

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

PATENT OWNER'S NOTICE OF OBJECTIONS TO EVIDENCE
PURSUANT TO 37 C.F.R. § 42.64

The undersigned, on behalf of Patent Owner Progressive Casualty Insurance Co. (“Patent Owner”), hereby provides Notice to the Board that the objections made on the record herewith were served to Liberty Mutual Insurance Co. pursuant to 37 C.F.R. § 42.64. *See also* 37 C.F.R. 42, Office Patent Trial Practice Guide, part II, § I (77 Fed. Reg. 48,756, 48,767 (Aug. 14, 2012)).

October 3, 2013

Respectfully submitted,

JONES DAY

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PATENT OWNER'S OBJECTIONS TO
EVIDENCE PURSUANT TO 37 C.F.R. § 42.64

Pursuant to 37 C.F.R. § 42.64(b)(1), the undersigned, on behalf of Patent Owner Progressive Casualty Insurance Co. (“Patent Owner”), hereby submits the following objections to Exhibits 1042-1044 filed on September 26, 2013 by Liberty Mutual Insurance Co. (“Liberty” or “Petitioner”) in response to Patent Owner’s Objections to Evidence, filed September 12, 2013. Pursuant to 37 C.F.R. § 42.62, Patent Owner’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

I. PATENT OWNER MAINTAINS ITS PRIOR OBJECTIONS

Patent Owner maintains all objections it previously set forth, including its objections filed on August 22, 2013 (Paper No. 40) and September 12, 2013 (Paper No. 47).

II. EXHIBITS 1042-1044 GO BEYOND EVIDENCE PERMITTED UNDER 37 C.F.R. § 42.64(B)(2)

37 C.F.R. § 42.64(b)(2) provides that a “party relying on evidence to which an objection is timely served may respond to the objection by serving supplemental evidence within ten business days of service of the objection.” Patent Owner objects to Exhibits 1042-1044 because they go beyond, and are not proper supplemental evidence pursuant to, 37 C.F.R. § 42.64(b)(2).

III. OBJECTIONS TO EXHIBIT 1042 AND ANY REFERENCE TO/RELIANCE THEREON

Patent Owner hereby objects to Exhibit 1042, Declaration of Scott Andrews, dated September 26, 2013 (“Andrews Fourth Declaration”).

Grounds for objection: 37 C.F.R. § 42.61 (Admissibility of Evidence), F.R.E. 402 (Relevance), F.R.E. 403 (Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons), F.R.E. 901 (Authentication), 37 C.F.R. § 42.223 (Filing of Supplemental Evidence), F.R.E. 702, 703, 705 (Witness Not Qualified to Provide Expert Testimony), F.R.E. 602 (Lack of Personal Knowledge), F.R.E. 801, 802 (Impermissible Hearsay), 37 C.F.R. § 42.23(b) (Outside Scope of Response and Petition), and the Andrews Fourth Declaration is unauthorized testimony.

Patent Owner advanced no position that provides a proper basis for the belated submission of the Andrews Fourth Declaration or the exhibits referenced therein, *i.e.*, Exhibits 1034, 1037, 1038, 1040, and 1043. (37 C.F.R. § 42.23(b); 37 C.F.R. § 42.223; 37 C.F.R. 42, Office Patent Trial Practice Guide, part II, § I (77 Fed. Reg. 48,756, 48,787 (Aug. 14, 2012)). The statements in the Andrews Fourth Declaration have no relevant bearing on any issue properly raised in this proceeding or argued by Patent Owner. (F.R.E. 402, 403; 37 C.F.R. § 42.61). Rather, the Andrews Fourth Declaration is an attempt to raise new theories to

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