

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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**LIBERTY MUTUAL INSURANCE COMPANY**  
Petitioner,

v.

**PROGRESSIVE CASUALTY INSURANCE COMPANY**  
Patent Owner,

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Case CBM-2012-00011 (JL)  
Patent 7,124,088

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

LEE, *Administrative Patent Judge.*

ORDER  
Conduct of the Proceeding  
*37 C.F.R. § 42.5*

On January 29, 2013, a joint telephone conference call was held between respective counsel for the parties and Judges Lee, Chang, and Zecher. Counsel for patent owner (“Progressive”) brought the following information to the attention of the patent judges:

(1) that an application which is a continuation of the patent involved in this proceeding, has been allowed by the examiner on January 17, 2013; and

(2) that prior to or concurrent with such allowance, information disclosure statements (“IDS”) providing the prior art references relied on by the petitioner in this proceeding, declarations in support of the petition, and the petition itself were indicated as having been considered by the examiner.

In response to an inquiry from the patent judges, counsel for Progressive also indicated that the examiner provided no substantive discussion beyond merely indicating that the IDS provided was considered.

The judges indicated that the conference call itself provides sufficient notice and no further submission from Progressive is necessary or authorized. During the conference call, the judges did not consider substantive arguments from Progressive’s counsel on the meaning, significance, or effect of the information conveyed by counsel.

Counsel for petitioner (“Liberty Mutual”) noted that an examiner’s allowance of claims in a continuation application is generally not pertinent and that since the Board may access the prosecution history of the continuation application, Liberty Mutual should have access to the official file of the continuation application. Progressive’s counsel agreed to provide Liberty Mutual access to the prosecution history of the continuation application. Counsel for both parties agreed to work on a mutually satisfactory confidentiality arrangement in which

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Progressive would provide the prosecution history of the continuation application to Liberty Mutual.

It is

**ORDERED** that Progressive is not authorized to file further supplemental information regarding the allowance of the continuation application, and

**FURTHER ORDERED** that Progressive is not authorized to file in this proceeding a copy of any paper in the prosecution history of the continuation application.

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By Electronic Transmission

Attorney for Petitioner Liberty Mutual Ins. Co.:

J. Steven Baughman, Esq.  
Nicole M. Jantzi, Esq.  
Ropes & Gray LLP  
[steven.baughman@ropesgray.com](mailto:steven.baughman@ropesgray.com)  
[nicole.jantzi@ropesgray.com](mailto:nicole.jantzi@ropesgray.com)

Attorneys for Patent Owner Progressive Casualty Ins. Co.:

James A. Collins, Esq.  
Joseph S. Hanasz, Esq.  
Robert Mallin, Esq.  
BRINKS HOFER GILSON & LIONE  
[jcolins@brinkshofer.com](mailto:jcolins@brinkshofer.com)  
[jhanasz@brinkshofer.com](mailto:jhanasz@brinkshofer.com)  
[rmallin@brinkshofer.com](mailto:rmallin@brinkshofer.com)