

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE PATENT TRIAL AND APPEAL BOARD

---

LIBERTY MUTUAL INSURANCE COMPANY  
Petitioner

v.

PROGRESSIVE CASUALTY INSURANCE COMPANY  
Patent Owner

---

Case Nos. CBM2012-00003 and CBM2013-00009  
Patent 8,140,358

---

Held: October 15, 2013

---

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

APPEARANCES:

ON BEHALF OF THE PETITIONER:

J. STEVEN BAUGHMAN, ESQUIRE  
NICOLE M. JANTZI, ESQUIRE  
JAMES MYERS, ESQUIRE  
Ropes & Gray  
One Metro Center, Suite 900  
700 12<sup>th</sup> Street, NW  
Washington, DC 20005-3948

1 ON BEHALF OF THE PATENT OWNER:  
2 CALVIN P. GRIFFITH, ESQ.  
3 JAMES L. WAMSLEY, ESQUIRE  
4 JOHN V. BIERNACKI, ESQUIRE  
5 Jones Day  
6 901 Lakeside Avenue  
7 Cleveland, Ohio 44114-1190  
8  
9  
10

11 The above-entitled matter came on for hearing on Tuesday, October  
12 15, 2013, commencing at 1:05 p.m., at the U.S. Patent and Trademark  
13 Office, 600 Dulany Street, Alexandria, Virginia.  
14  
15  
16

17 P R O C E E D I N G S  
18 - - - - -

19 JUDGE LEE: We can go on the record.

20 We sent out an order outlining the procedure, who's  
21 coming up first, who's second, and so on and so forth. By that  
22 order, what we intended was, this is a combined oral hearing, so  
23 the transcript of the hearing can be relied on by either party in  
24 either case.

25 In other words, we're not going to segregate any portion  
26 of this hearing and say only this half is usable in one and the  
27 other half is usable in the other. So, with that understanding, is  
28 there any objection from either side?

29 MR. BAUGHMAN: No, Your Honor.

1 MR. GRIFFITH: No, Your Honor.

2 JUDGE LEE: Great. We've allocated only an hour of  
3 argument time for each party, total, but we understand this is  
4 really a session for two cases. So, if you do go over, we will be  
5 lenient on that. So, you don't really have to rush. We have all  
6 the way until 4:00, if necessary, if we ask you many questions.  
7 So, essentially, you have some extra time if you need to go -- use  
8 it.

9 So, let me know who's representing the Petitioner and  
10 then the Patent Owner, please.

11 MR. BAUGHMAN: Your Honor, for Petitioner, Steve  
12 Baughman, from Ropes & Gray; and with me, my colleagues,  
13 James Myers, and Nicole Jantzi, also from Ropes & Gray; and we  
14 also have a representative of Liberty in the audience today,  
15 Michael Johnson.

16 MR. GRIFFITH: Your Honor, Calvin Griffith on behalf  
17 of the Patent Owner, Progressive Casualty Insurance Co. with  
18 Jones Day; and with me is my partner James Wamsley, also of  
19 Jones Day, and John Biernacki; and then Charles Jarrett, the  
20 general counsel for Progressive, is here as well.

21 JUDGE LEE: Thank you very much.

22 Any time you're ready, Mr. Baughman, you can proceed.

23 MR. BAUGHMAN: Thank you, Your Honor, and may it  
24 please the Board.

1           Again, my name is Steve Baughman. I'm counsel for  
2           Petitioner, and what I'd propose to do at the outset is to give the  
3           Board an overview of the suggested plan we have to address the  
4           issues in these two cases. We obviously are happy to address  
5           any questions the Board may have as well.

6           The three topics we propose to discuss today are, first,  
7           Progressive's claimed priority date; second, the grounds of  
8           rejection based on Toyota's patent application, Nakagawa; and  
9           third, the grounds of rejection based on the Geostar references  
10          based on Kosaka. My plan is for my colleague James Myers to  
11          address the first topic, and I'll address the second topics.

12          There's one procedural point we would like to make at  
13          the outset, in addition to reserving 30 minutes of our time, if I  
14          could, for rebuttal. Progressive has submitted a 99-page set of  
15          demonstratives, which we understand are not evidence. So, we  
16          just wish to confirm our understanding that while the whole  
17          document has been filed with the Board in these proceedings,  
18          again, we understand they are not evidence, and only the portions  
19          actually discussed during the hearing today, it is our  
20          understanding, would be considered by the Board. The rest are  
21          not essentially demonstratives.

22          In other words, we're just trying to confirm it's not a  
23          99-page surreply brief to which we don't get a chance to respond.  
24          So, we just wanted to set forth for the record our understanding  
25          of that submission.

1 I'd also like to recap for the Board where we are in  
2 terms of open issues. It's our understanding that the only  
3 questions remaining here today involve the validity of Claim 1,  
4 because Progressive has not separately argued the validity of any  
5 of Claims 2 through 20. So, we understand that any dispute on  
6 those points was waived and that all of the claims rise or fall --

7 JUDGE CHANG: Excuse me, Counsel.

8 MR. BAUGHMAN: Yes, Your Honor.

9 JUDGE CHANG: We have two proceedings. So, are  
10 you -- are you saying that for both proceedings, the only issue is  
11 Claim Number 1?

12 MR. BAUGHMAN: That's our understanding, Judge  
13 Chang, so -- but I'm happy to spell that out for each of the  
14 proceedings. So, in 2012-00003, the Board found a *prima facie*  
15 case for invalidity of Claims 1, 19, and 20, based on the Toyota  
16 Nakagawa reference, and all other dependent claims based on the  
17 combination of Nakagawa and some additional art. Progressive  
18 has disputed anticipation by Nakagawa only with respect to  
19 Claim 1. They didn't raise issues with respect to Claims 2  
20 through 20 separately from that Claim 1 argument.

21 The same is true for the other proceeding today,  
22 CBM2013-00009, where the Board found a *prima facie* case of  
23 invalidity for Claims 1, 3, 5, 8, 9, 19, and 20, based on Section  
24 103 combinations of the RDSS reference and the Geostar 10-K in  
25 light of Kosaka, with some additional references added for other

# Explore Litigation Insights

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

## Real-Time Litigation Alerts



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

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

## Advanced Docket Research



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

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

## Analytics At Your Fingertips



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

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

## API

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

## LAW FIRMS

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

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

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.