

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORP.,
Petitioner,

v.

RAILWARE, INC.,
Patent Owner.

IPR2026-00133 (Patent 9,517,782 B2)
IPR2026-00134 (Patent RE47,835 E)
IPR2026-00135 (Patent RE49,115 E)

Before JOHN A. SQUIRES, *Under Secretary of Commerce for Intellectual
Property and Director of the United States Patent and Trademark Office.*

DECISION
Denying Institution of *Inter Partes* Review

IPR2026-00133 (Patent 9,517,782 B2)

IPR2026-00134 (Patent RE47,835 E)

IPR2026-00135 (Patent RE49,115 E)

Railware, Inc. (“Patent Owner”) filed a request for discretionary denial (Paper 10, “DD Req.”) in the above-captioned cases, and Westinghouse Air Brake Technologies Corporation (“Petitioner”) filed an opposition (Paper 13, “DD Opp.”).¹ With authorization, Petitioner filed a Reply to Patent Owner’s Preliminary Response (Paper 14, “Pet. Reply”) and Patent Owner filed a Sur-reply (Paper 15, “PO Sur-reply”). On April 1, 2026, after considering the parties’ arguments and the record, and in view of all relevant considerations, I issued a Notice indicating that institution is denied in the above-captioned cases. Paper 16.

In the Petition, Petitioner states that it “does not believe any claim terms require express construction for purposes of this IPR.” Pet. 8. Petitioner further states that it “has explained . . . how the prior art satisfied even [Patent Owner’s and a third party’s] proposed constructions” that were presented in a prior district court litigation, which included arguments by the third party that a claim term is indefinite. *Id.* at 9–12.

Patent Owner argues that Petitioner’s assertions violate the holding in *Revvo Techs., Inc. v. Cerebrum Sensor Techs., Inc.*, IPR2025-00632, Paper 20 (Director Nov. 3, 2025) (precedential) (“*Revvo*”). PO Sur-Reply 1. Petitioner argues that its approach does not present a problem because it has not yet provided any claim construction position in its own parallel district court proceeding. Pet. Reply 1. I disagree.

As I have indicated previously, a petitioner should present a single construction and apply that construction consistently. *See Infineon Techs.*

¹ Citations are to papers in IPR2026-00133. The parties filed similar papers in IPR2026-00134 and IPR2026-00135.

IPR2026-00133 (Patent 9,517,782 B2)

IPR2026-00134 (Patent RE47,835 E)

IPR2026-00135 (Patent RE49,115 E)

Americas Corp. v. Mosaid Techs. Corp., IPR2025-01456, Paper 27 at 3–4 (Director Mar. 17, 2026). Failure to do so, without adequate explanation, is problematic. *Id.*; *Revvo*, Paper 20 at 3–4. A petitioner may not avoid presenting its own claim construction position in a proceeding before the Office by presenting an analysis based on claim construction positions taken by other parties in a different proceeding. *See* 37 C.F.R. § 42.104(b)(3) (requiring that the petition must “set forth . . . [h]ow the challenged claim is to be construed”); Trial Practice Guide² §§ II.B.(3) and (6). Permitting such conduct would allow a petitioner to avoid taking a consistent claim construction position. Such conduct would undermine the purpose of *inter partes* review proceedings and detract from the Office’s goal of “providing greater predictability and certainty in the patent system.” *Revvo*, Paper 20 at 4–5.

While certain arguments are highlighted above, the determination to exercise discretion to deny institution is based on the complete record and a holistic assessment of all of the evidence in light of the arguments presented.

In consideration of the foregoing, it is:

ORDERED that the Petitions are *denied*, and no trial is instituted.

² Available at <https://www.uspto.gov/patents/ptab/trial-practice-guide>.

IPR2026-00133 (Patent 9,517,782 B2)

IPR2026-00134 (Patent RE47,835 E)

IPR2026-00135 (Patent RE49,115 E)

FOR PETITIONER:

Stephen Yam

Jose Gonzalez

VENABLE LLP

syam@venable.com

jagonzalezlopez@venable.com

FOR PATENT OWNER:

Bryan Vogel

Derrick Carman

ROBINS KAPLAN LLP

bvogel@robinskaplan.com

dcarman@robinskaplan.com