

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

KAWASAKI RAIL CAR, INC.
Petitioner,

v.

SCOTT BLAIR,
Patent Owner.

Case No. IPR2017-00117

Patent No. 6,700,602

Issue Date: March 2, 2004

Title: Subway TV Media System

**PETITIONER'S RESPONSE TO PATENT OWNER'S
(SECOND) CORRECTED OBSERVATIONS ON LOWELL
MALO'S DEPOSITION**

I. RESPONSE TO OBSERVATION 1:

At p. 100, 89:9-90:18,¹ Mr. Malo testified that the cavity space behind the interior wall of Namikawa can include wires and conduits and also provide for ventilation of the televisions.

Q. Do you believe at the time of the publication of Namikawa, which is 1992, and the application was filed, I'm looking at Exhibit 2 on the front of it, was filed in 1990 --

A. Um hum.

Q. And the kind of TV's that existed in 1990 --

A. Um hum.

Q. -- would there have likely have been ventilation through openings in the TV monitors at that time, 1990 and a little bit prior to that, because that was what presumably the inventors had to look at and think about at that time?

A. There could well be, and this provides very nicely for it [indicating].

Q. What does, you're looking at Figure 1?

A. Yes.

Q. Could you explain what you're pointing at?

A. Again, you have a slanted surface here [indicating].

Q. Yes?

A. That builds an opening or cavity on the back side of the wall so it gives you a place to ventilate.

Q. Where is the ventilation happening?

¹ All the citations to page numbers are to Exhibit 2006.

A. It happens right behind the back along with all the conduits and wiring that runs along this part of the car.

In Ex. 1025 ¶11, Mr. Malo testified that “Namikawa [discloses] 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 to allow for the screen of the monitor to be substantially flushed with the adjacent wall surface structure”

Mr. Malo’s testimony is relevant to Patent Owner’s first observation because it rebuts Patent Owner’s notion that the existence of piping and conduits at the junction of the sidewall and ceiling would indicate to a POSITA that there is no additional space beyond the wall.

II. RESPONSE TO OBSERVATION 2:

At p. 33, 29:20-30:10, Mr. Malo testified that, based on his experience, a subway car normally has a cavity between its interior wall and exterior shell.

Q. And you say that "a subway car was normally constructed such that it had had a cavity between its interior wall and exterior shell."

A. Yes.

Q. Do you agree with that statement today?

A. Yes.

Q. You don't have any references for that. Do you have any references that you have in mind or any support for that proposition?

A. Well, it's mainly based on my personal experience with the construction of rail cars.

At p. 35, 31:2-16, Mr. Malo testified that the prior art references disclose a cavity between the inner wall and the outer wall to a POSITA.

Q. Do you believe any of those patents that the petitioner that you are working with has provided the -- did those references provide or disclose cavities within the wall as you describe in paragraph 10?

A. Looking at the construction of the patents, some of the illustrations show or indicate that there would be construction of that type, yes.

At p. 36, 32:13-33:16, Mr. Malo testified that Namikawa discloses a cavity between the interior and exterior walls.

Q. Where do you see an indication that this figure discloses a cavity in the wall between the interior wall and the exterior wall?

A. Actually in this case it brings the cavity interior to the interior wall as well

Q. Okay.

A. But if you look at the wall here and the juncture that comes up, this is at a different angle. It's very, very common construction to come down from the roof and cut across at a diagonal, that allows you to turn the screens down to be able to be seen, and that forms a cavity back behind this area as well [indicating]. Great place for conduits, piping and such.

At p. 40, 35:23-36:8, Mr. Malo also testified that Figure 2 of Namikawa discloses a cavity between the inner wall and the outer shell.

At p. 42, 37:19-24, Mr. Malo testified that the figures of Amano disclose a

cavity between the inner wall and the outer shell.

At p. 51, 46:4-21, Mr. Malo testified that Maekawa discloses a cavity as a door pocket which extends to the junction.

At p. 107, 95:3-14, he testified that the references disclose some features inherently.

Q. I'm asking you a question. Are you saying that if it's not actually shown in the figure that you cannot conclude that it's there or would likely be there? If something is not actually shown in a figure in these patents then you would say that the best way to interpret it is likely it is not there?

A. There are things in other patents that were not shown that I inherently know were there.

At p. 129, 114:19 -115:12, Mr. Malo testified that Miyajima too discloses a cavity between the interior and exterior walls.

Q. It says a cooling air passage gap. That is -- that is proof to you that there is a cavity between the exterior and internal walls of the rail car?

A. Yes, how would air flow.

In Ex. 1025 ¶10, Mr. Malo testified that “the '602 Patent itself states that ‘A subway car is normally constructed so that it has a cavity wall, defined between its outer structural shell and its inner lining wall, the cavity providing for wiring and cables and other mechanical functions, and, at places, containing insulation.’”

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