

CERTIFICATE OF SERVICE

It is certified that a copy of this Notification has been served in its entirety on the patent owner as provided in 37 CFR 1.33(c).

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Respectfully submitted,

**ROPES & GRAY LLP**

By /J. Steven Baughman/  
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Registration No. 47,414  
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## Electronic Acknowledgement Receipt

<b>EFS ID:</b>	9175732
<b>Application Number:</b>	90011252
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	4116
<b>Title of Invention:</b>	MOTOR VEHICLE MONITORING SYSTEM FOR DETERMINING A COST OF INSURANCE
<b>First Named Inventor/Applicant Name:</b>	6,064,970
<b>Correspondence Address:</b>	James A. Collins - P.O. BOX 10395 - Chicago IL 60610 US - -
<b>Filer:</b>	Matthew Robert Clements
<b>Filer Authorized By:</b>	
<b>Attorney Docket Number:</b>	LMIC-019
<b>Receipt Date:</b>	06-JAN-2011
<b>Filing Date:</b>	22-SEP-2010
<b>Time Stamp:</b>	14:48:12
<b>Application Type:</b>	Reexam (Third Party)

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### File Listing:

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Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1		LMIC_019_Notification_of_Concurrent_Proceedings.pdf	94616 3241e5c0838a47131b248698975cf03d247eae66	yes	3
<b>Multipart Description/PDF files in .zip description</b>					
	<b>Document Description</b>	<b>Start</b>	<b>End</b>		
	Notice of concurrent proceeding(s)	1	2		
	Reexam Certificate of Service	3	3		
<b>Warnings:</b>					
<b>Information:</b>					
2	Notice of concurrent proceeding(s)	LMIC_019_Stay_Decision_By_Court.pdf	55724 19f8d42f37b888b58f31af3b4495c234a7f89f35	no	9
<b>Warnings:</b>					
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<b>Total Files Size (in bytes):</b>			150340		
<p><b>This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.</b></p> <p><b><u>New Applications Under 35 U.S.C. 111</u></b>  If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.</p> <p><b><u>National Stage of an International Application under 35 U.S.C. 371</u></b>  If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.</p> <p><b><u>New International Application Filed with the USPTO as a Receiving Office</u></b>  If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.</p>					



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/011,252	09/22/2010	6,064,970	LMIC-019	4116
	7590	11/24/2010	EXAMINER	
James A. Collins P.O. BOX 10395 Chicago, IL 60610			ART UNIT	PAPER NUMBER

DATE MAILED: 11/24/2010

Please find below and/or attached an Office communication concerning this application or proceeding.





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**NOV 24 2010**

**CENTRAL REEXAMINATION UNIT**

**EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM**

REEXAMINATION CONTROL NO. 90/011,252.

PATENT NO. 6,064,970.

ART UNIT 3992.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

<b>Order Granting / Denying Request For Ex Parte Reexamination</b>	<b>Control No.</b> 90/011,252	<b>Patent Under Reexamination</b> 6,064,970	
	<b>Examiner</b> Karin M. Reichle	<b>Art Unit</b> 3992	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The request for *ex parte* reexamination filed 22 September 2010 has been considered and a determination has been made. An identification of the claims, the references relied upon, and the rationale supporting the determination are attached.

Attachments: a)  PTO-892,      b)  PTO/SB/08,      c)  Other: \_\_\_\_\_

1.  The request for *ex parte* reexamination is GRANTED.

RESPONSE TIMES ARE SET AS FOLLOWS:

For Patent Owner's Statement (Optional): TWO MONTHS from the mailing date of this communication (37 CFR 1.530 (b)). **EXTENSIONS OF TIME ARE GOVERNED BY 37 CFR 1.550(c).**

For Requester's Reply (optional): TWO MONTHS from the date of service of any timely filed Patent Owner's Statement (37 CFR 1.535). **NO EXTENSION OF THIS TIME PERIOD IS PERMITTED.** If Patent Owner does not file a timely statement under 37 CFR 1.530(b), then no reply by requester is permitted.

2.  The request for *ex parte* reexamination is DENIED.

This decision is not appealable (35 U.S.C. 303(c)). Requester may seek review by petition to the Commissioner under 37 CFR 1.181 within ONE MONTH from the mailing date of this communication (37 CFR 1.515(c)). **EXTENSION OF TIME TO FILE SUCH A PETITION UNDER 37 CFR 1.181 ARE AVAILABLE ONLY BY PETITION TO SUSPEND OR WAIVE THE REGULATIONS UNDER 37 CFR 1.183.**

In due course, a refund under 37 CFR 1.26 ( c ) will be made to requester:

- a)  by Treasury check or,  
b)  by credit to Deposit Account No. \_\_\_\_\_, or  
c)  by credit to a credit card account, unless otherwise notified (35 U.S.C. 303(c)).

cc:Requester ( if third party requester )

## DETAILED ACTION

### Decision

1. A request for reexamination containing proposed substantial new questions of patentability affecting all claims 1-15 of U.S. Patent No. 6,064,970 is set forth in the request submitted September 22, 2010. A substantial new question of patentability affecting claims 1-15 of United States Patent Number 6,064,970 is raised by the request for *ex parte* reexamination.

### Extensions of Time

2. Extensions of time under 37 CFR 1.136(a) will not be permitted in these proceedings because the provisions of 37 CFR 1.136 apply only to "an applicant" and not to parties in a reexamination proceeding. Additionally, 35 U.S.C. 305 requires that reexamination proceedings "will be conducted with special dispatch" (37 CFR 1.550(a)). Extension of time in *ex parte* reexamination proceedings are provided for in 37 CFR 1.550(c).

### Notification of Concurrent Proceedings

3. The patent owner is reminded of the continuing responsibility under 37 CFR 1.565(a), to apprise the Office of any litigation activity, or other prior or concurrent proceeding, involving Patent No. 6,064,970 throughout the course of this reexamination proceeding. The third party requester is also reminded of the ability to similarly apprise

Art Unit: 3992

the Office of any such activity or proceeding throughout the course of this reexamination proceeding. See MPEP §§ 2207, 2282 and 2286.

#### **Amendment in Reexamination Proceedings**

4. Patent owner is notified that any proposed amendment to the specification and/or claims in this reexamination proceeding must comply with 37 CFR 1.530(d)-(j), must be formally presented pursuant to 37 CFR 1.52(a) and (b), and must contain any fees required by 37 CFR 1.20(c).

#### **Submissions**

5. In order to insure full consideration of any amendments, affidavits or declarations or other documents as evidence of patentability, such documents must be submitted in response to the first Office action on the merits (which does not result in a close of prosecution). Submissions after the second Office action on the merits, which is intended to be a final action, will be governed by the requirements of 37 CFR 1.116, after final rejection and by 37 CFR 41.33 after appeal, which will be strictly enforced.

#### **Waiver of Right to File Patent Owner Statement**

6. In a reexamination proceeding, Patent Owner may waive the right under 37 C.F.R. 1.530 to file a Patent Owner Statement. The document needs to contain a statement that Patent Owner waives the right under 37 C.F.R. 1.530 to file a Patent Owner Statement and proof of service in the manner provided by 37 C.F.R. 1.248, if the request for reexamination was made by a third party requester, see 37 C.F.R. 1.550(f).

Art Unit: 3992

The Patent Owner may consider using the following statement in a document waiving the right to file a Patent Owner Statement:

**WAIVER OF RIGHT TO FILE PATENT OWNER STATEMENT**

Patent Owner waives the right under 37 C.F.R. 1.530 to file a Patent Owner Statement.

**Service of Papers**

7. After filing of a request for *ex parte* reexamination by a third party requester, any document filed by either the patent owner or the third party requester must be served on the other party (or parties where two or more third party requester proceedings are merged) in the reexamination proceeding in the manner provided in 37 CFR 1.248. The document must reflect service or the document may be refused consideration by the Office. See 37 CFR 1.550(f).

**References Asserted as Raising a Substantial New Question**

8. The substantial new question of patentability (SNQP) regarding claims 1-15 of the '970 Patent is based upon the following references:

A. Japanese Patent Publication No. JP-A-4/182868, filed on November 19, 1990 and published on June 30, 1992, to Kosaka ("Kosaka") and Certified English-Language Translation.

B. "An Interest in Black Magic - Motor Technology" published on January 1, 1994 in Insurance Age magazine ("Black Magic").

C. U.S. Patent No. 5,570,087, filed on February 18, 1994 and issued on October 29, 1996, to Lemelson ("Lemelson").

D. "Notes on Exposure and Premium Bases" by P. Dorweiler, on page 319 of a book published in 1930 by the Casualty Actuarial Society entitled "Proceedings of the Casualty Actuarial Society" ("Dorweiler").

E. U.S. Patent No. 5,465,079, filed on August 13, 1993 and issued on November 7, 1995, to Bouchard et al. ("Bouchard").

F. WO 90/02388, filed on August 8, 1989 and published on March 8, 1990, to Pettersen ("Pettersen").

Other Evidence:

"Admitted Prior Art" identified by Requester as the arguments set forth in the response of July 19, 1999 on page 5, lines 10-13 during prosecution of the application (09/135,034) that led to the issuance of the '970 patent.

**Availability of Asserted References as Prior Art**

9. The references to Kosaka ('868) and Pettersen ('388) include issue dates more than one year prior to the effective filing date (January 29, 1996) of the patent ('970) requested for reexamination and thus are available as prior art under 35 USC 102(b) and 35 USC 103.

The references to Lemelson ('087) and Bouchard ('079) include filing dates prior to the effective filing date (January 29, 1996) of the patent ('970) requested for reexamination and thus are available as prior art under 35 USC 102(e) and 35 USC 103.

The reference copies of Black Magic and Dorweiler indicate a publication date more than one year prior to the effective filing date (January 29, 1996) of the patent

Art Unit: 3992

('970) requested for reexamination and thus are available as prior art under 35 USC 102(b) and 35 USC 103.

#### **Summary of Prosecution History**

10. U.S. Application 09/135,034 was filed on August 17, 1998 as a continuation of 08/592,958 filed January 29, 1996 which parent application issued August 18, 1998 as U.S. Patent No. 5,797,134. The application ('034) included original claims 1-20.

Transmittal papers filed by Applicant on August 17, 1998 cancelled claims 1-27. A preliminary amendment was also filed by Applicant on August 17, 1998 adding claims 28-34. Another preliminary amendment stamped December 28, 1998, with a certificate of mailing dated December 23, 1998, was filed adding claims 35-47.

A non-final office action was mailed by USPTO on March 18, 1999. Original claims 1-20 were treated as cancelled and claims 28-47 were renumbered 21-40. Claims 27, 35-36, and 39-40 were rejected under both 35 USC 112, first paragraph, and 35 USC 112, second paragraph. A non-statutory double patenting rejection of claims 21-26, 28-34, 37 and 38 over claims 1-26 of the parent U.S. Patent No. 5,797,134 was set forth. Claims 21-24, 28-29, 33-34 were rejected under 35 USC 102(b) as being clearly anticipated by Camhi et al (U.S. Patent No. 5,430,432) or Ousbourn (U.S. Patent No. 5,499,182). The Pettersen reference, see section 8, F. supra, was cited but not applied against the claims nor specifically discussed. Note paragraph 10 and PTO-892 of such office action.

Applicant filed a response with remarks stamped on July 19, 1999 with a certificate of mailing dated July 19, 1999. Claims 25, 27, 35, 36, 39 and 40 were cancelled and claim 24 was amended.

A second non-final office action was mailed by USPTO on August 13, 1999. A non-statutory double patenting rejection of all the claims 21-24, 26, 28-34 and 37-38 was set forth. All of the claims, claims 21-24, 26, 28-34 and 37-38, were rejected under 35 USC 102(b) as being clearly anticipated by Camhi et al (U.S. Patent No. 5,430,432) or Ousbourne (U.S. Patent No. 5,499,182).

An interview was conducted on November 12, 1999. The substance of such interview, i.e. "Representative Roche argued that the instant invention is directed to a system which adjusts the insurance premium for the current insurance premium period and not a future insurance premium period as in the applied prior art. The examiner agreed with this argument in regard to claims 21, 24 & 26 and withdrew the rejection under 35 USC sect 102(b) for these claims. Further it was agreed that if independent claims 22 & 28 were to be amended to recite that the databases are generated with respect to the current insurance premium period, then the examiner agreed to withdraw the rejection under 35 USC sect 102(b) for these claims", was set forth in the Interview Summary form mailed by the USPTO on November 19, 1999. The rejection of claims 21, 24 and 26, and thereby claims 25 and 27 dependent therefrom, was withdrawn.

Applicant filed a response with remarks and terminal disclaimer stamped November 18, 1999 with a certificate of mailing dated November 15, 1999. Claims 22 and 28 were amended per the agreement reached during the November 12, 1999 interview and claim 41 was added.



A notice of allowance was mailed by USPTO on December 28, 1999. Claims 21-24, 26, 28-34, 37-38 and 41 were indicated as allowed. The claims were re-numbered as 1-15. U.S. Patent No. 6,064,970 was issued on May 16, 2000.

**Proposed Grounds of Rejection of claims 1-15 of the '970 Patent to**

**McMillian et al.**

11. (A) A substantial new question is raised as to the patentability of claims 4-8, 10, and 13 by Kosaka (JP-A-4/182868).

(B) A substantial new question is raised as to the patentability of claims 1-3, 11-12, and 14-15 by Kosaka (JP-A-4/182868) in view of Black Magic.

(C) A substantial new question is raised as to the patentability of claim 9 by Kosaka (JP-A-4/182868) in view of the Admitted Prior Art.

(D) A substantial new question is raised as to the patentability of claims 1-8 and 10-15 by Lemelson (U.S. Patent No. 5,570,087) in view of Dorweiler.

(E) A substantial new question is raised as to the patentability of claim 9 by Lemelson (U.S. Patent No. 5,570,087) in view of Dorweiler and the Admitted Prior Art.

(F) A substantial new question is raised as to the patentability of claims 1-8 and 10-15 by Bouchard (U.S. Patent No. 5,465,079) in view of Pettersen.

(G) A substantial new question is raised as to the patentability of claim 9 by Bouchard (U.S. Patent No. 5,465,079) in view of Pettersen and the Admitted Prior Art.

**Analysis of the Prior Art Provided in the Request**

12. (A) Requester asserts a substantial new question of patentability as to claims 4-8, 10 and 13 of the '970 patent in view of Kosaka ('868).

During prosecution of the application (09/135,034) that led to the issuance of the '970 patent, see paragraph 10 supra as well as the paragraph bridging pages 2-3 of the Request, independent claims including claims 4 and 5 (application claims 24 and 26) were allowed in light of Applicant's arguments presented during the November 12, 1999

Art Unit: 3992

interview, i.e. “the instant invention is directed to a system which adjusts the insurance premium for the current insurance premium period and not a future insurance premium period”, and independent claims including claim 6 (application claim 28) were allowed due to amendments per the agreement reached during the November 12, 1999, i.e.

“Further it was agreed that if independent claims 22 & 28 were to be amended to recite that the databases are generated with respect to the current insurance premium period, then the examiner agreed to withdraw the rejection under 35 USC sect 102(b) for these claims”. The argument/agreement was manifested by claim language, see, e.g., claim 4, i.e. “A method of insuring a vehicle operator for a **selected period** based upon operator driving characteristics **during the period**, comprising steps of: generating an initial operator profile; monitoring operator driving characteristics during the selected period; and deciding a cost of vehicle insurance for the period based upon the operating characteristics monitored in that period”; and the paragraph bridging pages 2-3 of the Request. As pointed out in the request on page 3, the paragraph bridging pages 4-5, the second full paragraph of page 16, and pages 23-25 and 26-49, Kosaka ('868), teaches an insurance premium determination device, see translation of '868 at, e.g., page 421, col. 2, section (6), for use in the automobile/vehicle insurance environment which determines the premiums in real time, i.e. continually, based on collection of risk evaluation data also measured in such real time, i.e. same time period, see translation of '868 at, e.g., page 422, col. 1, sections (9), (14), and (15) and col. 2, last full paragraph, page 424, col. 1, lines 4-8 and fifth full paragraph, page 427, paragraph bridging cols. 1-2, and page 429, col. 1, lines 27 et seq.

Given the teachings of Kosaka ('868), a reasonable examiner would consider these teachings important in evaluating the patentability of all of the independent claims of record, and thus the patentability of claims 4-8, 10 and 13 of the '970 patent. This art was not cited during the prosecution of US Patent No. 6,064,970. The teachings of Kosaka are new and non-cumulative and the claim at issue is not the subject of a final holding by a Federal Court. Accordingly, the reference to Kosaka ('868) raises a substantial new question of patentability with respect to claims 4-8, 10 and 13 of the '970 patent.

(B) Requester asserts a substantial new question of patentability as to claims 1-3, 11-12 and 14-15 of the '970 patent in view of Kosaka ('868) and Black Magic.

In Issue (A) supra, the reference to Kosaka was found to raise a substantial new question of patentability with respect to claims 4-8, 10 and 13. During prosecution of the application (09/135,034) that led to the issuance of the '970 patent, see paragraph 10 supra as well as the paragraph bridging pages 2-3 of the Request, the independent claims 1 and 2 (application claims 21 and 22) were allowed in light of similar arguments and amendments as discussed in such issue (A) with regard to claims 4-5 and claim 6, respectively. Claims 1-2 additionally require a data base/data collection including data elements representing time and location of vehicle operation. As pointed out in the request on page 5, lines 2-3 and pages 25-26 and 48-67, Black Magic contemplates usage of vehicle GPS technology/continuous tracking technology for data collection to accurately determine insurance rate premiums.

The proposed combination includes at least one reference (Kosaka) that does raise a substantial new question of patentability for all the claims asserted by the requester in this particular issue. Furthermore, given the teachings of Black Magic, a reasonable examiner would consider the combined teachings of Kosaka and Black Magic important in evaluating the patentability of all of the independent claims of record, and thus the patentability of claims 1-3, 11-12 and 14-15 of the '970 patent. This art combination was not cited during the prosecution of US Patent No. 6,064,970. The teachings of Kosaka and Black Magic are new and non-cumulative and the claims at issue are not the subject of a final holding by a Federal Court. Accordingly, the combination of Kosaka and Black Magic raises a substantial new question of patentability with respect to claims 1-3, 11-12 and 14-15 of the '970 patent.

(C) Requester asserts a substantial new question of patentability as to claim 9 of the '970 patent by Kosaka ('868) in view of "Admitted Prior Art".

On pages 67-68 of the Request, the "Admitted Prior Art" is identified by Requester as the arguments set forth in the response of July 19, 1999 on page 5, lines 10-13 during prosecution of the application (09/135,034) that led to the issuance of the '970 patent. Not only is such not an accurate/complete citation of such arguments but such response amounts to mere argument with regard to applied prior art, i.e. Camhi et al (U.S. Patent No. 5,430,432) or Ousbourn (U.S. Patent No. 5,499,182), and thereby, do not constitute an "admission" as "prior art" as set forth in MPEP 2129, I. and thus 2217, III. In any case, regardless of whether such argument/response is an "admission" of "prior art", such response by Applicant is merely cumulative to the teachings of Camhi et al

Art Unit: 3992

(U.S. Patent 5,430,432) or Ousbourne (U.S. Patent 5,499,182), i.e. arguments with regard to the teachings, and does not raise any questions of patentability that have not already been raised and/or addressed during prosecution of the earlier examination of the ('790) patent. However, in issue (A) supra, a determination was made that Kosaka ('868) raises a substantial new question of patentability with respect to claims 4-8, 10 and 13 and claim 9 depends directly from claim 6, and thus incorporates the subject matter of claim 6 by reference. Therefore, the proposed combination includes at least one reference (Kosaka) that does raise a substantial new question of patentability for the dependent claim asserted by the requester in this particular issue. Accordingly, based on the teachings of Kosaka ('868) alone, the proposed combination of Kosaka and the "Admitted Prior Art" include teachings which raise a substantial new question of patentability with respect to claim 9.

(D) Requester asserts a substantial new question of patentability as to claim 9 of the '970 patent by Lemelson ('087) in view of Dorweiler.

During prosecution of the application (09/135,034) that led to the issuance of the '970 patent, see paragraph 10 supra as well as the paragraph bridging pages 2-3 of the Request, independent claims including claims independent claims including claims 1, 4 and 5 (application claims 21, 24, 26) were allowed in light of Applicant's arguments presented during the November 12, 1999 interview, i.e. "the instant invention is directed to a system which adjusts the insurance premium for the current insurance premium period and not a future insurance premium period", and independent claims including claims 2 and 6 (application claims 22 and 28) were allowed due to amendments per the

Art Unit: 3992

agreement reached during the November 12, 1999, i.e. "Further it was agreed that if independent claims 22 & 28 were to be amended to recite that the databases are generated with respect to the current insurance premium period, then the examiner agreed to withdraw the rejection under 35 USC sect 102(b) for these claims". The argument/agreement was manifested by claim language, see, e.g., claim 4, i.e. "A method of insuring a vehicle operator for a **selected period** based upon operator driving characteristics **during the period**, comprising steps of: generating an initial operator profile; monitoring operator driving characteristics during the selected period; and deciding a cost of vehicle insurance for the period based upon the operating characteristics monitored in that period", and the paragraph bridging pages 2-3 of the Request. As pointed out in the request on page 3, page 4, and pages 69-117, Lemelson, issued in 1996, teaches the creation of evaluation codes/ a data base based on the real time monitoring of driver performance and sensing instrumentation of physical variables indicating the condition of the vehicle, see, e.g., col. 3, lines 20-38. As also pointed in the request at pages 3-4, 15 and 69-117 of the Request, Dorweiler contemplated retrospective insurance rate adjustment based upon monitored data representing physical variables indicating the condition of the vehicle although such monitoring/monitors were considered impractical at such time (the Dorweiler reference was published in 1930), see pages 338 and 339 thereof.

Given the combined teachings of Lemelson and Dorweiler, a reasonable examiner would consider these combined teachings important in evaluating the patentability of all of the independent claims of record, and thus the patentability of claims 1-8 and 10-15 of the '970 patent. This particular combination of prior art was not cited during the

Art Unit: 3992

prosecution of US Patent No. 6,064,970. The teachings of Dorweiler are new and non-cumulative and the claims at issue are not the subject of a final holding by a Federal Court. Accordingly, the combination of Lemelson and Dorweiler raise a substantial new question of patentability with respect to claim 1-8 and 10-15.

(E) Requester asserts a substantial new question of patentability as to claim 9 of the '970 patent by Lemelson ('087) in view of Dorweiler and "Admitted Prior Art".

On pages 117-118 of the Request, the "Admitted Prior Art" is identified by Requester as the arguments set forth in the response of July 19, 1999 on page 5, lines 10-13 during prosecution of the application (09/135,034) that led to the issuance of the '970 patent. Not only is such not an accurate/complete citation of such arguments but such response amounts to mere argument with regard to applied prior art, i.e. Camhi et al (U.S. Patent No. 5,430,432) or Ousbourn (U.S. Patent No. 5,499,182), and thereby, do not constitute an "admission" as "prior art" as set forth in MPEP 2129, I. and thus 2217, III. In any case, regardless of whether such argument/response is an "admission" of "prior art", such response by Applicant is merely cumulative to the teachings of Camhi et al (U.S. Patent 5,430,432) or Ousbourn (U.S. Patent 5,499,182), i.e. arguments with regard to the teachings, and does not raise any questions of patentability that have not already been raised and/or addressed during prosecution of the earlier examination of the ('790) patent. However, in issue (D) supra, a determination was made that the combination of Lemelson ('087) and Dorweiler raises a substantial new question of patentability with respect to claim 6 and claim 9 depends directly from claim 6, and thus incorporates the subject matter of claim 6 by reference. Therefore, the proposed combination includes at

Art Unit: 3992

least one reference (Dorweiler) that does raise a substantial new question of patentability for the dependent claim 9 asserted by the requester in this particular issue. Accordingly, based on the teachings of Lemelson ('087) and Dorweiler alone, the proposed combination of such and the "Admitted Prior Art" include teachings which raise a substantial new question of patentability with respect to claim 9.

(F) Requester asserts a substantial new question of patentability as to claims 1-8 and 10-15 of the '970 patent by Bouchard ('079) in view of Pettersen ('388). The prosecution history indicates that Pettersen was cited by the examiner in the final office action of April 2, 2001.

Accordingly, this reference is "old art". However, MPEP 2242 states:

*"For example, a substantial new question of patentability may be based solely on old art where the old art is being presented viewed in a new light, or in a different way, as compared with its use in the earlier examination(s), in view of a material new argument or interpretation presented in the request."*

In this instance, Requester asserts the combination of Bouchard and Pettersen, a combination which was not considered during prosecution since the reference to Bouchard was not cited during prosecution. Accordingly, such combination is not precluded from raising a substantial new question of patentability.

During prosecution of the application (09/135,034) that led to the issuance of the '970 patent, see paragraph 10 supra as well as the paragraph bridging pages 2-3 of the Request, independent claims including claims independent claims including claims 1, 4 and 5 (application claims 21, 24, 26) were allowed in light of Applicant's arguments



Art Unit: 3992

presented during the November 12, 1999 interview, i.e. "the instant invention is directed to a system which adjusts the insurance premium for the current insurance premium period and not a future insurance premium period", and independent claims including claims 2 and 6 (application claims 22 and 28) were allowed due to amendments per the agreement reached during the November 12, 1999, i.e. "Further it was agreed that if independent claims 22 & 28 were to be amended to recite that the databases are generated with respect to the current insurance premium period, then the examiner agreed to withdraw the rejection under 35 USC sect 102(b) for these claims". The argument/agreement was manifested by claim language, see, e.g., claim 4, i.e. "A method of insuring a vehicle operator for a **selected period** based upon operator driving characteristics **during the period**, comprising steps of: generating an initial operator profile; monitoring operator driving characteristics during the selected period; and deciding a cost of vehicle insurance for the period based upon the operating characteristics monitored in that period", and the paragraph bridging pages 2-3 of the Request. As pointed out in the request at page 4, page 16 and pages 118-168, Bouchard and Pettersen teach systems to monitor/compile data representing a drivers performance during a time period. As set forth at col. 9, lines 62 et sea, Bouchard further teaches data from such period, i.e. the "recent time period", is compared to "past" information to determine "current fitness", i.e. not retrospective adjustment. As also pointed out in the request at page 4 and 16 and pages 118-168, Pettersen further teaches using the data to allot a bonus. However Pettersen is silent as to the time period of such bonus/adjustment. Note Requester's further assumption as to one of ordinary skill with regard to the teachings of Bouchard and Pettersen at, e.g., page 16, lines 5 -10 of the request. A

Art Unit: 3992

review of the prosecution history of the '970 patent, see, e.g., pages 9-15 of the Request and section 10 supra, reveal that those same teachings were provided by Camhi et al (U.S. Patent No. 5,430,432), see, e.g., col. 2, lines 28-45 and col. 3, lines 42-49, or Ousbourn (U.S. Patent 5,499,182), see, e.g., col. 2, lines 26-34, col. 6, lines 39-40, and col. 7, lines 3-9, during prosecution of the application that led to the issuance of the '970 patent. Therefore, the teachings of Bouchard and Pettersen are merely cumulative to the teachings of Camhi et al (U.S. Patent 5,430,432) or Ousbourn (U.S. Patent 5,499,182), e.g. system to monitor/compile data representing a driver's performance during a time period, and do not raise any questions of patentability that have not already been raised and/or addressed during prosecution of the earlier examination of the ('790) patent. Accordingly, the combination of Bouchard ('079) with Pettersen ('388) is not important to a reasonable examiner in deciding whether claims 1-8 and 10-15 of the ('790) patent for which reexamination is requested is patentable or not.

(G) Requester asserts a substantial new question of patentability as to claim 9 of the '970 patent by Bouchard ('079) in view of Pettersen ('388) and "Admitted Prior Art".

On pages 168-169 of the Request, the "Admitted Prior Art" is identified by Requester as the arguments set forth in the response of July 19, 1999 on page 5, lines 10-13 during prosecution of the application (09/135,034) that led to the issuance of the '970 patent. Not only is such not an accurate/complete citation of such arguments but such response amounts to mere argument with regard to applied prior art, i.e. Camhi et al (U.S. Patent No. 5,430,432) or Ousbourn (U.S. Patent No. 5,499,182), and thereby, do not constitute an "admission" as "prior art" as set forth in MPEP 2129, I. and thus 2217, III.

Art Unit: 3992

In any case, regardless of whether such argument/response is an “admission” of “prior art”, such response by Applicant is merely cumulative to the teachings of Camhi et al (U.S. Patent 5,430,432) or Ousbourne (U.S. Patent 5,499,182), i.e. arguments with regard to the teachings, and does not raise any questions of patentability that have not already been raised and/or addressed during prosecution of the earlier examination of the ('790) patent. Furthermore, in issue (F) supra, a determination was made that combination of Bouchard ('079) and Pettersen ('388) does not raise a substantial new question of patentability with respect to claims 1-8 and 10-15 and claim 9 depends directly from claim 6, and thus incorporates the subject matter of claim 6 by reference. Therefore, the proposed combination does not include at least one reference that raises a substantial new question of patentability for the dependent claim 9 asserted by the requester in this particular issue and is not important to a reasonable examiner in deciding whether claim 9 of the ('790) patent for which reexamination is requested is patentable or not. Accordingly, based on the combined teachings, the proposed combination of Lemelson ('087) with Dorweiler and the “Admitted Prior Art” does include teachings which raise a substantial new question of patentability with respect to claim 9.

#### Conclusion

13. Accordingly, reexamination is granted. Claims 1-15 will be reexamined.

#### Correspondence

14. All correspondence relating to this ex parte reexamination proceeding should be directed:

Application/Control Number: 90/011,252

Page 19

Art Unit: 3992

By Mail to:       Mail Stop *Ex Parte* Reexam  
                  Central Reexamination Unit  
                  Commissioner for Patents  
                  United States Patent & Trademark Office  
                  P.O. Box 1450  
                  Alexandria, VA 22313-1450

By FAX to:       (571) 273-9900  
                  Central Reexamination Unit

By hand:         Customer Service Window  
                  Randolph Building  
                  401 Dulany Street  
                  Alexandria, VA 22314

Registered users of EFS-Web may alternatively submit such correspondence via the electronic filing system EFS-Web, at <https://portal.uspto.gov/authenticate/authenticateuserlocalepf.html>. EFS-Web offers the benefit of quick submission to the particular area of the Office that needs to act on the correspondence. Also, EFS-Web submissions are "soft scanned" (i.e., electronically uploaded) directly into the official file for the reexamination proceeding, which offers parties the opportunity to review the content of their submissions after the "soft scanning" process is complete.

Application/Control Number: 90/011,252

Page 20

Art Unit: 3992

Any inquiry concerning this communication should be directed to the Central Reexamination Unit at telephone number 571-272-7705.

Other useful telephone numbers:

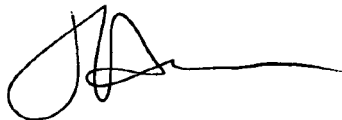
Reexamination Practice (571) 272-7703

Reexamination Facsimile Transmission No. (571) 273-9900

/Karin M. Reichle/  
Examiner, CRU  
Art Unit 3992


Conferees:

/Sam Rimell/  
Primary Examiner, Art Unit 3992

A handwritten signature in black ink, appearing to be 'JH', with a long horizontal line extending to the right.

**JESSICA HARRISON  
SUPERVISORY PATENT EXAMINER**



<b>Reexamination</b> 	Application/Control No.	Applicant(s)/Patent Under Reexamination
	90/011,252	6,064,970
	Certificate Date	Certificate Number

Requester	Correspondence Address:	<input type="checkbox"/> Patent Owner	<input checked="" type="checkbox"/> Third Party
ROPES & GRAY LLP IPRM - FLOOR 43 PRUDENTIAL TOWER 800 BOYLSTON STREET BOSTON, MA 02199-3600			

LITIGATION REVIEW <input checked="" type="checkbox"/>	(examiner initials) <b>KMR</b>	<b>11-2-10</b> (date)
Case Name		Director Initials
Progressive Casualty Ins. Co. v. Safeco Ins. Co. of Ill., et. al. Case No. 1 10-cv-01370, District Court for N. D. Ohio		<i>J. Corley</i>

COPENING OFFICE PROCEEDINGS	
TYPE OF PROCEEDING	NUMBER
1. NONE	
2.	
3.	
4.	







UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
90/011,252	09/22/2010	6,064,970	LMIC-019

James A. Collins  
P.O. BOX 10395  
Chicago, IL 60610

**CONFIRMATION NO. 4116**  
**POA ACCEPTANCE LETTER**



\*OC00000044406029\*

Date Mailed: 11/08/2010

**NOTICE OF ACCEPTANCE OF POWER OF ATTORNEY**

This is in response to the Power of Attorney filed 11/02/2010.

The Power of Attorney in this application is accepted. Correspondence in this application will be mailed to the above address as provided by 37 CFR 1.33.

/jcmcdougald/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
90/011,252	09/22/2010	6,064,970	LMIC-019

**CONFIRMATION NO. 4116**

**POWER OF ATTORNEY NOTICE**

27885  
FAY SHARPE LLP  
1228 Euclid Avenue, 5th Floor  
The Halle Building  
Cleveland, OH 44115



Date Mailed: 11/08/2010

**NOTICE REGARDING CHANGE OF POWER OF ATTORNEY**

This is in response to the Power of Attorney filed 11/02/2010.

- The Power of Attorney to you in this application has been revoked by the assignee who has intervned as provided by 37 CFR 3.71. Future correspondence will be mailed to the new address of record(37 CFR 1.33).

/jcmcdougald/

Office of Data Management, Application Assistance Unit (571) 272-4000, or (571) 272-4200, or 1-888-786-0101



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
90/011,252	09/22/2010	6,064,970	LMIC-019	4116

7590 11/08/2010  
James A. Collins  
P.O. BOX 10395  
Chicago, IL 60610

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 11/08/2010

Please find below and/or attached an Office communication concerning this application or proceeding.



**DO NOT USE IN PALM PRINTER**

(THIRD PARTY REQUESTER'S CORRESPONDENCE ADDRESS)

Ropes & Gray, LLP  
One International Place  
Boston, MA 02110-2624

**EX PARTE REEXAMINATION COMMUNICATION TRANSMITTAL FORM**

REEXAMINATION CONTROL NO. 90/011,252.

PATENT NO. 6,064,970.

ART UNIT 3993.

Enclosed is a copy of the latest communication from the United States Patent and Trademark Office in the above identified *ex parte* reexamination proceeding (37 CFR 1.550(f)).

Where this copy is supplied after the reply by requester, 37 CFR 1.535, or the time for filing a reply has passed, no submission on behalf of the *ex parte* reexamination requester will be acknowledged or considered (37 CFR 1.550(g)).

<b>Ex Parte Reexamination Interview Summary – Pilot Program for Waiver of Patent Owner's Statement</b>	<b>Control No.</b>	<b>Patent For Which Reexamination is Requested</b>
	90/011,252	6,064,970
	<b>Examiner</b>	<b>Art Unit</b>
	Jessica Harrison	3992

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address. --

**All participants (USPTO official and patent owner):**

- (1) Sharon S. Hoppe (3)  
(2) Jim Collins, Reg. No. 43557 (4)

Date of Telephonic Interview: 11/1/10.

The USPTO official requested waiver of the patent owner's statement pursuant to the pilot program for waiver of patent owner's statement in *ex parte* reexamination proceedings.\*

- The patent owner **agreed** to waive its right to file a patent owner's statement under 35 U.S.C. 304 in the event reexamination is ordered for the above-identified patent.
- The patent owner **did not agree** to waive its right to file a patent owner's statement under 35 U.S.C. 304 at this time.

The patent owner is not required to file a written statement of this telephone communication under 37 CFR 1.560(b) or otherwise. However, any disagreement as to this interview summary must be brought to the immediate attention of the USPTO, and no later than one month from the mailing date of this interview summary. Extensions of time are governed by 37 CFR 1.550(c).

\*For more information regarding this pilot program, see *Pilot Program for Waiver of Patent Owner's Statement in Ex Parte Reexamination Proceedings*, 75 Fed. Reg. 47269 (August 5, 2010), available on the USPTO Web site at <http://www.uspto.gov/patents/law/notices/2010.jsp>.

- USPTO personnel were unable to reach the patent owner.

The patent owner may contact the USPTO personnel at the telephone number provided below if the patent owner decides to waive the right to file a patent owner's statement under 35 U.S.C. 304.

/Sharon S. Hoppe/ 571-272-1586  
Signature and telephone number of the USPTO official who contacted or attempted to contact the patent owner.

cc: Requester (if third party requester)

Inventors: Robert J. McMillan, Alexander D. Craig, and John P. Heinen  
Title of Appln.: MOTOR VEHICLE MONITORING SYSTEM FOR DETERMINING A  
COST OF INSURANCE

**POWER OF ATTORNEY BY ASSIGNEE  
AND CORRESPONDENCE ADDRESS INDICATION**

The specification of the above-identified patent application:

- is attached hereto.  
 was filed on August 17, 1998 as U.S. application No. 09/135,034 and now Re-Examination Application No. 90/011,252.

**As required by 37 CFR 3.73(b)(1), the documentary evidence of the chain of title from the original owner to the assignee was, or concurrently is being, submitted for recordation pursuant to 37 CFR 3.11.**

Progressive Casualty Insurance Company, an Ohio Corporation, ("ASSIGNEE") certifies that it is the assignee of the entire right, title and interest in the patent application identified above by virtue of either:

- An assignment from the inventor(s) of the patent application identified above,  
 a copy of which was recorded in the Patent and Trademark Office at Reel 008964, frame 0534, or  
 a copy thereof which is attached hereto and another copy thereof which is being recorded concurrently herewith pursuant to 37 CFR 3.11; OR  
 A chain of title from the inventor(s) of the patent application identified above, to the current assignee as shown below:
1. From Progressive Casualty Insurance Company to Progressive Casualty Insurance Company.  
The document was recorded in the Patent and Trademark Office at Reel 011627, Frame 0258, or a copy thereof is attached.
  2. From Progressive Casualty Insurance Company to Progressive Directrac Service Corp.  
The document was recorded in the Patent and Trademark Office at Reel 011934, Frame 0089, or a copy of which is attached.
- Additional documents in the chain of title are listed on a supplemental sheet.

ASSIGNEE hereby revokes all previously granted powers of attorney in the above identified patent application and appoints the Practitioners named below as my/our attorney(s) or agent(s), with full power of substitution and revocation, to prosecute this application and any continuations, divisions, reissues, and reexaminations thereof, to receive the patent(s), to transact all business in the United States Patent and Trademark Office connected therewith, and to act on ASSIGNEE'S behalf before the competent International Authorities in connection with any and all international applications filed by ASSIGNEE:

James A. Collins - Reg. No. 43,557  
Gustavo Siller, Jr. - Reg. No. 32,305  
Joseph S. Hanasz - Reg. No. 54,720

Please recognize or change the correspondence address for this application to the following address: P.O. Box 10395, Chicago, IL 60610. Please direct all telephonic and facsimile communications to:

James A. Collins - Reg. No. 43,557  
Tel.: (312) 321-4200; Fax: (312) 321-4299

The undersigned hereby authorizes the Practitioners identified above to accept and follow instructions from James A. Collins as to any action to be taken in the Patent and Trademark Office regarding this application without direct communication between the Practitioners and the undersigned. In the event of a change in the persons from whom instructions may be taken, the Practitioners will be so notified by the undersigned.

The undersigned (whose title is supplied below) is empowered to act on behalf of ASSIGNEE.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Signature Dane A. Shallow Date: October 29, 2010  
Name: Dane A. Shallow  
Title: Associate General Counsel

Inventors: Robert J. McMillan, Alexander D. Craig, and John P. Heinen

Title of Appln.: MOTOR VEHICLE MONITORING SYSTEM FOR DETERMINING A  
COST OF INSURANCE

Continuation of Chain of Title:

3. From Progressive Directrac Service Corp. to Progressive Casualty Insurance Company.  
The document was recorded in the Patent and Trademark Office at Reel 012698, Frame 0908.



## Electronic Acknowledgement Receipt

<b>EFS ID:</b>	8754437
<b>Application Number:</b>	90011252
<b>International Application Number:</b>	
<b>Confirmation Number:</b>	4116
<b>Title of Invention:</b>	MOTOR VEHICLE MONITORING SYSTEM FOR DETERMINING A COST OF INSURANCE
<b>First Named Inventor/Applicant Name:</b>	6,064,970
<b>Customer Number:</b>	27885
<b>Filer:</b>	James A. Collins/Maggie Pieczonka
<b>Filer Authorized By:</b>	James A. Collins
<b>Attorney Docket Number:</b>	LMIC-019
<b>Receipt Date:</b>	02-NOV-2010
<b>Filing Date:</b>	22-SEP-2010
<b>Time Stamp:</b>	17:25:33
<b>Application Type:</b>	Reexam (Patent Owner)

### Payment information:

Submitted with Payment	no
------------------------	----

### File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Miscellaneous Incoming Letter	transforpoa.PDF	42392 <small>26d86d37445e2a4b3fde0f91b7540d6508755509</small>	no	1

### Warnings:

### Information:

2	Power of Attorney	POA.PDF	90612 0f727dd58312cd063c271c77c707827ccfbcd232	no	3
<b>Warnings:</b>					
<b>Information:</b>					
<b>Total Files Size (in bytes):</b>				133004	
<p><b>This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.</b></p> <p><b><u>New Applications Under 35 U.S.C. 111</u></b>  <b>If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.</b></p> <p><b><u>National Stage of an International Application under 35 U.S.C. 371</u></b>  <b>If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.</b></p> <p><b><u>New International Application Filed with the USPTO as a Receiving Office</u></b>  <b>If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.</b></p>					

CERTIFICATE OF EFS FILING UNDER 37 CFR §1.8

I hereby certify that this correspondence is being electronically transmitted to the United States Patent and Trademark Office, Commissioner for Patents, via the EFS pursuant to 37 CFR §1.8 on the below date:

Date: November 2, 2010 Name: James A. Collins, Reg. No. 43,557 Signature: /James A. Collins/

**BRINKS  
HOFER  
GILSON  
& LIONE**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Re-Examination of: Robert J. McMillan et al.

Re-Examination Appl. No.: 90/011,252

Filing Date: September 22, 2010

U.S. Patent No.: 6,064,970

For: **MOTOR VEHICLE MONITORING SYSTEM FOR DETERMINING A COST OF INSURANCE**

Attorney Docket No.: 12741/32

Examiner: Jessica Harrison

Group Art Unit: 3992

Conf. No.: 4116

**TRANSMITTAL**

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

**Attached is/are:**

- Transmittal; and Power of Attorney by Assignee and Correspondence Address Indication.

**Fee calculation:**

- No additional fee is required.
- Small Entity.
- An extension fee in an amount of \$\_\_\_\_\_ for a \_\_\_\_\_ month extension of time under 37 CFR § 1.136(a).
- A petition or processing fee in an amount of \$\_\_\_\_\_ under 37 CFR § 1.17(\_\_\_\_)\_\_\_\_\_.
- An additional filing fee has been calculated as shown below:

					Small Entity			Not a Small Entity		
	Claims Remaining After Amendment		Highest No. Previously Paid For	Present Extra	Rate	Add'l Fee	OR	Rate	Add'l Fee	
Total		Minus			x \$26=			x \$52=		
Indep.		Minus			x 110=			x \$220=		
First Presentation of Multiple Dep. Claim					+ \$195=			+ \$390=		
					Total	\$		Total	\$	

**Fee payment:**

- Please charge Deposit Account No. 23-1925 in the amount of \$\_\_\_\_\_ for \_\_\_\_\_.
- Payment by credit card in the amount of \$\_\_\_\_\_ (Form PTO-2038 is attached).
- The Director is hereby authorized to charge payment of any additional filing fees required under 37 CFR § 1.16 and any patent application processing fees under 37 CFR § 1.17 associated with this paper (including any extension fee required to ensure that this paper is timely filed), or to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

November 2, 2010  
Date

/James A. Collins/  
James A. Collins (Reg. No. 43,557)

# Litigation Search Report CRU 3999

Reexam Control No. 90/011,252

**TO: Kashnikow, Andres**

**Location: CRU**

**Art Unit: 3993**

**Date: 09/30/10**

**Case Serial Number: 90/011,252**

**From: Sharon S. Hoppe**

**Location: CRU 3999**

**MDW 7C69**

**Phone: (571) 272-1586**

**Sharon.hoppe@uspto.gov**

## Search Notes

U.S. Patent No. 6,064,970

- 1) I performed a KeyCite Search in Westlaw, which retrieves all history on the patent including any litigation.
- 2) I performed a search on the patent in Lexis CourtLink for any open dockets or closed cases.
- 3) I performed a search in Lexis in the Federal Courts and Administrative Materials databases for any cases found.
- 4) I performed a search in Lexis in the IP Journal and Periodicals database for any articles on the patent.
- 5) I performed a search in Lexis in the news databases for any articles about the patent or any articles about litigation on this patent.

Litigation was found.

1:10cv1370 Open

**KEYCITE**

**C US PAT 6064970 MOTOR VEHICLE MONITORING SYSTEM FOR DETERMINING A COST OF INSURANCE, Assignee: Progressive Casualty Insurance Company (May 16, 2000)**

**History**

**Direct History**

=> 1 **MOTOR VEHICLE MONITORING SYSTEM FOR DETERMINING A COST OF INSURANCE, US PAT 6064970, 2000 WL 929156 (U.S. PTO Utility May 16, 2000) (NO. 09/135034)**

**Patent Family**

2 **AUTOMOBILE INSURANCE COST DETERMINATION BASED ON OPERATOR AND VEHICLE CHARACTERISTIC DATA - INVOLVES MONITORING RAW DATA ELEMENTS AND RECORDING SELECTED ONES WHICH HAVE GIVEN RELATIONSHIP TO SAFETY STANDARD, Derwent World Patents Legal 1997-470443**

**Assignments**

- 3 **ACTION: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS). NUMBER OF PAGES: 006, (DATE RECORDED: Mar 18, 2002)**
- 4 **ACTION: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS). NUMBER OF PAGES: 005, (DATE RECORDED: Jun 28, 2001)**
- 5 **ACTION: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS). NUMBER OF PAGES: 005, (DATE RECORDED: Mar 22, 2001)**

**Patent Status Files**

.. Patent Suit(See LitAlert Entries),

**Docket Summaries**

7 **PROGRESSIVE CASUALTY INSURANCE COMPANY v. SAFECO INSURANCE COMPANY OF ILLINOIS ET AL, (N.D.OHIO. Jun 18, 2010) (NO. 1:10CV01370), (15 USC 1126 PATENT INFRINGEMENT)**

**Litigation Alert**

8 **Derwent LitAlert P2010-26-83 (Jun 18, 2010) Action Taken: complaint for PATENT INFRINGEMENT**

**Prior Art (Coverage Begins 1976)**

- C 9 ADAPTIVE VEHICLE, US PAT 4829434 Assignee: General Motors Corporation, (U.S. PTO Utility 1989)
- C 10 APPARATUS FOR ACCUMULATING AND PERMANENTLY STORING STATISTICAL INFORMATION, US PAT 4608638 Assignee: Siemens Corporate Research & Support,, (U.S. PTO Utility 1986)
- C 11 APPARATUS FOR DETECTING AND STORING MOTOR VEHICLE IMPACT DATA, US PAT 4992943 (U.S. PTO Utility 1991)
- C 12 APPARATUS FOR INDICATING SAFE DRIVING, US PAT 3504337 Assignee: Ekman Adolphe, (U.S. PTO Utility 1970)
- C 13 AUTOMATIC DETECTION OF SEAT BELT USAGE, US PAT 4667336 Assignee: Burlington Industries, Inc., (U.S. PTO Utility 1987)
- C 14 AUTOMOTIVE WARNING AND RECORDING SYSTEM, US PAT 5430432 (U.S. PTO Utility 1995)
- C 15 CONDITION ADAPTIVE-TYPE CONTROL METHOD FOR INTERNAL COMBUSTION ENGINES, US PAT 4853720 Assignee: Hitachi, Ltd., (U.S. PTO Utility 1989)
- C 16 DATA LOGGING IN A VOLTAGE REGULATOR CONTROLLER, US PAT 5500806 Assignee: Siemens Energy & Automation, Inc., (U.S. PTO Utility 1996)
- C 17 ELECTRONIC ENGINE CONTROL APPARATUS, US PAT 5189621 Assignee: Hitachi, Ltd., (U.S. PTO Utility 1993)
- C 18 IMPACT DETECTION APPARATUS, US PAT 4745564 Assignee: Board of Trustees Operating Michigan State, (U.S. PTO Utility 1988)
- C 19 LAND VEHICLE MOUNTED AUDIO-VISUAL TRIP RECORDER, US PAT 4843463 (U.S. PTO Utility 1989)
- C 20 METHOD AND APPARATUS FOR DETERMINING TAX OF A VEHICLE, US PAT 5694322 Assignee: Highwaymaster Communications, Inc., (U.S. PTO Utility 1997)
- C 21 METHOD AND DEVICE FOR RECORDING ANALOG PARAMETERS ON A STATIC DIGITAL MEMORY, US PAT 4807179 Assignee: Etat Francais, (U.S. PTO Utility 1989)
- C 22 METHOD FOR STORING RUN DATA OF A VEHICLE IN THE MEMORY OF AN ELECTRONIC TACHOGRAPH AND APPARATUS FOR CARRYING OUT THE METHOD, US PAT 4987541 (U.S. PTO Utility 1991)
- C 23 MOBILE UNIT TRACKING SYSTEM, US PAT 5365451 Assignee: Motorola, Inc., (U.S. PTO Utility 1994)
- C 24 MONITORING AND RECORDING SYSTEM FOR VEHICLES, US PAT 4067061 Assignee: Rockwell International Corporation, (U.S. PTO Utility 1978)
- C 25 MOTOR VEHICLE MONITORING SYSTEM FOR DETERMINING A COST OF INSURANCE, US PAT 5797134 Assignee: Progressive Casualty Insurance Company, (U.S. PTO Utility 1998)
- C 26 MOTOR VEHICLE WITH DRIVING STATUS DETECTION DEVICE, US PAT 4763745 Assignee: Toyoda Koki Kabushiki Kaisha, (U.S. PTO Utility 1988)
- C 27 POSITION MONITORING SYSTEM AND METHOD, US PAT 5550551 Assignee: AT&T Corp., (U.S. PTO Utility 1996)

- C 28 PRECISE UNIVERSAL TIME FOR VEHICLES, US PAT 5319374 Assignee: Trimble Navigation Limited, (U.S. PTO Utility 1994)
- C 29 SYSTEM & METHOD FOR MONITORING & DIAGNOSING FAULTS IN ENVIRONMENTALLY CONTROLLED CONTAINERS, SUCH SYSTEM AND METHOD BEING ESPECIALLY ADAPTED FOR REMOTE COMPUTER CONTROLLED MONITORING OF NUMEROUS TRANSPORTABLE CONTAINERS OVER EXISTING ON-SITE POWER WIRING, US PAT 4234926 Assignee: Sealand Service Inc., (U.S. PTO Utility 1980)
- C 30 TRIP RECORDER, US PAT 4939652 Assignee: Centrodyne Inc., (U.S. PTO Utility 1990)
- C 31 VEHICLE DATA STORAGE AND ANALYSIS SYSTEM AND METHODS, US PAT 5638273 Assignee: Remote Control Systems, Inc., (U.S. PTO Utility 1997)
- C 32 VEHICLE DRIVER PERFORMANCE MONITORING SYSTEM, US PAT 5499182 (U.S. PTO Utility 1996)
- C 33 VEHICLE DRIVING MONITOR APPARATUS, US PAT 5548273 Assignee: Competition Components International Pty, (U.S. PTO Utility 1996)
- C 34 VEHICLE LOCATION SYSTEM, US PAT 5055851 Assignee: TrackMobile, Inc., (U.S. PTO Utility 1991)
- C 35 VEHICLE MONITORING AND RECORDING SYSTEM, US PAT 4258421 Assignee: Rockwell International Corporation, (U.S. PTO Utility 1981)
- C 36 VEHICLE PERFORMANCE DETECTION AND RECORDING APPARATUS, US PAT 4533962 (U.S. PTO Utility 1985)
- C 37 VEHICLE SPEED MONITORING AND LOGGING MEANS, US PAT 4843578 (U.S. PTO Utility 1989)
- C 38 VEHICLE TRACKING AND SECURITY SYSTEM, US PAT 5223844 Assignee: Auto-Trac, Inc., (U.S. PTO Utility 1993)
- C 39 VEHICULAR MOUNTED SURVEILLANCE AND RECORDING SYSTEM, US PAT 5111289 (U.S. PTO Utility 1992)
- C 40 VEHICULAR MOVEMENT INDICATOR SAFETY SYSTEM, US PAT 4638295 (U.S. PTO Utility 1987)

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**US District Court Civil Docket**

**U.S. District - Ohio Northern  
(Cleveland)**

**1:10cv1370**

**Progressive Casualty Insurance Company v. Safeco Insurance Company  
of Illinois et A**

This case was retrieved from the court on Thursday, September 30, 2010

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<b>Date Filed:</b> 06/18/2010	<b>Class Code:</b>
<b>Assigned To:</b> Judge Patricia A Gaughan	<b>Closed:</b> No
<b>Referred To:</b>	<b>Statute:</b> 35:271
<b>Nature of suit:</b> Patent (830)	<b>Jury Demand:</b> Plaintiff
<b>Cause:</b> Patent Infringement	<b>Demand Amount:</b> \$0
<b>Lead Docket:</b> None	<b>NOS Description:</b> Patent
<b>Other Docket:</b> None	
<b>Jurisdiction:</b> Federal Question	

**Litigants**

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Plaintiff

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Date	#	Proceeding Text
06/18/2010	1	Complaint with jury demand against All Defendants. Filing fee paid &#36 350, Receipt number 0647-4148235. Filed by Progressive Casualty Insurance Company. (Attachments: # 1 Exhibit A, US Patent No. 6064970, # 2 Exhibit B, Ohio Rewind Program, # 3 Exhibit C, Onboard Advisor Ohio Filing, # 4 Exhibit Onboard Advisor Washington Filing, # 5 Civil Cover Sheet) (Wooley, James) (Entered: 06/18/2010)
06/18/2010	2	Corporate Disclosure Statement identifying Corporate Parent The Progressive Corporation for Progressive Casualty Insurance Company filed by Progressive Casualty Insurance Company. (Wooley, James) (Entered: 06/18/2010)
06/21/2010	--	Judge Kathleen M. O'Malley assigned to case. Recused pursuant to General Order No. 2009-3. (C,BA) (Entered: 06/21/2010)
06/21/2010	--	Judge Lesley Wells assigned to case. Judge Kathleen M. O'Malley terminated. (C,BA) (Entered: 06/21/2010)
06/21/2010	--	Random Assignment of Magistrate Judge pursuant to Local Rule 3.1. In the event of a referral, case will be assigned to Magistrate Judge Vecchiarelli. (C,BA) (Entered: 06/21/2010)
06/21/2010	3	Magistrate Consent Form issued. No summons provided, no summons issued. (C,BA) (Entered: 06/21/2010)
06/21/2010	--	This action has been identified as a Patent Case that is subject to the Local Patent Rules. Link to Local Patent Rules. (C,BA) (Entered: 06/21/2010)
06/23/2010	4	Order of Recusal. This case is returned to the Clerk for reassignment. Judge Lesley Wells (C,KA) (Entered: 06/23/2010)
06/23/2010	--	Judge Patricia A. Gaughan assigned to case. Judge Lesley Wells terminated. (C,BA) (Entered: 06/23/2010)
06/23/2010	5	Praeipce for issuance of Original Summons to all Defendants filed by Progressive Casualty Insurance Company. Related document(s) 1 , 2 . (Attachments: # 1 Summons to Safeco Ins. Co. of Illinois, # 2 Summons to Safeco Ins. Co. of America, # 3 Summons to Safeco Corp., # 4 Summons to Liberty Mutual Ins. Co., # 5 Summons to Liberty Mutual Group Inc., # 6 Summons to Ohio Casualty Ins. Co., # 7 Summons to Open Seas Solutions, Inc.)(Wooley, James) (Entered: 06/23/2010)
06/24/2010	6	Original Summons issued for service upon Liberty Mutual Group Inc., Liberty Mutual Insurance Company, Open Seas Solutions, Inc., Safeco Insurance Company of America, Safeco Insurance Company of Illinois, The Ohio Casualty Insurance Company. (Attachments: # 1 Summons, # 2 Summons, # 3 Summons, # 4 Summons, # 5 Summons, # 6 Summons) (R,N) Modified text on 7/8/2010 (B,IE). (Entered: 06/24/2010)
07/01/2010	7	FILING ERROR, no summons attached. Praeipce for issuance of Original Summons As Corrected filed by Progressive Casualty Insurance Company. Related document(s) 1 , 2 . (Wooley, James) Modified to denote filing error on 7/6/2010 (B,IE) (Entered: 07/01/2010)
07/07/2010	--	Service by Clerk. Summons and Complaint addressed to Liberty Mutual Group Inc., Liberty Mutual Insurance Company, Open Seas Solutions, Inc., Safeco Insurance Company of America, Safeco Insurance Company of Illinois & The Ohio Casualty Insurance Company placed in U.S. Mail. Type of service: certified mail. Receipt # 70071490000026718765/8819/8796/8802/8789/8772. (C,BA) (Entered: 07/07/2010)
07/07/2010	8	Praeipce for issuance of Original Summons as corrected filed by Progressive Casualty Insurance Company. Related document(s) 1 , 2 . (Attachments: # 1 Summons to Safeco Corporation) (Wooley, James) (Entered: 07/07/2010)

07/08/2010 9 Original Summons issued for service upon Safeco Corporation. (B,IE) (Entered: 07/08/2010)

07/08/2010 -- Service by Clerk. Summons and Complaint addressed to Safeco Corporation placed in U.S. Mail. Type of service: certified mail. Receipt # 70071490000026718826. (C,BA) (Entered: 07/08/2010)

07/08/2010 10 Case Management Conference Scheduling Order with case management conference set on 8/20/2010 at 9:00 a.m. to be held telephonically before Hon. Patricia A. Gaughan. Signed by Judge Patricia A. Gaughan on 7/08/10. (D,MB) (Entered: 07/08/2010)

07/12/2010 11 Return of Service by Clerk executed upon Liberty Mutual Insurance Company and Open Seas Solutions, Inc. by certified mail on 7/9/2010, filed on behalf of Plaintiff. Related document(s) 1 . (B,B) (Entered: 07/12/2010)

07/13/2010 12 Attorney Appearance by Christopher J. Higgins filed by on behalf of Progressive Casualty Insurance Company. (Higgins, Christopher) (Entered: 07/13/2010)

07/14/2010 13 Motion for attorney Laura Beth Miller to Appear Pro Hac Vice. Filing fee \$ 100, receipt number 0647-4186103, filed by Plaintiff Progressive Casualty Insurance Company. (Attachments: # 1 Affidavit of Laura Beth Miller)(Wooley, James) (Entered: 07/14/2010)

07/14/2010 14 Motion for attorney Ralph J. Gabric to Appear Pro Hac Vice. Filing fee \$ 100, receipt number 0647-4186121, filed by Plaintiff Progressive Casualty Insurance Company. (Attachments: # 1 Affidavit of Ralph J. Gabric)(Wooley, James) (Entered: 07/14/2010)

07/14/2010 15 Motion for attorney Jacob C. Bachman to Appear Pro Hac Vice. Filing fee \$ 100, receipt number 0647-4186139, filed by Plaintiff Progressive Casualty Insurance Company. (Attachments: # 1 Affidavit of Jacob C. Bachman)(Wooley, James) (Entered: 07/14/2010)

07/14/2010 16 Notice Of Filing Report On The Filing Or Determination Of An Action Regarding A Patent Or Trademark filed by Progressive Casualty Insurance Company. (Attachments: # 1 Report On The Filing Or Determination Of An Action Regarding A Patent Or Trademark)Related document(s) 1 . (Wooley, James) (Entered: 07/14/2010)

07/15/2010 17 Return of Service by Clerk executed upon Safeco Insurance Company of Illinois by certified mail on 7/12/2010, filed on behalf of Plaintiff. Related document(s) 1 . (B,B) (Entered: 07/15/2010)

07/15/2010 18 Return of Service by Clerk executed upon Safeco Insurance Company of America and Liberty Mutual Insurance Company by certified mail on 7/12/2010 filed on behalf of Plaintiff. Related document(s) 1 . (B,B) (Entered: 07/15/2010)

07/15/2010 19 Return of Service by Clerk by certified mail executed upon Liberty Mutual Group Inc., no date of service indicated on green card, filed on behalf of Plaintiff. Related document(s) 1 . (B,B) (Entered: 07/15/2010)

07/19/2010 -- Order [non-document]granting Motion for appearance pro hac vice by attorney Laura B. Miller for Progressive Casualty Insurance Company (Related Doc # 13 ). Judge Patricia A. Gaughan on 7/19/2010.(S,J) (Entered: 07/19/2010)

07/19/2010 -- Order [non-document]granting Motion for appearance pro hac vice by attorney Ralph J. Gabric for Progressive Casualty Insurance Company (Related Doc # 14 ). Judge Patricia A. Gaughan on 7/19/2010.(S,J) (Entered: 07/19/2010)

07/19/2010 -- Order [non-document]granting Motion for appearance pro hac vice by attorney Jacob C. Bachman for Progressive Casualty Insurance Company (Related Doc # 15 ). Judge Patricia A. Gaughan on 7/19/2010.(S,J) (Entered: 07/19/2010)

07/20/2010 20 Return of Service by Clerk executed upon Safeco Corporation by certified mail on 7/14/2010, filed on behalf of Plaintiff. Related document(s) 1 . (B,B) (Entered: 07/20/2010)

07/23/2010 21 Motion for attorney Charles M. McMahon to Appear Pro Hac Vice. Filing fee \$ 100, receipt number 0647-4201928, filed by Plaintiff Progressive Casualty Insurance Company. (Attachments: # 1 Affidavit of Charles M. McMahon)(Wooley, James) (Entered: 07/23/2010)

07/26/2010 22 Attorney Appearance by John S. Cipolla of Calfee, Halter & Griswold LLP filed by on behalf of All Defendants. (Cipolla, John) (Entered: 07/26/2010)

07/26/2010 23 Attorney Appearance by Mark W. McDougall of Calfee, Halter & Griswold LLP filed by on behalf of All Defendants. (McDougall, Mark) (Entered: 07/26/2010)

07/27/2010 24 Motion for To Reschedule Date of Case Management Conference with Consent of Plaintiff filed by Liberty Mutual Group Inc., Liberty Mutual Insurance Company, Open Seas Solutions, Inc., Safeco Corporation, Safeco Insurance Company of America, Safeco Insurance Company of Illinois, The Ohio Casualty Insurance Company. (Attachments: # 1 Proposed Order)(Cipolla, John) (Entered: 07/27/2010)

07/27/2010 25 Unopposed Motion for To Permit Counsel To Appear in Person at the Case Management



Conference filed by Liberty Mutual Group Inc., Liberty Mutual Insurance Company, Open Seas Solutions, Inc., Safeco Corporation, Safeco Insurance Company of America, Safeco Insurance Company of Illinois, The Ohio Casualty Insurance Company. (Attachments: # 1 Proposed Order)(Cipolla, John) (Entered: 07/27/2010)

07/27/2010 26 Unopposed Motion for extension of Time to Answer Complaint and Other Responsive Pleadings until September 8, 2010 filed by Liberty Mutual Group Inc., Liberty Mutual Insurance Company, Open Seas Solutions, Inc., Safeco Corporation, Safeco Insurance Company of America, Safeco Insurance Company of Illinois, The Ohio Casualty Insurance Company. (Attachments: # 1 Proposed Order)(Cipolla, John) (Entered: 07/27/2010)

07/27/2010 27 Attorney Appearance by Joshua V. Vanhoven of Ropes & Gray LLP filed by on behalf of All Defendants. (Vanhoven, Joshua) (Entered: 07/27/2010)

07/30/2010 28 Motion for attorney James R. Myers to Appear Pro Hac Vice. Filing fee \$ 100, receipt number 0647-4212234, filed by Liberty Mutual Group Inc., Liberty Mutual Insurance Company, Open Seas Solutions, Inc., Safeco Corporation, Safeco Insurance Company of America, Safeco Insurance Company of Illinois, The Ohio Casualty Insurance Company. (Attachments: # 1 Affidavit of James R. Myers)(Cipolla, John) (Entered: 07/30/2010)

07/30/2010 29 Motion for attorney Nicole M. Jantzi to Appear Pro Hac Vice. Filing fee \$ 100, receipt number 0647-4212251, filed by Liberty Mutual Group Inc., Liberty Mutual Insurance Company, Open Seas Solutions, Inc., Safeco Corporation, Safeco Insurance Company of America, Safeco Insurance Company of Illinois, The Ohio Casualty Insurance Company. (Attachments: # 1 Affidavit of Nicole M. Jantzi)(Cipolla, John) (Entered: 07/30/2010)

08/03/2010 -- Order [non-document]Defendants' Motion to Reschedule Date of Case Management Conference is GRANTED to 9/28/10 at 9:00 a.m. in Chambers 19B before Judge Patricia A. Gaughan. 24 Approved by Judge Patricia A. Gaughan on 8/02/10.(D,MB) (Entered: 08/03/2010)

08/03/2010 -- Order [non-document]Defendants' Unopposed Motion to Permit Counsel to Appear in Person at the Case Management Conference is GRANTED. 25 Approved by Judge Patricia A. Gaughan on 8/02/10.(D,MB) (Entered: 08/03/2010)

08/03/2010 -- Order [non-document]Defendants' Motion to Extend Time to File Responsive Pleadings is GRANTED to 9/08/10. 26 Approved by Judge Patricia A. Gaughan on 8/02/10.(D,MB) (Entered: 08/03/2010)

08/04/2010 30 Marginal Entry Order granting Motion for appearance pro hac vice by James R. Myers (Related Doc # 28 ). Signed by Judge Gaughan on 8/2/10(C,KA) (Entered: 08/04/2010)

08/04/2010 31 Marginal Entry Order granting Motion for appearance pro hac vice by Nicole M. Jantzi (Related Doc # 29 ). Signed by Judge Gaughan on 8/2/10(C,KA) (Entered: 08/04/2010)

08/10/2010 -- Order [non-document] granting Motion for appearance pro hac vice by Charles M. McMahon. Judge Patricia A. Gaughan on 8/2/10. (Related Doc # 21 ) (LC,S) (Entered: 08/10/2010)

09/08/2010 32 Motion to dismiss for Failure to State a Claim Upon Which Relief May Be Granted filed by Liberty Mutual Group Inc., Liberty Mutual Insurance Company, Open Seas Solutions, Inc., Safeco Corporation, Safeco Insurance Company of America, Safeco Insurance Company of Illinois, The Ohio Casualty Insurance Company. (Attachments: # 1 Brief in Support, # 2 Exhibit A - US Patent No. 6,064,970, # 3 Exhibit B - Case Law (Ultrimercial v. Hulu), # 4 Exhibit C - Case Law (Graff v. Federal Home Loan), # 5 Exhibit D - USPTO Memorandum re Bilski, # 6 Exhibit E - Interim Guidance after Bilski, # 7 Exhibit F - MPEP 2100 - Patentability)(Cipolla, John) (Entered: 09/08/2010)

09/08/2010 33 Corporate Disclosure Statement filed by Liberty Mutual Group Inc.. (Cipolla, John) (Entered: 09/08/2010)

09/08/2010 34 Corporate Disclosure Statement filed by Liberty Mutual Insurance Company. (Cipolla, John) (Entered: 09/08/2010)

09/08/2010 35 Corporate Disclosure Statement filed by Safeco Corporation. (Cipolla, John) (Entered: 09/08/2010)

09/08/2010 36 Corporate Disclosure Statement filed by Safeco Insurance Company of America. (Cipolla, John) (Entered: 09/08/2010)

09/08/2010 37 Corporate Disclosure Statement filed by Safeco Insurance Company of Illinois. (Cipolla, John) (Entered: 09/08/2010)

09/08/2010 38 Corporate Disclosure Statement filed by Open Seas Solutions, Inc.. (Cipolla, John) (Entered: 09/08/2010)

09/08/2010 39 Corporate Disclosure Statement filed by The Ohio Casualty Insurance Company. (Cipolla, John) (Entered: 09/08/2010)

09/15/2010 40 Joint Notice In Compliance With Local Patent Rule 1.5 filed by All Parties. (Wooley, James) (Entered: 09/15/2010)

09/23/2010 41 Joint Report of Parties' Planning Meeting , parties do not consent to this case being assigned to the magistrate judge, filed by All Parties. (Attachments: # 1 Exhibit A - Schedule)(Wooley, James) (Entered: 09/23/2010)

09/28/2010 42 Case Management Order : Case Management Conference was held on 9/28/10. Case is assigned to the complex track. Case is suitable for ECF. Case is not suitable for ADR at this time but may be after discovery. Schedule through Claim Construction- 10/11/10 Progressive's Opposition to Rule 12(b)(6) Motion; 10/25/10 Safeco's Reply; 11/15/10 Infringement Contentions; 12/01/01 Responses to written discovery served prior to 9/30/10 and 26(a)(1) disclosures; 12/15/10 Non-infringement Contentions; 1/19/11 Invalidity and Unenforceability Contentions; 2/03/11 Preliminary ID of Claim Terms to be Construed; 2/08/11 Validity and Enforceability Contentions; 2/23/11 Final ID of Claim Terms; 3/10/11 Preliminary Claim Constructions and Supporting Materials; 3/25/11 ID of Claim Construction Expert; 4/11/11 Disclosure of Rebuttal Claim Construction Expert; 4/26/11 Completion of Expert Discovery (Cl. Constr.); 5/02/11 Final Claim Construction; 5/17/11 Opening Claim Construction Submission; 6/16/11 Responsive Claim Construction Submissions; 6/21/11 File Joint Claim Construction and Prehearing Statement. A Status Conference by phone is set 1/11/2011 at 09:00 AM. Judge Patricia A. Gaughan on 9/28/10. (LC,S) Time: 1 hr. (Entered: 09/29/2010)

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Terms: patno= 6064970 ([Edit Search](#))

135034 (09) 6064970 May 16, 2000

UNITED STATES PATENT AND TRADEMARK OFFICE GRANTED PATENT

6064970

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May 16, 2000

Motor vehicle monitoring system for determining a cost of insurance

**REEXAM-LITIGATE:**

NOTICE OF LITIGATION

Progressive Casualty Insurance Company v. Safeco Insurance Company of Illinois et al, Filed June 18, 2010, D.C. N.D. Ohio, Doc. No. 1:10cv1370

**INVENTOR:** McMillan, Robert John - Tampa, United States of America (US) ; Craig, Alexander Dean - Moreland Hills, United States of America (US) ; Heinen, John Patrick - Tampa, United States of America (US)

**APPL-NO:** 135034 (09)

**FILED-DATE:** August 17, 1998

**GRANTED-DATE:** May 16, 2000

**PRIORITY:** January 29, 1996 - 08592958, United States of America (US)

**ASSIGNEE-AT-ISSUE:**

Progressive Casualty Insurance Company, Mayfield Village, OHIO, United States of America (US)

**ASSIGNEE-AFTER-ISSUE:**

March 22, 2001 - ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS)., PROGRESSIVE CASUALTY INSURANCE COMPANY 6300 WILSON MILLS ROADMAYFIELD VILLAGE, OHIO, 44143, 6300 WILSON MILLS ROAD, MAYFIELD VILLAGE, OHIO, UNITED STATES OF AMERICA (US), 44143, Reel and Frame Number: 011627/0258  
June 28, 2001 - ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS)., PROGRESSIVE DIRECTRAC SERVICE CORP. 6300 WILSON MILLS ROADMAYFIELD VILLAGE, OHIO, 44143, 6300 WILSON MILLS ROAD, MAYFIELD VILLAGE, OHIO, UNITED STATES OF AMERICA (US), 44143, Reel and Frame Number: 011934/0089  
March 18, 2002 - ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS)., PROGRESSIVE CASUALTY INSURANCE COMPANY 6300 WILSON MILLS ROADMAYFIELD VILLAGE, OHIO, 44143, 6300 WILSON MILLS ROAD, MAYFIELD VILLAGE, OHIO, UNITED STATES OF AMERICA (US), 44143, Reel and Frame Number: 012698/0908

**LEGAL-REP:** Fay, Sharpe, Fagan Minnich & McKee, LLP

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October 16, 2007 - Payment of Maintenance Fee, 8th Year, Large Entity

**FILING-LANG:** English (EN) (ENG)

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**REL-DATA:**

Continuation of Ser. No. 592958, January 29, 1996, GRANTED 5797134, August 17, 1998

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**CL:** 705, 340, 360, 702

**SEARCH-FLD:** 340#439, 340#870.01, 360#5, 701#1.7, 702#1, 705#4, 705#400

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**IPC-ADDL-CL:** [8] G06Q 030#00 (20060101) Advanced Inventive 20051220 (A F I R M JP)

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**IPC-ADDL-CL:** [8] G07C 005#08 (20060101) Advanced Inventive 20051008 (A I R M EP)

**PRIM-EXMR:** Cosimano; Edward R.

**REF-CITED:**

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9002388, March 8, 1990, World Intellectual Property Organization (WIPO) (WO)

**NON-PATENT LITERATURE:**

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Kaneko, Tetsuya; Jovanis, Paul P. Multiday driving patterns and motor carrier accident risk. A disaggregate analysis. Accident Analysis and Prevention, vol. 24, No. 5, pp. 437 456, Jan. 1, 1992.

**CORE TERMS:** recording, driver, sensor, trigger, driving, surcharge, actuarial, recorded, discount, motor vehicle, computer, insured, raw data, vehicle insurance, billing, monitoring, accident, rating, stored, age, safety standards, acquisition, calculated, monitored, profile, driven, speed limits, automobile, navigation, sample

**ENGLISH-ABST:**

A method and system of determining a cost of automobile insurance based upon monitoring, recording and communicating data representative of operator and vehicle driving characteristics. The cost is adjustable retrospectively and can be prospectively set by relating the driving characteristics to predetermined safety standards. The method comprises steps of monitoring a plurality of raw data elements representative of an operating state of the vehicle or an action of the operator. Selected ones of the raw data elements are recorded when the ones are determined to have an identified relationship to safety standards. The selected ones are consolidated for processing against an insurer profile and for identifying a surcharge or discount to be applied to a base cost of automobile insurance. A final cost is produced from the base costs and the surcharges or discounts.

**NO-OF-CLAIMS: 15****NO-OF-FIGURES: 2****PARENT-PAT-INFO:**

This application is a continuation application of U.S. Ser. No. 08/592,958, filed Jan. 29, 1996, now U.S. Pat. No. 5,797,134.

**SUMMARY:****BACKGROUND OF THE INVENTION**

The present invention relates to data acquisition and processing systems, and particularly to a system for monitoring motor vehicle operational characteristics and driver behavior to obtain increased amounts of data relating to the safety of use for purposes of providing a more accurate determination of a cost of insurance for the vehicle. Conventional methods for determining costs of motor vehicle insurance involve gathering relevant historical data from a personal interview with the applicant for the insurance and by referencing the applicant's public motor vehicle driving record that is maintained by a governmental agency, such as a Bureau of Motor Vehicles. Such data results in a classification of the applicant to a broad actuarial class for which insurance rates are assigned based upon the empirical experience of the insurer. Many factors are relevant to such classification in a particular actuarial class, such as age, sex, marital status, location of residence and driving record. The current system of insurance creates groupings of vehicles and drivers (actuarial classes) based on the following types of classifications. Vehicle: Age; manufacturer; model; and value. Driver: Age; sex; marital status; driving record (based on government reports), violations (citations); at fault accidents; and place of residence. Coverage: Types of losses covered, liability, uninsured motorist, comprehensive, and collision; liability limits; and deductibles. The classifications, such as age, are further broken into actuarial classes, such as 21 to 24, to develop a unique vehicle insurance cost based on the specific combination of actuarial classes for a particular risk. For example, the following information would produce a unique vehicle insurance cost. Vehicle: Age 1993 (three years old) manufacturer, model Ford, Explorer XLT value \$ 18,000. Driver: Age 38 years old sex male marital status single driving record (based on government reports) violations 1 point (speeding) at fault accidents 3 points (one at fault accident) place of residence 33619 (zip code) Coverage: Types of losses covered liability yes uninsured motorist no comprehensive yes collision yes liability limits \$100,000./\$300,000./\$50,000. deductibles \$500./\$500. A change to any of this information would result in a different premium being charged, if the change resulted in a different actuarial class for that variable. For instance, a change in the drivers' age from 38 to 39 may not result in a different actuarial class, because 38 and 39 year old people may be in the same actuarial class. However, a change in driver age from 38 to 45 may result in a different premium because of the change in actuarial class. Current insurance rating systems also provide discounts and surcharges for some types of use of the vehicle, equipment on the vehicle and type of driver. Common surcharges and discounts include: Surcharges: Business use. Discounts: Safety equipment on the vehicle airbags, and anti-lock brakes; theft control devices passive systems (e.g. "The Club"), and alarm system; and driver type good student, and safe driver (accident free). A principal problem with such conventional insurance determination systems is that much of the data gathered from the applicant in the interview is not verifiable, and even existing public records contain only minimal information, much of which has little relevance towards an assessment of the likelihood of a claim subsequently occurring. In other words, current rating systems are primarily based on past realized losses. None of the data obtained through conventional systems necessarily reliably predicts the manner or safety of future operation of the vehicle. Accordingly, the limited amount of accumulated relevant data and its minimal evidential value towards computation of a fair cost of insurance has generated a long-felt need for an improved system for more reliably and accurately accumulating data having a highly relevant evidential value towards predicting the actual manner of a vehicle's future operation. Many types of vehicle operating data recording systems have heretofore been suggested for purposes of maintaining an accurate record of certain elements of vehicle operation. Some are suggested for identifying the cause for an accident, others are for more accurately assessing the efficiency of operation. Such systems disclose a variety of conventional techniques for recording vehicle operation data elements in a variety of data recording systems. In addition, it has also been suggested to provide a radio communication link for such information via systems such as a cellular telephone to provide immediate communication of certain types of data elements or to allow a more immediate response in cases such as theft, accident, break-down or emergency. It has even been suggested to detect and record seatbelt usage to assist in determination of the vehicle insurance costs (U.S. Pat. No. 4,667,336). The various forms and types of vehicle operating data acquisition and recordal systems that have heretofore been suggested and employed have met with varying degrees of success for their express limited purposes. All possess substantial defects such that they have only limited economical and practical value for a system intended to provide an enhanced acquisition, recordal and communication system of data which would be both comprehensive and reliable in predicting an accurate and adequate cost of insurance for the vehicle. Since the type of operating information acquired and recorded in prior art systems was generally never intended to be used for determining the cost of vehicle insurance, the data elements that were monitored and recorded therein were not directly related to predetermined safety standards or the determining of an actuarial class for the vehicle operator. For example, recording data characteristics relevant to the vehicle's operating efficiency may be completely unrelated to the safety of operation of the vehicle. Further, there is the problem of recording and subsequently compiling the relevant data for an accurate determination of an actuarial profile and an appropriate insurance cost therefor. Current motor vehicle control and operating systems comprise electronic systems readily adaptable for modification to obtain the desired types of information relevant to determination of the



cost of insurance. Vehicle tracking systems have been suggested which use communication links with satellite navigation systems for providing information describing a vehicle's location based upon navigation signals. When such positioning information is combined with roadmaps in an expert system, vehicle location is ascertainable. Mere vehicle location, though, will not provide data particularly relevant to safety of operation unless the data is combined with other relevant data in an expert system which is capable of assessing whether the roads being driven are high-risk or low-risk with regard to vehicle safety. The present invention contemplates a new and improved motor vehicle monitoring, recording and communication system, which primarily overcomes the problem of determining cost of vehicle insurance based upon data which does not take into consideration how a specific vehicle is operated. The subject invention will base insurance charges with regard to current material data representative of actual driving characteristics of the vehicle and driver operation to provide a classification rating of the operator and the vehicle in an actuarial class which has a vastly reduced rating error over conventional insurance cost systems. Additionally, the present invention allows for frequent (monthly) adjustment to the cost of coverage because of the changes in operator behavior and driving patterns. This can result in automobile insurance charges that are readily controllable by individual operators. The system is adaptable to current electronic operating systems, tracking systems and communication systems for the improved extraction of selected insurance related data.

#### BRIEF SUMMARY OF THE INVENTION

In accordance with the present invention, there is disclosed a method of determining a cost of automobile insurance based upon monitoring, recording and communicating data representative of operator and vehicle driving characteristics, whereby the cost is adjustable by relating the driving characteristics to predetermined safety standards. The method is comprised of steps of monitoring a plurality of raw data elements representative of an operating state of a vehicle or an action of the operator. Selected ones of the plurality of raw data elements are recorded when they are determined to have an identified relationship to the safety standards. The recorded elements are consolidated for processing against an insured profile and for identifying, a surcharge or discount to be applied to a base cost of automobile insurance. The total cost of insurance obtained from combining the base cost and surcharges or discounts is produced as a final cost to the operator. In accordance with another aspect of the present invention, the recording comprises identifying a trigger event associated with the raw data elements which has an identified relationship to the safety standards so that trigger information representative of the event is recorded. In accordance with a more limited aspect of the present invention, the method comprises a step of immediately communicating to a central control station via an uplink, information representative of the trigger event and recording response information generated by the control station. In accordance with yet another aspect of the present invention, the method comprises steps of generating calculated data elements and derived data elements from the raw data elements, and accumulating the calculated and derived data elements in a recording device. The present invention will use information acquired from the vehicle to more accurately assess vehicle usage and thereby derive insurance costs more precisely and fairly. Examples of possible actuarial classes developed from vehicle provided data include: Driver: Total driving time in minutes by each driver of the insured vehicle; number of minutes driving in high/low risk locations (high/low accident areas); number of minutes of driving at high/low risk times (rush hour or Sunday afternoon); safe driving behavior, using seat belts, use of turn signals, observance of speed limits, and observance of traffic control devices; number of sudden braking situations; and number of sudden acceleration situations. Vehicle: Location vehicle is parked at night (in garage, in driveway, on street); and location vehicle is parked at work (high theft locations, etc.). These new and more precise actuarial classes are considered to be better predictors of loss because they are based on actual use of the vehicle and the behaviors demonstrated by the driver. This will allow the consumers unprecedented control over the ultimate cost of their vehicle insurance. In accordance with the present invention, additional discounts and surcharges based on data provided by the insured vehicle will be available. Examples of surcharges and discounts based on vehicle provided data include: Surcharges: Excessive hard braking situations occurring in high risk locations; and intermittent use of a safety device, such as seat belts. Discounts: Regular selection of low/high risk routes of travel; regular travel at low/high risk times; significant changes in driving behavior that results in a lower risk; vacation discount when the vehicle is not used; regular use of safety devices; and unflagging observance of speed limits. There is some overlap between the use of actuarial classes and discounts and surcharges. Until data has been gathered and analyzed it is not possible to determine which vehicle provided data will be used to determine actuarial classes and which will be used for surcharges or discounts. One benefit obtained by use of the present invention is a system that will provide precise and timely information about the current operation of an insured motor vehicle that will enable an accurate determination of operating characteristics, including such features as miles driven, time of use and speed of the vehicle. This information can be used to establish actual usage based insurance charges, eliminating rating errors that are prevalent in traditional systems and will result in vehicle insurance charges that can be directly controlled by individual operators. It is another benefit of the subject invention that conventional motor vehicle electronics are easily supplemented by system components comprising a data recording, a navigation system and a communications device to extract selected insurance relevant data from the motor vehicle. It is yet another object of the present invention to generate actuarial classes and operator profiles relative thereto based upon actual driving characteristics of the vehicle and driver, as represented by the monitored and recorded data elements for providing a more knowledgeable, enhanced insurance rating precision. The subject new insurance rating system retrospectively adjusts and prospectively sets premiums based on data derived from motor vehicle operational characteristics and driver behavior through the generation of new actuarial classes determined from such characteristics and behavior, which classes heretofore have been unknown in the insurance industry. The invention comprises an integrated system to extract via multiple sensors, screen, aggregate and apply for insurance rating purposes, data generated by the actual operation of the specific vehicle and the insured user/driver. Other benefits and advantages of the subject new vehicle insurance cost determination process will become apparent to those skilled in the art upon a reading and understanding of the specification.

#### DRWDESC:

#### BRIEF DESCRIPTION OF THE DRAWINGS

The invention may take physical form in certain parts and steps and arrangements of parts and steps, the preferred embodiments of which will be described in detail in this specification and illustrated in the accompanying drawings which form a part hereof and wherein: FIG. 1 is a flowchart generally describing a data gathering process from a vehicle; FIG. 2 is a flowchart detailing the gathering and consolidating of appropriate information for determining a cost of insurance and the resulting insurance billing process; FIG. 3 is a suggestive perspective drawing of a vehicle including certain data element monitoring, recording and communicating devices; FIG. 4 is a block diagram of a vehicle on-board computer and recording system

implementing the subject invention for selective communication with a central control center and a global positioning navigation system; FIG. 5 is a flowchart generally illustrating a method for acquiring and recording vehicle insurance related data; and FIG. 6 is a tabular illustration of various sources of insurance-related data, a necessary interface for acquiring the data and an exemplary sample rate therefor.

#### DETDESC:

#### DETAILED DESCRIPTION OF THE INVENTION

Referring now to the drawings, wherein the showings are for purposes of illustrating the preferred embodiments of the invention only and not for purposes of limiting same, the FIGURES show an apparatus and method for monitoring, recording and communicating insurance related data for determination of an accurate cost of insurance based upon evidence relevant to the actual operation and in particular the relative safety of that operation. Although described with specific reference to automobiles, this invention is also applicable to other operator controlled motor vehicles normally requiring insurance. Generally, a vehicle user is charged for insurance based upon statistical averages related to the safety of operation based upon the insurer's experience with other users who drive similar vehicles in a similar geographic area. The invention allows for the measure of the actual data while the motor vehicle is being driven. Such data measurement will allow the vehicle user to directly control his/her insurance costs by operating the vehicle in a manner which he/she will know will evidence superior safety of operation and a minimal risk of generation of an insurance claim. Examples of data which can be monitored and recorded include: 1. Actual miles driven; 2. Types of roads driven on (high risk vs. low risk); and, 3. Safe operation of the vehicle by the vehicle user through: A. speeds driven, B. safety equipment used, such as seat belt and turn signals, C. time of day driven (high congestion vs. low congestion), D. rate of acceleration, E. rate of braking, F. observation of traffic signs. With reference to FIG. 3, an exemplary motor vehicle is shown in which the necessary apparatus for implementing the subject invention is included. An on-board computer 300 monitors and records various sensors and operator actions to acquire the desired data for determining a fair cost of insurance. Although not shown therein, a plurality of operating sensors are associated with the motor vehicle to monitor a wide variety of raw data elements. Such data elements are communicated to the computer through a connections cable which is operatively connected to the vehicle data bus 304 through an SAE-J1978 connector, or OBD-II connector or other vehicle sensors 306. A driver input device 308 is also operatively connected to the computer 300 through connector 307 and cable 302. The computer is powered through the car battery 310 or a conventional generator system (not shown). Tracking of the vehicle for location identification can be implemented by the computer 300 through navigation signals obtained from a GPS (global positioning system) antenna or other locating system 312. The communications link to a central control station is accomplished through the cellular telephone, radio, satellite or other wireless communication system 314. FIG. 4 provides the block diagram of the in-vehicle computer system. The computer 300 is comprised of four principal components, an on-board data storage device 402, an input/output subsystem 404 for communicating to a variety of external devices, a central processing unit and memory device 406 and a real time operating kernel 408 for controlling the various processing steps of the computer 300. The computer 300 essentially communicates with three on-board vehicle devices for acquisition of information representative of various actual vehicle operating characteristics. A driver input console 410 allows the driver to input data representative of a need for assistance or for satisfaction of various threshold factors which need to be satisfied before the vehicle can be operated. The physical operation of the vehicle is monitored through various sensors 412 in operative connection with the vehicle data bus, while additional sensors 414 not normally connected to the data bus can be in direct communication with the computer 300 as will hereinafter be more fully explained. The vehicle is linked to an operation control center 416 by a communications link 418, preferably comprising a conventional cellular telephone interconnection. A navigation sub-system 420 receives radio navigation signals from a GPS 422. The type of elements monitored and recorded by the subject invention comprise raw data elements, calculated data elements and derived data elements. These can be broken down as follows: Raw Data Elements: Power train sensors RPM, transmission setting (Park, Drive, Gear, Neutral), throttle position, engine coolant temperature, intake air temperature, barometric pressure; Electrical sensors brake light on, turn signal indicator, headlamps on, hazard lights on, back-up lights on, parking lights on, wipers on, doors locked, key in ignition, key in door lock, horn applied; Body sensors airbag deployment, ABS application, level of fuel in tank, brakes applied, radio station tuned in, seat belt on, door open, tail gate open, odometer reading, cruise control engaged, anti-theft disable; Other sensors vehicle speed, vehicle location, date, time, vehicle direction, IVHS data sources. Calculated Data Elements: rapid deceleration; rapid acceleration; vehicle in skid; wheels in spin; closing speed on vehicle in front; closing speed of vehicle in rear; closing speed of vehicle to side (right or left); space to side of vehicle occupied; space to rear of vehicle occupied; space to front of vehicle occupied; lateral acceleration; sudden rotation of vehicle; sudden loss of tire pressure; driver identification (through voice recognition or code or fingerprint recognition); distance travelled; and environmental hazard conditions (e.g. icing, etc.). Derived Data Elements: vehicle speed in excess of speed limit; observation of traffic signals and signs; road conditions; traffic conditions; and vehicle position. This list includes many, but not all, potential data elements. With particular reference to FIG. 1, a flowchart generally illustrating the data gathering process of the subject invention is illustrated. Such a process can be implemented with conventional computer programming in the real time operating kernel 408 of the computer 300. The process is identified with initially a begin step 100 (key in ignition?) and a check of whether the vehicle is operating at step 102. If the vehicle is not operating a reverification occurs every two (2) minutes as shown at step 104. It should be noted that the computer is continually powered by at least the vehicle battery 310 (FIG. 3), but it can be appreciated that during operation the generator (not shown) will supply the energy. If the vehicle is operating, then there is a step of recording sensor information 106. The recording comprises monitoring a plurality of raw data elements, calculated data elements and derived data elements as identified above. Each of these is representative of an operating state of the vehicle or an action of the operator. Select ones of the plurality of data elements are recorded when the ones are determined to have an identified relationship to the safety standards. For example, vehicle speed in excess of a predetermined speed limit will need to be recorded but speeds below the limit need only be monitored and stored on a periodic basis. The recording may be made in combination with date, time and location. Other examples of data needed to be recorded are excessive rates of acceleration or frequent hard braking. The recording process would be practically implemented by monitoring and storing the data in a buffer for a selected period of time, e.g., thirty seconds. Periodically, such as every two minutes, the status of all monitored sensors for the data elements is written to a file which is stored in the vehicle data storage 402. The raw, calculated and derived data elements listed above comprise some of the data elements to be so stored. Certain of the recorded sensor information may comprise a trigger event of which inquiry is identified at step 108. "Trigger events" are defined as a combination of sensor data requiring additional action or which may result in a surcharge or discount during the insurance billing process. Certain trigger events may require immediate upload 110 to a central control 112 which will then be required to take appropriate action 114. For example, a trigger event would be rapid deceleration in combination with airbag


deployment indicating a collision, in which case the system could notify the central control of the vehicle location. Alternatively, if the operator were to trigger on an emergency light, similarly the system could notify the central control of the vehicle location indicating that an emergency is occurring. Alternatively, if the trigger information is not so serious as to require immediate upload (i.e., the inquiry is "NO") then, the trigger information is recorded, as at step 116. For upload information, whatever response is taken by the central control is also recorded at step 118. The trigger information recording step 116 and the recording sensor information step 106 may impart recording of information in the on-board data storage device 402 or memory 406. The event response information recording at step 118 will usually occur in the central control station. Such response information could be the dispatch of an emergency vehicle, or the telephoning of police or an EMS unit. The "NO" response to the trigger event inquiry 108 indicates that the system remains in a wait loop with the recording sensor information step 106. Trigger events are divided into two groups: those requiring immediate action and those not requiring immediate action, but necessary for proper billing of insurance. Those required for proper billing of insurance will be recorded in the same file with all the other recorded vehicle sensor information. Those trigger events requiring action will be uploaded 110, 112 to a central control center which can take action 114 depending on the trigger event. Some trigger events will require dispatch of emergency services, such as police or EMS, and others will require the dispatch of claims representatives from the insurance company. The following comprises an exemplary of some, but not all, trigger events: Need for Assistance: These events would require immediate notification of the central control center. 1. Accident Occurrence. An accident could be determined through the use of a single sensor, such as the deployment of an airbag. It could also be determined through the combination of sensors, such as a sudden deceleration of the vehicle without the application of the brakes. 2. Roadside assistance needed. This could be through the pressing of a "panic button" in the vehicle or through the reading of a sensor, such as the level of fuel in the tank. Another example would be loss of tire pressure, signifying a flat tire. 3. Lock-out assistance needed. The reading of a combination of sensors would indicate that the doors are locked but the keys are in the ignition and the driver has exited the vehicle. 4. Driving restrictions. The insured can identify circumstances in which he/she wants to be notified of driving within restricted areas, and warned when he/she is entering a dangerous area. This could be applied to youthful drivers where the parent wants to restrict time or place of driving, and have a record thereof. Unsafe Operation of the Vehicle: These events would be recorded in the in-vehicle recording device for future upload. Constant trigger events would result in notification of the driver of the exceptions. 1. Excessive speed. The reading of the vehicle speed sensors would indicate the vehicle is exceeding the speed limit. Time would also be measured to determine if the behavior is prolonged. 2. Presence of alcohol. Using an air content analyzer or breath analyzer, the level of alcohol and its use by the driver could be determined. 3. Non-use of seatbelt. Percent of sample of this sensor could result in additional discount for high use or surcharge for low or no use. 4. Non-use of turn signals. Low use could result in surcharge. 5. ABS application without an accident. High use could indicate unsafe driving and be subject to a surcharge. With particular reference to FIG. 2, a general flowchart describing the steps of the gathering of appropriate information for billing insurance on a periodic basis is illustrated. At the initiation of the vehicle insurance billing process, the central billing system of the insurer will acquire 202 the vehicle sensor record file from the sensor record file 204 from each vehicle to be billed. This process of data acquisition will involve a periodic uploading of the vehicle file 204. This file will be uploaded to the central system when the storage device 402 in the vehicle approaches capacity, on command, or when the billing process starts. All the information from the combination of files stored in the vehicle will be used to determine the bill for the insurance on the vehicle for the prior insurance period. Data acquisition is also made from the trigger event response file 206 in the acquisition step 208. This data is stored in the central control center, and includes information for response activities listed above which require additional billing for services rendered to the insured. At step 210, the vehicle sensor record file and the trigger event response file are consolidated. Such files will include all the activity for which the insured is to be billed for the prior period. At step 212, all the information comprising the insured profile, which is already maintained and stored in other insurance files, is applied to the consolidated activity files for the immediately prior period. This insured profile includes the information about coverages including limits and deductibles, which are necessary for establishing the appropriate cost of insurance for the subject insured. At step 214, the acquired consolidated file information from step 210 and the overall insured profile acquired at step 212 are combined and processed against a surcharge or discount algorithm file, which include the specific factors for the various usage patterns and trigger events. The surcharges and discounts are continuously adjusted based on the loss results associated with driving behaviors demonstrated. Finally at step 216, the appropriate billing is produced showing the charges for insurance and other services for the prior period. The billing can be sent electronically or in printed form to the insured for payment. With particular reference to FIG. 5, a general diagram of the process for acquiring and recording vehicle insurance related data is illustrated. At step 502, the raw data elements are collected from the vehicle sensors that provide the raw data elements identified above. Calculated data elements are generated in step 504 and derived data elements are generated at step 508. As noted, it is necessary to collect certain database information elements at step 506 prior to generating the derived data elements. A sample of all the data elements is stored in the vehicle at step 510. The sample rate or the recording of the information is controlled based upon the particular insurance billing recording needs predetermined by an algorithm developed by the insurance company. The algorithm will change depending on the particular type of insurance related requirements for the information. At step 512, if a certain incident, for example collision, occurs then a snapshot is generated of all the relevant data elements at the time of the incident, 514. If no such incident occurs (i.e., the condition inquiry is "NO"), the system remains in the data collection loop. With reference to FIG. 6, various examples of sources of insurance related data, the interface required to acquire the data and an example of the sample rate are illustrated for a preferred embodiment of the subject invention. Accordingly, it can be seen that for a certain information database comprised of maps, speed limits, traffic signs, and highway conditions is stored in the data storage device of the computer and can be obtained on demand therefrom. Acquiring data from vehicle sources such as engine data, body data and electrical data is obtained through a conventional SAEJ 1978 connector with an exemplary sample rate of 10-15 Hz. The other sources of relevant data, such as IVHs, GPS, security system or any additional systems are obtained through various I/O ports and the sample rate can be varied in accordance with the desired goals of the insurer. One of the useful consequences of the subject invention is that other products could be marketed to a particular vehicle operator based on information provided from the subject invention from the operator's motor vehicle. Since the invention includes processes for gathering, extracting and analyzing information provided by the vehicle, a more informed judgment can be made about a determination of when and which products could be marketed to that motor vehicle operator. For example, by knowing that a vehicle operator travels on vacation in that vehicle to a certain resort location may give rise to a marketing of a package of products particular to the type of travel or the location. Another example would relate to the knowledge that the vehicle operator attends particular types of sporting events which may give rise to certain types of products catered to fans of that sporting event. The invention has been described with reference to preferred embodiments. Obviously, modifications and alterations will occur to others upon a reading and understanding of the specification. It is our intention to include all such modifications and alterations insofar as they come within the scope of the appended claims or the equivalents thereof.



**ENGLISH-CLAIMS:**  
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1. A method of generating a database comprising data elements representative of operator or vehicle driving characteristics, the method comprising: monitoring a plurality of the data elements representative of an operating state of a vehicle or an action of the operator during a selected time period; and, recording selected ones of the plurality of data elements into the database when said ones are determined to be appropriate for recording relative to determining a cost of insurance for the vehicle during the selected time period, said ones including, a time and location of vehicle operation and a corresponding log of vehicle speed for the time and location.
2. A database comprising data elements representative of operator or vehicle driving characteristics for a selected time period including a time and location of vehicle operation and a corresponding log of vehicle speed for the time and location, the database then being used to determine an insurance charge for the vehicle operation for said selected time period.
3. The database as defined in claim 2 wherein the data elements comprise raw data elements, derived data elements and calculated data elements.
4. A method of insuring a vehicle operator for a selected period based upon operator driving characteristics during the period, comprising, steps of: generating an initial operator profile; monitoring operator driving characteristics during the selected period; and deciding a cost of vehicle insurance for the period based upon the operating characteristics monitored in that period.
5. A method of determining a cost of vehicle insurance for a selected period based upon monitoring, recording and communicating data representative of operator and vehicle driving characteristics during said period, whereby the cost is adjustable by relating the driving characteristics to predetermined safety standards, the method comprising: determining an initial insured profile and a base cost of vehicle insurance based on said insured profile; monitoring a plurality of data elements representative of an operating state of a vehicle or an action of the operator during the selected period; recording selected ones of the plurality of data elements when said ones are determined to have a preselected relationship to the safety standards; consolidating said selected ones for identifying a surcharge or discount to be applied to the base cost; and, producing a final cost of vehicle insurance for the selected period from the base cost and the surcharge or discount.
6. A method of monitoring a human controlled power source driven vehicle, the method comprising: extracting one or more data elements from at least one sensor wherein the one or more elements are of at least one operating state of the vehicle and the at least one human's actions during a data collection period; analyzing, grouping, and storing the one or more data elements as group data values in a first memory related to a predetermined group of elements; and, correlating the group data values to preset values in a second memory and generating an output data value based on the correlation wherein the output data value is used to compute an insurance rating for the vehicle FOR the data collection period.
7. The method according to claim 6, further including the steps of: determining if the one or more data elements indicate one or more predetermined triggering events, where if the determination is positive, correlating the one or more data elements to one or more types of triggering events stored in a third memory; and, storing and transmitting a signal corresponding to the determined triggering event to a receiving system.
8. The method according to claim 6, further including the steps of: determining if the one or more data elements indicate one or more predetermined triggering events, where if the determination is positive, correlating the one or more data elements to one or more types of triggering events stored in a third memory; and, storing or transmitting a signal corresponding to the determined triggering event to a receiving system.
9. The method as defined in claim 6 wherein the output data value is additionally used for computing an insurance rating for the vehicle for a future data collection period.
10. The method according to claim 6, further comprising the steps of: using safety or other actuarial standard values as the preset values; and, generating an adjusted insurance cost as the output data value.
11. The method according to claim 10, further comprising the steps of: using location and time as the one or more data elements which are compared to the safety or other actuarial standard values to generate the adjusted insurance cost.
12. The method according to claim 11 wherein: the adjusted insurance cost can be for a prospective or retrospective basis.
13. The method according to claim 6, further comprising the steps of: using safety or other actuarial standard values as the preset values; and, generating an adjusted underwriting cost as the output data value.
14. The method according to claim 13, further comprising the steps of: using location and time as the one or more data elements which are compared to the safety or other actuarial standard values to generate the adjusted underwriting cost.
15. The method according to claim 14 wherein: the adjusted underwriting cost can be for a prospective or retrospective basis.

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- 2. [The New York Times](#), July 15, 1982, Thursday, Late City Final Edition, Section 4; Page 6, Column 7; Financial Desk, 79 words, BAYBANKS INC reports earnings for Qtr to June 30  
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REEXAM CONTROL NUMBER	FILING OR 371 (c) DATE	PATENT NUMBER
90/011,252	09/22/2010	6064970

**CONFIRMATION NO. 4116  
REEXAM ASSIGNMENT NOTICE**

27885  
FAY SHARPE LLP  
1228 Euclid Avenue, 5th Floor  
The Halle Building  
Cleveland, OH 44115



Date Mailed: 09/29/2010

**NOTICE OF ASSIGNMENT OF REEXAMINATION REQUEST**

The above-identified request for reexamination has been assigned to Art Unit 3993. All future correspondence to the proceeding should be identified by the control number listed above and directed to the assigned Art Unit.

A copy of this Notice is being sent to the latest attorney or agent of record in the patent file or to all owners of record. (See 37 CFR 1.33(c)). If the addressee is not, or does not represent, the current owner, he or she is required to forward all communications regarding this proceeding to the current owner(s). An attorney or agent receiving this communication who does not represent the current owner(s) may wish to seek to withdraw pursuant to 37 CFR 1.36 in order to avoid receiving future communications. If the address of the current owner(s) is unknown, this communication should be returned within the request to withdraw pursuant to Section 1.36.

cc: Third Party Requester(if any)  
ROPES & GRAY LLP  
PATENT DOCKETING 39/41  
ONE INTERNATIONAL PLACE  
BOSTON, MA 02110-2624

/kpdozier/

\_\_\_\_\_  
Legal Instruments Examiner  
Central Reexamination Unit 571-272-7705; FAX No. 571-273-9900



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90/011,252	09/22/2010	6064970

ROPES & GRAY LLP  
PATENT DOCKETING 39/41  
ONE INTERNATIONAL PLACE  
BOSTON, MA 02110-2624

**CONFIRMATION NO. 4116  
REEXAMINATION REQUEST  
NOTICE**



Date Mailed: 09/29/2010

**NOTICE OF REEXAMINATION REQUEST FILING DATE**

*(Third Party Requester)*

Requester is hereby notified that the filing date of the request for reexamination is 09/22/2010, the date that the filing requirements of 37 CFR § 1.510 were received.

A decision on the request for reexamination will be mailed within three months from the filing date of the request for reexamination. (See 37 CFR 1.515(a)).

A copy of the Notice is being sent to the person identified by the requester as the patent owner. Further patent owner correspondence will be the latest attorney or agent of record in the patent file. (See 37 CFR 1.33). Any paper filed should include a reference to the present request for reexamination (by Reexamination Control Number).

cc: Patent Owner  
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/kpdozier/

Legal Instruments Examiner  
Central Reexamination Unit 571-272-7705; FAX No. 571-273-9900

## Patent Assignment Abstract of Title

### Total Assignments: 3

Application #: 09135034

Filing Dt: 08/17/1998

Patent #: 6064970

Issue Dt: 05/16/2000

PCT #: NONE

Publication #: NONE

Pub Dt:

Inventors: ROBERT JOHN MCMILLAN, ALEXANDER DEAN CRAIG, JOHN PATRICK HEINEN

Title: MOTOR VEHICLE MONITORING SYSTEM FOR DETERMINING A COST OF INSURANCE

### Assignment: 1

Reel/Frame: 011627 / 0258 Received: 04/02/2001 Recorded: 03/22/2001 Mailed: 06/05/2001 Pages: 5

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: PROGRESSIVE CASUALTY INSURANCE COMPANY

Exec Dt: 03/14/2001

Assignee: PROGRESSIVE CASUALTY INSURANCE COMPANY

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### Assignment: 2

Reel/Frame: 011934 / 0089 Received: 07/03/2001 Recorded: 06/28/2001 Mailed: 09/07/2001 Pages: 5

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: PROGRESSIVE CASUALTY INSURANCE COMPANY

Exec Dt: 03/14/2001

Assignee: PROGRESSIVE DIRECTRAC SERVICE CORP.

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### Assignment: 3

Reel/Frame: 012698 / 0908 Received: 03/27/2002 Recorded: 03/18/2002 Mailed: 05/20/2002 Pages: 6

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: PROGRESSIVE DIRECTRAC SERVICE COMP.

Exec Dt: 01/16/2002

Assignee: PROGRESSIVE CASUALTY INSURANCE COMPANY

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Attorney Docket No.: LMIC-019Date: September 22, 2010

1.  This is a request for *ex parte* reexamination pursuant to 37 CFR 1.510 of patent number 6,064,970 issued May 16, 2000. The request is made by:  
 patent owner.  third party requester.
2.  The name and address of the person requesting reexamination is:  
Liberty Mutual Insurance Co. (by their attorneys, Ropes & Gray LLP)  
175 Berkley Street  
Boston, Massachusetts 02116
3.  a. A check in the amount of \$ \_\_\_\_\_ is enclosed to cover the reexamination fee, 37 CFR 1.20(c)(1);  
 b. The Director is hereby authorized to charge the fee as set forth in 37 CFR 1.20(c)(1) to Deposit Account No. 18-1945; or  
 c. Payment by credit card. Form PTO-2038 is attached.
4.  Any refund should be made by  check or  credit to Deposit Account No. 18-1945 37 CFR 1.26(c). If payment is made by credit card, refund must be to credit card account.
5.  A copy of the patent to be reexamined having a double column format on one side of a separate paper is enclosed. 37 CFR 1.510(b)(4)
6.  CD-ROM or CD-R in duplicate, Computer Program (Appendix) or large table  
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7.  Nucleotide and/or Amino Acid Sequence Submission  
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ii.  paper  
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9.  Reexamination of claim(s) 1-15 is requested.
10.  A copy of every patent or printed publication relied upon is submitted herewith including a listing thereof on Form PTO/SB/08, PTO-1449, or equivalent.
11.  An English language translation of all necessary and pertinent non-English language patents and/or printed publications is included.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.510. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 18 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop *Ex Parte* Reexam, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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b. An identification of every claim for which reexamination is requested, and a detailed explanation of the pertinency and manner of applying the cited art to every claim for which reexamination is requested. 37 CFR 1.510(b)(2).		
13. <input type="checkbox"/> A proposed amendment is included (only where the patent owner is the requester). 37 CFR 1.510(e)		
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The name and address of the party served and the date of service are:		
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<u>1228 Euclid Avenue, 5th Floor, The Halle Building</u>		
<u>Cleveland OH 44115</u>		
Date of Service: <u>September 22, 2010</u> ; or		
<input type="checkbox"/> b. A duplicate copy is enclosed because service on patent owner was not possible. An explanation of the efforts made to serve patent owner is attached. See MPEP 2220.		
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16. <input checked="" type="checkbox"/> The patent is currently the subject of the following concurrent proceeding(s):		
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6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (*i.e.*, GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Inventors: Robert J. McMillan, et al.	§	Attorney Docket No.: 47,414
U.S. Patent No. 6,064,970	§	
Formerly Application No. 09/135,034	§	Customer No.: 28120
Issue Date: May 16, 2000	§	
Filing Date: August 17, 1998	§	Requester: Liberty Mutual Insurance Co.
Former Group Art unit: 2761	§	
Former Examiner: Edward R. Cosimano	§	

For: MOTOR VEHICLE MONITORING SYSTEM FOR DETERMINING A COST OF  
INSURANCE

MAIL STOP *EX PARTE* REEXAM  
Central Reexamination Unit  
Office of Patent Legal Administration  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**REQUEST FOR *EX PARTE* REEXAMINATION OF U.S. PATENT NO. 6,064,970  
PURSUANT TO 35 U.S.C. § 302, 37 C.F.R. § 1.510**

Dear Sir:

Pursuant to the provisions of 35 U.S.C. § 302 and 37 C.F.R. § 1.510, the undersigned, on behalf of Liberty Mutual Insurance Company (“the Requester”) hereby requests *ex parte* reexamination of claims 1-15 (all of the claims) of United States Patent No. 6,064,970 (“the ‘970 patent”), which issued to Progressive Casualty Insurance Company on May 16, 2000, with Robert J. McMillan as the first named inventor. A complete copy of the ‘970 patent is attached as Exhibit A, and a copy of the prosecution history for the ‘970 patent (other than the prior art of record) is attached as Exhibit B. As detailed below, the Requester hereby asserts that a substantial new question of patentability exists as to all of the claims of the ‘970 patent based on five prior art references that were not previously before the Patent Office, and one reference

that was.<sup>1</sup> The Requester also cites two other references that the Applicants conceded, during prosecution, were prior art. The Requester further asserts that all of the claims are invalid in view of these references.

The '970 patent is also at issue in *Progressive Casualty Insurance Company v. Safeco Insurance Company of Illinois, et al.*, Case No. 1:10-cv-01370-PAG, in the U.S. District Court for the Northern District of Ohio, Eastern Division (filed June 18, 2010). In the context of the present Request, the standard provided in MPEP § 2111 (Claim Interpretation; Broadest Reasonable Interpretation) for claim interpretation during patent examination is applied. Because the courts apply a different standard during litigation, *see In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364, 1369 (Fed. Cir. 2004), the Requester expressly reserves the right to argue a different claim construction in the pending litigation.

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<sup>1</sup> The '970 patent issued on August 18, 1998, approximately 19 months before the USPTO implemented "second-pair-of-eyes" review for business method patents in Class 705, to which the '970 patent is assigned. *See, e.g.,* <http://www.uspto.gov/web/offices/com/strat21/action/q3p17a.htm>.

**TABLE OF CONTENTS**

I. BACKGROUND TO THE REQUEST.....1

II. SUBSTANTIAL NEW QUESTIONS OF PATENTABILITY .....5

    A. Listing Of Prior Art Patents And Printed Publications.....5

    B. Statement Setting Forth Each Substantial New Question of Patentability .....6

        1. Background and Prosecution of the '970 Patent .....7

        2. The Specific Features the Applicants Emphasized During Prosecution to Obtain Allowance of the '970 Patent Existed Long Before Any Claimed Priority Date for the '970 Patent, As Shown By the New Technical Teachings of the Cited References, Which Thus Raise Substantial New Questions of Patentability .....15

    C. Secondary Considerations and Obviousness Under 35 U.S.C. § 103 .....17

III. DETAILED EXPLANATION OF THE PERTINENCE AND MANNER OF APPLYING THE PRIOR ART REFERENCES TO EVERY CLAIM FOR WHICH REEXAMINATION IS REQUESTED .....22

    A. Kosaka and Black Magic .....23

        1. Overview of Kosaka.....23

        2. Overview of Black Magic .....25

        3. Kosaka.....26

        4. Claims 4-8, 10, and 13 Should be Rejected under 35 U.S.C. 102(b) as Anticipated by Kosaka .....27

        5. Kosaka and Black Magic .....48

        6. Claims 1-3, 11-12, and 14-15 Should be Rejected under 35 U.S.C. 103(a) as Obvious in Light of Kosaka in View of Black Magic .....50

        7. The Admitted Prior Art .....67

        8. Claim 9 Should be Rejected under 35 U.S.C. 103(a) as Obvious in Light of Kosaka in View of the Admitted Prior Art .....67

    B. Lemelson and Dorweiler.....69

        1. Overview of Lemelson.....69

        2. Overview of Dorweiler .....71

        3. Lemelson and Dorweiler .....72

        4. Claims 1-8, 10-15 Should be Rejected under 35 U.S.C. 103(a) as Obvious in Light of Lemelson in View of Dorweiler.....74

        5. Claim 9 Should be Rejected under 35 U.S.C. 103(a) as Obvious in Light of Lemelson in View of Dorweiler and the Admitted Prior.....117

C.	Bouchard and Pettersen .....	118
1.	Overview of Bouchard .....	119
2.	Overview of Pettersen .....	120
3.	Bouchard and Pettersen .....	122
4.	Claims 1-8, 10-15 Should be Rejected under 35 U.S.C. 103(a) as Obvious in Light of Bouchard in View of Pettersen .....	123
5.	Claim 9 of the '970 patent is rendered obvious by Bouchard in view of Pettersen and the Admitted Prior Art. ....	168
IV.	CONCLUSION .....	170

**LIST OF EXHIBITS**

- Exhibit A: U.S. Patent No. 6,064,970
- Exhibit B: U.S. Patent No. 6,064,970 File History
- Exhibit C: Kosaka
- Exhibit D: Black Magic
- Exhibit E: Lemelson
- Exhibit F: Dorweiler
- Exhibit G: Bouchard
- Exhibit H: Pettersen
- Exhibit I: U.S. Patent No. 5,797,134 File History



## I. BACKGROUND TO THE REQUEST

The '970 patent is nothing more than an attempt to claim ideas that had long been known in the art – monitoring and recording vehicle data for insurance rating purposes. Independent claims 1, 2 and 4-6, and dependent claim 3, require three main elements: (1) “monitoring” or “extracting” data representative of vehicle or driver behavior (*e.g.*, time and location) during a selected period of time; (2) “recording” the data in, *e.g.*, a database; and (3) “determining” a cost of insurance for the selected time period. Dependent claims 7-15 recite a more detailed method for monitoring vehicle and driver behavior and adjusting insurance costs based on safety and actuarial standard values.

These claimed principles were not invented by the Applicants. This is confirmed, in part, by the Background of the Invention section of the '970 patent and statements made by the Applicants during prosecution. In fact, by the Applicants' own admissions, it was *well known* to monitor and record data collected from a vehicle and to use that data to assess insurance costs.

First, the '970 patent makes plain that “conventional insurance” schemes that used actuarial classes to rate insurance costs were known. Ex. A at Col. 1:16-2:37. Second, the Applicants acknowledged the following methods and systems as commonplace:

- Vehicle operating data recording systems that “disclose a variety of conventional techniques for recording vehicle operation data elements in a variety of data recording systems” (*id.* at Col. 2:54-61);
- Vehicle tracking systems “with navigation systems for providing information describing a vehicle’s location based upon navigation signals. When such positioning information is combined with roadmaps in an expert system, vehicle location is ascertainable” (*id.* at Col. 3: 28-34);
- Using radio communication links and cellular phones to “provide immediate communication of certain types of data elements or to allow a more immediate response in cases of theft, accident, break-down or emergency” (*id.* at Col. 1: 61-66); and

- Detection and recording of vehicle usage data, *e.g.*, seatbelt usage, to assess vehicle insurance costs (*id.* at Col. 1:66-2:2).

Third, the '970 patent recognizes that “[c]urrent motor vehicle control and operating systems comprise electronic systems readily adaptable for modification to obtain the desired types of information relevant to determination of the cost of insurance.” *Id.* at Col. 3:25-28.

Indeed, during prosecution of the '970 patent, the Applicants stated that the prior art of record was “useful for teaching a *collection of operational data about a vehicle*” and “that this *stored data can be acquired by automobile insurance companies for ‘appropriately allocating higher costs only among the highest risk drivers’* [or to allow] *‘insurance companies to evaluate the driving habits of vehicle operators.’*” Ex. B, Amend. D at 5 (emphasis added).

Faced with the breadth of the prior art teaching the use of vehicle data for insurance rating, the Applicants were forced to limit their “invention” based on which insurance period to apply cost adjustments, premium adjustments, and ratings, *i.e.*, for application to the monitored time period. Particularly, the Applicants argued that the “important and consequential advantage of the subject invention [is] *determining insurance costs for a certain period based upon how the vehicle is operated during that very same time period.*” *Id.* at 5-6 (emphasis added). The Applicants further assured the PTO that “the instant invention is directed to a system which *adjusts the insurance premium for the current insurance period and not a future insurance period as in the applied prior art.*” Ex. B, Interview Summary (emphasis added). As such, the Applicants made clear during prosecution that the “invention” as a whole is limited to using vehicle data for determining insurance cost adjustments, premium adjustments, and ratings

to apply to the corresponding monitored period of vehicle operation. This is further confirmed by the issued claim language, as illustrated in claim 1 of the '970 patent<sup>2</sup>:

**“. . . *monitoring a plurality of the data elements* representative of an operating state of a vehicle or an action of the operator *during a selected time period*; and recording selected ones of the plurality of data elements into the database when said ones are determined to be appropriate for recording relative to *determining a cost of insurance for the vehicle during the selected time period.*”**

But, contrary to the Applicants' representations to the Examiner, at least three separate prior art references (one that was before the original Examiner and two newly-located references) *did* disclose this purported “novel” concept of insurance rating for the monitored time period. In fact, using vehicle data to rate insurance retrospectively was known **80 years ago**.

The Dorweiler reference, published in 1930, discloses a method for determining “premium bases” using data from “devices” to assess exposure retrospectively, *i.e.*, collecting data during one period that affects an insurance rate during the same monitored period. Ex. F at 339. The article states that when hazard media such as “mileage, car-hour, or fuel-consumption exposure” are used in “*rate making*,” they would “*require a final adjustment which would be determined retrospectively*” for the period monitored. *Id.* at 339 (emphasis added).

The Kosaka reference, published in 1992, discloses a risk evaluation device “for evaluating risk in moving bodies (vehicles) or insurance customers,” and to an “insurance premium determination device that employs this *risk evaluation device*.” Ex. C at 2 (emphasis added). The information gathered and evaluated by these devices is then used to determine a “real time” insurance premium. *Id.* at 4, 7.

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<sup>2</sup> Each independent claim of the '970 patent has language that refers to monitoring driver behavior during a specific time period and determining an insurance rate for that time period. Ex. A at Col. 11:41-12:40.

And the Pettersen reference, published in 1990, taught that vehicle data related to the “driving pattern of a motor vehicle” may be used to provide a “*bonus*” to persons with measured safe driving characteristics, and in particular, a “*more fair bonus arrangement*, i.e., that policy holders having a ‘careful’ driving pattern – low speeds and low accelerations – may be allotted a higher bonus.” Ex. H at 3 (emphasis added). One of ordinary skill at the time would naturally have understood Pettersen’s disclosure of this “bonus” in its ordinary sense to include at least a possible reward for performance in the monitored period, and would thus have recognized Pettersen to be disclosing an insurance scheme where the policyholder receives such a “bonus” or rebate for good driver behavior during the measured time period against the premium for that period. *Id.*

As explained below in Section III, each of these three references not only demonstrates the existence of rating for the monitored time period – the Applicants’ claimed distinction for patentability – in the prior art, but also renders claims 1-15 invalid, as either anticipated (Kosaka) or obvious in combination with other cited prior art references (including three newly-cited references not before the examiner during original prosecution and admissions by the Applicants). For example, Lemelson teaches monitoring how a vehicle is being driven to create an evaluation code that can warn the driver or a remote location about unsafe driving while Dorweiler teaches how to use this exposure media to change premium rates retrospectively. In addition, Bouchard and Pettersen teach complementary systems of monitoring vehicle sensors to determine whether the driver is operating safely, which, as Pettersen discloses, can be used to give insurance bonuses to drivers who drove carefully during the monitored period, thus reducing the premium paid for that monitored period. Finally, Kosaka discloses a fuzzy logic system that uses data about the operation of a motor vehicle to

evaluate risk. Based on the level of risk, Kosaka discloses changing insurance premiums in real time or triggering an alarm signal. Combining Kosaka with Black Magic yields a location-aware real-time insurance pricing system. Kosaka, standing alone, and each of these combinations raise substantial new issues of patentability.

## **II. SUBSTANTIAL NEW QUESTIONS OF PATENTABILITY**

Section II.A, below, provides a list of all prior art references relied upon in the present request – including references not previously cited to or considered by the Patent Office – disclosing the features the Applicants argued were missing from the prior art considered during the original prosecution. Section II.B explains how each of the references raises a substantial new question of patentability that is different from those raised in the previous examination of the patent before the Office. As part of this discussion, Section II.B(1) provides an overview of the subject matter and prosecution history of the ‘970 patent, including an overview of the features the Applicants argued were missing from the prior art considered during the original prosecution. Section II.B(2) explains how the features emphasized by the Applicants during prosecution to obtain the ‘970 patent were well known in the art, and in particular are shown by the references and combinations of references that form the basis for Requester’s substantial new questions of patentability. Section II.C explains why the obviousness of all the claims of the ‘970 patent cannot be overcome by secondary considerations.

### **A. Listing Of Prior Art Patents And Printed Publications**

Reexamination of claims 1-15 (all of the issued claims) of the ‘970 patent is requested in view of the following references:

Exhibit C: Japanese Patent Publication No. JP-A-4/182868, filed on November 19, 1990 and published on June 30, 1992, to Kosaka (“Kosaka”) and Certified English-Language Translation.

- Exhibit D: “An Interest in Black Magic – Motor Technology” published on January 1, 1994 in *Insurance Age* magazine (“Black Magic”).
- Exhibit E: U.S. Patent No. 5,570,087, filed on February 18, 1994 and issued on October 29, 1996, to Lemelson (“Lemelson”).
- Exhibit F: “Notes on Exposure and Premium Bases” by P. Dorweiler, on page 319 of a book published in 1930 by the Casualty Actuarial Society entitled “Proceedings of the Casualty Actuarial Society” (“Dorweiler”).
- Exhibit G: U.S. Patent No. 5,465,079, filed on August 13, 1993 and issued on November 7, 1995, to Bouchard *et al.* (“Bouchard”).
- Exhibit H: WO 90/02388, filed on August 8, 1989 and published on March 8, 1990, to Pettersen (“Pettersen”).

**B. Statement Setting Forth Each Substantial New Question of Patentability**

Other than Pettersen, none of the above-listed references were cited by the Applicants or the Examiner or otherwise utilized during the prosecution of the application that issued as the ‘970 patent. As detailed below in this section, each of these new references is more relevant than the art that was utilized during the prosecution of the ‘970 patent. With regard to Pettersen, although it was made of record during the ‘970 patent’s prosecution, Pettersen was not cited or discussed during examination to reject the claims. As discussed below, Pettersen is being presented in this Request in a new light and in combination with references that were not cited or otherwise utilized during reexamination. In addition, statements the Applicants made during prosecution of the ‘970 patent application (“Admitted Prior Art”) are also used in this Request in combination with the newly-cited references that contain disclosures more pertinent than those before the Examiner during the original examination. Thus, the questions of patentability raised in this request were not raised during prosecution of the application that led to the ‘970 patent.

The following combinations of references raise new issues of patentability that were not considered during prosecution of the '970 patent:

1. A substantial new question is raised as to the patentability of claims 4-8, 10, and 13 by Kosaka.
2. A substantial new question is raised as to the patentability of claims 1-3, 11-12, and 14-15 by Kosaka in view of Black Magic.
3. A substantial new question is raised as to the patentability of claim 9 by Kosaka in view of the Admitted Prior Art.
4. A substantial new question is raised as to the patentability of claims 1-8 and 10-15 by Lemelson in view of Dorweiler.
5. A substantial new question is raised as to the patentability of claim 9 by Lemelson in view of Dorweiler and the Admitted Prior Art.
6. A substantial new question is raised as to the patentability of claims 1-8 and 10-15 by Bouchard in view of Pettersen.
7. A substantial new question is raised as to the patentability of claim 9 by Bouchard in view of Pettersen and the Admitted Prior Art.

**1. Background and Prosecution of the '970 Patent**

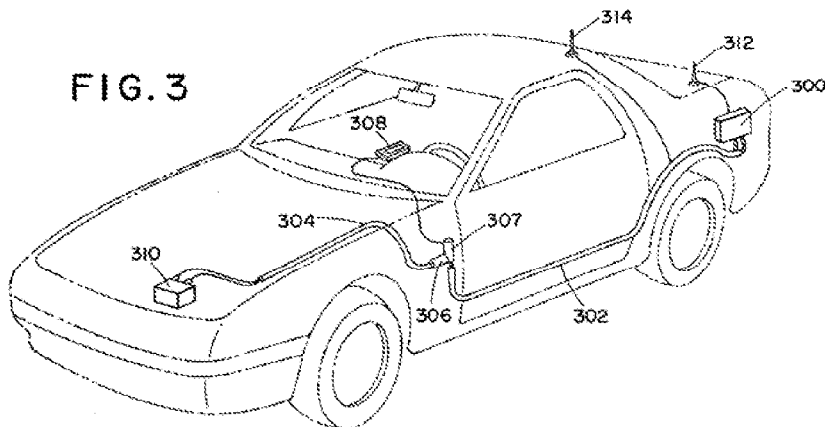
**(a) The '970 Patent**

The '970 patent states it is directed to “a method and system of determining a cost of automobile insurance based on monitoring, recording and communicating data representative of operator and vehicle driving characteristics.” Ex. A at Abstract. The majority of the written description of the '970 patent relates to well-known insurance schemes and vehicle monitoring technology. For example, the '970 patent describes “conventional insurance” schemes that use actuarial classes and assess underwriting costs. *Id.* at Col. 1:28-2:37.

In addition, according to the Background of the Invention, the following concepts were recognized in the prior art:

- Vehicle operating data recording systems that “disclose a variety of conventional techniques for recording vehicle operation data elements in a variety of data recording systems” (*id.* at Col. 2:54-61);
- Vehicle tracking systems “with navigation systems for providing information describing a vehicle’s location based upon navigation signals. When such positioning information is combined with roadmaps in an expert system, vehicle location is ascertainable” (*id.* at Col. 3:28-34);
- Using radio communication links and cellular phones to “provide immediate communication of certain types of data elements or to allow a more immediate response in cases of theft, accident, break-down or emergency” (*id.* at Col. 2:61-66); and
- Utilizing seatbelt use to assess vehicle insurance costs (*id.* at Col. 2:66-3:2).

Consequently, the ‘970 patent recognizes that “current motor vehicle control and operating systems comprise electronic systems readily adaptable for modification to obtain the desired types of information relevant to determination of the cost of insurance.” *Id.* at Col. 3: 25-28. Indeed, Figure 3 (depicted below) discloses a motor vehicle with well-known components for “implementing the subject invention” (Col. 5:44-46) – *e.g.*, on-board computer (300), vehicle data bus (304), vehicle sensors (306), driver input device (308), car battery (310), GPS antenna (312), and communication link (314).





The claims of the '970 patent are thus a combination of elements that were known in the prior art. Specifically, independent claims 1, 2, 4-5 and dependent claim 3 of the '970 patent generally require three elements: (1) monitoring data elements representative of vehicle behavior (*e.g.*, time and location) during a selected period of time; (2) recording the data elements in, *e.g.*, a database; and (3) determining a cost of insurance for the selected time period. Independent claim 6 requires a specific type of vehicle monitoring, *i.e.*: (1) extracting data elements during a data collection period; (2) analyzing, grouping and storing the data elements; and (3) generating an output data value to compute an insurance rating for the data collection period.

Dependent claims 7-15, generally recite a more detailed method for monitoring a vehicle for insurance and adjusting insurance costs based on safety and actuarial standard values. These claims require one or more of the following: (1) determining a trigger event and storing/transmitting a signal related to said trigger event (claims 7-8); (2) additionally using an output data value for computing an insurance rating for a future data collection period (claim 9); (3) comparing data elements (*e.g.*, location and time) to preset values (safety/actuarial standards) to create an adjusted insurance cost output (claims 10-11); (4) using adjusted cost for a prospective or retrospective basis (claim 12); and (5) generating an adjusted underwriting cost (claims 13-14), including for a prospective or retrospective basis (claim 15).

**(b) The '970 Prosecution History**

The application that resulted in the '970 patent (No. 09/135,034) was filed on August 17, 1998. The application claims priority to U.S. Application No. 08/592,958, which was filed on January 1996 and issued as U.S. Patent No. 5,797,134 on August 18, 1998. A copy of the '970 patent prosecution history is attached as Exhibit B, excluding the prior art of record.

The same day the application for the '970 patent was filed (August 17, 1998), originally-filed claims 1-27 were canceled and claims 28-34 were added by Preliminary Amendment A. Newly-added independent claim 28<sup>3</sup> of the application read as follows:

28 (21, 1). A method of generating a database comprising data elements representative of operator or vehicle driving characteristics, the method comprising:

monitoring a plurality of data elements representative of an operating state of a vehicle or an action of the operator during a selected time period; and,

recording selected ones of the plurality of the data elements into the database when said ones are determined to be appropriate for recording relative to determining a cost of insurance for the vehicle during the selected time period, said ones including a time and location of vehicle operating and a corresponding log of vehicle speed for the time and location.

Later, on December 23, 1998, Preliminary Amendment B added claims 35-47. Newly-added independent claim 35 read as follows:

35 (28, 6). A method of monitoring a human controlled power source driving vehicle, the method comprising:

extracting one or more data elements from at least one sensor wherein the one or more elements are of at least one operating state of the vehicle and the at least one human's actions during a data collection period;

analyzing, grouping, and storing the one or more elements as group data values in a first memory related to a predetermined group of elements; and,

correlating the group data values to preset values in a second memory and generating an output data value based on the correlation.

In the First Office Action the Examiner rejected all of the pending claims (21-40).<sup>4</sup> Claims 21-24, 28, 29, 33 and 34 were rejected under 35 U.S.C. 102(b) as being "clearly anticipated by Camhi et al (5,430,432) or Ousbourne (5,499,182)" because each disclosed:

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<sup>3</sup> The originally filed application had 20 claims, not 27. As a result, in the First Office Action and in accordance with 37 CFR 1.126, the examiner renumbered claims 28-34 as claims 21-27 and claims 35-47 as claims 28-40.

“[a] system which collect operational data about a vehicle. The data is then analyzed to determine if a trigger event of some type has occurred. When a trigger event has occurred, then the monitored operational data is stored in a different storage unit for further analysis.” Ex. B, OA 1 at 5.

The Applicants did not dispute the Examiner’s statements regarding the Camhi and Ousborne references. In fact, the Applicants admitted in their response to the First Office Action that both references teach: (1) collecting vehicle driver data and (2) providing that data to insurance companies for assessing insurance rates. Ex. B, Amend. D at 5. Specifically, the Applicants stated that both references are:

“useful for teaching the collection of operational data about a vehicle and which information is selectively stored, [and] that this stored data can be acquired by automobile insurance companies for ‘appropriately allocating higher costs only among the highest risk drivers.’, Osborne [sic] ‘182, Col. 2, lines 26-34; or, to allow ‘insurance companies to evaluate the driving habits of vehicle operators.’, Camhi et al. ‘432, at Col. 1, lines 63-65.” *Id.*

The Applicants instead distinguished their “invention” from Camhi and Ousborne on one ground – asserting that the references merely teach rating for a future period based on past driving activity, *i.e.*, “a more sophisticated scheme of collecting historical information in a conventional insurance scheme by generating a *prospective rate* based upon then known operating results and parameters of the vehicle operator.” *Id.* According to the Applicants, the “important and consequential advantage of the subject invention [is] determining insurance costs for a certain period based upon how the vehicle is operated *during that very same time period.*” *Id.* at 5-6 (emphasis added). In particular, the Applicants made the following representations to the Examiner:

“Claim 21 correlates the monitoring and recording of data elements relative to a common selected time period as opposed to the collection of data into a historical collection and then utilizing the historical collection to suggest a future cost of

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<sup>4</sup> The Examiner also objected to the application on several grounds, including for impermissibly adding new matter, nonstatutory double patenting, indefiniteness, and for failure meet the written description requirement. Ex. B, Office Action of Mar. 18, 1999 (“OA 1”) at 3-4.

insurance based on the mere historical collection of data. ***Rather, the subject invention determines the cost of insurance for a certain time period based upon the data elements collected during that same time period.***” *Id.* at 6 (emphasis added).

“The important novelty for the subject invention is retained in these claims by utilizing the output value for the data collection period to be determined by the data collected in that same period. Thus, the important and consequential advantage of the subject invention, of ***determining insurance costs for a certain period based upon how the vehicle is operated during that very same period,*** is defined in the claims and thus patentably distinguishes the invention from the teachings of the references.” *Id.* (emphasis added).<sup>5</sup>

Thus, in order to obtain allowance of the ‘970 patent claims, the Applicants clearly limited their “invention” to merely determining insurance cost adjustments, premium adjustments, and ratings for application to the monitored time period and disclaimed determining prospective cost adjustments, premium adjustments and ratings for application to a future time period.

The Examiner maintained his rejections in the Second Office Action. The Examiner was not persuaded by the Applicants’ arguments,<sup>6</sup> and he further characterized Camhi and Ousbourn as references that “record data which is to be used by an insurance company for the purpose of determining the cost of insurance based on driver habits.” Ex. B, OA 2 at 3.

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<sup>5</sup> Notably, Applicants made the same argument regarding determining insurance costs for the data collection period when seeking allowance of the claims filed in the application that led to U.S. Patent No. 5,797,134 (the parent application of the ‘970 patent). According to the January 27, 1998 Interview Summary, the Applicants (represented by the same attorney who prosecuted the ‘970 patent) “discussed [the] feature of collecting data in real time for a determination of premium for the period during which data is collected.” Exh. B, Interview Summary at 1. The Applicants “assert[ed] that the prior art determines cost payment based on past driving habits for a future period,” *id.* and agreed to amend their claims to reflect these purported distinguishing characteristics over the prior art. On January 30, 1998, the Applicants did just that by adding language to each independent claim requiring that “monitoring” and “extracting” of data be performed during a particular time period (*i.e.*, “selected time period”, “time period”, “insurance period of time”) and providing a “cost of insurance” for the respective time period. Exh. I, Amend. C at 2-7. In the Remarks section, the Applicants made clear that their amendments “clarif[ied] that the invention involves ***adjusting a cost of insurance by collecting data in a time period and using that data to compute a more reliable and accurate cost of insurance for the same time period.***” *Id.* at 8 (emphasis added).

<sup>6</sup> The Examiner found the Applicants’ arguments unpersuasive because they were premised, in part, on the reasons for allowance for claims of the parent application that were narrower than the claims of the instant application. Ex. B, Office Action of Aug. 13, 1999 (“OA 2”) at 3.

On November 12, 1999, the Examiner, Inventor Robert McMillan and the Applicants' attorney participated in a teleconference to discuss the '970 patent application. According to the Interview Summary, the Applicants attempted again to convince the Examiner that their claims were novel because they taught adjusting insurance premiums for the current monitored period and not a future period. *See* Ex. B, Interview Summary. Specifically, the Applicants' counsel

“argued that the instant invention is directed to a system which *adjusts the insurance premium for the current insurance period and not a future insurance period as in the applied prior art.*” *Id.* (emphasis added).

As a result, the Examiner agreed to allow claims 21, 24 and 26. *Id.* The Examiner also agreed to allow claims 22 and 28 if they were amended to reflect the “current insurance premium period” limitations.<sup>7</sup> *Id.*

Subsequently, on November 15, 1999, the Applicants amended claims 22 and 28 as follows:

22 (2). A database comprising data elements representative of operator or vehicle driving characteristics for a selected time period including a time and location of vehicle operation and a corresponding log of vehicle speed for the time and location, **the database then being used to determine an insurance charge for the vehicle operation for said selected time period.** (emphasis in original).

28 (6). A method of monitoring a human controlled power source driving vehicle, the method comprising:

extracting one or more data elements from at least one sensor wherein the one or more elements are of at least one operating state of the vehicle and the at least one human's actions during a data collection period;

analyzing, grouping, and storing the one or more elements as group data values in a first memory related to a predetermined group of elements; and,

correlating the group data values to preset values in a second memory and generating an output data value based on the correlation **wherein the output data**

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<sup>7</sup> Filed claims 21, 22, 24, 26 and 28 issued as claims 1, 2, 4, 5 and 6, respectively.

**value is used to compute an insurance rating for the vehicle FOR the data collection period.** (emphasis in original).

In the Remarks section of the Amendment, the Applicants stated that the amendments of claims 22 and 28 addressed the concerns of the Examiner, *i.e.*, that “he failed to see in claims 22, 28 a correlation between the data collection mentioned in these claims and the particular period of insurance charge for which the data is used are the *same* periods.”<sup>8</sup> Ex. B, Amend. E at 2 (emphasis added).

The Examiner then issued a Notice of Allowability allowing claims 21-24, 26, 28-34, 37, 38 and 41. Ex. B, Notice of Allowability. Each of the issued independent claims includes at least one limitation that requires monitoring the vehicle for a time period and determining the insurance cost for that same time period:

Claim 1: “. . . *monitoring a plurality of the data elements* representative of an operating state of a vehicle or an action of the operator *during a selected time period*; and recording selected ones of the plurality of data elements into the database when said ones are determined to be appropriate for recording relative to *determining a cost of insurance for the vehicle during the selected time period* . . .”

Claim 2: “A database comprising data elements representative of operator or *vehicle driving characteristics for a selected time period* . . . the database then being used *to determine an insurance charge for the vehicle operation for said selected time period.*”

Claim 4: “. . . *monitoring operator driving characteristics during the selected period*; and *deciding a cost of vehicle insurance for the period* based upon the operating characteristics monitored in that period.”

Claim 5: “. . . monitoring a plurality of data elements representative of an *operating state of a vehicle or an action of the operator during the selected period*; . . . *producing a final cost of vehicle insurance for the selected period* from the base cost and the surcharge or discount.”

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<sup>8</sup> The Applicants also added new claim 41 (issued dependent claim 9): “The method as defined in claim 28 [6] wherein the output data value is *additionally* used for computing an insurance rating for the vehicle for a future collection period.” (emphasis added).