Filed on behalf of: Westinghouse Air Brake Technologies Corporation

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION
Petitioner

v.

RAILWARE, INC.
Patent Owner

_____

IPR2026-00134
Patent RE47,835

_____

PETITIONER'S CORRECTED OPPOSITION TO PATENT OWNER'S MOTION FOR DISCRETIONARY DENIAL[1]

[1] The USPTO authorized Petitioner's filing of this corrected brief and has expunged the original brief. EX3101.

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EXHIBIT LIST

Exhibit Number	Description
1001	U.S. Patent No. RE47,835 (the "RE'835")
1002	File History of U.S. Patent No. RE47,835
1003	Declaration of Dr. Lori Kaufman including Curriculum Vitae ("Kaufman")
1004	Vols. 1 and 2 of U.S. Department of Transportation, Federal Railroad Administration, *Supporting Railroad Roadway Worker Communications with a Wireless Handheld Computer*, Report Nos. DOT/FRA/ORD-04/13.i and DOT/FRA/ORD-04/13.ii (October 2004) ("FRA-Report")
1005	PCT Publication No. WO 2007107554 A1 to Kruijswijk *et al*. ("Kruijswijk")
1006	U.S. Patent No. 6,078,908 to Schmitz ("Schmitz")
1007	PCT Publication No. WO 2010/012040 Al to Macey ("Macey")
1008	U.S. Patent No. 6,300,873 to Kucharczyk *et al*. ("Kucharczyk")
1009	U.S. Patent No. 5,708,422 to Blonder *et al*. ("Blonder")
1010	U.S. Patent No. 8,406,943 to Brand *et al.* ("Brand")
1011	U.S. Patent No. 6,581,161 to Byford ("Byford")
1012	Federal Railroad Administration, Research Reports, available at https://web.archive.org/web/20050211025837/http://www.fra.dot.gov:80/us/content/412
1013	Federal Railroad Administration, Research Reports, available at https://web.archive.org/web/20060922194521/http://www.fra.dot.gov/us/content/412

1014	Federal Railroad Administration, Research Reports, available at https://web.archive.org/web/20080212192107/http://www.fra.dot.gov:80/us/content/412
1015	Federal Railroad Administration, Research Reports, available at https://web.archive.org/web/20090320043352/http://www.fra.dot.gov/us/content/412
1016	Internet Archive Affidavit for URLs including EX1012-1015: https://web.archive.org/web/20050211025837/http://www.fra.dot.gov:80/us/content/412 https://web.archive.org/web/20060922194521/http://www.fra.dot.gov/us/content/412 https://web.archive.org/web/20080212192107/http://www.fra.dot.gov:80/us/content/412 https://web.archive.org/web/20090320043352/http://www.fra.dot.gov/us/content/412
1017	Excerpt of File History from U.S. Pat. RE49115
1018	Oral Argument Transcript regarding Wabtec's Motion to Quash and Railware's Motion to Compel held on March 26, 2025, before The Honorable Mark R. Hornak, Chief District Judge of the Western District of Pennsylvania. *See Railware, Inc. v. Southeastern Pennsylvania Transportation Authority*, Case No. 2:24-mc-01283-MRH, ECF No. 41 (W.D. Pa.).
1019	PCT Publication No. WO 2005/047074 A1 to Makkinga ("Makkinga")
1020	U.S. 2012/0176217 to Tamaribuchi *et al.* ("Tamaribuchi")
1021	U.S. Department of Transportation, Federal Railroad Administration, *Impact of Data Link Technology on Railroad Dispatcher Operations,* Report No. DOT/FRA/ORD-04/11 (October 2004) ("Malsch")
1022	U.S. Patent No. 9,403,545

1023	File History of U.S. Patent No. 9,403,545
1024	Railware's Opening Claim Construction Brief, *Railware, Inc. v. Southeastern Pennsylvania Transportation Authority*, Case No. 2:24-cv-02963-JMY, ECF No. 40 (E.D. Pa. May 9, 2025).
1025	[Redacted] Declaration of Mehdi Ahmadian, Ph.D. in Support of Railware Inc.'s Claim Construction Submissions, *Railware, Inc. v. Southeastern Pennsylvania Transportation Authority*, Case No. 2:24-cv-02963-JMY, ECF No. 40-20 (E.D. Pa.).
1026	Defendant Southeastern Pennsylvania Transportation Authority's Opening Claim Construction Brief, *Railware, Inc. v. Southeastern Pennsylvania Transportation Authority*, Case No. 2:24-cv-02963-JMY, ECF No. 39 (E.D. Pa. May 9, 2025).
1027	Excerpts from the Transcript of the March 28, 2025 Deposition of Medhi Ahmadian, Ph.D. as Part of Defendant Southeastern Pennsylvania Transportation Authority's Opening Claim Construction Brief Submission (Exhibit 1017), *Railware, Inc. v. Southeastern Pennsylvania Transportation Authority*, Case No. 2:24-cv-02963-JMY, ECF No. 39-18 (E.D. Pa.).
1028	U.S. Department of Transportation, Federal Railroad Administration, *Communication and Coordination Demands of Railroad Roadway Worker Activities and Implications for New Technology*, Report No. DOT/FRA/ORD-07/28 (November 2007) ("Roth")
1029	WO International Publication No. 2004/042663 to Wise ("Wise")
1030	Railware's Complaint against Caltrain, *Railware v. Peninsula Corridor Joint Powers Board d/b/a Caltrain*, Case No. 5:25-cv-05725-BLF, ECF No. 1 (N.D. Cal. Jul. 8, 2025).
1031	Proof of Service, *Railware v. Peninsula Corridor Joint Powers Board d/b/a Caltrain*, Case No. 5:25-cv-05725-BLF, ECF No. 15 (N.D. Cal. Jul. 24, 2025).

1032	Defendant Caltrain's Stipulation Regarding *Inter Partes* Review, *Railware v. Peninsula Corridor Joint Powers Board d/b/a Caltrain*, Case No. 5:25-cv-05725-BLF, ECF No. 67 (N.D. Cal. Jan. 20, 2026)
1033	Court's Approval of Caltrain's Stipulation, *Railware v. Peninsula Corridor Joint Powers Board d/b/a Caltrain*, Case No. 5:25-cv-05725-BLF, ECF No. 68 (N.D. Cal. Jan. 20, 2026)
1034	Railware's Amended Complaint Against Amtrak, *Railware, Inc. v. National Railroad Passenger Corporation*, 1:22-cv-05013-KPF, ECF No. 11 (S.D.N.Y. Jun. 30, 2022)
1035	Amtrak's Answer, *Railware, Inc. v. National Railroad Passenger Corporation*, 1:22-cv-05013-KPF, ECF No. 40 (S.D.N.Y. Sept. 13, 2023)
1036	Amtrak letter to the Court, *Railware, Inc. v. National Railroad Passenger Corporation*, 1:22-cv-05013-KPF, ECF No. 124 (S.D.N.Y. May 17, 2024)
1037	PACER docket report for *Railware, Inc. v. Southeastern Pennsylvania Transportation Authority*, Case No. 2:24-cv-02963-JMY (E.D. Pa.)
1038	Stipulation and Order of Dismissal, *Railware, Inc. v. Southeastern Pennsylvania Transportation Authority*, Case No. 2:24-mc-01283-MRH, ECF No. 48 (W.D. Pa. Jun. 25, 2025)
1039	PACER docket report for *Railware, Inc. v. New Jersey Transit Corporation*, 1:24-cv-05537-MMG (S.D.N.Y.)
1040	Joint Case Management Statement, *Railware v. Peninsula Corridor Joint Powers Board d/b/a Caltrain*, Case No. 5:25-cv-05725-BLF, ECF No. 46 (N.D. Cal. Nov. 13, 2025)
1041	Transcript of November 20, 2025 hearing, *Railware v. Peninsula Corridor Joint Powers Board d/b/a Caltrain*, Case No. 5:25-cv-05725-BLF, ECF No. 52 (N.D. Cal. Nov. 25, 2025)

1042	Notice of Abandonment, U.S. Patent Application No. 15/726,446 (Sept. 15, 2020)

Petitioner Westinghouse Air Brake Technologies ("Wabtec") respectfully opposes Patent Owner's (Railware) request for discretionary denial (Paper 10, "Br."). The record demonstrates that neither party has any settled expectations regarding the validity of U.S. Patent No. RE47,835 ("RE'835 patent"). Railware filed lawsuits in a serial fashion, hindering buildup of expectations. Railware also advanced a proposed claim construction already found problematic by the Board, dismissing the Board's concerns as merely "*dicta*", which unsettles expectations. The RE'835 patent has been in force less than 6 years, and its relationship to 2 additional patents, RE47,835 ("RE'835 patent") and RE49,115 ("RE'115 patent"), the latter in force only 3.5 years and being challenged in parallel, favors concurrent review of all 3 patents.

I. RAILWARE MISCHARACTERIZES PRIOR PROCEEDINGS

Amtrak Litigation (1:22-cv-05013-KPF (S.D.N.Y.)): Wabtec was not a party to this litigation. By Sept. 13, 2023, Railware was aware that Amtrak did ***not*** implement Enhanced Employee Protection System ("EEPS") in the accused Collins Aerospace's ARINC System,[2] EEPS being (according to Railware) the patented functionality. EX1034, ¶¶28 ("EEPS … is covered by the Asserted Patents"), 17

[2] Wabtec acquired "Collins Aerospace's ARINC rail solutions business segment" in 2022 ***after*** Railware had already sued Amtrak. EX2005; Br., 4 n.1.

("The '782 patent, the [RE]'835 patent, and the [RE]'115 [patent] each cover Railware's EEPS technology"), 2, 4, 5, 12; EX1035, ¶¶135-36, 397.

While Railware accused Amtrak of allegedly infringing with EEPS based on (i) Amtrak's proprietary "AMTEC" system (EX1034, ¶¶174-75, 44) and (ii) "Amtrak's implementation of Collins Aerospace's ARINC" system (*id.*, ¶¶135-37, 10), Railware's latter allegations were erroneous. Amtrak's answer explicitly stated that "Amtrak ***did not implement EEPS in the accused Collins Aerospace's ARINC … System***."[3] EX1035, ¶¶135-36, 397 (same); *c/f* ¶¶174-75, 398-404 (no parallel language in Amtrak's responses to AMTEC allegations); EX1036, 2 ("Amtrak has ***repeatedly*** informed Railware that ***EEPS*** was ***never implemented*** in ***ARINC***"). Additionally, Railware and Amtrak resolved their case on their own. EX2008.

Prior Amtrak IPR: Regarding Amtrak's RE'835 IPR (to which Wabtec was not a party/RPI (*see* IPR2023-01180, Paper 2 at 2)), Railware mischaracterizes the Board's evaluation (Br., 11, 13-17), which did not evaluate Wabtec's petition (Paper 1, "Pet.") grounds relying on new secondary references not in Amtrak's petition.

Moreover, while declining to explicitly construe "removal code" and similar terms (EX2002, 5 n.3), the Board questioned Railware's proposal to construe these terms as "a code that is not readily available to the dispatcher" (*id.*, 16), raising

[3] Emphasis added throughout, except where noted.

concerns that such construction "does not appear to expressly address how a person of ordinary skill in the art would have distinguished a code that is 'readily available' to the dispatcher from a code that was not 'readily available.'" *Id.*, 21 n.12.

SEPTA litigation (2:24-cv-02963-JMY (E.D. Pa.)): Wabtec was not a party to this litigation, where SEPTA had its own counsel. EX1037, 2. Wabtec's only involvement was a subpoena Railware served on it, which Wabtec moved to quash in W.D. Pa. EX2010. At oral argument on the subpoena motion, Railware's counsel advised it had no intention to sue Wabtec. EX1018, 32:24-33:4. In its opening *Markman* brief, Railware advanced the same proposed construction for "release code" it proposed—and the Board cautioned against—in the Amtrak IPR. EX1024, 16-29. Railware and SEPTA resolved their case on their own. EX2011; EX1037.

NJT litigation (1:24-cv-05537-MMG (S.D.N.Y.)): Wabtec is not a party to this litigation. NJT has its own counsel and moved to dismiss. EX1039 (ECFs 19, 20); *id.*, pp.1-2. The NJT litigation has been stayed since Aug. 2025. *Id.* (ECF 42).

Caltrain litigation (3:25-cv-05725-BLF (N.D. Cal.)): Numerous key patent litigation milestones remain, and trial is not scheduled until Nov. 8, 2027. EX2016.

II. NO SETTLED EXPECTATIONS EXIST

Railware is wrong that "strong settled expectations" exist for the RE'835 patent. Br., 6-9. Railware errs in failing to consider the "settled expectations ***of the parties***," including Wabtec's expectations. Neither party has settled expectations.

A. Railware Has No Settled Expectations on RE'835 Validity

1. Railware's Continued Advancement of a Claim Construction Already Flagged as Problematic by the Board Unsettles any Existing "Expectations"

Railware cannot have "strong settled expectations" regarding the RE'835 patent's validity when—***after*** the Board in the Amtrak IPR already raised concerns with Railware's proposed claim construction—Railware continued to advance that same construction in the SEPTA litigation. EX2002, 17-22; EX1024, 16-29.

As discussed *supra* in Section I, Railware's Amtrak IPR POPR proposed to construe the term "removal code" and similar terms as "a code that is not readily available to the dispatcher." EX2002, 15-19. In its Jan. 2024 institution decision, the Board cautioned that Railware's proposed construction was problematic as the RE'835 specification "does not appear to expressly address how a person of ordinary skill in the art would have distinguished a code that is 'readily available' to the dispatcher from a code that was not 'readily available.'" EX2002, 21 n.12.

Yet over a year later in May 2025, Railware advanced, in the SEPTA litigation, this same problematic claim construction (EX1024, 16-29), even asking the SEPTA court to disregard these Board concerns as merely "*dicta*" (*id.*, 28).

"[C]laim construction rules are designed to ensure that the Board correctly construes claim terms and to minimize inconsistency in claim construction between forums." *Revvo Techs. Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper

20 at 4 (Squires Nov. 3, 2025) (precedential); *id.* ("the Office's goal" is "providing greater ***predictability*** and ***certainty*** in the patent system").

Through its gamesmanship in pursuing its problematic claim construction in the SEPTA litigation, Railware has abandoned any "predictability" and "certainty" (and therefore, any "settled expectations") that may otherwise have existed regarding RE'835 patent validity. *See Ford Motor Co. v. AutoConnect Holdings LLC*, IPR2025-01524, Paper 7 (Discret. Den. Opp. brief) at 16-18 (Dec. 23, 2025) (petitioner exposing patent owner's claim-construction gamesmanship); IPR2025-01524, Paper 9 at 2 (Squires Jan. 16, 2016) (IPR referred for review on the merits).

2. Railware's Purported Evidence of Commercialization Fails to Establish Any Settled Expectations

As to EX2019, Railware argues this website capture purportedly shows its advertising its EEPS technology "practices the '835 patent since at least 2020." Br., 10-11. Not so. This exhibit is a website capture from ***Jan. 22, 2026***, which does not indicate the content of Railware's website at any time prior, let alone in 2020. This website capture also does not identify any specific patents, let alone RE'835.

Regarding EX2020, Railware argues this website capture purportedly shows knowledge "throughout the industry" that Metro-North used EEPS technology "since 2014." Br., 11. Not so. This Jan. 2026 capture likewise does not indicate its content prior or in 2014. The capture is of Railware's own website, not suggesting

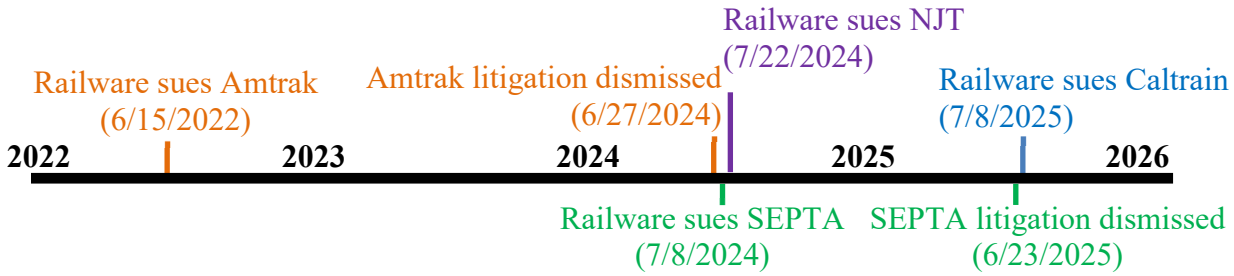
knowledge "throughout the industry." The captured website does not reference "EEPS". Railware provides no evidence of Metro North's RE'835 marking.

Regarding EX2021, this capture, again from Jan. 2026 and of Railware's own website, likewise does not show "industry" or pre-January 2026 knowledge.

Finally, Railware cites EX2008 and EX2011 to suggest RE'835 licensing to Amtrak and SEPTA. Br., 11. These exhibits contain no such information, but simply indicate these parties' settlement. Railware's attorney argument cannot substitute for evidence. *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005) ("Attorney argument is no substitute for evidence.").

3. Railware's Strategy of Serial, rather than Concurrent, Lawsuits Unsettles any Existing Expectations

Railware's litigation strategy is to file litigations sequentially, which erodes any existing settled expectations concerning the RE'835 patent's validity:



EX2007; EX1037; EX1039; EX2014. Railware waited until the Amtrak litigation was dismissed before suing SEPTA and NJT less than a month later, and waited until the SEPTA litigation was dismissed before suing Caltrain about 2 weeks later.

Had Railware sued Caltrain in 2022, the RE'835 patent would have been in

force only 2 years, before settled expectations arise. Indeed, Railware's complaint asserts reports dating back to 2022 and 2023. EX2014, ¶¶160 n.99, 137 n.80. Under Railware's own reasoning that knowledge within the industry is apparently widespread (Br., 10-11), Railware should have known or investigated Caltrain's alleged activity for nearly 3 years pre-dating its complaint.

Railware cannot have settled expectations when it files cases serially and ***allows a patent's time-in-force to accumulate*** before suing parties.

4. The RE'835 Patent's Time in Force (less than 6 years) Does Not Establish Settled Expectations, Particularly as a Related Patent Being Concurrently Challenged Was in Force Only 3.5 Years

The RE'835 patent's time in force (<6 years) does not support settled expectations, particularly given Wabtec's concurrent IPR challenges of 2 related Railware patents.

The RE'835 patent is in the same family as patents 9,517,782 ("'782 patent") and RE49,115 ("RE'115 patent"), which Wabtec concurrently petitioned for IPR (IPR2026-00133 and IPR2026-00135, respectively). The RE'115 patent has less than 3.5 years in force. IPR2026-00135, EX1001 (RE'115).

Patents even issuing in 2019, a year ***prior to*** the RE'835 patent, had not yet developed "strong settled expectations." *Cambridge Indus. USA, Inc. v. Applied Optoelecs., Inc.*, IPR2025-00434, Paper 11 at 2-3 (Stewart June 26, 2025) (2019

patent "ha[d] not developed strong settled expectations"); *Berkshire Hathaway Energy Co. v. Birchtech Corp.*, IPR2025-00274, Paper 23 at 2-3 (Stewart July 2, 2025) (same for 2019, 2020 patents). Therefore, the RE'835 patent has not developed strong settled expectations, while the RE'115 patent, in force less than 3.5 years, likewise has no settled expectations. *Samsung Elecs. Co. v. Wilus Inst. of Standards & Tech. Inc.*, IPR2025-00933, Paper 11 at 3 (Deshpande Oct. 10, 2025).

The USPTO has been inclined to ***review an entire set of related patents concurrently***, even where one patent may have settled expectations. In *Padagis US LLC v. Neurelis, Inc.*, Deputy Director Stewart referred 3 related patents for institution decisions on the merits despite the oldest being over 10 years:

> [T]he challenged patents in IPR2025-00465 and IPR2025-00466 have not been in force for a significant period of time (issued in 2022 and 2023, respectively), and ***the patent challenged in IPR2025-00464 is part of the same family, thus raising the same priority issue***. Accordingly, Patent Owner has not developed strong settled expectations that favor discretionary denial as to the first two patents, and ***it is an efficient use of Board resources to address the related patent*** …

IPR2025-00464, Paper 12 at 3-4 (Stewart Jul. 15, 2025); IPR2025-00464, EX1001 (challenged U.S. Patent No. 8,895,546, issued Nov. 25, 2014).

Board resources are similarly served by reviewing all 3 patents concurrently.

B. Wabtec Has No Settled Expectations on RE'835 Validity

1. Examiner Citation of Original Patent to RE'835 Patent in Wabtec Application Does Not Establish Settled Expectations

Railware argues Wabtec knew of the original patent (US 9,403,545 ("'545 patent")) to the RE'835 patent via the examiner's citation of '545 and corresponding US 2015/0108284 in a Wabtec application in Apr. 2017. Br., 8-9. But Railware's assertions are factually wrong—the Examiner citations actually occurred on ***Jan. 7, 2020***, and US 2015/0108284 was also ***not*** among them. EX2017, 9 ("01/07/2020" date), 16-21. Regardless, Railware's argument defies common sense and logic.

First, '545 knowledge is irrelevant towards RE'835, which ***narrowed*** the '545 patent claims and resulted in its ***surrender***. 35 U.S.C. § 252; EX1001, claims 1-19. The implication that settled expectations arise from a surrendered patent defies logic.

Second and ***critically***, the examiner's citation in Wabtec's application occurred in Jan. 2020, ***over 2 years prior to*** Wabtec's June 2022 acquisition of Collins Aerospace's ARINC segment. EX2005; Br., 4 n.1. Naturally, Wabtec was not in possession of any accused ARINC technology in Jan. 2020. EX2014 (Railware's complaint in Caltrain litigation), ¶¶22, 53, 59 (referencing Collins Aerospace; ARINC), 60 (acknowledging June 2022 acquisition). Such alleged knowledge is meaningless given it is outside of the context of ARINC and EEPS.

Third, even assuming Wabtec's pre-ARINC knowledge of the '545 patent

was relevant, Railware overstates the knowledge attributable to Wabtec. The '545 patent was one of ***35*** patent documents, cited ***by the examiner***, not Wabtec. The examiner did not rely on the '545 patent in any rejection, nor did the examiner even supply a copy. EX2017, 11-16 (rejections), 21 ("*" column selected for row K, denoting no copy furnished). Thus, the '545 patent was not discussed nor analyzed by Wabtec and it is irrelevant. Wabtec did not even respond to the Office Action and the application was abandoned thereafter, indicating that Wabtec reviewed only the references in the prior art rejections, which do not include the '545 patent. EX1042.

The situation here is analogous to *Apple Inc. v. Vampire Labs, LLC*, where the patent owner referenced 2 examiner-cited references among 33 citations in petitioner's application. *Vampire Labs*, IPR2025-01215, Paper 7 (Discret. Den. brief) at 12-13 (Aug. 27, 2025). The petitioner countered that patent owner's characterization that petitioner could contemplate the challenged patent's validity based solely on these two examiner citations was "farfetched." *Vampire Labs*, Paper 8 (Discret. Den. Opp. brief) at 12-13 (Oct. 17, 2025); Paper 9 at 2 (Squires Nov. 20, 2025) (referring the IPR for merits review). The same outcome is warranted here.

2. Amtrak Litigation Did Not Establish Settled Expectations

Railware's efforts to tie Wabtec to the Amtrak litigation fall flat, as Amtrak stated that "Amtrak did not implement EEPS in the accused Collins Aerospace's ARINC … System." EX1035, ¶¶135-36, 397 (same); EX1036, 2; Section I, *supra*.

Wabtec was not a party to that case. Wabtec could not have developed any settled expectations regarding RE'835 patent validity based on the Amtrak litigation.

Railware's "connect-the-dots" approach conveniently misses a critical and nonexistent connection—Wabtec was not a party to that litigation and Amtrak never implemented the Wabtec product with EEPS, as discussed *supra* in Section I. That Wabtec may have supplied separate technology to Amtrak—not encompassing EEPS—is irrelevant. Under Railware's reasoning that Wabtec has settled expectations by simply being an Amtrak supplier, such settled expectations would extend to all of Amtrak's presumably hundreds of suppliers, which defies logic.

Railware also alleges it licensed the RE'835 patent to Amtrak. Br., 11. But Wabtec was not involved in that confidential settlement (EX2008), and there is no evidence it implicates any ARINC implementation with EEPS.

3. SEPTA and NJT Litigations Do Not Establish Settled Expectations, They Support the Opposite

Wabtec was not a party to either litigation. In the SEPTA litigation, SEPTA was defended by its own counsel, and Wabtec was not involved in the SEPTA litigation's disposition, which involved Railware and ***SEPTA***. EX2011; EX1038.

Regarding Railware's subpoena on Wabtec, this action does not establish any settled expectations. Quite the contrary, the action strongly demonstrates that Railware nullified any expectations regarding the RE'835 patent's validity. At the

hearing for the motion to quash, the W.D. Pa. court asked Railware's counsel whether Railware intended to make Wabtec a party to the SEPTA litigation—Railware's counsel responded that ***Railware had no intention to sue Wabtec***:

> THE ***COURT***: Got it. Mr. Vogel, are you folks about to make Wabtec a party to your Eastern District [SEPTA] case in front of Judge Younge?
> MR. VOGEL: Your Honor, I'm not going to opine on that … But ***our indication at this point is no***, ***we see no reason to bring Wabtec into the mix***.

EX1018, 32:24-33:4. By providing such representation, Railware zeroed out any "strong settled expectations" on RE'835 patent validity as to Wabtec.

Regarding the NJT litigation, NJT (represented by separate counsel) moved to dismiss in Sept. 2024, discovery was immediately stayed, and the entire case was thereafter stayed in Aug. 2025. EX1039 (ECFs 22, 33, 42). Neither Railware nor Wabtec can have settled expectations arising from the NJT litigation, which was stayed prior to NJT even advancing an invalidity defense.

4. Amtrak IPR Does Not Establish Settled Expectations

Contrary to Railware's contention that the Board "[u]pheld the [v]alidity of the [c]laims of the [RE]'835 Patent" (Br., 11), the Board merely found that Amtrak's petition failed to satisfy the reasonable likelihood institution burden.

Board ***institution*** findings are distinguishable from ***final written decisions***: the latter involves a full evidentiary record, deposition testimony, and an oral hearing. Such distinction is reflected in the USPTO's recent proposed rulemaking to

preclude institution of a later IPR where the claims were previously "found not unpatentable in a ***final written decision***." Revision to Rules of Practice Before the PTAB, 90 Fed. Reg. 48,335, 48,341 (Oct. 17, 2025). The USPTO believes that after a final written decision, "the claims … have received ***adequate scrutiny***." *Id.*, 48,338. Short of that (as with the Amtrak IPR), the patent has not undergone "adequate" scrutiny for settled expectations. Regardless, Wabtec's IPR challenge is entirely distinguishable from Amtrak's, with new references. Pet., 38-39, 68-69.

Wabtec—a separate entity from Amtrak—deserves its chance to challenge the RE'835 patent based on prior art not previously considered by the PTAB.

III. ACCORDING TO RAILWARE, THE RE'835 PATENT "SAVE[S] LIVES" WHICH IMPLICATES PUBLIC HEALTH INTERESTS WARRANTING INSTITUTION

Compelling public health interests are relevant to discretionary considerations. Memo. on Interim Processes for PTAB Workload Management (Mar. 26, 2025) at 2. Such interests are implicated here, according to Railware.

Railware avers that EEPS technology purportedly covered by the RE'835 patent is critical to "ultimately ***saving lives and preventing injury*** of railway field workers." EX2014, ¶¶2, 33-34 (referring to railway worker deaths), 34 (alleging the "patented inventions … ultimately save lives"), 47 (alleging "'EEPS' technology … is covered by the Asserted Patents."). And in a joint case management statement in the Caltrain litigation, Railware alleged that "Caltrain's use of the patented

technology has saved and will continue to save Caltrain considerable … benefits … including through ***prevention of railway field worker injury and/or death***." EX1040, 15. Railware even indicated that its damages theory relies on "the ***value of a life***," under the premise that "[y]ou implement EEPS, it ***prevents deaths***." *Id.*, 17.

Railware's stance regarding such public health concerns are further exacerbated by its pursuit of injunctive relief to preclude Caltrain from using accused functionality. EX2014, ¶¶193 ("Unless and until Caltrain's infringement is enjoined, Railware will continue to be … irreparably harmed"), 194; *id.*, p.94.

Railware's "life-saving" statements cut against discretionary denial.

IV. WABTEC'S RETENTION OF COUNSEL PREVIOUSLY USED BY AMTRAK IS OF NO CONSEQUENCE

Railware implies some relationship between Amtrak and Wabtec based on Wabtec's retention of counsel from the Amtrak litigation and IPR. It is well settled that retention of the same law firm is of no moment. *See AMX, LLC v. Chrimar Sys.*, IPR2016-00569, Paper 16 at 6 (May 19, 2016); *NetNut Ltd. v. Bright Data Ltd.*, IPR2021-00465, Paper 11 at 10-11 (Aug. 12, 2021) ("a party is free to choose their own legal representation … ***we decline to consider*** a party's choice of a law firm and expert ***as a factor that favors discretionary denial***.").

V. DENIAL UNDER *FINTIV* IS UNWARRANTED

Denial is not warranted under *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper

11 (Mar. 20, 2020) (precedential). Factor 1 weighs against denial. The Caltrain court indicated it will accept a stay motion ***after*** IPR institution. EX1041, 6:14-25. N.D. Cal. has "recognized a liberal policy in favor of granting motions to stay pending IPR," *Zomm, LLC v. Apple Inc.*, 391 F. Supp. 3d 946, 956 (N.D. Cal. 2019), and the assigned judge likewise frequently grants such stays. *See Lyft, Inc. v. AGIS Software Development LLC*, No. 5:21-cv-04653-BLF, Dkt. 135 at 9-10 (N.D. Cal. May 19, 2022). And the NJT litigation is ***already*** currently stayed. *See* Section I, *supra*.

Factor 2 heavily weighs against denial. The Caltrain litigation trial is ***Nov. 8, 2027*** (EX2016, 4), well after the June 1, 2027 final written decision deadline here. The stay in the NJT litigation renders any trial date there speculative.

Factor 3 weighs strongly against denial. Fact discovery in the Caltrain litigation closes Nov. 6, 2026, opening expert reports are due Dec. 11, 2026, the dispositive motion hearing is June 17, 2027. *Id.* Opening *Markman* briefs are due July 31, 2026 (*id.*), well after the June 2, 2026 institution deadline, which alone weighs against discretionary denial. *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12 at 16-17 (Dec. 1, 2020) (precedential). The NJT litigation has even less party investment, given the stay of discovery and the entire case.

Factor 4 weighs strongly against denial. Both Wabtec and Caltrain have filed stipulations ***mirroring in scope the USPTO's proposed update to Rule 42.108(d)***, ensuring "fairness and efficiency by channeling similar patent challenges to a single

forum." 90 Fed. Reg. 48,335, 48,338 (Oct. 17, 2025); Paper 8; EX1032, 1; EX1033. Indeed, the ***USPTO has already referred IPRs*** where the petitioner merely files a "*Sotera*-plus" stipulation ***having less expansive breadth than Wabtec and Caltrain's stipulations here***. *See, e.g.*, *Shenzhen Tuozhu Technology Co., Ltd. v. Stratasys, Inc.*, IPR2025-00438, Paper 10 at 3-4 (Stewart July 17, 2025) (where "[p]etitioner has also filed a broad stipulation…, [p]etitioner's arguments that these factors tip the balance against discretionary denial are persuasive"). NJT is not in this IPR; any issue overlap with the stayed NJT litigation is speculative.

Factor 5 weighs against denial, as this factor "favors denial if trial precedes the Board's Final Written Decision and favors institution if the opposite is true." *Samsung Elecs. Co. v. Staton Techiya, LLC*, IPR2022-00302, Paper 13 at 18-19 (Jul. 11, 2022). The Board's final decision is due well before the Caltrain litigation's Nov. 2027 trial; Wabtec is not a party to the NJT litigation.

Factor 6 weighs against denial or is at least neutral. Wabtec's petition has strong merits, and the PTAB is well-suited to evaluate the technological aspects.

VI. DENIAL UNDER 35 U.S.C. § 325(D) IS UNWARRANTED

First, the same or substantively same art was not previously presented to the Office. Railware irreconcilably argues that the new art is "substantively unrelated" to the RE'835 patent claims (Br., 13-15), yet is apparently duplicative of art already considered by the Board and the examiner (Br., 15-17). Regardless, neither is true.

FRA-Report (EX1002)—the primary reference used in all grounds—was not before the examiner during prosecution of the application leading to the RE'835 (or underlying '545) patent, nor was any similar or cumulative reference. The examiner also never considered Wabtec's new secondary references or any similar thereto, let alone the combinations advanced herein. *Atlas Copco Tools and Assembly Sys. LLC v. Wildcat Licensing WI LLC*, IPR2020-00891, Paper 11 at 26 (Nov. 3, 2020).

Regarding the Amtrak IPR, the Board significantly did not evaluate Wabtec's grounds including its new secondary references (or any similar references). Pet., 4-5, 13. This alone avoids § 325(d) denial. *Tesla, Inc. v. Charge Fusion Techs. LLC*, IPR2025-00032, Paper 11 at 12-13 (May 19, 2025) (denying § 325(d) challenge as secondary references "were not before the Office"). Nor does Railware explain how the references relied on in Amtrak's IPR petition are comparable to Wabtec's new references. Additionally, the Amtrak IPR Board could not even have evaluated Wabtec's new secondary references. *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 365 (2018) (Director/Board do not "enjoy[] a license to depart from the petition and institute a *different* inter partes review of his own design.").

Railware alleges that the Board and the examiner previously considered and rejected art related to "codes". Br., 15-17. But the Board's first instance of analyzing the meaning of "release code" was in the Amtrak IPR and without Wabtec's new secondary references and grounds (*see* Pet., 4-5).

Second, the Office necessarily erred in a manner material to patentability. The Board overlooked relevant art teaching the claimed "release code" (as interpreted in the Amtrak IPR), including the secondary references presented in Wabtec's petition, given that the Board (in light of *SAS*) had no latitude to evaluate these references *sua sponte*.

Third, relevant prior art is not limited "to the technical problem … of the '835 patent" (Br., 13), as Railware alleges. Railware even concedes "the Examiner developed searches to target art referencing a 'worker' and a 'code'" (Br., 16 (citing EX1023, 131)) and the reissue Examiner "developed additional broad searches referencing a 'code,' 'password,' and 'block,'" (Br., 16-17), confirming even the examiners recognized prior art merely referring to a code or password is relevant.

VII. PETITION DOES NOT "GAP-FILL" WITH EXPERT TESTIMONY

Railware argues the Petition cites certain sections regarding a POSITA's understanding of prior art. Br., 17-19. Such reliance on expert testimony is proper. *In re Baxter Travenol Labs.*, 952 F.2d 388, 390 (Fed. Cir. 1991) ("extrinsic evidence may be considered" to "explain … the meaning of a reference").

Regardless, Railware overstates its use and complains that the Petition's assertions lack citation support. Br., 18 (citing Pet., 37-38). The Petition clearly cites to Wabtec's expert declaration at that section's conclusion. Pet., 38 (citing "Kaufman [*i.e.*, EX1003], ¶¶216-222"); EX1003, ¶226. The Petition also explicitly

refers to claim limitations 1[B], 1[C] which cite FRA-Report. Pet., 33, 25-28.

Railware's remaining blanket references to alleged "conclusory assertions" in the Petition (Br., 18-19) are likewise unfounded, given its failed example above.

VIII. DENIAL UNDER *GENERAL PLASTIC* IS UNWARRANTED

Denial under *General Plastic Indus. Co. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 (Sept. 6, 2017) (precedential) is unwarranted.

Factor 1 weighs against denial. Wabtec did not previously file an IPR petition, nor is there any relationship between Wabtec and Amtrak impacting this factor. Contrary to Railware's "second bite" contention (Br., 11-12), this is actually Wabtec's ***first*** bite. Railware does not dispute that Wabtec and Amtrak are different petitioners but suggests some "significant relationship" between them.

First, Railware notes common counsel between Wabtec and Amtrak. Br., 11-12. But the Board has ***repeatedly*** held that common counsel does not establish a significant relationship under factor 1. *LG Elecs., Inc. v. Bell Northern Research LLC*, IPR2020-00319, Paper 15 at 7 (June 23, 2020); *Micron Tech., Inc. v. Sonrai Memory Ltd.*, IPR2023-00909, Paper 7 at 8 (Nov. 28, 2023); *ShenZhen Apaltek Co. v. Asetek Danmark A/S*, IPR2022-01318, Paper 7 at 10 (Feb. 6, 2023) .

Second, Railware also suggests an "overlap" and "business relationship" between Wabtec and Amtrak. But any such relationship is not a "significant", as required. As discussed *supra* in Sections I and II.B.2, Wabtec did ***not*** supply the

accused ARINC technology with EEPS in the Amtrak litigation nor was it involved in Amtrak's defense. The Board has held such a business relationship to fall short of a "significant" one. *Flooring Indus. Limited SARL v. Innovations4Flooring Holding N.V.*, IPR2019-00766, Paper 11 at 13-14 (Sept. 4, 2019) (factor 1 weighing against denial despite petitioners' "close and direct business relationship," since "[p]etitioner's relationship with [the prior petitioner] is not related to their respective defense against claims of infringement of the [challenged] patent."). This ***cannot*** be a case where Amtrak and Wabtec are "strategically stag[ing] [their] prior art and arguments in multiple petitions" (*General Plastic*, Paper 19 at 17)—the Amtrak litigation was dismissed almost 1.5 years before Wabtec's IPR. EX2007; EX2008.

Factors 2-5 likewise weigh against denial. *Alcatel-Lucent USA Inc. v. Oyster Optics, LLC*, IPR2017-02146, Paper 12 at 12 (Feb. 28, 2018) (where factor 1 not satisfied, "factors 2-5 bear little relevance" absent evidence of "extenuating circumstances"). No extenuating circumstances exist. Regarding factors 6-7, patent quality would suffer here absent substantive review given Railware's life-savings claims. As the Board can timely render its final decision, these factors weigh against denial or are at least neutral.

IX. CONCLUSION

Wabtec respectfully requests that the Director deny Railware's request for discretionary denial and refer Wabtec's petition for a decision on the merits.

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Respectfully submitted,

/Stephen K Yam/

Stephen K. Yam (Reg. No. 64,927)
syam@venable.com
VENABLE LLP
600 Massachusetts Ave., NW
Washington, DC 20001
T 202-721-5429
F 202-344-8300

CERTIFICATE OF SERVICE

I hereby certify that on this date, a true and correct copy of the foregoing was served on Patent Owner via email to the following email addresses:

BVogel@robinskaplan.com
DCarman@robinskaplan.com
RK-Railware@robinskaplan.com

DATED: March 5, 2026

Respectfully submitted,

/Stephen K Yam/

Stephen K. Yam (Reg. No. 64,927)
syam@venable.com
VENABLE LLP
600 Massachusetts Ave., NW
Washington, DC 20001
T 202-721-5429
F 202-344-8300