

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIBERTY MUTUAL INSURANCE CO.
Petitioner

v.

PROGRESSIVE CASUALTY INSURANCE CO.
Patent Owner

Case CBM2013-00001 (JL)
U.S. Patent No. 7,877,269

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

LEE, *Administrative Patent Judge*

DECISION
Institution of Covered Business Method Patent Review
37 C.F.R. § 42.208

I. INTRODUCTION

On October 2, 2012, Liberty Mutual Insurance Company (“Liberty”) filed a petition (“Pet.”) requesting review under the transitional program for covered business method patents of U.S. Patent 7,877,269 (“the ’269 patent”)(Ex. 1001). Paper 4. Patent owner, Progressive Casualty Insurance Company (“Progressive”), filed a preliminary response (“Prel. Resp.”) on January 4, 2013. Paper 10. We have jurisdiction under 35 U.S.C. § 324.

The standard for instituting a covered business method patent review is set forth in 35 U.S.C. § 324(a), which provides:

THRESHOLD –The Director may not authorize a post-grant review to be instituted unless the Director determines that the information presented in the petition filed under section 321, if such information is not rebutted, would demonstrate that it is more likely than not that at least 1 of the claims challenged in the petition is unpatentable.

Liberty challenges claims 1-59 of the ’269 patent as being unpatentable under 35 U.S.C. §§ 102 and 103. Pet. 15-78. Taking into account Progressive’s preliminary response, we conclude that the information presented in the petition does not demonstrate that it is more likely than not that claims 1-59 are unpatentable. Pursuant to 35 U.S.C. § 324 and section 18(a) of the Leahy-Smith America Invents Act (“AIA”), we do not authorize a covered business method patent review to be instituted as to claims 1-59 for the grounds of unpatentability asserted in Liberty’s petition.

Accordingly, the petition is DENIED.

A. Standing

Section 18 of the AIA governs the transitional program for covered business method patent review. Section 18(a)(1)(B) of the AIA limits such reviews to persons or their privies that have been sued or charged with infringement of a covered business method patent.

Liberty indicates that the '269 patent was asserted against it in *Progressive Cas. Ins. Co. v. Allstate Ins. Co. et al.*, Case No. 1:11-cv-00082, pending in the U.S. District Court for the Northern District of Ohio. Pet. 5. Progressive does not dispute that it asserted the '269 patent against Liberty.

B. Covered Business Method Patent

Under § 18(a)(1)(E) of the AIA, the Board may institute a transitional proceeding only for a patent that is a covered business method patent. Section 18(d)(1) of the AIA defines the term “covered business method patent” to mean:

a patent that claims a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions.

The legislative history explains that the definition of covered business method patent was drafted to encompass patents “claiming activities that are financial or complementary to financial activity.” 157 Cong. Rec. S5432 (daily ed. Sept. 8, 2011) (statement of Sen. Schumer).

Section 18(d)(2) of the AIA provides that “the Director shall issue regulations for determining whether a patent is for a technological

invention.” The legislative history points out that the regulation for this determination should only exclude “those patents whose novelty turns on a technological innovation over the prior art and are concerned with a technical problem which is solved with a technical solution and which requires the claims to state the technical features which the inventor desires to protect.” 157 CONG. REC. S1364 (daily ed. Mar. 8, 2011) (statement of Sen. Schumer).

Pursuant to that statutory mandate, the Office promulgated 37 C.F.R. § 42.301(b) to define the term “technological invention” for the purposes of the transitional program for covered business method patents. Therefore, for determining whether a patent is for a technological invention in the context of the transitional program for covered business method patents, 37 C.F.R. § 42.301(b) identifies the following for consideration:

whether the claimed subject matter as a whole recites a technological feature that is novel and unobvious over the prior art; and solves a technical problem using a technical solution.

The determination of whether a patent is eligible for covered business method patent review is based on what the patent claims. A patent having even just one claim directed to a covered business method is eligible for review even if the patent includes additional claims.¹

¹ *Transitional Program for Covered Business Method Patents – Definitions of Covered Business Method Patent and Technological Invention; Final Rule*, 77 Fed. Reg. 48734, 48736 (Aug. 14, 2012) (Response to Comment 8).

Claim 53 of the '269 patent relates to how to provide an insurance service. Claim 53 begins with this preamble: “An on-line **insurance policy service** system” (emphasis added). Claim 53 ends with the recitation: “wherein the existing **insurance policy** comprises a **health, a property-casualty, or a liability insurance policy**” (emphasis added). Claim 53 also recites an interface that “enables **an insurance policy holder** to access personal and historical **insurance information** remotely through a policy accessible network and software linked to the **insurance information**,” and a visual output configured “to transmit display data that renders a visual of the **insurance policy parameter** of the **insurance policy holder**” (emphasis added).

In addition, claim 53 recites three software modules (emphasis added):

(1) an information module “to identify the **insurance policy holder** and verify an **insurance policy parameter** of an existing **insurance policy of that insurance policy holder** in response to data received from the **insurance policy holder** through the publicly accessible network and the interface”;

(2) an **insurance policy adjustment** module “that adjusts an **insurance policyholder’s selected insurance policy parameter** in real time in response to second data received **from the insurance policyholder** through the publicly accessible network and the interface”; and

(3) a payment module “that determines a cost of the **adjustment to an insurance premium** in response to the adjustment of the **insurance policyholder’s selected insurance policy parameter.**”

The insurance policy adjustment module also “communicates to the interface an acknowledgment comprising the **change in the insurance premium** resulting from the adjustment in the **insurance policyholder’s selected insurance policy parameter**” (emphasis added).

It cannot be reasonably disputed that Progressive claims “an apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service.” Any one of health insurance, property-casualty insurance, and liability insurance as is recited in claim 53 is a financial product, and the activities recited in claim 53 about the insurance policy together constitute a financial service.

The question at issue here centers on the “technological invention” exception to a covered business method patent.

To qualify under the “technological invention” exception to covered business method patent review, it is not enough that the invention makes use of technological systems, features, or components. The exception is not that the claimed invention makes use of technology. We agree with Liberty that the subject matter of claim 53 does not satisfy the “technological invention” exception to covered business method patent review.

In determining whether a patent is for a technological invention, the following shall be considered (37 C.F.R. § 42.301(b)):

1. recites a technological feature that is novel and unobvious over the prior art, and
2. solves a technical problem using a technical solution.

With respect to the first prong, Progressive's argument (Prel. Resp. 12:6-7) that claim 53 as a whole is directed to technological features is misplaced. As we discussed above, simply making use of technology is not the test for meeting the "technological invention" exception. In that regard, the Office Patent Trial Practice Guide, 77 *Fed. Reg.* 48764 (Aug. 14, 2012), states:

The following claim drafting techniques would not typically render a patent a technological invention:

(a) Mere recitation of known technologies, such as computer hardware, communication or computer networks, software, memory, computer-readable storage medium, scanners, display devices or databases, or specialized machines, such as an ATM or point of sale device.

Progressive does not contend that any of the claimed components of claim 53 by themselves constitute a new technological feature, only that the combination of claim elements as a whole forms a new technological feature. The latter is unpersuasive in light of: (1) the claim itself, (2) the specification, and (3) the state of the art at the time of Progressive's invention.

As we have presented above, the insurance nature of the data being collected, transferred, received, and processed is not only an intended use of the claimed apparatus, but is fully integrated into every aspect and element of claim 53 such that it appears that the claimed invention as a whole has no other use but to collect, transfer, receive, and process insurance information in the particular manner as specified in the claim. If stripped of everything

related to collection and maintenance of insurance data and insurance policy parameters, there is nothing left but generic and well known components used in their ordinary manner to achieve a predictable result, such as an interface, a computer system that facilitates data transfer from the interface, software modules, and a visual output. In that regard, we see no technical innovation such as a faster computer and interface, and Progressive has identified none. The innovation colorably stems from the insurance nature of the data collected, transferred, received and processed.

The specification of the '269 patent does not describe any faster computer, more efficient interface, or a visual output with higher resolution. Instead, the specification omits detailed instructions on how to assemble and form each of the technical components and generally discusses simply what is to be accomplished. That is an indication that the technology used for practicing the claimed invention is merely conventional and well known to one with ordinary skill in the art.

In the preliminary response at page 2, Progressive describes itself as being driven to serve its customers in innovative ways and noted various examples of such innovation. One example is that it was the first to allow policyholders to pay insurance premiums in monthly installments with no extra charge. Prel. Resp. 2:8-11. Another example is that it was the first to put auto damage and expert estimating together by providing drive-in-claim-service. Prel. Resp. 2:11-13. A further example is that it began to respond to claim calls around the clock and to provide immediate response through on-call adjusters to service accident victims on the spot. Prel. Resp. 2:13-16.

It is evident that in the insurance industry, not all innovations stem from a novel and unobvious technological feature. Yet, each of the above-noted innovations still may depend on and make use of technology, *e.g.*, computer, software, database, or telephone. Inclusion of those technical components in a claim would not transform those innovations in providing an insurance product and service into a technological invention. The subject matter of claim 53 appears no different.

Progressive argues that within the congressional record of the Leahy-Smith America Invents Act, Pub. L. No. 112-29, § 18, 125 Stat. 284, 331, are two examples of subject matter not covered under a covered business method patent review (Prel. Resp. 8:13 to 9:7):

1. A patent for a trading strategy would be subject to review, while an electronic trading tool, such as graphical user interface or network, which allows an electronic trader to place a trade order with an electronic exchange, would not. *See, e.g.*, Ex. 2004, at 2, 157 Cong. Rec. S5428 (daily ed. September 8, 2011)(statements of Sen. Schumer and Sen. Durbin)(discussing the *software tools* used to implement trading strategies).
2. A patent that is directed at machinery to count, sort, and authenticate currency and paper instruments also would not be subject to review. *See, e.g., id.* (confirming that the technology used to “count, sort, and authenticate currency and paper instruments” are technological inventions).

The argument is unpersuasive. With respect to the first example, the premise is that the trading strategy is not claimed and that the electronic trading tool is itself novel and nonobvious apart from its association with the trading strategy. In that regard, we have already noted that the Office Trial

Practice Guide provides that claim drafting techniques such as the inclusion of known technologies would not typically render a patent a technological invention. *77 Fed. Reg.* 48764 (Aug. 14, 2012). With regard to the second example, the subject matter of claim 53 is not directed at machinery to count, sort, and authenticate currency and paper instruments.

We note that even the processing of data in an on-line network setting in real-time was well known at the time of Progressive's invention, as is evidenced by this definition of "real-time" from the IEEE Standard Dictionary of Electrical and Electronics Terms, Sixth Edition (1996):²

Pertaining to a system or mode of operation in which computation is performed during the actual time that an external process occurs, in order that the computation results can be used to control, monitor, or respond in a timely manner to the external process. *Contrast:* batch. *See also:* conversational; interactive; interrupt; on-line.

The specification of the '269 patent does not indicate that the named inventors were the first to invent on-line processing of data in real-time. Nor does Progressive make that assertion in its preliminary response.

Therefore, on this record, the subject matter as a whole of claim 53 does not recite a novel and unobvious technical feature. All of the components as claimed, except the insurance nature of the data being processed, are known and operated in their ordinary and predictable manner.

²A copy of the IEEE dictionary definition of "real-time" is attached to this opinion.

We also conclude that the subject matter of claim 53 as a whole does not use a technical solution to solve a technical problem.

Progressive is correct that general classification of the '269 patent in the Patent and Trademark Office is of little relevance, because the issue concerns a statutory "exception." However, the invention of claim 53 still does not solve any technical problem with a technical solution because there simply was no technical problem to be solved given the state of the technology at the time of Progressive's invention.

According to Progressive, the claimed modules provide a technical solution to the technical problem of allowing direct verification of insurance policy parameters by a user in real-time, direct adjustment of insurance policy parameters by a user in real-time, and direct confirmation back to the user in real-time, all without need of assistance from an insurance agent or representative. However, the assertion is unpersuasive. It is misplaced because: (1) the technology useable for implementing direct and real-time identification of a user and direct and real-time verification of insurance parameter on-line over a publicly accessible network was generally available and required no technical innovation; (2) the technology useable for implementing real-time adjustment of a user's insurance policy parameters on-line over a publicly accessible network was also generally available and required no technical innovation; and (3) the technology useable for direct confirmation back to the user requesting the change in insurance parameters was also generally available and required no technical innovation. There was no technical problem in need of a technical solution.

Progressive asserts that “[t]raditionally, it was not possible to service insurance without the assistance of an insurer, agent, or representative.” Prel. Resp. 15:14-16. Progressive further asserts: “[i]nstead, once a customer purchased his/her insurance, the consumer had to work with an agent or other insurance company representatives in person to effect desired changes in his or her policy, such as adding or deleting a driver, changing, adding or deleting a vehicle, or changing policy limits, coverages or deductibles.” Prel. Resp. 15:16-20. Those assertions do not relate to any “technical problem,” but to a mere tradition which took time to change. Also, Progressive’s characterization that it was “not possible to service insurance without the assistance of an insurer, agent, or representative” is incorrect from the point of view of the state of the art of the technology in existence at the time of the invention, as we have already discussed at length above.

Therefore, the second prong for qualifying as a “technological invention” is also not satisfied.

For the foregoing reasons, the subject matter of claim 53 is not a “technological invention” under 37 C.F.R. § 42.301(b). Accordingly, the ’269 patent is eligible for a covered business method patent review.

C. Prior Art Relied Upon

Liberty relies upon the following prior art references:

Tawil	US 5,225,976	July 6, 1993	Ex. 1007
Chelliah	US 5,710,887	Jan. 20, 1998	Ex. 1006
Peterson	US 5,903,873	May 11, 1999	Ex. 1004

D. Alleged Grounds of Unpatentability

Liberty seeks review of claims 1-59 of the '269 patent based on the following alleged grounds of unpatentability:

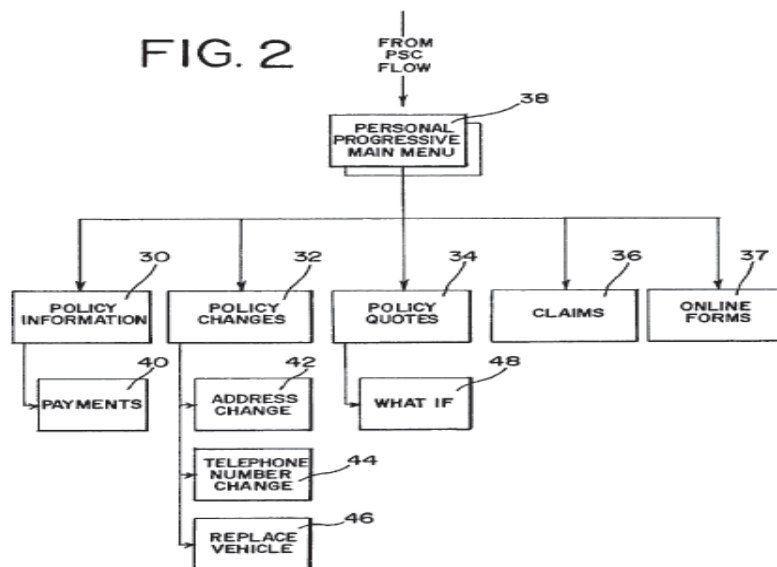
1. claims 1-16, 24, 30-42, 44-54, and 56-59 as anticipated under 35 U.S.C. § 102 by Peterson (Pet. 15-54);
2. claims 1-59 as unpatentable under 35 U.S.C. § 103(a) over Peterson (*id.* at 55-67);
3. claims 10-12, 17-29, 53, 57, and 59 as unpatentable under 35 U.S.C. § 103 over the combination of Peterson and Chelliah (*id.* at 67-75);
4. claims 35, 36, and 57-59 as unpatentable under U.S.C. § 103(a) over the combination of Peterson and Tawil (*id.* at 75-78); and
5. claims 57 and 59 as unpatentable under 35 U.S.C. § 103(a) over the combination of Peterson, Chelliah, and Tawil. *Id.* at 78.

E. The Invention of the '269 Patent

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

reviewing policy information, (4) reviewing state specific contract information, (5) quoting and endorsing for vehicle replacement, (6) making address changes, and (7) reviewing claim information. Ex. 1001, spec. 2:65-3:4. The system displays both the premium amount and variance, and updates the file of the policyholder at the request of the policyholder without the need for personal handling by an individual representative of the insurer or an independent agent. Ex. 1001, spec. 3:4-8.

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



The insurance data processing system illustrated in Figure 2 is segregated into four critical areas of content: (1) policy information 30; (2) policy changes 32; (3) policy quotes 34; and (4) claims information 36. Ex. 1001, spec. 5:43-46. A prospective user can navigate to each module from the

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

F. Illustrative Claim

Claims 1, 10, 13, 15, and 53 are the independent claims. Independent claim 10 is illustrative:

1. An on-line insurance policy service system comprising:
 - a web browser for accessing remote insurance information by an insurance policyholder and software linked to the remote insurance information;
 - a publicly accessible distributed network for transferring data from the web browser;
 - an information module, remote from the web browser coupled to the publicly accessible distributed network, that identifies the insurance policyholder and verifies an insurance policy parameter of an existing insurance policy of the insurance policyholder in real-time in response to first data received from

the insurance policyholder through the publicly accessible distributed network and the web browser;

where the first data comprises a personal security code that allows access to insurance policy parameters of the insurance policyholder;

an insurance policy adjustment module, remote from the web browser coupled to the publicly accessible distributed network, that adjusts the insurance policyholder's insurance policy parameter in real-time in response to second data received from the insurance policyholder through the publicly accessible distributed network and the web browser,

where the second data comprises a selection of the insurance policy parameter;

where the insurance policy adjustment module provides an acknowledgement to the web browser in response to the adjustment of the selected insurance policy parameter within the existing insurance policy, and implements the adjustment to the existing insurance policy; and

where an insurer's computer generates an insurance document customized to the insurance policyholder as identified by the personal security code and sends the customized insurance document to the web browser in response to the second data received from the insurance policyholder through the publicly accessible distributed network and the web browser.

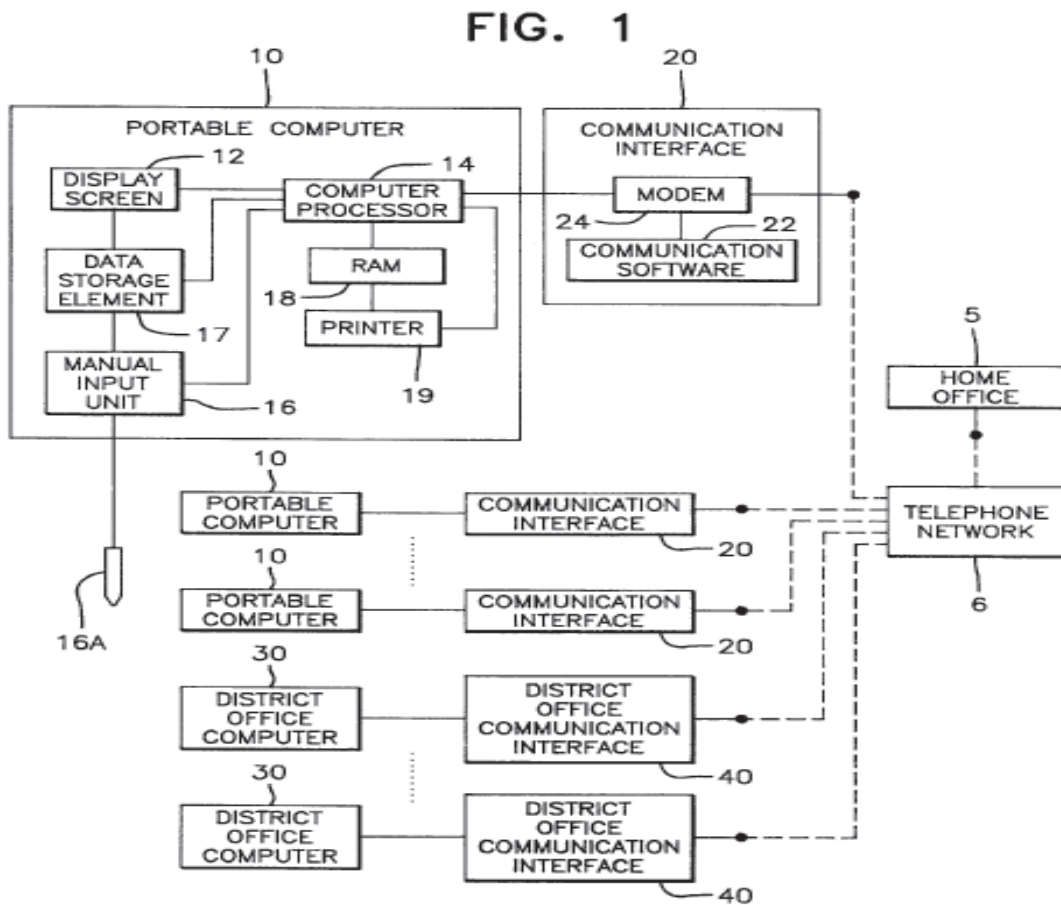
Ex. 1001, claims—spec. 9:2-30 (emphasis added).

II. FINDINGS OF FACT

The following findings of facts are supported by a preponderance of the evidence.

A. Peterson

1. Peterson discloses a system that registers insurance transactions and communicates such transactions to the home office computer of an insurance company. Ex. 1004, spec. 1:6-9. Figure 1 of Peterson, which is reproduced below, illustrates the system. Ex. 1004, spec. 6:7-10.



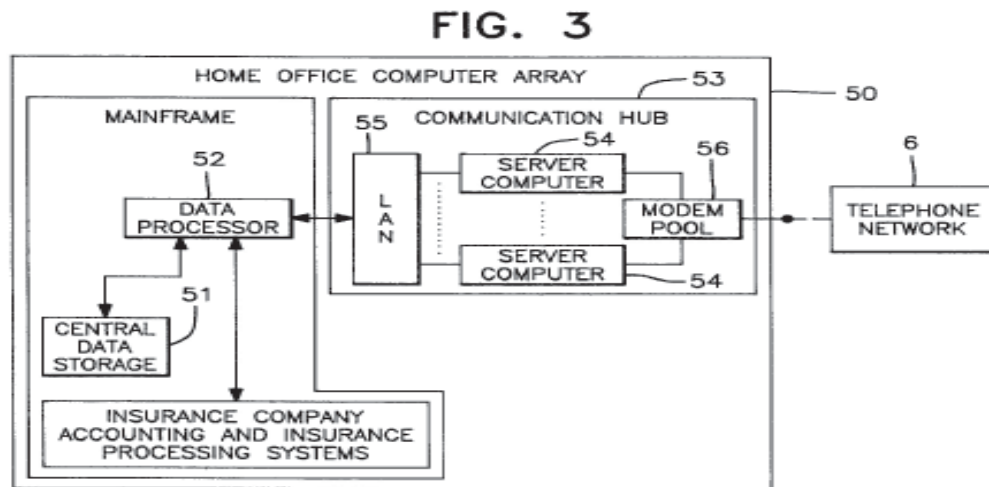
The system illustrated in Peterson's Figure 1 includes a home office 5, at least one portable computer 10, and a communication interface 20.

Ex. 1004, spec. 7:50-54. Peterson discloses that each portable computer 10 includes a display screen 12, a computer processor 14, a manual input unit 16, and a data storage element 17 that stores insurance information pertaining to a plurality of insurance customers. Ex. 1004, spec. 7:59-62.

Peterson discloses that the communication interface 20 includes communication software 22 and a modem 24. Ex. 1004, spec. 9:11-13.

In particular, Peterson discloses that the communication software 22 includes a commercially available package of communication software known as *RemoteWare*® by XcelleNet. Ex. 1004, spec. 9:13-16 (emphasis added).

2. Figure 3 of Peterson, which is reproduced below, illustrates a block diagram of a home office computer. Ex. 1004, spec. 6:14-15.



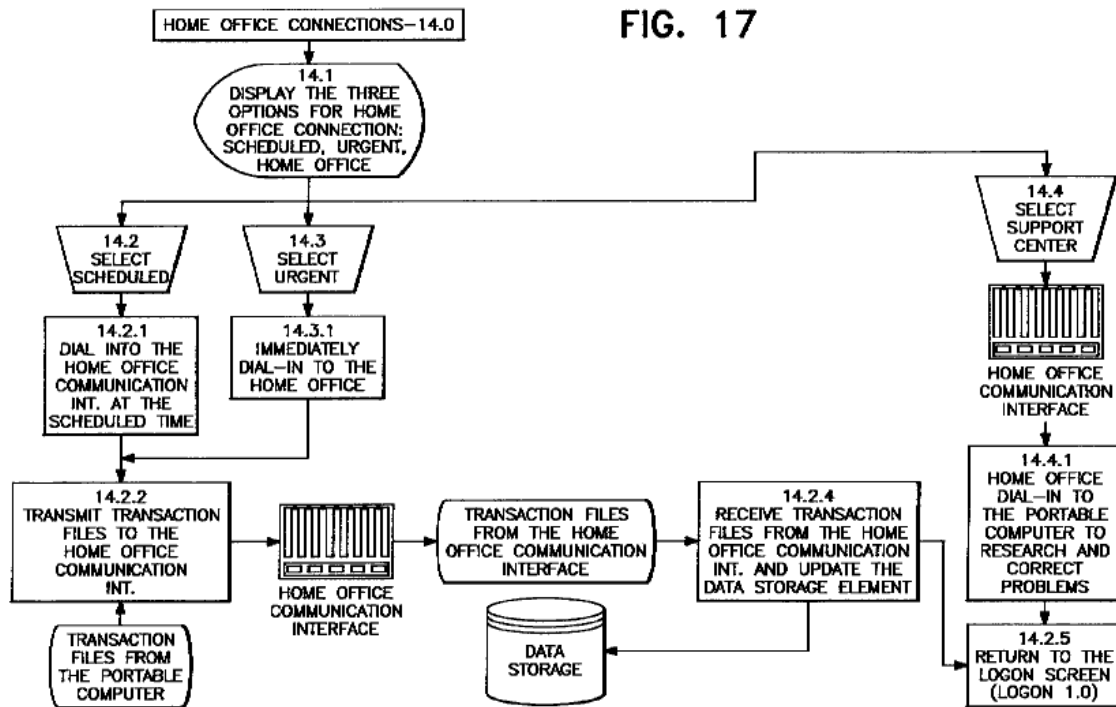
The home office computer illustrated in Peterson's Figure 3 contains a home office computer array 50, which includes a central data storage element 51,

a data processor 52, and a communication hub 53. Ex. 1004, spec. 11:22-25. Peterson discloses that the communication hub 53 may be configured to include a plurality of server computers 54, each of which has a keyboard, display screen, memory, data storage, a local area network 55 linking the server computers 54 to the data processor 52, and a modem pool connecting the server computers 54 to the telephone network 6. Ex. 1004, spec. 12:12-20. In particular, Peterson discloses that the server computers 54 utilize *RemoteWare*® software by XcelleNet. Ex. 1004, spec. 12:21-24 (emphasis added).

4. In a preferred embodiment, Peterson discloses transmitting agent transaction information from the second group of storage tables stored in the data storage element 17 of the portable computer 10 to the home office computer 5 on a nightly basis. Ex. 1004, Spec. 12:31-35. Likewise, Peterson discloses transmitting the district office transaction information to the home office 5 on a nightly basis. Ex. 1004, spec. 12:35-38. Peterson discloses that the home office computer array 50 compiles both the updated insurance information and the district-specific updated insurance information derived from the nightly transmissions the following day. Ex. 1004, spec. 12:30-43.

5. Figure 17 of Peterson illustrates a sequence of events that occur in a Home Office Connection mode. Ex. 1004, spec. 6:62-64.

FIG. 17



Referring to Figure 17 of Peterson, if an insurance agent selects the scheduled type of home office connection (step 14.2), the portable computer 10 dials the home office 5 via the communication interface 20 at a scheduled time overnight (step 14.2.1). Ex. 1004, spec. 33:10-14. Upon establishing a connection with the home office 5, Peterson discloses that the portable computer 10 transmits to the home office computer array 50 a collection of transaction files preferably accumulated throughout one day (step 14.2.2). Ex. 1004, spec. 33:14-20. Next, Peterson discloses that the home office computer array 50 generates and transmits transaction files to the portable computer 10 (step 14.2.4), and stores/updates the first group of storage

tables in the data storage element 17 using the updated insurance information from the home office 5. Ex. 1004, spec. 33:21-27.

Alternatively, if the insurance agent selects the urgent type of home office connection (step 14.3), the portable computer 10 immediately dials up the home office computer array 50 (step 14.3.1) without waiting for the scheduled time. Ex. 1004, spec. 33:30-34. According to Peterson, the rest of the home office connection proceeds in the same way as when the home connection is made in the scheduled manner. Ex. 1004, spec. 33:34-36.

B. The RemoteWare® Press Release

6. The RemoteWare® press release is relied upon by Liberty as extrinsic evidence to establish that certain claim features are necessarily present in the RemoteWare® communications software package referred to in Peterson. The RemoteWare® press release is an announcement by XcelleNet, Inc. concerning the general commercial availability of version 3.1 of the RemoteWare® software package. Ex. 1005, pg. 1.³ According to the RemoteWare® press release, version 3.1 of the RemoteWare® software package adds full messaging support, subscription and publishing services, and accessibility from within a web browser. *Id.* The RemoteWare® press release also discloses that version 3.1 of the RemoteWare® software package lets remote users connect to the enterprise through an Internet browser while it updates applications, exchanges files and electronic mail,

³ All references to the page numbers in the RemoteWare® press release are to the page numbers located in the top, right-hand corner of each page.

replicates databases, and updates price lists and other sales or marketing information. *Id.* The RemoteWare® press release further discloses that the Client Control aspect of version 3.1 of the RemoteWare® software package allows users to initiate a RemoteWare® communications session from within a webpage. Ex. 1005, pg. 2.

III. CLAIM CONSTRUCTION

During a covered business method patent review, the Board construes claims by applying the broadest reasonable interpretation in light of the specification. 37 C.F.R. § 42.300(b). If the specification does not set forth an explicit or special definition for a claim term, we resort to its ordinary and customary meaning as would be understood by one with ordinary skill in the art. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (en banc). In some cases, the ordinary and customary meaning of a claim term as would be understood by one with ordinary skill in the art may be readily apparent even to lay judges, and claim construction in such cases involves little more than the application of the widely accepted meaning of commonly understood words. *See id.* at 1314.

Liberty has identified seven claim terms and its claim construction for those terms. Pet. 12-14. Those claim terms are listed as follows:

(A) “enable[s] an insurance policyholder to access . . . insurance data/information;” (B) “information module,” “insurance policy adjustment module,” “payment module,” “payment enablement module,” “claims information module,” and “policy quote(s) module;” (C) “insurance policy

parameter;” (D) “real-time,” “in response to and at the same rate;” (E) “personal security code;” (F) “adjustment;” and (G) “insurance document.” *Id.* As a step to determine whether to institute a covered business method patent review, we will address each claim term identified by Liberty in turn.

A. “*Enable[s] an insurance policyholder to access . . . insurance data/information*”

Liberty construes the claim phrase “enable[s] an insurance policyholder to access . . . insurance data/information” to mean enabling an insurance policyholder or someone acting on his or her behalf access insurance information located elsewhere. Pet. 13. Liberty contends that the specification of the ’269 patent does not limit that claim phrase to direct access by a policyholder. *Id.* In response, Progressive contends that Liberty’s claim construction with respect to the claim term “insurance policyholder” is unreasonable. Prel. Resp. 21-23. Progressive argues that throughout the specification, the claim term “insurance policyholder” describes a person who holds ownership in an existing insurance policy rather than a person, such as an insurance agent or other insurance company personnel, acting on behalf of the insurance policyholder. *Id.* at 22-23 (citing to Ex. 1001, Abstract; spec. 1:41-53, 2:65-3:2, and 3:4-8). Moreover, Progressive alleges that the use of the claim term “an insurance policyholder” throughout the specification is consistent with its common understanding in the insurance industry. *Id.* at 23. Progressive directs us to a dictionary of insurance terms that defines a “policyholder” as an

“individual or other entity who owns an insurance policy” and “synonymous with policyowner.” *Id.* (citing to Ex. 2007, Harvey W. Rubin, Dictionary of Insurance Terms, 3rd ed. (1995)).

Upon reviewing the specification, we do not find an explicit or special definition for the claim term “insurance policyholder.” Therefore, we resort to its ordinary and customary meaning as would be understood by one with ordinary skill in the art. *See Phillips*, 415 F.3d at 1312. We agree that the dictionary definition offered by Progressive amounts to the broadest reasonable interpretation of the claim term “insurance policyholder.” However, the claim phrase “*enable[s] an insurance policyholder to access . . . insurance data/information*” (emphasis added) does not require the insurance policyholder to personally access the insurance information and, therefore, should not be construed so narrowly to preclude someone acting on the insurance policyholder’s behalf. We can find nothing in the specification indicating that access by an insurance policyholder is limited only to direct access by the insurance policyholder and excludes indirect access through someone acting on behalf of the insurance policyholder.

While we agree with Progressive that the claim term an “insurance policyholder” by itself constitutes a person who owns an existing insurance policy rather than someone acting on his or her behalf (Prel. Resp. 22-23), the key issue here centers on the entire claim phrase “*enable[s] an insurance policyholder to access . . . insurance data/information.*” Progressive identifies two statements in the specification that purportedly support its view that access by an insurance policyholder must mean direct access by

the insurance policyholder without someone acting on his or her behalf. *Id.*

In one, the specification of the '269 patent states that:

[t]he present invention contemplates a new and improved insurance policy service and delivery system for communicating changes in policy parameters to an insurer via an Internet on-line automated system, thereby obviating representative or agent personal involvement in the interfacing and communicating of policy parameter changes, policy changes and associated charge adjustments between the customer and the insurer.

Ex. 1001, spec. 1:51-58. In the other, the specification of the '269 patent states that “[a]ny way the insurer can reduce personnel involvement in addressing policyholder services is a way that can improve efficiency and reduce costs—costs that can be eliminated to result in lower rates to a consumer buying the insurance.” Ex. 1001, spec. 1:46-50. However, those statements are inapposite because they pertain to allowing direct access by an insurance policyholder without personnel involvement from the insurer and do not prohibit indirect access through someone acting on behalf of the insurance policyholder, *e.g.*, an adult child acting on behalf of an elderly parent.

B. “Information module,” “insurance policy adjustment module,” “payment module,” “payment enablement module,” “claims information module,” and “policy quote(s) module”

Liberty construes those claim terms to mean software associated with the functions as named for each “module” in the corresponding claims. Pet. 13 (citing to Ex. 1001, Abstract; spec. 3:27-31, 5:44-49). Progressive does

not challenge Liberty's claim construction with respect to those claim terms. Because Liberty's claim construction is consistent with the specification of the '269 patent, we agree with Liberty's claim construction.

C. "Insurance policy parameter"

Liberty construes the claim term "insurance policy parameter" to mean any information relating to an insurance policy. Pet. 13 (citing to Ex. 1001, spec. 2:16-22, 3:35-4:44). Progressive does not challenge Liberty's claim construction with respect to that claim term. Because Liberty's claim construction is consistent with the specification of the '269 patent, we agree with Liberty's claim construction.

D. "Real-time" and "in response to and at the same rate"

1. "Real-time"

Liberty construes the claim term "real-time" to mean at the same or substantially the same time. Pet. 14 (citing to Ex. 1001, spec. 2:3-7, 3:16-19). In response, Progressive contends that Liberty's proposed claim construction is unreasonable because "substantially" is a relative term that does not provide a standard for measuring degree or scope. Prel. Resp. 23-24. Moreover, Progressive argues that Liberty does not identify an explicit or special definition for the claim term "real-time" in the intrinsic record and, therefore, Liberty has not overcome the presumption that the claim term "real-time" takes on its ordinary and customary meaning. *Id.* at 24.

Upon reviewing the specification, we do not find an explicit or special definition for the claim term "real-time." Therefore, we resort to its ordinary

and customary meaning as would be understood by one with ordinary skill in the art. *See Phillips*, 415 F.3d at 1312. Accordingly, we construe the claim term “real-time” as “pertaining to a system or mode of operation in which computation is performed during the actual time that an external process occurs, in order that the computation results can be used to control, monitor, or respond in a timely manner to the external process. *Contrast*: batch. *See also*: conversational; interactive; interrupt; on-line.” The IEEE Standard Dictionary of Electrical and Electronics Terms, 6th ed. (1996).

2. *“In response to and at the same rate”*

Our findings and determination regarding the claim term “in response to and at the same rate” are set forth in Section IV (“Alleged Grounds of Unpatentability as to Claims 10-12”) in this decision.

E. *“Personal Security Code”*

Liberty construes the claim term “personal security code” to mean data personal to a user that provides secure access to information. Pet. 14 (citing to Ex. 1001, spec. 3:11-15, 5:11-43). In response, Progressive contends that the Liberty’s proposed claim construction is unreasonable to the extent that the code is personal to a user other than the insurance policyholder. Prel. Resp. 23. However, we note that Liberty’s proposed claim construction does not include data that is personal to a user other than the insurance policyholder. Because Liberty’s claim construction is consistent with the specification of the ’269 patent, we agree with Liberty’s claim construction.

F. “Adjustment”

Liberty construes the claim term “adjustment” to mean any change, modification, or update. Pet. 14 (citing to Ex. 1001, spec. 1:61-2:7, 7:62-8:17). Progressive does not challenge Liberty’s claim construction with respect to that claim term. Because Liberty’s claim construction is consistent with the specification of the ’269 patent, we agree with Liberty’s claim construction.

G. “Insurance document”

Liberty construes the claim term “insurance document” to mean any document related to an insurance policy. Pet. 14 (citing to Ex. 1001, independent claim 1). Progressive does not challenge Liberty’s claim construction with respect to that claim term. Because Liberty’s claim construction is consistent with the specification of the ’269 patent, we agree with Liberty’s claim construction.

IV. ALLEGED GROUNDS OF UNPATENTABILITY
AS TO CLAIMS 10-12

Liberty alleges that claims 10-12 are unpatentable under 35 U.S.C. §§ 102 and 103 based on Peterson and the combination of Peterson and Chelliah. (Pet. 15, 55, and 67.) As a step in our analysis for determining whether Liberty’s petition has demonstrated that it is more likely than not that claims 10-12 are unpatentable over the cited prior art, we determine the meaning of the claims. *Oakley, Inc., v. Sunglass Hut Int’l*, 316 F.3d 1331, 1339 (Fed. Cir. 2003) (Both anticipation and obviousness are two step

inquiries; the first step is to determine the scope and meaning of the claims being challenged, and the second step in the analysis requires a comparison of the properly construed claim to the prior art.). We also review the specification because it is always highly relevant to the claim construction analysis. *Phillips*, 415 F.3d at 1317 (The specification is the single best guide to the meaning of a disputed term.).

Based on our claim construction analysis, we discern no reasonable construction that can properly be adopted which would render claims 10-12 definite, and we cannot find sufficient written description for the claimed subject matter. Because the claims fail to particularly point out and distinctly claim an invention as required by 35 U.S.C. § 112, ¶ 2⁴, and are not supported by the original disclosure as required by 35 U.S.C. § 112, ¶ 1, we deny the prior art grounds of unpatentability asserted by Liberty as to claims 10-12.⁵ *See In re Steele*, 305 F.2d 859, 862-63 (CCPA 1962) (the prior art grounds of unpatentability must fall, *pro forma*, because they are based on speculative assumption as to the meaning of the claims).

Patent claims serve an important public notice function. *See General Elec. Co. v. Wabash Appliance Corp.*, 304 U.S. 364, 369 (1938). The scope

⁴ Section 4(c) of the AIA re-designated 35 U.S.C. § 112, ¶¶ 1 and 2, as 35 U.S.C. §§ 112(a) and (b). Because the '269 patent has a filing date before September 16, 2012 (effective date), we will refer to the pre-AIA version of 35 U.S.C. § 112.

⁵ Our decision in this regard is based solely on the indefiniteness and lack of written description of the claimed subject matter and does not reflect on the adequacy of the prior art evidence applied in support of the asserted grounds.

of the claims must be sufficiently definite to inform the public of the bounds of the protected invention, *i.e.*, what subject matter is covered by the exclusive rights of the patent. *Halliburton Energy Servs. v. MI, LLC*, 514 F.3d 1244, 1249 (Fed. Cir. 2008). The test for whether a claim meets the definiteness requirement is whether a person of ordinary skill in the art would have understood the scope of the claim when read in light of the specification. *Exxon Research and Engineering Co. v. United States*, 265 F.3d 1371, 1375 (Fed. Cir. 2001); *Personalized Media Communications v. Int'l Trade Comm'n*, 161 F.3d 696, 705 (Fed. Cir. 1998).

In this proceeding, we determine that one of ordinary skill in the art could not have discerned the scope of claims 10-12 because the phrase “in response to and at the same rate” as used in the claims is indefinite.

Claims 11-12 depend from claim 10. Claim 10 is representative and recites:

An on-line insurance policy service system comprising:

a browser that enables an insurance policyholder to access remote insurance information and software linked to the remote insurance information;

a publicly accessible network that facilitates data transfers from the browser;

an information module remote from the browser coupled to the publicly accessible network that *identifies* the insurance policyholder and *verifies* an insurance policy parameter of that insurance policyholder **in response to and at the same rate data is received** from the insurance policyholder through the publicly accessible network and the browser; and

an insurance policy adjustment module remote from the browser coupled to the publicly accessible network that *adjusts* an insurance policyholder's selected insurance policy parameter

in response to and at the same rate *second data is received* from the insurance policyholder through the publicly accessible network and the browser;

a payment module remote from the browser coupled to the publicly accessible network that determines a cost of the adjustment to an insurance premium in response to the adjustment of the insurance policyholder's selected insurance policy parameter;

wherein the insurance policy adjustment module communicates to the browser an acknowledgement comprising the change in the insurance premium resulting from the adjustment in the insurance policyholder's selected insurance policy parameter. Emphasis added.

Liberty contends that the phrase “in response to and at the same rate” and the term “real-time” have the same construction, namely “at the same time or substantially the same time.” Pet. 13. We do not agree with Liberty’s contention.

Liberty fails to explain how “rate” and “time,” which are different measures, could have the same meaning. The term “rate” has the meaning of “a certain amount of one thing considered in relation to a unit of another thing”⁶ (e.g., 100 Megabits **per** second). In contrast, “real-time” relates to an absolute time interval and not something that is “per” unit-time or “per” anything. A time interval or duration is not a rate. We conclude that the phrase “in response to and *at the same rate*” does not have the same meaning as “real-time.”

⁶ *Random House Webster’s College Dictionary* (2nd ed. 1999).

The problem we have with the claim language is that it requires the insurance system to *identify* and *verify* the policyholder information **at the same rate** as *data is received* from the policyholder, and requires the insurance system to *adjust* a parameter **at the same rate** as *second data is received* from the policyholder. The claim language requires the insurance system to perform those functions (“identifying,” “verifying,” and “adjusting”) at the same rate as the data transfer rate of the policyholder information sent over a public network. However, it is ambiguous which rates as to identifying, verifying, and adjusting are compared with the data transfer rate of a public network (*e.g.*, the Internet and bits per second). Possible choices range from user level rates such as “policies per day” to computer execution level rates such as “instructions per cycle” and include everything in between. At each level, the conceptual focus is different and the unit rate is different, thus leading to ambiguity on which rate is to be compared with the data transfer rate on a public network.

Even assuming that the language is merely broad and that the processing rate at any one of the multitude of levels which can be used for comparison with the data transfer rate of a public network, it is ambiguous what test or standard is to be used to determine when it is the case that a processing rate is the same as a data transfer rate. One with ordinary skill in the art would not know whether the limitation is or is not met and thus whether an element is or is not within the scope of the claim.

The specification contains no guidance on what processing rate at which level and moment is to be compared to a data transfer rate, and

provides no standard for determining when it is the case that a processing rate is deemed to be the same as a data transfer rate. We discern no reasonable construction that can properly be adopted which would render the claims definite. Based on this record, a preponderance of evidence supports the conclusion that claims 10-12 are indefinite.

We further conclude that the original disclosure of the '269 patent lacks written description for the subject matter of claims 10-12. *See In re Wright*, 866 F.2d 422 (Fed. Cir. 1989); *In re Rasmussen*, 650 F.2d 1212, 1214 (CCPA 1981) (An amendment to the claims must be supported by the original disclosure of the invention.). The test for determining compliance with the written description requirement under 35 U.S.C. § 112, ¶ 1, is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter. *Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc); *In re Kaslow*, 707 F.2d 1366, 1375 (Fed. Cir. 1983).

Here, none of the originally-filed claims of the '269 patent contains the phrase “in response to and *at the same rate*.” When Progressive amended the claim⁷ to overcome the Examiner’s obviousness rejection by changing “in *real-time* in response to data received from the insurance policyholder” to “in response to and *at the same rate* data is received from the insurance policy holder,” Progressive did not point out the portion of the

⁷ Amended claim 45 was issued as claim 10 in the '269 patent.

specification that supports the amended claim. Application 11/580,324 Amendment filed September 1, 2010, pages 4 and 14. In fact, the specification of the '269 patent contains no description of the matter added by the amendment.

The specification merely describes the invention as providing “real-time” communications between the policyholder and the insurer’s computer system, but nothing on data transfer rates or system performance rates. *See, e.g.*, '269 patent, col. 1:62-67 (“In accordance with the present invention, there is disclosed a method and apparatus for Internet on-line insurance policy service and delivery for *real-time* automated selective adjustment...”); col. 2:3-7 (“A policy adjustment module selectively communicates parameter changes made by the user to the insurer’s computer system and the computer than generates in *real-time* the resulting policy cost attributable to the parameter change.”) (Emphasis added.). As we concluded above, “in response to and *at the same rate*” does not have the same meaning as “real-time.” Therefore, the specification fails to provide written description support for the claim limitations that contain the phrase “in response to and *at the same rate*.”

For the foregoing reasons, we deny the prior art grounds of unpatentability asserted by Liberty as to claims 10-12.⁸

⁸ In CBM2013-00002, a concurrent proceeding for the '269 patent, we authorize a covered business method patent review of claims 10-12 based on the grounds of unpatentability under 35 U.S.C. § 112, ¶ 2, as being indefinite, and under 35 U.S.C. § 112, ¶ 1, as failing to comply with the

V. ALLEGED GROUNDS OF UNPATENTABILITY AS TO
CLAIMS 1-9 and 13-59

A. 35 U.S.C. § 102 Ground of Unpatentability—Claims 1-9, 13-16, 24, 30-42, 44-54, and 56-59 as Anticipated by Peterson

1. Principles of Law

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

To serve as an anticipation when the reference is silent about the asserted inherent characteristic, such gap in the reference may be filled with recourse to extrinsic evidence. Such evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.

Continental Can Co. USA, Inc. v. Monsanto Co., 948 F.2d 1264, 1268 (Fed. Cir. 1991). “Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999) (citations and internal quotation marks omitted).

2. Introduction

In the petition, all five grounds of unpatentability alleged by Liberty are based in whole or in part on Peterson. Peterson does not expressly describe all the claim features recited in the '269 patent. Consequently,

written description requirement.

Liberty relies upon the RemoteWare® press release as extrinsic evidence to establish that certain claim features are inherently disclosed in Peterson. Pet. 18-30. The RemoteWare® press release issued on October 7, 1996. Ex. 1005, pg. 1. The RemoteWare® press release is an announcement by XcelleNet, Inc. concerning the general commercial availability of RemoteWare® version 3.1 software. *Id.* Liberty relies upon the description of RemoteWare® version 3.1 software in the RemoteWare® press release to show what must be necessarily present in Peterson.

3. Contentions

Liberty contends that claims 1-16, 24, 30-42, 44-54, and 56-59 are anticipated by Peterson. Pet. 15-54. In particular, Liberty relies upon the description of RemoteWare® version 3.1 software in the RemoteWare® press release to confirm the inherent features of Peterson—namely a web browser, the Internet, and webpages. *Id.* at 18. Based on that reliance, Liberty argues that Peterson describes the claimed subject matter recited in claims 1-16, 24, 30-42, 44-54, and 56-59. *Id.* at 19-54.

In response, Progressive contends that Liberty fails to demonstrate that claims 1-16, 24, 30-42, 44-54, and 56-59 are anticipated by Peterson. Prel. Resp. 26-42. In particular, Progressive argues that the description of RemoteWare® version 3.1 software in the RemoteWare® press release cannot be used as extrinsic evidence to confirm the inherent features of Peterson in order to establish an anticipation rejection. *Id.* at 26-30. Progressive indicates that Peterson was filed on May 31, 1996, whereas the RemoteWare® press release was not publicly available before October 7,

1996. *Id.* at 27-28. Given the four month gap between May 31, 1996, and October 7, 1996, Progressive asserts that the RemoteWare® version 3.1 software described in the RemoteWare® press release could have been conceived and developed after Peterson was filed and, therefore, the contents of the RemoteWare® press release cannot be relied upon as a description of any RemoteWare® software referred to in Peterson. *Id.* at 28-29.

Further, Progressive contends that Peterson fails to disclose *an insurance policy adjustment module* that adjusts the insurance policyholder's insurance policy parameter in *real-time* and in response to data received from the insurance policyholder through the publicly accessible distributed network, as required by independent claims 1, 13, 15, and 53. Prel. Resp. 30 (emphasis added). In particular, Progressive argues that the only difference between Peterson's normal scheduled connection option and the "urgent type" connection option is what time the connection is initiated between the portable computer and the home office. *Id.* at 32-33 (citing to Ex. 1004, spec. 33:29-36.) Progressive alleges that the rest of the "urgent type" connection option does not include any real-time or same-rate insurance parameter adjustments at the home office while the portable computer is connected to the home office for the initial upload. *Id.* at 33. Instead, Progressive asserts that the home office computer batch processes the data uploaded during the "urgent type" connection option the next day, and then returns the updated data back to the portable computer the next night. *Id.* at

33-34 (citing to Ex. 1004, spec. 1:66-2:8, 12:30-49). We are persuaded by Progressive's arguments.

4. Analysis

We begin our analysis by determining if Liberty properly relies on the RemoteWare® press release to support its assertion that features of the RemoteWare® version 3.1 software described in the press release are inherently disclosed in Peterson. Peterson discloses that the communication interface associated with the portable computer includes communication software such as RemoteWare®. Ex. 1004, spec. 9:11-17. Peterson also discloses that each of the server computers contained within the home office computer array use RemoteWare® software. Ex. 1004, spec. 12:21-24. As set forth in the Introduction section, the RemoteWare® press release announces the commercial availability of version 3.1 of the RemoteWare® software package. Ex. 1005, pg. 1. According to the RemoteWare® press release, version 3.1 of the RemoteWare® software package adds accessibility from within a web browser, lets remote users connect to the enterprise via an Internet browser, and allows prospective users to initiate communications sessions from within a webpage. Ex. 1005, pgs. 1-2. Based on the cited disclosures in the RemoteWare® press release describing version 3.1 of the RemoteWare® software package, Liberty asserts that the RemoteWare® software referred to in Peterson necessarily includes a web browser, the Internet, and webpages. Pet. 18.

However, Liberty does not provide any persuasive evidence or technical reasoning indicating that the use of a web browser, the Internet,

and webpages in the RemoteWare® version 3.1 software are necessarily present in the RemoteWare® software referred to in Peterson. Peterson only refers to RemoteWare® software generally and not to RemoteWare® version 3.1 software specifically. *See* Ex. 1004, spec. 9:11-17; 12:21-24. Liberty has not shown that the RemoteWare® software referred to in Peterson is the same version of RemoteWare® software referred to in the RemoteWare® press release, *i.e.*, RemoteWare® version 3.1 software. The likelihood that the RemoteWare® software referred to in Peterson may be an earlier version of RemoteWare® software other than version 3.1 undermines Liberty's position on inherent disclosure in Peterson. *See Robertson*, 169 F.3d at 745. Therefore, we are not persuaded by Liberty's argument that features of the RemoteWare® version 3.1 software described in the RemoteWare® press release are necessarily present in the RemoteWare® software referred to in Peterson.

Second, we must determine whether Liberty's reliance on Peterson properly accounts for the claimed "insurance policy adjustment module" feature and corresponding "real-time" adjustment aspect required by independent claims 1, 13, 15, and 53. Pet. 25-27. Figure 1 of Peterson illustrates a system that registers insurance transactions and communicates such transactions to the home office computer of an insurance company. Ex. 1004, spec. 6:7-10. Peterson discloses that the system includes a home office and at least one portable computer. Ex. 1004, spec. 7:50-54. Figure 17 of Peterson illustrates that the portable computer can select from three different types of home office connections, two of those options are: (1)

scheduled; and (2) urgent. Ex. 1004, spec. 33:4-9. Peterson discloses that during the urgent type connection option, the portable computer immediately establishes a connection with the home office computer without waiting for the scheduled time. Ex. 1004, spec. 33:30-34.

Based on the aforementioned disclosure in Peterson, Liberty takes the position that the entire urgent type connection option occurs in real-time. Pet. 27 (citing to Ex. 1009, Klausner Dec. ¶¶ 16, 28-30, 35-38). However, Liberty does not direct us to a specific disclosure in Peterson that expressly describes the adjustment and processing steps that occur during the latter half of the urgent type connection option. Liberty's stated position also fails to address Peterson's disclosure that the latter half of the urgent type connection option occurs in the same way as the scheduled manner. Ex. 1004, spec. 33:34-36.

Peterson discloses that during the scheduled type connection option illustrated in Figure 17, the portable computer submits transaction files that were accumulated throughout one day to the home office on a nightly basis. Ex. 1004, spec. 33:10-20. Peterson also discloses that for the scheduled manner of operation, the home office compiles and adjusts insurance information received from the previously scheduled nightly submission sometime during the following day, and transmits such processed information back to the portable computer during the next scheduled nightly transmission. Ex. 1004, spec. 1:66-2:8, 12:39-43.

Peterson discloses that during the urgent type connection option illustrated in Figure 17, the portable computer immediately transmits a

transaction file to the home office instead of holding the transaction file until the next scheduled nightly transmission. Ex. 1004, spec. 33:30-34.

However, Peterson is not entirely clear about the adjustment and processing steps that occur when the home office receives the transaction file in the urgent type connection mode. Peterson only informs us that the latter half of the urgent type connection option occurs in the same way as the scheduled manner. Ex. 1004, spec. 33:34-36.

We do not agree with Liberty's contention that Peterson's urgent type connection option necessarily entails real-time adjustment and processing of insurance information. Liberty primarily argues that it would make no sense for the urgent type connection option to not be conducted in real-time. Pet. 17-18. That argument is without merit because Liberty does not account for the fact that, even without real-time adjustment and processing, the urgent type connection option may work in a way that reduces the response time of the home office by a whole calendar day. For instance, note the following scenario:

- (1) a transaction file may be transmitted from the portable computer to the home office during an urgent type connection established at 10:00am;
- (2) the transaction file is then added to the collection of transaction files transmitted during the previous scheduled nightly transmission;
- (3) sometime during the day, the transaction file received at 10:00am is processed with the collection of transaction files received from the previous scheduled nightly transmission; and

(4) all of the adjusted transaction files, which includes the transaction file received at 10:00am, are transmitted back to the portable computer during the next scheduled nightly transmission.

In the above-described scenario, the response time for the transaction file transmitted during the urgent type connection option is moved ahead one full calendar day than what it would be if the transaction file were held up and sent during the regularly scheduled nightly transmission. The corresponding result is still achieved using batch adjustment and processing of insurance information and does not entail real-time adjustment and processing of insurance information.

Finally, we are not persuaded by the corresponding declaration testimony of David Klausner. Pet. 27 (citing to Ex. 1009). In the declaration, Mr. Klausner states:

In my opinion, Peterson would necessarily be understood by one of ordinary skill to disclose that the ‘urgent mode’ transmission of data from the portable computer, as well as the processing of data at the home office computer and re-transmission back to the portable computer, all happen in real-time. In my view, a person of ordinary skill would have understood that the “urgent mode” connection would run “urgently” in real-time—*i.e.* without waiting for the home office computer to process the data at some later (non-urgent and non-real-) time.

Ex. 1009, ¶ 28. First, Mr. Klausner’s testimony is conclusory because it does not explain why one with ordinary skill in the art would have understood that adjustment and processing of insurance information

transmitted during the urgent type connection option must necessarily entail real-time adjustment and processing. Second, Mr. Klausner's testimony does not account for the scenario described above. It is simply not the case that Peterson's urgent type connection option makes no sense or is illogical unless the adjustment and processing of insurance information, once it is received, occurs in real-time. To the contrary, based on the scenario described above, it is more logical that adjustment and processing of the transaction file transmitted during the urgent type connection option does not occur in real-time because Peterson explicitly discloses that once the transaction file is received, adjustment and processing occurs in the same way as in the scheduled manner. Ex. 1004, spec. 33:34-36. Therefore, based on the record before us, Peterson's urgent type connection option does not properly account for the claimed "insurance policy adjustment module" feature and corresponding "real-time" adjustment aspect required by independent claims 1, 13, 15, and 53.

For the foregoing reasons, we conclude that Liberty's petition does not demonstrate that it is more likely than not that independent claims 1, 13, 15, and 53 of the '269 patent would have been anticipated by Peterson. For the same reasons, we conclude that Liberty's petition does not demonstrate that it is more likely than not that claims 2-9, 14, 16, 24, 30-42, 44-52, 54, and 56-59 of the '269 patent would have been anticipated by Peterson.

B. Remaining 35 U.S.C. § 103(a) Grounds of Unpatentability

Each of the remaining grounds of unpatentability alleged by Liberty is based in whole or in part on Peterson. In our discussion of the anticipation challenge alleged by Liberty, we determine that Liberty's reliance on the RemoteWare® version 3.1 software described in the RemoteWare® press release does not establish any inherent disclosure in Peterson, and that Peterson's urgent type connection option does not properly account for the claimed "insurance policy adjustment module" feature and corresponding "real-time" adjustment aspect required by independent claims 1, 13, 15, and 53. Therefore, for those same reasons, we conclude that Liberty's petition does not demonstrate that it is more likely than not that: (1) claims 1-59 of the '269 patent would have been unpatentable over Peterson; (2) claims 10-12, 17-29, 53, 57, and 59 of the '269 patent would have been unpatentable over the combination of Peterson and Chelliah; (3) claims 35, 36, and 57-59 of the '269 patent would have been unpatentable over the combination of Peterson and Tawil; and (4) claims 57 and 59 of the '269 patent would have been unpatentable over the combination of Peterson, Chelliah, and Tawil.

VI. RELATED PROCEEDING

Liberty also filed a petition requesting a covered business method patent review of claims 1-59 of the '269 patent in CBM2013-00002. In that proceeding, we have authorized the institution of a covered business method patent review for claims 1-59 based on the following grounds of unpatentability:

- A. claims 1-9 and 13-59 as unpatentable under 35 U.S.C. § 103(a) over NAIC;
- B. claims 17-22, 29, and 54-56 as unpatentable under 35 U.S.C. § 103(a) over the combination of NAIC and Lockwood; and
- C. claims 10-12 as unpatentable under 35 U.S.C. § 112, ¶ 2, as being indefinite, and under 35 U.S.C. § 112, ¶ 1, as failing to comply with the written description requirement.

VII. ORDER

It is

ORDERED that pursuant to 35 U.S.C. § 324(a) and section 18(a) of the AIA, a covered business method patent review is hereby denied as to claims 1-59 of the '269 patent for the following grounds of unpatentability:

- A. claims 1-16, 24, 30-42, 44-54, and 56-59 as anticipated under 35 U.S.C. § 102 by Peterson;
- B. claims 1-59 as unpatentable under 35 U.S.C. § 103(a) over Peterson;
- C. claims 10-12, 17-29, 53, 57, and 59 as unpatentable under 35 U.S.C. § 103(a) over the combination of Peterson and Chelliah;
- D. claims 35, 36, and 57-59 under 35 as unpatentable under U.S.C. § 103(a) over the combination of Peterson and Tawil;
- E. claims 57 and 59 as unpatentable under 35 U.S.C. § 103(a) over the combination of Peterson, Chelliah, and Tawil; and

FURTHER ORDERED that no trial is instituted in this proceeding.

Case CBM2013-00001
U.S. Patent No. 7,877,269

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The IEEE Standard Dictionary of Electrical and Electronics Terms

Sixth Edition

Standards Coordinating Committee 10, Terms and Definitions
Jane Radatz, Chair

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realm *See*: area.

real number A member of the set of all positive and negative numbers, including integers, zero, mixed, fractional, rational, and irrational numbers. (C) 1084-1986w, 610.5-1990

real storage (1) The main storage portion of a virtual storage system. *Contrast*: virtual storage. (C) 610.12-1990

(2) The main storage in a virtual storage system. *Note*: Although real storage and main storage are physically identical, conceptually real storage represents only parts of the range of addresses available to the user of a virtual storage system, whereas, the main storage includes the total range of addresses available to the user. (C) 610.10-1994

real time (1) (emergency and standby power) (processing) Pertaining to the actual time during which a physical process transpires or pertaining to the performance of a computation during the actual time of related physical processing in order that results of the computation can be used in guiding the physical process. (IA) 446-1987s

(2) **(analog computer)** Using an ordinary clock as a time standard, the number of seconds measured between two events occurring in a physical system. By contrast, computer time is the number of seconds measured, with the same clock, between corresponding events in the simulated system. The ratio of the time interval between two events in a simulated system to the time interval between the corresponding events in the physical system is the time scale. Computer time is equal to the product of real time and the time scale. Real-time computation is computer operation in which the time scale is unity. Machine time is synonymous with computer time. *See also*: scale factor. (C) 165-1977w

(3) **(software)** Pertaining to a system or mode of operation in which computation is performed during the actual time that an external process occurs, in order that the computation results can be used to control, monitor, or respond in a timely manner to the external process. *Contrast*: batch. *See also*: conversational; interactive; interrupt; on-line. (C) 610.10-1994, 610.12-1990

(4) **(modeling and simulation)** In modeling and simulation, simulated time with the property that a given period of actual time represents the same period of time in the system being modeled; for example, in a simulation of a radar system, running the simulation for one second may result in the model advancing time by one second; that is, simulated time advances at the same rate as actual time. *Contrast*: fast time; slow time. (C) 610.3-1989

(5) An event or data transfer in which, unless accomplished within an allotted amount of time, the accomplishment of the action has either no value or diminishing value. (C/DIS) 1278.2-1995

(6) The real time, in seconds and fraction thereof, of acquisition of the spectrum. It is expressed as 14 characters including decimal point with leading zeros interpreted as zeros. (NPS) 1214-1992

(7) The actual time in the real world during which an event takes place. *Synonyms*: actual time; true time. (C) 610.10-1994

real-time clock A device that signals the computer at regular intervals in order that it may keep up with some external event. *See also*: time-of-day clock. (C) 610.10-1994

real-time printout (sequential events recording systems) The recording of actual time that an input signal was received as correlated to a time standard. (PE) [1], [5]

real-time service A service that satisfies timing constraints imposed by the service user. The timing constraints are user specific and should be such that the user will not be adversely affected by delays within the constraints. (C/DIS) 1278.2-1995

real-time system A system in which the correctness of a computation depends not only upon the results of the computations but also upon the time at which the outputs are generated. (BA/C) 896.3-1993

real-time testing (test, measurement, and diagnostic equipment) The testing of a system or its components at its normal operating frequency or timing. (MIL) [2]

real type A data type whose members can assume real numbers as values and can be operated on by real number arithmetic operations, such as addition, subtraction, multiplication, division, and square root. *Contrast*: character type; enumeration type; integer type; logical type. (C) 610.12-1990

real user ID (1) The attribute of a process that, at the time of process creation, identifies the user who created the process. This value is subject to change during the process lifetime. *See also*: user ID. (C/PA) 1003.5-1992, 9945-1-1996, 9945-2-1993

(2) The attribute of a process that, at the time of process creation, identifies the user who created the process. This value is subject to change during the process lifetime. *See also*: user ID. (C/PA) 1003.5b-1995

real variable A variable that may assume only real-number values. (C) 1084-1986w

real-world time The actual time in the real world, expressed as Universal Coordinated Time (UTC). (C/DIS) 1278.1-1995

reasoning system In the context of AI-ESTATE, a system that can combine elements of knowledge to draw conclusions. (ATL) 1232-1995

reassembly The function in the DQDB layer that provides for the reconstruction of an initial MAC protocol data unit (MPDU). Reassembly is performed by concatenating the segmentation units received in derived MAC protocol data units (DMPDUs). This is the inverse process to segmentation. (C/LM) 8802-6-1994

reboot fileset A fileset which, if installed, requires reboot of the operating system to complete its installation, and denoted by having the value of its *is_reboot* attribute set to true. (C/PA) 1387.2-1995

rebooting An implementation-defined procedure generally used to terminate and then restart operations on the target system. (C/PA) 1387.2-1995

recalcitrant point The temperature at which there is a sudden liberation of heat when metals are lowered in temperature. *See also*: coupling; induction heating. (IA) 169-1955w, 54-1955w

receipt of a CCS message *See*: receipt of a CCS signal.

receipt of a CCS signal Occurs when the signal or complete message becomes available for acceptance by the processor (that is, stored in the input buffer). *Synonym*: receipt of a CCS message. (COM) 973-1990w

receipt of a per-trunk-signaling supervisory signal Occurs when the state transition that begins the signal is received (that is, E-lead signal or loop open or closure). All times noted are exclusive of hit timing. (COM) 973-1990w

receive (1) The acoustic output of a telephone set due to an electrical input to the telephone set or connecting test circuit. (COM) 269-1992

(2) The acoustic output of a handset or headset due to an electrical input to the device or connecting test circuit. (COM) 1206-1994

receive channel A channel used within a data circuit to receive data. *Contrast*: transmit channel. (C) 610.10-1994

receive characteristic (telephony) The acoustic output level of a telephone set as a function of the electrical input level. The output is measured in an artificial ear, and the input signal is obtained from an available constant-power source of specified impedance. (IA) [123], 169-1955w

received power (mobile communication) The root-mean-square value of radio-frequency power that is delivered to a load that correctly terminates an isotropic reference antenna. The reference antenna most commonly used is the half-wave dipole. *See also*: mobile communication system. (VT) [37]

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ratchet wheel to raunch

ratch/et wheel/, *n.* a wheel, with teeth on the edge, into which a pawl drops or catches, as to prevent reversal of motion or convert reciprocating motion into rotary motion. [1770-80]

rate' (rāt), *n., v., -ated, -at-ing.* —*n.* 1. the amount of a charge or payment with reference to some basis of calculation: a high rate of interest on loans. 2. a certain amount of one thing considered in relation to a unit of another thing: at the rate of 60 miles an hour. 3. a fixed charge per unit of quantity: a rate of 10 cents a pound. 4. degree of speed or progress: to work at a rapid rate. 5. assigned position in any of a series of graded classes; rating. 6. the premium charge per unit of insurance. 7. a charge by a common carrier for transportation. 8. a wage paid on a specified time basis: an hourly rate. —*v.t.* 9. to estimate the value or worth of; appraise. 10. to esteem, consider, or account: He is rated a fine writer. 11. to fix at a certain rate, as of charge or payment. 12. to value for purposes of taxation or the like. 13. to make subject to the payment of a certain rate or tax. 14. to place in a certain rank or class, as a ship or a sailor. —*v.i.* 15. to have value or standing: a performance that didn't rate very high. —*Idiom.* 16. at any rate, a. in any event; in any case. b. at least. [1375-1425; late ME rate monetary value, estimated amount < ML rata < L (prō) ratā (parte) (according to) an estimated (part)]

rate² (rāt), *v.t., v.i., -ated, -at-ing.* to chide vehemently. [1350-1400; ME (a)raten, perh. < Scand] —*rat'er, n.*

rat-el (rāt/1, rāt/1), *n.* a badgerlike carnivore, *Mellivora capensis*, of Africa and India. Also called honey badger. [1770-80; < Afrik < dial. D ratel, var. of raat honeycomb; perh. elliptically from a compound with this word, referring to the animal's fondness for honey]

rate/ of exchange/, *n.* EXCHANGE RATE. [1720-30]

rate-pay-er (rāt/pā/ər), *n.* 1. a person who pays a regular charge for the use of a public utility. 2. Brit. a taxpayer.

rat'er (rāt/ər), *n.* a person or thing that is of a specific rating (usu. used in combination): The show's star is a first-rater. [1605-15]

rat-fink (rat/fing'k), *n.* Slang. FINK (defs. 3, 4). [1960-65]

rat-fish (rat/fish'), *n., pl. (esp. collectively) -fish, (esp. for kinds or species) -fish-es.* a spotted chimaera, *Hydrolagus colletti*, of the Pacific Ocean from Alaska to Baja California, having a rattlike tail. [1880-85]

rathe (rāth), *adj.* Archaic. early. [bef. 900; ME; OE hræth, hræd quick, active; c. D rad, ON hrathr]

Ra-the-nau (rāt'n ou'), *n.* Walther, 1867-1922, German industrialist.

rath-er (rāth/ər, rāth/ər), *adv.* 1. to some extent: rather good. 2. in some degree: I rather expect you'll regret it. 3. more properly or justly: The contrary is rather to be supposed. 4. sooner: to die rather than yield. 5. more truly: He is a painter or, rather, a watercolorist. 6. on the contrary: It's not generosity, rather self-interest. —*Idiom.* 7. had or would rather, to prefer that or to: I had much rather we not stay. [bef. 900; ME; OE hrathor, comp. of hræth quick, RATHÉ]

raths-kel-ler (rāt'skel/ər, rat', -rath'-), *n.* a restaurant or bar located below street level. [1895-1900, Amer.; < G Rat(h)skeller lit., the cellar of a town hall]

rat-i-cide (rat'ə sid'), *n.* a substance for killing rats. [1840-50]

rat-i-fy (rat'ə fī'), *v.t., -fied, -fy-ing.* to confirm by expressing consent, approval, or formal sanction: to ratify a constitutional amendment. [1325-75; < MF ratifier < ML ratificāre = L rat(us) calculated (see RATE') + -i- + -ficāre -fy] —*rat'i-fi-ca'tion, n.*

rat-ing (rāt/ing), *n.* 1. classification according to grade or rank, as in the armed forces. 2. the estimated credit standing of a person or firm. 3. a percentage indicating the number of listeners to or viewers of a radio or television broadcast. 4. a designated operating limit for a machine, based on specified conditions.

ra-tio (rā'shō, -shē ō'), *n., pl. -tios.* 1. the relation between two similar magnitudes with respect to the number of times the first contains the second: the ratio of 5 to 2, written 5:2 or 5/2. 2. proportional relation; rate: the ratio between acceptances and rejections. 3. the relative value of gold and silver when both are used as a country's monetary standard. [1630-40; < L ratiō reckoning, proportion]

ra-ti-oc-i-nate (rash'ē os'ə nāv', -ō'sə-, rat'ē-), *v.t., -nat-ed, -nat-ing.* to reason logically. [1635-45; < L ratiōcinātus, ptp. of ratiōcināri to calculate, reason = ratiō (see RATIO) + -cināri to act (in the manner specified), prob. extracted from vaticināri; see VATICINATE] —*ra'ti-oc'i-na'tion, n.* —*ra'ti-oc'i-na'tor, n.*

ra-tion (rash'an, rā'shān), *n.* 1. a fixed allowance of food, esp. for one day. 2. an allotted amount. —*v.t.* 3. to distribute as rations (often fol. by out): to ration out food to an army. 4. to provide with or put on rations. 5. to restrict consumption of: to ration meat. [1540-50; < F < L ratiō; see RATIO]

ra-tion-al (rash'ə nl, rash'n'l), *adj.* 1. based on or agreeable to reason: a rational decision. 2. exercising reason: a rational negotiator. 3. sane; lucid: The patient seems rational. 4. Math. a. capable of being expressed exactly by a ratio of two integers. b. (of a function) capable of being expressed exactly by a ratio of two polynomials. —*n.* 5. RATIONAL NUMBER. [1350-1400; ME racional < L ratiōnālis = ratiōn- (s. of ratiō) REASON + -ālis -al'] —*ra'tion-al-ly, adv.* —*ra'tion-al-ness, n.*

ra-tion-ale (rash'ə nal'), *n.* 1. the fundamental reason or reasons serving to account for something. 2. a statement of reasons or principles. [1650-60; < L neut. of ratiōnālis RATIONAL]

ra-tion-al-ism (rash'ə nl iz'am), *n.* 1. the principle or habit of accepting reason as the supreme authority in matters of opinion, belief, or conduct. 2. a. a philosophic doctrine that reason alone is a source of knowledge and is independent of experience. b. a doctrine that all knowledge is expressible in self-evident propositions or their consequences. 3. a doctrine that human reason, unaided by divine revela-

tion, is an adequate or the sole guide to all attainable religious truth. [1790-1800] —*ra'tion-al-ist, n.*

ra-tion-al-i-ty (rash'ə nal'i tē), *n., pl. -ties.* 1. the state or quality of being rational. 2. the possession or exercise of reason. 3. agreeableness to reason. 4. a reasonable view, practice, etc. [1560-70; < LL ratiōnālītās reasonableness. See RATIONAL, -ITY]

ra-tion-al-ize (rash'ə nl iz', rash'n'l-), *v., -ized, -iz-ing.* —*v.t.* 1. to ascribe (one's actions) to causes that seem reasonable but do not really be to reason. 2. to eliminate radicals from (an equation or an expression): to rationalize the denominator of a fraction. —*v.i.* 4. to invent plausible explanations for actions that are actually based on less acceptable causes. 5. to employ reason. [1810-20] —*ra'tion-al-ize'tion, n.* —*ra'tion-al-iz'er, n.*

ra'tional num'ber, *n.* a number that can be expressed exactly by a ratio of two integers. [1900-05]

rat-ite (rat'it), *adj.* 1. having a flat, unkeeled sternum, as an ostrich, cassowary, emu, or moa. —*n.* 2. a bird having a ratite sternum. [1875-80; < L rat(is) raft + -ite]

rat-line or rat-lin (rat'lin), *n.* any of the small ropes or lines that cross the shrouds of a ship horizontally and serve as steps for going aloft. [1475-85; earlier ratling, radelyng, of obscure orig.]

ra-toon (ra tōon'), *n.* 1. a sprout or shoot from the root of a plant, esp. a sugarcane, after it has been cropped. —*v.t.* 2. to put forth or cause to put forth ratoons. [1625-35; < Sp retoño to sprout, der. of retoñar to sprout again in the fall]

rat' race/, *n.* an exhausting and usu. competitive routine activity.

rats-bane (rats'bān'), *n.* 1. rat poison. 2. the trioxide of arsenic.

rat' snake/, *n.* any of several harmless New and Old World snakes, of the genus *Elaphe*, that feed chiefly on small mammals and birds. Also called chicken snake. [1855-60]

rat's/ nest/, *n.* MARE'S NEST (def. 2).

rat'-tail/ cac'tus, *n.* a cactus, *Aporocactus flagelliformis*, of Mexico, having slim cylindrical stems that are easily trained into strange designs, and crimson flowers. [1895-1900]

rat-tan (ra tan', rā-), *n.* 1. Also called rattan' palm/. any of various climbing palms of the genus *Calamus* or allied genera. 2. the tough stems of such palms, used for wickerwork, canes, etc. 3. a stick or switch of rattan. [1650-60; by uncert. mediation < Malay rotan, alleged to be a der. of rot scrape off, with -an nominalizing suffix]

rat-teen (ra tēn'), *n.* Obs. a heavy, napped woolen fabric. [1675-65; < F ratine, ptp. of rattiner to make a nap on cloth]

rat-ter (rat'ər), *n.* a rat-catching animal. [1825-35]

rat-tle (rat'l), *v., -tled, -tling, n.* —*v.t.* 1. to make a rapid succession of short, sharp sounds: The doors rattled in the storm. 2. to move noisily: The car rattled along the back roads. 3. to chatter: rattling out about his ailments. —*v.t.* 4. to cause to make a rattling noise: to rattle a doorknob. 5. to impel with a rattling noise: The wind rattled the metal car across the roadway. 6. to utter or perform in a rapid or lively manner (usu. with off). 7. to disconcert; confuse. 8. Hunting. to stir up (a cover). —*n.* 9. a rapid succession of short, sharp sounds. 10. a contrivance that makes a rattling sound, esp. a baby's toy filled with small pellets that rattle when shaken. 11. the series of horny, interlocking hollow rings at the end of a rattlesnake's tail, with which it produces a rattling sound. 12. a rattling sound in the throat, as a death rattle. [1250-1300; ME ratelen (v.), ratele (n.)]

rat-tle-brain (rat'l brān'), *n.* a silly or easily distracted person. [1700-10] —*rat'tle-brained/*, *adj.*

rat-tler (rat'lər), *n.* 1. a rattlesnake. 2. one that rattles. [1400-50]

rat-tle-snake (rat'l snāk'), *n.* any of several New World pit vipers of the genera *Crotalus* and *Sistrurus*, having a rattle at the end of the tail. [1620-30, Amer.]

timber rattlesnake, *Crotalus horridus*, length 3 1/2 to 6 ft. (1 to 1.8 m)



rat'tlesnake root/, *n.* any of certain composite plants of the genus *Prenanthes*, whose roots or tubers have been regarded as a remedy for snake bites, as *P. serpentaria* or *P. alba*. [1675-85]

rat-tle-trap (rat'l trap'), *n.* a shaly object, as a rickety vehicle.

rat-ting (rat'ing), *adj.* 1. brisk: a rattling pace. 2. splendid; fine. —*adv.* 3. very: a rattling good time. [1350-1400] —*rat'ting-ly, adv.*

rat-ty (rat'tē), *adj.* tending to rattle; making a rattle. [1880-85]

rat-trap (rat'trap'), *n.* 1. a device for catching rats. 2. a run-down, filthy, or dilapidated place. 3. a daunting situation. [1425-75]

rat-ty (rat'tē), *adj., -tied, -ti-est.* 1. full of rats. 2. of or characteristic of a rat. 3. wretched; shabby. 4. irritable; angry. [1860-65]

rau-cous (rō'kəs), *adj.* 1. harsh; strident: raucous laughter. 2. rowdy; disorderly: a raucous party. [1760-70; < L raucus hoarse, harsh, rough; see -ous] —*rau-cous-ly, adv.* —*rau-cous-ness, n.*

raunch (rōnch, rānch), *n.* 1. smuttiness; vulgarity. —*adj.* 2. using or