

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*.

**RULE 42.64(b)(2) 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 under the laws of the United States of America:

I have previously been asked by Liberty Mutual Insurance (“Liberty”) to testify as an expert witness in this action.

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, and a Rebuttal Declaration in this matter executed on August 6, 2013 as Exhibit 1019. (My information regarding experience, qualifications, and compensation has been provided along with my prior Declaration, Exhibit 1012, and CV, Exhibit 1013.)

II. Response to Evidentiary Objections

2. I understand an evidentiary objection has been made to Exhibit 1019, asserting that it is hearsay, but in fact it is my sworn expert testimony in the matter. *See* Patent Owner's Notice of Objection to Evidence Pursuant to 37 C.F.R. § 42.64, at 5.

3. I understand that a further evidentiary objection has been made to Exhibit 1019, asserting that it has "no relevant bearing on any issue actually raised in this proceeding." *See* Patent Owner's Notice of Objection to Evidence Pursuant to 37 C.F.R. § 42.64, at 2-3. As I stated in my Rebuttal Declaration (Exhibit 1019), I testified in Exhibit 1019 solely to rebut issues actually raised by Patent Owner in its Patent Owner's Response, including assertions and opinions of Mark Ehsani expressed in his declaration of May 1, 2013 (attached to the Patent Owner's Response as Exhibit 2016) and certain assertions of Progressive in its Patent Owner's Response of May 1, 2013. Contrary to Progressive's evidentiary objection, my testimony was not offered to "raise new theories to support [Liberty's] invalidity arguments in order to make out a *prima facie* case of unpatentability of the claims," which I understand the Board already found to exist in its Institution Decision.

4. Furthermore, I understand that an evidentiary objection has been made to Exhibit 1019, asserting that my testimony "could have been elicited during direct examination in the first instance." *See* Patent Owner's Notice of Objection to Evidence Pursuant to 37 C.F.R. § 42.64, at 3-4. In particular, Progressive objects to

my testimony in paragraph 7 as an “alleged clarification” of my cross-examination testimony. *Id.* However, as I stated in my declaration, I was not attempting to clarify my testimony. I believe my testimony was quite clear. I was attempting to correct Progressive’s incorrect interpretation of my cross-examination testimony.

5. Exhibit 1030, the Declaration of Darrell W. Stark, indicates Exhibit 1020 was downloaded from the publisher’s web site (www.ieee.org). I have downloaded the document on July 31, 2013 from the same publisher’s web site (in particular through its digital library at <http://ieeexplore.org>, which is linked to the publisher’s web site home page), and confirm that it contains identical text to the one filed as Exhibit 1020.

Executed this 26th day of August, 2013



Scott Andrews

At: Forestville, CA