

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 CBM2012-00004
Patent 6,064,970

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

CHANG, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
35 U.S.C. § 328(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

Liberty Mutual Insurance Company (“Liberty”) filed a petition on September 16, 2012, requesting a covered business method patent review of U.S. Patent No. 6,064,970 (“the ’970 patent”) pursuant to section 18(a) of the Leahy-Smith America Invents Act (“AIA”).¹ Paper 1 (“Pet.”).

Progressive Casualty Insurance Company (“Progressive”) filed a patent owner preliminary response. Paper 8 (“Prelim. Resp.”). Taking into account Progressive’s preliminary response, the Board determined that the information presented in Liberty’s petition demonstrated that it was more likely than not that the challenged claims are unpatentable. Pursuant to 35 U.S.C. § 324, the Board instituted this trial on January 25, 2013, as to claims 1 and 3-18 of the ’970 patent. Paper 10 (“Dec.”).

During the trial, Progressive filed a patent owner response (Paper 25, “PO Resp.”), and Liberty filed a reply to the patent owner response (Paper 30, “Reply”). An oral hearing was held on October 21, 2013.²

The Board has jurisdiction under 35 U.S.C. § 6(c). This decision is a final written decision under 35 U.S.C. § 328(a) as to the patentability of claims 1 and 3-18 of the ’970 patent. We hold that claims 1 and 3-18 of the ’970 patent are unpatentable under 35 U.S.C. § 103(a).

¹ Pub. L. 112-29, 125 Stat. 284, 329 (2011).

² The oral arguments for the instant trial and for CBM2012-00002 were merged and conducted at the same time. A transcript of the oral hearing is included in the record as Paper 58 (“Tr.”).

A. Related Proceedings

Liberty indicates that the '970 patent was asserted against it in *Progressive Casualty Ins. Co. v. Safeco Ins. Co. of Ill.*, Case No. 1:10-cv-01370 (N.D. Ohio). Pet. 5. The '970 patent also is subject to a covered business method patent review in CBM2012-00002. A final written decision in CBM2012-00002 is entered concurrently with this decision.

B. The '970 Patent

The '970 patent relates to a method for determining an automobile insurance premium based on data collected from monitored motor vehicle operational characteristics and operator's driving characteristics. Ex. 1001, Abs.; 3:61-66. The method assesses vehicle usage by collecting and recording monitored vehicle data, such as miles driven, types of roads driven, speeds driven, rate of acceleration, and rate of braking. *Id.* at 4:27-29; 6:29-43. According to the '970 patent, the method determines insurance costs more precisely and fairly, because new actuarial classes generated based on actual usage of the vehicle and driver behavior are better predictors of loss. *Id.* at 4:27-29; 4:53-56.

Claims 1, 4-6, and 18 are independent. Claim 3 depends directly from claim 1; claims 7-15 depend ultimately from claim 6; and claims 16 and 17 depend directly from claim 5. Claim 4, reproduced below, is illustrative of the claimed subject matter of the '970 patent.

4. A method of insuring a vehicle operator for a selected period based upon operator driving characteristics during the period, comprising, steps of:

generating an initial operator profile;

generating an insured profile for the vehicle operator prior to any monitoring of any of the vehicle operator's driving characteristics wherein the insured profile comprises coverage information, including limits and deductibles, for determining a base cost of vehicle insurance for the vehicle operator;

monitoring the vehicle operator's driving characteristics during the selected period; and

deciding a total cost of vehicle insurance for the selected period based upon the vehicle operator's driving characteristics monitored in that selected period and the base cost of insurance.³

C. Covered Business Method Patent

Upon consideration of Liberty's contentions in the petition and Progressive's arguments in the preliminary response, the Board, in the Decision on Institution, determined that the '970 patent is a covered business method patent as defined in section 18(a)(1)(E) of the AIA and 37 C.F.R. § 42.301, because at least one claim of the '970 patent is directed to a covered business method. Dec. 3-8. Accordingly, the Board concluded that the '970 patent is eligible for a covered business method patent review. *Id.*

In its patent owner response, Progressive argues that the Board must conduct a claim-by-claim analysis and determine that every challenged

³ Ex. 1001, Reexam. Cert., 1:50-65 (original emphases and bracketed matters omitted).

claim is directed to a covered business method, before it is authorized, under section 18(a)(1)(E) of the AIA, to review all of the challenged claims.

PO Resp. 2-3, n.1. Progressive asserts that the Board exceeded its “statutory authority to institute review of any patent claim which the Board has not determined to be directed to a covered business method.” *Id.*

Progressive’s argument is based on an erroneous statutory construction that interprets the word “patent” in the statutory provision on what is subject to review as “claim.” We decline to adopt such an interpretation.

As in any statutory construction analysis, we begin with the language of the statute. *In re Swanson*, 540 F.3d 1368, 1374-75 (Fed. Cir. 2008); *Duncan v. Walker*, 533 U.S. 167, 172 (2001); *Crandon v. United States*, 494 U.S. 152, 158 (1990). “In the absence of a clearly expressed legislative intention to the contrary, the language of the statute itself must ordinarily be regarded as conclusive.” *United States v. James*, 478 U.S. 597, 606 (1986) (internal quotation marks and citations omitted). “It is well settled law that the plain and unambiguous meaning of the words used by Congress prevails in the absence of a clearly expressed legislative intent to the contrary.” *Hoechst AG v. Quigg*, 917 F.2d 522, 526 (Fed. Cir. 1990).

Section 18(d)(1) of the AIA defines the term “covered business method patent” to mean (emphases added):

[A] *patent* that claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product

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