

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CHEGG INC., MATCH GROUP, LLC, AND RPX CORPORATION,
Petitioner,

v.

NETSOC, LLC,
Patent Owner.

IPR2019-01165
Patent 9,978,107 B2

Before KALYAN K. DESHPANDE, SHEILA F. McSHANE, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

McSHANE, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

We have jurisdiction to hear this *inter partes* review under 35 U.S.C. § 6. This Final Written Decision is issued pursuant to 35 U.S.C. § 318(a). For the reasons discussed herein, we determine that Petitioner has shown, by a preponderance of the evidence, that claims 1–11 of U.S. Patent No. 9,978,107 B2 (Ex. 1001, “the ’107 patent”) are unpatentable.

A. Procedural Background

Chegg, Inc., Match Group, LLC, and RPX Corporation (collectively, “Petitioner”)¹ filed a Petition requesting *inter partes* review of claims 1–11 (“the challenged claims”) of the ’107 patent pursuant to 35 U.S.C. § 312, along with the supporting Declaration of Benjamin Goldberg, Ph.D. Paper 4 (“Pet.”); Ex. 1004. NETSOC, LLC (“Patent Owner”) filed a Preliminary Response to the Petition. Paper 12 (“Prelim. Resp.”). Pursuant to 35 U.S.C. § 314(a), on December 5, 2019, we instituted *inter partes* review on the grounds of:

Claims Challenged	35 U.S.C. §	References
1–3, 5–8, 10, 11	103(a) ²	Beaudoin ³ , Shubov ⁴

¹ Petitioner identifies IAC/InterActiveCorp, Humor Rainbow, Inc., PlentyOfFish Media, ULC, and Match Group, Inc. as other real parties-in-interest. Pet. 1.

² The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. § 103, and was effective March 16, 2013. Because the ’107 patent’s effective filing date predates the AIA’s amendments to § 103, this decision refers to the pre-AIA version of § 103.

³ US 7,096,193 B1, issued August 22, 2006, claiming priority to Provisional Application No. 60/135,522, filed on May 21, 1999. Ex. 1005.

⁴ US Pub. No. 2002/0038233 A1, published March 28, 2002. Ex. 1006.

4, 9	103(a)	Beaudoin, Shubov, Herz ⁵
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Pet. 5; Paper 14 (“Inst. Dec.” or “Dec.”).

Patent Owner filed a Patent Owner Response (“PO Resp.”). Paper 20. Petitioner filed a Reply (“Pet. Reply”) to the Patent Owner Response. Paper 22. Patent Owner filed a Sur-Reply (“PO Sur-Reply”). Paper 24.

An oral hearing was held on September 9, 2020. A transcript of the hearing is included in the record. Paper 31 (“Tr.”).

B. Related Proceedings

The parties identify these proceedings involving the ’107 patent: *NetSoc, LLC v. Match Group, Inc.*, 2:18-cv-00217 (E.D. Tex.); *NetSoc, LLC v. Match Group, LLC et al.*, 3:18-cv-01809 (N.D. Tex.); *NetSoc, LLC v. Chegg Inc.*, 1:18-cv-10262 (S.D.N.Y.); *NetSoc, LLC v. LinkedIn Corp.*, 1:18-cv-12215 (S.D.N.Y.); *NetSoc, LLC v. Quora, Inc.*, 1:18-cv-12250 (S.D.N.Y.); and *NetSoc, LLC v. Yahoo! Inc.*, 1:18-cv-12267 (S.D.N.Y.). Pet. 1–3; Paper 7, 2. The parties indicate that *NetSoc, LLC v. Teladoc Health, Inc.*, 2:18-cv-00542 (E.D. Tex.) involves U.S. Patent No. 7,565,344 (“the ’344 Patent”), which is related to the ’107 patent. Pet. 2; Paper 7, 2.

Petitioner and Patent Owner also identify another petition, IPR2019-01171 (“the -01171 proceeding”), challenging the patentability of claims 1–11 of the ’107 patent. Pet. 1; Paper 7, 3. The final written decision in the -01171 proceeding is being issued concurrently with this decision.

C. The ’107 Patent

The ’107 patent is entitled “Method and System for Establishing and Using a Social Network to Facilitate People in Life Issues” and issued on

⁵ US Pub. No. 2004/0019579 A1, published January 29, 2004. Ex. 1007.

May 22, 2018 from an application filed on December 18, 2015. Ex. 1001, codes (22), (45), (54). The '107 patent claims priority as a continuation or continuation-in-part of several applications, and claims priority to provisional application No. 60/499,543, filed on September 3, 2003. *Id.*, codes (60), (63).

The '107 patent is directed to “applications and implementations of a social network to facilitate individuals to resolve various life issues.” Ex. 1001, code (57). Under its embodiments, a social network may be established and used to assist individuals with issues to be resolved at a particular geographic location, including maintaining a list of participants who can assist in resolving issues at that location. *Id.* at 2:17–23. Users may submit inquiries to the service, and the service may select which participants are best suited to respond to inquiries. *Id.* at 3:39–41.

The invention of the '107 patent includes several embodiments, such as those depicted in Figures 3 and 4, reproduced below.

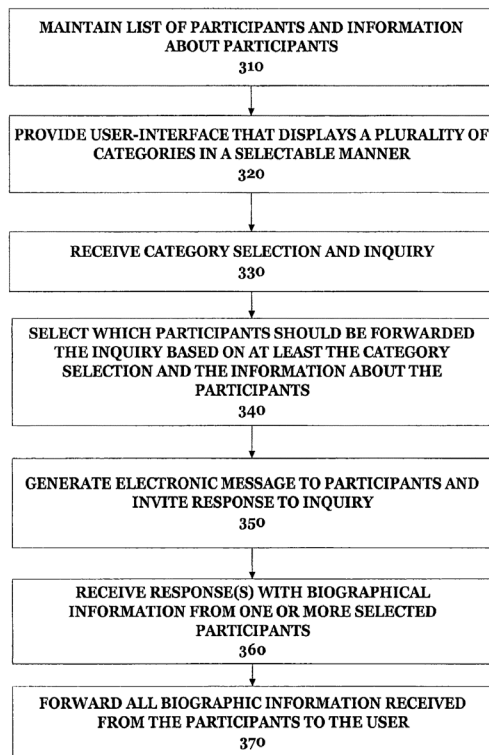


FIG. 3

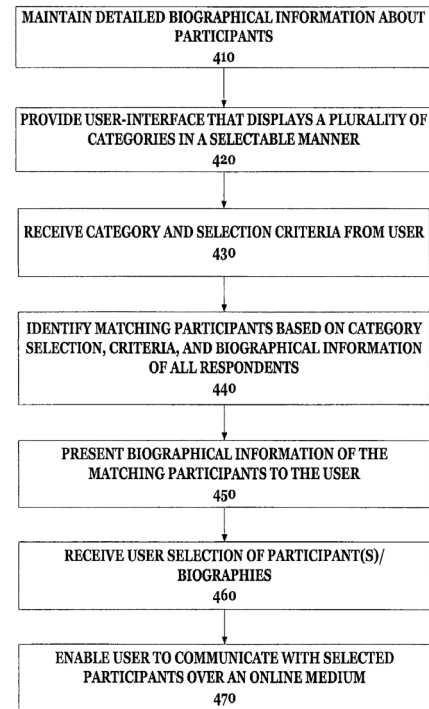


FIG. 4

Figures 3 and 4, above, are implementations of the invention, such as those depicted in Figures 1 and 2. Ex. 1001, 1:50–55, 6:46–50, 7:63–82. The embodiment shown in Figure 3 may be implemented, in part, in accordance with the example below.

A person may need to relocate to Chicago. The person may be in need of a special heart medication. What the person may need to know is how much the medication will cost in Chicago, and how readily available the new medication is. Under an embodiment such as described in FIGS. 1–3, the user may access service 110, select “medical category” through UI 212, enter an inquiry “I need to check the availability of my heart medicine in Chicago, and its price . . .” and then send the message. The service 110 will receive the message, locate the geographic information (Chicago) and make a selection of who should receive the information. In one example, the service 110

may send the inquiry to the Chamber of Commerce in Chicago. In another example, the service 110 may send the inquiry to one or more identified doctors or cardiologists.

Ex. 1001, 7:44–58 (bolding omitted). Under the embodiment depicted in Figure 4, as part of step 410, biographical information about participants is maintained, step 420 provides for a user-interface that displays a plurality of categories that may be selected, and at step 430, category and selection criteria are received from the user. *Id.* at 8:3–5, 21–23, 26–27. At step 440, participants are identified based on the category and selection criteria; in step 450, the matching participants are presented to the user; at step 460, the user is presented with biographies of the user-selected participants; and at step 470, the user is enabled to communicate with the selected participants. *Id.* at 8:36–52.

Figure 5A, reproduced below, presents another embodiment of a method of implementation for issue resolution. Ex. 1001, 9:13–17.

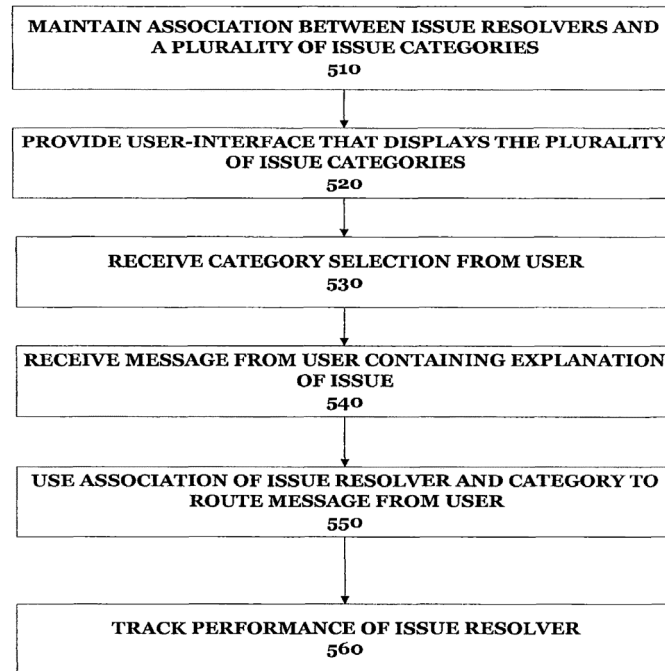


FIG. 5A

As shown in Figure 5A, above, an association is formed between issue resolvers and categories (step 510); a user-interface is displayed with the categories (step 520); a user selects a category (step 530); a message is received from the user containing an explanation of the issue that falls within the category (step 540); the user's message is routed to a participant by the service that may use a database to determine the association between the category and assigned participant (step 550); and the performance of the particular issue resolver is tracked (step 560). Ex. 1001, 9:21–59. As part of step 550, the user may submit an email, but the recipient of the email is not known to the user. *Id.* at 9:55–57.

Challenged claims 1 and 6 of the '107 patent are independent. Claim 1, an illustrative independent claim of the '107 patent, is reproduced below, with sub-paragraphing added to the limitations for reference purposes.

1. A method for establishing a social network, the method being implemented on a network computer system and comprising:

[a] maintaining a list comprising a plurality of participants, wherein each participant in the plurality of participants corresponds to one or more individuals, wherein the list also includes information associated with at least one of each participant or the one or more individuals that correspond to each participant;

[b] presenting a user with an interface from which the user makes a selection of a category from a plurality of categories;

[c] in response to receiving the selection of the category by the user, displaying, for the user, some of the information associated with each of multiple participants from the plurality of participants which match the selection of the category by the user, while shielding contact information associated with each of the multiple participants;

[d] wherein displaying some of the information associated with each of the multiple participants is based at least in part on a rating of individual participants in the plurality of participants;

[e] enabling the user to send an inquiry message to one or more of the multiple participants, while shielding the contact information from the user, the contact information including any messaging identifier that is associated with each of the one or more participants;

[f] tracking a response time of each of the one or more participants who received the message from the user; and

[g] updating the rating associated with each of the one or more participants based at least in part on the tracked response time.

Ex. 1001, 17:15–48.

II. ANALYSIS

A. The Parties' Arguments

In our Decision on Institution, we concluded that the arguments and evidence advanced by Petitioner demonstrated a reasonable likelihood that at least one claim of the '107 patent would have been obvious. Inst. Dec. 19–40. Here, we determine whether Petitioner has established by a preponderance of the evidence that the challenged claims are obvious. 35 U.S.C. § 316(e). We previously instructed Patent Owner that “any arguments for patentability not raised in the response may be deemed waived.” Paper 15, 7; *see also* 37 C.F.R. § 42.23(a) (“Any material fact not specifically denied may be considered admitted.”); *In re Nuvasive, Inc.*, 842 F.3d 1376, 1379–82 (Fed. Cir. 2016) (holding Patent Owner waived an argument addressed in the Preliminary Response by not raising the same argument in the Patent Owner Response). Additionally, the Board’s Trial Practice Guide states that the Patent Owner Response “should identify all the involved claims that are believed to be patentable and state the basis for that belief.” Consolidated Trial Practice Guide (“TPG”), 66 (November, 2019).⁶

We have reviewed arguments and evidence advanced by Petitioner to support its unpatentability contentions, and Patent Owner chose not to address certain limitations in its Patent Owner Response. We determine that Petitioner has demonstrated by a preponderance of the evidence that claims 1–11 of the '107 patent are obvious.

⁶ Available at <https://go.usa.gov/xpvPF>.

B. Level of Ordinary Skill in the Art

Petitioner asserts that a person of ordinary skill in the art would have had a “Bachelor of Science degree in computer science or a similar technical field together with 2 years of educational practicum or work experience in the field of software development (including programming for client-server systems, databases and networks), or related areas.” Pet. 8. In support, Dr. Goldberg testifies that a person of skill would have been familiar with the technologies, such as user interfaces, databases, networks, etc., “underlying existing social networks, including participant matching systems,” and would have understood how to implement such systems. Ex. 1004 ¶ 11.

Patent Owner asserts that “[a] person of ordinary skill in the art is defined as having a bachelor’s degree in Computer Science, or highly related field, and would have had at least four years’ experience in computer networking, especially in social networking systems.” PO Resp. 3–4. Patent Owner further contends that, in the alternative, that “a non-degreed practitioner with eight years of experience in developing social networking systems would also be considered one of ordinary skill in the art.” *Id.* at 4.

We have reviewed the relevant technology and claims of the ’107 patent, as well as the technology of the asserted prior art, and we adopt Petitioner’s proposed skill level because it is commensurate with the relevant technology.

Patent Owner’s proposed construction is similar to that proposed by Petitioner to the extent that it requires the person of ordinary skill to have familiarity with social networking systems. However, Petitioner’s proposed years of experience and years of familiarity with social networking systems

is less. This, however, does not affect the determinations made here. *See Tokai Corp. v. Easton Enters., Inc.*, 632 F.3d 1358, 1369 (Fed. Cir. 2011) (If prior art renders claims obvious to a person of ordinary skill with lesser qualifications, then a person with more qualifications would also find obviousness). Additionally, in the Decision on Institution, we also adopted Petitioner’s proposed qualifications. *See* Inst. Dec. 16–17. In the Decision, we requested that the parties address what impact, if any, the different levels of proposed qualifications had on the obviousness analysis. *Id.* at 17 n. 6. Neither Petitioner nor Patent Owner identified any differences in their obviousness analysis due to differences in the qualifications of a person of ordinary skill in the art. *See generally*, PO Resp.; Pet. Reply; PO Sur-Reply.

C. Claim Construction

The Board interprets claim terms in accordance with the standard used in federal district court in a civil action involving the validity or infringement of a patent. *See* Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51,340, 51,340, 51,358 (Oct. 11, 2018) (amending 37 C.F.R. § 42.100(b) effective November 13, 2018) (now codified at 37 C.F.R. § 42.100(b) (2019)). Under the principles set forth by our reviewing court, the “words of a claim ‘are generally given their ordinary and customary meaning,’” as would be understood by a person of ordinary skill in the art in question at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005) (en banc) (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)). “In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of record, examining the claim language

itself, the written description, and the prosecution history, if in evidence.”
DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc., 469 F.3d 1015, 1014
(Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17).

“contact information”

In the Decision on Institution, we construed the term “contact information” to include “information, such as an email address, mailing address, or telephone number, that permits one entity to communicate directly with another entity.” Inst. Dec. 19.

We explained that independent claims 1 and 6 recite “the contact information includ[es] any messaging identifier that is associated with one of more participants.” See Inst. Dec. 18 (citing Ex. 1001, 17:38–42, 18:28–32). The ’107 patent specification states that in an embodiment of the invention that a service handling a request from a user may be forwarded to the identified participant (Ex. 1001, 8:55–57), where

In such an embodiment, an email address or other contact information may be shielded from the user. In one variation, it is also possible to shield the identity of the participant, or the end person who will be communicating with the user.

Ex. 1001, 8:57–61. That is, “contact information,” such as an email address, is differentiated from a participant’s identity.

The ’107 patent specification also refers to biographies that may be stored under an embodiment of the invention, where the biographies include “email addresses (or [instant messaging] IM tags or other contact information) to enable the individuals behind the biographies to meet each other.” Ex. 1001, 15:25–28. Additionally, in a user interface, the biography page includes “Contact Information” that includes “What is the best way for someone . . . to contact . . .?” and “They can email me directly at . . .” *Id.*

at 6:57–58, Fig. 6D. These specification portions further support that contact information is identified as messaging identifiers, such as an email address.

Thus, in institution, we construed the term in accordance with the intrinsic record which indicates that the type of information included as “contact information” is that which allows a user to directly contact a participant. Inst. Dec. 19. No party challenged the construction in the Decision on Institution. PO Resp. 3–7; Pet. Reply 8–12; Tr. 12:18–13:6, 23:5–17. We see no reason to deviate from that construction. Therefore, we adopt the construction of the term “contact information” to include “information, such as an email address, mailing address, or telephone number, that permits one entity to communicate directly with another entity.”

“in response to receiving the selection of the category by the user, displaying, for the user, some of the information associated with each of multiple participants from the plurality of participants which match the selection of the category by the user”

Patent Owner argues that some of Petitioner’s asserted prior art does not teach this claim limitation because the asserted prior art does not disclose displaying participant information *in response to* the selection of the category by the user. See PO Resp. 12–14. Patent Owner contends that in the asserted prior art, the claimed display does not occur as a result of the user category selection, but rather results from a subsequent process where there are intervening steps. See *id.*; see also PO Sur-Reply 6⁷ (“Patent

⁷ Patent Owner’s Sur-Reply lacks accurate page numbers for the majority of its pages. We have assumed that the page beginning with the text “I. Claims

Owner asserts that Beaudoin does not teach ‘in response to’ as there are intervening steps before display.”). Accordingly, Patent Owner’s arguments are premised on interpreting the claim limitation term “in response to” to mean that a user’s selection of a category has to directly result in the display of participant information and there cannot be any intervening steps.

Patent Owner argues that the plain meaning of the term “in response to” is “as a reaction to.” PO Sur-Reply 4. Patent Owner refers to a dictionary definition of “response” as “a reaction to something that has happened.” *Id.* at 9 (citing Ex. 2035). Patent Owner contends that “in response to” cannot mean a “but for” relationship because “the remainder of the claim includes language that makes clear the information being displayed ‘match[es] the selection of the category by the user.’” *Id.* at 6. Patent Owner contends that its position that the term “in response to” does not cover intervening steps, “does not depend on ‘limitations that do not appear in the claim,’ but rather is based on the common and well understood meaning of the term and the ‘107 patent’s specification.” *Id.* at 7. Patent Owner further refers to limitation 1[g], which recites, “updating the rating associated with each of the one or more participants based at least in part on the tracked response time.” *Id.* at 12. Patent Owner argues that “the inventor intentionally used modifying language (based at least in part) when addressing an issue of causality in one part of the claim” but “omitted such language (in response to) in another part of the claim,” which implies that “had the inventor intended ‘displaying . . . some of the information’ to be an

1–11 of the ‘107 Patent Are Not Obvious Over the Petition Art” is marked accurately as page 2, and we assume that sequential page numbers apply to the remaining pages of the Sur-Reply. *See generally* PO Sur-Reply.

indirect result to receiving the selection of the category, [and] the inventor would have claimed that.” *Id.* at 12–13.

Patent Owner further argues that Petitioner’s assertion that the specification has embodiments with an intervening step is flawed, and in the referenced portion of the ’107 patent specification the module selects participants using information of a database, and there is no intervening step between receiving the category selection and displaying. PO Sur-Reply 8 (citing Ex. 1001, 6:33–42). Patent Owner argues that, even if there is an embodiment in the ’107 patent which has an intervening step, that is not the claimed embodiment, and the patent includes other embodiments without intervening steps. *Id.* at 8–9 (citing Ex. 1001, 2:37–42, 2:48–53). Patent Owner asserts that courts “do not usurp the dictionary when the claim term is clean and unambiguous,” and the claim terms should be read in the context of the claims and patent. *Id.* at 10. Patent Owner cites to *Ex parte Cragun*, arguing that in that case the Board found that “in response to” connotes a direct cause-and-effect relationship. *Id.* at 11–12 (citing *Ex Parte Cragun*, Appeal No. 2013-001903 (PTAB Sept. 16, 2015)).

Petitioner asserts that the claims do not require “that ‘displaying . . . information associated with each of multiple participants’ be directly in response to receiving the category selection by the user.” Pet. Reply 5. Petitioner contends that the claim language does not require direct responsiveness, and the display of information is in response to the category selection, that is, the display would not have occurred but for the user making the category selection. *Id.* Petitioner asserts that the ’107 patent specification includes an embodiment that discloses intervening steps between category selection and the display of information. *Id.* at 5–6 (citing

Ex. 1001, 6:33–42). Petitioner further contends that Patent Owner advocated for the adoption of the plain and ordinary meaning of the term “in response to” and that other courts have applied the *Phillips* standard and determined that the ordinary meaning of the term does not require a direct response. *Id.* at 6–7 (citing *Optis Wireless Tech., LLC v. Huawei Device Co.*, No. 2:17-CV-123-JRG-RSP, 2018 WL 476054, at *33 (E.D. Tex. Jan. 18, 2018); *Sprint Commc’ns Co. L.P. v. Comcast Cable Commc’ns LLC*, No. 11-2684-JWL, 2014 WL 5089402, at *25 (D. Kan. Oct. 9, 2014); *Progressive Semiconductor Sols. LLC v. Qualcomm Techs., Inc.*, No. 8:13-CV-01535-ODW, 2014 WL 4385938, at *8–9 (C.D. Cal. Sept. 4, 2014)).

Considering claim 1, we discern no claim language requiring that a response to “receiving the selection of the category by the user” be limited to a direct response. *See* Ex. 1001, 17:27–28. Contrary to Patent Owner’s argument, we also do not discern that the recital of limitation 1[g] (“updating the rating . . . based at least in part on the tracked response time”) implicates an intent that the omission of similar language in claim element 1[c] should be construed to mean that the limitation should be interpreted in a more limited manner. PO Sur-Reply 12–13. That is, we do not discern an interrelationship or overlap between the terms, or meanings of the terms, of the respective claim limitations such that they be considered in combination.

Turning to the ’107 patent specification, Petitioner’s arguments rely, in part, on the ’107 patent specification’s disclosure of an embodiment where

The UI 212 may provide a form, or a template (such as for use with a messaging application) to enable a person to enter the inputs. The category specification may correspond to a list of categories, each of which are selectable. When the category is

selected by the user, the module 210 receives the category as input.

In response to receiving the input through the UI 212, the module 210 selects participants using the information of the database 214. Then the module 210 sends messages 222 to selected participants, where the messages may include the inquiry content 213, or content based on the inquiry content 213. The number of messages sent 222 may be one or more.

In an embodiment, the module 210 may receive the bios 40 from recipients of messages 222. The module 210 then sends a compilation 242 (or aggregation) of the bios [biographies] to the user.

Ex. 1001, 6:27–43. We find that this disclosure in a '107 patent embodiment provides support for Petitioner's argument that there are intervening steps between user category selection and the display of information on participants. *See* Pet. Reply 5. The specification portion above refers to a description of an implementation using components of the network service, with the steps of the implementation illustrated in Figure 3. *See* Ex. 1001, 1:48–52, 6:27–50; *see infra* 5. As disclosed and depicted, a user is presented with a category that can be selected, and upon selection, participants are selected and the module sends messages 222 to those participants. *See id.* Participants then may respond with bios (*id.* at Fig. 3, step 360), which are then sent to users for display (*id.* at 6:40–43, Fig. 3, step 370). Thus, in this embodiment of the '107 patent, there are intervening steps which occur between category selection by the user and the display of participant information to the user.

Patent Owner argues that the Petitioner's reliance on embodiments with intervening steps is flawed because in the referenced portion of the specification "all that is being made clear . . . is that in the embodiment

being described, ‘the module 210 selects participants using the information of the database 212’ ‘in response to receiving the input through the UI 212,’” and there is no intervening step between receiving the category section and displaying. PO Sur-Reply 8 (citing Ex. 1001, 6:33–42). Patent Owner appears to misconstrue the ’107 patent specification in its argument. As above, the specification states that upon receiving the user input, the module selects participants from the database, but there is no display to users at that step, as Patent Owner argues. *See* Ex. 1001, 6:27–43. Instead, the module sends messages to selected participants, and then may receive the bios from the participants, which then may be sent and displayed to users. *Id.*

We also do not find persuasive Patent Owner’s argument that the ’107 patent includes several embodiments that do not have intervening steps between user category selection and the display of participant information, and those are the embodiments claimed. PO Sur-Reply 8–9. We do not find the argument persuasive because “there is a strong presumption against a claim construction that excludes a disclosed embodiment.” *See In re Katz Interactive Call Processing Patent Litig.*, 639 F.3d 1303, 1324 (Fed. Cir. 2011). “[W]here claims can reasonably [be] interpreted to include a specific embodiment, it is incorrect to construe the claims to exclude that embodiment, absent probative evidence on the contrary.” *Oatey Co. v. IPS Corp.*, 514 F.3d 1271, 1277 (Fed. Cir. 2008). As above, we discern no limitation recited in claim 1 requiring that there be a direct response to “receiving the selection of the category by the user.” And Patent Owner provides only a conclusory statement that certain embodiments are the ones claimed, but does explain why the claim language would not also apply to

the embodiment Petitioner identifies, which has intervening steps. Therefore, Patent Owner's argument is unsupported in view of the language of claim 1.

Patent Owner also argues that the Board found a direct cause-and-effect relationship for the term "in response to" in *Cragun*. PO Sur-Reply 11–12. On the other hand, Petitioner points to several cases where courts determined that no direct response was required. *See* Pet. Reply 6–7. Interpreting claim terms under *Phillips* involves considering specifics of the intrinsic record. *See Phillips* at 1312–15. In *American Calcar, Inc. v. American Honda Motor Co.*, which is relied upon in *Cragun*, the Federal Circuit considered the intrinsic record to affirm a finding of an automatic response construction, but noted that in that particular case "the specification fails to disclose any embodiment that requires any type of user interaction prior to identification of a service provider." *Am. Calcar, Inc. v. Am. Honda Motor Co.*, 651 F.3d 1318, 1340 (Fed. Cir. 2011); *see also Cragun*, Appeal No. 2013-001903, at 3–4. Here, we find *Cragun* and *American Calcar* are distinguishable because the '107 patent specification includes an embodiment covering a non-direct response to a category selection.

Finally, we do not find persuasive Patent Owner's argument that its proffered dictionary definition of "response" as "a reaction to something that has happened" precludes a response that is not direct. *See* PO Sur-Reply 2, 5, 9. Rather, we agree with Petitioner that, even under the selected dictionary definition, the definition allows for reactions that occur as a result of an action, even if there are intervening steps, because the reaction would nonetheless happen. *See* Tr.10:26–11:12.

“one or more users of the network computer system”

Claim 4 depends from claim 1 and further requires “identifying information for another participant that matches the category selection of the user based on a referral provided by one or more users of the network computer system.” Ex. 1001, 17:56–60. Claim 9 recites a similar limitation, without the word “network.” *Id.* at 18:48–52.

Petitioner’s arguments on the merits are based on an interpretation of the claim term “one or more users of the network computer system” used in claim 4, with similar issues raised for claim 9. Pet. 65–66, 69; Pet. Reply 18–20. Patent Owner presents an argument on the claim construction issue in its Sur-Reply and at oral hearing, which Petitioner argues is waived because the argument was not raised in Patent Owner’s Response. PO Sur-Reply 22; Tr.19:25–20:1. Because the claim term needs to be addressed to evaluate Petitioner’s contentions on the merits, we will address it here.

Petitioner argues that the phrase “one or more users of the network computer system” includes “participants of the network computer system, not just a user of the system seeking to have an issue resolved, e.g., the claimed ‘user’ in claim 1.” Pet. Reply 18; *see also* Pet. 66. Petitioner asserts that: 1) the ’107 patent provides an example of referrals where participants refer other participants; 2) one of ordinary skill in the art would have understood that “one or more users of the network computer system” is not limited to either a participant or user; and 3) there is a lack of antecedent basis for “one or more users” such that it is “a new entity . . . not tied to ‘the user’ or ‘the one or more participants.’” Pet. Reply 19–20 (citing Pet. 66 (citing Ex. 1011, 12:11–20); Ex. 1004 ¶ 158). Patent Owner argues that Petitioner’s contention that “users” includes “participants” is not correct

because the lack of antecedent basis of “one or more users” does not cause it to include participants, and instead “merely indicates that it is one or more users that are not the same user as earlier in claim 4.” PO Sur-Reply 22.

We agree with Petitioner’s arguments. Specifically, comparing claim 1 with claim 4, we do not discern an antecedent basis for the phrase “one or more users of the network computer system” of claim 4, so the term refers to a new entity. *See* Ex. 1001, 17:15–48, 17:56–60; Pet. Reply 19–20.

Petitioner refers to the following disclosure of the ’107 patent specification:

For example, in one situation, the individual (“Connection 1”) that the user has selected may not be able to solve the problem or answer the question the user has submitted. In other instances, Connection 1 may see other questions or issues the user has on their bio which are not related to the question posed. In either case, Connection 1 may know of others, either inside or outside of his or her network of contacts (online, personal, friends, family etc.), who may be able to assist the user with either the original issue or other issues that become apparent.

Pet. 66 (quoting Ex. 1001, 12:11–20). Further, users of the network system may be the following entities: organizational participant 122, individual participant 124, group participant 126, and individual participant 128.

Ex. 1001, 3:50–4:37, Fig. 1. Users also include the following entities shown in Figure 5B who use the network computer system: Connection 1 520, Connection 2 530, and Connection 3 540. *Id.* at 12:10–13:67, Fig. 5B. And Connection 1 520, Connection 2 530, and Connection 3 540 are participants. *Id.* at 12:10–20, 12:47–13:5, 13:28–34, 13:37–44, 13:58–67. Thus, the ’107 patent specification disclosures provide support for Petitioner’s contention that “one or more users of the network computer system” of claim 4 can be

participants who use the network computer system. Similarly, we conclude that the phrase “one or more users of the computer system” in claim 9 encompasses participants who use the computer system.

Other Claim Terms

We determine that it is not necessary to provide an express interpretation of any other term of the claims. *See Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017); *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999) (“[O]nly those terms need be construed that are in controversy, and only to the extent necessary to resolve the controversy.”).

D. Alleged Obviousness of Claims 1–3, 5–8, 10, and 11 over Beaudoin and Shubov

Petitioner contends that claims 1–3, 5–8, 10, and 11 are rendered obvious by Beaudoin and Shubov. Pet. 14–61. To support its contentions, Petitioner provides explanations as to how Beaudoin and Shubov teach each claim limitation. *Id.* Petitioner also relies upon the Goldberg Declaration (Ex. 1004) to support its positions. Patent Owner alleges that the combination of Beaudoin and Shubov fails to teach some of the limitations of the claims and that the rationale to combine the references is insufficient. PO Resp. 9–21; PO Sur-Reply 2–22.

We begin our discussion with a brief summary of Beaudoin and Shubov and then address the evidence and arguments presented.

1. Beaudoin (Ex. 1005)

Beaudoin is directed to a method and system for matching consumers with service providers. Ex. 1005, 1:44–45. Beaudoin discloses an information environment to facilitate efficient identification of pre-qualified,

appropriate service providers with consumers, to support more efficient communications, and to allow comparison shopping. *Id.* at 4:45–53, 5:1–10.

Beaudoin's system provides a database for service providers based on information, such as name, address and years in operation, service types, geographic region and communication mechanisms, provided by the service providers, that is part of the Customer-driven Service Request (CRS) process. Ex. 1005, 5:27–30, 5:45–49, 10:24–28. In the CRS process, a user may select a category of services or the system may provide a path to identify the problem/issue to lead the user to an appropriate category. *Id.* at 8:32–38. A commerce facilitator platform brings together consumers and service providers by matching consumer needs to service providers' capabilities. *Id.* at 9:5–10. Figure 7A, reproduced below, illustrates consumer interactions with the commerce facilitator platform. *Id.* at 2:38–40.

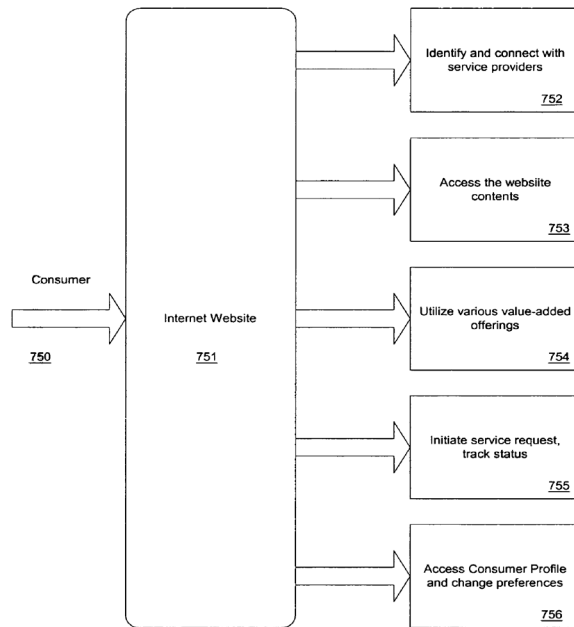


Figure 7a

As shown in Figure 7A, above, consumer 750 can access a website associated with commerce facilitator platform 751 to: (1) identify and connect with service providers to fulfill their local service needs 752; (2) access content relevant to these needs 753; (3) utilize various value-added offerings related to their fundamental local service needs 754; (4) track the status of these requests after initiation of a service request 755; and (5) access their consumer profile and change preferences 756. Ex. 1005, 9:17–26.

2. Shubov (Exs. 1006, 1009)

Shubov is directed to a system for matching consumers with professional service providers. Ex. 1006 ¶ 8. In Shubov, consumers can access a matching system, browse listings of service providers, and view more detailed information by clicking on buttons, and can also request bids

for services from service providers by posting a case. *Id.* ¶ 9. Screens are provided that allow a consumer to describe service needs and geographic location. *Id.* ¶ 10. The matching system posts the case and transmits case information to service providers, where the matching system only transmits consumer information to service providers in the same area of practice and geographic location by cross referencing the consumer's case information with the service provider database for the service provided and geographic location fields. *Id.* ¶¶ 10, 11.

A service provider has its own home page where submitted cases can be reviewed and the service provider can respond if interested in pursuing the case, with responses transmitted back to the consumer. Ex. 1006 ¶ 12. A consumer may review the service provider responses and obtain additional information including information on the service provider, such as rating information based on ratings and assessments from consumers. *Id.* ¶ 13.

Shubov claims priority to Provisional Application No. 60/210,857, filed June 9, 2000 ("the Shubov provisional"), and incorporates it by reference. Ex. 1006 ¶ 1; Ex. 1009.

3. *Analysis*

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

(3) the level of ordinary skill in the art; and (4) objective evidence of nonobviousness.⁸ *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966).

a. Independent Claim 1

i. Preamble and Limitations [a], [b]

Petitioner asserts that Beaudoin teaches a method for establishing a social network implemented on a network computer system, as recited in the preamble of claim 1. Pet. 26. Petitioner relies upon Beaudoin’s disclosure of a method to match consumers and service providers, such as a “method and apparatus . . . for matching ready-to-act consumers and pre-qualified service providers.” *Id.* (citing Ex. 1005, 1:44–45, also citing *id.* at code (57), 2:23–52, Figs. 1–11, 2:57–3:3). Petitioner argues that these disclosures are consistent with those of the ’107 patent relating to a social network. *Id.* (citing Ex. 1001, 2:4–6, 14:16–20, 15:30–31; Ex. 1004 ¶ 123). For the disclosure of the implementation on a network computer system, Petitioner refers to Beaudoin’s disclosure of the use of an internet-based platform and network computer system. *Id.* (citing Ex. 1005, 2:23–28, 3:38–4:39, Figs. 1, 2).

Petitioner contends that Beaudoin teaches limitation [a] by its disclosure of the maintenance of a list of service providers, which includes information on the service providers including, for instance, individual service professionals. Pet. 27–28 (citing, e.g., Ex. 1004 ¶ 124; Ex. 1005, 10:63–65, 11:11–14, 11:21–23, 25:2, 41:2, 53:2, 95:2). More specifically, Petitioner asserts that Beaudoin teaches establishing “a database of pre-screened service providers,” where service providers enroll in the system.

⁸ Patent Owner presents no objective indicia in its papers. PO Resp. 9–21; PO Sur-Reply 2–22.

Id. at 27. Further, Petitioner relies upon Beaudoin’s disclosure that “service providers submit information to a database consisting of basic information, such as name, address and years in operation, and some preference information, such as service types, geographic region and communication mechanism 801,” where a unique Service Provider Profile is created for each service provider. *Id.* at 27–28 (citing Ex. 1005, 10:24–30, Fig. 8 (blocks 801 and 802)).

Petitioner asserts that Beaudoin teaches limitation [b] by its disclosure of a user interface that presents a listing of service categories, which a user can select from. Pet. 28–30 (citing, e.g., Ex. 1005, 8:42–43, 8:32–37; Ex. 1004 ¶ 126). For support, Petitioner refers to exemplary user interfaces where consumers can make a selection of a category from categories using a dropdown menu. *Id.* (citing Ex. 1005, 25:2, 27:2).

Patent Owner presents no arguments specific to these claim limitations. *See generally*, PO Resp.

We have reviewed Petitioner’s arguments and evidence for these claim limitations and are persuaded that Petitioner has provided sufficient evidence that the combination of Beaudoin and Shubov teaches the preamble and limitations [a] and [b] of claim 1.⁹

ii. Limitation [c]

Petitioner contends that limitation [c] of claim 1 is taught by the combination of Beaudoin and Shubov, with Beaudoin disclosing a system that matches service providers for selected categories in response to a consumer’s selections. Pet. 31 (citing, e.g., Ex. 1005, 9:5–10). Petitioner

⁹ We make no specific determination as to whether the preamble of claim 1 is limiting.

asserts that once a CRS, that is, a Consumer-driven Service Request, is completed, the matching process of Beaudoin uses information from service providers' profiles and the consumer's category selection to identify a group of eligible service providers for the CSR. *Id.* (citing Ex. 1005, 8:20–54, 10:51–57, 10:63–11:10, Fig. 8). Petitioner contends the information associated with matched multiple service providers is then displayed to the consumer. *Id.* at 32 (citing, e.g., Ex. 1005, 4:45–53, 9:5–15, 11:21–23, 14:50–60, 15:61–65, Fig. 8 (block 812), Fig. 11 (blocks 1107–1108)).

Petitioner acknowledges that Beaudoin does not explicitly disclose “shielding contact information associated with each of the multiple participants” of limitation 1[c]. Pet. 32. Petitioner asserts that Shubov teaches contact information of a service provider can be shielded from a consumer. *Id.* (citing Ex. 1006 ¶¶ 4, 16–19, 39; Ex. 1009, 246, 364). Petitioner contends that in Shubov consumers and service providers can “communicate anonymously within the matching system,” and the displays of information in Shubov do not include identity or contact information. *Id.* at 32–34. Petitioner further asserts that one of ordinary skill in the art would have found it obvious to modify Beaudoin to provide a feature of shielding for a number of reasons, including to maintain anonymity, and/or prevent out-of-band communications. *Id.* (citing Ex. 1004 ¶¶ 25–29, 128–130). Dr. Goldberg testifies that the rationale for a skilled artisan to want to shield this information would have been preservation of privacy and also to prevent a consumer from directly contacting a service provider by withholding contact information in order to prevent bypassing and allow an intermediary to benefit from a transaction. Ex. 1004 ¶¶ 27, 29.

Patent Owner contends that the combination of Beaudoin and Shubov fails to teach different portions of claim element 1[c], and we address Patent Owner's arguments in turn.

(1) Display Is Not Performed “In Response to Receiving the Selection of the Category by the User”

Patent Owner argues that as to the “in response to” portion of claim 1, “Petitioner does not even allege that this aspect of [c] is disclosed or suggested by Beaudoin and Shubov. Rather, it is simply ignored.” PO Resp. 13. Patent Owner also argues that neither Beaudoin nor Shubov disclose or suggest limitation [c] because both references describe a process where a consumer makes a submission, but neither supports that the displayed information is responsive to the alleged category selection. *Id.* at 12–13 (citing Ex. 1006 ¶ 15). More specifically, Patent Owner asserts that in Beaudoin, the service receives a service request from the consumer, and the service generates a new communication for prospective service providers, who are invited to make a bid for the job. *Id.* at 13 (citing Ex. 1005, cols. 49–50, 53–54). Patent Owner asserts that Beaudoin discloses that its display “about a Consumer’s Service Request is responsive to the communications they receive from the service providers, but the information displayed by Beaudoin is not responsive to the Consumer Service Request.” *Id.* at 14.

Patent Owner further asserts that Shubov discloses “the matching system can assist the attorney in creating an offer using the make an offer function 601.” PO Resp. 14 (citing Ex. 1006 ¶ 144). Patent Owner argues that in Shubov, the attorney’s transmittal of a bid is through the matching

system to the consumer and “is therefore not responsive to the consumer’s bid request—it is responsive to the attorney reviewing and completing his or her bid.” *Id.*

In Reply, Petitioner argues that, contrary to Patent Owner’s allegations, the Petition provides arguments regarding the teaching of limitation 1[c]. Pet. Reply 3 (citing Pet. 31–32). Petitioner asserts that Patent Owner is alternatively “attempting to recraft the claim by reading substantial limitations into the words ‘in response to’ to require that something is done immediately upon the selection of a category.” *Id.*

Petitioner asserts that Beaudoin teaches displaying information in response to receiving the selection of the category by the user because a user selects a category and that selection is submitted to the Matching Process, which identifies and compiles eligible service providers, and in response, multiple service providers information, that is, information for eligible service providers that match the consumer’s selection is displayed to the consumer. Pet. Reply 3–4 (citing Ex. 1005, 4:45–53, 8:20–54, 9:5–15, 10:51–57, 10:63–11:10, 11:21–23, 14:50–60, 15:61–65, 16:9–12, 89:2, 91:2, Fig. 8 (block 812); Ex. 1004 ¶ 127).

Petitioner further contends that Patent Owner’s argument that an intervening step in Beaudoin’s disclosure does not teach the limitation “in response to” is meritless because the claims do not require “that ‘displaying . . . information associated with each of multiple participants’ be *directly* in response to receiving the category selection by the user.” Pet. Reply 5. Petitioner argues that the claim language does not require direct responsiveness, and the display of information is in response to the category

selection, that is, the display would not have occurred but for the user making the category selection. *Id.*

We determine that the Petition provides sufficient argument and evidence that the combination of Beaudoin and Shubov teach limitation 1[c]. *See* Pet. 31–35; Ex. 1004 ¶¶ 127–132. More specifically, we agree with Petitioner’s assertions that Beaudoin discloses displaying information in response to receiving the selection of the category by the user because a user selects a category and, in response to the receipt of the selection of the category, the matching process of Beaudoin uses information to identify a group of eligible service providers and associated information is then displayed to consumers (users). *See* Pet. 31–32. We are not persuaded by Patent’s Owner’s arguments because they are based on the premise that it is impermissible to have intervening steps between the receipt of the category selection and the display of participant information, as we have determined that there may be intervening steps under the claim interpretation adopted for this limitation. *See supra* Section II.C.

(2) No Teaching of “Shielding Contact Information”

Patent Owner argues that Beaudoin does not disclose that it shields contact information associated with the participants, but rather discloses the contact information. PO Resp. 14 (citing Ex. 1005, cols. 21–22); *see also* PO Sur-Reply 14 (citing Ex. 1005, cols. 89–90). Patent Owner also asserts that Shubov does not cure the deficiency of Beaudoin because it discloses that its matching system response includes the “attorney profile and contact information.” *Id.* at 15 (citing Ex. 1006 ¶ 16). Patent Owner contends that although Shubov discloses “consumers and attorneys both have log on

names which allow then [sic] to communicate anonymously,” this portion of the disclosure is not related to the offer-submission process from attorneys. *Id.* at 15–16 (citing Ex. 1006 ¶ 39); *see also* PO Sur-Reply 15–16. Patent Owner further argues that in Shubov, one entity is able to directly communicate with the other, and the complete offer will include the attorney profile and contact information, so the contact information is not shielded. PO Sur-Reply 15–16 (citing Ex. 1006 ¶¶ 4, 16–19, 39). Patent Owner asserts that the Shubov provisional depicts a profile of an attorney offer that is provided as part of an offer from an attorney, rather than from a match based on a category selected by a user. *Id.* at 16 (citing Ex. 1009, 3, 246).

Patent Owner further argues that Petitioner’s reliance on the Shubov provisional is incorrect, because “any material in the provisional that is not physically present and published in Shubov is not part of Shubov.” PO Sur-Reply 14 (citing *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1381 (Fed. Cir. 2015)). Patent Owner contends that although “a provisional becomes available to the public after the publication of an application claiming priority to it, it would not be found unless one went to the PAIR record for an application claiming priority to the provisional.” *Id.* (citing Ex. 2043, 37 C.F.R. § 1.53(2)(d)(6); Ex. 2044, 35 U.S.C. § 122).

In Reply, Petitioner asserts that Patent Owner cherry picks an embodiment of Shubov for its arguments, but Shubov discloses instances where a consumer may only see attorney identification, while shielding the attorney’s contact information. Pet. Reply 9–10. Petitioner also responds that log on names are not limited to the anonymous communication context in Shubov, and, additionally, a person of ordinary skill would have known that the shielding-contact-information concept could be applied to Beaudoin

with respect to displaying results. *Id.* at 11–12 (citing Pet. 32–34; Ex. 1009, 246, 364; Ex. 1004 ¶¶ 128–132, 25–29).

In response to Patent Owner’s argument on the use of the Shubov provisional, Petitioner argues that the provisional becomes public when the underlying application published, and, additionally, this is not an instance of trying to establish a § 102(e) priority date and *Dynamic Drinkware* does not apply here. Tr. 13:8–14:20.

As an initial matter, we do not agree with Patent Owner’s argument that the Shubov provisional cannot be considered. PO Sur-Reply 14. Shubov incorporates the Shubov provisional by reference. Ex. 1006 ¶ 1. Unpublished applications, including provisional applications, are preserved in confidence, but are made publicly available “if the application is identified in . . . a U.S. patent application publication.” 37 C.F.R. § 1.14 (a)(1)(iv). Accordingly, the Shubov provisional was publicly available at least at the time the Shubov patent application was available, that is, by March 28, 2002. Further, because the Shubov provisional was incorporated by reference into Shubov, the provisional is also part of Shubov itself. We agree with Petitioner that *Dynamic Drinkware* does not apply here because it is directed to determining an effective priority date under § 102(e), which is not at issue here. *See Dynamic Drinkware*, 800 F.3d at 1387–1382; *see also* Pet. 6 (asserting Shubov is § 102(b) prior art). Additionally, as discussed, the Shubov provisional is legally deemed to be publicly available, and Patent Owner provides no explanation for the alleged lack of public accessibility, i.e. the assertion that “[the Shubov provisional] would not be found unless

one went to the PAIR record.” *See* PO Sur-Reply 14.¹⁰ Accordingly, we determine that the Shubov provisional disclosures may be considered in Petitioner’s assertions for the prior art teachings of the shielding portion of limitation 1[c].

We are not persuaded by Patent Owner’s arguments related to Beaudoin because Petitioner also relies upon Shubov for its teaching of contact information of a service provider that can be shielded from a consumer. *See* Pet. 32. As discussed above, we construe “contact information” to include “information, such as an email address, mailing address, or telephone number, that permits one entity to directly communicate with another entity.” *See supra* Section II.C. Shubov’s provisional provides examples of user displays of participant information where contact information, such as email addresses, mailing addresses, and telephone numbers, are not provided to the user. *See* Ex. 1009, 246, 346¹¹. Additionally, we agree with Petitioner’s argument that because Shubov discloses anonymous attorney-consumer communication via an anonymous e-mail address, a display of the participant information absent contact

¹⁰ Patent Owner refers to “37 C.F.R. 1.53(2)(d)(6)” in support, but we could not find a rule section with this designation. PO Sur-Reply 14 n.34.

¹¹ We disregard Patent Owner’s argument about a “hot button” (*see* Tr.35:22–36:13, 36:26–38:4, 41:16–42:25) directed to some of the participant display examples because that argument was raised for the first time at oral hearing. At oral hearing, a party may only present arguments relied upon in previously presented papers. TPG, 85–86. Even if we were to consider this argument, we would still find it unpersuasive because the participant display examples in Shubov’s provisional meet the requirements of the claim limitation: the relied-upon displays show participant information but in the display contact information is shielded from the view of the user. *See* Ex. 1009, 246, 346.

information would be consistent with this disclosure. *See* Ex. 1006 ¶ 4; Pet. Reply 11–12. Further, we agree with Petitioner’s assertion, and the underlying rationale, that a person of ordinary skill would have known that the shielding-contact-information concept could be applicable to Beaudoin for displaying results. *See* Pet. 32–34; Pet. Reply 11–12.

We are also not persuaded by Patent Owner’s argument that the Shubov provisional depicts a profile of an attorney offer that is provided as part of an offer from an attorney, rather than from a match based on a category selected by a user. PO Sur-Reply 16. This argument is based on Patent Owner incorrectly contending that Petitioner bodily incorporates Shubov into Beaudoin, and is also based on Patent Owner’s proposed prohibition on intervening steps performed “in response to,” which we have not adopted, as discussed above. *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Thus, we agree with Petitioner’s assertions that the combination of Beaudoin and Shubov disclose the “shielding” portion of limitation 1[c], and we are not persuaded by Patent’s Owner’s arguments.

(3) No Motivation to Combine Beaudoin and Shubov

Patent Owner argues that there is no motivation to combine Beaudoin and Shubov because Beaudoin enables a consumer to be the initiator of communications with a participant, which allows the user to “be noncommittal,” while participants who are searched for “are shielded from having contact information disclosed until a point where the searcher is committed.” PO Resp. 16. Patent Owner asserts that the purpose of the anonymity feature of Shubov “is to enable attorneys to discuss cases with

prospective clients without there being any attorney/client relationship.” *Id.* Patent Owner argues that Petitioner misapplies the motivation to combine because, assuming for the sake of argument, all of Petitioner’s argument apply, “for there to be motivation to combine Beaudoin and Shubov, motivation would be to incorporate anonymity with the returned result.” *Id.* at 16–17 (emphasis omitted). Patent Owner further argues that, if Shubov were combined with Beaudoin, “quotes from service providers would not identify the name of the Service Provider, or any other information about the Service Provider,” and this would destroy the purpose of Beaudoin, which is to provide service providers with referrals. *Id.* at 17. Additionally, Patent Owner asserts that because Beaudoin allows for the service to contact the service providers, the service providers only receive Consumer Service Requests and then the Service Provider must submit a winning bid, but “maintaining anonymity will not facilitate the service provider in submitting a winning bid, as the user will be unable to view the business name or reputation.” *Id.*

Patent Owner’s arguments are based on bodily incorporation of embodiments of Shubov into Beaudoin; however, “[t]he test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference . . . Rather, the test is what the combined teachings of those references would have suggested to those of ordinary skill in the art.” *Keller*, 642 F.2d at 425. Instead, Petitioner applies some of the teachings of Shubov in some instances, that is, to shield contact information in results. *See* Pet. 34. And the Petition provides sufficient support for the rationale to modify Beaudoin with

Shubov to offer advantages with the *initial* withholding of contact information. Pet. 32–34; Ex. 1004 ¶¶ 25–29.

Thus, we agree with Petitioner’s evidence and argument in support of the rationale to combine Beaudoin and Shubov, and we are not persuaded by Patent’s Owner’s arguments.

(4) Limitation [c] – Conclusion

On this record, we are persuaded that Petitioner has provided sufficient evidence that the combination of Beaudoin and Shubov teaches limitation 1[c] and a sufficient rationale to combine the references has been provided.

iii. Limitation [d]

Petitioner asserts that Beaudoin teaches a rating and review process/quality seal that allows consumers to rate service providers, which is updated in real-time and displayed to consumers. Pet. 35. Petitioner further contends that the display of service providers’ information may be based at least in part on their rating, such as by consumer sorting based on ratings. *Id.* (citing Ex. 1005, 16:13–16). Petitioner also refers to Beaudoin’s disclosure that “the rating information may also serve as a component for the Matching Process 1106 by combining the individual scores, potentially with a weighting scheme, to create a composite score,” so the results of a matching search are based in part on rating information. *Id.* at 35–36 (citing Ex. 1004 ¶ 134; Ex. 1005, 17:5–9, Fig. 11 (block 1112)).

Patent Owner presents no arguments specific to these claim limitations. *See generally*, PO Resp.

We have reviewed Petitioner’s arguments and evidence for this claim limitation and are persuaded that Petitioner has provided sufficient evidence

that the combination of Beaudoin and Shubov teaches limitation [d] of claim 1.

iv. Limitation [e]

Petitioner asserts that Beaudoin or the combination of Beaudoin and Shubov teaches limitation [e] by Beaudoin's disclosure of consumer communications to service professionals, with contact information of the service professionals shielded from the consumer. Pet. 36–37 (citing Ex. 1005, 93:2, 95:2, 5:25–38, 9:49–57, 15:11–60, 16:17–31, 14:44–67, 18:14–54, Fig. 11 (block 1109); Ex. 1004 ¶ 135). Petitioner refers to a messaging window of Beaudoin where the name and company of a service professional is identified, but with no messaging identifier, such as an email address, provided. *Id.* at 37–38 (citing, e.g., Ex. 1005, 95:2).

Petitioner also contends that the combination of Beaudoin and Shubov teaches enabling a user to send an inquiry message while shielding contact information, for reasons similar to those provided for limitation [c]. Pet. 38–41. More specifically, Petitioner refers to Shubov's disclosure that consumers and service providers have log on names (i.e., identification numbers) so they can “communicate anonymously within the matching system.” *Id.* at 39 (citing Ex. 1006 at ¶ 39). Petitioner asserts that a person of ordinary skill in the art would have understood a reason to shield contact information would be in order to prevent direct contact between a consumer and service provider for anonymity. *Id.* at 40–41 (citing Ex. 1004 ¶¶ 136–138, 25–29; Ex. 1006 ¶¶ 4, 18, 39). Petitioner further contends that a person of ordinary skill in the art would have applied the conceptual teachings of Shubov to the very similar teachings of Beaudoin at least to provide improved privacy for the service provider and to discourage communicating

outside of the matching system. *Id.* at 41 (citing Ex. 1004 ¶¶ 137–138, 25–29).

Patent Owner argues that in the portion of Beaudoin that Petitioner relies upon, contact information is disclosed to the user in the interface for composing and sending messages. PO Resp. 17–19 (citing Ex. 1005, 95:2). Patent Owner refers to Beaudoin’s disclosure that when messaging and “Return” is hit, contact information of the service provider is shown. *Id.* at 20 (citing Ex. 1005, 93–96). Patent Owner contends that Beaudoin’s disclosure “goes against the plain meaning of the claim terms, as the system in Beaudoin does plainly allow for the user to view the contact information of the recipient.” *Id.* at 19.

Patent Owner further argues that Shubov does not cure the deficiency of Beaudoin because it permits only anonymous communications, and “[a]ny communication between parties where one is anonymous would not provide an equivalent teaching for ‘enable the user to send an inquiry message to one or more of the multiple participants.’” PO Resp. 20. Patent Owner further argues that Shubov does not teach the claim limitation because in Shubov, “[t]he system, not the user, handles the anonymous communication between the user and the participant.” PO Sur-Reply 18.

Patent Owner’s arguments on the combination of Beaudoin and Shubov are impermissibly based on bodily incorporation. *Keller*, 642 F.2d at 425; PO Resp. 20; PO Sur-Reply 18. However, in combination, Petitioner contends that the messaging disclosed in Beaudoin is combined with Shubov’s concept of shielding contact information. Pet. 36–41. More specifically, Petitioner contends that messaging between a consumer and service provider, as disclosed in Beaudoin, is combined with Shubov’s

concept of shielding contact information in anonymous communications between consumers and service providers (attorneys). Ex. 1005, 95:2, Fig. 11 (block 1109), 18:14–54; Ex. 1006 ¶ 39 (“communicat[ing] anonymously within the matching system”). And the Petition provides sufficient support of the rationale to modify Beaudoin with Shubov to offer advantages of maintaining anonymous communications. *See* Pet. 37–41; Ex. 1004 ¶¶ 136–138, 25–29.

Thus, the Petition’s evidence and argument presented in support of the prior art teachings of limitation [e] is sufficient, as is the rationale to combine Beaudoin and Shubov, and we are not persuaded by Patent’s Owner’s arguments.

v. Limitation [f]

Petitioner asserts that Beaudoin teaches limitation [f] by its disclosure of “Process Tracking/Update” regarding service provider status information and consumer request status. Pet. 41 (citing Ex. 1005, 6:9–13, 8:14–18, 9:17–18, Fig. 7a (block 755), 9:36–41, Fig. 7b (block 765), 13:33–36). Petitioner contends that provider’s response time to consumer’s message impacts the priority of specific service providers over others. *Id.* (citing Ex. 1005, 11:11–17). Petitioner also asserts that Beaudoin’s claims 4 and 11 recitals support the teaching of the limitation. *Id.* at 41–42 (citing, e.g., Ex. 1005, claim 4, 109:25–27 (“selecting home service providers from the second list based upon past response times of each respective home service provider”)).

Patent Owner presents no arguments specific to this claim limitation. *See generally*, PO Resp.¹²

We have reviewed Petitioner's arguments and evidence for this claim limitation and are persuaded that Petitioner has provided sufficient evidence that the combination of Beaudoin and Shubov teaches limitation [f] of claim 1.

vi. Limitation [g]

Petitioner contends that the combination of Beaudoin and Shubov teaches limitation [g] by Beaudoin's teachings of service quality ratings and prioritizing service providers based on tracked response times, with updating of ratings in real-time, and one of skill in the art would understand that a ratings update would include basing it on response time. Pet. 42–43 (citing Ex. 1004 ¶ 141). Petitioner additionally asserts that one of ordinary skill in the art would have had knowledge that response times commonly impact ratings, as reflected in the teachings of Shubov, with its update of service providers' ratings based at least on a tracked response time. *Id.* at 43–44 (citing Ex. 1004 ¶ 142; Ex. 1006 ¶¶ 154–156; Ex. 1009, 360). Petitioner argues that a person of skill would have applied Shubov's teachings to Beaudoin because doing so would have improved search results for a user to ensure access to quality service providers. *Id.* at 44–45. Petitioner further

¹² Although Patent Owner provided some arguments related to this claim limitation, as well as some other claim limitations and other claims, in the Preliminary Response, no arguments were presented in the Patent Owner Response. We ordered that “any arguments for patentability not raised in the [Patent Owner] response may be deemed waived,” and absent any arguments raised in the Response, we deem them to be waived by Patent Owner. Paper 15, 7.

contends that this modification utilizes known features to function in the same manner and would yield predictable results. *Id.* at 45.

Patent Owner presents no arguments specific to this claim limitation. *See generally*, PO Resp.

We have reviewed Petitioner's arguments and evidence for this claim limitation and are persuaded that Petitioner has provided sufficient evidence that the combination of Beaudoin and Shubov teaches limitation [g] of claim 1.

vii. Conclusion

To summarize, we determine that Petitioner has demonstrated by a preponderance of the evidence that the combination of Beaudoin and Shubov teaches all the limitations of claim 1, there is adequate rationale to combine the references, and claim 1 is unpatentable as obvious over Beaudoin and Shubov.

b. Independent Claim 6

Independent claim 6 recites a computer system that includes a memory and a processor to maintain a list of participants, and steps that perform functions paralleling the steps of independent claim 1. *See* Ex. 1001, 18:5–38.

Petitioner contends that Beaudoin teaches a computer system (Ex. 1005, 3:39–41, Fig. 1), the use of a memory to store a participant list (*id.* at 3:45–49, 1:49–50), and processors that may be programmed to perform steps (*id.* at 3:12–17). Pet. 55–57. Petitioner also asserts that the combination of Beaudoin and Shubov teaches the remainder of the limitations for claim 6 for similar reasons to those presented for claim 1. *Id.* at 57–59.

Patent Owner argues that claim 6 is not rendered obvious because neither Beaudoin nor Shubov teaches limitations 1[c] (“in response to”) and 1[e] (“send[ing] inquiry message”). PO Resp. 20–21. We do not find these arguments persuasive for the reasons discussed above.

We have reviewed Petitioner’s arguments and evidence for this claim and are persuaded that Petitioner has provided sufficient evidence that the combination of Beaudoin and Shubov teaches all the limitations of claim 6¹³.

Accordingly, we determine that Petitioner has demonstrated by a preponderance of the evidence that the combination of Beaudoin and Shubov teaches all the limitations of claim 6, there is adequate rationale presented to combine the references, and claim 6 is unpatentable as obvious over Beaudoin and Shubov.

c. Claims 2 and 7

Claim 2 depends from claim 1 and additionally recites that “receiving the selection of the category from the plurality of categories includes receiving input that identifies a geographic location.” Ex. 1001, 17:49–51. Claim 7 recites a similar limitation. *Id.* at 18:39–42.

Petitioner asserts that Beaudoin discloses receiving the selection of a category from several categories. Pet. 45. Petitioner argues that Beaudoin discloses a user interface with a dropdown menu with a zip code field, which “allows ServiceMagic to match you to service professionals in your neighborhood.” *Id.* at 46 (citing Ex. 1005, 25:2). Petitioner also contends that Shubov teaches the claim 2 limitation by its disclosure of a matching

¹³ We make no specific determination as to whether the preamble of claim 6 is limiting.

system that takes into account geographic locations of the consumers and service providers. *Id.* at 46–47 (citing Ex. 1006 ¶¶ 10, 166).

We have reviewed the evidence presented in the Petition and are persuaded that Petitioner has provided sufficient evidence that the combination of Beaudoin and Shubov teaches the limitations of claims 2 and 7. For instance, Petitioner contends that Shubov discloses a matching system that accounts for geographic locations. Pet. 46–47. Shubov discloses that in its matching system a consumer is presented with a display of questions that allow a consumer to describe service needs and geographic location (Ex. 1006 ¶ 10), and transmission of this information “to service providers in the same area of practice and same geographic location by cross referencing the consumer’s case information with the service provided and geographic location fields of the service provider database” (*id.* ¶ 11). Petitioner asserts that a person of skill in the art would have applied Shubov’s receipt of input to similar teachings of Beaudoin and its selection of a category to provide improved search results. Pet. 47 (citing Dr. Goldberg’s testimony on the same (Ex. 1004 ¶ 144)).

Patent Owner argues that dependent claims 2 and 7 are not rendered obvious based on the arguments presented for the respective independent claims from which claims 2 and 7 depend. PO Resp. 21. We do not find the arguments on the independent claims persuasive for the reasons discussed above.

Accordingly, we determine that Petitioner has demonstrated by a preponderance of the evidence that the combination of Beaudoin and Shubov teaches all the limitations of claims 2 and 7, an adequate rationale

has been presented to combine the references, and claims 2 and 7 are unpatentable as obvious over Beaudoin and Shubov.

d. Claims 3 and 8

Claim 3 depends from claim 1 and additionally recites that “displaying some of the information associated with each of multiple participants includes displaying an image that is included in the information associated with each of the multiple participants.” Ex. 1001, 17:53–55. Claim 8 recites a similar limitation. *Id.* at 18:43–47.

Petitioner contends that both Beaudoin and Shubov teach the display of information for multiple participants that includes an image. Pet. 48–51, 60. Petitioner relies upon, in part, Beaudoin’s presentation of “certified banner” image associated with the service provider in a display, as well as a “ServiceMagic Rating” for a provider presented as an image. *Id.* at 48–51 (citing Ex. 1005, 89:2, 91:2¹⁴, 99:2).

We have reviewed the evidence presented in the Petition and are persuaded that Petitioner has provided sufficient evidence that the combination of Beaudoin and Shubov teaches the limitations of claims 3 and 8. More specifically, we agree with Petitioner’s contention that Beaudoin discloses that it displays information associated with the participants in image form, such as banners and star images, which is included in the information sent regarding the participants. *See* Ex. 1005, 89:2, 91:2, 99:2

Patent Owner argues that dependent claims 3 and 8 are not rendered obvious based on the arguments presented for the respective independent

¹⁴ On page 50 of the Petition, below the reproduced figure, Petitioner refers to “89:2,” however, this appears to be a typographical error.

claim from which claims 3 and 8 depend. PO Resp. 21. We do not find the arguments on the independent claims persuasive for the reasons discussed above.

Accordingly, we determine that Petitioner has demonstrated by a preponderance of the evidence that the combination of Beaudoin and Shubov teaches all the limitations of claims 3 and 8, there is adequate rationale presented to combine the references, and claims 3 and 8 are unpatentable as obvious over Beaudoin and Shubov.

e. Claims 5 and 10

Claim 5 depends from claim 1 and additionally recites that “displaying some of the information associated with each of the multiple participants includes displaying information associated with individual participants who match the category selection and have a higher rating in favor of information associated with individual participants who match the category selection and have a lower rating.” Ex. 1001, 17:61–18:4. Claim 10 recites a similar limitation. *Id.* at 18:53–59.

Petitioner contends that both Beaudoin and Shubov teach display of information for multiple participants based on respective ratings. Pet. 52–54, 60–61. Petitioner asserts that Beaudoin discloses displaying information for participants who match the category selection and have a higher rating in favor of information associated with participants who have a lower rating. *Id.* at 52 (citing Ex. 1004 ¶ 148). Petitioner relies upon Beaudoin’s disclosure that consumers can “sort the presentation order based on different variables, including composite rating” and “service providers replying promptly are given priority over others.” *Id.* (citing Ex. 1005, 16:14–15, 11:16–17).

We have reviewed the evidence presented in the Petition and are persuaded that Petitioner has provided sufficient evidence that the combination of Beaudoin and Shubov teaches the limitations of claims 5 and 10. For instance, Petitioner contends that Beaudoin discloses sorting the presentation order based on different variables, including composite ratings, with service providers replying promptly given priority. *See* Ex. 1005, 16:14–15, 11:16–17.

Patent Owner argues that dependent claims 5 and 10 are not rendered obvious based on the arguments presented for the respective independent claim from which claims 5 and 10 depend. PO Resp. 21. We do not find the arguments on the independent claims persuasive for the reasons discussed above.

Accordingly, we determine that Petitioner has demonstrated by a preponderance of the evidence that the combination of Beaudoin and Shubov teaches all the limitations of claims 5 and 10, there is adequate rationale presented to combine the references, and claims 5 and 10 are unpatentable as obvious over Beaudoin and Shubov.

f. Claim 11

Claim 11 depends from claim 6 and additionally recites that “the computer system corresponds to a server, or a combination of servers.” Ex. 1001, 18:60–62.

Petitioner contends that Beaudoin teaches a computer system that includes servers. Pet. 61 (citing Ex. 1005, 3:38–4:39, 4:40–60, 2:23–28, Figs. 1, 2, claim 15).

We have reviewed the evidence presented in the Petition and are persuaded that Petitioner has provided sufficient evidence that the

combination of Beaudoin teaches the limitations of claim 11. For instance, Beaudoin discloses the use of a system that uses an electronic network that includes servers. *See* Ex. 1005, Fig. 2, claim 15.

Patent Owner argues that dependent claim 11 is not rendered obvious based on the arguments presented for the respective independent claim from which claim 11 depends. PO Resp. 21. We do not find the arguments on the independent claims persuasive for the reasons discussed above.

Accordingly, we determine that Petitioner has demonstrated by a preponderance of the evidence that the combination of Beaudoin and Shubov teaches all the limitations of claim 11, there is adequate rationale presented to combine the references, and claim 11 is unpatentable as obvious over Beaudoin and Shubov.

E. Alleged Obviousness of Claims 4 and 9 over Beaudoin, Shubov, and Herz

Petitioner contends that claims 4 and 9 are rendered obvious by Beaudoin, Shubov, and Herz. Pet. 63–69. To support its contentions, Petitioner provides explanations as to how Beaudoin, Shubov, and Herz teach each claim limitation. *Id.* Petitioner also relies upon the Goldberg Declaration (Ex. 1004) to support its positions. Patent Owner alleges that the combination of Beaudoin, Shubov, and Herz fails to teach some of the limitations of the claims. PO Resp. 22–23; PO Sur-Reply 19–22.

We begin our discussion with a brief summary of Herz and then address the evidence and arguments presented.

1. Herz (Ex. 1007)

Herz is directed to a professional referral network using the network to provide greater efficiency in the referral process. Ex. 1007 ¶ 5. The

referral network in made available via a web interface over the Internet, and consists of a client ratings database, professional ratings database, an availability list, and a referral bid engine. *Id.* ¶ 14. Specialized professionals looking for clients may register with the system and a referring professional may provide a client’s identity and needs to the referral network, and the referral network will then present the most suitable candidates to the referring professional. *Id.* ¶¶ 20–22. Patients may rate physicians, and, additionally, physicians may rate referral physicians who are referred to their patients. *Id.* ¶ 31.

2. Analysis

Claim 4 depends from claim 1 and further recites “identifying information for another participant that matches the category selection of the user based on a referral provided by one or more users of the network computer system.” Ex. 1001, 17:56–60. Claim 9 contains a similar limitation. *Id.* at 18:48–52.

Petitioner asserts that one of ordinary skill in the art would have been motivated to combine Beaudoin and Herz because the references are in the same field and address the same problems. Pet. 63 (citing Ex. 1004 ¶¶ 153–154). More specifically, Petitioner asserts that both Beaudoin and Herz relate to matching consumers (clients) with service providers (professionals) and facilitating connections between these entities in an efficient manner. *Id.* Petitioner contends that Beaudoin further teaches that the system is benefitted when potential service providers are identified by a service provider to provide for additional services. *Id.* at 64 (citing Ex. 1005, 15:15–20). Petitioner argues that “Herz teaches that it is advantageous to use a referral system that identifies the best-qualified individuals or groups

for a specialty problem to provide quality matches to clients.” *Id.* (citing Ex. 1007 ¶¶ 1, 5, 33–34; Ex. 1004 ¶ 155). Petitioner asserts that a person of skill in the art “would have found it obvious to utilize the conceptual teachings of Herz to implement an improved referral process at least to allow for additional matches to be identified to a consumer,” and would have modified Beaudoin to utilize the Herz referral system in order “to allow for additional matches to be identified to ensure a consumer has access to quality results.” *Id.* (citing Ex. 1004 ¶ 155).

Petitioner relies upon Beaudoin’s disclosure that an “enrolling service provider may be encouraged to identify potential Service Provider participants that can be contacted regarding the service (‘Referred Prospects’)” to teach the claim limitation. Pet. 67 (citing Ex. 1005, 15:15–20). Petitioner also contends that the concept of referrals was known, as demonstrated in Herz, which discloses referring physicians choosing appropriate specialists for clients. *Id.* at 67–68 (citing Ex. 1007 ¶¶ 6, 14, 16, 18, 30–32, 20–22; Ex. 1004 ¶ 160). Petitioner’s contentions are based upon an interpretation of the claim limitation in view of the disclosures of the ’107 patent, which we discuss *supra* Section II.C. *Id.* at 65–66.

Patent Owner did not present arguments specific to claims 4 and 9 in its Response, except to the extent that Patent Owner argued that these claims contain elements of independent claims that are not obvious. PO Resp. 23. In its Sur-Reply, Patent Owner asserts for the first time that Herz does not teach a “referral” as required by the claims and the ratings of Herz are not “a referral.” PO Sur-Reply 20. Patent Owner contends that the ’107 patent uses “ratings” in claims 1 and 6, so “rating” and “referral” have different meanings. *Id.* Patent Owner argues that Herz does not remedy the

deficiencies in the teachings of Beaudoin and Shubov in teaching elements 1[c] and 1[e]. *Id.* Patent Owner also argues claim construction of claim 4 in its Sur-Reply and at the oral hearing, contending that the term “one or more users” of claims 4 and 9 should be construed as just “users” and should not include “participants.” PO Sur-Reply 22; Tr. 24:6–25:2.

Petitioner asserts that, except for the arguments based on the independent claims, Patent Owner’s arguments should not be considered because they were first raised in Sur-Reply and were not addressed in the Patent Owner Response. Pet. Reply 18; Tr. 23:23–24:6. We agree. As previously noted, we deem that any arguments not raised in the Patent Owner Response are waived. Paper 15, 7. However, even if we were to consider Patent Owner’s late-raised arguments, we would still not find them persuasive.

Beginning with Petitioner’s arguments and evidence, we determine that they sufficiently support that the asserted prior art teaches the limitations of claims 4 and 9. More specifically, as above, Petitioner relies upon Herz disclosing referring physicians choosing appropriate specialists for clients in combination with Beaudoin to teach the limitations of claims 4 and 9. Pet. 68–69 (citing Ex. 1007 ¶¶ 6, 14, 16, 18, 30–32, 20–22; Ex. 1004 ¶ 160). As discussed *supra* Section II.C, we have interpreted the term “one or more users” in claims 4 and 9 to mean that “users” can be participants who use the network computer system. Further, Herz explains, for example, that its referral system may present a screen with the most suitable candidate and “then [it is] up to the judgement of the referring professional to choose the most appropriate specialist for his client,” which discloses the “referral provided by one or more users” of the claims. Ex. 1007 ¶ 22. We agree

with Petitioner that one of ordinary skill in the art would have been motivated to modify Beaudoin to use this type of referral in order to improve its referral process to allow for additional matches to be identified to a consumer. Pet. 64 (citing Ex. 1004 ¶ 155). Accordingly, we are persuaded that Petitioner has provided sufficient evidence that the combination of Beaudoin, Shubov, and Herz teaches the limitations of claims 4 and 9.

We are not persuaded by Patent Owner's argument that the ratings of Herz are not "a referral" because, even with the use of ratings in Herz's referral system, professionals nevertheless ultimately select the most appropriate specialist for referral. Ex. 1007 ¶ 22. Additionally, we do not find persuasive Patent Owner's arguments based on claim construction because we have adopted a claim construction contrary to Patent Owner's interpretation. Finally, we do not find persuasive Patent Owner's arguments based on the alleged deficiencies of the independent claims for the reasons discussed above.

Accordingly, we determine that Petitioner has demonstrated by a preponderance of the evidence that the combination of Beaudoin, Shubov, and Herz teaches all the limitations of claims 4 and 9, there is adequate rationale presented to combine the references, and claims 4 and 9 are unpatentable as obvious over Beaudoin, Shubov, and Herz.

III. CONCLUSION¹⁵

In summary:

Claims	35 U.S.C. §	References	Claims Shown Unpatentable	Claims Not shown Unpatentable
1–3, 5–8, 10, 11	103(a)	Beaudoin, Shubov	1–3, 5–8, 10, 11	
4, 9	103(a)	Beaudoin, Shubov, Herz	4, 9	
Overall Outcome			1–11	

IV. ORDER

For the reasons given, it is:

ORDERED that Petitioner has shown by a preponderance of the evidence that claims 1–11 of U.S. Patent No. 9,978,107 B2 are unpatentable; and

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

¹⁵ Should Patent Owner wish to pursue amendment of the challenged claims in a reissue or reexamination proceeding subsequent to the issuance of this decision, we draw Patent Owner’s attention to the April 2019 *Notice Regarding Options for Amendments by Patent Owner Through Reissue or Reexamination During a Pending AIA Trial Proceeding*. See 84 Fed. Reg. 16,654 (Apr. 22, 2019). If Patent Owner chooses to file a reissue application or a request for reexamination of the challenged patent, we remind Patent Owner of its continuing obligation to notify the Board of any such related matters in updated mandatory notices. See 37 C.F.R. § 42.8(a)(3), (b)(2).

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