

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 to 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)).

September 16, 2013

Respectfully submitted,

JONES DAY

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PATENT OWNER'S OBJECTIONS TO
EVIDENCE PURSUANT TO 37 C.F.R. § 42.64

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 1041-1043 filed on September 9, 2013 by Liberty Mutual Insurance Co. (“Liberty” or “Petitioner”) in response to Patent Owner’s Objections to Evidence, filed August 23, 2013. Pursuant to 37 C.F.R. § 42.62, Patent Owner’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

I. PATENT OWNER MAINTAINS ITS PRIOR OBJECTIONS

Patent Owner maintains all objections it previously set forth, including its objections filed on August 23, 2013. (*See* CBM2013-00009, Paper No. 28).

II. EXHIBITS 1041-1043 GO BEYOND EVIDENCE PERMITTED UNDER 37 C.F.R. § 42.64(B)(2)

37 C.F.R. § 42.64(b)(2) provides that a “party relying on evidence to which an objection is timely served may respond to the objection by serving supplemental evidence within ten business days of service of the objection.” Patent Owner objects to Exhibits 1041-1043 because they go beyond, and are not proper supplemental evidence pursuant to 37 C.F.R. § 42.64(b)(2).

III. OBJECTIONS TO EXHIBIT 1041 AND ANY REFERENCE TO/RELIANCE THEREON

Patent Owner hereby objects to Exhibit 1041, Declaration of Mary Lou O’Neil, dated September 6, 2013 (“O’Neil Second 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), F.R.E. 901 (Authentication), 37 C.F.R. § 42.223 (Filing of Supplemental Evidence), F.R.E. 702, 703, 705 (Witness Not Qualified to Provide Expert Testimony), F.R.E. 602 (Lack of Personal Knowledge), F.R.E. 801, 802 (Impermissible Hearsay), 37 C.F.R. § 42.23(b) (Outside Scope of Response and Petition), and the O'Neil Second Declaration is unauthorized testimony.

Patent Owner advanced no position that provides a proper basis for the belated submission of the O'Neil Second Declaration or the exhibits referenced therein, *i.e.*, the O'Neil First Declaration (Exhibit 1031) and a purported copy of Interpretative Opinion Nos. 3 and 4 (Exhibit 1033). (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 O'Neil Second Declaration have no relevant bearing on any issue properly raised in this proceeding or argument raised by Patent Owner. (F.R.E. 402, 403; 37 C.F.R. § 42.61). Rather, the O'Neil Second Declaration is an attempt to raise new theories to support invalidity arguments in an effort to establish a *prima facie* case of unpatentability of the claims that should have been submitted with the Petitioner's

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