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

- - - - -

KAWASAKI RAIL CAR, INC.,

Petitioner,

v. Case IPR2017-01036

SCOTT BLAIR,

Patent Owner.

- - - - -

Video-recorded Deposition Upon Oral Examination of:

JOSEPH B. ZICHERMAN

Location: Meredith & Keyhani
205 Main Street
East Aurora, New York 14052

Date: February 28, 2018

Time: 9:42 a.m.

Reported By: MICHELLE MUNDT ROCHA

Page 2

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19 Peter Colucci
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Page 3

1 P R O C E E D I N G S
2 WEDNESDAY, FEBRUARY 28, 2018;
3 (Proceedings in the above-titled matter
4 commencing at 9:42 a.m.)
5 * * *
6 THE VIDEOGRAPHER: Good morning. We are
7 on the record at 9:42 a.m. on Wednesday, February 28,
8 2018. This is the videotaped deposition of Joseph
9 Zicherman.
10 My name is Peter Colucci, here with court
11 reporter Michelle Rocha. We are here from Veritext
12 National Deposition and Litigation Services. This
13 deposition is being held at 205 Main Street in East
14 Aurora, New York. The caption of this case is
15 Kawasaki Rail Car versus Scott Blair.
16 At this time would counsel please
17 introduce themselves for the record.
18 MR. GHIAM: Armin Ghiam on behalf of
19 petitioner, Kawasaki Rail Car, Inc.
20 MR. BILLAH: Zaed Billah on behalf of
21 Kawasaki Rail Car Inc.
22 MR. KEYHANI: Dariush Keyhani of
23 Meredith & Keyhani on behalf of the patent owner,
24 Scott Blair.
25 THE VIDEOGRAPHER: Will the court reporter

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1 JOSEPH B. ZICHERMAN - BY MR. GHIAM
2 please swear in the witness.
3 JOSEPH B. ZICHERMAN,
4 called herein as a witness, first being sworn,
5 testified as follows:
6 EXAMINATION BY MR. GHIAM:
7 Q. Good morning. Can you please state your
8 full name and address for the record?
9 A. Joseph B. Zicherman. Address is 808
10 Gilman Street in Berkeley, California 94710.
11 Q. Have you been deposed before?
12 A. I have.
13 Q. When was that?
14 A. The last deposition was perhaps two months
15 ago.
16 Q. How many times have you been deposed
17 before?
18 A. Several hundred.
19 Q. In connection with what sort of cases have
20 you been deposed before?
21 A. Primarily forensic cases involving fire
22 safety.
23 Q. Have you been involved with any patent
24 cases before?
25 A. No.

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1 JOSEPH B. ZICHERMAN - BY MR. GHIAM
2 Q. What types of opinions do you provide for
3 the cases that you have been deposed in?
4 MR. KEYHANI: Objection. Form.
5 A. Can you be more specific?
6 Q. What types of opinions do you provide for
7 these cases that you said you've been deposed at?
8 MR. KEYHANI: Objection.
9 Q. Do you opine on fire issues?
10 A. Primarily.
11 Q. Okay.
12 A. And then the underlying mechanical or
13 chemical or human factors, et cetera, issues.
14 Q. What was the subject matter of the last
15 case that you were deposed in?
16 A. The last case --
17 MR. KEYHANI: Objection.
18 You can answer.
19 A. The last case involved a fire in a
20 multi-story, multi-occupancy building where there was
21 a loss of life, several dozen people were forced out
22 of their apartments, several dozen businesses were
23 effectively destroyed.
24 Q. Have you been deposed in a case related to
25 a rail car?

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1 JOSEPH B. ZICHERMAN - BY MR. GHIAM
2 A. Related to a rail car.
3 MR. KEYHANI: Objection. Form.
4 You can answer the question.
5 A. I don't recall.
6 Q. Have you been deposed in a case related to
7 consumer electronics?
8 A. Yes.
9 Q. Do you remember when this was?
10 A. Pardon?
11 Q. Do you remember when this deposition was?
12 A. Well, the last case that I was involved in
13 involved a television set that may or may not have
14 been responsible for a fire in a hotel.
15 Q. Do you remember when you were deposed for
16 this case?
17 A. I was not deposed in that case.
18 Q. Well, do you remember the title of the
19 case or the caption of the case?
20 A. I just remember that LG was the defendant.
21 Q. Any other consumer electronic cases that
22 you have been involved with?
23 A. Without being diffuse, when I get involved
24 in evaluation of a fire, I'll frequently be asked to
25 consider the role of appliances present, which can be

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1 JOSEPH B. ZICHERMAN - BY MR. GHIAM
2 consumer electronics, they could be a computer. There
3 are all sorts of possibilities frequently.
4 Q. Fair enough. Thank you very much.
5 I'm sure your counsel has reviewed the
6 ground rules with you. I'm going to go over the
7 ground rules.
8 I would like to remind you that I am going
9 to ask questions, and you are going to answer my
10 questions, and our court reporter is going to record
11 the answers.
12 It's important for you to speak up, so
13 that the court reporter can hear you and record your
14 answers. It's also important to provide your answers
15 with words -- so no shaking, no nods -- so that the
16 court reporter could record your answers.
17 It's also important for us not to talk
18 over each other, because she wouldn't be able to
19 record the answer.
20 Is that okay with you?
21 A. Yes.
22 Q. I would like to remind you that you're
23 under oath today. It's the same -- so you're
24 obligated to tell the truth. It's the same as if
25 you're testifying in court.

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1 JOSEPH B. ZICHERMAN - BY MR. GHIAM
2 Do you understand that?
3 A. Yes.
4 Q. If you don't understand any of my
5 questions, please let me know. I will try to clarify
6 the question and ask it again.
7 Is that okay?
8 A. Yes.
9 Q. If you need a break, please let me know.
10 However, if a question is pending, I will ask you to
11 provide your answer for the question, and then we can
12 go on the break.
13 A. Yes.
14 Q. Is there any reason why you can't provide
15 full, complete and accurate answers today?
16 A. No.
17 Q. Are you sick today?
18 A. No.
19 Q. Are you taking any medication?
20 A. I take blood pressure medication.
21 Q. Could that affect your ability to provide
22 truthful answers today?
23 A. No.
24 Q. Are you under the influence of any drugs
25 today?

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1 JOSEPH B. ZICHERMAN - BY MR. GHIAM
2 A. No.
3 Q. Have you had any alcoholic drinks today?
4 A. No.
5 Q. Thank you very much.
6 How did you prepare for today's
7 deposition?
8 A. How did I prepare? I reviewed materials
9 provided to me by Mr. Keyhani, I reviewed the
10 declaration I had prepared earlier, and I met with
11 Mr. Keyhani briefly last evening.
12 Q. How long did you meet with Mr. Keyhani?
13 A. Probably an hour.
14 Q. Can you please name a few of the documents
15 that you reviewed for this deposition today?
16 A. I reviewed Mr. Malo's declaration, I
17 reviewed the full FRA proceedings, I reviewed the
18 Blair '602 patent, and I reviewed a number of items
19 that are listed in my declaration primarily translated
20 from Japanese.
21 Q. Did you review the Consumer Product Safety
22 Commission guidelines for today's deposition?
23 A. Yes, I did.
24 Q. Did you review a reference named Yamada
25 for today?

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1 JOSEPH B. ZICHERMAN - BY MR. GHIAM

2 A. Yes.

3 Q. Did you review a reference named Namikawa

4 for today's deposition?

5 A. I believe I did. I don't remember all the

6 names. It might be good to have my declaration in

7 front of me, because that has a listing, and then I

8 won't be speculating.

9 Q. Did you review the Japan train operation

10 association magazine for today's deposition?

11 A. The parts of it that were provided to me.

12 Q. Did you review the reference named

13 Sedighzadeh?

14 A. I'm guessing. The names are somewhat

15 unfamiliar to me.

16 Q. Thank you.

17 I would like to ask about your educational

18 background. What did you study in college?

19 A. I studied wood products engineering at the

20 State University College of Forestry, which is

21 basically an industrial engineering kind of a degree

22 related to the utilization of wood and wood products.

23 Q. Let me go back for a second.

24 Did you talk to anybody else besides

25 Mr. Keyhani for today's deposition?

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1 JOSEPH B. ZICHERMAN - BY MR. GHIAM

2 A. I spoke with his partner.

3 Q. Do you know the name of the partner?

4 A. Jennifer Meredith.

5 Q. Did you talk to Mr. Long for today's

6 deposition?

7 A. I did not.

8 Q. Back to the question about your academic

9 background. You said you studied wood science

10 engineering; am I correct?

11 A. Wood products engineer is what the program

12 was called.

13 Q. Can you tell me more about the program and

14 what it's focused on?

15 A. Sure. It had basic mathematics,

16 engineering, chemistry, some botany and then applied

17 technology areas like adhesives technology and

18 conversion of wood into wood products.

19 Q. What sort of engineering classes did you

20 take for the program?

21 A. I took two semesters of physics, three

22 semesters of chemistry, three semesters of calculus,

23 took a year of biology and then specialized courses in

24 the major wood mechanics, things of that sort.

25 Q. Did you take any other engineering

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1 JOSEPH B. ZICHERMAN - BY MR. GHIAM

2 classes?

3 A. Those are the ones that I recall. It's

4 been about 50 years, so...

5 Q. I understand.

6 Did you take any mechanical engineering

7 classes?

8 A. Well, I took mechanics courses. They were

9 called wood mechanics, but they were essentially

10 analogous to statics and dynamics in mechanical

11 engineering.

12 Q. Any other mechanical engineering classes

13 that you can recall?

14 A. Not named mechanical engineering classes.

15 Q. Any other classes that were not named

16 mechanical engineering but pertained to subjects

17 related to mechanical engineering?

18 A. Fractured mechanics, orthogonal behavior

19 of wood-based materials.

20 Q. All of these mechanics classes were

21 related to wood-based products; right?

22 A. Well, wood and composites.

23 Q. And composites.

24 Did you take any electrical engineering

25 classes in college?

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1 JOSEPH B. ZICHERMAN - BY MR. GHIAM

2 A. No.

3 Q. When were you engaged by Mr. Keyhani for

4 this IPR proceeding?

5 A. Probably in the fall of 2017.

6 Q. Did he reach out to you?

7 A. He reached out to the company I work for.

8 Q. What did he ask you to do?

9 A. His firm asked me --

10 MR. KEYHANI: I'm going to object, just to

11 the extent it gets into work product privilege.

12 So just be careful. We're not going to

13 get in there. We don't need to get into

14 communications related to work product privilege.

15 THE WITNESS: Okay.

16 So what was the question?

17 Q. What did Mr. Keyhani ask you to do for

18 this case?

19 A. I was asked to review some materials

20 associated with the Blair patent issues and consider

21 those and consider writing a declaration.

22 Q. And what did you do after considering

23 these materials?

24 A. Pardon?

25 Q. What did you do after considering these

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1 JOSEPH B. ZICHERMAN - BY MR. GHIAM
2 materials?
3 A. I wrote a declaration.
4 Q. So you wrote the declaration yourself?
5 A. I wrote the declaration with the
6 assistance of Jennifer Meredith.
7 Q. Did you come up with the first draft of
8 the declaration?
9 A. No.
10 Q. Did you -- in the process of drafting the
11 declaration, did you ever talk to Mr. Long?
12 A. No.
13 Q. Have you ever talked to Mr. Long?
14 A. I think I answered that.
15 Q. So you've never spoken to Mr. Long?
16 A. No.
17 Q. You don't know Mr. Long?
18 A. I don't.
19 Q. Thank you.
20 I am trying to ascertain the scope of your
21 expertise. So if you wouldn't mind, I'm going to ask
22 you a few questions about the area of your expertise.
23 If you would start yourself and describe to me your
24 expertise.
25 MR. KEYHANI: Objection.

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1 JOSEPH B. ZICHERMAN - BY MR. GHIAM
2 A. I'm a consulting fire scientist, and I
3 work in a wide variety of areas, both forensic and
4 what we call prospective. The forensic being
5 retrospective. The consulting, other than for
6 attorneys, is prospective work.
7 I also do some work on review of
8 environmental impact statements where fire safety are
9 issues.
10 Most relevant to this litigation it would
11 seem is my work with rail fire safety and rail car
12 design and qualification that started in 1979.
13 Q. What type of expertise do you offer when
14 you do rail fire safety work?
15 A. I offer formal -- what was the word you
16 asked me, what services? Was it services?
17 Q. What sort of expertise do you offer?
18 A. What expertise? I offer expertise in
19 doing fire safety analyses both of rail passenger
20 systems, which the Federal Railway Agency calls
21 system-wide analyses; and I offer expertise with
22 regards to individual cars, car designs and products
23 used in cars that are subject to a fire safety
24 analysis if they're used for cars regulated by the
25 FRA.

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1 JOSEPH B. ZICHERMAN - BY MR. GHIAM
2 Q. Can you please tell me more about the
3 system-wide analysis that you perform, what it
4 entails?
5 A. Yes. It entails -- well, when the
6 original system-wide analyses requirement was added by
7 the FRA in the 1990s, there was a requirement to
8 complete a preliminary fire safety analysis which took
9 into account the operating environment of a rail
10 passenger system and the history of the system and
11 subjected that to an analysis -- essentially an
12 incident style analysis, which was based on a military
13 spec, which involves system safety and codifies system
14 safety. And what the goal of those analyses was to
15 identify unsafe conditions and provide documentation
16 of that to the system operators.
17 And under the FRA rule, there was some
18 time period -- it was either a year or 18 months --
19 for the identified shortcomings to be addressed and
20 mitigated. And at some point following that there
21 would be a final fire safety analysis.
22 Q. For which operators did you perform these
23 analysis?
24 A. For Caltrain in the San Francisco Bay
25 area, for Metra in Chicago, for Metrolink in Los

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1 JOSEPH B. ZICHERMAN - BY MR. GHIAM
2 Angeles. Those were complete studies.
3 And I've conducted studies on individual
4 components, like rail cars and locomotives and things
5 like that, for car manufacturers, for operators as
6 part, again, of the FRA system safety requirements.
7 Q. You also mentioned that --
8 A. Let me also add that that fire safety
9 analysis work may involve an entire rail car design or
10 locomotive design, or it may involve the evaluation of
11 a cooking device going into a club car, a
12 refrigerator, electronic components, things of that
13 nature.
14 Q. You mentioned that you have worked on car
15 design projects?
16 A. Yes.
17 Q. Is that correct? What services have you
18 offered when you worked and offered expertise for car
19 design?
20 A. Well, in particular, the FRA requirements
21 and the FTA guidelines require that a fire safety
22 analysis be conducted of the design. And that started
23 with the FRA rules and became codified.
24 And that means that I would look at a
25 complete design of a vehicle, including the

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