

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
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1 ON BEHALF OF THE PATENT OWNER:
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8
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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.
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17 P R O C E E D I N G S

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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

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