

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

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**KAWASAKI RAIL CAR, INC.**  
Petitioner,

v.

**SCOTT BLAIR,**  
Patent Owner.

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Case No. IPR2017-00117

Patent No. 6,700,602

Issue Date: March 2, 2004

Title: Subway TV Media System

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**SUPPLEMENTAL EXPERT DECLARATION OF  
LOWELL MALO**

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## **I. INTRODUCTION**

1. I, Lowell Malo, have been retained by counsel for Kawasaki Rail Car, Inc. (hereinafter “Petitioner”).
2. I submit this declaration in support of Petitioner’s Petition for *Inter Partes* Review of U.S. Pat. No. 6,700,602, No. IPR2017-00117.

## **II. QUALIFICATIONS**

3. I am currently Vice President of Engineering Services for RailPlan International Inc.
4. I have previously summarized in my original declaration (Ex. 1014) my background, education, and professional experience.

## **III. MATERIALS CONSIDERED**

5. I have reviewed the following:
  - a. U.S. Pat. No. 6,700,602 (“the ’602 Patent”) including the claims thereof;
  - b. The translation of Japanese Publication No. 04-085379 (Ex. 1005, “Namikawa”);
  - c. The translation of Japanese Publication No. 04-322579 (Ex. 1011, “Sasao”);
  - d. Patent Owner Scott Blair’s Response (Paper No. 13) (“Response”);
  - e. Expert Declaration of Jack Long (Ex. 2002);

- f. Supplemental Declaration of Jack Long (Ex. 2004).
6. In making my conclusions stated herein, while reviewing the materials listed in paragraph 5, I have applied the claim construction definitions applied by Petitioner in its Reply to Patent Owner Scott Blair's Response (unless otherwise indicated herein).
  7. I understand that a claim is invalid for obviousness if the differences between the subject matter sought to be patented and the prior art are so insubstantial that the subject matter as a whole would have been obvious, at the time the invention was made, to a person having ordinary skill in the art to which that subject matter pertains.
  8. To the best of my understanding, my opinions regarding obviousness of the '602 Patent follow the legal principles contained in *Graham v. John Deere*, 383 U.S. 1 (1966) and *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007).

#### **IV. OPINIONS**

##### **A. Namikawa and Sasao**

9. The Response states that "Nothing within the teachings of Namikawa teaches or suggests the availability of space beyond the wall, let alone 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 of the car." (Response at 6). The

Response also states that “Still further, nothing within the teachings of Namikawa teaches or suggests the availability of space beyond the wall, let alone 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 of the car.” (Response at 20-21). Mr. Long states that “Nothing within the teachings of Namikawa teaches or suggests the availability of space beyond the wall, let alone 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 of the car.” (Ex. 2004 at ¶ 10). I disagree with these statements.

10. In the 1995-1997 timeframe, a subway car was normally constructed such that it had a cavity in between its interior wall and its exterior shell. Such a cavity 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. Indeed, 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.”

(Ex. 1001 at 55:59). The last time the state of the art included rail cars that did not have a cavity in between the interior wall and exterior shell was well before 1950.

11. Namikawa bears an application date of November 29, 1990 and a publication date of July 24, 1992. (Ex. 1005 at 1). Accordingly, a person of ordinary skill in the art in the 1995-1997 timeframe would have understood Figure 1 of Namikawa to be disclosing a subway car having a cavity in between the interior wall and the exterior shell. Thus, contrary to the statements made by the Patent Owner and Mr. Long, a person of ordinary skill in the art would have understood Figure 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 to allow for the screen of the monitor to be substantially flushed with the adjacent wall surface structure of the car.
12. The Response appears to take the position that Sasao is limited to a rear projection television. (Response at 21). I disagree with this apparent position. Sasao discloses that “an ordinary television having a CRT may serve as the image formation part.” (Ex. 1004 at 3). Indeed, Sasao is directed towards “display devices,” and more generally, Sasao states that “[t]he present invention relates to a display device such as a rear projection

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