August 15, 2006 **Vol: 2006.4**

INSURANCE IP BULLETIN

An Information Bulletin on Intellectual Property activities in the insurance industry

A Publication of - Tom Bakos Consulting, Inc. and Markets, Patents and Alliances, LLC

Introduction

In this issue's feature article, ***Protecting the Look and Feel of Your Insurance Illustration with Design Patents***, co-editor Mark Nowotarski addresses how design patents can be used to protect another form of intellectual property in the insurance industry – look and feel. Design patents are put in perspective with respect to utility patents, copyrights, and trademarks.

In our **Patent Q/A** section we address the question of ***Publicizing Your Invention***. The answer points out things that should be considered before going public.

This issue's **Basic Ed.** Feature, ***Is it Insurance?***, discusses another practical aspect of inventing in the highly regulated insurance industry. How do you know that your "insurance" invention is really insurance?

The Statistics section updates the current status of issued US patents and published patent applications in the insurance class (i.e. 705/004). We also provide a link to the ***Insurance IP Supplement*** with more detailed information on recently published patent applications and issued patents.

Our mission is to provide our readers with useful information on how intellectual property in the insurance industry can be and is being protected – primarily through the use of patents. We will provide a forum in which insurance IP leaders can share the challenges they have faced and the solutions they have developed for incorporating patents into their corporate culture.

Please use the FEEDBACK link to provide us with your comments or suggestions. Use QUESTIONS for any inquiries. To be added to the Insurance IP Bulletin e-mail distribution list, click on ADD ME. To be removed from our distribution list, click on REMOVE ME.

Thanks,
Tom Bakos & Mark Nowotarski

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Feature Article

Protecting the Look and Feel of Your Insurance Illustration with Design Patents

By: ***Mark Nowotarski***
Patent Agent, MPA LLC

A lot of hard work goes into getting a computer based insurance illustration to look just right. The aesthetics of the presentation can be as important in making the sale as the information provided. How frustrating it must be, therefore, to invest considerable resources in getting the look and feel of a computer illustration just right, only to be immediately copied by a competitor.

Design patents can help keep that copying from happening. A design patent is a special type of patent used to protect the aesthetic features of a manufactured object. It consists simply of a drawing of the object and a single claim. The claim says "The ornamental design for an object, as shown and described". Anyone that makes uses or sells objects with essentially the same shape is infringing the patent.

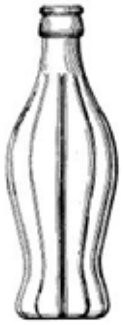

Fig 1
Patented Coke Bottle Design

Fig 2
Patented Computer Icon Design

Many common objects are protected by design patents. They include cell phone designs, furniture designs, food container designs and more recently, computer image designs. The original Coke® bottle, for example, was protected by a design patent (See Fig 1). The familiar Windows® security shield icon is also protected by a design patent (see Fig 2). Hundreds, of design patents, as a matter of fact, have been issued not only on computer icons, but entire layouts of computer screens as well.

Financial service companies are just beginning to use design patents. Citicorp and Wells Fargo, for example, have design patents covering the layouts of their cash machine screens. See figure 3 for a comparison. The designs don't have to be complicated. They only have to be new and not obvious in light of earlier designs. The protected features include the layout, shading and other ornamental aspects. The numbers, words, phrases and anything shown as a doted line are not

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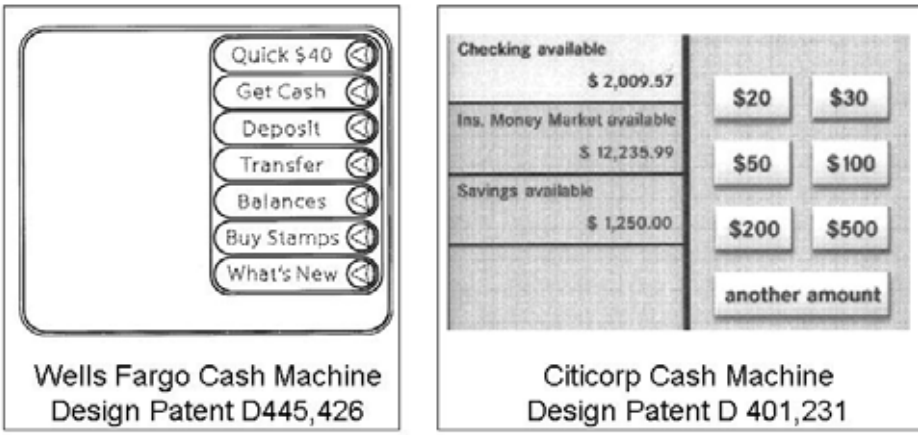
part of the design and not protected.

Fig. 3



Wells Fargo Cash Machine
Design Patent D445,426

Citicorp Cash Machine
Design Patent D 401,231

We have yet to find any insurance related design patents, but in principle, there is nothing to keep insurance inventors from getting them.

Design patents exist at an interesting intersection between utility patents, copyrights, and trademarks. Utility patents (i.e. regular patents) protect the functionality of an invention but not the aesthetic design. Copyrights protect creative works of art but only if the artistic aspect of an object can be separated from the functional object itself. Trademarks uniquely identify the source or provider of an object or service creating, in effect, a brand. However, like copyrights, trademarks do not protect the object or service itself.

More than one type of intellectual property can protect the same object. The shape of the Coke® bottle, for example, was protected by a design patent (now expired) and a trademark (still in force). The Statue of Liberty was protected by a design patent and a copyright. By having overlapping forms of protection on the same object, an inventor has more than one option for enforcement. As Russ Pangborn, head of Microsoft's copyright and trade secret practice, put it in a recent interview with the author, "Adding design patents to our portfolio gives us a 'belt and suspenders approach' for protecting our IP".

Design patents can be powerful marketing tools. The word "patent" gets a lot of public attention. Design patents are the fastest and least expensive way to get patents on your invention. They testify to your customers and the public that your product is unique and inventive.

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It takes a significant investment in creativity and artistic talent to develop a computer based insurance illustration or web site. Design patents help inventors protect this investment. They provide an additional measure of protection in addition to more conventional utility patents, copyrights and trademarks. Major software companies and, more recently, major financial institutions, are obtaining design patents on their computer based user interface designs and novel icons. These patents can be important marketing tools and are relatively inexpensive and easy to get. With the importance of creating the right look and feel of a computer implemented invention, design patents can be a valuable addition to an overall intellectual property portfolio.

(For more information you can contact the author at mnowotarski@marketsandpatents.com)

Announcements

Frank Cuypers Joins AIPPI as Executive Director

A good friend of the IP Bulletin, Frank Cuypers, will join the ***International Association for the Protection of Intellectual Property***, generally known under the abbreviated name **AIPPI**, in October, 2006 as Executive Director. The AIPPI is the world's leading International Organization dedicated to the development and improvement of intellectual property.

It is a politically neutral, non-profit organization, domiciled in Switzerland which currently has over 8,000 Members representing more than 100 countries.

The objective of AIPPI is to improve and promote the protection of intellectual property on both an international and national basis. It pursues this objective by working for the development, expansion and improvement of international and regional treaties and agreements and also of national laws relating to intellectual property.

Information on AIPPI can be found at: http://www.aippi.org

You can find information about the **40th World Intellectual Property Congress** under meetings on the AIPPI web site. The Congress is at the Gothenburg Convention Centre in Gothenburg, Sweden starting on Sunday, October 8, 2006 and ending on Thursday, October 12, 2006.

Patent Q & A

Publicizing Your Invention

Question: I just filed my patent application. Is it OK to tell people now about my invention?

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Answer: This is a tough one. Once a patent application is on file, an inventor will theoretically be protected from unauthorized copying when his or her patent issues (assuming it does). This presumes, however, that a patent will issue quickly, that no one else has made the same invention earlier, and that all patentable aspects of the invention are disclosed and claimed. Failure in any of these areas can leave an inventor exposed to copying by those that might learn about his or her invention.

Details: For example, if the inventor has not realized all of the patentable aspects of his or her invention and incorporated them into the patent application, disclosing it publicly might provide someone else with an immediate opportunity to recognize and file a patent application on improvements. Delaying a public disclosure of an invention as long as possible will allow the original inventor time to work with and develop the invention and the opportunity to discover the improvements others may otherwise recognize.

Since March 15, 2001 most US patent applications are published 18 months after they are filed. They then become available to anyone with an interest in looking for them on the USPTO web site or other publication sites. An inventor can postpone the publication of a patent application and, therefore, keep it secret until a patent is actually issued, by agreeing that the patent application is not going to be filed in any other country.

Some inventors do elect to keep their inventions secret until a patent issues. The classic case of this was the Wright brothers. They filed their patent application before their success at Kitty Hawk. After their first powered flights, they shipped their flying machine back to Dayton. There they continued to develop it in secret until they had a commercially viable aircraft. Once they were done with development, they took the plane apart and hid it until their patent issued.

The patent took three years to get approved. For three years the Wright brothers refused to show their plane in public. No one could figure out what their secret was. Once their patent issued, however, they put on a public demonstration and began selling it. When the inevitable copying occurred, they sued the infringers and won (at least in the US).

Most inventors need to move faster than the Wright brothers. To protect against copying while their patents are pending, they often will put a “non disclosure agreement” (NDA) in place with someone they want to tell their secrets to. An NDA is a contract between a disclosing party and a receiving party. The disclosing party agrees to disclose confidential information to the receiving party, but only for a particular purpose. An inventor, for example, might agree to disclose

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confidential information about an invention to a potential licensee for the purpose of negotiating a licensing agreement. The receiving party agrees to keep the information secret and to not use it for any other purpose. If the receiving party fails to honor the agreement, then the disclosing party may sue for damages.

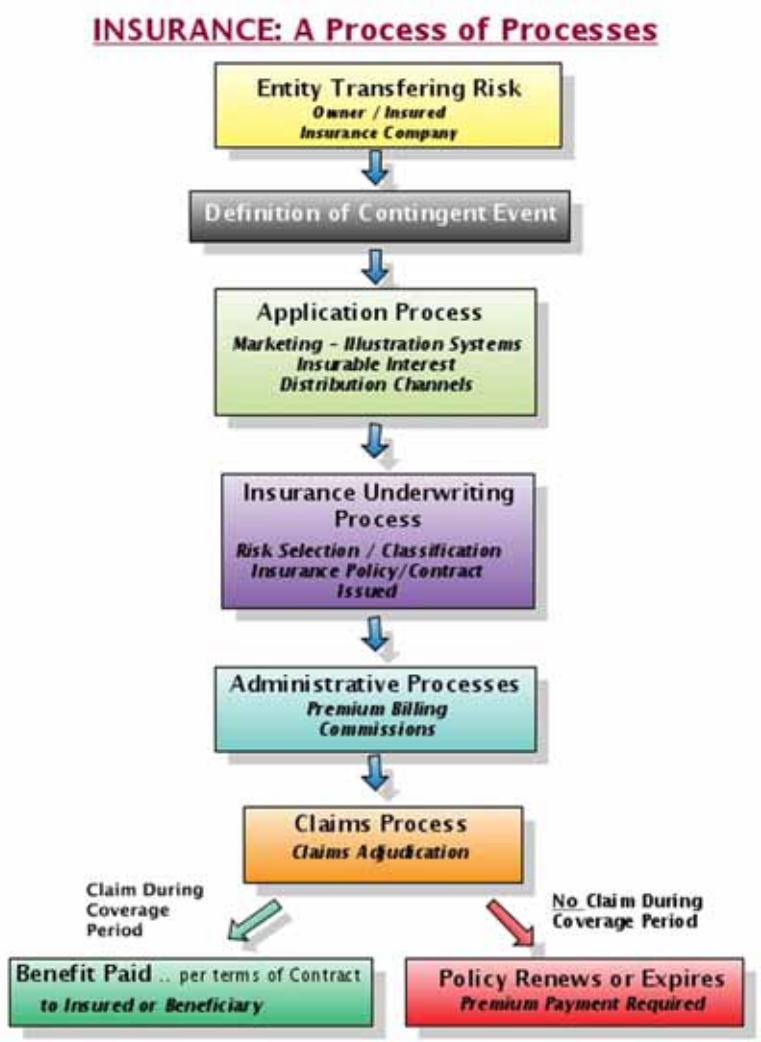
Inventors are often concerned about disclosing the secrets of their inventions while their patents are pending. Some, like the Wright brothers, keep their secrets. Others rely on nondisclosure agreements to protect their secrets from widespread dissemination. NDAs help inventors commercialize their inventions faster by allowing confidential licensing negotiations to take place.

Basic Ed.

Is it Insurance?

The chart from the last (June, 2006) issue which portrayed insurance as a process of processes is updated to the right. Invention in insurance addresses processes because, basically, that's what insurance is. Some of these process inventions may enable new forms or types of insurance.

For example, let's say an automobile insurer through one of its inventive employees comes up with a method to encourage people to buy and keep buying automobile insurance from that auto insurer. The method involves putting insureds who pay their premiums on time into a special pool of insureds who are eligible annually to win a free car through some random selection process. The method is made more complicated by providing additional credits (and, therefore, a higher probability of winning) if policyholders satisfy certain conditions related to policy duration, driving record, claims experience, etc. Policyholders are also given the option



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to elect a premium reduction in lieu of participating in the car giveaway.

Is that insurance – or is it a lottery?

Another example - Say an airline decides to offer, for a fee or premium, the opportunity for members of the frequent flyers program who die to transfer the miles in their account to a beneficiary. Is that life insurance – or is it merely a refinement in a frequent flyer program?

If an insurance invention amounts to a refinement in an underwriting or claims process, for example, which is intended to be applied to well recognized types of insurance, the question asked in the title never comes up. But, if a new insurance process, in effect, defines a new type of insurance (as in the made-up examples above), there are practical issues that must be resolved before such a product can be brought to market in the highly regulated insurance industry. These issues should be in the mind of the inventor early on.

The USPTO may classify claims in class 705/004 (i.e. insurance inventions) as "…being a computer implemented system or method for writing an insurance policy .." but the regulating agencies that really matter are the state insurance departments.

Embedded somewhere in the law of each State in the US are sections which define the *Kinds of Insurance Authorized.* A typical example of a state which defines the authorized forms of insurance all in one place is North Carolina in § 58-7-15. Other states may spread the definition of what types of insurance are authorized under the types of insurance companies that are defined in their law. So, for example, property & casualty type coverages may be defined in a section that defines General P&C companies.

The types of insurance authorized fall into common categories of insurance which most people are familiar with: life insurance, annuities, accident & health, fire, property, animal, collision, personal injury liability, etc. There are 22 general categories of insurance allowed in the North Carolina law. Insurance regulation tends to be reactive but there is some provision in the law for innovation. Many inventors, after they peruse the first 21 sections and find no hits, will be left with the catch-all, Miscellaneous Insurance – which in North Carolina is defined as: "meaning insurance against any other casualty authorized by the charter of the company, not included in subdivisions (1) to (21) of this section, which is a proper subject of insurance".

However, even if an inventor manages to find a fit under insurance law and regulation for a product type, an invention which modifies or, the inventor thinks, improves an essential process which regulators have reacted to with some sensitivity in the past (e.g., benefit determination, commission payment, or underwriting classification) may run up against other hurdles that will get in the way of speedy regulatory policy form approval.

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The bottom line is that invention in insurance may create just as many problems as it solves. Insurance inventors need to consider not only the social, psychological, and market challenges that invention creates but also the legal challenges that exist in a highly regulated industry.

Statistics

An Update on Current Patent Activity

The table below provides the latest statistics in overall class 705 and subclass 4. The data shows issued patents and published patent applications for this class and subclass.

Published Patents as of 8/15/2006		
	Class 705	Subclass 4
YEAR	#	#
2006	1,401	30
2005	1,453	30
2004	997	23
2003	969	21
2002	887	15
2001	880	19
2000	1,062	29
1999	1,005	36
1998	745	20
1978-1997	2,778	47
1976-1977	80	0
TOTAL	12,257	270

Published Patent *Applications* as of 8/17/2006		
	Class 705	Subclass 4
YEAR	#	#
2006	3,755	112
2005	6,299	148
2004	5,590	156
2003	6,009	128
2002	6,135	164
2001	1,326	30
TOTAL	29,114	738

Class 705 is defined as: DATA PROCESSING: FINANCIAL, BUSINESS PRACTICE, MANAGEMENT, OR COST/PRICE DETERMINATION.

Subclass 4 is used to identify claims in class 705 which are related to: *Insurance (e.g., computer implemented system or method for writing insurance policy, processing insurance claim, etc.).*

Issued Patents

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Since our last issue, 10 new patents with claims in class 705/4 have been issued. All 10 of these newly issued patents have an assignee indicated.

Patents are categorized based on their claims. Some of these newly issued patents, therefore, may have only a slight link to insurance based on only one or a small number of the claims therein.

The **Resources** section provides a link to a detailed list of these newly issued patents.

Published Patent Applications

Thirty seven (37) new patent applications with claims in class 705/4 have been published since our last issue. They are broken down by product line or type area as follows:

The **Resources** section provides a link to a detailed list of these newly published patent applications.

Again, a reminder -

Patent applications have been published 18 months after their filing date only since March 15, 2001. Therefore, there are many pending applications that are not yet published. A conservative assumption would be that there are, currently, about 200 new patent applications filed every 18 months in class 705/4.

The published patent applications included in the table above are not reduced when applications are either issued as patents or abandoned. Therefore, the table only gives an indication of the number of patent applications currently pending.

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Resources

Recently published U.S. Patents and U.S. Patent Applications with claims in class 705/4.

The following are links to web sites which contain information helpful to understanding intellectual property.

United States Patent and Trademark Office (USPTO): ***Homepage*** - http://www.uspto.gov

United States Patent and Trademark Office (USPTO): ***Patent Application Information Retrieval*** - http://portal.uspto.gov/external/portal/pair

Free Patents Online - http://www.freepatentsonline.com/
Provides free patent searching, with pdf downloading, search management functions, collaborative document folders, etc.

US Patent Search - http://www.us-patent-search.com/ ←NEW LINK
Offers downloads of full pdf and tiff patents and patent applications free

World Intellectual Property Organization (WIPO) - http://www.wipo.org/pct/en

Patent Law and Regulation - http://www.uspto.gov/web/patents/legis.htm

Here is how to call the USPTO Inventors Assistance Center:

- **Dial the USPTO's main number, 1 (800) 786-9199.**
- **At the first prompt press 2.**
- **At the second prompt press 4.**
- **You will then be connected to an operator.**
- **Ask to be connected to the Inventors Assistance Center.**
- **You will then listen to a prerecorded message before being connected to a person who can help you.**

The following links will take you to the authors' websites

Mark Nowotarski - Patent Agent services – http://www.marketsandpatents.com/

Tom Bakos, FSA, MAAA - Actuarial services – http://www.BakosEnterprises.com

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