

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 CBM2012-00003

Patent 8,140,358

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

**REBUTTAL DECLARATION OF SCOTT ANDREWS ON BEHALF OF
PETITIONER LIBERTY MUTUAL INSURANCE CO. REGARDING U.S.
PATENT NO. 8,140,358**

I, Scott Andrews, hereby declare under penalty of perjury:

I have previously been asked by Liberty Mutual Insurance (“Liberty”) to testify as an expert witness in this action. As part of my work in this action, I have been asked by Liberty to respond to certain assertions and opinions offered by Mr. Ivan Zatkovich and Progressive Casualty Insurance Co. (“Progressive”) in this proceeding concerning U.S. Patent No. 8,140,358 (“the ‘358 patent”).

I. Prior Testimony

1. I am the same Scott Andrews who provided a Declaration in this matter executed on September 15, 2012 as Exhibit 1025.

II. Experience, Qualifications, and Compensation

2. My information regarding experience, qualifications, and compensation are provided along with my prior Declaration, Exhibit 1025, and CV, Exhibit 1026.

III. Scope of Study and Rebuttal Opinions

A. Questions Presented

3. I have been asked to respond to certain assertions and opinions of Mr. Ivan Zatkovich expressed in his declaration of June 11, 2013 as Exhibit 2007, and certain assertions of Progressive in its Patent Owner's Response of June 12, 2013.

B. Materials Considered

4. In developing my opinions below, and in addition to the materials identified in my prior Declaration at paragraph 13, I have considered the following materials:¹

- Declaration of Mr. Ivan Zatkovich (Ex. 2007);
- CV of Mr. Ivan Zatkovich (Ex. 2008)
- The '076 application (Ex. 2012);
- The '650 application (Ex. 2004);

¹ Unless noted, all emphases in cited portions are added.

- Patent Owner’s Response Pursuant to 37 C.F.R. § 42.220 (Paper 33) (“Opposition” or “Opp.”);
- Board’s Decision on Institution of Covered Business Method Review (Paper 15);
- Excerpts from Microsoft Press Computer Dictionary, Third Ed. (Ex. 2010; Ex 1036);
- All other materials referenced as exhibits herein.

IV. Analysis and Opinions

A. **Mr. Zatkovich’s Opinions Regarding Nakagawa’s Disclosure of Storing and Transmitting Selected Vehicle Data**

5. Progressive admits that Nakagawa “*does* collect ‘vehicle data’ from a control bus, using ‘various sensors to detect how a user is operating [the] car.’” Opp. 21 (emphasis original). Mr. Zatkovich states that this detected data is “converted to point values on the vehicle, and those point values are stored as usage data...and subsequently transmitted to the server.” Ex. 2007, ¶ 42. Mr. Zatkovich opines that such “point values” are not “selected vehicle data” because they do not “represent recognizable aspects of operating the vehicle as required by claim 1.” Ex. 2007, ¶ 42-43. I do not agree. As explained below, Nakagawa discloses storing and transmitting “selected vehicle data.”

6. To begin with, Nakagawa expressly and repeatedly discloses that the on-board device stores and transmits *the detected/collected vehicle data*: “When the user uses car 1, an on-board apparatus (on-board) apparatus installed in car 1 *collects, via various*

sensors, information relating to the operation of car 1 by the user and information relating to the installation status of safety equipment. The *collected information is provided from the on-board apparatus to the car insurance company 2.*” (Ex. 1005, [0048]); “Data collected by the operating status detection means 7 and installation status detection means 8 is sent to the on-board radio part 9 via a control bus 11 while control by the on-board control part 12 is being received. The on-board radio part 9 sends data detected as above to server apparatus 6, installed at the car insurance company 2, via radio.” (Ex. 1005, [0056]); “The on-board control part 12 controls the entire on-board apparatus 4. Also, the on-board control part 12 contains memory that is not pictured. This memory stores data collected by operating status detection means 7 and installation status detection means 8 and data received via radio by the on-board radio part 9.” (Ex. 1005, [0058]).

7. In fact, Mr. Zatkovich actually acknowledges that the on-board device stores and transmits the detected data when he states: “Certain data obtained from these two detection means 7 and 8 is sent by the on-board radio part 9 to the server apparatus 6.” Ex. 2007, ¶ 11.

8. Nakagawa further discloses that the data received from the on-board device and stored at the server as “user data” includes data that represents particular detected aspects of operating the vehicle: “Specifically, when the user data includes data relating to speeding and the length of time for which speeding occurs, non-use or inappropriate use of seatbelts, application of ABS other than during an accident, sudden acceleration and deceleration, or data showing that brake pads have not been replaced despite being worn,

processing will occur to increase the standard insurance premium by a certain percentage and calculate an increased premium. In contrast, when the *user data includes* data relating to *driving within the speed limit, appropriate use of seatbelts and head rests, and appropriate replacement of brakes and hoses*, processing will occur to discount the standard insurance premium by a certain percentage and calculate a discounted premium.” Ex. 1005, [0072]. These types of “user data” disclosed in Nakagawa are the same types of vehicle data disclosed in the ‘358 Patent: “[O]ne or more recorded aspects of machine operation may include *speed, acceleration events, deceleration events...seat belt use...*” Ex. 1001, 16:7-14. They clearly “represent recognizable aspects of operating the vehicle as required by claim 1.” *Cf.* Ex. 2007 ¶ 42.

9. Second, the additional numeric “usage data” disclosed in Nakagawa also satisfies the “selected vehicle data” limitation. The numeric “usage data” are—even as Mr. Zatkovich reads Nakagawa—at a minimum, calculated or derived from vehicle sensors, and therefore are still “vehicle data” according to the ‘358 Patent. *See* Ex. 1001 7:12-13 (disclosing that vehicle data “monitored and/or recorded by [in-vehicle] device 300 include [not only] *raw* data elements [but also] *calculated* data elements, *derived* data elements, and subsets of these elements.”). These data are derived from vehicle data that “represents aspects of operating the vehicle” and are thus “related to a level of safety or an insurable risk in operating a vehicle” because, for example, they represent the “degree of safe operation” and “danger status.” Ex. 1005, [0065].

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