

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GREAT WEST CASUALTY COMPANY,
BITCO GENERAL INSURANCE CORPORATION, and
BITCO NATIONAL INSURANCE COMPANY,
Petitioner,

v.

INTELLECTUAL VENTURES II LLC,
Patent Owner.

Case IPR2015-01706
Patent 7,516,177 B2

Before MICHAEL W. KIM, PETER P. CHEN and ROBERT A. POLLOCK,
Administrative Patent Judges.

KIM, *Administrative Patent Judge.*

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

A. Background

Great West Casualty Company, BITCO General Insurance Corporation, and BITCO National Insurance Company (collectively “Petitioner”) filed a Petition to institute an *inter partes* review of claims 1–20 of U.S. Patent No. 7,516,177 B2 (Ex. 1001, “the ’177 patent”). Paper 1 (“Pet.”). Intellectual Ventures II LLC (“Patent Owner”) filed a Preliminary Response (Paper 7; “Prelim. Resp.”), in which Patent Owner indicated that it had filed a statutory disclaimer under 35 U.S.C. § 253 of claims 1–10. Prelim. Resp. 1 (citing Ex. 2001). On February 9, 2016, based on the record before us at the time, we instituted an *inter partes* review of claims 11, 12, and 16–20. Paper 10 (“Decision to Institute” or “Dec.”). We instituted the review on the following challenges to the claims:

References	Basis	Claims challenged
Eric Lease Morgan, MyLibrary: A Model for Implementing a User-centered, Customizable Interface to a Library’s Collection of Information Resources (1999) (“MyLibrary”) (Ex. 1005)	§ 103(a)	11, 12, and 16–20

Dec. 18.

After we instituted this review, Patent Owner filed a Patent Owner Response (Paper 15, “PO Resp.”) and Petitioner filed a Reply (Paper 18, “Reply”). Petitioner relies on the Declaration of Dr. Philip Greenspun (Ex. 1003). Patent Owner relies on the Declaration of Dr. Yannis

Papakonstantinou (Ex. 2009). We heard oral argument on October 3, 2016. A transcript of the argument has been entered in the record (Paper 27, “Tr.”).

We have jurisdiction under 35 U.S.C. § 6(c). The evidentiary standard is a preponderance of the evidence. *See* 35 U.S.C. § 316(e); *see also* 37 C.F.R. § 42.1(d). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73.

For the reasons expressed below, we conclude that Petitioner has demonstrated by a preponderance of evidence that claims 11, 12, and 16–20 are unpatentable.

B. Related Proceedings

Petitioner and Patent Owner identify the following district court proceedings concerning the ’177 patent: *Intellectual Ventures II LLC v. BITCO General Insurance Corporation*, Civ. No. 6-15-cv-00059 (E.D. Tex.); *Intellectual Ventures II LLC v. Great West Casualty Company*, Civ. No. 6-15-cv-00060 (E.D. Tex.); and *Intellectual Ventures I LLC et al. v. HCC Insurance Holdings, Inc. et al.*, Civ. No. 6-15-cv-00660 (E.D. Tex.). Pet. 1–2; *see also* Paper 5 (“PO Mandatory Notice”), 1. Petitioner and Patent Owner collectively identify also the following requests for review of the ’177 patent involving the same parties: CBM2015-00171; IPR2015-01707; IPR2016-00453. Pet. 2; *see also* Paper 5, 1; Paper 9, 2.

C. The ’177 Patent

The ’177 patent discloses the following under the heading “Technical Field:”

This invention pertains to electronic commerce and business. More particularly, the present invention relates to aggregating, enhancing, and distributing content objects with customers over

a network-based environment such as via the Internet or some other form of interactive network.

Ex. 1001, 1:22–26. The '177 patent asserts that the storage and retrieval of information has evolved from storing and retrieving information in textbooks and libraries, to storing and retrieving information from online networks such as the Internet. Ex. 1001, 1:30–33. According to the '177 patent, while such advances have led to a significant increase in information available to users, the users now have the problem of being overwhelmed by the amount of information, resulting in a failure to find specific information or losing track of the information that had already been found. Ex. 1001, 1:33–46. Thus, the '177 patent asserts that there is a need to provide improvements in the way demand for information is identified, content is generated in response to a defined demand, and in which users access desired information. Ex. 1001, 2:23–26.

D. Illustrative Claim

Petitioner challenges claims 1–20 of the '177 patent, of which claims 1–10 have been disclaimed. Prelim. Resp. 1 (citing Ex. 2001). Claims 11 and 16 are the only remaining independent claims. Independent claim 11 is illustrative of the challenged claims and is reproduced below:

11. An apparatus for distributing content through one or more distributed information access points to a centralized access point of a user, comprising:

at least one server operative to store one or more of: a) content, b) links to content, c) information about content, and d) information about users including information about which content a user has chosen;

a centralized access point of a user accessible via a communications link and operative to provide the user with access to content chosen by or for the user;

at least one distributed information access point accessible via a communications link and operative to implement one or more of: a) list one or more content objects, b) allow a user to choose content for addition to their centralized access point, and c) provide the user with logon access to their centralized access point; and

an administrative interface in communication with the server and operative to create groupings of content into one or more distributed information access points;

wherein a user is enabled with the capability to log on to their centralized access point from one or more distributed information access point(s) and access content chosen from one or more distributed information access point(s).

II. ANALYSIS

A. *Claim Interpretation*

“A claim in an unexpired patent that will not expire before a final written decision is issued shall be given its broadest reasonable construction in light of the specification of the patent in which it appears.” 37 C.F.R. § 42.100(b); *see also* *Cuozzo Speed Techs., LLC v. Lee*, 136 S. Ct. 2131, 2142 (2016) (Affirming that USPTO has statutory authority to construe claims according to 37 C.F.R. § 42.100(b).). When applying that standard, we interpret the claim language as it would be understood by one of ordinary skill in the art in light of the Specification. *In re Suitco Surface, Inc.*, 603 F.3d 1255, 1260 (Fed. Cir. 2010). Thus, we generally give claim terms their ordinary and customary meaning. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007) (“The ordinary and customary meaning ‘is the meaning that the term would have to a person of ordinary skill in the art in

question.”). For the purposes of this decision, and on this record, we determine that most claim terms do not need express interpretation. *See Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (Only those terms which are in controversy need to be construed, and only to the extent necessary to resolve the controversy.).

We determine that only the following claim terms require construction.

1. “content”

Independent claims 11 and 16 each recite “content.” Petitioner does not construe “content,” but asserts that “content object” should be construed as “a discrete unit of information that can be selected by the user such as: a tutorial, article, advertisement, or link to a web page.” Pet. 7–8 (citing Ex. 1001, Fig. 53, 2:35–40, 23:20–26, 25:3–28, 32:22–25; and Ex. 1003 ¶¶ 70–74).¹ Patent Owner asserts that “content” should be construed as “electronic data embodying information for an individual or individuals,” but not including links to content. PO Resp. 7–13 (citing Ex. 1001, 1:23–26, 2:23–26, 2:30–32, 6:53–54, 6:57–60, 7:11, 9:39–41, 34:55–59, 55:7–10; and Ex. 1003 ¶¶ 72–73). Petitioner replies that a proper construction of “‘content’ [must] embrace all examples of content disclosed in the [S]pecification, so the claim term ‘content’ must include a link to content.” Reply 2–11 (citing Ex. 1001, 3:58–60, 3:65–67, 17:31–35, 22:20–22, 23:11–24:35, 25:20–23, 47:5–7, 47:15–18, 47:47–48, 47:64, 53:54–56, 55:28–31, Figs. 8–10, 43; and Ex. 1048, 43–49).

¹ In the Decision on Institution, we partially and preliminarily construed “content” as excluding “links to content.” Dec. 6–7.

As an initial matter, after considering Petitioner and Patent Owner's assertions, we do not discern any real disagreement that "content" should be construed as "electronic data embodying information for an individual or individuals." Patent Owner asserts, and we agree, that the '177 patent is almost entirely devoted to only electronic forms of information, most prominently, information rendered by a computer.² Petitioner advocates for a construction that is, essentially, the broadest possible construction in view of the Specification. To that end, we are unable to discern a construction of "content," in the context of the '177 patent, that is broader than "electronic data embodying information for an individual or individuals." PO Resp. 8.

The disagreement, then, comes down to whether or not "electronic data embodying information for an individual or individuals" includes or excludes links to content and information about content. For that, we note that the above construction is unhelpful, without further explanation, in resolving this disagreement. For example, take the word "LOGON" in the upper right corner of Figure 8 of the '177 patent. To be sure, "LOGON" indicates the presence of a link, but it is clearly also "electronic," in that it is in an electronic format, and it clearly also embodies "data" or "information

² A bit cryptically, Patent Owner does assert that "[t]he patent does not contemplate content in the context of other media, such as speech, print documents, or gestures." PO Resp. 8. Patent Owner's assertion is confusing, because such media can be presented in electronic form, for example, speech may be rendered by a computer in a *.wav or *.mp3 format. Accordingly, we analyze the aforementioned assertion in a manner that is consistent with the overall framework of Patent Owner's positions, namely, that "content" excludes "speech, print documents, or gestures" not rendered by a computer, for example, "speech" verbally communicated by a human being.

for an individual,” in that an individual reading the word “LOGON” would glean the “information” that selecting “LOGON” would activate an underlying link that would take that an individual to a webpage where the individual could logon. Accordingly, on a cursory level, the word “LOGON” would appear to meet the aforementioned construction of “content” as “electronic data embodying information for an individual or individuals.”

Given this, we begin by turning to the express claim language for guidance in resolving this disagreement. To that end, the relevant portion of independent claim 11 recites “at least one server operative to store one or more of: a) content, b) links to content.” As an initial matter, controlling precedent from our reviewing court instructs us that different claim terms are presumed to have different meanings. *Applied Med. Res. Corp. v. U.S. Surgical Corp.*, 448 F.3d 1324, 1333 n.3 (Fed. Cir. 2006) (“[T]he use of two terms in a claim requires that they connote different *meanings*.”); *CAE Screenplates Inc. v. Heinrich Fiedler GmbH & Co. KG*, 224 F.3d 1308, 1317 (Fed. Cir. 2000) (“In the absence of . . . evidence to the contrary, we must presume that the use of these different terms in the claims connotes different meanings.”). Accordingly, on a high level, each of the following express claim terms are presumed to have different meanings: content; and, links to content.

Of course, we do not discern that either Petitioner or Patent Owner is actually arguing that, for example, “content” and “links to content” do not differ in scope. The disagreement, when distilled to its core, is that Patent Owner asserts that there cannot be any overlap between “content” and “links to content,” whereas Petitioner asserts that difference in claim scope does

not preclude at least some overlap, for example, that “content” is a genus and “links to content” is a species. In literal terms, we agree with Patent Owner, but in application we agree with Petitioner, for the following reasons and as explained below.

Most illuminating in this regard is Petitioner’s analysis of “content object,” specifically, Petitioner’s assertion that “[i]t is true that the patent also states that a ‘content object’ may be added to a user’s personal web page.” Ex. 1001 at 25:20–23. But a content object is not content; *it is the container for content*, as even Patent Owner recognizes (Paper 7 at 23–24).” Reply 10 (emphasis added). A relevant tangible analogy is a “cereal box.” A “cereal box” is of course, intended to contain cereal. If a “cereal box” does not contain any cereal, however, the question becomes whether it is still a “cereal box.” We believe it is. Even without cereal in a “cereal box,” the “cereal box” nevertheless has a design, shape, weight, markings, and material composition that would indicate that it is a “cereal box,” even if it does not contain cereal. Put more simply, a “cereal box” is a box with features indicating that it is intended to contain cereal, but does not need to contain cereal in order to be considered a “cereal box.”

We determine that the above analogy for “cereal box” holds for “content object.” A “content object” is, by itself, just an object, essentially, a virtual container, with features indicating that it can include certain items, such as “content.” We are unpersuaded by Petitioner’s implication, however, that “content objects” must contain “content,” or that “content objects” can only contain “content.” The disclosures of the ’177 patent support this determination. To be sure, the ’177 patent discloses expressly that “content objects” contain “content.” Ex. 1001, 17:31–35 (“[S]uch

aggregation encompasses the provision of *content within content objects* to the personal web site by a user and/or an authorized party such as a system administrator on Applicant's HowZone.com web site." (Emphasis added)). The '177 patent, however, also discloses "link" type content objects, which would only include "links to content," and not "content." Ex. 1001, 48:63–64 ("For example, content builder page 504 of FIG. 43 shows how content is built for a 'link' type of content object.") Furthermore, the '177 patent refers expressly to "content objects" as being of several generic "types," some of which refer to containing items other than "content." Ex. 1001, 47:15–19 ("FIG. 43 is a diagram of a screen display showing a link content builder page 504 provided for a content object type comprising a link. All other content object types, except for tutorial content objects, use a similar content builder page."), 47:27–30, 48:45–48, and 48:65–49:4. Additionally, the '177 patent discloses manipulating generic "content objects" in manner independent from any items, "content" or otherwise, that those "content objects" may actually contain. Ex. 1001, 23:11–24:34; 25:20–23.

We determine that the same analysis applies for "links to content" and "content," in that "link to content" is not itself "content." Aside from the above analysis of "content object," there are several factors that inform our determination. Initially, we return to the presumption, set forth above, that different claim terms are presumed to have different meanings. To that end, a "link to content" is no more than that, a "link," which is a technical set of computer instructions that is in itself not "content."³ This construction is

³ The '177 patent supports our determination that a "link" is a set a computer instructions. Ex. 1001, 1:53–2:22 ("The World Wide Web provides an Internet facility that links documents locally and remotely. A

supported also by the '177 patent, which distinguishes expressly between “content” and “links to content.” Ex. 1001, 6:57–60 (“Furthermore, contributors are given the ability to contribute information by uploading content and/or by distributing links to content that is available over a network system”), 7:11–13 (“In order to organize links and/or uploaded content so that it can be viewed by individuals, a dynamically generated category network is implemented to sort and distribute information.”). Accordingly, it is for these reasons that, as a literal matter, we agree with Patent Owner that there is no overlap between “content” and “links to content.”

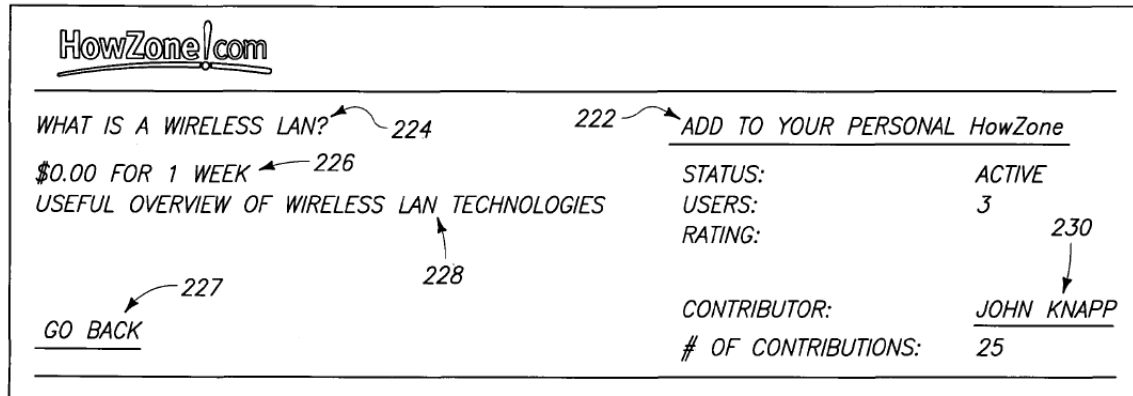
Having said all this, however, we return to our above discussion of “LOGON” in Figure 8 of the '177 patent, because it best exemplifies that while as a literal matter, Patent Owner is correct that there is no overlap between “content” and “links to content,” as this construction is applied, Petitioner is correct, to the extent that the examples for activating links in the '177 patent encompass both semantic “content” as well as the actual “links to content.” More specifically, by its express terms, “LOGON” encompasses a “link to content.” In application, however, the “LOGON” is actually two separate components: (1) the underlying technical set of computer instructions that, upon clicking the “LOGON” link, transports a user to a web page associated with a “LOGON” procedures; and (2) the

Web document, referred to as a Web page, includes links in a page that let users jump from page to page (hypertext links) whether the pages are stored on the same server or on servers around the world A user then merely clicks on the link in order to go to the corresponding Web page.”)

word “LOGON” itself displayed on the computer display, but separate from the technical set of computer instructions set forth in (1).

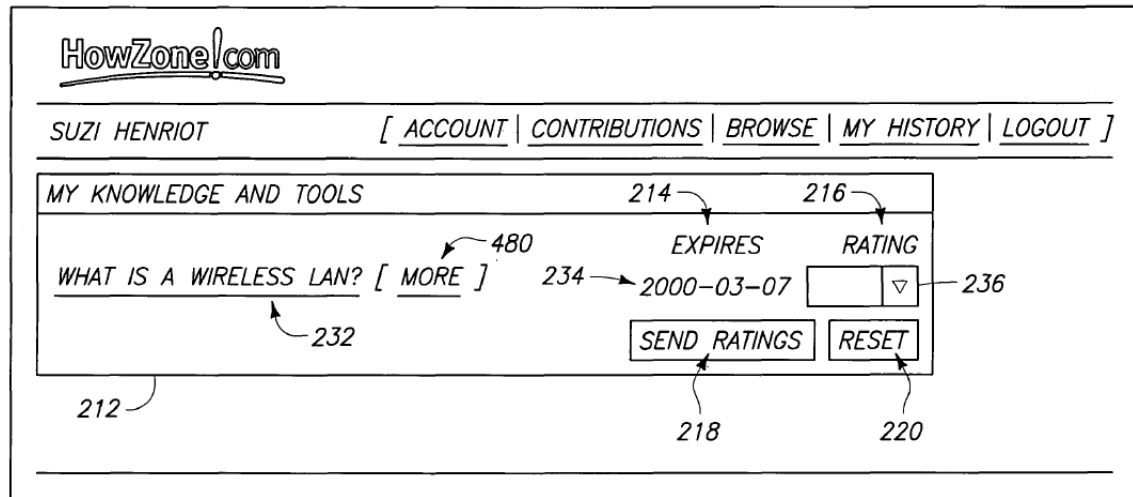
In brief, (1) is “link to content, but not itself “content,” however, (2) is itself “content.” More precisely, when we now consider “LOGON,” and its respective components, in relation to the aforementioned construction of “content” as “electronic data embodying information for an individual or individuals,” it becomes clear that “LOGON” is both “links to content” and “content.” Specifically, component (1) of “LOGON” is “links to content,” but not “content” itself, because the underlying technical set of computer instructions is not “electronic data embodying information *for an individual or individuals*,” but for a computer. By contrast, component (2) of “LOGON” is “content,” as it is clearly “electronic data embodying information *for an individual or individuals*,” in that the word “LOGON” is intended to convey information to an individual. So, as a practical matter, we discern that every disclosure of a “link to content” that includes “electronic data embodying information for an individual or individuals” (i.e., any information associated with a “link” that is separate from a generic indication of the “link” itself) is “content.”

The claims and Specification of the ’177 patent support this determination. Specifically, independent claim 16 recites “selecting content . . . for addition to a centralized access point.” The only examples in the ’177 patent identified by either party for creating “selecting content . . . for addition to a centralized access point” are Figures 8–10. Reply 8–11 (emphasis omitted) (citing Ex. 1001, Figs. 8–10, 23:11–24:35). Figures 9 and 10 are reproduced below.



II II II II

Figure 9 is a diagram of a screen display.



II II II II III

Figure 10 is a diagram of a screen display.

The only item “selected” and “added” in Figures 8–10 is the text “what is a wireless LAN” 232 in Figure 10, which is shown above. Ex. 1001, 24:5–11. Indeed, the ’177 patent even distinguishes expressly between specific content object access *link* 232, labelled in Figure 10, and content object *title* 224 entitled “what is a wireless LAN,” labelled in Figure 8. Ex. 1001, 24:5–11. Accordingly, this example is consistent with our application of the above construction, in that specific content object access link 232 would be a “link

to content,” but the phrase “what is a wireless LAN” 224, 232 would be “content.”

At oral argument, the Board and counsel for Patent Owner had the following exchange concerning content object access link 232 and content object title 224 entitled “what is a wireless LAN”:

JUDGE KIM: Let’s look at a scenario. So let’s say 232 was not a hyperlink. It was just text. Now is it content?

MR. BABCOCK: I’d say yes. I’d say yes.

JUDGE KIM: Okay. So your position is that it’s the functionality that basically fundamentally changes content to content link?

MR. BABCOCK: A hundred percent correct. It’s a hypertext link that embeds within that link, it embeds functionality that allows you to click on the text. You don’t click on the underline. You click on the text. I guess you could click on the underline. But you basically click on anywhere in the text and that takes you to another page. The hypertext link. That’s what the link is. If there is no link capability, then it’s content.

Tr. 48:18–49:8; *see also* Tr. 7:3–8:23 (Petitioner’s counsel agrees that the words “what is a wireless LAN” is content). In other words, the parties agree that the words “what is a wireless LAN” has meaning, i.e., “electronic data embodying information for an individual or individuals,” independent of the presence or absence of functionality associated with this words. Given this, we are unpersuaded that merely adding “link” functionality to those words would so fundamentally change the nature of those words that they would have been taken out of the realm of “electronic data embodying information for an individual or individuals.”

Additionally, we note that Patent Owner’s infringement contentions in the related district court proceeding assert that bookmarks and links to

websites are sufficient to meet the aforementioned “selecting content” limitation. Ex. 1048, 71–72; Tr. 25:20–29:19. Despite the Board’s application of a claim construction standard (broadest reasonable interpretation) that could not result in a narrower construction than that applicable in the district court, Patent Owner, here, has advocated an application of a construction of “content” that is narrower than that asserted in district court, which the United States Court of Appeals for the Federal Circuit has counseled against. *See Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1351 (Fed. Cir. 2001) (“A patent may not, like a ‘nose of wax,’ be twisted one way to avoid anticipation and another to find infringement.” (quoting *Sterner Lighting, Inc. v. Allied Elec. Supply, Inc.*, 431 F.2d 539, 544 (5th Cir. 1970))).⁴

At oral argument, Patent Owner asserted that the infringement contentions constituted extrinsic evidence that was merely preliminary, and should be accorded little weight in a claim construction which should primarily be based on intrinsic evidence. Tr. 61:20–63:16. While we agree that the weight given to the infringement contentions on this issue should be discounted, we are persuaded that the infringement contentions are a factor that should be weighed, even if discounted, against Patent Owner’s proposed practical application of its claim construction.

⁴ We note that, by the same reasoning, it would be equally improper for Petitioner, upon agreeing to a broad construction in District Court, to use this forum to attempt to obtain a more narrow construction contrary to that agreement and use that narrow construction to potentially avoid a finding of infringement in the District Court.

In summary, we construe “content” as “electronic data embodying information for an individual or individuals,” and excluding “links to content,” but not excluding “content” associated with the “links to content.”⁵

2. “*access point*”

Independent claims 11 and 16 each recite “access point.” Petitioner asserts, “[t]he broadest reasonable construction of ‘*access point*’ is a resource on a network, such as a web page, that allows a user to access links and content objects.” Pet. 8 (citing Ex. 1001, 7:17–22, 8:19–30, 23:46–50, 52:40–43; and Ex. 1003 ¶¶ 75–78). Patent Owner does not challenge Petitioner’s proposed construction. *See generally* PO Resp. We have considered Petitioner’s assertion and supporting evidence, and are persuaded that it is correct. Accordingly, we construe “access point” as “a resource on a network, such as a web page, that allows a user to access links and content objects.”

3. “*centralized access point of [a] user*”

Independent claims 11 and 16 each recite “centralized access point of [a] user.” Petitioner asserts that “[t]he broadest reasonable construction of ‘*centralized access point of [a] user*’ is [] an access point that aggregates

⁵ We acknowledge that Patent Owner also asserts that the recited “content” excludes the recited “information about content.” PO Resp. 7–13. We conclude that it is unnecessary to determine the precise relationship between these terms in order to render our decision. We do note, however, that the ’177 patent is even more sparse concerning “information about content” than “links to content,” as “information about content” is recited explicitly in only two locations (Ex. 1001, 1:67–2:3; 46:15–16), and neither recitation is particularly illuminating. We note further that neither party has briefed this issue in a manner meaningfully distinct from the relationship between “content” and “links to content.”

content objects, or links to content objects, that are selected by or for the user.” Pet. 9 (citing Ex. 1001, 8:19–30, 26:8–30, and 43:55–59, Fig. 14; and Ex. 1003 ¶¶ 82–89). Patent Owner does not challenge Petitioner’s proposed construction. *See generally* PO Resp. We have considered Petitioner’s assertion and supporting evidence, and are persuaded that it is correct. We also construed “access point” above as “a resource on a network, such as a web page, that allows a user to access links and content objects.” Pet. 8. Accordingly, we construe “centralized access point of [a] user” as “a resource on a network, such as a web page, that aggregates content objects, or links to content objects, that are selected by or for the user.”

4. “*distributed information access point*”

Independent claims 11 and 16 each recite “*distributed information access point*.” Petitioner asserts, “[t]he broadest reasonable construction of ‘*distributed information access point*’ is an access point that makes information visually perceptible to multiple users, such as a web page or a login page.” Pet. 9–10 (citing Ex. 1001, 6:60–7:10, 14:43–52, and 17:22–29; and Ex. 1003 ¶¶ 90–94). Petitioner asserts further that in construing “distributed information access point,” it is distinct from “a ‘*personalized access point*’ which suggests an association with a particular user.” Pet. 10. Patent Owner does not challenge Petitioner’s proposed construction. *See generally* PO Resp. We have considered Petitioner’s assertion and supporting evidence, and are persuaded that it is correct. We also construed “access point” above as “a resource on a network, such as a web page, that allows a user to access links and content objects.” Accordingly, we construe “distributed information access point” as “a resource on a network, such as a

web page, that makes information visually perceptible to multiple users, such as a web page or a login page.”

5. “*access to content*”

Independent claim 11 recites “access to content.” In the Decision on Institution, we construed “access to content” as including the presence of links to content. Dec. 8–10 (citing Exs. 1001, 3001, 3002). Independent claim 16 recites “access to the selected content,” which was construed in the same manner. *See Id.* After institution, neither party has disputed our construction of “access to content.” PO Resp. 17 (acknowledging the Board’s construction of “access to content,” but addressing specifically the different limitation of “access content chosen from one or more distributed information access point(s)”) (emphasis omitted); Reply 13 (“Patent Owner no longer disputes that ‘*access to content*’ should be construed as including the presence of links to content. *See* Resp. 15–32 (never arguing the Board’s construction in this regard is incorrect)”). Accordingly, we maintain our construction of “access to content” as including the presence of links to content. Independent claim 16 recites “access to the selected content,” and its construction is also maintained.

6. “*wherein a user is enabled with the capability to . . . access content chosen from one or more distributed information access point(s)*”

Independent claim 11 recites “wherein a user is enabled with the capability to . . . access content chosen from one or more distributed information access point(s).” In evaluating Patent Owner’s assertions concerning the prior art, we determine that it is necessary to construe the aforementioned claim limitation. Specifically, Patent Owner asserts that

adding a link to content to a user's personalized webpage is insufficient to satisfy "wherein a user is enabled with the capability to . . . access content chosen from one or more distributed information access point(s)," asserting instead that actual content, from that link to content, must be added to the user's personalized webpage in order to meet the aforementioned claim limitation. PO Resp. 15–21 (emphasis omitted).

Although presented expressly in the context of construction of another claim limitation, namely, "selecting content . . . for addition to a centralized access point," as recited in independent claim 16, we discern, nevertheless, that Petitioner disagrees with Patent Owner's assertions concerning the above claim limitation. Specifically, we discern that Petitioner asserts that content to be accessed can be construed as being "chosen" when a link to the content is added to a personalized webpage. Reply 8–16 (citing, in relevant part, Ex. 1001, Figs. 8–10, 3:58–60, 3:65–67, 22:20–22, 23:11–24:35, 25:20–23). We agree with Petitioner.

The '177 patent does not recite expressly "access content chosen."⁶ As set forth above, we construe "access to content" as including the presence of links to content. The only example of "chosen" content, identified by either party in the '177 patent, is at Figures 8–10, where links to content are added to a "personal HowZone" webpage. Ex. 1001, 23:11–24:35.

Accordingly, we construe "wherein a user is enabled with the capability to . . . access content chosen from one or more distributed

⁶ The only explicit use of the words "chose" or "chosen" in the Specification of the '177 patent is at column 49, lines 49–50, in a context unrelated to the aforementioned claim limitation.

information access point(s)” as being met by links to content added by a user to their personalized webpage.

7. *“an administrative interface . . . operative to create groupings of content into one or more distributed information access points”*

Independent claim 11 recites “an administrative interface . . . operative to create groupings of content into one or more distributed information access points.” In evaluating Patent Owner’s assertions concerning the prior art, we determine that it is necessary to construe the aforementioned claim limitation. Specifically, Patent Owner asserts that the aforementioned claim limitation requires an administrative interface with the ability to create new categories of links, and cannot be met by the ability to merely add and subtract links to preexisting categories. PO Resp. 32–37 (citing Ex. 1001, Fig. 18, 28:17–21, 28:30–48; Ex. 1003 ¶ 257, Ex. 1005, 7; Ex. 2008, 31:19–21; Ex. 2009 ¶¶ 61, 63, 65–67). Petitioner disagrees, asserting that the aforementioned claim limitation can be met by an administrative interface with the ability to create an aggregation of content. Reply 17–19 (citing Ex. 1001, Fig. 2, 2:37–43, 14:15–18, 14:29–42, 30:36–38; Ex. 1003, ¶ 255; Ex. 1005, 7–8). We agree with Petitioner.

The only directly relevant disclosure of “grouping” or “group” in the Specification of the ’171 patent is as follows:

Additionally, information in the form of content objects available on the networked system is enhanced by way of an approval process, by ranking content, and by categorizing content. Furthermore, content is distributed to users in several manners: by way of a primary Web site, and by way of predetermined but dynamic groups of aggregated content objects which are made available via banners and/or tokens.

Ex. 1001, 2:37–43.⁷ This portion of the Specification is noteworthy for several reasons. First, “groups” is explicitly associated with “aggregated content objects.” Second, by interposing the word “[f]urthermore,” it distinguishes “categorizing content” from “aggregated content objects.” Accordingly, when read separately and in conjunction, the aforementioned portions of the Specification support Petitioner’s assertion.

Other portions of the Specification support further Petitioner’s assertion. For example, Figure 2 “illustrates logic processing used to aggregate content objects,” but notably, no category creation is disclosed in Figure 2. Ex. 1001, 14:15–65. In another example, the Specification discloses, “it is possible that a new category may not have a content object assigned to it at the time the new category is added.” Ex. 1001, 30:36–38. We are unclear as to how a category with no contents can be considered a “grouping” or “aggregation.”

In support of its assertion, Patent Owner identifies Figure 18 and column 28 of the ’171 patent, which relate to creating a new category and assigning “parents” to that category. While we acknowledge that this disclosure does appear to be in the context of an “administrative interface,” the only reference to content appears to be the assignment of “parents” to the category, which appears to be classifying the category, and we are unclear as to the relationship of all this to either “grouping” or “aggregation.”

Furthermore, as noted above, the Specification discloses, “it is possible that

⁷ Column 38, line 9 refers to a “group of screen displays,” which is not directly relevant to the aforementioned claim limitation, but does provide at least some support that “group” should be construed as “aggregation,” as opposed to “creation of new categories.”

a new category may not have a content object assigned to it at the time the new category is added,” which, again, undercuts Patent Owner’s assertion.⁸

We construe “an administrative interface . . . operative to create groupings of content into one or more distributed information access points” as being met by an administrative interface with the ability to create an aggregation of content.

B. The Parties’ Post-Institution Arguments

In our Decision to Institute, we concluded that the argument and evidence adduced by Petitioner demonstrated a reasonable likelihood that various selections of claims 11, 12, and 16–20 were unpatentable as obvious based on MyLibrary. Dec. 10–16. We must now determine whether Petitioner has established by a preponderance of the evidence that the specified claims are unpatentable over the cited prior art. 35 U.S.C. § 316(e). In this connection, we previously instructed Patent Owner “any arguments for patentability not raised in the [Patent Owner Response] will be deemed waived.” Paper 12, 3; *see also* 37 C.F.R. § 42.23(a) (“Any material fact not specifically denied may be considered admitted.”). Additionally, the Board’s Trial Practice Guide states that the Patent Owner Response “should identify all the involved claims that are believed to be patentable and state the basis for that belief.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,766 (Aug. 14, 2012).

⁸ The cited portions of Dr. Papakonstantinou’s Declaration only involves an analysis of whether MyLibrary reads on this claim limitation, and not the proper claim construction of the aforementioned limitation.

In connection with the arguments and evidence adduced by Petitioner in the Petition to support its positions that Patent Owner chose not to address in its Patent Owner Response, the record now contains unrebutted arguments and evidence presented by Petitioner regarding the manner in which the asserted prior art teaches all other elements of the claims against which that prior art is asserted. Based on the preponderance of the evidence before us, we conclude that the prior art identified by Petitioner describes all limitations of the reviewed claims, in view of our analysis of those that Patent Owner contested in the Patent Owner Response, which we address below.

C. Claims 11, 12, and 16–20: Obviousness in view of MyLibrary

Petitioner challenges the patentability of 11, 12, and 16–20 as obvious in view of MyLibrary. Pet. 13–17, 29–41, 47–52 (citing Exs. 1001, 1003, 1005, 1008, 1010, 1011, 1012, 1037). Patent Owner disagrees. PO Resp. 14–40 (citing Exs. 1001, 1003, 1005, 2008, 2009). Petitioner replies. Reply 12–22 (citing Exs. 1001, 1003, 1005, 1047).

The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. 398 (2007), reaffirmed the framework for determining obviousness as set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966). The *KSR* Court summarized the four factual inquiries set forth in *Graham* that we apply in determining whether a claim is reasonably likely to be unpatentable as obvious under 35 U.S.C. § 103(a) as follows:

1. determining the scope and content of the prior art,
2. ascertaining the differences between the prior art and the claims at issue,

3. resolving the level of ordinary skill in the pertinent art, and
4. considering objective evidence present in the application indicating obviousness or nonobviousness.

KSR, 550 U.S. at 406. With these standards in mind, we address the challenge below.

1. *MyLibrary (Ex. 1005)*

MyLibrary relates to “an extensible model for implementing a user-centered, customizable interface to a library’s collection of information resources.” Ex. 1005, 1. MyLibrary refers to MyLibrary@NCState as an exemplary implementation of the MyLibrary service model at the NCSU Libraries of the North Carolina State University in Raleigh, NC, USA. Ex. 1005, 4. MyLibrary describes user and administrator interfaces with implementation on MyLibrary@NCState as a template. Ex. 1005, 4. From a user’s perspective, MyLibrary@NCState is a customizable HTML page accessible via any Web browser supporting Netscape cookies and the Secure Socket Layer (SSL) protocol. Ex. 1005, 4.

“The process of creating a MyLibrary@NCState page begins when the user creates an account on the system.” Ex. 1005, 4. “Once an account is created, the user’s MyLibrary@NCState page is dynamically built and displayed.” Ex. 1005, 4. Afterwards links may be added to or subtracted from the preconfigured list of recommendations creating the framework for the user’s personal “digital library”. Ex. 1005, 4. Some exemplary links include Reference Shelf, Bibliographic Databases, and Electronic Journals. Ex. 1005, 4. The links presented on the user’s page are customizable by the user through a Customize hotlink. Ex. 1005, 4, 6. Alternatively, an

administrator may make such changes through an administrative interface.

Ex. 1005, 7–8.

Users can access MyLibrary@NCState from just about any Web browser in the world. Ex. 1005, 10. If the user's browser does not include a MyLibrary@NCState cookie, the user's browser is redirected to the University's SSL authentication system. Ex. 1005, 9.

2. *Petitioner's Initial Mapping of MyLibrary to Claims 11, 12, and 16–20*

Petitioner asserts that MyLibrary renders obvious claims 11, 12, and 16–20. Pet. 13–17, 29–41, 47–52. For example, independent claim 11 recites “at least one server operative to store one or more of: . . . b) links to content . . . ; a centralized access point of a user accessible via a communications link and operative to provide the user with access to content chosen by or for the user.” MyLibrary discloses a user's personal web page, which may include links added to or subtracted from a preconfigured list of recommendations creating a framework for the user's personal “digital library.” Ex. 1005, 4. Some exemplary links include Reference Shelf, Bibliographic Databases, and Electronic Journals. Ex. 1005, 4. Independent claim 11 recites additionally

at least one distributed information access point accessible via a communications link and operative to implement one or more of: . . . c) provide the user with logon access to their centralized access point; and . . . wherein a user is enabled with the capability to log on to their centralized access point from one or more distributed information access point(s) and access content chosen from one or more distributed information access point(s).

Users can access MyLibrary@NCState from just about any Web browser in the world. Ex. 1005, 10. If the user's browser does not include a

MyLibrary@NCState cookie, the user's browser is redirected to the University's SSL authentication system. Ex. 1005, 9. Petitioner asserts, "it would have been obvious to include a home page for the MyLibrary system that included a log on facility and other library information generally available to library users." Pet. 47–48 (citing Exs. 1003, 1005, 1008, 1030, 1032, 1034). Independent claim 11 recites also "an administrative interface in communication with the server and operative to create groupings of content into one or more distributed information access points." MyLibrary discloses that an administrator may make one of a myriad of changes through an administrative interface. Ex. 1005, 7–8. Petitioner provides similar analysis for claims 12 and 16–20.

3. *Patent Owner's Assertions Concerning
Independent Claim 11*

Independent claim 11 recites "wherein a user is enabled with the capability to . . . access content chosen from one or more distributed information access point(s)." Patent Owner asserts that MyLibrary's customization page does not correspond properly to the aforementioned claim limitation, because the only alleged "content" identified by Petitioner on MyLibrary's customization webpage are links to content, which are not "content," and certainly not "content chosen." PO Resp. 15–21. We disagree with Patent Owner.

First, as set forth above, we construe "content" as "electronic data embodying information for an individual or individuals," and excluding "links to content," but not excluding "content" associated with the "links to content." Here, the "links to content" have associated "content" that is "electronic data embodying information for an individual or individuals,"

namely, the text associated with the links listed under the headings of “Reference Shelf,” “Bibliographic Databases,” and “Electronic Journals,” such as “AcqWeb,” “ABI/INFORM Global,” and “International Journal Of Product Research,” respectively.

Second, we construe “wherein a user is enabled with the capability to . . . access content chosen from one or more distributed information access point(s)” as being met by links to content added by a user to their personalized webpage. MyLibrary discloses expressly a customizable HTML page where “other links may be added to or subtracted from the preconfigured list of recommendations creating the framework for the user’s personal ‘digital library.’” Ex. 1005, 4. We are persuaded that at least this disclosure of MyLibrary corresponds properly to the aforementioned claim limitation.⁹

Patent Owner asserts further that “MyLibrary’s SSL authentication system (the second alleged distributed information access point) also do not allow content to be chosen, as required by the wherein clause.” PO Resp. 21–22. More specifically, Patent Owner asserts that “there is [] no evidence that a user [in MyLibrary] can access content chosen from the SSL authentication system.” Patent Owner’s assertions are not persuasive, because they are misplaced. Independent claim 11 recites “wherein a user is enabled with the capability to log on to their centralized access point from

⁹ As counter-evidence, Patent Owner cites paragraphs 40–49 of the Declaration of Dr. Papakonstantinou. Those paragraphs largely track Patent Owner assertions, and in any case, are unpersuasive because they are premised on the same logical flaw in that they do not apply a proper construction of “content.”

one or more distributed information access point(s) and access content chosen from one or more distributed information access point(s).” The aforementioned claim limitations do not require the log on system to also allow the user to access content chosen *from that same log on system*, as the two recited capabilities, “log on” and “access content chosen,” are not recited as being related in that manner. Instead, we determine that separate “distributed information access point(s)” that each perform one of “log on” and “access content chosen” are sufficient to meet the aforementioned claim limitation, and are persuaded that Petitioner has shown sufficiently that MyLibrary discloses those systems and capabilities. Pet. 34 (citing Ex. 1003, ¶¶ 235–237; Ex. 1005, 9–10).

Concerning the “wherein” limitation of independent claim 11, Patent Owner asserts additionally that “MyLibrary users cannot access, from a centralized access point, chosen content from an email message,” “MyLibrary does not satisfy the wherein clause if the alleged content is a message from the librarian,” and “[i]t would not have been obvious to modify MyLibrary to enable content to be chosen instead of links.” PO Resp. 22–32 (citing Ex. 2009 ¶¶ 50–59). As we have already determined above, however, that MyLibrary’s customization webpage corresponds properly to the aforementioned “wherein” limitation of independent claim 11, Patent Owner’s above assertions concerning “e-mail message,” “message from the librarian,” and “modify MyLibrary” are moot.

Patent Owner asserts also that MyLibrary does not disclose or suggest “an administrative interface . . . operative to create groupings of content into one or more distributed information access points,” as recited in independent claim 11. Specifically, Patent Owner asserts that MyLibrary only discloses

the ability to merely add and subtract links to preexisting categories, while the aforementioned claim limitation requires an administrative interface with the ability to create new categories of links. PO Resp. 32–37. We disagree because Patent Owner’s assertions are misplaced.

As set forth above, we construe “an administrative interface . . . operative to create groupings of content into one or more distributed information access points” as being met by an administrative interface with the ability to create an aggregation of content. We are unpersuaded that the aforementioned claim limitation requires the ability to create new categories of links. MyLibrary discloses an administrative interface with the ability to “create, modify, or delete just about any content item in the system’s database,” which includes “links and descriptions of information resources (databases, journals, etc.).” Ex. 1005, 7–8. In particular, MyLibrary discloses that the system includes “a list of all the resources” associated with each discipline, such as, categories called “Library Links” and “University Links” that are “populated with a librarian-defined list of hyperlinks to various library and University home pages.” Ex. 1005, 6; *see also* Ex. 2008, 31:19–21 (“the groups of content of Claim 11 would correspond to, for example, the library links group”). Accordingly, we find that MyLibrary discloses the ability of a user, at MyLibrary’s administrative interface, to “create, modify, or delete” the list of hyperlinks listed under “Library Links” and “University Links.” Furthermore, we are persuaded that the aforementioned portions of MyLibrary concerning an administrative interface, with the ability to create any aggregation of content, is sufficient to correspond properly to the recited “an administrative interface . . .

operative to create groupings of content into one or more distributed information access points.”¹⁰

4. *Patent Owner’s Assertions Concerning
Dependent Claim 12*

For dependent claim 12, Patent Owner asserts that the challenge to this claim suffers from the same deficiency as the challenge to independent claim 11, from which it depends. PO Resp. 37. As we are unpersuaded of any deficiency with respect to the challenge of independent claim 11, however, we are unpersuaded of any deficiency with the challenge to dependent claim 12 as well.

5. *Patent Owner’s Assertions Concerning
Independent Claim 16*

Independent claim 16 recites “selecting content from one or more of an entire range of distributed information access points for addition to a centralized access point of the particular user.” Patent Owner asserts that MyLibrary does not disclose this limitation, because MyLibrary only discloses allowing selection of links to be added to a personal webpage, which is not content. PO Resp. 38–39. Our analysis here is the same as set

¹⁰ As counter-evidence, Patent Owner cites paragraphs 61, 63, and 65–67 of the Declaration of Dr. Papakonstantinou. Those paragraphs largely track Patent Owner assertions, and in any case, are unpersuasive because they are premised on the same logical flaw in that they do not apply a proper construction of “administrative interface.”

forth above with respect to the “wherein” limitation of independent claim 11, and need not be repeated here.¹¹

Independent claim 16 recites further, “accessing the centralized access point of the particular user from one or more distributed information access points to gain access to the selected content.” Patent Owner advances the same positions as set forth above with respect to the “wherein” limitation of independent claim 11 and the “selecting content” limitation of independent claim 16. PO Resp. 40. Our analysis is the same as set forth above, and need not be repeated here.¹²

6. *Patent Owner’s Assertions Concerning
Dependent Claims 17–20*

Patent Owner asserts conclusorily, without any further analysis, that “[d]ependent claims 17-20 depend from claim 16 and are therefore patentable for the same reasons as claim 16, and for the unique features recited in claims 17-20.” PO Resp. 40. With respect to the assertions concerning independent claim 16, they are unpersuasive for the reasons set forth above. With respect to the assertions concerning the “unique features” of dependent claims 17–20, we have considered Petitioner’s proffered evidence and analysis (Pet. 39–41), and are persuaded that Petitioner has met

¹¹ As counter-evidence, Patent Owner cites paragraphs 75 and 82 of the Declaration of Dr. Papakonstantinou. Paragraph 75 is misplaced because Petitioner does not propose the creation of link categories, and paragraph 82 is unpersuasive because it does not apply a proper construction of “content.”

¹² As counter-evidence, Patent Owner cites paragraphs 76 and 77 of the Declaration of Dr. Papakonstantinou. Both only refer in a conclusory manner to assertions previously made for claims 11 and 12, which we determined were unpersuasive for the reasons set forth above.

its burden of showing, by a preponderance of the evidence, that the additional “unique features” of dependent claims 17–20 are obvious in view of MyLibrary.

7. Conclusion

We are persuaded that Petitioner has shown, by a preponderance of the evidence, that claims 11, 12, and 16–20 are unpatentable as obvious in view of MyLibrary. In addition to findings we make above in connection with our analysis of claims 11, 12, and 16–20 as obvious in view MyLibrary, we also adopt as our findings Petitioner’s positions as to how MyLibrary discloses each of the limitations of claims 11, 12, and 16–20. We further adopt as our own Petitioner’s rationales for modifying MyLibrary, as referenced above.

D. Credibility of Experts

There have been interspersed arguments made in the substantive papers, as well as at oral argument, concerning the credibility of experts. *See, e.g.*, Tr. 38:23–43:2, 72:8–77:9. We note expressly that the Board has taken into account all factors, identified by the parties, weighing for and against the credibility of any particular expert in rendering its decision.

E. Conclusion

For the reasons expressed above, we conclude that Petitioner has demonstrated by a preponderance of evidence that claims 11, 12, and 16–20 are unpatentable.

III. ORDER

For the reasons given, it is:

ORDERED that claims 11, 12, and 16–20 of the '177 patent are held unpatentable; and

FURTHER ORDERED that because this is a final written decision, parties to the proceeding seeking judicial review of the decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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