

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

**LIBERTY MUTUAL INSURANCE CO.**

Petitioner

v.

**PROGRESSIVE CASUALTY INSURANCE CO.**

Patent Owner

---

Case CBM2012-00002

Patent 6,064,970

---

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

**PETITIONER LIBERTY MUTUAL INSURANCE CO.'S SECOND SET OF  
OBJECTIONS TO PATENT OWNER PROGRESSIVE CASUALTY  
INSURANCE CO.'S EXHIBITS**

Pursuant to 37 C.F.R. § 42.64(b)(1), the undersigned, on behalf of and acting in a representative capacity for Petitioner, Liberty Mutual Insurance Company (“Petitioner”), hereby submits the following objections to Patent Owner Progressive Casualty Insurance Co.’s (“Patent Owner”) Exhibit 2020 and Exhibit 2021, and any reference to/reliance on the foregoing in Patent Owner’s Response Pursuant To 37 C.F.R. § 42.220 (“Response” or “Resp.”). As required by 37 C.F.R § 42.62, Petitioner’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

## **I. Objections to Exhibit 2020 and Any Reference to/Reliance Thereon**

Evidence objected to: Exhibit 2020 titled “Supplemental Declaration of Michael J. Miller,” and any reference to or reliance thereon.

Grounds for objection: F.R.E. 901 (“Authenticating or Identifying Evidence”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”); F.R.E. 801, 802 (“Hearsay”).

Exhibit 2020 contains evidence that is not properly supplemental evidence in response to an objection under 37 C.F.R. 42.64(b)(2). Exhibit 2020 contains new evidence, including a document that is purported to be “Actuarial Standard of Practice No. 12, ‘Concerning Risk Classification’” that should have been provided at the time of the Response or after seeking Board approval under 37 C.F.R. 42.223. Additionally, Patent Owner fails to provide for Exhibit 2020 the authentication required by F.R.E. 901. Although the witness providing the declaration asserts that it is a “true and accurate copy,” it is not suggested that the witness has personal knowledge of the document.

The witness providing the declaration cites to statements in the purported “Actuarial Standard of Practice No. 12” alleging facts about Exhibit 2012 to prove those very same facts. Patent Owner is therefore improperly attempting to offer Exhibit 2020 “to prove the truth of the matter asserted in the statement[s],” which are inadmissible hearsay to which Patent Owner has not demonstrated any exception. *See*

F.R.E. 801, 802. Accordingly, Petitioner further objects to Exhibit 2020 as improper hearsay evidence.

Furthermore, to the extent the Response or any other submission of Patent Owner purports to refer to or rely on Exhibit 2020, Petitioner objects to such reference to/reliance on evidence that is not properly authenticated under F.R.E. 901, and as misleading and unfairly prejudicial (F.R.E. 403).

## **II. Objections to Exhibit 2021 and Any Reference to/Reliance Thereon**

Evidence objected to: Exhibit 2021, titled “Supplemental Declaration of Dr. Mark Ehsani,” and any reference to or reliance thereon.

Grounds for objection: F.R.E. 402 (“General Admissibility of Relevant Evidence”); F.R.E. 403 (“Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons”).

Exhibit 2021 provides testimony that is irrelevant under F.R.E. 402 and a waste of time, repetitive, and needlessly cumulative in violation of F.R.E. 403 because it fails to cure the original objections. Accordingly, permitting any reliance on this purported expert testimony in the Response or other submissions of Patent Owner would be misleading and unfairly prejudicial to Petitioner (F.R.E. 403).

## **III. All Previous Objections to Exhibits Maintained**

Petitioner maintains all previous objections stated in Liberty Mutual Insurance Co.’s Second Set of Objections to Patent Owner Progressive Casualty Insurance Co.’s Exhibits, as Patent Owner’s supplemental declarations do not cure those objections.

Respectfully submitted,

**ROPES & GRAY LLP**

May 30, 2013

By     / J. Steven Baughman/      
J. Steven Baughman, Lead Counsel  
Nicole M. Jantzi  
**ROPES & GRAY LLP**  
Prudential Tower  
800 Boylston Street  
Boston, Massachusetts 02199-3600  
[Steven.baughman@ropesgray.com](mailto:Steven.baughman@ropesgray.com)  
[Nicole.jantzi@ropesgray.com](mailto:Nicole.jantzi@ropesgray.com)

*Attorneys for Petitioner Liberty Mutual Insurance Co.*

## CERTIFICATE OF SERVICE

It is certified that a copy of PETITIONER LIBERTY MUTUAL INSURANCE CO.'S SECOND SET OF OBJECTIONS TO PATENT OWNER PROGRESSIVE CASUALTY INSURANCE CO.'S EXHIBITS has been served in its entirety on the Patent Owner as provided in 37 CFR § 42.6.

The copy has been served on May 30, 2013 by causing the aforementioned document to be electronically mailed to:

Calvin P. Griffith, at: cpgriffith@jonesday.com

James L. Wamsley, III at: jlwamsleyiii@jonesday.com

John V. Biernacki at: jvbiernacki@jonesday.com

pursuant to the Petitioner and Patent Owner's agreement.

/Jordan M. Rossen/  
Jordan M. Rossen

**ROPES & GRAY LLP**