

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 CBM2012-00003
Patent 8,140,358

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

CHANG, *Administrative Patent Judge*

DECISION
Liberty's Request for Rehearing
37 C.F.R. § 42.71

INTRODUCTION

Liberty Mutual Insurance Company (“Liberty”) requests rehearing of the final written decision (Paper 78), holding claims 2-18 of U.S. Patent No. 8,140,358 (“the ’358 patent”) unpatentable. Paper 81 (“Req.”). Progressive Casualty Insurance Company (“Progressive”) filed an opposition to Liberty’s request for rehearing. Paper 84 (“Opp.”).¹

A request for rehearing must be in the form of a motion. 37 C.F.R. § 42.20(a). The request must identify specifically all matters the party believes the Board misapprehended or overlooked, and the place where each matter was addressed previously. 37 C.F.R. § 42.71(d). For the reasons stated below, Liberty’s request for rehearing is *denied*.

ANALYSIS

On March, 28, 2013, we instituted the instant covered business method patent review as to claims 1-20 of the ’358 patent. Paper 15. We also instituted a review in CBM2013-00009 with respect to claims 1-20 of the ’358 patent. *Liberty Mutual Insurance Co. v. Progressive Casualty Insurance, Co.*, CBM2013-00009, Paper 10. In response to the parties’ joint request, we synchronized the trial schedules for both reviews, as they involved the same patent and parties. Papers 29-30; CBM2013-00009, Papers 16-17. During the trials, the parties also merged and conducted discovery for both proceedings at the same time (*see, e.g.*, Paper 25, Ex. 2016; CBM2013-00009, Paper 36, Ex. 2029) and conducted conference calls

¹ We authorized Progressive to file an opposition to Liberty’s request for rehearing. Paper 83.

with the Board for both proceedings concurrently (*see, e.g.*, Papers 53-54; CBM2013-00009, Papers 37-38). The oral hearings for both reviews were merged and conducted at the same time, and the transcript for the oral hearing was made useable for both reviews. Papers 62, 76; CBM2013-00009, Papers 47, 65. We in effect consolidated the reviews, at the request of the parties, except that papers and exhibits are stored in separate files for case management. *See* 35 U.S.C. § 325(d).

In a prior Order, we stated: “The parties can expect that the final written decision for the two cases will issue on the same date, as that has been the plan according to the formal schedule.” Paper 75, p. 2. The parties did not object to the advance notice to the parties that the final written decisions for the two cases will issue on the same date. Pursuant to 35 U.S.C. § 328(a), the Board issued the final written decision in the instant proceeding and the final written decision for CBM2013-00009 on February 11, 2014, concurrently. Paper 78 at 3 (“A final written decision in CBM2013-00009 is entered concurrently with this decision.”); CBM2013-00009, Paper 68 at 2 (“A final written decision in Case CBM2012-00003 is entered concurrently with this decision.”).

In its request for rehearing, Liberty seeks the following relief:

In the event that this Board denies Progressive’s rehearing request in Case CBM2013-00009, Petitioner respectfully requests that the Board deny Petitioner’s rehearing requests concurrently for both CBM2012-00003 and CBM2013-00009. In the event that the Board grants rehearing in Case CBM2013-00009, Petitioner requests that the Board issue a single combined final decision for both CBM2012-00003 and CBM2013-00009, effective February 11, 2014.

Req. 2.

Liberty filed a similar request for rehearing in CBM2013-00009 (Paper 73). In its opposition filed in the instant proceeding, Progressive counters that Liberty's request is not a proper rehearing request because "it seeks relief contingent on how the Board will in the future rule on the rehearing request filed by [Progressive] in CBM2013-00009, Paper 71." Opp. 1 (emphasis omitted); *see also* Opp. 2-3.

We have reviewed Liberty's request for rehearing, as well as Progressive's arguments submitted in its opposition. We agree with Progressive that Liberty has not shown that the final written decision misapprehended or overlooked any matter. Liberty's request that we should issue a single combined final written decision is moot because we deny Progressive's request for rehearing (*see* CBM2013-00009, Paper 78). Liberty's request that we should issue the decisions denying its requests for both proceedings concurrently also is not necessary in light of the previous Order granting the parties' joint request to synchronize the trial schedules for both proceedings (Papers 29-30; CBM2013-00009, Papers 16-17). Consistent with that Order, we hereby issue the instant decision on Liberty's request for rehearing and the decision on Liberty's request for rehearing filed in CBM2013-00009 concurrently.

CONCLUSION

Liberty has not shown that the final written decision misapprehended or overlooked any matter. *See* 37 C.F.R. § 42.71(d).

Liberty's request for rehearing is *denied*.

Case CBM2012-00003
Patent 8,140,358

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