

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

RAIL ASSETS, LLC,

Plaintiff,

v.

NORFOLK SOUTHERN CORP.,

Defendant.

Civil Action No.:

TRIAL BY JURY DEMANDED

COMPLAINT FOR INFRINGEMENT OF PATENT

Now comes, Plaintiff, Rail Assets, LLC (“Plaintiff” or “Rail Assets”), by and through undersigned counsel, and respectfully alleges, states, and prays as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement under the Patent Laws of the United States, Title 35 United States Code (“U.S.C.”) to prevent Defendant Norfolk Southern Corp. from infringing and profiting, in an illegal and unauthorized manner, and without authorization and/or consent from Plaintiff, U.S. Patent No 6,088,635 (“the ‘635 Patent” or the “Patent-in-Suit”), which is attached hereto as **Exhibit A** and incorporated herein by reference, and pursuant to 35 U.S.C. §271, and to recover damages, attorney’s fees, and costs.

THE PARTIES

2. Plaintiff Rail Assets, LLC is a limited liability company organized under the laws of the state of Colorado with a principal place of business at 1417 Pikes Peak Avenue, Fort Collins, CO 80524.

3. Upon information and belief, Defendant Norfolk Southern Corporation (“Defendant” or “NSC”) is a corporation organized under the laws of the state of Virginia with a principal place of business at 650 West Peachtree Street NW, Atlanta, GA 30308. Upon information and belief, Defendant can be served with process through its Registered Agent, J. Steven Stewart at 577 Mulberry Street 1500, Macon, GA 31201.

JURISDICTION AND VENUE

4. This is an action for patent infringement in violation of the Patent Act of the United States, 35 U.S.C. §§1 *et seq.*

5. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§1331 and 1338(a).

6. This Court has personal jurisdiction over Defendant by virtue of its systematic and continuous contacts with this jurisdiction and its residence in this District, as well as because of the injury to Plaintiff, and the cause of action Plaintiff has risen in this District, as alleged herein.

7. Defendant is subject to this Court's specific and general personal jurisdiction pursuant to its substantial business in this forum, including: (i) at least a portion of the infringements alleged herein; (ii) regularly doing or soliciting business, engaging in other persistent courses of conduct, and/or deriving substantial revenue from goods and services provided to individuals in this forum state and in this judicial District; and (iii) being incorporated in this District.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §1400(b) because Defendant resides in this District under the Supreme Court's opinion in *TC Heartland v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017) through its incorporation, and regular and established place of business in this District.

**RAIL ASSETS' RAILROAD VEHICLE ACCIDENT VIDEO
RECORDERS**

9. Rail Assets' principal, Mr. Todd Cox, is a pioneer in the railroad vehicle accident video recording systems industry. Customers, retailers, distributors, and industrial organizations in the railroad industry require a device and system for monitoring and/or recording the status of a railroad vehicle, such as a locomotive, prior to a potential accident.

10. Rail Assets' patented technology continuously monitors the progress of a railroad vehicle and the status of various vehicle equipment. These images are stored continuously and can be reviewed to determine the occurrence of events

following an accident. As is explained further, below, railroad operators are now required by Federal Regulation to deploy such systems on its railroad vehicles.

11. Specifically, since the filing date of the application for the '635 Patent, the Code of Federal Regulations requires the installation of an event recorder and certified crashworthy event recorder memory module on a lead locomotive, a lead manned helper locomotive, and a controlling remotely distributed power locomotive, a DMU locomotive, and an MU locomotive. See 49 C.F.R. 229.135(a). The Federal Regulations governing the operation of such recorders, which NSC was required to follow, fall directly within the claims of the '635 Patent.

THE ASSERTED PATENT

12. On July 11, 2000, the United States Patent and Trademark Office ("USPTO") duly and lawfully issued the '635 Patent, entitled "*Railroad Vehicle Accident Video Recorder*." The disclosure of the '635 Patent relates to, among other things, a railroad vehicle accident video recording method that facilitates the collection, preservation and analysis of video captured prior to, during, and following rail related accidents or near accidents.

13. The inventions disclosed in the '635 Patent were made by, *inter alia*, Mr. Todd Cox. Mr. Cox is the owner and founder of Plaintiff, Rail Assets.

14. Rail Assets is the exclusive licensee and thus the owner of the right, title, and interest in and to the '635 Patent, including the right to assert all causes of action arising under the '635 Patent and the right to remedies for infringement thereof, including past damages.

**DEFENDANT'S DEVELOPMENT OF THE ACCUSED
INSTRUMENTALITY AND KNOWLEDGE OF THE ASSERTED PATENT**

15. Upon information and belief, Defendant NSC co-developed and subsequently utilized a railroad vehicle accident video recording system and method that facilitates the collection, preservation and analysis of video captured prior to, during, and following rail related accidents or near accidents (“RailView” or the “Accused Instrumentality”).

16. Upon information and belief, Defendant NSC co-developed the RailView product with Scientific Applications International Corporation (“SAIC”). This information and belief includes public statements by NSC senior personnel including, but not limited to, Blair Wimbush, Senior General Counsel in a presentation on February 27, 2003. See Exhibit B (“The *RailView* Locomotive Video Recording System”). According to Mr. Wimbush’s presentation notes, in the early 1990’s NSC “faced a rising tide of lawsuits from grade crossing accidents and trespasser incidents. A principal problem in cases was the absence of reliable witness testimony as to what occurred at the point of collision. For every train and

engine employee who testified that the warning signals were working or that the horn was sounded, there were more victims or nearby witnesses who would say the signals were not working and that they heard no horns blown by the crew.” Upon information and belief, the foregoing led to a collaboration by the Law, Claims, and Research & Tests departments of NSC with SAIC to develop RailView. See Ex. B, slide 3 and accompanying notes. According to the presentation notes: “An evaluation of existing products indicated there was nothing suitable for the requirements the Railway [NSC] needed. ... To develop an appropriate product, [NSC] worked with SAIC to develop the ‘RailView’ camera system.” Id.

17. Upon information and belief, NSC publicly touted its co-development program with SAIC relative to RailView such that, in November of 2004, NSC announced it was “expanding the testing and implementation of RailView, a locomotive-mounted camera designed to record all activity occurring in front of a train. [NSC] will equip 1,100 locomotives with the system by year end, then equip another 500 units in 2005, according to the railroad’s November newsletter.” See <https://www.progressiverailroading.com/mechanical/article/NS-to-install-1600-locomotive-mounted-cameras-by-the-end-of-2005--7611>. The foregoing article confirms, *inter alia*, that RailView was jointly developed by NSC and SAIC.

18. Upon further information and belief, after NSC co-developed RailView, the product was thereafter made, sold, and distributed by SAIC and, subsequently, Leidos.

19. Upon information and belief, during the foregoing development of the RailView system, Plaintiff and SAIC engaged in business discussions regarding the ‘635 Patent, and the disclosed and claimed technology. Moreover, on information and belief, NSC was specifically advised of the ‘635 Patent by the then-owner of the patent, Roadtrac LLC, with an offer to sell authorized systems, including the “Locomotive Starshield” product.

20. Notwithstanding the foregoing, rather than licensing the ‘635 Patent or purchasing and utilizing Locomotive Starshield, NSC and SAIC incorporated Rail Assets’ patented technology into its railroad vehicle recorder systems and product and system, particularly RailView, and began equipping railroad locomotives with the RailView systems and software throughout the United States, in Georgia, and in this District.

21. Upon information and belief, the RailView product and associated services and software used at least the patented methods claimed in the ‘635 Patent.

THE ACCUSED INSTRUMENTALITY

22. Defendant at least made and used systems and methods for video recording locomotive accidents and near accidents, including and/or utilizing the RailView system. Moreover, on information and belief, Defendant is the co-developer of at least the RailView system with SAIC and is thus liable for SAIC's acts of infringement.

23. The Accused Instrumentality specifically infringe at least claim 1 of the '635 Patent.

COUNT ONE – INFRINGEMENT OF THE '635 PATENT

24. Paragraphs 1 to 23 are reincorporated herein by reference as if fully set forth herein.

25. Claim 1 of the '635 Patent is directed to a method for visually recording a potential accident of a railroad vehicle, comprising the steps of:

- a. continuously monitoring the status of an emergency break of the railroad vehicle;
- b. continuously monitoring the status of a horn of the railroad vehicle;
- c. continuously viewing with a video camera the scene that the railroad vehicle approaches;
- d. continuously storing video information from the video camera;

- e. detecting at least, the application of both the emergency brake and blast of the horn within a predetermined time window; and
- f. capturing video information from the video camera for a predetermined period of time after detection that, at least, the application of the emergency brake and horn blast occurred within a predetermined time window.

26. The Accused Instrumentality practices the step of “continuously monitoring the status of an emergency brake of the railroad vehicle.” Upon information and belief, the RailView system monitors the status of the emergency brake of their locomotives. See, e.g., *Norfolk Southern Railway Co. v. Hartry et al*, Case No. A12A0649 (Ga. Ct. App. Jun. 29, 2012) (“The RailView device records digital images of the train’s movement, as well as data about the train’s speed, direction, horn activity, and braking activity.”); see also, Ex. B, slide 14 (“Information Recorded” “PC or emergency brake application”).

27. Moreover, Plaintiff is informed and believes that RailView has been publicly described as an “event recorder.” See, e.g., *Norfolk Southern Railway Co. v. Hartry et al*, Case No. A12A0649 (Ga. Ct. App. Jun. 29, 2012) (describing “an event recorder known as ‘RailView’”). Plaintiff is further informed and believes that NSC must and does comply with all applicable Federal Regulations related to

RailView. Thus, the Accused Instrumentality comprises an event recorder and a certified crashworthy event recorder memory module, as required by 49 C.F.R. 229.135(a). Per 49 C.F.R. 229.135(b), the event recorder records, and the certified memory module retains, recorded information when the emergency brake of the railroad vehicle is activated. Therefore, the event recorder must continuously monitor the status of the emergency brake to determine when the emergency brake is activated. See also, Ex. B, slide 19.

28. The Accused Instrumentality practices the step of “continuously monitoring the status of a horn of the railroad vehicle.” Upon information and belief, the RailView system monitors the status of the emergency brake of their locomotives. See, e.g., *Norfolk Southern Railway Co. v. Hartry et al*, Case No. A12A0649 (Ga. Ct. App. Jun. 29, 2012) (“The RailView device records digital images of the train’s movement, as well as data about the train’s speed, direction, horn activity, and braking activity.”); see also, Ex. B, slide 14 (“Information Recorded” “Audio and visible indicator of horn”).

29. Moreover, Plaintiff is informed and believes that RailView has been publicly described as an “event recorder.” See, e.g., *Norfolk Southern Railway Co. v. Hartry et al*, Case No. A12A0649 (Ga. Ct. App. Jun. 29, 2012) (describing “an event recorder known as ‘RailView’”). Plaintiff is further informed and believes

that NSC must and does comply with all applicable Federal Regulations related to RailView. Thus, the Accused Instrumentality comprises an event recorder and a certified crashworthy event recorder memory module, as required by 49 C.F.R. 229.135. Per 49 C.F.R. 229.135(b), the event recorder records, and the certified memory module retains, recorded information when the horn of the railroad vehicle is activated. Therefore, the event recorder must continuously monitor the status of the horn to determine when the horn is activated. See also, Ex. B, slide 19.

30. The Accused Instrumentality practices the step of “continuously viewing with a video camera the scene that the railroad vehicle approaches.” See Exhibit C (RailView Locomotive Digital Video Recorder, dated 2015) (“RailView continuously records the scene in front of the train whenever the locomotive is in motion ...”). See <https://www.progressiverailroading.com/mechanical/article/NS-to-install-1600-locomotive-mounted-cameras-by-the-end-of-2005--7611> (describing RailView as “a locomotive-mounted camera designed to record all activity occurring in front of a train.”)

31. The Accused Instrumentality practices the step of “continuously storing video information from the video camera.” See Exhibit C (RailView Locomotive Digital Video Recorder, dated 2015) (“RailView continuously records the scene in front of the train whenever the locomotive is in motion ... RailView can store the

latest 18 days of video and audio, along with train speed, direction and other locomotive events ...”). Moreover, Plaintiff is informed and believes that NSC has and does comply with all applicable Federal Regulations related to RailView. Thus, the Accused Instrumentality comprises an event recorder and a certified crashworthy event recorder memory module, as required by 49 C.F.R. 229.135(a). Per 49 C.F.R. 229.135(b), the event recorder records, and the certified memory module retains, recorded information received from the video camera.

32. The Accused Instrumentality practices the step of “detecting at least, the application of both the emergency brake and blast of the horn within a predetermined time window.” See, e.g., Ex. B, slides 14, 19. Moreover, Plaintiff is informed and believes that NSC must and does comply with all applicable Federal Regulations related to RailView. Thus, the Accused Instrumentality comprises an event recorder and a certified crashworthy event recorder memory module, as required by 49 C.F.R. 229.135(a). Per 49 C.F.R. 229.135(b), the event recorder records, and the certified memory module retains, recorded information when the horn of the railroad vehicle is activated for at least 48 hours. Therefore, the event recorder must continuously monitor the status of the horn to determine when the horn is activated. Moreover, on information and belief, RailView detects the application of both the emergency brake and blast of the horn within a predetermined

time window because the system has been developed to assist in accident investigations which would require knowledge of application of the emergency brake and blast of horn approaching a crossing.

33. The Accused Instrumentality practices the step of “capturing video information from the video camera for a predetermined period of time after detective that, at least, the application of the emergency brake and horn blast occurred within a predetermined time window.” See, e.g., Ex. B, slides 11, 14, 19. Moreover, Plaintiff is informed and believes that NSC has and does comply with all applicable Federal Regulations related to RailView. Thus, the Accused Instrumentality comprises an event recorder and a certified crashworthy event recorder memory module, as required by 49 C.F.R. 229.135(a). Per Appendix D of 49 C.F.R. 229.135, the event recorder memory module must be crashworthy so that the data can continue to be collected and preserved post-accident.

34. Defendant thus directly infringes the '635 Patent, literally and/or under the doctrine of equivalents, as proscribed by 35 U.S.C. § 271, *et seq.*, by at least making, using, and importing products that infringe at least claim 1 of the '635 Patent, without permission or authority from Rail Assets.

35. As a direct and proximate result of Defendant's direct infringement of the '635 Patent, Rail Assets has been damaged.

36. Defendant has committed these acts of infringement with knowledge of the '635 Patent and thus has acted recklessly and willfully with regard to Rail Assets' rights in the '635 Patent.

37. As a result of Defendant's willful infringement of the '635 Patent, Rail Assets has suffered monetary damages and is entitled to a monetary judgment in an amount adequate to compensate for Defendant's infringement.

38. Defendant has willfully infringed the '635 Patent, entitling Rail Assets to increased damages under 35 U.S.C. § 284 and to attorneys' fees and costs incurred in prosecuting this action under 35 U.S.C. § 285.

DEMAND FOR JURY TRIAL

39. Plaintiff demands a trial by jury of any and all causes of action.

PRAYER FOR RELIEF

WHEREFORE, Rail Assets prays for the following relief:

- A. That Defendant be adjudged to have infringed one or more claims of the Asserted Patent literally or under the doctrine of equivalents;
- B. An award of damages pursuant to 35 U.S.C. § 284 adequate to compensate Rail Assets for Defendant's past infringement;
- C. An assessment of pre-judgment and post-judgment interest and costs against Defendant, together with an award of such interest and costs, in

accordance with 35 U.S.C. § 284;

D. That Defendant be directed to pay enhanced damages under 35 U.S.C. § 284 and Rail Assets' attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285; and

E. That Rail Assets have such other and further relief as this Court may deem just and proper.

Dated: November 7, 2022

Respectfully submitted,

INSIGHT, PLC

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