

**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. IPR2017-01036

Patent No. 6,700,602

Issue Date: March 2, 2004

Title: Subway TV Media System

**SECOND SUPPLEMENTAL EXPERT
DECLARATION OF LOWELL MALO**

I. INTRODUCTION

1. I submit this supplemental declaration in support of Petitioner's Reply in response to Patent Owner Scott Blair's Response (Paper No. 15) and the declarations of Patent Owner's expert Joseph Zicherman (Exs. 2007, 2009).

II. QUALIFICATIONS

2. I have previously summarized in my original declaration (Ex. 1015) my background, education, and professional experience. As I explained in my original declaration, I have decades of experience designing railcars. Over the course of my career, I have worked or consulted for many companies in the railcar industry, including Alaska Railroad, Alstom, Amtrak, CAF, Caltrans, Caltrain, Colorado Railcar, CRRC, CSX, Kawasaki, Long Island Railroad, Louisville and Nashville Railroad, Metra, Metro North, Missouri Pacific Railroad, New Jersey Transit, New York City Transit, Rader Railcar, Railplan International, San Francisco Municipal Transit Authority, Sentech, South Florida Regional Transit Authority, Stadler, Talgo, and TriRail.

III. MATERIALS CONSIDERED

3. I have reviewed the following:
 - a. U.S. Patent No. 6,700,602 (Ex. 1001, "the '602 Patent");

- b. The translation of Japan Train Operation Association Magazine, Vol. 37, issue no. 3 (March 1, 1995) (Ex. 1003, “JTOA Magazine”) and the photographs in the original Japanese reference (Ex. 1002);
- c. The translation of Japanese Publication No. 04-085379 (Ex. 1005, “Namikawa”);
- d. The translation of Japanese Publication No. 07-181900 (Ex. 1007, “Miyajima”);
- e. The translation of Japanese Publication No. 04-160991 (Ex. 1009, “Maekawa”);
- f. The translation of Japanese Publication No. 04-322579 (Ex. 1011, “Sasao”);
- g. The translation of Japanese Publication No. 02-223985 (Ex. 1021, “Amano”);
- h. U.S. Patent No. 5,148,282 (Ex. 1025, “Sedighzadeh”);
- i. U.S. Patent No. 3,211,904 (Ex. 1026, “Schwenkler”);
- j. The translation of Japanese Publication No. 05-42853 (Ex. 1028, “Yamada”);
- k. Patent Owner Scott Blair’s Response (Paper No. 15, “Response”);
- l. Expert Declaration of Jack Long (Ex. 2002);
- m. The 1997 Proposed FRA Rules (Ex. 2004);

- n. The 1974 Consumer Product Safety Commission Guidelines for Television Receiver Safety (Ex. 2005);
- o. Supplemental Declaration of Jack Long (Ex. 2006);
- p. Declaration of Joseph B. Zicherman (Ex. 2007);
- q. Supplemental Declaration of Joseph B. Zicherman (Ex. 2009);
- r. First Deposition Transcript of Joseph Zicherman (Ex. 1035); and
- s. Second Deposition Transcript of Joseph Zicherman (Ex. 1038).

IV. OPINIONS

A. Patent Owner's Fire Safety Arguments

4. Patent Owner and his expert Dr. Zicherman argue in the Response and declarations that a person of ordinary skill in the art (“POSITA”) would not have been motivated to place Namikawa’s LCD televisions substantially flush with the adjacent wall surface because the televisions would overheat and create a fire hazard. (*See, e.g.*, Response 25-32). Patent Owner and his expert make substantially the same fire safety argument for all the claims and all the instituted grounds, with slight adjustments to account for the specific language of the various claim limitations. (*See* Response 25-32, 37-38, 43-44, 50-52; Ex. 2009, ¶¶ 15, 25, 27, 28, 34, 37; Ex. 2007, ¶¶ 15, 18, 25, 27-34.) In particular, they make substantially the same fire safety argument for the limitations that require: (a) the “screen of the monitor” to

be “substantially flushed with the adjacent wall surface” in claims 5-7 (Response 25-32); (b) the “transparent cover units covering” the “video display monitors” to be “substantially flush with the adjacent surface structure of the transitional wall portion” in claims 8, 9, and 11-14 (Response 37-38, 50); (c) the “video screen of each video display monitor” to be “substantially contiguous with an exterior surface of said transitional segment” in claims 15-19 (Response 51-52); (d) the “transparent cover unit” to be “flushed with the adjacent wall surface structure” in claims 20-29 (Response 43-44, 50); and (e) “back lit panels” with the monitors in claims 11, 15-19 and 23 (Response 50, 52).

5. I disagree with Patent Owner’s fire safety argument for all the claims and grounds because, as I explain below, the fire safety concerns raised by Patent Owner are unfounded.
6. In particular, a POSITA in 1997 would not have been discouraged by fire safety concerns from placing: (a) the screens of the LCD televisions in Namikawa substantially flushed with the adjacent wall surface as required by claims 5-7; (b) transparent cover units covering the LCD televisions in Namikawa substantially flush with the adjacent surface structure of the transitional wall portion as required by claims 8, 9 and 11-14; (c) the screens of the LCD televisions in Namikawa substantially contiguous with the

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