

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 CBM2013-00002
Patent 7,877,269 B2

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

ZECHER, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
35 U.S.C. § 328(a) and 37 C.F.R. § 42.73

I. BACKGROUND

Liberty Mutual Insurance Company (“Liberty”) filed a petition on October 2, 2012, requesting a covered business method patent review of U.S. Patent No. 7,877,269 B2 (“the ’269 patent”) pursuant to section 18(a) of the Leahy-Smith America Invents Act (“AIA”).¹ Paper 1 (“Pet.”). Progressive Casualty Insurance Company (“Progressive”) timely filed a patent owner preliminary response. Paper 9 (“Prelim. Resp.”). Taking into account Progressive’s preliminary response, the Board determined that the information presented in Liberty’s petition demonstrates that, it was more likely than not, the challenged claims are unpatentable under 35 U.S.C. § 103(a). Pursuant to 35 U.S.C. § 324, the Board instituted this proceeding on February 27, 2013, as to claims 1-59 of the ’269 patent. Paper 12 (“Dec.”).

During this proceeding, Progressive timely filed a patent owner response (Paper 28, “PO Resp.”), as well as a motion to amend (Paper 29, “Mot. Amend”). In its motion to amend, Progressive requested that the Board cancel claims 10-12 of the ’269 patent. Mot. Amend 1. Shortly thereafter, the Board entered a decision granting Progressive’s motion to amend by cancelling claims 10-12 and ordering claims 10-12 to be cancelled upon entry of judgment. Paper 30. Therefore, the patentability of claims 10-12 will not be addressed further herein.

¹ Pub. L. No. 112-29, 125 Stat. 284, 329 (2011).

Liberty timely filed a corrected reply to the patent owner response (Paper 43, “Reply”). A consolidated oral hearing was held on October 28, 2013.²

The Board has jurisdiction under 35 U.S.C. § 6(c). This decision is a final written decision under 35 U.S.C. § 328(a) as to the patentability of the remaining challenged claims. Based on the record before us, Liberty has demonstrated, by a preponderance of the evidence, that claims 1-9 and 13-59 of the ’269 patent are unpatentable.

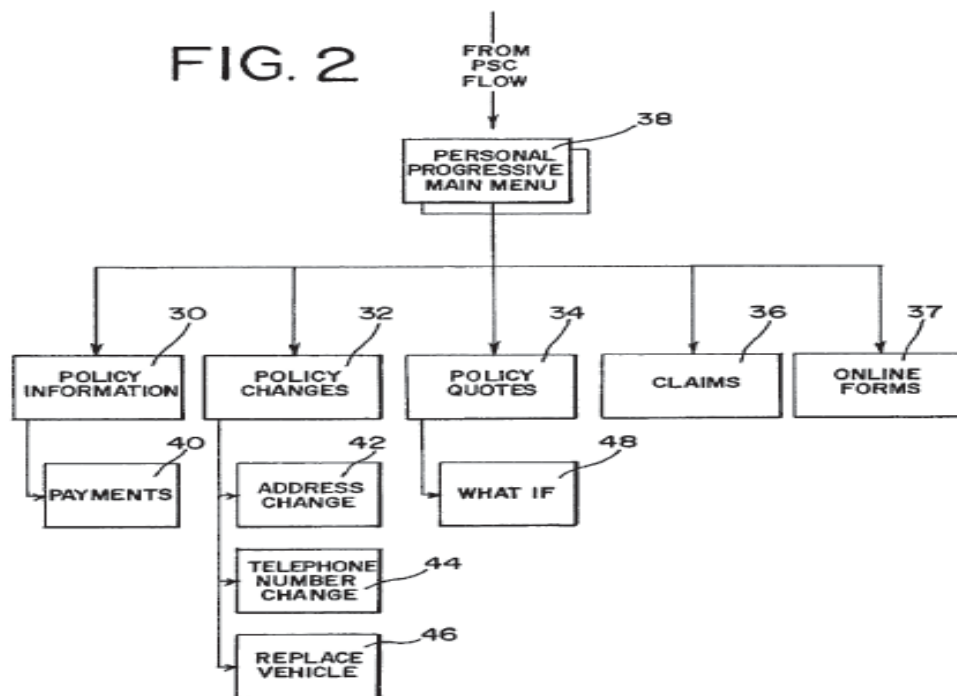
A. The Invention of the ’269 Patent

The invention of the ’269 patent generally relates to an insurance data communication and processing system. Ex. 1001, 1:12-19. The insurance data processing system allows a policyholder to access, view, and update insurance policy information via the Internet. Ex. 1001, 2:62-65. After the policyholder is authenticated, the system retrieves and displays the information requested by the policyholder. Ex. 1001, 2:65-3:2. The system employs a user-interface that guides the policyholder through various activities. Ex. 1001, 2:65-67. Those activities include, but are not limited to, the following: (1) reviewing billing information; (2) making a payment via a credit card or on-line check; (3) reviewing policy information; (4) reviewing state specific contract information; (5) quoting and

² The oral arguments for this proceeding and for CBM2012-00010, which is directed to U.S. Patent No. 7,124,088 B2 (“the ’088 patent), were merged and conducted at the same time. A transcript of the oral hearing is included in the record as Paper 58.

endorsement for vehicle replacement; (6) making address changes; and (7) reviewing claim information. Ex. 1001, 3:2-7. The system displays both the premium amount and variance, and updates the file of the policyholder at its request, without the need for personal handling by an individual representative of the insurer or an independent agent. Ex. 1001, 3:7-11.

Figure 2, which is reproduced below, illustrates a block diagram that identifies the principal processing modules of the insurance data processing system. Ex. 1001, 2:48-49.



As shown in Figure 2 of the '269 patent, the insurance data processing system is segregated into the following four critical areas of content:

(1) policy information 30; (2) policy changes 32; (3) policy quotes 34; and (4) claims information 36. Ex. 1001, 5:43-46. A prospective user can

navigate to each module from Personal Progressive main menu 38 by accessing web pages that specifically are designed to guide the policyholder to the desired information via clicks on alternative query marks or via input of necessary information. Ex. 1001, 5:46-51. Figure 2 also illustrates module 37 that provides the policyholder with the ability to acquire on-line forms, typically comprising duplicate insurance forms, such as identification cards and declaration page sets. Ex. 1001, 5:55-58. Payments module 40 can be accessed through policy information module 30. Through payments module 40, a prospective user can select a payment amount via the current amount due, and either pay in full or pay the minimum amount, using an online check or credit card. Ex. 1001, 6:21-29.

B. Illustrative Claim

Claims 1, 13, 15, and 53 are independent claims. Claims 1-9 and 54-59 depend directly or indirectly from independent claim 1. Claim 14 depends directly from independent claim 13. Claims 16-52 depend directly or indirectly from independent claim 15. Independent claim 1 is illustrative of the invention of the '269 patent and reproduced below:

1. An on-line insurance policy service system comprising:

a computer system that enables an insurance policyholder to access insurance data of an existing insurance policy remotely through a publicly accessible network and executes software embodied on a computer readable medium linked to the insurance data;

an information module embodied on the computer readable medium and running on the computer system that

identifies the insurance policyholder and verifies an insurance policy parameter of that insurance policyholder in real-time in response to data received from the insurance policyholder through a publicly accessible network;

an insurance policy adjustment module embodied on the computer readable medium and running on the computer system that adjusts an insurance policyholder's selected insurance policy parameter within the existing insurance policy in real-time in response to second data received from the insurance policyholder through the publicly accessible network; wherein the insurance policy adjustment module generates an insurance document customized to the insurance policyholder and sends the customized insurance document to the insurance policyholder in response to the second data received from the insurance policyholder through the publicly accessible network; and

wherein the existing insurance policy comprises a health, a property-casualty, or a liability insurance policy.

Ex. 1001, 9:2-31 (emphasis added).

C. Related Proceeding

Liberty indicates that the '269 patent was asserted against it in Case No. 1:11-cv-00082, *Progressive Cas. Ins. Co. v. Allstate Ins. Co. et al.*, which is currently pending in the United States District Court for the Northern District of Ohio. Pet. 5. The '269 patent is a continuation the '088 patent. The '088 patent is subject to a covered business method patent review in *Liberty Mutual Insurance Co. v. Progressive Casualty Insurance Co.*, CBM2012-00010. A final written decision in CBM2012-00010 is entered concurrently with this decision.

D. Covered Business Method Patent

Upon consideration of Liberty's contentions submitted in its petition, as well as Progressive's arguments submitted in its patent owner preliminary response, the Board determined that the '269 patent is a covered business method patent, as defined in section 18(a)(1)(E) of the AIA and 37 C.F.R. § 42.301, because at least one claim of the '269 patent is directed to a covered business method. Dec. 3-12. Consequently, the Board concluded that the '269 patent is eligible for a covered business method patent review. *Id.* In its patent owner response, Progressive did not contest the Board's conclusion that the '269 patent is eligible for a covered business method patent review. Therefore, there is no dispute as to whether the Board has the authority to institute a covered business method patent review as to claims 1-9 and 13-59 of the '269 patent.

E. Prior Art Relied Upon

Liberty relies upon the following prior art references:

Lockwood	US 4,567,359	Jan. 28, 1986	Ex. 1008
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Marketing of Insurance Over the Internet, National Association of Insurance Commissioners (1998) ("NAIC") (Ex. 1007).

F. Grounds of Unpatentability

As to the challenged claims that Progressive has not cancelled, the Board instituted this proceeding based on the grounds of unpatentability set forth in the table below.

Claims	Basis	Reference(s)
1-9 and 13-59	§ 103(a)	NAIC
17-22, 29, and 54-56	§ 103(a)	NAIC and Lockwood

II. ANALYSIS

A. Claim Construction

In a covered business method patent review, claim terms are given their broadest reasonable interpretation in light of the specification of the patent in which they appear. 37 C.F.R. § 42.300(b). Under the broadest reasonable interpretation standard, claims terms are given their ordinary and customary meaning as would be understood by one of ordinary skill in the art in the context of the entire disclosure. *In re Translogic Tech. Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). We must be careful not to read limitations from a particular embodiment appearing in the specification into the claim if the claim language is broader than that embodiment. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993). If a feature in the disclosure is not necessary to give meaning to what the inventor means by a claim term, it would be “extraneous” and should not be read into the claim. *Renishaw PLC v. Marposs Societa’ per Azioni*, 158 F.3d 1243, 1249 (Fed. Cir. 1998); *E.I. du Pont de Nemours & Co. v. Phillips Petroleum Co.*, 849 F.2d 1430, 1433 (Fed. Cir. 1988).

Liberty initially identified seven claim terms and provided a claim construction for those terms. Pet. 11-13. Those claim terms are listed as follows: (1) “enable[s] an insurance policyholder to access . . . insurance data/information;” (2) “information module,” “insurance policy adjustment module,” “payment module,” “payment enablement module,” “claims information module,” and “policy quote(s) module;” (3) “insurance policy parameter;” (4) “real-time” and “in response to and at the same rate;” (5) “personal security code;” (6) “adjustment;” and (7) “insurance document.” *Id.* In the decision on institution, the Board construed each claim term identified by Liberty. Dec. 19-25. In its patent owner response, Progressive proposed alternative claim constructions for the following claim terms: (1) “real-time;” and (2) “insurance policy parameter.” PO Resp. 4-7. We will address each claim term identified by Progressive in turn.

1. “*real-time*”

Independent claim 1 recites “an insurance policy adjustment module . . . that adjusts an insurance policyholder’s selected insurance policy parameter within the existing insurance policy in *real-time* in response to second data received from the insurance policyholder through the publicly accessible network.” Emphasis added. In the decision on institution, the Board construed the claim term “real-time” based on the definition of real-time in The IEEE Standard Dictionary of Electrical and Electronics Terms (6th ed. 1996). Dec. 23. The Board construed the claim term “real-time” as “pertaining to a system or mode of operation in which computation is performed during the actual time that an external process occurs, in order

that the computation results can be used to control, monitor, or respond in a timely manner to the external process. *Contrast:* batch. *See also:* conversational; interactive; interrupt; on-line.” *Id.* (quoting The IEEE Standard Dictionary of Electrical and Electronics Terms (6th ed. 1996)).

In its patent owner response, Progressive contends that the Board’s construction of the claim term “real-time” should be understood from the perspective of one with ordinary skill in the art in the context of the specific Internet web-based technology disclosed in the ’269 patent. PO Resp. 5. Progressive argues that, in the Internet web-based systems of the ’269 patent, one with ordinary skill in the art would have understood that the “external process” recited in the IEEE definition of “real-time” should be limited to adjusting an insurance policy parameter during the same online Internet session that resulted in receipt of the second data from the insurance policyholder. *Id.* at 5-6 (citing Ex. 1001, 1:12-24, 51-58, 1:62-2:10, 2:62-3:11, fig. 3). We do not agree with Progressive.

Upon reviewing the portions of the specification of the ’269 patent cited by Progressive in its patent owner response, there is no suggestion that the claim term “real-time” limits the functionality of the disclosed online computer system to adjusting an insurance policy parameter during the same online Internet session that resulted in receipt of the second data from the insurance policyholder. In other words, Progressive attempts to import limitations into the claims by construing the claim term “real-time” in a way that is not supported by the specification of the ’269 patent. We decline to adopt such a construction as the broadest reasonable interpretation, as it

would import extraneous limitations into the claims, and it would be inconsistent with the specification of the '269 patent. The use of the term “same online Internet session” is not necessary to give meaning to the claim term “real-time,” and such a limitation should not be read into the claims that recite this feature. *Renishaw*, 158 F.3d at 1249.

Moreover, it is unclear to us what constitutes the same online Internet session. For instance, the same online Internet session may include logging on to a computer at the beginning of a day, which, in turn, accesses the Internet, visiting a number of webpages throughout the day, and logging off the computer at the end of the day. Alternatively, the same online Internet session may include accessing the Internet via a computer, opening a webpage in a window, and closing that window. The uncertainty regarding what constitutes the same online Internet session would inject ambiguity into the claim construction for the claim term “real-time.”

Therefore, we maintain that, in light of the specification of the '269 patent, the broadest reasonable interpretation of the claim term “real-time,” is “pertaining to a system or mode of operation in which computation is performed during the actual time that an external process occurs, in order that the computation results can be used to control, monitor, or respond in a timely manner to the external process. *Contrast*: batch. *See also*: conversational; interactive; interrupt; on-line.” The IEEE Standard Dictionary of Electrical and Electronics Terms (6th ed. 1996).

2. “*insurance policy parameter*”

Independent claim 1 recites “an information module . . . that identifies the insurance policyholder and verifies an insurance policy parameter of that insurance policyholder.” Liberty construes the claim term “insurance policy parameter” as “any information relating to an insurance policy.” Pet. 13 (citing Ex. 1001, 2:16-22, 3:35-4:44). In its patent owner preliminary response, Progressive did not challenge Liberty’s claim construction for that claim term. However, in its patent owner response, Progressive contends that Liberty’s claim construction for the claim term “insurance policy parameter” is unreasonable because it ignores the interpretative guidance provided in the specification of the ’269 patent, and does not reflect the understanding of a person with ordinary skill in the art. PO Resp. 6. Progressive argues that Liberty’s claim construction is unreasonable to the extent that the words “any” and “relating” allow the construction to encompass information that in some way “relates” to the insurance policy, but is not a material parameter of the policy itself. *Id.* Therefore, Progressive asserts that the proper claim construction for the claim term “insurance policy parameter” is “information material to an insurance policy.” *Id.* at 6 (citing Ex. 1001, 1:35-41, 2:16-22, 8:11-18). We do not agree with Progressive.

The portions of the specification of the ’269 patent cited by Progressive in its patent owner response only provide examples of the claim term “insurance policy parameter,” and do not limit that claim term to information that is material to an insurance policy. In other words,

Progressive attempts to import limitations from the specification into the claims by construing the claim term “insurance policy parameter” in a way that is not supported by the specification of the ’269 patent. We decline to adopt such a construction as the broadest reasonable interpretation, as it would import extraneous limitations into the claims, and it would be inconsistent with the specification of the ’269 patent. The use of the term “material” is not necessary to give meaning to the claim term “insurance policy parameter,” and such a limitation should not be read into the claims that recite this feature. *Renishaw*, 158 F.3d at 1249.

Moreover, Progressive does not explain adequately what constitutes a material parameter of an insurance policy. For instance, material parameters of an insurance policy may be limited to the name of the insurer and the item to be insured. Alternatively, material parameters of an insurance policy may not be so limited and include each of the examples of an insurance policy parameter listed in the specification of the ’269 patent, i.e., residence of the insurer, vehicle location, number of household drivers, addition of a new vehicle or replacement of an old vehicle, and changes in insurance coverage, deductible amounts, or policy limits. The uncertainty regarding what constitutes a material parameter of an insurance policy would inject ambiguity into the claim construction for the claim term “insurance policy parameter.”

We also disagree with how Liberty construed the claim term “insurance policy parameter” because any information relating to an insurance policy is overly broad. Upon reviewing the specification of the

'269 patent, we do not find an explicit or special definition for the claim term "parameter." The Oxford Desk Dictionary and Thesaurus, American Edition (1997), defines a "parameter" as "a characteristic or feature." Based on that dictionary definition, the claimed "parameter" is not merely any information relating to an insurance policy, but rather a characteristic or feature of an insurance policy.

Therefore, the ordinary and customary meaning of the claim term "insurance policy parameter," as would be understood by one with ordinary skill in the art in light of the specification of the '269 patent, is "a characteristic or feature of an insurance policy." This claim construction is consistent with the examples of an insurance policy parameter listed in the specification of the '269 patent. *See, e.g.*, Ex. 1001, 1:35-41, 2:16-22, 8:11-18.

B. The Level of Ordinary Skill in the Art

In determining the level of ordinary skill in the art, we note that various factors may be considered, including "type of problems encountered in the art; prior art solutions to those problems; rapidity with which innovations are made; sophistication of the technology; and educational level of active workers in the field." *In re GPAC*, 57 F.3d 1573, 1579 (Fed. Cir. 1995) (citing *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 955, 962 (Fed. Cir. 1986)). As explained in the decision on institution (Dec. 34), NAIC is a white paper or an authoritative report or guide, which,

by itself, reflects the appropriate skill level in the art of insurance (Ex. 1007, p. 1³). *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001).

There is additional evidence in the record before us that reflects the knowledge level of a person with ordinary skill in the art. We note that such an artisan possesses ordinary skill in the art of insurance and, in particular, adjusting new or existing insurance policies. Ex. 1010 ¶ 12; Ex. 1017 ¶ 19; Ex. 2202 ¶ 10; Ex. 2204 ¶¶ 21, 23. With respect to the insurance aspects of the invention in the '269 patent, Liberty's expert, Ms. Mary L. O'Neil, asserts that a person of ordinary skill in the art would be an individual with at least 5 years of experience in actuarial and management aspects of the insurance industry, including policy rating, underwriting, claims, policy adjustments, and related computer systems. Ex. 1017 ¶ 19. Progressive's expert, Ms. Ruth Ann Cacchione, asserts that a person of ordinary skill in the art would be an individual with at least 2-3 years of field and 2-3 years of home office experience in rating, underwriting, and servicing existing insurance policies. Ex. 2204 ¶ 23. With respect to the computer aspects of the invention in the '269 patent, the experts for each party agree that a person of ordinary skill in the art would be an individual with a computer science degree, or equivalent, and at least 2-3 years of experience in designing, developing, and maintaining computer systems via the Internet. Ex. 1010 ¶ 12; Ex. 2202 ¶ 10.

³ All references to the page numbers in NAIC refer to the page numbers located at the bottom, middle of each page.

C. Principles of Law

A patent claim is unpatentable under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject matter and the prior art; (3) the level of skill in the art; and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17-18 (1966).

We analyze the two grounds of unpatentability on which this proceeding was instituted with the aforementioned principles in mind. We also recognize that prior art references must be “considered together with the knowledge of one of ordinary skill in the pertinent art.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). Moreover, “it is proper to take into account not only specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” *In re Preda*, 401 F.2d 825, 826 (CCPA 1968). That is because an obviousness analysis “need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR*, 550 U.S. at 418; *Translogic Tech.*, 504 F.3d at 1259.

D. Claims 1-9 and 13-59

Liberty contends that claims 1-9 and 13-59 are unpatentable under § 103(a) over NAIC. Pet. 14-44. In support of that alleged ground of unpatentability, Liberty provides explanations as to how NAIC teaches each claim limitation. *Id.* Liberty also submits declarations of Mr. David Klausner (Ex. 1010) and Ms. Mary L. O’Neil (Ex. 1017) to support its positions. Upon reviewing Liberty’s petition and supporting evidence, as well as Progressive’s response and supporting evidence, we determine that Liberty has demonstrated, by a preponderance of the evidence, that claims 1-9 and 13-59 are unpatentable over NAIC.

We begin our analysis with a general discussion of NAIC, and then we turn to the arguments presented by both Liberty and Progressive that are directed towards whether NAIC teaches the following claim limitation recited in independent claim 1, and similarly recited in independent claims 13, 15, and 53:

an insurance policy adjustment module embodied on the computer readable medium and running on the computer system that adjusts an insurance policyholder’s selected insurance policy parameter within the existing insurance policy in real-time in response to second data received from the insurance policyholder through the publicly accessible network.

Ex. 1001, 9:16-225 (emphasis added).

1. NAIC

NAIC provides a detailed discussion of the Internet as it relates to insurance transactions, possible transactional guidelines, and other issues

relating to online insurance transactions. Ex. 1007, p. 1. According to NAIC, the Internet provides email and home page capabilities that allow a prospective consumer to communicate with insurance companies about changes to their respective insurance policies. Ex. 1007, pp. 4, 9. The Internet also provides instantaneous confirmation that an insurance company has complied with a consumer's instruction(s). *Id.* In addition, NAIC discloses that by establishing websites on the Internet, insurance companies have the ability to conduct instant transactions and communications. Ex. 1007, pp. 8, 20. A typical insurance consumer interacts with an insurance company on at least four occasions: (1) when the insurance is purchased; (2) when the insurance premium is paid; (3) when a claim is made on the policy; and (4) when changes to coverage or a beneficiary are made. Ex. 1007, p. 9.

NAIC discloses that automation vendors design websites that are integrated with agency management systems. Ex. 1007, p. 17. Those websites permit policyholders to access their insurance companies electronically to examine billing status, determine the type and amount of coverage, make changes to their policy, request quotes, and obtain information about other types of insurance coverage. *Id.* According to NAIC, the insurance industry views those websites as an opportunity to operate an insurance agency that is accessible to policyholders and consumers 24 hours a day. *Id.*

2. *Contentions*

In its petition, Liberty contends that the NAIC teaches the claimed “insurance policy adjustment module” feature and corresponding “real-time” adjustment aspect required by independent claims 1, 13, 15, and 53. Pet. 20-21 (citing Ex. 1007, pp. 4, 9, 17, 20, p. 2 of App. A, p. 2 of App. B.) In the decision on institution, the Board only referenced pages 4, 8, 9, and 20 of NAIC before determining that Liberty met its burden of demonstrating that the disputed claim limitation is, more likely than not, unpatentable over NAIC. Dec. 33-34.

In its patent owner response, Progressive presents a number of arguments that allegedly explain why each of the textual portions of NAIC that was relied upon by Liberty in the petition does not teach the claimed “insurance policy adjustment module” feature and corresponding “real-time” adjustment aspect required by independent claim 1. PO Resp. 8-45. For the reasons stated below, we do not agree with Progressive. In particular, our analysis focuses on Progressive’s arguments directed to pages 8 and 9 of NAIC, and how those textual portions of NAIC, as a whole, would have taught the disputed claim limitation to one with ordinary skill in the art.

a. Progressive’s Contentions Directed to Page 8 of NAIC

In its patent owner response, Progressive contends that one with ordinary skill in the art would not have understood that NAIC’s disclosure at page 8, which pertains to “instant transactions and communications,” teaches the claimed “insurance policy adjustment module” feature and corresponding “real-time” adjustment aspect required by independent claim

1, 13, 15, and 53. PO Resp. 26-28 (citing Ex. 2202 ¶ 29; Ex. 2204 ¶ 44-45). In its reply, Liberty contends that NAIC discloses using technology that existed in 1998 to adjust insurance policy parameters in real-time, as well as automated processing of insurance transactions via the Internet. Reply 1-7, 11-15. Liberty also submits a rebuttal declaration of Mr. Klausner (Ex. 1024) to support its positions.

Progressive's argument and the corresponding testimony of Ms. Cacchione narrowly focuses on the traditional procedures for adjusting insurance policy parameters and, in particular, the instantaneous nature of the communications submitted via the Internet, but fails to discuss NAIC's disclosure as a whole. A prior art reference must be considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect. *EWP Corp. v. Reliance Universal Inc.*, 755 F.2d 898, 907 (Fed. Cir. 1985). Neither Progressive, nor its experts, address NAIC's disclosure regarding the advantages associated with conducting insurance services via the Internet. Reply 2-4 (citing Ex. 1007, p. 13 (“[C]onsumers currently have the ability from at least one auto insurer to complete the entire transaction on-line.”); Ex. 1007, p. 14 (“Consumers already have the ability from at least one company to review their account status to determine when and how much they need to pay to maintain their existing policy. . . . This service eliminates the two step process of calling the company to find out how much is owed and then mailing payment”)). Given these textual portions of NAIC, one with ordinary skill in the art would have recognized that the

“instant transactions and communications” disclosed on page 8 of NAIC are not limited to traditional procedures for adjusting insurance policy parameters, e.g., receiving and processing emails from an insurer manually. Instead, one with ordinary skill in the art would have recognized that such “instant transactions and communications” refer to an insurance service that allows a prospective insurer to conduct an entire transaction via the Internet.

Next, Progressive contends that the claimed “insurance policy adjustment module” feature and corresponding “real-time” adjustment aspect required by independent claims 1, 13, 15, and 53 does not flow necessarily from NAIC’s disclosure of “instant transactions and communications.” PO Resp. 27-28. Rather, Progressive asserts that NAIC’s disclosure of “instant transactions and communications” could refer to types of transactions or communications other than adjusting insurance policy parameters in real-time. *Id.* at 28 (citing Ex. 1007, pp. 7, 20).

Progressive’s argument is unpersuasive. Progressive fails to recognize that NAIC discloses that a typical insurance consumer interacts with an insurance company on four occasions, one of which includes changing coverage or beneficiaries to its respective insurance policy. Ex. 1007, p. 9. Liberty’s expert, Mr. Klausner, attests that one with ordinary skill in the art would have recognized that NAIC’s disclosure of changing coverage or beneficiaries to a respective insurance policy amounts to adjusting an insurance policy parameter. *See* Ex. 1010 ¶ 28; Ex. 1024 ¶ 7. Therefore, contrary to Progressive’s argument, NAIC’s disclosure of “instant transactions and communications” is not limited merely to instant

transactions, such as obtaining a quote for a new insurance policy or communicating information to the insurance company, but instead encompasses instantaneously adjusting an insurance policy parameter.

b. Progressive's Contentions Directed to Page 9 of NAIC

In its patent owner response, Progressive contends that NAIC's disclosure at page 9, which pertains to typical insurance consumer interactions with an insurance company, such as changing coverage or beneficiaries, does not teach the claimed "insurance policy adjustment module" feature and corresponding "real-time" adjustment aspect required by independent claims 1, 13, 15, and 53. PO Resp. 28-30 (citing Ex. 2202 ¶ 28, Ex. 2204 ¶ 47). In its reply, Liberty contends that NAIC discloses using technology that existed in 1998 to adjust insurance policy parameters in real-time, and asserts that insurance computer systems in 1998 had progressed far beyond an Internet email front-end to traditional manual processing. Reply 1-11. Liberty also submits the rebuttal declaration of Mr. Klausner (Ex. 1024) to support its positions.

We are not persuaded by Progressive's argument that NAIC's disclosure at page 9 does not teach adjusting an insurance policy parameter. Progressive's argument narrowly focuses on NAIC's disclosure of processing claims, complaints, and insurance policyholder services, and the alleged lack of a "real-time" connection between an insurance consumer and company. However, Progressive fails to recognize that NAIC discloses typical interactions between an insurance consumer and company, including changing coverage or beneficiaries to its respective insurance policy.

Ex. 1007, p. 9. Although NAIC's disclosure at page 9 does not indicate explicitly that changing coverage or beneficiaries to a respective insurance policy occurs in "real-time," one with ordinary skill in the art would have appreciated that such transactions may be "instant" in nature. See Ex. 1010 ¶ 28; Ex. 1024 ¶ 7 (citing Ex. 1007, p. 8).

Next, Progressive contends NAIC's disclosure of the Internet at page 9 merely implies email communications between an insurance consumer and the agent/representative of an insurance company and, therefore, does not teach the disputed claim limitation. PO Resp. 30 (citing Ex. 1007, p. 2 of App. E, p. 29). As noted above, Progressive fails to discuss NAIC's disclosure as a whole. Neither Progressive, nor its experts, address NAIC's disclosure regarding the advantages associated with conducting insurance services via the Internet (*see, e.g.*, Ex. 1007, pp. 13-14), which are not limited to email communication between an insurance consumer and the agent/representative of an insurance company, but rather are applicable to providing an insurance service that allows a prospective insurer to conduct an entire transaction via the Internet.

c. NAIC Must be Read as a Whole

Progressive contends that any one passage from NAIC is not helpful to supplement any other passage from NAIC because each individual passage relied upon by Liberty in the petition fails to teach the claimed "insurance policy adjustment module" feature and corresponding "real-time" adjustment aspect required by independent claims 1, 13, 15, and 53. PO Resp. 44-45. We do not agree with Progressive. NAIC must be

considered for everything it teaches by way of technology and is not limited to the particular invention it is describing and attempting to protect. *EWP Corp.*, 755 F.2d at 907. NAIC also must be considered together with the knowledge of one with ordinary skill in the art. *Paulsen*, 30 F.3d at 1480. Such analysis includes reading NAIC in context, taking into account “demands known to the design community,” “the background knowledge possessed by a person having ordinary skill in the art,” and “the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR*, 550 U.S. at 418. Reading individual passages from NAIC in isolation would be contrary to these principles.

d. Summary

In summary, we broadly, but reasonably, construe the claim term “real-time” as “pertaining to a system or mode of operation in which computation is performed during the actual time that an external process occurs, in order that the computation results can be used to control, monitor, or respond in a timely manner to the external process. *Contrast:* batch. *See also:* conversational; interactive; interrupt; on-line.” Consistent with that claim construction, we conclude that NAIC, as a whole, would have taught one with ordinary skill in the art an instantaneous adjustment of an insurance policy parameter that reflects a mode of operation in which action is performed during the actual time that the adjustment is requested, such that the results are timely with respect to the adjustment. Therefore, we are not persuaded by Progressive’s argument that one of ordinary skill in the art would not have understood that NAIC teaches the claimed “insurance policy

adjustment module” feature and corresponding “real-time” adjustment aspect required by independent claims 1, 13, 15, and 53.

3. Whether the Disclosure of NAIC is Non-Enabling

Progressive contends that NAIC would not have enabled one with ordinary skill in the art to make the invention of the ’269 patent. PO Resp. 47-51. Progressive presents a number of arguments that are predicated on the notion that NAIC’s disclosure does not provide any implementation details that make the invention of the ’269 patent predictable, much less provide any reasonable expectation of success. *Id.* In its reply, Liberty contends that Progressive’s argument that NAIC speculates about functionality that eventually could be developed in the future lacks merit. Reply 1. Liberty maintains that NAIC discloses that insurers are using “sophisticated, interactive Web sites”—not merely email—to conduct insurance transactions, including selling, servicing and modifying existing policies. *Id.* (citing Ex. 1007, pp. 1, 7-9, 13, 14, 17; Ex. 1024 ¶ 7-8; *see* Ex. 1010 ¶¶ 26-28.)

As explained previously, NAIC discloses that consumers, as of 1998, had the ability from at least one insurance company to complete an entire transaction via the Internet. Ex. 1007, p. 13. Contrary to Progressive’s argument, NAIC does not speculate about developing and implementing a website to conduct insurance transactions, it, in fact, discloses that, as of 1998, an insurance company already is using a website to complete an entire transaction via the Internet. Even if we assume that NAIC speculates about the functionality associated with developing and implementing a website to

conduct insurance transactions, it is well settled that published subject matter is prior art for all that it teaches in obviousness determinations—even if the reference itself is not enabling. *See In re Antor Media Corp.*, 689 F.3d 1282, 1292 (Fed. Cir. 2012) (citing *Symbol Techs. Inc. v. Opticon Inc.*, 935 F.2d 1569, 1578 (Fed. Cir. 1991) (“[A] non-enabling reference may qualify as prior art for the purpose of determining obviousness under § 103.”)). For those reasons alone, we are not persuaded by Progressive’s arguments regarding the alleged non-enabling disclosure of NAIC.

Moreover, we note that prior art publications are presumed to be enabled. *Antor*, 689 F.3d at 1287-88; *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1355 (Fed. Cir. 2003). Once specific, concrete reasons as to why the cited prior art reference is not enabling have been identified, however, we conduct an analysis by reviewing the argument and supporting evidence to determine whether the prior art is enabling. *Antor*, 689 F.3d at 1292; *see also In re Morsa*, 713 F.3d 104, 110 (Fed. Cir. 2013).

Here, Progressive fails to demonstrate that NAIC does not provide an enabling disclosure for the claimed “insurance policy adjustment module” feature and corresponding “real-time” adjustment aspect required by independent claims 1, 13, 15, and 53. In particular, Progressive does not provide sufficient factual basis to support a showing that, based on NAIC’s disclosure, undue experimentation would be needed to practice the disputed claim limitation. *In re Wands*, 858 F.2d 731, 737 (Fed. Cir. 1988). For this additional reason, we are not persuaded by Progressive’s arguments regarding the alleged non-enabling disclosure of NAIC.

4. Conclusion

For the foregoing reasons, we conclude that Liberty has demonstrated, by a preponderance of the evidence, that independent claims 1, 13, 15, and 53 of the '269 patent are unpatentable over NAIC. Progressive relies upon the same arguments presented against independent claims 1, 13, 15, and 53 to rebut the explanations provided by Liberty as to how NAIC teaches the claimed limitations recited in dependent claims 2-9, 14, 16-52, and 54-59. PO Resp. 7-51. Therefore, for the same reasons discussed above with respect to independent claims 1, 13, 15, and 53, we conclude that Liberty has demonstrated, by a preponderance of the evidence, that dependent claims 2-9, 14, 16-52, and 54-59 of the '269 patent are unpatentable over NAIC.

E. Claims 17-22, 29, and 54-56

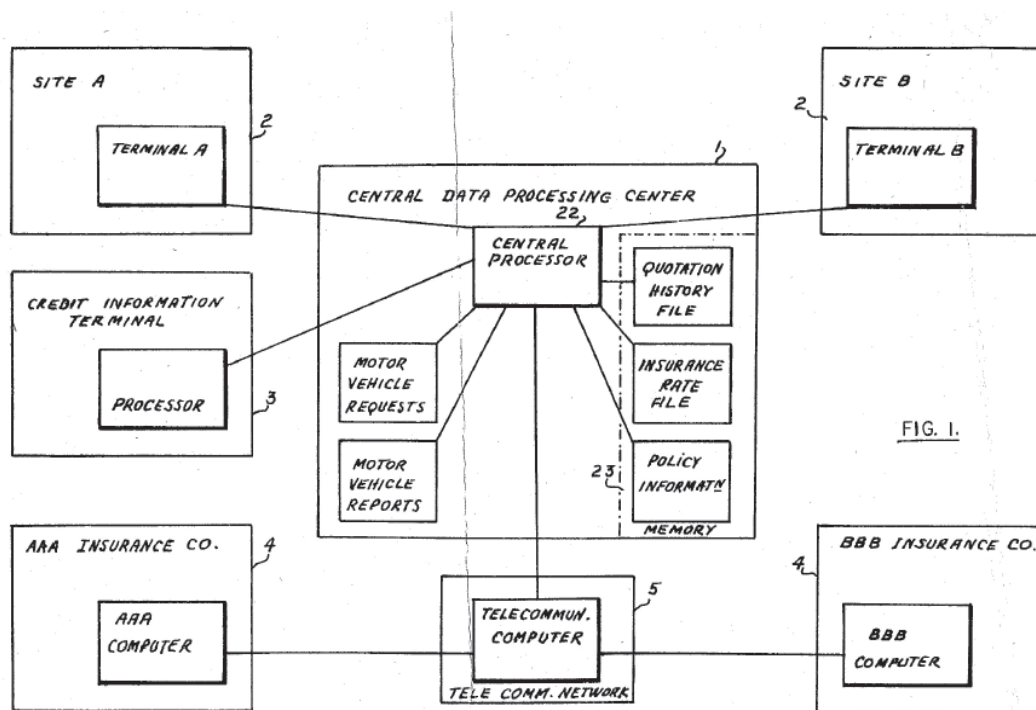
Liberty contends that claims 17-22, 29, and 54-56 are unpatentable under § 103(a) over the combination of NAIC and Lockwood. Pet. 44-49. In support of that alleged ground of unpatentability, Liberty provides explanations as to how the combination of NAIC and Lockwood teaches each claim limitation. *Id.* Liberty also submits declarations of Mr. Klausner (Ex. 1010) and Ms. O'Neil (Ex. 1017) to support its positions. Upon reviewing Liberty's petition and supporting evidence, as well as Progressive's response and supporting evidence, we determine that Liberty has demonstrated, by a preponderance of the evidence, that claims 17-22, 29, and 54-56 are unpatentable over the combination of NAIC and Lockwood.

We begin our analysis with a general discussion of Lockwood, and then we turn to the arguments presented by both Liberty and Progressive that

are directed towards whether the Lockwood teaches the claim limitations recited in claims 17-22, 29, and 54-56.

1. Lockwood

Lockwood generally relates to a system for automatically dispensing information, services, and products to customers in a self-service fashion. Ex. 1008, 1:6-8. In particular, Lockwood discloses that the system may be used to dispense insurance quotations and policies automatically. Ex. 1008, 1:8-10. Figure 1 of Lockwood, which is reproduced below, illustrates data processing center 1, which includes central processing unit 22 and memory 23. Ex. 1008, 5:37-38.



As shown in Figure 1, Lockwood discloses that processing unit 22 operates in response to program instructions to perform insurance quotation

calculations based on customer information received from a terminal.
Ex. 1008, 3:51-55, 5:44-49, 6:3-14. Lockwood further discloses that all operations with respect to obtaining information, checking credit, transmitting information to respective companies, and issuing policies are carried out automatically. Ex. 1008, 9:16-20.

2. Contentions

In its patent owner response, Progressive contends that Liberty only provides explanations as to how Lockwood teaches the claim limitations recited in dependent claims 17-22, 29, and 54-56, and does not explain how Lockwood remedies the above-noted deficiencies in NAIC for the claim limitations recited in independent claims 1 and 15. PO Resp. 51. As explained previously, there are no such deficiencies in NAIC for Lockwood to cure. Next, Progressive presents separate arguments directed to dependent claims 22, 23, and 54-56. PO Resp. 52-57. For the reasons stated below, we do not agree with Progressive.

a. Claims 22 and 23

In its petition, Liberty contends that Lockwood describes claim 22, which recites that “the acknowledgement comprises a price of the adjustment to the selected insurance policy parameter.” Pet. 47-48 (citing Ex. 1008, 5:66-6:23). In its patent owner response, Progressive contends that the “selected insurance policy parameter” recited in dependent claim 22 amounts to an insurance policy parameter for an existing insurance policy. PO Resp. 53. Progressive argues that the insurance policy quotes communicated in Lockwood are quotes for new insurance policies and,

therefore, Lockwood does not disclose communicating adjustments to existing insurance policies. *Id.* (citing Ex. 1008, Abstract, 2:8-19, 3:33-40, 4:64-66, 5:44-6:32). In its reply, Liberty contends that Progressive ignores that issuing new policies and adjusting existing policies involve many identical functions. Reply 2-3, n. 5 (citing Ex. 1017 ¶¶ 19, 40).

We begin our analysis by noting that it is well settled that a person of ordinary skill is a person of ordinary creativity, not an automaton. *See KSR*, 550 U.S. at 421. Even if we assume that Lockwood is limited to communicating quotes to a consumer for a new insurance policy, Liberty, nonetheless, presents sufficient evidence indicating that one with ordinary skill in the art would have recognized that Lockwood's system possesses the capability to generate and communicate price adjustments associated with changing a parameter of an existing insurance policy. Ex. 1017 ¶ 40. In other words, communicating price adjustments associated with changing a parameter of an existing insurance policy, instead of communicating quotes for new insurance policies, predictably uses prior art elements according to their established functions—an obvious improvement. *See KSR*, 550 U.S. at 417. Moreover, Progressive does not present sufficient or credible evidence that communicating price adjustments associated with changing a parameter of an existing insurance policy is beyond the level of an ordinary skill artisan. *See Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1162 (Fed. Cir. 2007).

For the foregoing reasons, we conclude that Liberty has demonstrated, by a preponderance of the evidence, that dependent claim 22 of the '269

patent is unpatentable over the combination of NAIC and Lockwood. Progressive relies upon the same arguments presented against dependent claim 22 to rebut the explanations provided by Liberty as to how Lockwood teaches the claimed limitation recited in dependent claim 23. PO Resp. 54. For the same reasons discussed above with respect to dependent claim 22, we conclude that Liberty has demonstrated, by a preponderance of the evidence, that dependent claim 23 of the '269 patent is unpatentable over the combination of NAIC and Lockwood.

b. Claims 54-56

Next, Liberty contends that the combination of NAIC and Lockwood teaches dependent claim 54, which recites the following:

where the insurance policy adjustment module is further configured to generate in real-time an insurance policy cost adjustment attributable to the adjustment of the insurance policyholder's insurance policy parameter, and where the insurance policy adjustment module is also further configured to communicate the insurance policy cost adjustment in real-time in the customized insurance document sent to the insurance policyholder over the publicly accessible distributed network.

Pet. 38, 49 (citing Ex. 1007, pp. 4, 5, 7-9, 11, 13-15, 17, 20, 21 and 27, p. 2 of App. A, p. 2 of App. B, p. 1 of App. E; Ex. 1008, 5:66-6:23). In its patent owner response, Progressive contends that, although NAIC discloses the possibility that a consumer could submit a request for a policy change on the Internet, NAIC fails to teach generating or communicating an insurance policy cost adjustment attributable to the requested policy change, as

required by dependent claim 54. PO Resp. 55 (citing Ex. 1007, pp. 4, 9, and 20). In addition, Progressive relies upon the same argument presented against dependent claim 22 to rebut the explanations provided by Liberty as to how Lockwood teaches the claimed limitation recited in dependent claim 54. *Id.* at 55-56.

Progressive's arguments are not persuasive. Nonobviousness cannot be established by attacking references individually where, as here, the ground of unpatentability is based upon the combined teachings of NAIC and Lockwood. *In re Keller*, 642 F.2d 413, 426 (CCPA 1981). Rather, the test for obviousness is whether the combination of NAIC and Lockwood, taken as a whole, would have suggested the claim limitation recited in dependent claim 54 to a person having ordinary skill in the art. *In re Merck & Co.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

As explained previously, NAIC teaches the claimed "insurance policy adjustment module" feature and corresponding "real-time" adjustment aspect required by independent claim 1. As discussed above with respect to dependent claim 22, one with ordinary skill in the art would have recognized that Lockwood's system possesses the capability to generate and communicate price adjustments associated with changing a parameter of an existing insurance policy. Ex. 1017 ¶ 40. Based on the combined teachings of NAIC and Lockwood, one with ordinary skill in the art would have understood that the claimed "insurance policy adjustment module," as taught by NAIC, may be configured to generate and communicate, in real-time, price adjustments associated with changing a parameter of an existing

insurance policy, as taught by Lockwood. As such, Liberty has presented sufficient evidence to support a finding that the combination of NAIC and Lockwood teaches the claim limitation recited in dependent claim 54.

For the foregoing reasons, we conclude that Liberty has demonstrated, by a preponderance of the evidence, that dependent claim 54 of the '269 patent is unpatentable over the combination of NAIC and Lockwood. Progressive relies upon the same arguments presented against dependent claim 54 to rebut the explanations provided by Liberty as to how Lockwood teaches the claimed limitations recited in dependent 55 and 56. PO Resp. 57. Therefore, for the same reasons discussed above with respect to dependent claim 54, we conclude that Liberty has demonstrated, by a preponderance of the evidence, that dependent claims 55 and 56 of the '269 patent are unpatentable over the combination of NAIC and Lockwood.

F. Whether the Declaration of Mr. David Klausner (Ex. 1010) Should be Given Weight

In its patent owner response, Progressive contends that Mr. Klausner's testimony should be given no weight for the following reasons: (1) he does not have the appropriate experience to qualify as an expert in the pertinent art; and (2) his résumé includes false information. PO Resp. 58-64. Progressive's repeats the same arguments in its motion to exclude, which we address below.

G. Progressive's Motion to Exclude Evidence

Progressive seeks to exclude the following evidence: (1) the declarations of Mr. David Klausner (Exs. 1010, 1024, and 1036) because he is not qualified to provide an opinion in this proceeding; (2) Exhibits 1024-

1038 because they include impermissible hearsay; (3) Exhibits 1025-1034 and 1037 because they are not authenticated; and (4) Exhibits 1033 and 1034 because they are irrelevant and prejudicial. Paper 47 (“PO Mot.”) Liberty opposes Progressive’s motion to exclude. Paper 51 (“Pet. Opp.”). In response, Progressive filed a reply to Liberty’s opposition to its motion to exclude. Paper 53. For the reasons discussed below, Progressive’s motion to exclude is denied.

1. Whether Mr. Klausner is Qualified to Provide an Opinion in This Proceeding

Progressive contends that the declarations of Mr. Klausner are not admissible because he is not qualified to provide an opinion in this proceeding under Federal Rule of Evidence (“Fed .R. Evid.”) 702.⁴ PO Mot. 2-9. Progressive’s argument is predicated on the notion that the field of the ’269 patent is Internet web-based functionality, and Mr. Klausner is not qualified to provide his opinion regarding that matter. *Id.* at 3-4. In

⁴ Fed. R. Evid. 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

response, Liberty contends that Progressive improperly limits the field of the '269 patent to the Internet. Pet. Opp. 4-5. We agree with Liberty.

As discussed previously, the field of the '269 patent generally relates to an insurance data communication and processing system. Ex. 1001, 1:12-19. Although independent claim 1 recites “a publicly accessible network,” there is nothing in the specification of the '269 that limits the aforementioned claim feature to the Internet. For instance, dependent claim 8 recites “wherein the publicly accessible network comprises an Internet.” Applying the broadest reasonable interpretation standard to independent claim 1, the “publicly accessible network” recited therein is not limited to the Internet. Therefore, contrary to Progressive’s argument, not all the claims of the '269 patent reference Internet web-based functionality because the “publicly accessible network” recited in independent 1 is not limited to the Internet.

Even if we assume that the field of the '269 patent is limited to the Internet, the testimony of Progressive’s own expert, Dr. Kevin Jeffay, indicates that Mr. Klausner has the requisite experience to provide an expert opinion on designing, developing, and maintaining computer systems via the Internet. With respect to the computer aspects of the invention in the '269 patent, Dr. Jeffay testifies that a person of ordinary skill in the art would be an individual with a computer science degree, or computer engineering degree, and at least 2-3 years of experience in designing, implementing, and using processing systems distributed via the Internet. Ex. 2202 ¶ 10. According to Mr. Klausner’s curriculum vitae, he earned a Bachelor of Arts

in Mathematics, as well as a Master of Science in Electrical Engineering. Ex. 1011 at 1. Mr. Klausner also designed a commercial online system for Intel from 1991-1993. *Id.* at 2. In addition, Mr. Klausner attests that he was involved in numerous matters relating to the Internet after 1993, such as Internet computing, software, web design, etc. Ex. 1024 ¶¶ 16-17. Therefore, based on qualifications outlined by Progressive's expert, Mr. Klausner is qualified to give expert testimony on the subjects of designing, implementing, and using processing systems distributed via the Internet.

Next, Progressive questions the qualifications of Mr. Klausner as an expert because he allegedly provided false statements about his experience on his résumé. PO Mot. 9-11. In response, Liberty contends that Progressive's argument is unfounded. Pet. Opp. 9. Liberty argues that Progressive does not explain adequately why the declarations provided by Mr. Klausner are inadmissible. *Id.* We agree with Liberty. Mr. Klausner's curriculum vitae indicates that he was consulted as an expert in one hundred ninety four matters. Ex. 1011 at 5-24. Progressive's identification of two matters where Mr. Klausner's description of his duties was called into question does not render the additional one hundred ninety two matters irrelevant. Any such inconsistency simply would affect the weighing of the testimony offered by Mr. Klausner.

For the foregoing reasons, we decline to exclude the declarations of Mr. David Klausner (Exs. 1010, 1024, and 1036).

2. *Whether Exhibits 1024-1038 Should be Excluded as Hearsay*

Progressive contends that Exhibits 1024-1038 each include out of court statements being offered for the truth of the matter asserted and, therefore, should be excluded as hearsay under Federal Rule of Evidence 802.⁵ PO Mot. 11-14. In response, Liberty contends that Exhibits 1024, 1035, 1036, and 1038 are rebuttal declarations containing testimony rendered by four declarants in this proceeding and fall outside the scope of impermissible hearsay. Pet. Opp. 9-10. Liberty argues that Exhibits 1025-1034 and 1037 are articles that were considered by its expert, Mr. Klausner, and confirm what one with ordinary skill in the art would have known about technical features and development in the pertinent art. *Id.* at 10-11. Liberty further argues that Exhibits 1025-1034 and 1037 are articles that are admissible for the truth of the matter asserted under certain hearsay exceptions. *Id.* at 11-13.

With respect to the rebuttal declarations that are Exhibits 1024, 1035, 1036, and 1038, the testimony rendered by Mr. Darrell W. Stark, Mr. Klausner, and Mr. Jordan M. Rossen are not out of court statements, as they are direct rebuttal testimony submitted in this proceeding. Progressive's argument that the Board's rules, as well as the Scheduling Order (Paper 13), do not provide it with an opportunity to cross-examine the

⁵ Fed. R. Evid. 802. The Rule Against Hearsay
Hearsay is not admissible unless any of the following provides otherwise:

- (a) a federal statute;
- (b) these rules; or
- (c) other rules prescribed by the Supreme Court.

rebuttal declarants is incorrect. PO Mot. 11-13. The opportunity to cross-examine rebuttal declarants is provided as routine discovery under 37 C.F.R. § 42.51(b)(1)(ii). Progressive cannot seek to exclude Liberty's rebuttal declarants on the basis that it chose neither to cross-examine them nor, if necessary, request the filing of observations on cross-examination.

With respect to the articles that are Exhibits 1025-1034 and 1037, we are not persuaded by Progressive's arguments that these exhibits constitute hearsay. Progressive does not identify specifically the textual portions of the aforementioned exhibits that allegedly are being offered for the truth of the matter asserted, yet seeks to exclude the entirety of each exhibit. We will not go through the entirety of each exhibit and determine which portion of the exhibit Progressive believes to be hearsay—this is something that Progressive should have done in its motion to exclude.

Moreover, we do not reach Liberty's argument that the articles that are Exhibits 1025-1034 and 1037 are admissible for the truth of the matter asserted under certain hearsay exceptions. Pet. Opp. 11-13. We have considered the statements therein not for the truth of the matter asserted, but for the fact that such statements were made at all. We recognize that these exhibits were relied on by Liberty's rebuttal declarant, Mr. Klausner, and are of the type that experts in the pertinent field reasonably would rely on to form their opinions. Accordingly, as argued by Liberty (*id.* at 10-11), these exhibits need not themselves be admissible for the testimony of Mr. Klausner to be admissible. We further agree with Liberty that Exhibits 1025-1034 and 1037 serve a non-hearsay purpose for which they can be

admitted—namely to show what one with ordinary skill in the art would have known about technical features and developments in the pertinent art. *Id.* at 11.

For the foregoing reasons, we decline to exclude Exhibits 1024-1038 as impermissible hearsay.

3. Whether Exhibits 1025-1034 and 1037 Should be Excluded as Unauthenticated Evidence

Progressive contends that Exhibits 1025-1034 and 1037 have not been authenticated and, therefore, should be excluded under Federal Rule of Evidence 901.⁶ PO Mot. 14-15. Progressive asserts that the only evidence indicating that Exhibits 1025-1034 and 1036 are authentic are the declarations of Mr. Stark and Mr. Rossen, which are hearsay and should be excluded. *Id.* at 14.

We agree with Liberty that Exhibits 1025-1027, 1030, 1031, 1033, and 1034 are self-authenticating material because they each purport to be a newspaper or periodical that requires no extrinsic evidence of authenticity in order to be admitted under Federal Rule of Evidence 902(6).⁷ Pet. Opp. 13.

⁶ Fed. R. Evid. 901. Authenticating or Identifying Evidence

(a) In General. To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.

⁷ Fed. R. Evid. 902. Evidence that Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

(6) Newspapers and Periodicals. Printed material purporting to be

For instance, Exhibit 1025 is an article titled “What TCP/IP Protocol Headers Can Tell Us About the Web” that was co-authored by Progressive’s expert, Dr. Jeffay, and published in the Proceedings of ACM SIGMETRICS at pages 245-256 in June 2001. Ex. 1025, p. 1. Even if we assume that Exhibits 1025-1027, 1030, 1031, 1033, and 1034 are not self-authenticating material under Federal Rule of Evidence 902(6), the rebuttal declaration of Mr. Stark properly authenticates these Exhibits independently of that rule. Ex. 1035 ¶¶ 3-5, 8, 9, 11, and 12.

We also agree with Liberty that Exhibits 1028, 1029, and 1037 are properly authenticated under Federal Rule of Evidence 901(b)(8)⁸ because the rebuttal declarations of Mr. Stark and Mr. Klausner identify where and when each Exhibit was obtained, the rebuttal declaration of Mr. Klausner provides a brief description of the place where each Exhibit was maintained, and each Exhibit was at least 20 years old when offered. Pet. Opp. 13 (citing Ex. 1035 ¶¶ 6-7, Ex. 1036 ¶¶ 4-5). Finally, we agree with Liberty that Exhibits 1032 and 1033 are authenticated properly by the declarations of Mr. Stark (Ex. 1035 ¶¶ 10-11) and Mr. Klausner (Ex. 1024 ¶¶ 13-14, n. 7). *Id.* at 13-14.

issued by a public authority.

⁸ Fed. R. Evid. 901(b)(8). Evidence About Ancient Documents or Data Compilations.

For a document or data compilation, evidence that it:

- (A) is in a condition that creates no suspicion about its authenticity;
- (B) was in a place where, if authentic, it would likely be; and
- (C) is at least 20 years old when offered.

For the foregoing reasons, we decline to exclude Exhibits 1025-1034 and 1037 as unauthenticated evidence.

4. *Whether Exhibits 1033 and 1034 Should be Excluded as Irrelevant and Prejudicial*

Progressive contends that, even if it assumes that Exhibits 1033 and 1034 are authentic and not hearsay, they should be excluded because they are irrelevant and prejudicial under Federal Rules of Evidence 402⁹ and 403.¹⁰ PO Mot. 15. Progressive argues that Exhibits 1033 and 1034 are purportedly from October 1998, which is after the time period of July 1998 used by Liberty's experts to establish the knowledge of one with ordinary skill in the art. *Id.* (citing Ex. 1010 ¶ 14, Ex. 1017 ¶ 20). Progressive also asserts that it was not given an opportunity to address these references. *Id.*

We agree with Liberty that Exhibits 1033 and 1034 both have publication dates in October 1998, which is prior to the earliest effective

⁹ Fed. R. Evid. 402. General Admissibility of Relevant Evidence. Relevant Evidence is admissible unless any of the following provides otherwise:

- (a) the United States Constitution;
- (b) a federal statute;
- (c) these rules; or
- (d) other rules prescribed by the Supreme Court.

¹⁰ Fed. R. Evid. 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons.

The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

filing date of the '269 patent—July 30, 1999. Pet. Opp. 15. Even if we assume that the critical date of the '269 patent is July 1998, it is well settled that references that have publication dates after the critical date may be cited to show the state of the art at or around the time of the invention. *Eli Lilly and Co. v. Barr Labs., Inc.*, 251 F.3d 955, 969-70 (Fed. Cir. 2001); *see also In re Wilson*, 311 F.2d 266, 268-269 (CCPA 1962). Moreover, we note that there is a strong public policy for making all information filed in an administrative proceeding available to the public, especially in a covered business method patent review, which determines the patentability of claims in an issued patent. It is better to have a complete record of the evidence submitted by the parties than to exclude particular pieces of evidence.

For the foregoing reasons, we decline to exclude Exhibits 1033 and 1034 as irrelevant and prejudicial. In summary, Progressive's motion to exclude evidence is denied.

H. Liberty's Motion to Exclude Evidence

Liberty seeks to exclude certain portions of the testimonial evidence offered by Progressive's two experts—namely paragraphs 10-14 and 17-38 of the declaration of Dr. Kevin Jeffay (Ex. 2202), and paragraphs 20, 23, 24, 39-42, 44, 45, 47, 48, 50-52, and 54-56 of the declaration of Ms. Ruth Ann Cacchione (Ex. 2204). Paper 48 ("Pet. Mot."). Liberty presents the following arguments in support of its motion to exclude evidence: (1) Dr. Jeffay and Ms. Cacchione do not possess sufficient knowledge about online computer systems used for insurance processing in 1998 and, in particular, Dr. Jeffay is not qualified to provide testimony about the pertinent

aspects of insurance; and (2) Dr. Jeffay and Ms. Cacchione provide insufficient underlying facts or data upon which their opinions could be based, in violation of Federal Rule of Evidence 702. Pet. Mot. 1-10.

Progressive opposes Liberty's motion to exclude. Paper 50 ("PO. Opp."). Progressive presents the following arguments in support of its opposition: (1) the evidentiary objections upon which Liberty bases its motion to exclude fail to provide "sufficient particularity to allow correction in the form of supplemental evidence," in violation of 37 C.F.R. § 42.64(b)(1); and (2) Dr. Jeffay and Ms. Cacchione are qualified "by knowledge, skill, experience, training, or education" and their testimony is "based on sufficient facts or data," in accordance with Federal Rule of Evidence 702. PO Opp. 1-14. Liberty filed a reply to Progressive's opposition to its motion to exclude. Paper 53.

The current situation does not require us to assess the merits of Liberty's motion to exclude. As discussed above, even without excluding the aforementioned paragraphs in the declarations of Dr. Jeffay and Ms. Cacchione, we have concluded that Liberty has demonstrated, by a preponderance of the evidence, that claims 1-9 and 13-59 of the '269 patent are unpatentable under § 103(a). Accordingly, Liberty's motion to exclude evidence is dismissed as moot.

III. CONCLUSION

Liberty has demonstrated, by a preponderance of the evidence, that claims 1-9 and 13-59 of the '269 patent are unpatentable based on the grounds of unpatentability set forth in the table below.

Claims	Basis	Reference(s)
1-9 and 13-59	§ 103(a)	NAIC
17-22, 29, and 54-56	§ 103(a)	NAIC and Lockwood

IV. ORDER

In consideration of the foregoing, it is
ORDERED that claims 1-59 of the '269 patent are CANCELLED;
FURTHER ORDERED that Progressive's motion to exclude evidence
is DENIED; and

FURTHER ORDERED that Liberty's motion to exclude evidence is
DISMISSED as moot.

Case CBM2013-00002
Patent 7,877,269 B2

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papa ~ paraffin

570

pa-pa /pa/pə, pa/pə/ *n.* father (esp. as a child's word).
pa-pa-cy /pəpəseɪ/ *n.* (pl. -cies) 1 pope's office or tenure. 2 papal system.
pa-pal /pəpəl/ *adj.* of a pope or the papacy. **as pa pal-ly** *adv.*
pa-paw var. of PAWPAW.
pa-pa-ya /pəpəjə/ *n.* 1 edible yellow fruit with orange flesh. 2 tropical tree bearing this.
pa-per /pəpər/ *n.* 1 material manufactured in thin sheets from the pulp of wood or other fibrous substances, used for writing or drawing or printing on, or as wrapping material, etc. 2 (attrib.) a made of or using paper. b flimsy like paper. 3 = NEWS-PAPER. 4 a printed document. 5 (in pl.) identification or other legal documents. 6 = WALLPAPER. 6 essay or dissertation. 7 piece of paper. *v.* 1 apply paper to, esp. decorate (a wall, etc.) with wallpaper. 2 (foll. by over) disguise or try to hide. *n.* **paper** clip clip of bent wire or of plastic for holding several sheets of paper together. **paper** tiger apparently threatening, but ineffectual, person or thing. **paper** trail documentation of transactions, etc. *as pa per-er* *n.* **pa per-less** *adj.* **pa per-y** *adj.*
n. 3 tabloid, daily, weekly, journal, gazette, publication, periodical, newsletter, organ, *derog.* rag, sheet. 4 instrument, form, certificate, deed; credential(s), identification; docket, file, dossier. 6 article, composition, assignment, report, thesis, study, tract, analysis, critique, monograph. *v.* 1 wallpaper, line; decorate. 2 cover up; see also COVER *v.* 1.
pa-per-back /pəpərbak/ (also **pa per-bound**) *adj.* (of a book) bound in stiff paper. *n.* a paperback book.
pa-per-boy /pəpərbɔɪ/ *n.* (fem. **pa per-girl** /-gɜrl/) boy or girl who delivers or sells newspapers.
pa-per-weight /pəpərwet/ *n.* small heavy object for keeping loose papers in place.
pa-per-work /pəpərwɜrk/ *n.* 1 routine clerical or administrative work. 2 documents, esp. for a particular purpose.
pa-pier mâ-ché /pəpər mæʃə, pəpəjə/ *n.* paper pulp used for molding into boxes, trays, etc.
pa-pil-la /pəpɪlə/ *n.* (pl. **pa-pil-lae** /-pɪlee/) small nipplelike protuberance in a part or organ of the body. *as pa pil-lary* *adj.* **pa pil-lose** *adj.*
pa-poosé /pəpəʊs/ *n.* young Native American child.
pa-pri-ka /pəprɪkə, pəprɪkə/ *n.* 1 Bot. a red pepper. 2 powdery condiment made from it.
Pap smear /pap/ (also **Pap test**) *n.* test for cervical cancer, etc., done by a cervical smear.
pa-py-rus /pəpɪrəs/ *n.* (pl. **pa-py-ri** /-rɪ/) 1 aquatic plant with dark green stems topped with fluffy inflorescences. 2 writing material prepared in ancient Egypt from the pithy stem of this.
par /paər/ *n.* 1 average or normal amount, degree, condition, etc. (*be up to par*). 2

equality; equal footing. 3 Golf number of strokes a skilled player should normally require for a hole or course. 4 Stock Exch. face value of stocks and shares, etc. 5 (in full **par** of exchange) recognized value of one country's currency in terms of another's. *n.* **par** for the course *colloq.* what is normal or to be expected.
n. 1 standard, normal, norm, expectation. 2 level; see also PARITY 1.
par- /pər, paər/ *prefix* var. of PARA- before a vowel or *h*; (*paraldehyde*, *parody*, *parhelion*).
para- /pə-rə/ *prefix* (also **par-**) 1 beside (*paramilitary*). 2 beyond (*paranormal*).
para-a-mi-no-ben-zo-ic acid /para-æmɛnɔ-benzɔɪk/ *n.* Biochem. compound used in suntan lotions and sunscreens to absorb ultraviolet light. *Abbrev.* PABA.
para-ble /pə-rə-bəl/ *n.* 1 narrative of imagined events used to illustrate a moral or spiritual lesson. 2 allegory.
n. fable, lesson, morality tale.
pa-rab-o-la /pə-rə-bə-lə/ *n.* open plane curve formed by the intersection of a cone with a plane parallel to its side.
para-bol-ic /pə-rə-bɒl-ɪk/ *adj.* 1 of or expressed in a parable. 2 of or like a parabola. *as pa-ra-bol-i-cal-ly* *adv.*
para-chute /pə-rəʃu:t/ *n.* rectangular or umbrella-shaped apparatus allowing a slow and safe descent, esp. from an aircraft. *v.* convey or descend by parachute. *as pa-ra-chut-ist* *n.*
pa-rade /pə-ræd/ *n.* 1 formal or ceremonial muster of troops for inspection. 2 public procession. 3 ostentatious display. *v.* 1 a *n.* march through (streets, etc.) in procession. *b.* *intr.* march ceremonially. 2 *tr.* display ostentatiously. *as pa-rad-er* *n.*
n. 2 march, train, file, promenade, cortège; column. 3 exhibition, show, spectacle, array, splash. *v.* 1 march, pass in review, promenade, walk, file. 2 flaunt, show (off), brandish, wave, air, *literary* vaunt.
para-digm /pə-rædɪm/ *n.* 1 example or pattern. 2 Gram. representative set of the inflections of a noun, verb, etc. *as pa-ra-dig-mat-ic* /-dɪgmætɪk/ *adj.* **para-dig-mat-i-cal-ly** *adv.*
para-dise /pə-rædɪs/ *n.* 1 heaven. 2 place or state of complete happiness. 3 (in full **earthly paradise**) abode of Adam and Eve; garden of Eden. *as pa-ra-di-si-a-cal* /-dæsiækəl/ *adj.*
n. 1 Zion, Elysium, Elysian Fields, happy hunting ground, the promised land, Valhalla. 2 heaven on earth, dreamland, seventh heaven, (Garden of) Eden, utopia, Shangri-la; bliss, rapture, heaven.
para-dox /pə-rædɒks/ *n.* 1 a seemingly absurd or contradictory statement, even if actually well-founded. *b.* self-contradictory or essentially absurd statement. 2 person or thing having contradictory qualities, etc. *as pa-ra-dox-i-cal* *adj.* **para-dox-i-cal-ly** *adv.*
n. contradiction, self-contradiction, incongruity, inconsistency, absurdity, ambiguity, enigma, puzzle. *as paradoxical* impossible, improbable, illogical.
par-af-fin /pə-ræfɪn/ *n.* (also **par'af-fin wax**)

waxy mixture of hydrocarbons used in candles, waterproofing, etc.

para-gon /pə-rə-gən/ *n.* model of excellence.

n. epitome, archetype, prototype, quintessence, pattern, standard, exemplar, ideal.

para-graph /pə-rə-graf/ *n.* 1 distinct section of a piece of writing, beginning on a new usu. indented line. 2 symbol (usu. ¶) used to mark a new paragraph. 3 short item in a newspaper, usu. of only one paragraph. *v.* *tr.* arrange in paragraphs. *as pa-ra-graph-ic* /-græfɪk/ *adj.*

para-keet /pə-rə-keɪt/ *n.* small usu. long-tailed parrot.

para-le-gal /pə-rə-le-gəl/ *adj.* of auxiliary aspects of the law. *n.* person trained in subsidiary legal matters.

para-lax /pə-rə-læks/ *n.* apparent difference in the position or direction of an object caused when the observer's position is changed. *as pa-ral-lax-tic* /-læktɪk/ *adj.*

para-let /pə-rə-leɪt/ *n.* 1 side by side and having the same distance continuously between them. 2 precisely similar, analogous, or corresponding simultaneous. *n.* 1 person or thing precisely analogous or equal to another. 2 comparison. 3 (in full **parallel of latitude**) *Geog.* a each of the imaginary parallel circles of constant latitude on the earth's surface. *b.* corresponding line on a map (*the 49th parallel*). *v.* *tr.* 1 be parallel to; correspond to. 2 represent as similar; compare. *as pa-ral-lel-ism* *n.*

adj. 2 congruent, analogous, corresponding, like, matching, homologous, coordinate, equivalent. *n.* 1 analog, match, homologue, equivalent, counterpart. 2 analogy, parallelism, equivalence, correspondence, symmetry, equality; see also COMPARISON 3. *v.* 1 match, equate to or with, be likened to, correlate to or with, compare with or to, imitate, repeat, echo; keep pace with, conform to or with, balance, set off, offset. 2 match, equate, liken, juxtapose, associate, correlate.

para-lel-o-gram /pə-rə-leɪ-lə-gram/ *n.* *Geom.* four-sided plane rectilinear figure with opposite sides parallel.

para-ly-sis /pə-rə-lɪ-sɪs/ *n.* (pl. **para-ly-ses** /-seɪz/) 1 impairment or loss of esp. the motor function of the nerves. 2 state of utter powerlessness. *as pa-ra-lyt-ic* /pə-rə-lɪtɪk/ *adj.* & *n.* **para-lyt-i-cal-ly** *adv.*

para-lyze /pə-rə-lɪz/ *v.* 1 affect with paralysis. 2 render powerless; cripple. *as pa-ra-lyz-a-tion* *n.* **pa-ra-lyz-ing-ly** *adv.*

n. 2 disable, incapacitate; immobilize.

para-me-ci-um /pə-rə-mɛ-si-əm/ *n.* freshwater protozoan of a characteristic slipper-like shape covered with cilia.

para-med-ic /pə-rə-mɛ-dɪk/ *n.* 1 paramedical worker. 2 person trained in emergency medical procedures.

para-med-i-cal /pə-rə-mɛ-dɪkəl/ *adj.* (of services, etc.) supplementing and supporting medical work.

para-me-ter /pə-rə-mɛ-tər/ *n.* 1 Math. quantity constant in the case considered but varying in different cases. 2 a characteristic or feature. *b.* (loosely) constant element

571 paragon ~ parasymphatic

or factor, esp. serving as a limit or boundary. *as pa-ra-met-ric* /pə-rə-mɛ-trɪk/ *adj.* **pa-ram-e-trize** *v.* *tr.*

para-mil-i-tary /pə-rə-mɪ-lɪ-tərɪ/ *adj.* (of forces) ancillary to and similarly organized to military forces.

para-mount /pə-rə-maʊnt/ *adj.* supreme; requiring first consideration. *as pa-r'a-mount-ly* *adv.*

n. preeminent, chief, dominant, main, major, predominant, cardinal, first, prime, primary, principal, essential.

para-mour /pə-rə-moʊr/ *n.* illicit lover of a married person.

n. love, innamorato, innamorata, mistress, gigolo, concubine, kept woman, (the) other woman.

para-noi-a /pə-rə-nɔɪ-ə/ *n.* 1 personality disorder esp. characterized by delusions of persecution and self-importance. 2 abnormal tendency to suspect and mistrust others. *as pa-ra-noi-ac* *adj.* & *n.* **para-noid** /-nɔɪd/ *adj.* & *n.*

para-nor-mal /pə-rə-nɔr-məl/ *adj.* beyond the scope of normal objective investigation or explanation. *as pa-ra-nor-mal-ly* *adv.*

para-pet /pə-rə-pɪt/ *n.* 1 low wall at the edge of a roof, balcony, etc., or along the sides of a bridge. 2 defense of earth or stone to conceal and protect troops. *as pa-r'a-pet-ed* *adj.*

para-pher-na-li-a /pə-rə-fər-nə-lɪ-ə/ *n.* (pl. also treated as *sing.*) miscellaneous belongings, equipment, accessories, etc.

n. apparatus, outfit, kit, appliances, utensils, gear, rig, material(s), matériel, things, tackle.

para-phrase /pə-rə-frayz/ *n.* free rendering or rewording of a passage. *v.* *tr.* express the meaning of (a passage) in other words. *as pa-ra-phras-tic* /-fræstɪk/ *adj.*

n. rephrasing, rewriting, rewrite, rehash, rendition, version. *v.* rephrase, paraphrase, reword, restate.

para-ple-gi-a /pə-rə-plɛ-jə/ *n.* paralysis of the legs and part or the whole of the trunk. *as pa-ra-ple-gic* *adj.* & *n.*

para-psy-chol-o-gy /pə-rə-sɪkə-lə-dʒi/ *n.* the study of mental phenomena outside the sphere of ordinary psychology. *as pa-ra-psy-cho-log-i-cal* /-sɪkə-lə-dʒɪkəl/ *adj.* **para-psy-chol-o-gist *n.***

para-quar /pə-rə-kwɔr/ *n.* quick-acting herbicide, becoming inactive on contact with the soil.

para-site /pə-rə-sɪt/ *n.* 1 organism living in or on another and benefiting at the expense of the other. 2 person who lives off or exploits another or others. *as pa-ra-sit-ic* /-sɪtɪk/ *adj.* **para-sit-i-cal** *adj.* **para-sit-i-cal-ly** *adv.* **para-sit-o-log-y** /-tɒlədʒi/ *n.* **para-sit-ol-o-gist *n.***

n. 2 leech, bloodsucker, hanger-on, sponge, cadger.

para-sol /pə-rə-sɔl/ *n.* light umbrella used to give shade from the sun.

para-sym-pa-the-tic /pə-rə-sɪmpə-thetɪk/ *adj.* *Anat.* relating to the part of the autonomic nervous system that controls the slowing of the heartbeat, constriction of the pupils, etc.