

**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. IPR2017-01036

Patent No. 6,700,602

Issue Date: March 2, 2004

Title: Subway TV Media System

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**PETITIONER'S RESPONSE TO PATENT OWNER'S  
OBSERVATIONS ON LOWELL MALO'S DEPOSITION**

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**I. RESPONSE TO OBSERVATION 1:**

PO asserts in its first observation that Mr. Malo testified that the television of Namikawa is “located along the ceiling.” The cited testimony discussed “the intersection between the end wall and the ceiling” in Figure 1 of Namikawa. (Ex. 2010, 20:17-21:3 (emphasis added).) The cited testimony is not relevant because the junction (or transitional wall portion or transitional segment) recited in the claims is at the junction of the sidewall and the ceiling, not the junction of the end wall and the ceiling.

At 21:10-22:13 of his deposition (Ex. 2010), Mr. Malo testified that the television of Namikawa is mounted at the transition between the sidewall and the ceiling:

Q. Would the top dotted line, would that be along the ceiling?

A. It would be the juncture of the ceiling and something, yes.

Q. If we follow it to the end of the television, is the curved line the ceiling?

A. You mean down at the end of the car, yes.

Q. So wouldn't the top dotted line be along the ceiling?

A. It would be along the ceiling and the juncture of something else. They don't extend the dotted lines to the end.

Q. Below the bottom dotted line there is another line, what is that, a solid line, excuse me, so the bottom dotted line and then there is a solid line below that. What is that?

A. That appears to be the juncture of the side wall and not the

ceiling, but whatever that space is between the two dotted lines.

Q. So that solid line is the juncture, okay. Is Namikawa mounted on top of the wall, the television in this figure 1?

A. Did you say mounted on top of the wall?

Q. Correct.

A. It looks like it's mounted on the transition between the wall and the ceiling.

This testimony is relevant because it confirms that Mr. Malo testified that the television of Namikawa is not located along the ceiling but instead is located at the junction/transition of the sidewall and the ceiling.<sup>1</sup>

## **II. RESPONSE TO OBSERVATIONS 2-3:**

PO asserts in its second and third observations that because of horizontal structural members in the car, there would not be any space available in the cavity behind the wall at the transitional wall portion to flush-mount a television. The cited testimony is not relevant because Mr. Malo did not testify that the horizontal structural members would not leave enough space to flush-mount a television.

Moreover, at 24:4-12, Mr. Malo testified that horizontal structural members come

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<sup>1</sup> PO's first observation and the cited testimony go beyond the scope of Mr. Malo's supplemental declaration and relate to an issue that Patent Owner ("PO") did not argue in the PO Response, *i.e.*, whether Namikawa discloses the "mounted at the junction" (and like) limitations.

in several pieces and that they are put together in between the vertical members:

Q. Are there horizontal members also?

A. Yes.

Q. How many members are there?

A. They come in pieces. They are put in pieces in between the vertical members so down the length of the car, depends on how many windows there are, for example, so again, it would be -- it varies depending on the car, the construction, the length of the car, but there are many of them, yes.

Further, at 26:11-13, Mr. Malo further testified that these structural members could easily be moved:

Q. Would it be complicated to move structural members?

A. No.

This testimony is relevant because it shows that the longitudinal members are made from several pieces and could easily be moved if necessary to flush mount a television.

### **III. RESPONSE TO OBSERVATIONS 4-5:**

PO asserts in the fourth observation that, because Mr. Malo has not seen the specification sheets for the television of Namikawa, he could not have determined how much heat its television generates and how much space would have been needed to move the television into the wall. Similarly, PO asserts in the fifth observation that, without the specification sheets for Namikawa, Mr. Malo could

not determine if a cover would cause heat build-up. In both cases, PO asserts that Mr. Malo's testimony contradicts his prior testimony that there would be enough space in the cavity at the junction to flush-mount the television or cover unit and safely dissipate any excess heat.

With respect to the fourth observation, Mr. Malo explained in his supplemental declaration that LCD televisions in 1997 typically did not generate much heat, and that, even if a particular LCD television did, a POSITA would have known how to dissipate the heat if necessary, using several well-known techniques, including using space behind the television. (Ex. 1034, ¶¶ 8, 15, 17.) He also explained that “[a]lthough the amount of space required would have varied depending on the particular case, I estimate that for a typical LCD television in 1997, the amount of space behind the television required to dissipate the excess heat would have been relatively small, likely about 2 to 5 cm.” (*Id.*, ¶ 16.) The cited deposition testimony merely explained that one would have reviewed the specific television's specification sheet in determining how much space would be needed to dissipate the heat—within the predicted range of about 2 to 5 cm.

With respect to the fifth observation, Mr. Malo testified about the mock-up that he built to test the LCD televisions installed in the Colorado Rail Car project, which he discussed at paragraph 10 of his supplemental declaration. (Ex. 2010, 6:12-19:6; Ex. 1034, 10.) Mr. Malo explained that the LCD televisions in that

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