

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of: Cheng et al.

Case: IPR2013-00034

U.S. Patent No.: 7,970,674

Attorney Docket No.: 30693-0090IP1

Issue Date: June 28, 2011

Appl. Serial No.: 11/347,024

Title: AUTOMATICALLY DETERMINING A CURRENT VALUE FOR A REAL ESTATE PROPERTY, SUCH AS A HOME, THAT IS TAILORED TO INPUT FROM A HUMAN USER, SUCH AS ITS OWNER

DECLARATION OF DR. RICHARD BORST

1. My name is Richard Borst of 41 Wharton Drive, Glen Mills, PA 19342. I have been asked to offer technical opinions with respect to prior art references cited in this *Inter Partes* Review (“IPR”). I base these opinions on my work regarding Computer Assisted Mass Appraisal Systems (CAMAs) and Automated Valuation Models (AVMs). My current curriculum vita is attached.

2. I hold a Doctor of Technology from the University of Ulster, Northern Ireland. My Doctoral work was in the field of geostatistics applied to Computer Assisted Mass Appraisal Systems (CAMA) and Automated Valuation Models (AVM).

3. I have been involved in the mass appraisal of real property since 1973 when I was the project manager on a contract with the State of New York. My project team at Calspan Corporation developed a residential CAMA system for the New York State Board of Equalization and Assessment.

4. In December of 1974, I took a position with North America's then-largest mass appraisal company, Cole Layer Trumble Company. Initially, I managed the system development team. Under my direction of that team, the company began offering a CAMA system using multiple regression analysis and comparable sales analysis by mid-1975. The technology developed by me and my team at Cole Layer Trumble Company in the mid to late 1970's is still being utilized in the United States, Canada, England, Australia and other places throughout the world. By 1981, I was president of the company and was a leader in the effort to transform U.S. Assessment offices from paper-based assessment systems to systems that leveraged computer readable and updateable methods and procedures. I was in that position until 1989.

5. Since leaving my position as the president of Cole Layer Trumble Company, I have held various positions within the property valuation industry. For example, in 2003, I was the project executive of a team tasked with developing an AVM for the British government. That AVM was designed to value 22,000,000 residential properties for the Council Tax. The AVM we designed is currently in use by the Valuation Office Agency (VOA), which is an executive agency of Her Majesty's Revenue and Customs. As project executive, I directed the project team and personally calibrated the AVM to value well over one million properties.

6. As of 2013, my responsibilities have included calibrating AVM models for large jurisdictions in Australia, Georgia (US), Ohio and Pennsylvania.

7. I have published a number of peer-reviewed articles on the subject of CAMA and AVM methodology. I also have given presentations on AVM methodology at real estate and property tax conferences in Austria, Brazil, China, Italy, Germany, Mexico, Moldova, South Africa, the United States, and Canada. In 1990, as a chairman of an ad hoc committee organized by the Appraisal Standards Board of the Appraisal Foundation, I helped rewrite Standard 6 of the Uniform Standards of Professional Appraisal Practice (USPAP), which establishes requirements for the development and reporting of mass appraisals. The USPAP contains the generally accepted standards for professional appraisal practice in North America. I also served as a reviewer of the International Association of Assessing Officers (IAAO) “Standard on Automated Valuation Models.” *See* Ex. 1019, p. 2.

8. I have no financial interest in either party or in the outcome of this proceeding. I am being compensated on an hourly basis at a rate of \$450 per hour.

9. In preparing this declaration, I studied U.S. Patent No. 7,970,674 (the '674 patent). Additionally, I have reviewed the following: the Patent Owner's Response to the Revised Petition for *Inter Partes* Review; the Declaration of John Kilpatrick Under 37 C.F.R. § 1.132 (the “Kilpatrick Declaration”); U.S. Patent No.

5,857,174 (the “Dugan Patent”); and U.S. Publication No. 2005/1015465 (the “Kim Application”).

10. My findings, as explained below, are based on my education, experience, and background in the fields discussed above.

11. This declaration is organized as a response to the statements made by Dr. Kilpatrick. In particular, the Kilpatrick Declaration advances two positions with which I disagree: (1) that the term “automatic valuation” as it is used in independent claims 2 and 15 of the ’674 patent refers to an Automated Valuation Model (AVM); and (2) that all AVMs necessarily include features that are not shown in the Dugan Patent and the Kim Application. Moreover, in both his declaration and his cross-examination testimony, Dr. Kilpatrick has made a number of factual statements with which I disagree, and I address several of these below.

A. Interpretation of “Automatic Valuation”

12. In paragraph 26 of his declaration (attached as Exhibit 1013), Dr. Kilpatrick states that claims 2 and 15 of the ’674 patent “claim an automatic valuation model.” Moreover, in paragraph 45 of his declaration, Dr. Kilpatrick states that “A person of ordinary skill in the art on February 3, 2006, would understand that the ’674 patent claims, when referring to a ‘valuation’ (or more

precisely an ‘automatic valuation’), refer to a market valuation based on a regression or similar process across a large data set.” I respectfully disagree.

13. Claims 2 and 15 simply recite an “automatic valuation” of a “distinguished property” or “distinguished home.” These claims do not recite the use of a “model,” and they make no mention of a “data set,” much less the size of the data set being used. The mere recitation of “automatic valuation” does not mean more than the sum of its parts, as “automatic valuation” is not a term used with special meaning in the field, nor is it said to have any particular definition or special meaning in the ’674 patent. Rather, the plain meaning of these words is well understood to those of skill in the art, and it differs from specialized terms like AVM. As such, “automatic valuation” would not be read by those of skill to require any particular type of model, nor to require any size of data set. “Automatic valuation” simply refers to the nature of the valuation.

14. In greater detail, unlike the term “automatic valuation,” Automated Valuation Model (AVM) is a term specifically used within the field of property valuation to describe a type of computer system. For example, the IAAO has developed the “Standard on Automated Valuation Models (AVMs).” *See* Ex. 1019. Similarly, the USPAP addresses the use of AVMs with regard to appraisals in its Advisory Opinion 18. *See* Ex. 1014.

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