

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ORACLE AMERICA INC., ORACLE CORPORATION, and
HCC INSURANCE HOLDINGS, INC.,
Petitioner,

v.

INTELLECTUAL VENTURES I LLC,
Patent Owner.

Case IPR2016-01434
Patent 7,516,177 B2

Before MICHAEL W. KIM, STACEY G. WHITE, 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*

Oracle America Inc., Oracle Corporation, and HCC Insurance Holdings, Inc. (collectively “Petitioner”) filed a Petition to institute an *inter partes* review of claims 11–20 of U.S. Patent No. 7,516,177 B2 (Ex. 1002, “the ’177 patent”). Paper 4 (“Pet.”). Intellectual Ventures I LLC (“Patent Owner”)¹ filed a Preliminary Response. Paper 12 (“Prelim. Resp.”).

On January 17, 2017, we instituted an *inter partes* review of claims 11–20 on certain grounds of unpatentability set forth in the Petition. (Paper 13, “Dec.”). After institution of trial, Patent Owner filed a Patent Owner’s Response (Paper 26, “PO Resp.”) and Petitioner filed a Reply (Paper 29, “Pet. Reply”). With authorization from the Board, Patent Owner filed a Sur-Reply. Paper 38 (“PO Sur-Reply”). Petitioner relies on Declarations of Dr. Kevin Almeroth (Exs. 1022, 1033).² Patent Owner relies on the Declaration of Dr. Yannis Papakonstantinou (Ex. 2002).

An oral hearing was held on September 11, 2017, a transcript of which is included in the record. Paper 49 (“Tr.”). The Board has

¹ Patent Owner identifies “Intellectual Ventures I LLC” as the real party-in-interest. See Paper 10, 1; *see also* Paper 10 (cover page and signature page); Paper 11 (cover page). Patent Owner is identified at times, however, as “Intellectual Ventures II LLC,” for example, in all references to related matters. See Paper 10, 1; Paper 11, 1; *see also* Paper 11, 1–2 (“Patent Owner Intellectual Ventures II LLC” and “Attorneys for Patent Owner Intellectual Ventures II LLC”); Prelim. Resp. (cover page and signature page). Aside from the listings of related matters, we assume the references to “Intellectual Ventures II LLC” are clerical errors.

² Patent Owner filed Observations on the Cross-Examination of Dr. Almeroth (Paper 40; “PO Obs.”) and Petitioner filed a Response (Paper 45; “Pet. Resp.”).

jurisdiction under 35 U.S.C. § 6. In this Final Written Decision, issued pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73, we determine that Petitioner has shown, by a preponderance of the evidence, that claims 11–13 and 15–20 of the ’177 patent are unpatentable. We determine also that Petitioner has not met its burden of showing, by a preponderance of the evidence, that claim 14 of the ’177 patent is unpatentable.

B. Related Proceedings

Petitioner and Patent Owner identify the following district court proceedings concerning the ’177 patent: (1) *Intellectual Ventures I LLC, et al. v. HCC Ins. Holdings, Inc., et al.*, 6:15-cv-00660-JRG-KNM (E.D. Tex.); (2) *Intellectual Ventures I LLC, et al. v. BITCO Gen. Ins. Corp., et al.*, 6:15-cv-00059-JRG (E.D. Tex.); (3) *Intellectual Ventures II LLC v. Great W. Cas. Co.*, 6:15-cv-00060-JRG (E.D. Tex.); (4) *Intellectual Ventures II LLC v. Kemper Corp., et al.*, 6:16-cv-00081-JRG (E.D. Tex.). Pet. 1; Paper 11, 1. Petitioner and Patent Owner also collectively identify the following requests for review of the ’177 patent: CBM2015-00171; IPR2015-01706, IPR2015-01707, IPR2016-00453, and IPR2016-01534. Pet. 1–2; Paper 11, 1.

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. 1002, 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. 1002, 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. 1002, 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 the way in which users access desired information. Ex. 1002, 2:23–26.

D. Illustrative Claim

A trial was instituted for claims 11–20 of the '177 patent. Claims 11 and 16 are independent. 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).

*E. Prior Art References Applied by Petitioner
and Instituted Grounds of Unpatentability*

A trial was instituted on claims 11–20 as obvious under 35 U.S.C.

§ 103(a) based on the following grounds and items of prior art:

Reference(s)	Basis	Challenged Claims
Robinson ³	§ 103(a)	11–20
Robinson and Coates ⁴	§ 103(a)	13 and 14
Robinson and Excite ⁵	§ 103(a)	13 and 15

Dec. 31–32; *see* Pet. 25–87.

II. ANALYSIS

A. Claim Construction

In an *inter partes* review, a claim in an unexpired patent shall be given its broadest reasonable construction in light of the specification of the patent

³ CHERI ROBINSON, EARL JACKSON, JR., & SCOTT DAVIS, OFFICIAL EXCITE INTERNET YELLOW PAGES (IDG Books Worldwide, Inc., Nov. 13, 1998) (Ex. 1004, “Robinson”).

⁴ James Coates, *Excite.com In Synch With Personal Preferences of Users*, CHI. TRIB. (Sept. 5, 1999) (Ex. 1006, “Coates”).

⁵ *Add Your Site to Excite’s Database*, EXCITE <http://web.archive.org/web/19990117085806/http://excite.com/Info/listing.html> (Jan. 17, 1999) (Ex. 1007, “Excite”).

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)). Under the broadest reasonable construction standard, claim terms are generally given their ordinary and customary meaning, as would have been 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). Any special definition for a claim term must be set forth in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). We must be careful not to read a particular embodiment appearing in the written description into the claim if the claim language is broader than the embodiment. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993). Only terms which are in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Vivid Techs., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

We determine that, for the purposes of this Decision, only the following terms require express construction.

1. “content”

Independent claims 11 and 16 each recite “content.” Petitioner does not provide a construction for “content.” *See generally* Pet.; Pet. Reply. In its Preliminary Response, Patent Owner asserted that “content” should be construed as “electronic data embodying information for an individual or individuals, but not including links to content, information about content, and information about users including information about which content a user has chosen.” Prelim. Resp. 6–12. In our Institution Decision, we and

adopted the analysis in a related proceeding and preliminarily construed “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.” Dec. 6–7 (adopting analysis and construction of “content” in *Great W. Cas. Co. v. Intellectual Ventures II LLC*, Case IPR2015-01706, slip op. at 6–16 (PTAB Jan. 17, 2017) (Paper 28).⁶). In its Response to the Petition, Patent Owner largely repeats the assertions made in the Preliminary Response. *Compare* PO Resp. 18–23, *with* Prelim. Resp. 6–12. In turn, those assertions are substantively identical to the assertions set forth in the Patent Owner’s Response for IPR2015-01706. *Compare* PO Resp. 18–23, *with* Ex. 3002, 8–13.⁷ Indeed, in the Patent Owner’s Response, Patent Owner includes the following footnote, suggesting that Patent Owner is not directly challenging the Board’s preliminary construction of “content,” and is, instead, merely repeating their assertions to preserve the issue for appeal:

While the Board has issued decisions finding “content” to exclude links to content but not “content associated with links to content” (IPR2015-01706, Paper 28; IPR2015-01707, Paper 30), IV does not concede the legal correctness of those decisions. Thus, out of an abundance of caution, IV includes its content construction here to preserve its right to raise the issue in the future, as may be appropriate, including in the context of any appellate review.

⁶ Exhibit 3001.

⁷ A copy of the Patent Owner’s Response filed in IPR2015-01706 has been added as Exhibit 3002.

PO Resp. 18–19 n.2. Petitioner replies that “IV’s construction should be rejected for the reasons the Board articulated. *Id.*; see also Almeroth Reply ¶ 24.” Pet. Reply 15.

After considering all assertions and evidence anew, we see no reason to deviate from our preliminary construction, as that preliminary construction already took into account all of Patent Owner’s assertions, and Patent Owner does not present any new assertions or evidence as to why that preliminary construction was in error. Most prominently, Patent Owner asserts that “content” excludes “links to content, information about content, and information about users including information about which content a user has chosen.” PO Resp. 20–22. Patent Owner asserts that because each of independent claims 11 and 16 recite “content” and “links to content” separately, that the two should be considered mutually exclusive in order to give each claim term full effect. Patent Owner’s assertions are misplaced, however, as our construction does treat separately, and provides full effect to each of, “content” and “links to content.” For example, independent claim 16 recites “selecting content . . . for addition to a centralized access point.” The only examples in the ’177 patent we are able to identify as corresponding to “selecting content . . . for addition to a centralized access point” are Figures 8–10. Ex. 3001, 12 (citing Reply 8–11 in IPR2015-01706 (emphasis omitted) (citing Ex. 1001, Figs. 8–10, 23:11–24:35).) Figures 9 and 10 are reproduced below.

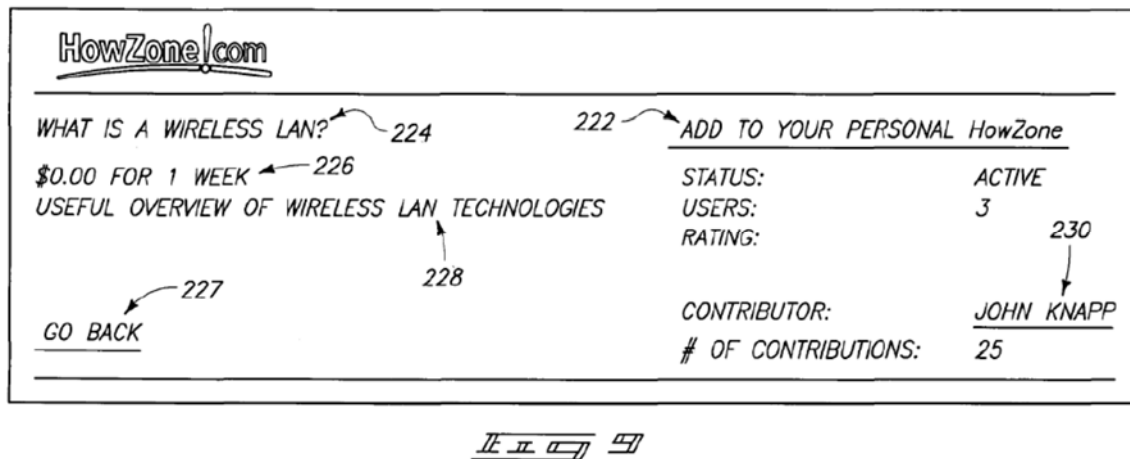


Figure 9 is a diagram of a screen display.

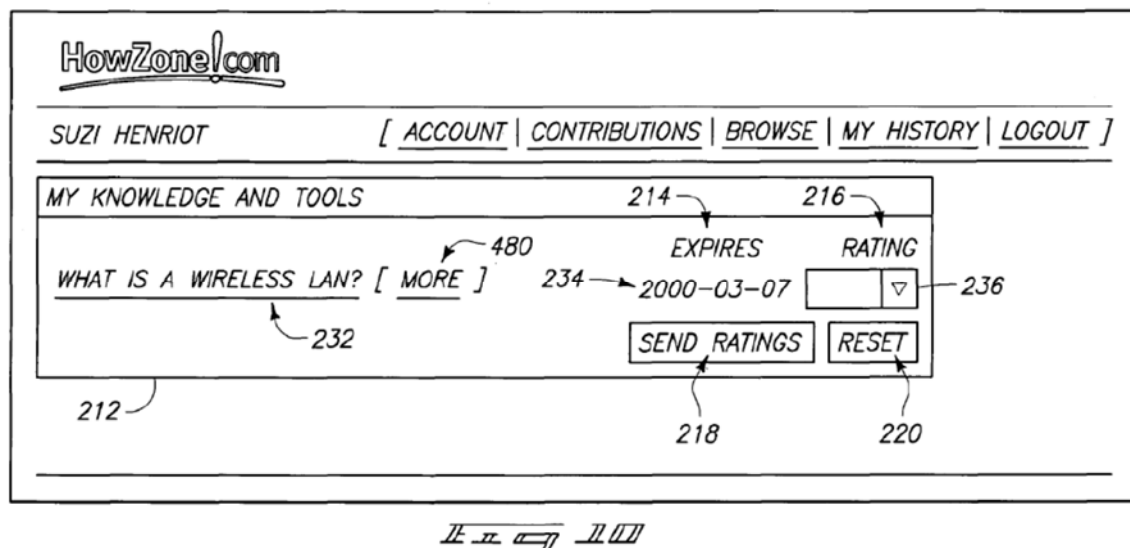


Figure 10 is a diagram of a screen display.

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 would be “content.”

More specifically, there is no dispute that “what is a wireless LAN?” 224, 232 encompasses a “link to content.” In application, however, “what is a wireless LAN?” 224, 232 is actually two separate components: (1) the underlying technical set of computer instructions that, upon clicking the link associated with “what is a wireless LAN?” 232, transports a user to a web page associated with “what is a wireless LAN?” 232; and (2) the words “what is a wireless LAN?” 224 itself displayed on the computer display, but separate from the technical set of computer instructions set forth in (1).

In this example, (1) is “link to content, but not itself ‘content,’” however, (2) is itself “content.” More precisely, when we now consider “what is a wireless LAN?” 224, 232 in relation to the aforementioned construction of “content” as “electronic data embodying information for an individual or individuals,” it becomes clear that “what is a wireless LAN?” 224, 232 is both “links to content” and “content.” Specifically, component (1) of “what is a wireless LAN?” 232 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 “what is a wireless LAN?” 224 is “content,” as it is clearly “electronic data embodying information for an individual or individuals,” in that the words “what is a wireless LAN?” are 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.” *See also* Ex. 3001, 6–16 (providing further analysis concerning construction, which we expressly incorporate herein).

Accordingly, we determine that a proper construction of “content” is “electronic data embodying information for an individual or individuals,” and excluding “links to content,” but not excluding “content” associated with the “links to content.”

2. *“administrative interface”*

Independent claim 11 and dependent claim 15 recite an “administrative interface.” Petitioner asserts that the aforementioned claim limitation should be construed as “a software management tool that facilitates administrative functions.” Pet. 20–21 (citing Exs. 1002, 1018, 1022); Pet. Reply 2–9 (citing Exs. 1002, 1018, 1019, 1033–1038, 2002). Patent Owner asserts that “administrative interface” should be construed as “a software management tool that facilitates administrative functions, where the software management tool is a graphical user interface that is not merely an HTML programming tool.” PO Resp. 6–11 (citing Exs. 1002, 1022, 2002, 2007). As an initial matter, we note that neither party disputes that a proper construction of “administrative interface” includes “a software management tool that facilitates administrative functions.” *See* Pet. 20–21 (citing Ex. 1002, 10:64–67, Figs. 26, 34A, 34B, 52; Ex. 1018, 27; Ex. 1022 ¶ 97); PO Resp. 6–7 (citing Ex. 2007, 28). We have reviewed the assertions and underlying evidence, and agree with the parties that a proper construction of “administrative interface” includes “a software management tool that facilitates administrative functions.”

We are unpersuaded, however, by Patent Owner’s assertion that “administrative interface” should be construed to further include “where the software management tool is a graphical user interface that is not merely an HTML programming tool.” We treat Patent Owner’s assertions as separately advocating for adding “graphical user interface” and “not merely an HTML programming tool.” We address each addition in turn.

With respect to “graphical user interface,” we first note that the neither the express claim language of independent claim 11 nor that of independent claim 15 recites that “administrative interface” is required to include “graphical user interface.”

Patent Owner turns to the specification, and asserts that because the recited “administrative interface” corresponds to the “administrative page” disclosed in the” specification, and the “administrative page” is repeatedly referred to as coextensive with a “graphical user interface,” as evidenced, for example, by Figures 18, 26, 34A, 34B, and 52, the inclusion of “graphical user interface” in construing “administrative interface” is proper. PO Resp. 8 (citing Ex. 1002, 4:31–33, 4:60–62, 5:17–19, 6:9–11, 16:39–44, 16:65–17:5, Figs. 18, 26, 34A, 34B, 52; Ex. 1022 ¶¶ 98, 101; Ex. 2002 ¶¶ 33, 35–39).⁸ More specifically, Patent Owner asserts that “[t]he specification also explains that these administrative pages may, for example, be highly-automated and browser based, which further implies that they are graphical user interfaces.” PO Resp. 9 (citing Ex. 1002, 8:38–47, 8:54–62, 16:39–41, 54:8–14; Ex. 2002 ¶¶ 35, 40). According to Patent Owner’s expert, Dr.

⁸ We note that the term “graphical user interface” appears only twice in the text of the ’177 patent. Ex. 1002, 16:39, 16:53. These passages indicate that Figures 5–61 of the ’177 patent are illustrations of graphical user interfaces.

Papakonstantinou, this disclosure implies that a proper construction of the recited “administrative interface” must include “graphical user interface.” Ex. 1002, 8:38–47; Ex. 2002 ¶ 40.

Petitioner counters that embodiments in the specification concerning “graphical user interface,” while perhaps preferred, are insufficient to limit the construction of “administrative interface” in the manner asserted by Patent Owner. Pet. Reply 3–5 (citing Ex. 1002, 14:45–52, 16:39–44, 54:8–11, 54:17–56:35; Ex. 1033 ¶¶ 12–14; Ex. 1034, 65:4–20, 69:2–3, 135:21–136:2; Ex. 1038, 17; Ex. 2002 ¶ 33). More specifically, Petitioner asserts that “had the inventors wanted to claim a ‘graphical user interface’—a term they were clearly aware of given its exemplary use in parts of the specification, ’177 Patent at 16:39, 16:53—they could have done so. The fact that they chose not to do so weighs heavily against limiting ‘administrative interface’ to a ‘graphical user interface.’” *Id.* (citing *Schoeller -Bleckmann Oilfield Equip. AG v. Churchill Drilling Tools US, Inc.*, 664 Fed. App’x 949, 952 (Fed. Cir. 2016)).⁹ Instead, Petitioner asserts that while the recited “administrative interface” certainly encompasses “graphical user interface,” it also asserts that “administrative interface” is not so limited, as other non-graphical interfaces, such as a command line interface, are fully capable of performed the recited functions. *Id.*

We agree with Petitioner. We are persuaded that “administrative interface” is broader than the “administrative page” mentioned in the specification, in that an “administrative interface” may encompass

⁹ While discussing “graphical user interface” during oral argument, Patent Owner stated that it was not disclaiming claim scope. Tr. 47:20–22 (“We’re not arguing that the claim terms have been disclaimed in some phrase.”).

something other than an “administrative page.” We are also persuaded that the specification’s disclosure of a non-limiting embodiment, that of a highly-automated and browser-based “administrative page,” does not require that a proper construction of “administrative interface” include “graphical user interface.” As admitted by Patent Owner, these pages are “example[s]” only, and, at best, merely “impl[y]” the presence of a “graphical user interface.” See PO Resp. 8–9 (citing Ex. 1002, 16:39–44; Ex. 2002 ¶ 40). We are persuaded that an “implied example” does not belong in a proper construction of a claim term.

Indeed, Petitioner asserts that Patent Owner’s factual premise, concerning the above “implied example,” is flawed, as the specification’s “reference to automation and a browser provides no basis for restricting the claimed ‘administrative interface’ to a graphical user interface.” Pet. Reply 5–6 (citing Ex. 1033 ¶ 15) (Dr. Almeroth testifies that “automation of computer systems does not require a graphical user interface.”). More specifically, Dr. Almeroth identifies other automated “interfaces” in the specification, such as “a networked cash register, bar code scanner or electronic product code reader” (Ex. 1002, 13:8–15, 14:51–52) that do not require a “graphical user interface.” Ex. 1033 ¶ 14. We agree with Dr. Almeroth’s analysis of the specification. Dr. Almeroth asserts further, and we agree, again, that “[o]ne of ordinary skill would understand that that cash register could be connected to a server that is accessible only via a command line interface, and that administrators could use command-line tools . . . to group content on that server.” Ex. 1033 ¶ 14.

Patent Owner cites *In re Abbott Diabetes Care, Inc.*, 696 F.3d 1142, 1149–1150 (Fed. Cir. 2012) for its finding of an implicit definition of a

claim term when “Abbott’s patents ‘repeatedly, consistently, and exclusively’ depict[ed] an electrochemical sensor without external cables or wires while simultaneously disparaging sensors with external cables or wires.” PO Resp. 5, 8. We agree with Petitioner that *Abbott* is distinguished in that, in *Abbott*, the claims themselves contained language supporting the asserted definition, and the specification contained only disparaging remarks about not using the definition, neither of which is the case here, as the claims do not cite “graphical user interface” and the specification does not disparage all non-graphical user interfaces. Pet. Reply 6 (citing *Abbott*, 696 F.3d at 1149).

For the above reasons, we are persuaded that a proper construction of “administrative interface” is not limited to a “graphical user interface.”

With respect to Patent Owner’s next argument, that the claimed “administrative interface” should be construed to include “not merely an HTML programming tool,” we, again, begin by noting that the express claim language does not include that language. PO Resp. 9–11. Instead, Patent Owner justifies its argument based on the assertion that the specification disparages prior art systems that require HTML programming to perform administrative tasks, as follows:

[Content] categories can be added, moved, hidden, deleted and have their appearance modified using a web browser by way of a dial-up or other Internet connection. Accordingly, a user does not need to be trained with HTML programming in order to carry out such tasks.

PO Resp. 9–10 (citing Ex. 1002, 8:38–53, 16:66–17:2; Ex. 2002 ¶¶ 41–49).¹⁰ Petitioner replies that Patent Owner’s cited passage “merely explains that, in

¹⁰ Dr. Papakonstantinou testifies that “graphical user interface[s] with

the particular example being discussed, HTML programming need not be used in connection with these particular tasks, because they ‘can’—but need not necessarily—be performed using a web browser.” Pet. Reply 8. In support, Dr. Almeroth testifies that other parts of the specification “describe[] tasks that administrators perform directly on HTML” and that “an administrator would need to have at least some knowledge of HTML to perform these tasks.” Ex. 1033 ¶¶ 16–17 (citing Ex. 1002, 32:3–44, 41:50–42:30, 42:60–62, 43:3–10, Figs. 36–37).

We agree with Petitioner. Essentially, we are unpersuaded that the above-identified single statement in the specification, which uses permissible language such as “can be” and “does not need to be,” is sufficient to justify Patent Owner’s assertions, which for all practical purposes, is a disavowal of claim scope. *See Home Diagnostics, Inc. v. LifeScan, Inc.*, 381 F.3d 1352, 1358 (Fed. Cir. 2004) (“Absent a clear disavowal in the specification or the prosecution history, the patentee is entitled to the full scope of its claim language.”) We also credit the testimony of Dr. Almeroth over that of Dr. Papakonstantinou, because, among other reasons, Dr. Almeroth supports his testimony with relevant citations to the specification, while Dr. Papakonstantinou largely repeats that which is set forth in the Patent Owner Response, without further analysis.

graphical fields that allow the input of administrative information without programming” are advantageous over “cumbersome programming performed in the past.” Ex. 2002 ¶¶ 44, 47. We treat this argument as subsumed within Patent Owner’s argument that the specification disparages prior art systems that require HTML programming to perform administrative tasks.

For the above reasons, we are persuaded that a proper construction of “administrative interface” does not include “not merely an HTML programming tool.”

Based on the above, we construe “administrative interface” as “a software management tool that facilitates administrative functions.” We note additionally that this construction is identical to that adopted by the District Court in a related proceeding concerning the same patent. Ex. 1018, 28.

3. *“content contributions” and “content contributed”*

Dependent claim 13 recites “wherein the distributed information access point is further operative to accept content contributions from a user.” Dependent claims 14 and 15 also recite “content contributed” by users. Petitioner asserts that “content contributed” should be construed as “content added.” Pet. Reply 9–14 (citing Exs. 1002, 1033, 1034, 1039–1042, 2001). Patent Owner asserts that “content contributed” should be construed as “content provided so it is accessible by at least one user other than the contributor.” PO Resp. 11–18 (citing Exs. 1002, 2001, 2002, 2004–2006, 2008).

More specifically, Patent Owner asserts that a plain and ordinary meaning of “contribute” supports their position, in that several dictionary definitions for “contribute” recite terms, such as “common,” “publication,” and “share,” that unequivocally indicate being “accessible by at least one user other than the contributor.” PO Resp. 12–13 (citing Ex. 2001, 3; Ex. 2002 ¶¶ 53–56; Ex. 2004; Ex. 2005; Ex. 2008, 2).

Patent Owner asserts further that the specification always refers to “contributed” content in a manner that is consistent with this meaning.

PO Resp. 14–17 (citing Exs. 1002, 2002). In particular, Patent Owner asserts that the following portions of the specification make clear that content contributions are made accessible to at least one user other than the contributor:

The system and method allow anyone to make a **contribution** by uploading web pages with graphics to be stored on Applicant’s web site and system. The system and method **then present the information to individuals** who potentially desire such information.

PO Resp. 15 (citing Ex. 1002, 7:55–59 (emphases added)).

Contributed information is distributed to individuals **by making such information perceptible to individuals** at distributed information access points.

PO Resp. 15 (citing Ex. 1002, 6:60–62 (emphases added)). *See also*

PO Resp. 15 (additionally citing Ex. 1002, 1:23–24, 40:20–26, 40:59–64, 47:37–48:5; Ex. 2002 ¶¶ 58–59).

Petitioner counters that “content contributed” is not limited to the portions of the specification relied upon by Patent Owner, because those disclosures are merely exemplary discussions indicating that the “accessible by others” aspects are optional, but not required. Pet. Reply 9–14 (citing Ex. 1002, 1:23–24, 6:15–17, 6:26–29, 6:50–51, 6:60–62; 7:55–59, 16:39–40, 40:20–26, 40:59–64, 47:5–12, 47:37–48:5, 53:41–46, 54:8–14, Figs. 54, 58; Ex. 1033 ¶ 20).

We agree with Patent Owner that, in the full context of the specification, “contributed content” is “content provided so it is accessible by at least one user other than the contributor.” In particular, we agree with Patent Owner that the context of the specification’s disclosure, when considered in its entirety, is enticing a potential contributor to contribute

information that is desired by specific individuals, paying the contributor for contributed content, and reviewing or editing the contributed content via an approval process. See PO Resp. 16 (citing Ex. 1002, 7:46–54, 38:48–49, 38:65–66, 39:4–6, 40:20–26, 40:53–59, 40:65–67; Ex. 2002 ¶¶ 60–62). We agree that this full context does not make sense unless the “contributed content” is accessible to others. In this respect, Patent Owner’s expert, Dr. Papakonstantinou, testifies that “[t]here is in fact *no* teaching in the specification where contributed content is kept for a user’s personal use and not made accessible to at least one other user.” Ex. 2002 ¶ 62 (emphasis in original). We credit that testimony, as our reading of the specification is consistent with that of Dr. Papakonstantinou.

Petitioner argues that the aforementioned portion of the specification, cited by Patent Owner, only limits the “presenting” of information, if it limits it at all, to those that “desire” such information, and that “one of ordinary skill would understand that only a contributor might desire to see content she or he contributed. . . . Likewise, nothing about the language in 1:23–24 suggests a contributor cannot be the sole viewer of content objects that she or he contributed.” Pet. Reply 12–13 n.5 (citing Ex. 1002, 6:60–62, 7:55–59; Ex. 1033 ¶ 20). While Petitioner’s arguments are logically plausible, when the specification is considered in the aggregate, we are unpersuaded that the specification’s wording of “allow[ing] anyone to make a contribution” and “then present[ing] the information to individuals who potentially desire such information,” and “[c]ontributed information is distributed to individuals,” credibly refers to *presenting* or *distributing* the contributed content back to the originator of that content.

Petitioner's expert, Dr. Almeroth, testifies that one of ordinary skill would not understand the claim term "content contributed" to be restricted to content that is accessible to other users. Ex. 1033 ¶ 19. In particular, Petitioner argues that the '177 patent's disclosure of a private, personal note taking feature is "creat[ing] and contributing content in the form of notes." Pet. Reply 13. According to Petitioner, because "users may use the claimed invention to create content in the form of notes," and because the note taking functionality is integrated within the web site of the invention, the claimed "content contributed" must encompass the private, personal notes. Pet. Reply 13–14 (citing Ex. 1002, 6:15–17, 6:26–29, 7:17–26, 10:57–11:9, 14:10–28, 47:5–12, 53:29–30, 53:41–46, Figs. 54, 58; Ex. 1033 ¶¶ 21–23). We agree with Patent Owner, however, that the specification's discussion of the personal note taking feature is not used in conjunction with the term "content contributions" or variations thereof. See PO Resp. 17–18 (citing Ex. 1002, 53:31–40, 53:43–46; Ex. 2002 ¶ 63, 65–67; Ex. 2006).

Petitioner asserts that the dictionary definitions newly presented in Patent Owner's Response should not be considered because they are from 2017. Pet. Reply 10; see PO Resp. 13 (citing Exs. 2004, 2005). While we see some merit in this argument, and discount the weight of those definitions accordingly, we are unpersuaded that it is dispositive, as Petitioner has not shown that the plain and ordinary meaning of "contribute" has changed in the relevant time period. See Ex. 1002 at [45], [63] ('177 patent's 2000 priority date and 2009 issue date).¹¹ In any event, Patent Owner does rely on

¹¹ Petitioner cites *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1299 (Fed. Cir. 2003). The Court in *Brookhill*, however, determined explicitly that the ***time of the patent*** was relevant to the meaning and

a 1993 dictionary that predates the '177 patent, with definitions consistent with those set forth in the other, later dictionaries. PO Resp. 12; Ex. 2001, 2, 3.

Patent Owner cites contextual uses of “contribute” that would be illogical under Petitioner’s proposed construction, for example, “I contributed to myself by writing a personal note in my journal” or “I contributed my paycheck to my wallet.” PO Resp. 12–13 (Ex. 2002 ¶ 53). Petitioner counters with two examples of uses of the word “contribute” to illustrate that a “contribution” may be for personal use only and need not be shared with, or accessible to, others: contributing to an individual retirement account and contributing to personal growth. Pet. Reply 10–11 (citing Ex. 1034, 7:16–22; Exs. 1039–1042). While Petitioner’s examples have some merit, we find that they are limited to particularized usages of the term not applicable here. When all of the above evidence is weighed in the aggregate, we are unpersuaded these two examples are sufficient to alter the outcome.

Finally, through their assertions concerning the prior art, Petitioner tangentially asserts that all “content contributed” is, in a sense, accessible by at least one user other than the contributor, because the administrator always has access to all content. Pet. Reply 21–23; Tr: 28:11–31:12. As an initial matter, it is unclear that this is correct, as while Robinson discloses that administrators have access to content that was clearly intended for users other than the contributors, such as opinions posted on message boards,

construction of “remote location” (the technology being robotic surgical tools using telecommunication links). Petitioner has not shown persuasively that this is the case here.

Petitioner has not identified any such disclosures concerning the “Notepad” feature, and it is unclear why, for example, an administrator would need to moderate something that is only visible to the user who created the “Note.” Moreover, we are unpersuaded that this is correct, as to accede to such a construction, that all “content” is necessarily “content contributed,” would impermissibly render the term “contributed” superfluous. *Texas Instr. Inc. v. United States Int’l Trade Comm’n*, 988 F.2d 1165, 1171 (Fed. Cir. 1993) (claim language cannot be mere surplusage. An express limitation cannot be read out of the claim); *Unique Concepts, Inc. v. Brown*, 939 F.2d 1558, 1563 (Fed. Cir. 1991) (two distinct claim elements should each be given full effect).

For the reasons set forth above, we construe “content contributions” and “content contributed” as “content provided so it is accessible by at least one user other than the contributor.” In particular, we are persuaded that the plain and ordinary meaning of “contribute,” and the specification’s consistent usage of the term “content contributions,” weigh heavily in favor of Patent Owner’s construction.

B. Person of Ordinary Skill in the Art

“Section 103(a) forbids issuance of a patent when ‘the differences between the subject matter sought to be patented 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, 405 (2007).

Dr. Almeroth opines the following concerning a person of ordinary skill in the art:

Based on my background and qualifications, it is my opinion that a person having ordinary skill in the relevant art at the time of the alleged invention of the '177 Patent would have been someone with an undergraduate degree in Computer Science, or an equivalent field, and one (1) years of industry or research experience building database-backed web applications, and therefore have a good working knowledge of interfacing web browsers with relational database management systems. Such a person would also be familiar with web concepts such as e-commerce, wireless web access, web portals, and personalized news

Ex. 1022 ¶ 37.

Dr. Papakonstantinou opines the following concerning the same:

[A] person of ordinary skill in the art at the time of the invention of the '177 patent would be an individual having a bachelor's or a master's degree in computer science or electrical engineering, or a related discipline, with at least 1 year of experience in designing or developing database-backed web applications.

Ex. 2002 ¶ 24.

While the parties use slightly different language, we are unable to discern any substantive differences between the proffered levels of skill and basic qualifications of a person of ordinary skill in the art. Accordingly, we adopt Dr. Papakonstantinou's articulation of the level of ordinary skill as our own, if for no other reason than for its conciseness, with the understanding that the differences between the proffered levels of ordinary skill are limited and inconsequential in our analysis.

C. The Parties' Post-Institution Arguments

In our Decision on Institution, we concluded that the arguments and evidence advanced by Petitioner demonstrated a reasonable likelihood that claims 11–20 were unpatentable as obvious based on Robinson, that claims 13 and 14 were unpatentable as obvious based on Robinson and Coates, and

that claims 13 and 15 were unpatentable as obvious based on Robinson and Excite. Dec. 31–32. Petitioner bears the burden of proving unpatentability of the challenged claims, and the burden of persuasion never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). To prevail, Petitioner must establish the facts supporting its challenge by a preponderance of the evidence. 35 U.S.C. § 316(e); 37 C.F.R. § 42.1(d). 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).

We previously instructed Patent Owner that “any arguments for patentability not raised in the [Patent Owner’s Response] will be deemed waived.” Paper 14, 6; *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’s 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).

In connection with the arguments and evidence advanced by Petitioner to support its positions that Patent Owner chose not to address in its Patent Owner’s Response, the record now contains persuasive, unrebutted arguments and evidence presented by Petitioner regarding the manner in which the asserted prior art teaches corresponding elements of the claims against which that prior art is asserted. *See* Pet. 4–13, 15–49, 51–78, 80–87 (citing Exs. 1002–1004, 1006–1008, 1016–1018, 1022). Based on the preponderance of the evidence before us, we conclude, based upon our review of Petitioner’s arguments and evidence, that the prior art identified

by Petitioner describes all limitations of the reviewed claims that were not contested by the Patent Owner in the Patent Owner's Response. *See In re NuVasive*, 841 F.3d 966, 974 (Fed. Cir. 2016) (citing *In re Watts*, 354 F.3d 1362, 1367 (Fed. Cir. 2004)) ("a party waives an argument that it 'failed to present to the [PTAB]' because it deprives the court of 'the benefit of the [PTAB]'s informed judgment.'"). We address only the contested limitations below.

D. Claims 11–20 as Unpatentable Over Robinson

Petitioner challenges the patentability of claims 11–20 as obvious in view of Robinson. Pet. 4–6, 8–10, 14, 25–74; *see* Dec. 19–22 (Bezos removed from this ground of unpatentability). Patent Owner disagrees. PO Resp. 25–45. Petitioner replies. Pet. Reply 16–29. Patent Owner responds to Petitioner's Reply. PO Sur-Reply 1–5. Claims 11 and 16 are the only independent claims challenged in this ground.

1. Robinson (Ex. 1004)

Robinson is titled "Official Excite™ Internet Yellow Pages." Ex. 1004, 1. "In addition to the search engine, Excite offers its users a comprehensive database of indexed Web pages." Ex. 1004, 26. Robinson discloses "Personalizing the Excite Page." Ex. 1004, 31. For example, a personalized "Headline News page allows you to specify the type and number of news items to be headlined on your Excite page." Ex. 1004, 36 (emphasis omitted). Robinson also discloses a "Computers & Internet Channel" web page, which contains an alphabetical list divided by categories of information relating to computers and the Internet. Ex. 1004, 80. On a different "Excite People and Chat" channel home page, Robinson discloses message boards. Ex. 1004, 95–96.

2. *Petitioner's Overall Positions*

Petitioner asserts that Robinson renders obvious claims 11–20. Pet. 25–74. For example, independent claim 11 recites “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.” Petitioner cites Robinson for disclosing various web pages of the Excite system, some of which include topic specific “channels,” and others of which include message boards. Pet. 25–35. Independent claim 11 recites further “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.” Petitioner cites Robinson for disclosing personalized home pages that correspond to the recited “centralized access point.” Pet. 35–42.

Independent claim 11 also recites

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 “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).” Petitioner cites Robinson for disclosing various web pages of the Excite system that correspond to various recited “distributed information access point[s].” Pet. 42–46, 51–52. Independent claim 11 recites additionally “an administrative interface in communication with the server and operative to create groupings of content into one or more

distributed information access points.” Petitioner cites Robinson for disclosing topic specific “channels” including various links that were curated by editors. Pet. 47–49. Petitioner provides similar analyses for independent claim 16 and dependent claims 12–15 and 17–20. Pet. 52–74. Petitioner sets forth additional related analysis and evidence in its Reply, of which we find that the portions relied upon below are properly responsive to Patent Owner’s assertions. Pet. Reply 15–29.

For the reasons set forth below, we are persuaded that Petitioner’s assertion that claims 11–13 and 15–20 would have been obvious over Robinson is correct, and that the above-referenced analyses and evidence support that assertion by a preponderance of the evidence. For reasons discussed below, however, we are not persuaded that Petitioner has met its burden of establishing, by a preponderance of the evidence, that claim 14 is obvious over Robinson.

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

Independent claim 11 recites “an administrative interface in communication with the server and operative to create groupings of content into one or more distributed information access points.” Patent Owner argues that Robinson fails to disclose an “administrative interface” for creating groupings of content, with all of its argument hinging on its assertion that an “administrative interface” should be construed to require a graphical user interface. PO Resp. 1–2, 25–32 (citing Exs. 1002, 1004, 2002). Specifically, Patent Owner asserts that “Robinson’s generic references to editors and content producers are simply too vague and say nothing about any graphical user interface operative to create groupings of content.” PO Resp. 2.

Petitioner responds that, under any construction of “administrative interface,” even Patent Owner’s expert agrees that the “Favorite Links” feature disclosed at Figure 1-23 of Robinson allows a user to create groupings of content (Pet. Reply 16–17 (citing Ex. 1034, 78:21–79:4, 115:6–11, 116:7–16)), and, further, that “the Excite editors have used some interface, some kind of interface to some kind of software system to associate some sites with channels.” Pet. Reply (citing Ex. 1034, 87:12–88:12; also citing Ex. 1022 ¶¶ 71–72, 149, 170–173; Ex. 1033 ¶¶ 28–31). We agree with Petitioner.

As set forth above, we construe “administrative interface” as “a software management tool that facilitates administrative functions.” That construction does not include “graphical user interface.” Without that construction, Patent Owner’s above assertions, and the testimony of Dr. Papakonstantinou on which they rely, are misplaced.

More specifically, Petitioner cites Robinson for disclosing that “Excite editors keep you up to date with their subject directory of 100,000 of the best Web sites. Each Channel has its own directory of sites.” Pet. 47 (citing Ex. 1004, 28). That same page of Robinson discloses that these “Channels” are presented as “topic categories,” each having “information focused on the dedicated content.” Ex. 1004, 28. Figure 6-2 of Robinson, reproduced at page 48 of the Petition, shows a list of websites on a Channel, and is reproduced below.

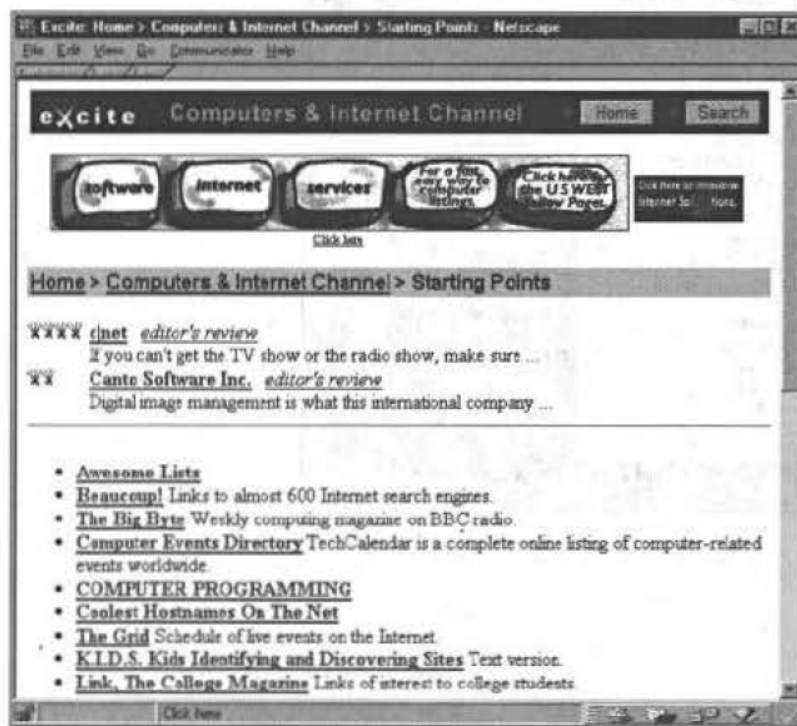


Figure 6-2 Clicking the Starting Points category provides a list of related Web sites.

Ex. 1004, 80; *see also* Ex. 1004, Fig. 6-1 (depicting a channel including further sub-groupings of content by topic). As shown above, Figure 6-2 shows a plurality of links to websites labeled with the recited “content,” i.e., “electronic data embodying information for an individual or individuals,” e.g., “Awesome Lists,” “Beaucoup!,” “The Big Byte,” “Computer Events Directory,” “COMPUTER PROGRAMMING,” etc. (underlining omitted).¹² Petitioner further cites Robinson for disclosing the following:

The Web Sites area contains an alphabetical list ***divided by categories of information*** relating to computers and the internet The links listed above the line are sites reviewed by ***the***

¹² Patent Owner asserts that “links to content” do not correspond properly to the recited “content.” PO Resp. 36–37. These assertions are misplaced, as, under our above construction of “content,” the links disclosed in Robinson do correspond properly to the recited “content.”

Excite editors. The *editors use a ranking system . . .* Clicking the ‘Editor’s review’ icon takes you to the short description the Excite editors have written about the site (Figure 6-3).

Pet. 47 (citing Ex. 1004, 80; emphasis original)). Petitioner additionally asserts the following:

Robinson also discloses a “software tool” used by Excite to “manage” content, including by indexing it into databases. See *id.* at 129 (back cover) (“[t]he Excite story began in February 1993 as an idea over dinner—‘Create a software tool to manage the vast amount of information available on the Internet.’ Today, Excite is a leading online navigation network and offers one of the most comprehensive databases of indexed pages on the Internet.”); Almeroth ¶ 200.

The “software tool” for “manag[ing]” information disclosed in Robinson is an “administrative interface” that facilitates the administrative function of “creat[ing] groupings of content” in the form of indexed web pages. See VII.A.1.v (claim construction). It further would have at least been obvious to have the Excite editors disclosed in Robinson use Robinson’s management software tool to index websites and provide other administrative functions, such as creating and maintaining large amounts of content available in channel web pages and in lists and descriptions of websites, as well as moderating or otherwise administering message boards. See Almeroth ¶ 202–03; see, e.g., Robinson at 29, 28, 80, 65–66, 68–78, 82–85, 86–89, 91–106; *infra* VII.A.5.i (Claim 15).

Pet. 48–49. Based on the above, Dr. Almeroth asserts that “under the appropriate construction of ‘administrative interface,’ the ‘software tool’ disclosed in Robinson would be an ‘administrative interface,’ because it is a ‘a software management tool’ and could be used to ‘facilitate[] administrative functions,’ such as ‘create groupings of content.’ See VIII.A.1(5) (claim construction).” Ex. 1022 ¶ 202. Also based on the above, Dr. Almeroth asserts further the following:

It is my opinion that the “software tool to manage . . . information” disclosed in Robinson could perform or be trivially modified to perform a number of different administrative functions with respect to such information (“content”), including grouping information into web pages with particular categories of content Excite makes available, such as news, stocks, or various channels such as the Games channel, and thereby manage it. Because the “software tool” is disclosed as having the ability to “manage” information, it would have been obvious to one of ordinary skill in the art that creating groupings of information—such as those disclosed in Robinson—would or at least could be part of managing such information.

Ex. 1022 ¶ 201.¹³

In response to Patent Owner’s assertions that “administrative interface” should be construed as requiring, among other things, a “graphical user interface,” Dr. Almeroth expands on Petitioner’s previously asserted obviousness position, as follows:

Moreover, one of ordinary skill in the art at the time of the ’177 Patent would understand that the functions that the claims require be performed using the administrative interface—“grouping” and “managing” content stored on a server—do not require a “graphical user interface.” Claim 11 states that content is stored on a server. Content on a server could be grouped in many different ways, none of which require a graphical user interface. For example, content in the form of files containing information can be grouped into directories on a filesystem using a command line interface. One such command line interface is a “bash” shell running in a terminal. Commands entered in a terminal using the “bash” shell on a Unix operating system can

¹³ Patent Owner asserts that “Dr. Almeroth testified that the software tool on the back cover of Robinson does not teach the administrative interface of claim 11.” PO Obs. 1. The assertion is misplaced, as Petitioner also relies on a “trivially modified” version of the “software tool to manage information” of Robinson as corresponding to the recited “administrative interface.” Ex. 1022 ¶ 201.

be used to modify directories and files stored on an ext2 filesystem, including via command such as “mkdir,” “rm,” “mv,” “cp,” “chmod,” and “chown,” among many others. As another example, content in the form of rows in a database can be grouped together into tables, and tables in turn can be grouped into schema using a command line interface. One such command line interface is the “mysql” program, which provides commands to insert, query, update and delete data, create or modify database tables and schema, and control access to information in a SQL database. Each of these provide examples of a command line interface, as opposed to a graphical user interface, that can be used to group content. One of ordinary skill in the art would be familiar with these programs and interfaces, including because, in my experience, they are commonly used in college level Computer Science courses to teach how filesystems and databases work.

Ex. 1033 ¶ 13 (omitted footnotes cite examples of “command line interfaces”); *see also* Ex. 1033 ¶ 17 (further identifying text editors run from a command line).

Our claim construction of “administrative interface” aligns with that proffered by Petitioner, and does not agree with that proposed by Patent Owner. We agree further, with Petitioner, that Robinson discloses explicitly that editors associate sites with channels, and that one of a relatively high level of ordinary skill, as articulated above, would have been familiar with grouping content via a “command line interface.” Based on those findings, we conclude that the editors of Robinson use, at a minimum, a command line interface to associate those channels, and that such a “command line interface” corresponds properly to the recited “administrative interface,” in

that it is as “a software management tool that facilitates administrative functions.”¹⁴

4. *Patent Owner’s Assertions Concerning
Dependent Claim 14*

Dependent claim 14 recites “wherein the centralized access point is further operative to enable a user to manage any content contributed by them.” For this limitation, Petitioner cites Robinson’s disclosure of a “Notepad” feature on the personalized My Excite page in which users may modify text or remove the notepad from a “Reminder” page altogether. Pet. 56–59 (citing Ex. 1004, 33, 37, Figs. 1-16, 1-27, 1-28, 1-29; Ex. 1022 ¶¶ 226–230). Patent Owner argues that the notes in the “Notepad” feature are not “content contributed” because “these notes are accessible only to the user leaving the notes.” PO Resp. 37–38 (citing Ex. 1004, 37; Ex. 2002 ¶¶ 101–104). Petitioner responds that administrators always have access to all user content, including those set forth in the “Notepad” feature. Pet. Reply 21–23.

We agree with Patent Owner, as Petitioner’s assertions are premised on its construction of “content contributed,” which we do not adopt. As set forth above, we construe “content contributed” as “content provided so it is accessible by at least one user other than the contributor.” We find that the content entered by the contributor in the “Notepad” feature is not accessible by “at least one user other than the contributor.” *See, e.g.*, Ex. 1004, 37

¹⁴ The parties dispute whether it would have been obvious to modify Robinson to include a graphical user interface for creating groupings of content. PO Resp. 32–33; Pet. Reply 16–20; Sur-Reply 2–3. We need not reach this question as we do not construe “administrative interface” as requiring a graphical user interface.

(“This gives you a notepad on your My Excite page on which you can leave notes to yourself and save them.”). Thus, we agree with Patent Owner that Robinson’s personal notes, accessible only to the user leaving the notes, are not “content contributed.”¹⁵

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

Independent claim 16 recites “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 asserts that the “Petition failed to identify a single page in Robinson that both permits selection of content for addition to a centralized access point and that provides access to the centralized access point of a user.” PO Resp. 44; *see also* PO Resp. 40–43 (asserting the same). In particular, Patent Owner argues the following:

The recited distributed information access points [in the above “accessing” limitation] must permit the selection of content for addition to the centralized access point, as required by at least the claim body (‘selecting’) of claim 16. Fatally, Oracle did not argue that the random web pages that it identified

¹⁵ Petitioner argues in its Reply that, even under the above construction, “it would have been obvious for Excite administrative users to be able to access all forms of user-contributed content. . . . to perform administrative functions effectively” Pet. Reply 23 (citing Ex. 1033 ¶ 41); *see also* Pet. Reply 21–23 (citing Exs. 1022, 1033, 2002). Read in conjunction with the Petition, we understand Petitioner’s argument to be that it would have been obvious to give an administrative user access to the contributing user’s “Notepad” content. Patent Owner asserts, and we agree, that this is an improper shift in positions from the Petition, in that the Petition relied on Robinson for expressly disclosing this limitation, while now, Petitioner is asserting that a modification to Robinson is needed in order to meet this claim limitation. PO Sur-Reply 3. Thus, we do not consider it.

with “home” links select or distribute any content for addition to a centralized access point.

PO Resp. 40. Petitioner replies that “claim 16 does not require that the ‘distributed information access points’ contain the mechanism to select the content,” but only that the *content* selected *is from* one or more distributed information access points. Pet. Reply 28–29; *see also* Ex. 1033 ¶ 54 (Dr. Almeroth testifying to the same).

We agree with the Petitioner, as Patent Owner’s assertions are misplaced, and, in any case, against the weight of the evidence. Independent claim 16 merely recites “accessing the centralized access point . . . *from one or more* distributed information access points” (emphasis added), not *from the* previously recited one or more distributed information access points from which content is selected, as asserted by Patent Owner. There is no indication in the claim language, express or otherwise, that the “one or more distributed information access points,” in the “accessing” limitation, derives an antecedent basis from “one or more of an entire range of distributed information access points,” recited in the “selecting” limitation. Informing our determination is the lack of the use of the word “the,” and the different language used in referring to the two “distributed information access points,” i.e., “one or more” versus “one or more of an entire range.” Finally, Patent Owner does not cite any testimony in support of its position (*see generally* PO Resp. 40–44), while Petitioner’s assertion is supported by the testimony of Dr. Almeroth. Pet. Reply 28–29 (citing Ex. 1033 ¶ 54). Thus, we are persuaded that the “distributed information access points,” recited in the “accessing” limitation, need not be the same as the “distributed information access points” recited in the “selecting content” limitation. On that basis alone, Patent Owner’s assertions are unpersuasive.

Even if, however, Patent Owner is correct in asserting that the recited “distributed information access points” must both (1) permit selection of content for addition to a centralized access point, and (2) provide access to the centralized access point of a user, we are persuaded by Petitioner that

to the extent any other Excite web pages do not contain a link to a user’s personalized home page, it would have at least been obvious to do so . . . because the functionality is already described in Excite and adding such links to other pages would provide an easy and quick way to navigate back to a user’s home page. See Almeroth ¶ 265.

Pet. 71. In our Institution Decision, we determined that the “My Netscape” link, in Figure 2-2 of Robinson identified by Petitioner, provided evidentiary support for the proffered modification. Dec. 27.¹⁶ In its Reply, Petitioner elaborates further on this assertion, by relying on the following unrebutted testimony of Dr. Almeroth:

To the extent the “Home” and “Excite Home” links are not links to the user’s personalized home page, it would have been obvious to one of ordinary skill in the art to modify them to be such links. Robinson assigns great importance to the ability to create a personalized home page, as opposed to simply visiting a generic home page. See, *e.g.*, Pet. at 9 (“Excite helps users deal with ‘information overload’” quoting Robinson at 10), 35–42 (describing extensive disclosures of personalized web pages in Robinson). As such, and further given the teachings of the “consistency of design” across these pages (Robinson at 29), it

¹⁶ Patent Owner asserts that “clicking on the My Netscape link would not take a user to a personal Excite page.” PO Obs. 2. The assertion is misplaced, as the citation provides an evidentiary basis for taking a user back to their personalized home page generally, not that it would take a user back to their personalized home page on different platforms. See Pet. Resp. 5 (citing Ex. 2011, 66:12–69:3) (Dr. Almeroth testifies that “Figure 2-2 shows that the use of buttons that take you to personalized pages was something that was widely known and demonstrated.”).

would have at least been obvious to one of ordinary skill in the art to make the trivial modification of changing the “Excite Home” or “Home” links to point to a user’s personalized home page, or to add a link that points to the user’s personalized home page, so that Excite users could access their personalized version of Excite’s home page (which they spent time and effort creating), rather than a generic home page that does not contain any of their personalizations. Such a modification would have been trivial because the technology for creating website links was already known (indeed, it is admitted in the ’177 Patent, 1:53–64), and creating a personalized web page was also already known, as disclosed by Robinson and for the reasons discussed in my opening declaration.

Ex. 1033 ¶ 53. Patent Owner does not challenge directly any of these assertions or modifications. Instead, Patent Owner’s arguments are largely directed to Petitioner’s assertions concerning Robinson’s “Business & Investing” page and the “My Channel” link (PO Sur-Reply 4–5), none of which are relevant to this modification, and which we need not address here, given our analysis above. Accordingly, on the above basis, we find credible Dr. Almeroth’s above testimony that it would have been obvious to modify the “Home” and “Excite Home” links of Robinson to link to a user’s personalized home page, as “adding such links to other pages would provide an easy and quick way to navigate back to a user’s home page” (Pet. 71 (citing Ex. 1022 ¶ 265), and “so that Excite users could access their personalized version of Excite’s home page (which they spent time and effort creating), rather than a generic home page that does not contain any of their personalizations.” Ex. 1033 ¶ 53. In particular, we find that the proffered modification is sufficiently explained by Dr. Almeroth and adequately supported by citations to the record, and that it would have been

well within the knowledge and abilities of one of the relatively high level of ordinary skill outlined above.

For the reasons set forth above, we are persuaded that Petitioner has shown that Robinson alone renders obvious the aforementioned “accessing” limitation.

6. *Summary*

For the reasons above, we are persuaded that Petitioner has shown, by a preponderance of the evidence, that claims 11–13 and 15–20 are obvious over Robinson. We are unpersuaded, however, that Petitioner has shown, by a preponderance of the evidence, that dependent claim 14 is obvious over Robinson.

E. Dependent Claims 13 and 14 as Unpatentable Over Robinson and Coates

Petitioner asserts that dependent claims 13 and 14 are obvious in view of Robinson and Coates. Pet.74–78; see Dec. 29 (Bezos removed from this ground of unpatentability). Patent Owner disagrees with respect to dependent claim 14 only. PO Resp. 45–47 (citing Exs. 1006, 2002). Petitioner replies. Pet. Reply 21–23 (citing Exs. 1022, 1033, 2002). Patent Owner responds. PO Sur-Reply 3–4 (citing Exs. 1004, 1007, 1022).

Dependent claim 13 recites “wherein the distributed information access point is further operative to accept content contributions from a user.” Petitioner asserts that Coates discloses Excite users synchronizing calendar, address book, and notepad data stored on their home computer to their Excite web pages. Pet. 75–77 (citing Ex. 1006, 1–2; Ex. 1022 ¶¶ 281–86). Petitioner asserts further that “a POSITA would have been motivated to combine these references to allow [users] of the Robinson system to synch

their content (as disclosed in Coates) with their personalized web page (as disclosed in Robinson) to make that content more accessible.” Pet. 77 (citing Ex. 1022 ¶¶ 285–286). Patent Owner does not challenge this assertion. *See generally* PO Resp.; PO Sur-Reply. We have considered Petitioner’s proffered evidence and analysis, and are persuaded that Petitioner has met its burden of showing, by a preponderance of the evidence, that dependent claim 13 is obvious in view of Robinson and Coates.

Dependent claim 14 recites “wherein the centralized access point is further operative to enable a user to manage any content contributed by them.” For this limitation, Petitioner cites Robinson’s disclosure of allowing a user to modify notes in a “Notepad” feature, on their personal Excite web page, combined with Coates’s disclosure of synchronizing “notepad” notes from their computer with data stored on their Excite page. Pet. 77–78 (citing Ex. 1004, 10, 37; Ex. 1006, 1–2; Ex. 1022 ¶¶ 287–294). Patent Owner argues that “the claimed ‘content contributed’ excludes personal notes because personal notes are not accessible to at least one user other the contributor, and because the specification describes personal notes separately from “content contributed.” PO Resp. 46–47. (Ex. 1006, 1–2; Ex. 2002 ¶¶ 105–108).

For the reasons similar to those set forth above, for the same claim limitation, and with respect to the ground of unpatentability based on Robinson alone, we agree with Patent Owner. Specifically, in view of our construction of “content contributed” as “content provided so it is accessible by at least one user other than the contributor,” we agree with Patent Owner that the personal notes disclosed by Robinson and Coates are not “content

contributed.” Thus, we are unpersuaded that Petitioner has met its burden of showing, by a preponderance of the evidence, that claim 14 is obvious in view of Robinson and Coates.

*F. Dependent Claims 13 and 15 as Unpatentable
Over Robinson and Excite*

Petitioner asserts that dependent claims 13 and 15 are obvious in view of Robinson and Excite. Pet. 80–87; see Dec. 30 (Bezos removed from this ground of unpatentability). Patent Owner does not specifically challenge this assertion with respect to the limitations of dependent claims 13 and 15. *See generally* PO Resp.; PO Sur-Reply.

Dependent claim 13 recites “the distributed information access point is further operative to accept content contributions from a user.” For this limitation, Petitioner cites Robinson and Excite’s disclosure of Excite receiving and indexing user-submitted web pages. Pet. 80–85 (citing Ex. 1004, 32, 40, 51, Fig. 1-11 (“Add URL”); Ex. 1007; Ex. 1022 ¶¶ 305–307, 309–310).

Dependent claim 15 recites “the administrative interface is further operative to manage content contributions by users.” For this limitation, Petitioner cites Excite’s disclosure of users submitting web page content to Excite, and Robinson’s disclosure of Excite administrators curating, organizing, and reviewing user-contributed websites. Pet. 86–87 (citing Ex. 1004, 26, 28, 80; Ex. 1007; Ex. 1022 ¶ 314).

We have considered Petitioner’s proffered evidence and analysis, and are persuaded that Petitioner has met its burden of showing, by a preponderance of the evidence, that dependent claims 13 and 15 are obvious in view of Robinson and Excite, for the reasons set forth in the Petition.

III. CONCLUSION

Petitioner has met its burden of showing, by a preponderance of the evidence, that claims 11–13 and 15–20 of the '177 patent are unpatentable. Petitioner has not met its burden of demonstrating, by a preponderance of the evidence, that claim 14 of the '177 patent is unpatentable.

IV. ORDER

Accordingly, it is

ORDERED that claims 11–13 and 15–20 of the '177 patent are held unpatentable;

FURTHER ORDERED that claim 14 of the '177 patent is held patentable; 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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