

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
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 on 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)).

Respectfully submitted,

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August 23, 2013

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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 1027, 1028, 1029, 1030, 1031, 1032, 1033, 1034, 1035, 1036, 1037, 1038, and 1039 submitted with Liberty Mutual Insurance Co.’s (“Liberty” or “Petitioner”) Reply to Patent Owner’s Response (“Reply”). *See* CBM2013-00009, Paper No. 27 (and exhibits thereto). Pursuant to 37 C.F.R. § 42.62, Patent Owner’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

I. OBJECTIONS TO EXHIBIT 1027 AND ANY REFERENCE TO/RELIANCE THEREON

Patent Owner hereby objects to Exhibit 1027, Rebuttal Declaration of Scott Andrews, dated August 15, 2013 (“Andrews Rebuttal 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), 37 C.F.R. § 42.223 (Filing of Supplemental Evidence), F.R.E. 702, 703, 705 (Witness Not Qualified to Provide Expert Testimony), 37 C.F.R. § 42.65 (Failure to Disclose Underlying Facts or Data), F.R.E. 801, 802 (Impermissible Hearsay), 37 C.F.R. § 42.23(b) (Outside Scope of Response and Petition), and the Andrews Rebuttal Declaration is unauthorized testimony.

Petitioner cites the Andrews Rebuttal Declaration as allegedly rebutting certain arguments presented by Patent Owner in its Patent Owner Response. However, Petitioner's Reply improperly mischaracterizes and misrepresents Patent Owner's arguments in order to provide an artificial basis (which it otherwise could not) for its new declaration it calls a "Rebuttal Declaration." Patent Owner advanced no position that provides a proper basis for the belated submission of new declarations. (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, 48,767 (Aug. 14, 2012))). The statements in the Andrews Rebuttal Declaration have no relevant bearing on any issue properly raised in this proceeding (F.R.E. 402, 403; 37 C.F.R. § 42.61). Rather, the Andrews Rebuttal Declaration is used by Petitioner to raise new theories and invalidity arguments in an effort to make out a *prima facie* case of unpatentability of the claims that could and should have been submitted with the Petitioner's petition.¹ The contents of the Andrews Rebuttal Declaration and the

¹ For example, Andrews argues in ¶ 9 that "Kosaka explicitly discloses that fuzzy logic need not be used at all" and that "[a] person of ordinary skill in the art would understand that Kosaka teaches implementing its system using *either* fuzzy logic or standard crisp logic[.]" (Emphasis in original). However, Liberty's use of Kosaka in its Petition is based entirely on Kosaka's reliance on fuzzy logic.

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