

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 CBM2013-00009 (JL)
Patent 8,140,358

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

LEE, *Administrative Patent Judge*

DECISION
Institution of Covered Business Method Patent Review
37 C.F.R. § 42.208

I. INTRODUCTION

On November 19, 2012, Liberty Mutual Insurance Company (“Liberty”) filed a petition (“Pet.”) requesting a review under the transitional program for covered business method patents of U.S. Patent 8,140,358 (“the ’358 patent”)(Ex. 1001). The patent owner, Progressive Casualty Insurance Company (“Progressive”), filed a preliminary response (“Prel. Resp.”) on February 21, 2013. We have jurisdiction under 35 U.S.C. § 324. *See* section 18(a) of the Leahy-Smith America Invents Act, Pub. L. 112-29, 125 Stat. 284, 329 (2011) (“AIA”).

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 (CBM2012-00003) on some of the grounds alleged by Liberty in that first petition. (Ex. 2009.) This second petition presents grounds not raised in Liberty’s first petition.

The standard for instituting a covered business method review is set forth in 35 U.S.C. § 324(a), which provides as follows:

THRESHOLD --The Director may not authorize a post-grant review to be instituted unless the Director determines that the information presented in the petition filed under section 321, if such information is not rebutted, would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.

Liberty challenges the patentability of claims 1-20 of the ’358 patent. Taking into account Progressive’s preliminary response, we determine that

the information presented in the petition demonstrates that it is more likely than not that the challenged claims are unpatentable. Pursuant to 35 U.S.C. §§ 324 and section 18(a) of the AIA, we authorize a covered business method review of claims 1-20 of the '358 patent for the grounds identified in the Order section of this decision.

Liberty's petition is GRANTED.

A. Liberty's Standing

Liberty certifies that the '358 patent was asserted against it in Case No. 1:10-cv-01370, *Progressive Cas. Ins. Co. v. Safeco Ins. Co. of Ill. et al.*, pending in the U.S. District Court for the Northern District of Ohio. (Pet. 7.) Progressive does not dispute that certification.

B. Prior Art Relied Upon

Liberty relies upon the following prior art references:

US Patent 4,651,157 (Gray)	Mar. 17, 1987	Exhibit 1023
US Patent 5,243,530 (Stanifer)	Sept. 7, 1993	Exhibit 1025
US Patent 5,210,854 (Beaverton)	May 11, 1993	Exhibit 1007
US Patent 5,465,079 (Bouchard)	Nov. 7, 1995	Exhibit 1022
US Patent 5,438,312 (Lewis)	Aug. 1, 1995	Exhibit 1024
US Patent 5,446,757 (Chang)	Aug. 29, 1995	Exhibit 1006
US Patent 7,228,211 (Lowrey)	June 5, 2007	Exhibit 1008
"Understanding Radio Determination Satellite Service," Geostar (RDSS)	May 1989	Exhibit 1004
Geostar Corp., Annual Report (Form 10-K) (Geostar 10-K)	Apr. 16, 1990	Exhibit 1005

C. Alleged Grounds of Unpatentability

Liberty seeks cancelation of claims 1-20 based on the following grounds:

1. Claims 1, 3, 5, 8, 9, 19, and 20 as obvious over RDSS and Kosaka.
2. Claim 2 as obvious over RDSS, Kosaka, and Chang.
3. Claim 4 as obvious over RDSS, Kosaka, and Beaverton.
4. Claims 6 and 7 as obvious over RDSS, Kosaka, and Stanifer.
5. Claims 10, 11, and 13-15 as obvious over RDSS, Kosaka, and Lowrey.
6. Claim 12 as obvious over RDSS, Kosaka, and Lowrey.
7. Claims 16, 17, and 18 as obvious over RDSS, Kosaka, and Bouchard.
8. Claims 17 and 18 as obvious over RDSS, Kosaka, Bouchard, and Gray.
9. Claims 17 and 18 as obvious over RDSS, Kosaka, Bouchard, and Lewis.

II. FINDINGS OF FACT

The findings of fact in this section and others in the analysis section are supported by a preponderance of the evidence.

A. RDSS¹

RDSS discloses a vehicle telematics system that wirelessly transmits “position data, status or alarms, and messages” from a variety of vehicles to a central location for processing and management. (Ex. 1004, 22:2:6-15.) Certain processing may be performed on the local vehicular system, but operations “requiring extensive processing” are instead performed at the central location, thus “reducing the sophistication and cost of the terminal.” (Ex. 1004, 52:1:1-9.) Text messages are stored in a memory local to the vehicle for the benefit of later recall and transmission. (Ex. 1004, 54:2:1-8.) The central location uses a server/computer system that processes incoming data and maintains automated file and storage facilities. (Ex. 1004, 22:2:6-16; 46:2:24-40.) Data collected in this way is made available for billing purposes. (Ex. 1004, 49:1:7-14.)

B. Kosaka²

Kosaka discloses a combination risk evaluation device and insurance premium determination device that makes use of the risk evaluation device. (Ex. 1003, 18:1:53 to 18:2:3.) The risk evaluation device evaluates risk in moving bodies such as vehicles or insurance customers. *Id.* With regard to prior art, Kosaka describes that pre-existing conventional insurance premium determination systems determine rates based on static attributes of the customer. (Ex. 1003, 18:2:15-19). For instance, Kosaka describes that in

¹ All citations to RDSS refer to the page numbers of Exhibit 1004.

² All citations to Kosaka refer to the page numbers of Exhibit 1003 appearing on the lower right corner of each page of the exhibit.

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