

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KAWASAKI RAIL CAR, INC.,

Petitioner,

v.

SCOTT BLAIR,

Patent Owner

Case IPR2017-00117

Patent 6,700,602

PATENT OWNER SCOTT BLAIR'S CORRECTED
OBSERVATIONS ON LOWELL MALO'S NOVEMBER 28, 2017
DEPOSITION

1. Malo confirms that a person of ordinary skill in the art (POSITA) would not have expected space beyond the wall at the junction of the sidewall and the ceiling to be available.

In Ex. 2006, p. 36 at 32:7-16, the witness testified there would be conduits, piping and such at the junction of the sidewall and the ceiling.

A. Sure. If you look at the construction here [indicating]? ... and that forms a cavity back behind this area as well [indicating]. Great place for conduits, piping and such.

This testimony is relevant to the testimony of Malo, Ex. 1025 ¶ 11, in that “conduits, piping and such” at the junction of the sidewall and the ceiling is contrary to Ex. 1025 ¶ 11 that a POSITA would have understood Fig. 1 of Namikawa to be disclosing a subway car having space beyond the wall, including the availability of space beyond the wall at the junction of the sidewall and the ceiling.¹

2. Malo testifies that none of the references, other than Maekawa, had any verbal indication of a cavity between the interior wall and the exterior wall and Maekawa provides only for a door pocket cavity, which is not at the junction of the sidewall and the ceiling.

In Ex. 2006, on p. 40 at 36:2, the witness testified, “I saw nothing in the wording” of Namikawa to indicate a cavity in between the interior wall and the exterior wall. In Ex. 2006, p. 41 at 36:16 to 38:3, Malo testified that “there is nothing in the writing . . . where it indicates, suggests, describes that there is a cavity between

¹ Mr. Malo also testified that the cavity between a subway car’s interior wall and exterior shell was important to allow space for the inclusion of (a) thermal insulation, (b) sound deadening material, (c) wiring and cabling, and (d) an array of structural members which could be used for the mounting of interior equipment, Ex. 1025 ¶ 10.

the interior wall and its exterior shell of the rail car.” In Ex. 2006, p. 50 at 44:17-21, the witness testified that Maekawa does not disclose a cavity at the junction of the sidewall and the ceiling. In Ex. 2006, p. 51 at 45:19 to 47:20, the witness testified that none of the references, other than Maekawa, had any verbal indication of a cavity between the interior wall and the exterior wall and Maekawa provides only for a door pocket cavity, at the door level, which is not at the junction of the sidewall and the ceiling.

This testimony is relevant to the testimony of Malo on Ex. 1025 ¶ 11, that Namikawa discloses a subway car having a cavity between its interior wall and its exterior shell and a POSITA would have understood Namikawa to disclose a subway car having space beyond the wall, including the availability of space beyond the wall at the junction of the sidewall and the ceiling, which is not supported by the references.

3. Malo confirms that the proposed FRA rules provide that the intent of the guidelines is to prevent fire ignition, and a review of accident data indicates that fire was the second leading cause of fatalities on passenger trains for the period of 1972 to 1973.

In Ex. 2006, on p. 84 at 75:3 to 76:20, the witness testified fires are to be avoided and are a big problem because there is no place to go in a subway.

Q. Further down it says: "A review of the accident/incident data, related to fatalities and injuries on passenger trains for the period of 1972 to 1973, indicates

that collapse of equipment structure and loss of sufficient space for the passengers to ride out the collision is a principal cause of fatality in train accidents." And then the next sentence it goes on and talks about, it says: "Fire and post-collision conditions result in 30 percent of the fatalities and 16 percent of the serious injuries." Do you think that's reasonable, those numbers?

A. In the '72 to '73 timeframe?

Q. Yes.

A. It could well be.....

Q. The first sentence says: "In 1984, FRA published guidelines recommending testing methods and performance criteria for the flammability, smoke emission, and fire endurance characteristics for categories and functions of materials to be used in the construction of new or rebuilt + rail passenger equipment." And it goes on and then it says: "The intent of the guidelines is to prevent fire ignition and to maximize the time available for passenger evacuation if fire does occur."

A. Yes.

Q. This is kind of consistent with what you just said?

A. Um hum.

This testimony is relevant to Ex. 1025 ¶ 18 in that Malo, in forming his expert testimony, relies upon the proposed FRA rules as a motivation to modify the references as requiring flush mounting², when in fact the proposed FRA rules provide that fire safety is important, an intent is to avoid fires, and fires are the second leading cause of fatalities.³

² See also Ex. 1014 ¶ 44

³ See Ex. 2006, pp. 244-45.

4. Expert for Petitioner confirms concerns of overheating of monitors and that proper ventilation is a concern.

In Ex. 2006, p. 89 at 79:13 to p. 90 at 80:8, the witness testified that there would be a concern of overheating when designing a monitor for a rail car interior and proper ventilation is a concern.

Q. How do the concerns about heating of these monitors, ventilation of these monitors play, for safety reasons, play into the disposition of the monitoring in the rail car?

A. We would have to take a look at how much heat the monitor itself generates and then see how we would dissipate. If it was a number large enough we would have to be able to dissipate the heat.

Q. How would you dissipate that?

A. Sometimes just venting directly into the car, you know, that would be one way of doing it. Some things, not necessarily monitors, but lights, for example, have a little tunnel behind it, if you will, for air to pass through, and it's just to bring cool air in to cool it off.

This testimony is relevant to Malo's declaration on Ex. 1025 ¶ 15, because it contradicts the position advanced that, "to flush mount a flat TV screen in the flat junction one would only have to cut a hole and run power to the hole." This testimony contradicts Malo's testimony on Ex. 1025 ¶ 15 which provides, "in 1995-1997, many rail car manufacturers used fiberglass panels at the junction of a sidewall and ceiling because fiberglass panels are light in weight, last for a long time, require low maintenance, and are good insulators." *emphasis added*. The testimony

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