

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

PATENT OWNER'S NOTICE OF OBJECTIONS TO EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64

The undersigned, on behalf of Patent Owner Progressive Casualty Insurance Co. (“Progressive” or “Patent Owner”), hereby provides Notice to the Board that the objections made on the record herewith were served to Liberty Mutual Insurance Co. pursuant to 37 C.F.R. § 42.64. *See also* 37 C.F.R. § 42, Office Patent Trial Practice Guide, part II, § I.

Respectfully submitted,

JONES DAY

August 13, 2013

By: /Calvin P. Griffith/
Calvin P. Griffith
Registration No. 34,831
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190
(216) 586-3939
(216) 579-0212 (Fax)
Attorneys For Patent Owner

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

PATENT OWNER'S OBJECTIONS TO
EVIDENCE PURSUANT TO 37 C.F.R. § 42.64

Pursuant to 37 C.F.R. § 42.64(b)(1), the undersigned, on behalf of Patent Owner Progressive Casualty Insurance Co. (“Progressive” or “Patent Owner”), hereby submits the following objections to Exhibit 1019, Exhibit 1020, Exhibit 1021, Exhibit 1022, Exhibit 1023, Exhibit 1024, Exhibit 1025, Exhibit 1026, Exhibit 1027, Exhibit 1028, Exhibit 1029, and Exhibit 1030 attached to Liberty Mutual Insurance Co.’s (“Liberty” or “Petitioner”) Reply to Patent Owner’s Response (“Reply”). *See* CBM2012-00002, Paper 33 (and exhibits thereto). Pursuant to 37 C.F.R. § 42.62, Patent Owner’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

I. OBJECTIONS TO EXHIBIT 1019 AND ANY REFERENCE TO/RELIANCE THEREON

Patent Owner hereby objects to Exhibit 1019, Rebuttal Declaration of Scott Andrews, dated August 6, 2013 (“Andrews Rebuttal Declaration”).

Grounds for objection: 37 C.F.R. § 42.61 (Admissibility of Evidence), F.R.E. 402 (Relevance), F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons), 37 C.F.R. § 42.223 (Filing of Supplemental Evidence), F.R.E. 702, 703, 705 (Witness Not Qualified to Provide Expert Testimony), 37 C.F.R. § 42.65 (Failure to Disclose Underlying Facts or Data), F.R.E. 801, 802 (Impermissible Hearsay), 37 C.F.R. §42.23(b) (Outside

Scope of Response and Petition), and the Andrews Rebuttal Declaration is unauthorized testimony.

Petitioner cites the Andrews Rebuttal Declaration as allegedly rebutting certain arguments presented by Patent Owner in its Patent Owner Response. However, Petitioner's Reply improperly mischaracterizes and misrepresents Patent Owner's arguments in order to provide an artificial basis (which it otherwise could not) for its new declaration it calls a "Rebuttal Declaration." Patent Owner advanced no position that provides a proper basis for the belated submission of new declarations (37 C.F.R. 42.23(b), 42.223; 37 C.F.R. 42, Office Patent Trial Practice Guide, part II, § I). The statements in the Andrews Rebuttal Declaration have no relevant bearing on any issue properly raised in this proceeding (F.R.E. 402, 403; 37 C.F.R. § 42.61).¹ Rather, the Andrews Rebuttal Declaration is used by Petitioner to present new prior art (to the extent any of the documents referenced therein constitute prior art) and raise new theories to support its invalidity arguments in order to make out a *prima facie* case of unpatentability of the claims that could only have been submitted with the Petitioner's petition for

¹ Paragraph 8 in Exhibit 1019 is also irrelevant because Petitioner's Reply includes no citation to that paragraph.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.