

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. (“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 (77 Fed. Reg. 48,756, 48,767 (Aug. 14, 2012)).

Respectfully submitted,

JONES DAY

September 4, 2013

By: /s/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)
Attorney For Patent Owner

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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. (“Patent Owner”), hereby submits the following objections to Exhibits 1031-1033 filed on August 27, 2013 by Liberty Mutual Insurance Co. (“Liberty” or “Petitioner”) in response to Patent Owner’s Objections to Evidence, filed August 13, 2013. Pursuant to 37 C.F.R. § 42.62, Patent Owner’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

I. PATENT OWNER MAINTAINS ITS PRIOR OBJECTIONS

Patent Owner maintains all objections it previously set forth, including its objections filed on August 13, 2013. (*See* CBM2012-00002, Paper No. 34).

II. EXHIBITS 1031-1033 GO BEYOND EVIDENCE PERMITTED UNDER 37 C.F.R. § 42.64(B)(2)

37 C.F.R. § 42.64(b)(2) provides that a “party relying on evidence to which an objection is timely served may respond to the objection by serving supplemental evidence within ten business days of service of the objection.” Patent Owner objects to Exhibits 1031-1033 because they go beyond, and are not proper supplemental evidence pursuant to, 37 C.F.R. § 42.64(b)(2).

III. OBJECTIONS TO EXHIBIT 1031 AND ANY REFERENCE TO/RELIANCE THEREON

Patent Owner hereby objects to Exhibit 1031, Declaration of Scott Andrews, dated August 26, 2013 (“Andrews Third 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), F.R.E. 901 (Authentication), 37 C.F.R. § 42.223 (Filing of Supplemental Evidence), F.R.E. 702, 703, 705 (Witness Not Qualified to Provide Expert Testimony), F.R.E. 602 (Lack of Personal Knowledge), F.R.E. 801, 802 (Impermissible Hearsay), 37 C.F.R. § 42.23(b) (Outside Scope of Response and Petition), and the Andrews Third Declaration is unauthorized testimony.

Patent Owner advanced no position that provides a proper basis for the belated submission of the Andrews Third Declaration or the exhibits referenced therein, *i.e.*, the Andrews Second Declaration (Exhibit 1019), a purported copy of an article titled “Application of a Clustering Adaptive Fuzzy Logic Controller in a Brushless DC Drive” (Exhibit 1020), and the Stark Declaration (Exhibit 1030). (37 C.F.R. § 42.23(b); 37 C.F.R. § 42.223; 37 C.F.R. 42, Office Patent Trial Practice Guide, part II, § I, 77 Fed. Reg. 48,756, 48,767 (Aug. 14, 2012)). The statements in the Andrews Third Declaration have no relevant bearing on any issue properly raised in this proceeding or argued by Patent Owner. (F.R.E. 402, 403; 37 C.F.R. § 42.61). Rather, the Andrews Third Declaration is an attempt to raise new theories to support invalidity arguments in an effort to establish a *prima facie* case of unpatentability of the claims that should have been submitted with the

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