

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LIBERTY MUTUAL INSURANCE COMPANY  
Petitioner,

v.

PROGRESSIVE CASUALTY INSURANCE COMPANY  
Patent Owner,

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Case CBM2012-00003 (JL)  
Patent 8,140,358

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

LEE, *Administrative Patent Judge.*

ORDER  
Conduct of the Proceeding  
*37 C.F.R. § 42.5*

A telephone conference call was held on September 4<sup>th</sup>, 2013, between Judges Lee, Chang, and Zecher, and respective counsel for the parties. The subject matter of the call was the timing of the cross examination of Petitioner's reply declarants by the Patent Owner. Petitioner has offered the declarants for cross-examination on September 6<sup>th</sup> and 10<sup>th</sup>, but lead counsel for Patent Owner is unavailable during that time. Also, because of other matters in litigation, lead

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counsel for Patent Owner will be unavailable to conduct the cross-examination until September 23<sup>rd</sup>, 2013. Patent Owner has proposed to postpone oral hearing in this case by more than three weeks, from October 8<sup>th</sup>, 2013, to October 30<sup>th</sup>, and beyond.

Even if cross-examination of reply declarants is not conducted until September 23<sup>rd</sup>, when Patent Owner's lead counsel is available, the circumstance does not justify postponement of oral hearing by more than three weeks. We note, however, that counsel for Patent Owner has indicated that one backup counsel is available to conduct the cross examination on September 6<sup>th</sup> or 10<sup>th</sup>, or sometime during the week of September 16<sup>th</sup> when the witnesses may be available. Counsel for Petitioner has indicated that Petitioner can submit its response to observations on cross-examination within four days of the filing of the observations.

It is

**ORDERED** that Due Date 7, the date of oral hearing in this trial, is herein reset to October 15<sup>th</sup>, 2013; and

**FURTHER ORDERED** that the parties may stipulate to different Due Dates 4-6 so long as none is later than Due Date 7, to accommodate the scheduling requirements on both sides, and that such stipulation shall be filed prior to any Due Date that is changed by the stipulation.

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By Electronic Transmission

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