

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

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

**PETITIONER LIBERTY MUTUAL INSURANCE CO.'S NOTICE OF
THIRD SET OF OBJECTIONS TO PATENT OWNER PROGRESSIVE
CASUALTY INSURANCE CO.'S EXHIBITS**

Pursuant to 37 C.F.R. § 42.64(b)(1), the undersigned, on behalf of and acting in a representative capacity for Petitioner, Liberty Mutual Insurance Company (“Petitioner”), hereby provides Notice to the Board that the objections made on the record herewith to Patent Owner Progressive Casualty Insurance Co.’s (“Patent Owner”) new Exhibit 2031 were served to Patent Owner pursuant to 37 C.F.R. § 42.64.

Respectfully submitted,

ROPES & GRAY LLP

October 8, 2013

By /J. Steven Baughman/

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**PETITIONER LIBERTY MUTUAL INSURANCE CO.'S THIRD SET OF
OBJECTIONS TO PATENT OWNER PROGRESSIVE CASUALTY
INSURANCE CO.'S EXHIBITS**

Pursuant to 37 C.F.R. § 42.64(b)(1), the undersigned, on behalf of and acting in a representative capacity for Petitioner, Liberty Mutual Insurance Company (“Petitioner”), hereby submits the following objections to Patent Owner Progressive Casualty Insurance Co.’s (“Patent Owner”) new Exhibit 2031, and any reference to/reliance on the foregoing in connection with Patent Owner’s Response Pursuant To 37 C.F.R. § 42.220 (“Response” or “Resp.”) or otherwise. As required by 37 C.F.R § 42.62, Petitioner’s objections below apply the Federal Rules of Evidence (“F.R.E.”).

I. Objections to Exhibit 2031

Petitioner objects to Exhibit 2031 and particularly to Progressive's attempt to introduce this additional evidence, in the form of Exhibit 2031, at this stage in the proceeding on October 4, 2013, days before oral hearing, as untimely in violation of the Board's Rules governing this proceeding. *See* 37 C.F.R. §§ 42.6(c), 42.51(b)(1), 42.63, and 42.64(b)(2). *See also* 37 C.F.R. § 42.223; F.R.E 403 ("undue delay"). Progressive had ample opportunity to submit this evidence with Mr. Miller's declaration filed with its Response, the first document in which it was purportedly cited in this proceeding, or in response to Petitioner's First and Second Set of Objections pointing out Progressive's failure to submit this evidence. 37 C.F.R. §§ 42.64(b)(2), 42.223. Petitioner pointed out this very issue in its previous objections (*e.g.*, MX1045 § I, MX1046 § II), the last of which was served on July 3, 2013. Thus, Progressive had notice of the defect and 10 business days to submit supplemental evidence to cure. 37 C.F.R. §§ 42.64(b)(2). Instead, Progressive chose not to produce the evidence as permitted by the Rules; it cannot belatedly change its mind and submit the evidence in violation of the Rules, three months later and days before the oral hearing in this trial.

Respectfully submitted,

ROPES & GRAY LLP

October 8, 2013

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