap to justify allegedly “new” art against the '835 patent, namely Kruijswijk, Schmitz, Byford, and Macey. The allegedly

“new” art, however, is substantively unrelated to the claimed inventions of the ’835 patent. Indeed, the art draws on a disparate collection of technical fields that are unrelated to the technical problem facing the inventor of the ’835 patent, namely placing the power to lift a block placed on a railway track by a dispatcher in the hands of the railway field worker to prevent errant or mistaken unblocking of tracks. For instance, Kruijswijk is concerned with making sure that two people are in the same physical location. EX1005 at 11:27-28.³ Likewise, Schmitz relates to “a method for the authorization of data transmission systems” in the context of the field of “telebanking” and “call-back systems.” EX1006 at 1:45-46, 1:9-33. Similarly, Byford describes “a system for controlling access to a facility.” EX1011 at 1:65-66. Likewise, Macey describes a form of advanced warning system where traffic is active on a track, requiring sensors and alarms to warn workers of incoming train traffic, but still allows dispatchers to route trains on tracks through work zones. EX1007 at 3:12-20. In contrast, the ’835 patent covers situations when, for example, train traffic is already blocked by a remote dispatcher. The power to release that block is given to the railway field worker by generating, transmitting, receiving, and

³ Railware’s citations are to the pdf pages of Wabtec’s exhibits because Wabtec failed to uniquely number its exhibit pages as required by 37 C.F.R. § 42.63(d)(2).

using a release code that is associated with a block placed on a track by a dispatcher and that is transmitted to the railway field worker(s) that is working on the track, but otherwise is not readily available to the dispatcher. The '835 patent's claimed inventions prevent errant or mistaken unblocking of tracks by the dispatcher. EX1001 at 2:22-25, 1:15-32. None of Kruijswijk, Schmitz, Byford, or Macey teach these inventions, including, for example, using a release code in the manner described and claimed in the '835 patent.

D. The Board and the Examiner Previously Considered and Rejected Art Related to “Codes.”

Wabtec justifies its reliance on its allegedly “new” art by claiming that it serves the limited purpose of disclosing a “code-based verification feature . . . such as a one time code.” Pet. at 4. However, even assuming the allegedly “new” art could be considered pertinent to the '835 patent (it is not), such art is, at best, duplicative of art already considered and rejected by the Board and the Examiner.

“The Director may take into account whether, and reject the petition or request because, the same or substantially the same prior art or arguments previously were presented to the Office.” 35 U.S.C. § 325(d); *see also Becton, Dickinson & Co. v. B. Braun Melsungen AG*, IPR2017-01586, Paper 8 (Dec. 15, 2017); *Advanced Bionics, LLC v. MED-EL Elektromedizinische Gertite GmbH*, IPR2019-01469, Paper 6 at 7 (Feb. 13, 2020) (precedential); *General Plastic Industrial Co., Ltd. v. Canon*

Kabushiki Kaisha, IPR2016-01357, Paper 19 (PTAB Sep. 6, 2017); Interim Processes Memorandum at 2. Section 325(d) applies where the art relied upon in the petition is not identical to that before the Examiner or Board, but is substantively cumulative. *Darfon Elecs. Corp. v. Shipman*, IPR2022-01008, Paper 11 at 12-13 (PTAB Dec. 2, 2022). The burden is on Wabtec to demonstrate that “that the Office erred in a manner material to the patentability of challenged claims.” *Advanced Bionics*, IPR2019-01469, Paper 6 at 8. Wabtec cannot satisfy this burden.

First, Wabtec’s allegedly “new” art is, at best, duplicative of art already considered and rejected by the Board in IPR2023-01180. For example, in IPR2023-01180, Amtrak cited U.S. Pat. No. 7,328,090 for a “checking code” and argued that “the control center will only release the track upon entry of a code in the interface.” IPR2023-01180, Petition at 16-17, 68. Wabtec makes the same argument in the Petition, relying on allegedly “new” art. This argument has no more merit now than it did in the rejected Amtrak IPR. And Wabtec does not address this previously-rejected art, nor explain why the Board allegedly materially erred in its analysis.

Second, Wabtec’s allegedly “new” art is also, at best, duplicative of art considered by the Examiner during prosecution of the ’835 patent. For example, during examination of the ’835 patent’s parent, the Examiner developed searches to target art referencing a “worker” and a “code,” which returned fifty (50) hits. *See* EX1023 at 131. During reissue, the Examiner developed additional broad searches

referencing a “code,” “password,” and “block,” which resulted in thousands of hits. EX1002 at 592. Considering this art, the Examiner nevertheless allowed the ’835 patent (and its parent) over this art.

Specifically, for example, the Examiner considered U.S. Pat. Pub. No. 2011/0278401, which states “keypad 22 enables the entry into the LDPU 28 of S-BU unit 2 of access codes, employee numbers of workers on the track level, and/or any other suitable and/or desirable data.” EX2023 at [0072]. As another example, the Examiner considered U.S. Pat. Pub. No. 2012/0176217, which states “[t]he control unit transitions to the lock state when judging that the personal identification code included in the lock request is coincident with a previously registered personal identification code.” EX2024 at [0018]. Considering all of this art, the Examiner nevertheless allowed the ’835 patent (and its parent). Again, Wabtec does not address this previously-rejected art, nor explain why the Office allegedly materially erred.

Accordingly, Wabtec’s allegedly “new” art is, at best, duplicative of previously considered art, and Wabtec neither argues nor demonstrates that the Office erred in a manner material to the patentability of the ’835 patent.

E. Wabtec’s Petition Relies on Improper “Gap Filling” through Improper Expert Testimony.

The Director should also discretionarily deny institution because Wabtec’s Petition relies on “gap filing” through its 231-page expert declaration, which is

improper and subject to credibility challenges better suited for resolution in district court. *See* Consolidated Trial Practice Guide (CTPG) at 34-36 (Nov. 2019); Acting Director Stewart’s July 31, 2025 Memorandum titled “Enforcement and Non-Waiver of 37 C.F.R. § 42.104(B)(4) and Permissible Uses of General Knowledge in Inter Partes Reviews”; *Xerox Corp. v. Bytemark, Inc.*, No. IPR2022-00624, Paper 9 at 15-16 (PTAB Aug. 24, 2022) (precedential).

For example, with respect to the “code generation part,” the Petition states simply that “[a] POSITA would have understood that the hardware and software used to place a block would have included corresponding hardware (*e.g.*, processor) and software to generate the code or code generation part given the railway control apparatus CAD system controls switches and signals to block and unblock the track.” Pet. at 37-38. Wabtec provides no citation or evidence whatsoever for this assertion other than its expert declaration. This is improper and fatal to Wabtec’s Petition. *Rocket Media, LLC d/b/a Launch Labs v. FullThrottle Techs., LLC*, IPR2025-00149, Paper 7 at 16, 19-20 (PTAB Jun. 2, 2025).

Like the Petition, Wabtec’s expert declaration is also riddled with conclusory assertions that rely on the alleged “understanding of a POSITA” to “gap-fill” critical deficiencies in the expert’s analysis. *See, e.g.*, EX1003 ¶¶ 171, 177, 181, 182, 186, 187, 198, 207, 215, 222, 230, 249, 294, 310, 315, 323, 446, 463, 542, 544, 556. This raises serious concerns regarding the reliability of the expert’s analysis and is also

improper and fatal to Wabtec's Petition. At bottom, Wabtec relies solely on its expert declaration or, worse, unsupported attorney argument, to "gap-fill" what was purportedly "known in the art." But this "gap-filling" runs contrary to the Director's July 31, 2025 Memorandum, and therefore further supports discretionary denial.

F. Other Factors Also Support Discretionary Denial.

Under *Fintiv*, the Director considers: (1) whether the court granted a stay or evidence exists that one may be granted if a proceeding is instituted; (2) proximity of the court's trial date to the Board's projected statutory deadline for a final written decision; (3) investment in the parallel proceeding by the court and the parties; (4) overlap between issues raised in the petition and in the parallel proceeding; and (5) whether the petitioner and the defendant in the parallel proceeding are the same party. *Apple, Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 at 6. At least *Fintiv* Factors 1, 3, 4, and 5 also support discretionary denial.

Factor 1 – The court in the *Caltrain* case denied Caltrain's request to stay the proceedings in light of a Motion to Dismiss that Caltrain filed. EX2025. The *NJT* case is currently voluntarily stayed pending resolution of questions regarding NJT's interstate sovereign immunity, which are currently before the U.S. Supreme Court. *See* EX2013. This factor weighs in favor of discretionary denial.

Factor 3 – Railware has already invested significantly in the district court litigations. As to the current active litigations, Railware has been engaged in

substantial briefing in the *NJT* case and has been in substantive litigation in the *Caltrain* case for over six months. In that time, the parties have completed briefing on a motion to dismiss and a motion to stay, and engaged in substantial discovery. Railware is scheduled to serve infringement contentions on February 27, 2026, triggering additional deadlines. This factor weighs in favor of discretionary denial.

Factor 4 – The possibility of overlap with district court litigations is considerable. While Caltrain filed a *Sotera* stipulation in the *Caltrain* case, NJT remains likely to raise prior art-based defenses in the *NJT* case, and NJT has not filed a *Sotera* stipulation to foreclose it from recycling the same, or substantially the same, arguments. This factor weighs in favor of discretionary denial.

Factor 5 – Caltrain is a real party interest to the Petition, so there is overlap between parties in the *Caltrain* case and this proceeding. Further, Wabtec is a supplier of the infringing systems at issue in both the *Caltrain* and *NJT* cases. Pet. at 1. This factor weighs in favor of discretionary denial.

IV. CONCLUSION

For the foregoing reasons, Railware respectfully requests that the Director exercise discretion and deny Wabtec's request for *inter partes* review of the '835 patent.

IPR2026-00134
U.S. Patent No. RE47,835

Date: February 2, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2026, a copy of this Patent Owner's Discretionary Denial Brief, including all accompanying exhibits, has been served in its entirety via e-mail on Petitioner's counsel at the following e-mail addresses:

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