

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 B1

Before JAMESON LEE, SCOTT A. DANIELS, and
KEVIN C. TROCK, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

ORDER
Conduct of Proceeding
37 C.F.R. § 42.5(a)

Through this order, we provide notice to Patent Owner's backup counsel, Dariush Keyhani, who is admitted *pro hac vice* in this proceeding, of previous representations by Patent Owner's Lead Counsel. We also make of record an email from Lead Counsel of Patent Owner, dated December 1, 2017, in which Lead Counsel declined to utilize the process provided in our November 29, 2017 Order (Paper 19) to address Patent Owner's concern

that Petitioner's Reply contained improper new arguments that were allegedly beyond the scope of a proper reply.

In Paper 19, the Board authorized Patent Owner to identify, specifically, "the location of any portion of Petitioner's Reply (Paper 17) and the Supplemental Declaration of Lowell Malo (Ex. 1025) that Patent Owner believes exceeds the scope of Patent Owner's Response." Paper 19, 3. The Board also authorized Petitioner to file a response to Patent Owner's submission, specifically pointing out, for each item identified by Patent Owner, what Petitioner regards as the material in the Patent Owner Response that caused Petitioner to submit the reply items identified by Patent Owner. *Id.* at 3–4.

The December 1, 2017 email, noted above, from Lead Counsel of Patent Owner states: "In response to the Order entered November 29, 2017 [Paper 19] counsel for Patent Owner would like to inform the Board they *will not be filing a response.*" Ex. 3002 (emphasis added). The email further states: "Accordingly, *Patent Owner withdraws its request to challenge the scope of the Petitioner's Reply and will not be making any submissions in connection with the issues raised at the conference and the Board's subsequent November 29, 2017 Order.*" *Id.* (emphasis added).

During oral hearing held on January 26, 2017, backup counsel for Patent Owner, Dariush Keyhani, argued nonetheless that Patent Owner was deprived due process with respect to alleged new arguments of Petitioner in the Reply, to which, Mr. Keyhani argued, Patent Owner did not have an opportunity to respond. Given the resolution mechanism outlined by the Board in Paper 19, and the email from Lead Counsel of Patent Owner dated December 1, 2017, backup counsel's argument is baseless.

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We recognize that Mr. Keyhani was not admitted to this proceeding until December 20, 2017. Paper 21. Nonetheless, Mr. Keyhani still is expected to be familiar with the entire record of the proceeding, including prior representations made by Patent Owner's Lead Counsel to the Board and what contentions Patent Owner's Lead Counsel has withdrawn.

ORDER

Accordingly, it is

ORDERED that the email from Patent Owner's Lead Counsel, dated December 1, 2017, is entered into the record as Exhibit 3002.

PETITIONER:

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