

UNITED STATES PATENT AND TRADEMARK OFFICE

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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 IPR2017-01036  
Patent 6,700,602 B1

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Before JAMESON LEE, SCOTT A. DANIELS, and  
KEVIN C. TROCK, *Administrative Patent Judges*.

DANIELS, *Administrative Patent Judge*.

**ORDER**

Conduct of the Proceeding  
*37 C.F.R. § 42.5*

Pursuant to our Order on May 3, 2018, the parties provided to the Board, by email on May 10, 2018, a proposed schedule to address the newly instituted grounds in this proceeding. Paper 38. The proposed schedule assumed an extension of the statutory due date, presumably under 37 C.F.R. § 42.100(c), and a new Oral Hearing date of December 19, 2018. In light of the approaching June 5, 2018 Oral Hearing date in this proceeding, the Board conducted a telephone conference with Petitioner's counsel, Mr. Mark Chapman and Mr. Armin Ghiam, as well as Patent Owner's counsel, Ms. Jennifer Meredith, on May 14, 2018, to discuss the schedule.

The Board informed the parties during the call that the statutory due date in this proceeding would not be extended because the newly instituted grounds consisted of either, or both, the substitution of Miyajima for Namikawa as a primary reference, and the substitution of JTOA Magazine as a secondary reference for Sasao. *See* Pet. 6–7. The Board explained that the technical subject matter of the two additional references relevant to the newly instituted grounds was not so disparate as to impose an unreasonable burden on either party to address the added grounds, particularly where the Board is willing to change the Oral Hearing date in this proceeding. In that regard, we note further that in related Case IPR2017-00117, Patent Owner already has, in a preliminary response (Paper 6), addressed Miyajima applied as a primary reference against independent claim 1 of the patent involved in this proceeding, and JTOA Magazine applied as a secondary reference against independent claim 1 of the patent involved in this proceeding.

The Board also asked the parties' counsel if they would consider waiving the newly instituted grounds. Both Mr. Chapman and Ms. Meredith indicated that this was a possibility, and Petitioner requested two days, due to the time difference, to contact their overseas client to discuss the matter. The Board requested that Mr. Chapman meet and confer with Patent Owner's counsel, then send an email to the Board as soon as they had an answer from their client with respect to such a waiver.

We indicated that in the event that the parties are not able to agree to waive the newly instituted grounds, the Board could move the Oral Hearing date to the week of July 9, to accommodate a Supplemental Patent Owner's Response and Supplemental Petitioner's Reply as well as respective cross-examination of any witnesses. Because the parties' counsel were unable to agree on intervening dates for their respective supplemental briefs during the call, the Board set June 8, 2018 as the date for Patent Owner's Supplemental Response in the event there is no agreement to waive the newly instituted grounds. The Board noted also that the parties' supplemental briefs must be limited to the newly instituted grounds in this proceeding.

As set forth above, the parties shall meet and confer and inform the Board by email no later than May 17, 2018 whether they will file a joint motion to waive the newly instituted grounds. If not, based on the June 8, 2018 due date for the Supplemental Patent Owner's Response, the parties will propose in their email to the Board, a reasonable schedule, given the two alternative references and new grounds, in which each party can accomplish their briefing, any additional cross-examinations, and any Motions for Observation by July 5, 2018. In either event, the parties shall also provide two alternative dates and times during the week of May 21–25,

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2018, for a telephone conference with the Board to finalize the schedule in this proceeding.

In consideration of the foregoing, it is hereby:

ORDERED that Patent Owner's Supplemental Response is limited to the newly instituted grounds and must be filed no later than June 8, 2018;

FURTHER ORDERED that the parties shall meet and confer as to waiver of the newly instituted grounds, and inform the Board by email no later than May 17, 2018 whether they will file a joint motion to waive the newly instituted grounds;

FURTHER ORDERED that should Petitioner and Patent Owner not agree to file a joint motion to waive the newly instituted grounds, the parties will propose in their email to the Board a schedule in which each party can accomplish their briefing, any additional cross-examinations, and any Motions for Observation, by July 5, 2018; and

FURTHER ORDERED that the parties shall provide also in the email to the Board two alternative dates and times during the week of May 21–25, 2018, for a telephone conference with the Board to finalize the schedule in this proceeding.

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