

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIBERTY MUTUAL INSURANCE CO.

Petitioner

v.

PROGRESSIVE CASUALTY INSURANCE CO.

Patent Owner

Case CBM2012-00002

Patent 6,064,970

Before the Honorable JAMESON LEE, JONI Y. CHANG, and MICHAEL R. ZECHER, *Administrative Patent Judges*.

**REBUTTAL DECLARATION OF SCOTT ANDREWS ON BEHALF OF
PETITIONER LIBERTY MUTUAL INSURANCE CO. REGARDING U.S.
PATENT NO. 6,064,970**

I, Scott Andrews, hereby declare under penalty of perjury:

I have previously been asked by Liberty Mutual Insurance (“Liberty”) to testify as an expert witness in this action. As part of my work in this action, I have been asked by Liberty to respond to certain assertions and opinions offered by Dr. Mark Ehsani and Progressive Casualty Insurance Co. (“Progressive”) in this proceeding concerning U.S. Patent No. 6,064,970 (“the ‘970 patent”).

I. Prior Testimony

1. I am the same Scott Andrews who provided a Declaration in this matter executed on September 15, 2012 as Exhibit 1012.

II. Experience, Qualifications, and Compensation

2. My information regarding experience, qualifications, and compensation are provided along with my prior Declaration, Exhibit 1012, and CV, Exhibit 1013.

III. Scope of Study and Rebuttal Opinions

A. Questions Presented

3. I have been asked to respond to certain assertions and opinions of Dr. Mark Ehsani expressed in his declaration of May 1, 2013 as Exhibit 2016, and certain assertions of Progressive in its Patent Owner's Response of May 1, 2013.

B. Materials Considered

4. In developing my opinions below, and in addition to the materials identified in my prior declaration at paragraph 13, I have considered the following materials:

- Declaration of Dr. Mark Ehsani (Ex. 2016);
- CV of Dr. Mark Ehsani (Ex. 2017)
- Patent Owner's Response Pursuant to 37 C.F.R. § 42.220 (Paper 27) ("Opposition" or "Opp.");
- Board's Decision on Institution of Covered Business Method Review (Paper 10);

- All other materials referenced as exhibits herein.

IV. Analysis and Opinions

A. **Dr. Ehsani's Opinions and Progressive's Assertions Concerning Kosaka's Disclosures Regarding Fuzzy Logic**

5. Contrary to Dr. Ehsani's testimony, a person of ordinary skill in the telematics aspects of the '970 patent¹ would understand how to implement the fuzzy logic processing in Kosaka's Risk Evaluation Unit. Progressive's expert, Dr. Ehsani, is wrong when he states otherwise. *E.g.*, EX2016 ¶¶ 28-29. Although a person of ordinary skill in the art might not be an "expert" in the sub-specialty of fuzzy logic, such a person would know enough about fuzzy logic to understand Kosaka and the technology for implementing it. In fact, Dr. Ehsani himself acknowledges that the membership functions provided by Kosaka can be found in conceptual introductions to basic fuzzy logic. EX2016 ¶ 31. Thus, understanding the fuzzy logic aspects of Kosaka requires a minimal understanding of fuzzy logic.

6. Fuzzy logic was well established and fairly common by 1996. Dr. Ehsani himself references a 1994 book on fuzzy logic in one of his papers cited in his CV. J.P. Johnson, K. M. Rahman, & M. Ehsani, "*Application of a Clustering Adaptive Fuzzy Logic Controller in a Brushless DC Drive*," IEEE-IECON'97, New Orleans, LA, November 1997, pp. 1001-1005 (EX1020) (referencing Wang, L., Adaptive Fuzzy

¹ As before, for purposes of this Declaration, unless otherwise noted, my statements and opinions below reflect the knowledge that existed in the field as of January 1996.

System and Control – Design and Stability Analysis, Prentice Hall, Englewood Cliffs, N.J., 1994) (cited in EX2017 at 8). And during this period fuzzy logic was also the subject of general study, as reflected, *e.g.*, by the publication shortly thereafter of a textbook by Reza Langari & John Yen, *Fuzzy Logic: Intelligence, Control, and Information 3* (1999) (EX1021) (“[a]fter being mostly viewed as a controversial technology for two decades, fuzzy logic has finally been accepted as an emerging technology since the late 1980s”). By 1996, I already had studied several fuzzy logic systems and supervised many engineers with similar fuzzy logic experience. In 1994, I was leading a team of engineers doing a variety of automotive systems development. These engineers were generally of the same level of skill as I have set forth as a typical POSITA. On one project they used fuzzy logic to track radar targets for an automotive radar system. On another they used fuzzy logic to classify accelerometer data from crash sensors in order to determine if and when to fire the airbags in a car. As far as I know, Dr. Ehsani is correct in that none of these engineers had received any *formal training* in fuzzy logic *per se*, but the technical concepts are not difficult, and with only a modest amount of research in target acquisition and tracking these engineers decided to use fuzzy logic, and then implemented the system. Thus, in my opinion, such a POSITA, faced with a technical problem (in this case classifying the driving behavior of insureds) would easily identify fuzzy logic as an effective classification system, and then set about implementing the technical aspects of the system by consulting references for any needed details, and testing solutions. In fact, few engineers practice

exclusively in technology for which they have formal training, and a good measure of the capability of an engineer, as I have learned in interviewing and hiring many engineers throughout my career, is their ability to apply their core technical skills to finding solutions to problems; in the real world outside of a formal curriculum, these problems are seldom like those found in textbooks. An engineer of ordinary capability knows where to look for a solution, and has the skills to understand those solutions based on basic technical principles.

7. Progressive cites to their deposition of me and argues I had trouble reading and understanding Kosaka. Opp. at 32. However, they misunderstand my testimony. Instead, I was expressing difficulty based on the way the question asked of me was phrased—in other words, I was initially unclear as to what I was being asked. Once the question was clarified, I was able to respond based on Kosaka’s disclosure. EX2018 at 142:11-145:14. Additionally, Progressive cites to two errors in my declaration (neither of which substantively altered my conclusions) as evidence of Kosaka being confusing. Opp. at 32. However, these were not based on difficulties with Kosaka. First, in my original declaration, as I raised during the deposition, I accidentally said “second fuzzy logic part,” when I actually meant “third fuzzy logic part.” EX2018 at 138:3-7. Second, I acknowledged during my deposition that I misspoke when I stated that “operator control density” is integrated; rather, it is the product of integration. This does not change my conclusion that Kosaka discloses

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