

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 (d/b/a WABTEC CORPORATION),  
Petitioner,

v.

SIEMENS INDUSTRY, INC.,  
Patent Owner.

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Case IPR2017-00580  
Patent 9,233,698 B2

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Record of Oral Hearing  
Held: April 17, 2018

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Before KRISTEN L. DROESCH, MEREDITH C. PETRAVICK and  
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

Case IPR2017-00580  
Patent 9,233,698 B2

APPEARANCES:

ON BEHALF OF THE PETITIONER:

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The above-entitled matter came on for hearing on Tuesday, April 17, 2018, commencing at 1:30 p.m. at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

P-R-O-C-E-E-D-I-N-G-S

1  
2 JUDGE DROESCH: We're here for Inter Partes Review  
3 Number 2017-00580 between Petitioner Westinghouse Air Brake  
4 Technologies Corporation and Patent Owner Siemens Industry,  
5 Incorporated. Joining me in the room here is, in Alexandria is myself,  
6 Judge Droesch and Judge Petravick. And from our Silicon Valley  
7 office, Judge Goodson joins us.

8 I'm going to go over how the hearing will proceed today. Per  
9 our order, each party is allotted 60 minutes total. Petitioner is going to  
10 begin by presenting arguments regarding the challenged claims for which  
11 we instituted trial and arguments, including a motion to exclude.

12 And Petitioner may reserve some of its time for rebuttal. And  
13 then Patent Owner will respond to Petitioner's arguments and also present  
14 its arguments regarding its motion to amend and, if desired, its motion to  
15 exclude. Patent Owner may also reserve some time for rebuttal.

16 And next Petitioner using its reserve time, may present rebuttal  
17 arguments regarding the challenged claims and respond to Patent  
18 Owner's arguments regarding its motion to amend, if applicable, also the  
19 motion to exclude.

20 And then, lastly, Patent Owner gets the last word. Using your  
21 reserved time, Patent Owner may present rebuttal arguments to address  
22 only its motion to amend and, if applicable, its motion to exclude.

1           We're going to be operating the clock up here. It should indicate  
2 how much time you have left. And, Petitioner, whenever you are ready,  
3 you may begin. Please state your name for the record and anyone in  
4 appearance for your party.

5           MR. WEED: Good afternoon, Your Honors. My name is Ben  
6 Weed. And with me from K&L Gates is Katy Hoffee. Sitting behind  
7 us is Jason Engel, lead counsel in this proceeding, and Erik Halverson.

8           Your Honors, in my first set of remarks today the Board really  
9 has only one question to answer. And that question is has the Patent  
10 Owner shown that the challenged claims of the 698 Patent are entitled to  
11 the filing date of the 494 Patent?

12           The answer to that question is no. And as a result, the  
13 challenged claims are null.

14           If we could flip over to Slide Number 2. Give me one minute.

15           On Slide Number 2 of the demonstratives we presented to the  
16 Board last week, we have called out the front cover of the 494 Patent,  
17 along with some of the pertinent information to allow the Board to make  
18 its decision here this morning. Included in that information is an  
19 identification of the single inventor for the 494 Patent, Claus Weber.  
20 Mr. Weber was a CAP engineer with very little software training and no  
21 experience with virtualization, as we mentioned in our briefs.

1           This application was filed in September of 2012. And as the  
2 abstract tells us, it is directed to a vital system that "uses a pair of COTS,"  
3 which is an acronym for commercial off-the-shelf, "personal computers  
4 and operating systems." And by using these commercial off-the-shelf  
5 personal computers and operating systems can provide safety  
6 functionality because of redundancy.

7           In the deposition of Mr. Weber in the District Court case. which  
8 is a part of this record in Exhibit 1026, Mr. Weber explained the further  
9 concept of the 494 Patent. And that concept is that one component, one  
10 commercial off-the-shelf computer "calculates the content" and the other  
11 component or task or controller calculates the safety code, the safety or  
12 security code.

13           So the idea is we divide the task, the operations between two  
14 computing entities: one does part of it, the other does the other part of it.  
15 And when the results are combined, a third downstream entity can verify  
16 that both computing entities were working correctly.

17           Now, if we flip to Slide 3 of the slides that we presented, we have  
18 a bit of information about what the 494 Patent doesn't purport to invent.  
19 On Slide 3 we have an excerpt from column 6 of the 494 Patent which,  
20 for the Board's reference, is Exhibit 1012 in this proceeding. We'll talk  
21 a lot about 494 because the priority issues permeate.

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