

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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LIBERTY MUTUAL INSURANCE CO.  
Petitioner

v.

PROGRESSIVE CASUALTY INSURANCE CO.  
Patent Owner

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Case CBM2013-00009  
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.*

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 November 19, 2012, requesting a covered business method patent review of claims 1-20 of U.S. Patent No. 8,140,358 (“the ’358 patent”) pursuant to section 18(a) of the Leahy-Smith America Invents Act (“AIA”).<sup>1</sup> Paper 2 (“Pet.”). Progressive timely filed a preliminary response. Paper 8 (“Prelim. Resp.”). Taking into account Progressive’s preliminary response, the Board determined that the information presented in Liberty’s petition demonstrates that it is more likely than not that each of claims 1-20 of the ’358 patent is unpatentable. Pursuant to 35 U.S.C. § 324, the Board instituted this trial on March 28, 2013, as to claims 1-20 of the ’358 patent. Paper 10 (“Dec.”).

This is the second petition Liberty has filed requesting a covered business method patent review of the ’358 patent. The first petition was filed on September 16, 2012. On February 12, 2013, the Board instituted review (Case CBM2012-00003, Paper 15) on some of the grounds alleged by Liberty in that first petition. The second petition presents grounds of unpatentability not raised in the first petition. A final written decision in Case CBM2012-00003 is entered concurrently with this decision.

During the trial, Progressive filed a patent owner response (Paper 21, “PO Resp.”), and Liberty filed a reply (Paper 27, “Reply”). A consolidated oral hearing with Case CBM2012-00003 was held on October 15, 2013.<sup>2</sup>

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<sup>1</sup> Pub. L. No. 112-29, 125 Stat. 284, 329 (2011).

<sup>2</sup> A transcript of the oral hearing is included in the record as Paper 65.

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 1-20 of the '358 patent. For reasons discussed below, Liberty has proved, by a preponderance of the evidence, that claims 1-20 of the '358 patent are unpatentable under 35 U.S.C. § 103. Therefore, claims 1-20 are herein cancelled.

#### *A. The '358 Patent*

The '358 patent relates to a vehicle monitoring system. Ex. 1001, Title. A data logging device is disclosed, which tracks the operation of a vehicle and/or operator behavior. Ex. 1001, 1:33-34. A processor reads data from an automotive bus that transfers data from vehicle sensors to other components. *Id.* at 1:40-42. The processor writes data that reflects a level of safety to a storage device. *Id.* at 1:42-44. A communication device links the data logging device to a network of computers. *Id.* at 1:44-45.

The Background of the Invention portion of the disclosure of the '358 patent acknowledges preexisting methods for determining cost of insurance, and indicates that they gather data from “personal interviews and legacy sources.” Ex. 1001, 1:20-21. The discussion of preexisting methods indicates that such data may be used to classify applicants into actuarial classes that may be associated with insurance rates. *Id.* at 1:21-23. The same discussion further indicates that some of the data used to classify risk “is not verified and has little relevance to measuring risk.” *Id.* at 1:24-25. The disclosure states that the data may not be validated, may be outdated,

and may not support new or dynamic risk assessments. *Id.* at 1:27-29.

“Systems may accumulate and analyze significant amounts of data and yet discover that the data does not accurately predict losses.” *Id.* at 1:25-27.

The claims of the '358 patent are directed to a system that monitors and facilitates a review of data collected from a vehicle that is used to determine a level of safety or cost of insurance. *See e.g.*, Ex. 1001, Claim 1.

Claim 1 is the only independent claim. Claims 2-20 each depend, directly or indirectly, from claim 1, which is reproduced below:

1. A system that monitors and facilitates a review of data collected from a vehicle that is used to determine a level of safety or cost of insurance comprising:

a processor that collects vehicle data from a vehicle bus that represents aspects of operating the vehicle;

a memory that stores selected vehicle data related to a level of safety or an insurable risk in operating a vehicle;

a wireless transmitter configured to transfer the selected vehicle data retained within the memory to a distributed network and a server;

a database operatively linked to the server to store the selected vehicle data transmitted by the wireless transmitter, the database comprising a storage system remote from the wireless transmitter and the memory comprising records with operations for searching the records and other functions;

where the server is configured to process selected vehicle data that represents one or more aspects of operating the vehicle with data that reflects how the selected vehicle data affects a premium of an insurance policy, safety or level of risk; and

where the server is further configured to generate a rating factor based on the selected vehicle data stored in the database.

*B. Related Proceedings*

Liberty indicates that the '358 patent was asserted against it in *Progressive Cas. Ins. Co. v. Safeco Ins. Co. of Ill.*, Case No. 1:10-cv-01370 (N.D. Ohio). Pet. 7. The '358 patent also is subject to a covered business method patent review in Case CBM2012-00003.

*C. Covered Business Method Patent*

Upon consideration of Liberty's contentions in its petition and Progressive's arguments in its preliminary response, the Board, in the Decision on Institution, determined that the '358 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 '358 patent is directed to a covered business method. Dec. 10-17. The Board concluded that the '358 patent is eligible for a covered business method patent review. *Id.* at 17.

In its Patent Owner Response, Progressive argues that the Board must conduct a claim-by-claim analysis and determine that every challenged 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. 5-6, n. 3. Progressive asserts that the Board exceeded its statutory authority by instituting review of patent claims 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 would interpret the word "patent" as "claim" in the

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