

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

This issue of the Insurance IP Bulletin marks the beginning of our **second year of publication**. With six issues under our belt, we hope that we have been able to enlighten many and, at least, keep the rest well informed. We look forward to another exciting year.

Our readers do, occasionally, give us hints that point us in new directions. Based on recent feedback we have received, with this issue we will attempt to provide more detailed information on newly issued patents and newly published patent applications in the field of insurance, that is, class 705/4.

We hope our readers will continue to make us aware of special areas of interest regarding intellectual property in the insurance area in which they think we should focus.

For those not familiar with the term, we present a feature article on *patent trolls*.

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 above 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

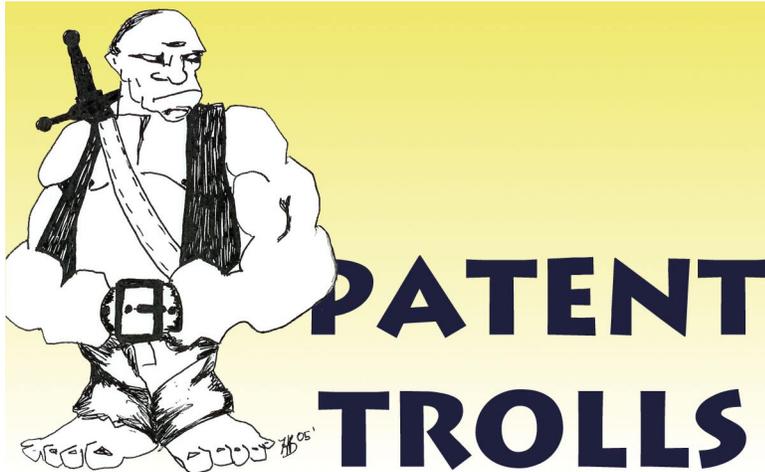
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Feature Article

By: Tom Bakos



What is a Patent Troll ... something you wouldn't want to meet on a dark bridge unless you had a little change in your pocket.

Peter Detkin coined the term *Patent Troll* while Intel's patent counsel to replace a less glamorous term he had been using to describe the ugly, bottom feeding, scum sucking,

parasitic creatures collecting tolls (figuratively) from him for crossing bridges that no one else was using. To some on Peter Detkin's side of the river, *patent* trolls give the mythological Scandinavian creature after whom they are named an even worse reputation. But we should remember before we pass judgment that beauty is in the eye of the beholder.

What patent trolls do that is so offensive is to buy up patent rights – something like buying bridges – to patents that no one is actually using – and which *they* have no intention of actually using themselves. Just like the fabled trolls they are named for, they don't use the bridges to get to the other side. Their preferred position is under the bridge where they lie in wait, in the muck, for some Billy Goats to come along.

Unfortunately for the poor Billy Goats, patent trolls are not the dim witted troll creatures we learned about in third grade. And, more important than that, they are real. They don't go away when you turn on the lights. At least, they haven't so far.

For the outraged posse wanting to cross the bridges to the future under which the patent trolls lie in wait, it is a matter of fairness. Innovation and progress are stifled, they say, when those who, like themselves, are trying to live the American dream are ambushed by ugly, opportunistic patent trolls with hijacked claims to innovation apparently abandoned by the rightful owners. Such patent rights, they feel, ought to be fair game for all. Essentially, they have a use-it-or-lose-it philosophy.

OK. It's time for a little refresher on what a patent is. A patent (in the U.S.) is issued to a person who invents something. The something can take many different forms which are not important for this discussion. The important thing is that a patent conveys a *right* to the inventor to exclude others from making, using, or selling the invention. That's all a patent is good for. A patent is "intellectual" property

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and can be sold, bought, rented, shared, traded, used, abused, or abandoned just like any other piece of property. And, since 1995, patent intellectual property rights have been limited to a period of 20 years.

So, all the so called patent trolls are doing is exercising their right as owners of the patents they acquired to exclude others from making, using or selling their invention or, alternatively, pay a toll or royalty. What's wrong with that?

Admittedly, it's their invention not because they invented it but because they bought it. And, if they are good patent trolls, they probably have a whole big bag of those purchases slung across their ugly misshapen backs. But, while you may have no compassion for the heavy load they bear, their enterprise makes them rich trolls and they willingly bear the burden. Why should this collector of valuable things be called a "troll". Why not patent *entrepreneur*. You may not like that kind of down and dirty entrepreneurship if you are trying to cross their bridge but things would look a lot different from the muck under your bridge.

Mythological history, I think, clearly shows that trolls, generally, are losers. They may be feared and reviled but in the end they always lose because ... well, because that is the lesson that fairy tales teach in the land the river divides. The successful entrepreneurship of modern *patent* trolls, however, is turning around that loser status. Ingenuity and self esteem was the only driving force they needed to make something of themselves in the patent business. Their outlook from under the bridge is getting a lot brighter. No longer do patent trolls need to skip school on picture day.

Of course, being trolls they are still feared and reviled – by the fair haired, bright eyed boys who see new competition in the category “most likely to succeed” and, may fairy tale legend forbid, for prom king! These – well, shall we call them *patent bullies*? – are all in a flutter because tailors are now making tuxedos in troll sizes.

What are *patent bullies*? Well, from a patent troll perspective they are much like the third Billy Goat Gruff. You remember the third Billy Goat Gruff with the hoarse bossy voice who followed his two smaller brother Billy Goat Gruffs across the fairy tale troll's bridge. He claimed passage across the troll's bridge, according to the tale, by using his horns to poke the troll's eyes out through his ears, crush him to bits body and bone, and then toss him over the bridge. Then, as the fairy tale tells it, this third Billy Goat Gruff went up the hill to join his two brothers who, by the way, finagled their way across the bridge with lies and false promises, where they ate and ate and ate until they all got so fat they could not walk.

Should patent trolls be criticized, vilified, and head butted just because they are exercising a legitimate right? Making, using, or selling someone else's invention without their permission is called infringement. The fact that patent trolls are ugly and don't make, use, or sell anything is an argument patent bullies make to excuse their free use of someone else's patented invention in order to get so fat they cannot walk. What a world we live in, huh?

Well, feel that wind? It's the wind of change that always comes before the storm of reform. It foretells new opportunities. Congressman Lamar Smith (R-TX) has introduced legislation which he feels will improve the quality of patents issued by the U.S. Patent and Trademark Office and is intended to reform

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certain patent practices which patent trolls have relied on. Thus, his *Patent Reform Act of 2005* clearly addresses patent trolls and the things they do that he feels “disrupt the operations of high-tech companies and other businesses.” Could Lamar Smith be a Billy Goat Gruff?

There is no doubt the patent trolls and the patent bullies are preparing strategies, tactics, arguments, and plans to address this new challenge. It makes one wonder about the poor chicken. For the first time in history he’s trying to figure out whether or not he should cross the road. The patent bully has invited him to dinner on the other side and the patent troll wants to charge him fifty cents to get there. It used to be a no-brainer. But, now, he’s giving serious thought to just staying put.

Patent News

USPTO 2005 Business Methods Customer Partnership Meeting

Your editors attended the recent *Business Methods Customer Partnership Meeting* sponsored by the USPTO and held in their Alexandria, VA offices on May 4. Presentations were given on overall statistics related to the examination of business method patents, inventor’s perspectives on how important business method patents are to their fledgling companies, attorney/agent’s perspectives on how to draft better business method patent applications, and an examiner’s update on exactly what sort of business method inventions they will consider granting patents on in light of recent court cases.

The most important statistic we saw was that the patent office is hiring more examiners for the business method area. This will help address the critical issue of processing the enormous backlog of pending business method patent applications.

The ability of the patent office to hire the new examiners has been brought about, at least in part, by the fee increases that were passed by Congress last year. We are not a big fan of fee increases, but if they result in faster, more efficient examination, they will be well worth it.

The Customer Partnership Meeting was also an excellent time to have informal discussions with other inventors, attorneys/agents, examiners and officials of the patent office. Some of the tips we picked up are presented in the Patent Q&A below.

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Patent — Q & A

Improving the efficiency of patent examination

Question: *My business method patent application is taking forever to get through the patent office. We have had repeated rejections and don't seem to be making any progress. I'm beginning to worry that my attorney/agent really doesn't know what he/she is doing. Any suggestions?*

Answer: This is a tough one. Right now, business method patents, including those in the insurance field, are the most difficult patents to get through the US patent office. Only 5 – 10% of the applications are being allowed. The ones that do manage to get through have taken an average of five years to get there. It's no wonder that there is a growing sense of frustration with how long, difficult and costly the process is.

Here are a number of positive steps that inventors, their patent attorneys/agents, and the examiners in the patent office are taking to help improve the efficiency of the process.

Inventors are getting second opinions from other patent attorneys and agents. A second opinion can provide a much-needed independent perspective on how a case is going and what additional steps can be taken to make it go better.

Second opinions, however, cost money. An inventor needs to weigh the more immediate cost of the second opinion versus the value that second opinion can bring in helping their current patent attorney/agent overcome an examiner's rejections.

Some inventors may be concerned that their attorney/agent will be offended if they get a second opinion. They shouldn't be. Most attorneys/agents welcome it when a client suggests getting additional assistance in a particularly difficult case. It's always good to have a second pair of eyes.

Patent attorneys and agents are having more in-person interviews with examiners right after an initial rejection of the claims. In-person interviews are a very effective way for an attorney/agent to clear up fundamental misunderstandings an examiner might have about what exactly a given business method invention is all about. They are also a very effective way for an examiner to provide guidance to an attorney/agent on how to present the claims so that said claims will be in a better condition for allowance. Theoretically these misunderstandings can be cleared up over the phone, but experience is showing that in-person interviews work better.

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As with a second opinion, however, in-person interviews cost money. Here again, the inventor must use his/her judgment as to the tradeoff between the cost of sending their attorney/agent to the patent office versus the value of reaching agreement with an examiner more quickly.

Examiners are getting more training in business fundamentals. The patent office is providing more business training to examiners. They also encourage outside corporations, industry groups, and even individual industry experts to come in and provide a training session to examiners on their particular area of expertise.

Your editors have provided a “basics of insurance” seminar to the examiners. All parties found it very rewarding and we would like to think that it has helped improve the examination of insurance patents. Swiss Re and Fireman’s Fund have provided insurance training programs as well.

An important caveat in providing training programs is that you can’t discuss any pending patent applications. That would create a conflict of interest.

Despite all of the positive action being taken, however, the fact is that for the foreseeable future, examination of business method patents will continue to be a long, multiyear process. A great deal of future frustration can be avoided if inventors and their attorneys/agents have a candid discussion up front as to what the realistic expectations should be in terms of overall costs and timing of getting a business method patent. This will help an attorney/agent craft a patent strategy to best support an inventor’s business needs.

Patent Search (Sort Of)

Looking For the Patents Around You

Pay attention and you can find patents in all kinds of interesting places. We’ve noticed, for example, that almost every fast food franchise has a patent or patent application pending on their box or coffee cup. When you’re through eating turn it over and take a look.

However, you can even find patents (or applications) in the every day financial services businesses. We got a credit card offer a few weeks ago from Capitol One. It was, by the way, in an ominous envelope that warned us not to bend, fold, or staple it. It’s a good thing we didn’t throw it away because, if you took the time to read it, you’d find some interesting fine print.

The selling point of the card offered was that one could earn miles on any airline. The fine print described how the mileage redemption worked. The apparently unique feature was the fact that the miles required for travel redemption is variable. As the fine print states: “The number of miles required by the Cardholder for travel redemption is variable, and will depend on the cost of the itinerary chosen ... The Miles Required for Ticket Redemption will equal the Lowest Available Published Fare (LAPF) ... multiplied by 80.” Then it said: “This unique methodology is proprietary to Capital One and the subject of pending patent rights.”

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A recent check shows that Capital One Financial Corporation has 13 patents issued and 30 published patent applications on which it is the Assignee. We couldn't find this application among the published applications so one can reasonably assume there is, at least, one unpublished application pending.

While this is in the broader category of financial services, it points out how pervasive we might expect patents to become in the insurance industry. The bottom line is that it pays to pay attention. In a business environment in which intellectual property is becoming more likely than not to be protected with a patent, you may discover to your chagrin that your unique new approach is not as new as you thought.

Patent Value

Ignoring Patent Value

The monetizing of intellectual property, in general, and patents, in particular, has long been a subject of interest. Certainly, patent trolls, the subject of this issue's feature story, have found their own unique way to monetize the patents they own. But, for the rest of us, this concept may be just an interesting option we might one day consider. Perhaps that day was yesterday?

Some insurance companies are just now beginning to realize the value of their intellectual capital – the creative spirit of the people who, together, comprise their company. Insurance products are not like products in manufacturing industries in that they have no material substance. They are, essentially, promises as are the products in the broader financial services industry. However, they can and do involve creative, innovative, and valuable new business processes that add value to the company.

Many years ago in the insurance industry, competition was such that all it took to be successful and profitable was a moderate degree of competence. In fact, some may have said that it took intentional mismanagement to lose money. Then, of course, a lot of advantages insurance companies had come to enjoy – decreasing taxes, expense reduction due to computer efficiencies, improving mortality, etc. bit the dust. Competition became uglier as profit margins and margins, in general, disappeared. New sources of profitability had to be found.

We have argued that intellectual property has value long ignored in the insurance industry. Failing to protect intellectual property that is created in an organization is bad in that it forgoes an opportunity to realize value which can be used to add to profit. In a more competitive insurance market where margins are shrinking no potential value should be ignored.

While programs that capture value through patent protection are good, programs which create additional value through effective use of those patents are even better. Profit centers that use a company's patent portfolio to create cash-flow through licensing arrangements are what's meant by monetizing patents. Insurance companies (or any company for that matter) that do not consider use of its intellectual assets in this way may be accused of wasting corporate assets.

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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 and published patents and published patent applications for this class and subclass.

Insurance Patents Issued by Year as of 6/7/05			Insurance Patents Pending by Year Published as of 6/9/05		
	Class 705	Subclass 4		Class 705	Subclass 4
YEAR	#	#	YEAR	#	#
2005	643	14	2005	2,787	63
2004	996	24	2004	5,560	156
2003	968	23	2003	5,991	128
2002	883	16	2002	6,135	164
2001	879	21	2001	1,326	30
2000	1,062	33	TOTAL	21,799	541
1999	1,004	38			
1998	743	20			
1978-1997	2,775	47			
1976-1977	80	0			
TOTAL	10,033	236			

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.)*.

Highlight of Newly Issued Patents and Applications During Last Two Months

Our analysis and summary of issued patents and newly published patent applications is based on a quick read and interpretation of the published documents. It is not intended to be and should not be considered to be a complete or exhaustive analysis of the breadth of these inventions or claimed inventions. This information is provided to give our readers a way to quickly find patents or patent applications in their field of interest. To understand the full range of a patent or intended range of a patent application, the original document must be studied and analyzed.

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Issued Patents

Since our last issue 4 new insurance patents with claims in class 705/4 have been issued. Patents are assigned to a class based on their claims. See the detailed list for a brief description of these new patents.

All four would have implementation mostly in the Life & Health area. Three of the four had an assignment indicated in the published document.

Published Patent Applications

Twenty six new patent applications have been published since our last issue. In the P&C industry there were 14 and in L&H there were 11. One application specifies a use in all insurance fields and some of the others may be claiming broader applications in other lines of business. See the detailed list for of summary of what has been recently published.

One of the patent applications (Pub. # 20050102168) describes a new type of P&C insurance – collateral coverage. This application describes a simple way to define benefits and determine a premium for coverage addressing the collateral losses associated with other types of P&C insurance.

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 not yet published. A conservative assumption would be that there are about 150 applications filed every 18 months in class 705/4. Therefore, there are, probably, about 625 class 705/4 patent applications currently pending, only 473 of which have been published.

Because the pending patents total above includes all patent applications published since March 15, 2001, applications that have been subsequently issued will also appear in the issued patents totals.

Resources

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

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

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

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

Patent Agent services – <http://www.marketsandpatents.com/>

Actuarial services – <http://www.BakosEnterprises.com>

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Newly Issued Patents (4/15 – 6/15/05) in Class 705/4

6,879,959 Filed: January 21, 2000 Issued: April 12, 2005 Pendency: 5.25 years

L&H

Method of adjudicating medical claims based on scores that determine medical procedure monetary values

ASSIGNEE: Quality Care Solutions, Inc. (Phoenix, AZ)

FIELD: Medical claim adjudication

PROBLEMS: A significant number of medical claims must be reprocessed by a medical service provider due to clerical input errors. The pre-approval process for some claim procedures is time consuming and neither patient nor provider friendly. Administrative overhead is costly.

SOLUTIONS: An improved method of processing medical claims/method of adjudicating medical claims/method of managing medical contracts/method of down-coding medical claims is provided to overcome the disadvantages of the prior art. The method can be performed real-time without a time delay of weeks or even a day. The method described provides a more cost efficient, more reliable, and more accurate method of processing medical claims/method of adjudicating medical claims/method of managing medical contracts/method of down-coding medical claims, and the method is both patient-oriented and medical service provider-oriented.

6,886,061 Filed: November 21, 2002 Issued: April 26, 2005 Pendency: 2.4 years

L&H

Electronic record system and control program device with display and tablet function for manipulating display area functions with pen stylus

ASSIGNEE: NEC Corporation (Tokyo, JP); Kanagawa (JP); Osaka (JP)

FIELD: Electronic medical record system

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PROBLEMS: A paper based medical record system creates storage problems which results in short record retention to conserve space. Conventional electronic medical record systems which involve keyboard or mouse input which is difficult, disrupts the doctor, and may create patient concerns. Pen tablet input systems also have problems.

SOLUTIONS: A pen tablet system which incorporates free writing solves these problems.

6,891,946 Filed: January 25, 2002 Issued: May 10, 2005 Pendency: 3.3 years

L&H

Automated phone priorities

ASSIGNEE: Walgreen Co. (Deerfield, IL)

FIELD: The automatic routing of telephone calls within a pharmacy to maximize customer service and internal workflow

PROBLEMS: No telephone call routing systems to date have been developed that take into account the unique skill sets of pharmacists, technicians, and other staff members when distributing telephone calls to increase the overall workflow of a pharmacy as a whole.

SOLUTIONS: Provide an electronic means to match a caller to the pharmacy based on the type of caller (e.g. prescriber, patient, insurer) to an available pharmacy employee who has signed into the system with functional resources necessary to address the caller's specific needs.

6,895,390 Filed: April 20, 2000 Issued: May 17, 2005 Pendency: 5.1 years
Continuation of 09/327,728 now patent # 6,061,661

L&H

System for monitoring increasing income financial products

ASSIGNEE: None

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- FIELD:** Monitoring investments in a fund established to provide increasing income to subscriber/survivors investing in a financial product – which can be life insurance, an annuity, mutual fund, or other similar financial product
- PROBLEMS:** Essentially, this is an opportunity that has not been previously addressed. That is, this is a process that allows individuals to invest in a fund and realize increasing income created by income forgone by deaths in the subscriber group. It appears to be something like a tontine.
- SOLUTIONS:** Provide a system that responds better to administrative problems associated with the increasing income financial product described.

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Class 705/4 Patent Applications Published between (approximately) April, 15 2005 and June 10, 2005 (In order latest to earliest)

CATAGORY	Publication Number	TITLE
P&C - Auto	20050125261	Intelligent used parts cross-referencing, search and location software application Assignee = Alexander Omeed Adegan
P&C – Crop Ins.	20050125260	Method for quoting and contracting for management of inputs and services under a commercial service agreement, with a service loss guaranty or insurance policy and using an information management system Assignee = Agflex, Inc.
P&C – Unemployment Ins.	20050125259	Unemployment risk score and private insurance for employees
L&H – Medical Underwriting	20050125253	System and method for using medication and medical condition information in automated insurance underwriting Assignee = GE Financial Assurance Holdings, Inc.
L&H – Medical Underwriting	20050119920	Method and apparatus for automated insurance processing
All – Enterprise Risk Management	20050119919	Risk transfer supply chain system
P&C – Timeshare/Vacation Travel Ins.	20050114184	Insurance coverage system and method
L&H – Adjudicating Medical Claims	20050108067	Method of increasing efficiency in a medical claim transaction, and computer program capable of executing same Assignee = Quality Care Solutions, Inc.
P&C – Provides Claims Paid vs. Claims Made or Occurrence coverage	20050108066	Property/casualty insurance and techniques Assignee = Cooperation of American Physicians

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- | | | |
|---|-----------------------------|--|
| P&C - Auto | 20050108065 | <i>Method and system of estimating vehicle damage</i> |
| P&C – Combines
Mortgage w/ Job Loss
Ins. Etc. | 20050108064 | <i>Methods and apparatus for developing and marketing
combined insurance packages
Assignee = GE Mortgage Holdings, L.L. C.</i> |
| P&C – Fraud Detection | 20050108063 | <i>Systems and methods for assessing the potential for
fraud in business transactions</i> |
| L&H – Underwriting but
w/ P&C applications | 20050108062 | <i>Automated system and method for evaluating insurable
risks at point of sale</i> |
| L&H – Underwriting,
risk classification based
on monitoring healthy
behavior | 20050102172 | <i>System and method for evaluating insurance member
activity and pricing insurance products</i> |
| L&H - Underwriting | 20050102171 | <i>Elderly assessment protocol</i> |
| L&H – Health Claims | 20050102170 | <i>System for processing transaction data</i> |
| L&H – Claims related to
health care spending
accounts | 20050102169 | <i>Method for reimbursing qualified over-the- counter
medical care products</i> |
| P&C – New type of
insurance | 20050102168 | <i>Collateral coverage for insurers and advisors</i> |
| | | This invention describes a new type of coverage: collateral coverage to cover collateral losses associated with a traditional insurance form with the intention to make insured “whole” and which are difficult to measure. For example: lost income, lost productivity, credit losses, additional borrowing costs, reputation maintenance expenses, claim expenses, accounting expenses, legal costs, consulting, and other types of discretionary expenses. |
| | | Premiums for collateral coverage is expressible as a percentage of the premium for the basic coverage. |
| P&C – Investment,
Asset Backed
Securities | 20050096945 | <i>Method of administering automobile insurance
premium finance contract asset-backed securities</i> |

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- P&C - Underwriting** [20050096944](#) *Method, system and computer-readable medium useful for financial evaluation of risk*
- P&C – Auto - Marketing** [20050091175](#) *Automated consumer to business electronic marketplace system*
Assignee = Telanon, Inc.
- L&H - Marketing** [20050091085](#) *Method for evaluating the value of group and individual insurance products*
- L&H – Marketing, product design** [20050086085](#) *Methods of offering and providing a variable life insurance product*
- P&C – Builders Risk Ins.** [20050086084](#) *Method of administrating insurance coverage for multi tasks building projects*
- P&C – Administration, Work Comp** [20050080653](#) *Method and system of identifying available reserve and subrogation funds for workers' compensation insurance carriers*
- L&H - Marketing** [20050080649](#) *Systems and methods for automating the capture, organization, and transmission of data*