

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

QUALTRICS, LLC,
Petitioner,

v.

OPINIONLAB, INC.,
Patent Owner.

Case IPR2014-00406
Patent 7,085,820 B1

Before RAMA G. ELLURU, JEREMY M. PLENZLER,
GEORGIANNA W. BRADEN, and CARL M. DEFRANCO, *Administrative
Patent Judges.*

PLENZLER, *Administrative Patent Judge.*

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

I. INTRODUCTION

A. Background

Qualtrics, LLC (“Petitioner”) filed a Petition to institute an *inter partes* review of claims 1–8, 11, 15, 18, 20, 25–32, 35, 39, and 42 of U.S. Patent No. 7,085,820 B1 (Ex. 1001, “the ’820 patent”). Paper 6 (“Pet.”). Petitioner submitted an expert declaration from John Chisholm in support of its Petition. Ex. 1005 (“Chisholm Declaration”). OpinionLab, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 9 (“Prelim. Resp.”). In our Decision on Institution, we instituted trial for claims 1–8, 11, 15, 18, 20, 25–32, 35, 39, and 42 as unpatentable, pursuant to 35 U.S.C. § 103 over the combination of CustomerSat¹ and Medinets². Paper 10 (“Dec.”).

During trial, Patent Owner filed a Patent Owner Response (Paper 20, “PO Resp.”), which was supported by an expert declaration from Michael Shamos, Ph.D. (Ex. 2002, “Shamos Declaration”). Petitioner filed a Reply to the Patent Owner Response. Paper 32 (“Pet. Reply”). An oral hearing was held on April 22, 2015. A transcript of the hearing has been entered into the record. Paper 43 (“Tr.”).

We have jurisdiction under 35 U.S.C. § 6(c). This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a).

¹ Internet Archive Wayback Machine, <https://web.archive.org/web/19980526190826/http://www.customersat.com/> (May 26, 1998) (Ex. 1003, “CustomerSat”).

² David Medinets, Perl5 by Example (1996) (Ex. 1004, “Medinets”).

We determine that Petitioner has shown, by a preponderance of the evidence, that claims 1–8, 11, 15, 18, 20, 25–32, 35, 39, and 42 of the '820 patent are unpatentable.

B. Related Proceedings

Petitioner and Patent Owner indicate that the '820 patent is the subject of the following co-pending federal district court cases: *OpinionLab, Inc. v. Qualtrics Labs, Inc.*, No. 1:13-CV-01574 (N.D. Ill.); and *OpinionLab, Inc. v. iPerceptions Inc.*, No. 1:12-CV-05662 (N.D. Ill.). Pet. 2; Paper 8, 1.

In addition to this Petition, Petitioner has filed petitions challenging the patentability of claims of Patent Owner's U.S. Patent Nos. 6,421,724 (IPR2014-00314), 6,606,581 (IPR2014-00356), 8,041,805 (IPR2014-00366), 7,370,285 (IPR2014-00420), and 8,024,668 (IPR2014-00421), which are directed towards similar subject matter.

C. The '820 Patent

The '820 patent is titled "System and Method for Reporting to a Website Owner User Reactions to Particular Web Pages of a Website" and is directed to report generation for analysis of user feedback related to particular web pages of a website. Ex. 1001, 1:12–15. Figure 3 of the '820 patent is reproduced below.

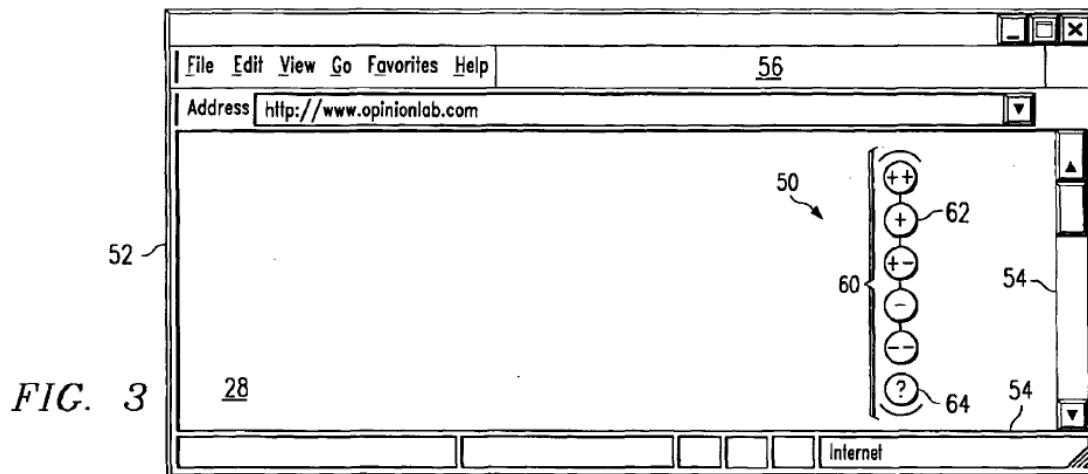


Figure 3 illustrates an exemplary web page, “web page 28,” that includes a multi-level subjective rating scale for user submission of a general reaction to the web page. In the example illustrated in Figure 3, rating scale 60 includes five rating levels, ranging from very positive (++) to very negative (--). *Id.* at 12:31–41.

After the user selects one of rating levels 62, the user reaction information is collected and stored in a database. *Id.* at 12:46–51. The ’820 patent explains that the stored information concerning web page 28 may be provided to the website owner in the form of one or more reports that allows the owner to assess the success of web page 28 from the perspective of the user community. *Id.* at 13:35–38. Figure 8A of the ’820 patent is reproduced below.

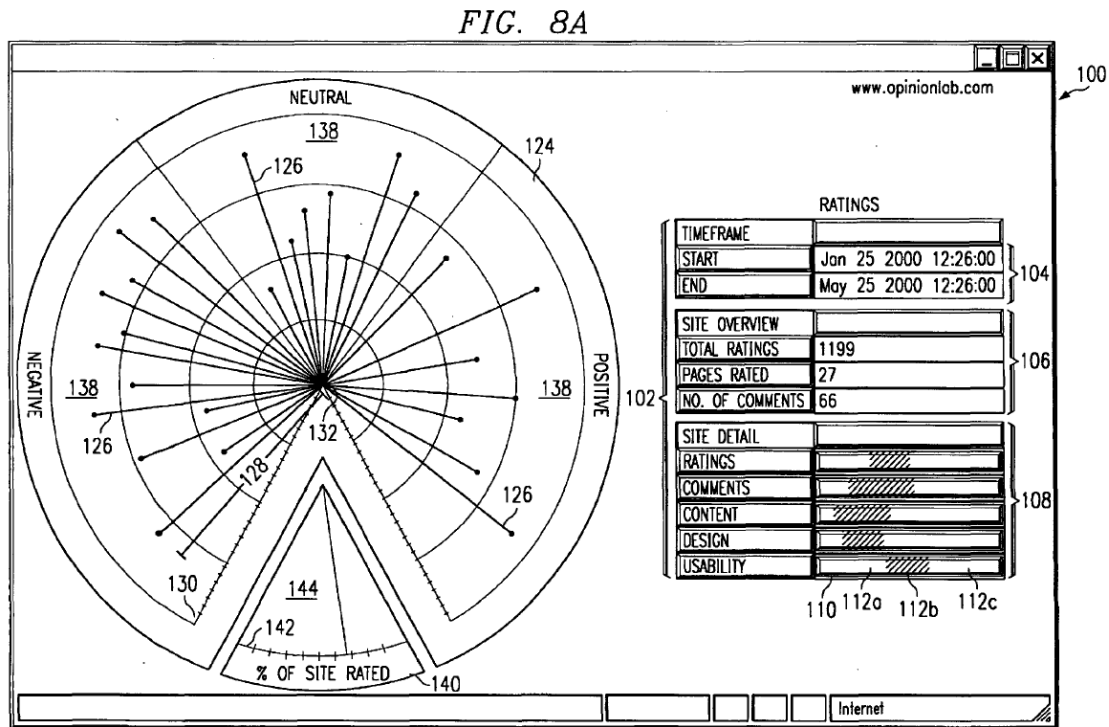


Figure 8A is an example report, “report 100,” illustrating overall website ratings, as well as ratings for individual web pages of the website.

Table 102 from report 100 is directed to overall ratings of the website and includes timeframe 104 (the time during which user reactions were collected); website overview 106 (including the total number of ratings received, number of pages rated, and number of comments); and site detail 108 (a summary of evaluated elements of the website). *Id.* at 17:12–62.

Chart 124 from report 100 is directed to relative ratings among the various web pages of the website, and includes one line 126 for each web page 28 of the website. *Id.* at 17:63–65. The ’820 patent explains that lengths 128 of lines 126 vary based on the total number of reviews received for corresponding web page 28. *Id.* at 17:66–18:1. Chart 124 includes regions for negative, neutral, and positive ratings, with the location of lines

126 corresponding to the rating for each particular webpage 28. *Id.* at 18:26–45.

Claims 1 and 25 are independent, with claims 2–8, 11, 15, 18, and 20 depending from claim 1 and claims 26–32, 35, 39, and 42 depending from claim 25. Claim 1 illustrates the claimed subject matter and is reproduced below:

1. A system for reporting to a website owner page-specific subjective user reactions concerning each of a plurality of particular web pages of a website, comprising:

a database containing page-specific subjective user reaction information for each of the plurality of particular web pages of the website, the page-specific subjective user reaction information for a particular web page reflecting page-specific subjective user reactions to the particular web page as a whole received from users that have accessed the particular web page; and

a reporting module coupled to the database and operable to generate one or more reports using the page-specific subjective user reaction information for communication to the website owner, each report reflecting page-specific subjective user reactions across the plurality of particular web pages of the website and allowing the website owner to identify one or more particular web pages of the website for which the page-specific subjective user reactions are notable relative to page-specific subjective user reactions for other particular web pages of the website.

Id. at 25:39–59.

D. Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable interpretation in light of the specification in which they appear and the understanding of others skilled in the relevant art.

37 C.F.R. § 42.100(b). Applying that standard, we interpret the claim terms of the '820 patent according to their ordinary and customary meaning in the context of the patent's written description. *See In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007).

Petitioner proposes a construction of several claim terms of the '820 patent (Pet. 6–12), and Patent Owner does not contend that any terms should be construed (PO Resp. 5–6 n. 4). We determine that the claim terms do not require express construction in order to conduct properly our analysis of the prior art.

II. ANALYSIS

We have reviewed the Petition, the Patent Owner Response, and Petitioner's Reply, as well as the relevant evidence discussed in those papers. We are persuaded that Petitioner has established, by a preponderance of the evidence, that claims 1–8, 11, 15, 18, 20, 25–32, 35, 39, and 42 would have been obvious over the combination of CustomerSat and Medinets.

A. Overview of CustomerSat

CustomerSat includes excerpts from a website showing consumer surveys from website users. Ex. 1003, 3. CustomerSat describes an invitation system where website visitors are selected to participate in a survey reviewing the website, and explains that feedback of different

portions of the website can be gathered by including surveys on multiple pages of the website. *Id.* at 7. User responses are handled electronically and stored to a database. *Id.* at 16.

With respect to the subject matter of the surveys, CustomerSat explains that “[t]he most important question is one which asks for the customer’s overall assessment” and “most commonly has five rating choices, but anywhere from three to eleven are possible.” *Id.* at 20. Examples of the rating choices are “Excellent, Very Good, Good, Fair, Poor; and Very Satisfied, Satisfied, Neutral/No opinion/Neither Satisfied nor Dissatisfied, Dissatisfied, Very Dissatisfied.” *Id.*

CustomerSat explains that survey “[r]esults may be analyzed by frequency distribution of responses for each question, by respondent subgroup or segment; by cross-tabulation; by difference between stated importance and rated performance (gap analysis); and in many other ways.” *Id.* at 18 (emphasis omitted). Frequency distributions are described as being used to “examine the distribution of the full set of responses for each closed-end question among the question’s choices.” *Id.* at 25. CustomerSat describes segmentation as examining results for subsets of respondents, such as based on user demographics, and cross-tabs as “provid[ing] a systematic tabulation and display of results by respondent segment for all choices of all questions of interest.” *Id.*

B. Overview of Medinets

Medinets is a manual for the Perl programming language. Ex. 1004, 1.³ Medinets is directed to using Perl for common gateway interface (CGI)

³ The cited page numbers for this exhibit are located at the bottom right of the exhibit.

programming, which is described as “the standard programming interface between Web servers and external programs.” *Id.* at 51. Medinets further explains that “Perl is the de facto standard for CGI programming.” *Id.* at 52.

Medinets discusses general report generation features in Perl and provides an example report for displaying a CD collection including “the CD album’s title, the artist’s name, and the album’s price.” *Id.* at 29. Medinets provides an additional example that converts a report into a web page. *Id.* at 57. The example report displays statistics regarding specific documents accessed, such as documents that start with the letter “s.” *Id.* at 57-60.

With respect to user feedback, Medinets notes that “[o]ne of the hallmarks of a professional Web site . . . is that every page has . . . a way to provide feedback,” and provides an example web page comment form, shown in Figure 21.3, reproduced below. *Id.* at 60–64.

Figure 21.3

A sample user
feedback form.

The image is a screenshot of a Netscape browser window titled "Netscape - [Web Page Comment Form]". The address bar shows "http://localhost/cgi-bin/mail.com.pl". The form itself is titled "Web Page Comment Form" and contains the following fields and options:

- To:** medined@planet.net
- Subject:** Eclectic Consulting Home Page
- Your email address:** A text input field.
- How urgently do you need a reply:** Three radio button options: ☒ Just FYI, ☐ Please Reply, and ☐ Reply Urgently.
- What is the nature of your feedback:** A dropdown menu with "Found Typo" and "Bug Report" as visible options.
- Please enter your comments:** A large text area for comments.
- Submit:** A button labeled "Submit Your Comments".

Figure 21.3 is an illustration of a web page comment form and includes the recipient’s e-mail address, a subject line, the sender’s e-mail address, an

indication of the sender's urgency for receiving a reply (e.g., just FYI, please reply, reply urgently), nature of the feedback (typo, bug, etc.), and a comment field.

Medinets explains that the system sends information from the feedback form to the recipient's e-mail address. *Id.* at 64. Medinets, however, specifies that the recipient will "need to perform further processing in order to make use of the information." *Id.* Medinets further explains that the website owner "might want to have the feedback submit button call a second CGI script that stores the feedback information into a database" which "will make it much easier for you to track the comments and see which Web pages generate the most feedback." *Id.*

C. Obviousness over CustomerSat and Medinets

1. Claim 1

As seen above, claim 1 is directed to "[a] system for reporting to a website owner page-specific subjective user reactions concerning each of a plurality of particular web pages of a website" including "a database" and "a reporting module." The claim requires that the database contain "page-specific user reactions" and the reporting module is "operable to generate one or more reports . . . reflecting page-specific subjective user reactions across the plurality of particular web pages of the website" allowing identification web pages having "notable" user reactions.

Petitioner relies on CustomerSat as teaching a website user feedback system including a database containing subjective user reaction data for a website (Pet. 15–16) and a reporting module that generates reports using the subjective user reaction data to allow identification of notable user reactions relative to a number of variables (*id.* at 20–22). Petitioner cites Medinets as

teaching page-specific user feedback. *Id.* at 34–36, 43. Petitioner contends that it would have been obvious to combine “the *explicit* page-specific disclosure of Medinets, (*supra* Section VII(B)), with the website user feedback system disclosed in CustomerSat, (*supra* Section VII(A)).” *Id.* at 43.

Petitioner reasons, for example, that “it would have been obvious to combine the explicit solicitation of user feedback about a ‘web page’ disclosed in Medinets with the teachings of CustomerSat” because “CustomerSat also recommends collecting feedback on a page-by-page basis: ‘Feedback on different sections of your Web site can be gathered by using Pop!Up on multiple pages of the site.’” *Id.* at 42 (quoting Ex. 1003, 7). Petitioner further contends that the proposed combination would have been obvious because the references each address the same problem in the same manner, including solicitation of feedback from users of a web page through HTML forms, Common Gateway Interface (CGI) scripts, and databases. *Id.* at 41–42. Petitioner contends that because the Perl programming language, which is the subject of Medinets, “was recognized as the ‘de facto standard for CGI programming,’ (Medinets, at 408 (52)), a [skilled artisan] would have had reason to consult Medinets to understand how to implement surveys on a page-by-page basis using (among other things) CGI scripts.” *Id.* at 42 (quoting Ex. 1004, 52).

Patent Owner does not dispute, and we agree, that CustomerSat teaches the database and reporting module features for website-level feedback noted above, and that Medinets teaches eliciting page-specific user feedback. *See, e.g.*, Ex. 1003, 18; Ex. 1004, 60. For example, Patent Owner acknowledges that “CustomerSat discloses a data collection system for a

website as a whole” (PO Resp. 8) and “that its survey results can be ‘analyzed’ by such things as ‘frequency distribution of responses for each question, by respondent sub-group or segment; by cross-tabulation; [and] by difference between stated importance and rated performance (gap analysis)’” (*id.* at 10 (quoting Ex. 1003, 18)). Patent Owner also acknowledges that “Medinets suggests an improvement where the identification of the web page from which the comments are sent is automated” and “setting up a script to store the textual feedback in a database.” *Id.* at 12–13.

Patent Owner, however, contends that “[t]here is no disclosure, teaching, or suggestion in CustomerSat of any collection of page-specific comments or ratings across multiple web pages” (*id.* at 15) and Medinets “does not allow a website owner to **compare the substance** of page-specific feedback in those e-mails (such as page-specific ratings or comments) across web pages” (*id.* at 18–19), which is unpersuasive for this challenge. As indicated in our Decision to Institute (Dec. 9–10, 14), and acknowledged by Patent Owner (PO Resp. 15, 18–19), we did not institute trial based on anticipation by either CustomerSat or Medinets. In this challenge, Petitioner does not require CustomerSat or Medinets to individually teach the *page-specific* user reaction reporting required by the claim. Rather, Petitioner relies on the combined teachings of CustomerSat and Medinets. Specifically, Petitioner has proposed modifying CustomerSat such that its user feedback is for specific pages, and that the resulting reporting is segmented by page accordingly. *See* Pet. 43.

In response to Petitioner’s contentions regarding the combination of CustomerSat and Medinets, Patent Owner contends that “Petitioner has provided no explanation of why one of ordinary skill would have had any

need, desire, or reason to track comments related to particular web pages in the context of CustomerSat’s website-wide, high-level, user survey system.” PO Resp. 23–24. We disagree.

As noted above, CustomerSat at least teaches a database including website-level subjective user reaction data and reporting that data segmented by a number of variables. Ex. 1003, 16, 18. Petitioner contends that “to the extent website owners (or POSITA) believed user satisfaction varied by web page, CustomerSat specifically encouraged them to design, deploy and analyze their surveys on a page-by-page basis.” Pet. 42–43 (citing Ex. 1005 ¶¶ 137–138). Indeed, CustomerSat explicitly notes, for example, that “**Feedback** on different sections of your Web site can be gathered by using Pop!Up on multiple pages of the site.” Ex. 1003, 7. CustomerSat also allows a website owner to specify the exact page on which a given survey invitation will appear. *Id.* at 8. Even if CustomerSat does not disclose *explicitly* identifying the survey feedback as being related to any particular page when it is gathered, Petitioner contends that Medinets teaches this feature. *See, e.g.*, Pet. 35 (citing Ex. 1004, 60). We are persuaded that one skilled in the art would have found it obvious to identify the page corresponding to the feedback in CustomerSat.

As Petitioner contends, and Patent Owner does not dispute, both CustomerSat and Medinets implement user feedback systems using Common Gateway Interface (CGI) scripts. *See* Ex. 1003, 7; Ex. 1004, 52. For example, Petitioner notes that “CustomerSat’s Pop!Up page explicitly discloses the use of a CGI script to implement its Pop!Up survey technology” (Pet. 5–6 (citing Ex. 1003, 7)) and that “Perl was recognized as the ‘de facto standard for CGI programming’” (Pet. 41 (quoting Ex. 1004,

52)). Further, as noted by Petitioner at oral hearing (Tr. 38:5–13), when Patent Owner’s expert, Dr. Shamos, was asked whether it would have been obvious to solicit user feedback on a page-specific basis versus an overall website basis, he answered “[p]ossibly” (Ex. 1026, 382:8–16). When asked why it would not have been obvious to use page-specific feedback, Dr. Shamos replied: “I didn’t say it wasn’t.” *Id.* at 402:18–403:4.

Petitioner contends that a person skilled in the art “simply could have plugged this page identifier [taught by Medinets] into the extensive analytical and reporting capabilities disclosed in CustomerSat.” Pet. Reply 7; *see* Ex. 1005 ¶¶ 70–71. With respect to reporting, as noted above, CustomerSat at least teaches cross-tab reporting segmented by a number of variables for a website as a whole. Ex. 1003, 25. When CustomerSat’s feedback system is modified to identify feedback as corresponding to a particular page, we are persuaded that it would have been obvious to generate reports indicating subjective user reactions for one web page that are notable relative to page-specific subjective user reactions for other particular web pages of the website. For example, we are persuaded by Dr. Chisholm’s testimony that one skilled in the art would have found it obvious to create a cross-tab report based on user feedback for individual web pages, such as a cross-tab report showing average user ratings for each page of a website. *See* Ex. 1005 ¶ 208. Specific web pages corresponding to feedback would simply be another variable used in CustomerSat’s reporting.

For these reasons, we are persuaded by Petitioner’s contentions regarding claim 1.

2. Claims 2–8, 11, 15, 18, and 20

Claims 2–8, 11, 15, 18, and 20 depend from claim 1. Patent Owner does not respond to Petitioner’s contentions regarding these claims specifically. We have reviewed the cited portions of CustomerSat and Medinets, and are persuaded by Petitioner’s contentions regarding those claims.

3. Claims 25–32, 35, 39, and 42

Independent claim 25 includes limitations similar to those found in claim 1, and the contentions presented by Petitioner and Patent Owner with respect to claim 25 are similar to those presented for claim 1. *See* Pet. 32–37, 46–60; PO Resp. 14–31. For the reasons discussed above regarding claim 1, we are also persuaded by Petitioner’s contentions regarding claim 25. As for claims 26–32, 35, 39, and 42, which depend from claim 25, we note that Patent Owner does not respond to Petitioner’s contentions regarding those claims specifically. We have reviewed the cited portions of CustomerSat and Medinets, and are persuaded by Petitioner’s contentions regarding those claims.

4. Secondary Considerations

As part of our obviousness analysis, we consider the evidence and arguments submitted by Patent Owner regarding secondary considerations of non-obviousness. *See Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). In particular, Patent Owner argues that commercial success, industry praise, and copying demonstrate that the challenged claims would not have been obvious to a person of ordinary skill in the art. PO Resp. 22–26.

a. Commercial Success

As evidence of commercial success, Patent Owner alleges its “page-specific feedback solution embodying the claimed invention⁴ is utilized by including nearly half of Fortune 50 organizations.” *Id.* at 37. Patent Owner further contends that “this feedback solution, as designated by OpinionLab’s [+] feedback symbol, had already been ‘adopted by hundreds of brands and implemented on more than 6,500 websites worldwide.’” *Id.* at 38. We are not persuaded by Patent Owner’s arguments.

Initially, we note that “[e]vidence of commercial success, or other secondary considerations, is only significant if there is a nexus between the claimed invention and the commercial success.” *Ormco Corp. v. Align Tech., Inc.*, 463 F.3d 1299, 1311–12 (Fed. Cir. 2006). In its summary of the legal standard for secondary considerations, Patent Owner states, generally, that “[a] nexus is presumed[] when a marketed product is coextensive with the asserted claims.” PO Resp. 31 (citing *Teva Pharms. USA, Inc. v. Sandoz, Inc.*, 723 F.3d 1363, 1372 (Fed. Cir. 2013)). Patent Owner, however, offers no persuasive explanation or evidence to support the allegation that its allegedly commercially successful product is *coextensive* with the claimed invention. In fact, Patent Owner’s reference to the patent markings on its product appears to be evidence that the product is not coextensive with the claimed invention, as its product lists at least fourteen patents, in addition to the ’820 patent, that apply to its product. *See id.* at 32–33.

⁴ Patent Owner identifies “the claimed invention” in its discussion of secondary considerations as independent claims 1 and 25. Pet. 33 n.9.

In its specific discussion of “nexus,” Patent Owner contends that “[a] nexus between the OpinionLab product and the challenged claims is easy to show,” but simply alleges that its product includes the limitations of claim 1 and references the patent markings discussed above. *Id.* at 32. To show how commercial success supports non-obviousness, however, Patent Owner must prove that the sales were a direct result of the unique characteristics of the invention, and not a result of economic and commercial factors unrelated to the quality of the patented subject matter, which Patent Owner has not even attempted to show. *See In re Applied Materials, Inc.*, 692 F.3d 1289, 1299–1300 (Fed. Cir. 2012). Even if Patent Owner’s product includes the limitations of claim 1, there is no explanation as to how these limitations are related to the alleged commercial success, other than summarily alleging its product satisfies the limitations. *See* PO Resp. 32–37. Patent Owner provides examples of the database and reporting module features of its product and discusses use of various features by its customers, but does not attempt to tie any of these features to the alleged commercial success. Patent Owner’s specific discussion of “commercial success” does not cure this deficiency. *See id.* at 37–38 (alleging that “OpinionLab’s page-specific user feedback solution embodying the claimed invention is utilized by an extensive list of customers” and that “OpinionLab’s customer list has continued to grow” without tying this alleged commercial success to the unique characteristics of the claims).

Accordingly, we are not persuaded by Patent Owner’s allegations of commercial success.

b. Industry Praise

Patent Owner contends, generally, that it “has received widespread industry recognition and praise for the claimed technology as demonstrated in the many articles written on OpinionLab’s page-specific user feedback solution.” *Id.* at 38. As with commercial success, however, evidence of industry praise is only relevant when it is directed to the merits of the invention claimed. *See Ormco*, 463 F.3d at 1311. Patent Owner identifies various documents discussing features of its product. *See* PO Resp. 38–39. For example, Patent Owner quotes the discussion from Exhibit 2019 of “the iconic image of a rotating plus/minus sign,” the discussion from Exhibit 2020 stating “OpinionLab, the pioneer and leader in voice-of-customer (VOC) listening technologies,” and the discussion from Exhibit 2017 regarding “OpinionLab’s [+] feedback symbol.” *Id.* Notably, these materials quoted in the Patent Owner Response praise OpinionLab’s product in general. Patent Owner does not identify any praise due to specific features that are present in the claims. Patent Owner has not established a sufficient nexus with the claimed invention.

Accordingly, we are not persuaded by Patent Owner’s allegations of industry praise.

c. Copying

Patent Owner contends that “there is strong evidence of copying by others of OpinionLab’s page-specific user feedback solution covered by the ’820 Patent claims.” *Id.* at 39. Patent Owner notes that “[t]his copying is generally shown for *at least* the reasons identified in Exhibit 1008 to the

Petition, which includes OpinionLab’s Infringement Contentions.”⁵ *Id.* Patent Owner notes that “[t]he Infringement Contentions of Exhibit 1008 illustrate in detail how each element of the challenged claims are present in Petitioner’s system.” *Id.* at 40. Patent Owner’s arguments regarding copying are not persuasive.

“[C]opying requires evidence of efforts to replicate a specific product.” *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010). Patent Owner does not provide any analysis or explanation of how other companies, such as Petitioner, allegedly copied its product that allegedly includes the features of the claimed invention. Rather, Patent Owner simply shows similarities between its products and those offered by Petitioner. *See* Pet. 40–41.

Accordingly, we are not persuaded by Patent Owner’s allegations of copying.

5. Conclusion

We have considered the entirety of the evidence, including the evidence of obviousness and the evidence of secondary considerations submitted by Patent Owner. For the reasons set forth above, Petitioner has established, based on a preponderance of the evidence, that claims 1–8, 11, 15, 18, 20, 25–32, 35, 39, and 42 would have been obvious over the combination of CustomerSat and Medinets.

⁵ To the extent Patent Owner relies on arguments in Exhibit 1008 not discussed in the Patent Owner response, we decline to address those arguments. *See* 37 C.F.R. § 42.6(a)(3) (“Arguments must not be incorporated by reference from one document into another document.”).

D. Petitioner's Motion to Exclude

Petitioner filed a Motion to Exclude Evidence seeking to exclude portions of the Shamos Declaration and portions of the deposition testimony of Dr. Shamos (Ex. 1026). Paper 36 (“Mot.”). Even without excluding this evidence, we have determined that Petitioner has established, based on a preponderance of the evidence, the unpatentability of claims 1–8, 11, 15, 18, 20, 25–32, 35, 39, and 42 of the ’820 patent. Thus, Petitioner’s Motion is moot for this reason. Further, Petitioner’s arguments on these items go to the weight to be accorded to the evidence. Decisions regarding the appropriate weight to accord to evidence are within our purview.

For these reasons, we *deny* Petitioner’s motion.

III. SUMMARY

Petitioner has demonstrated, by a preponderance of the evidence that claims 1–8, 11, 15, 18, 20, 25–32, 35, 39, and 42 of the ’820 patent are unpatentable.

IV. ORDER

For the reasons given, it is

ORDERED that Claims 1–8, 11, 15, 18, 20, 25–32, 35, 39, and 42 are unpatentable as obvious over CustomerSat and Medinets;

FURTHER ORDERED that Petitioner’s Motion to Exclude is *denied*; and

FURTHER ORDERED that parties to the proceeding seeking judicial review of this Final Written Decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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