UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GETTATTLE, INC.
Petitioner

v.

AFTERWORDS, INC.
Patent Owner

IPR Case No.: 2025-00677
U.S. Patent No. 10,430,811

PATENT OWNER'S RESPONSE

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TABLE OF CONTENTS

TABLE OF CONTENTS i
TABLE OF AUTHORITIES ii
LIST OF EXHIBITS iv
I. INTRODUCTION 1
II. RESPONSE TO STATEMENT OF MATERIAL FACTS 2
III. OVERVIEW OF THE '811 PATENT 3
IV. THE '811 PATENT FAMILY 8
V. PERSON OF ORDINARY SKILL IN THE ART 8
VI. CLAIM CONSTRUCTION 8
A. "point of sale interface" 10
B. "purchase detail identifier" 13
C. "survey token" 16
D. "Survey Module" 18
VII. INSTITUTED GROUNDS FOR UNPATENTABILITY 21
VIII. SUMMARY OF THE PETITION'S APPLIED REFERENCES 21
A. Douglas (Exhibit 1007) 21
B. Ganesh (Exhibit 1008) 24
IX. PETITIONER HAS NOT MET ITS BURDEN OF DEMONSTRATING THAT CHALLENGED CLAIMS ARE UNPATENTABLE. 26
A. Grounds 1 & 2: Douglas does not anticipate the challenged claims 27
B. Grounds 3 & 4: Ganesh does not anticipate the challenged claims 36
C. Petitioner cannot rely on inherency to salvage unpatentability Grounds 1-4 because Douglas and Ganesh do not inherently disclose the omitted elements of claims 1 and 19 41
X. DR. BRUN'S TESTIMONY DOES NOT ESTABLISH DISCLOSURE OF A SURVEY MODULE OR CAMPAIGN DATA STRUCTURE 44
XI. CONCLUSION 46

TABLE OF AUTHORITIES

Page(s)

Cases

Blue Calypso, LLC v. Groupon, Inc.,
815 F.3d 1331 (Fed. Cir. 2016) 1

Bright Data Ltd. v. Oxylabs, Uab,
No. IPR2023-01442, 2024 WL 1436014 (PTAB Apr. 3, 2024) 42, 43

Dominion Dealer Sols., LLC Petr. v. Autoalert, Inc. Pat. Owner,
8,08, 2013 WL 6514072 (PTAB Oct. 10, 2013) 45

Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.,
800 F.3d 1375 (Fed. Cir. 2015) 2

Edmund Optics, Inc., Petr., v. Semrock, Inc., Pat. Owner.,
IPR2014-00583, 2015 WL 5376245 (PTAB Sept. 9, 2015) 45

Harmonic Inc. v. Avid Tech., Inc.,
815 F.3d 1356 (Fed. Cir. 2016) 1

Microsoft Corp. v. Proxyconn, Inc.,
789 F.3d 1292 (Fed. Cir. 2015) 9

Nokia of Am. Corp. v. Gen. Access Sols., Ltd.,
No. IPR2023-01415, 2024 WL 1241505 (PTAB Mar. 22, 2024)..... 41, 42, 45

PersonalWeb Techs., LLC v. Apple, Inc.,
917 F.3d 1376 (Fed. Cir. 2019) 36, 43

Phillips v. AWH Corp.,
415 F.3d 1303 (Fed. Cir. 2005) 9, 21

Rosco, Inc. v. Mirror Lite Co.,
304 F.3d 1373 (Fed. Cir. 2002) 43

Teva Pharm. USA, Inc. v. Sandoz, Inc.,
574 U.S. 318 (2015)..... 9

In re Translogic Tech., Inc.,
504 F.3d 1249 (Fed. Cir. 2007) 9

Trintec Indus., Inc. v. Top–U.S.A. Corp.,
295 F.3d 1292 (Fed. Cir. 2002) 41

Verdegaal Bros. v. Union Oil Co. of Ca.,
814 F.2d 628 (Fed. Cir. 1987) 1

Vitronics Corp. v. Conceptronic, Inc.,
90 F.3d 1576 (Fed. Cir. 1996) 9

Statutes

35 U.S.C. § 102 2

Other Authorities

37 C.F.R. § 42.24 48

37 C.F.R. § 42.24(b)(1) 48

37 C.F.R. § 42.24(d) 48

37 C.F.R. § 42.100(b)..... 8

LIST OF EXHIBITS

Exhibit No.	Description
2001	Declaration of Ivan Zatkovich with Curriculum Vitae
2002	File history for provisional patent application No. 62/104,043 with a filing date of 1/15/2015
2003	File history for U.S. Application No. 16/279,387 with a filing date of 2/19/2019 and now U.S. Patent. 10,380,611

I. INTRODUCTION

Patent Owner, AfterWords, Inc. ("***Patent Owner***"), responds to the Petition for *Inter Partes* Review ("***Petition***") filed by Petitioner, GetTattle, Inc. ("***Petitioner***"), challenging the novelty of Claims 1-7, 10, 13, 16, 18-19 ("***Challenged Claims***") of U.S. Patent No. 10,430,811 (EX1001, the "***'811 Patent***").

The patentability of the '811 Patent should be confirmed at least because the references cited by the Petition do not teach or disclose the Survey Module, campaign data structure, vendor interface, and vendor database that are part of Patent Owner's independent claims 1 and 19. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of Ca.*, 814 F.2d 628, 631 (Fed. Cir. 1987). The elements must not only be present in a single prior art reference, but the elements must also be arranged or combined in the same manner claimed by the challenged patent. *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1341 (Fed. Cir. 2016) ("[A] prior art reference will anticipate if it 'disclose[s] each and every element . . . arranged or combined in the same way as in the claim.'") (citation omitted).

The "petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable." *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d

1356, 1363 (Fed. Cir. 2016). This burden never shifts to the patent owner. *Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

The Petition contends the Challenged Claims are anticipated, but there is no single prior art reference that teaches the combination of elements claimed by Patent Owner in the '811 Patent. Given that the references cited in the Petition do not teach each and every element of the Challenged Claims, the Petitioner has not met its burden of demonstrating that the Challenged Claims are unpatentable. The Board should, therefore, enter a final decision affirming the validity of the Challenged Claims, or, alternatively, enter an order granting Patent Owner's Motion to Amend and affirming the patentability of the substitute claims.

II. RESPONSE TO STATEMENT OF MATERIAL FACTS

1. Admitted that the priority date of the '811 Patent is January 15, 2015.

2. Denied that claims 1-7, 10, 13, 16, 18-19 are unpatentable under 35 U.S.C. § 102 as being anticipated by U.S. Publication No. 2015/0193794 to Douglas, *et al*. ("*Douglas*").

3. Denied that claims 1-7, 10, 13, 16, 18-19 are unpatentable under 35 U.S.C. §102 as being anticipated by U.S. Publication No. 2014/0337098 to Ganesh, *et al*. ("*Ganesh*").

III. OVERVIEW OF THE '811 PATENT

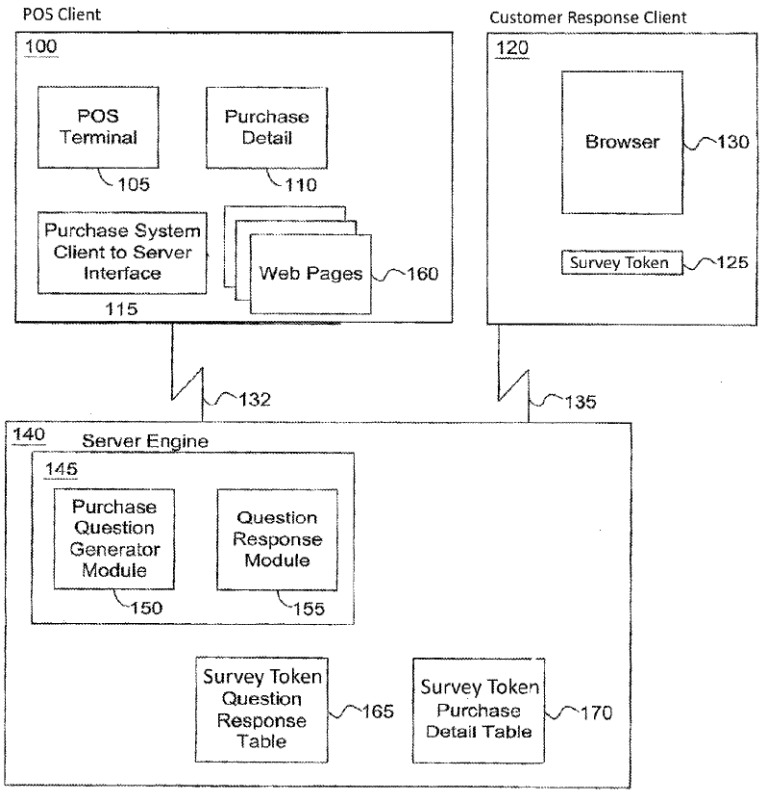
The '811 Patent discloses an improved customer experience platform. EX1001, '811 Patent, C1:14-18. The platform utilizes data from a purchase to generate a transaction-specific survey that is sent to the customer in the form of a Survey Module that displays survey questions as an integrated component of a vendor survey interface, such as a merchant-branded website or software application on a mobile device. *Id.*, C2:35-64, Claim 5.

Historically, customer experience platforms have not made use of the rich details relating to a purchase captured by point-of-sale ("***POS***") systems, resulting in overly generalized and impersonal customer surveys. *Id.*, C1:35-39. Customer surveys have also been cumbersome to complete, which results in customers foregoing the survey. *Id.*, C1:39-50. The inventors set out to solve these identified problems in the market by inventing a platform that makes use of the rich details captured by POS systems to generate transaction-specific surveys that are more likely to yield detailed, actionable customer feedback. *Id.*, C2:14-34.

To provide more intelligent surveys that generate customized questions based on the user's specific context, the specification and claims identify the use of a "Survey Module comprising software code for displaying the at least one Survey Question." The Survey Module includes executable software that implements a

survey and displays survey questions as an integrated component within a graphical user interface. *Id.*, C17:11-21.

Independent claims 1 and 19 of the '811 Patent include the following components: (a) a point-of-sale interface, (b) a survey server computing device, and (c) a vendor survey interface. *Id.*, C26:4-42. These components are depicted in the block diagram shown in Figure 2 of the '811 Patent and reproduced below:



The "point-of-sale interface" 115 is configured to record transaction data having at least one "purchase detail identifier" and a "survey token." *Id.*, C26:4-9. The transaction data includes information such as price, quantity, and name of each item purchased, time and date of purchase, employees on duty, the mode of service

delivery, and/or any other relevant information associated with a purchase. *Id.*, C5:35-39. The point-of-sale interface 115 provides an interface between POS client 100 and survey server 140 through communication link 132. *Id.*, C6:3-7, 10-11.

The "survey server computing device" 140 is configured to receive and store the transaction data recorded by point-of-sale interface 115. *Id.*, C26:10-12. A typical survey server computing device 140 includes a server engine 145, response table 165, and purchase detail table 170. *Id.*, C6:7-8. Server engine 145 includes purchase question generator module 150 and question response module 155. *Id.*, C6:8-10.

The purchase question generator module 150 generates questions based on purchase information stored in purchase detail table 170 and merchant preferences. *Id.*, C6:12-15. The merchant preferences can be formatted as a campaign data structure. *Id.*, C6:15-16. A campaign data structure may include configurable Conditions, Survey Questions, Events, Incentives, Exit Pages, groupings, and general logic utilized in constructing Survey Questions. *Id.*, C6:17-19. Surveys are created using the transaction data, purchase detail identifiers, and the campaign data structure. *Id.*, C11:19-21.

When a customer makes a purchase, details regarding the purchase are sent to and stored on the survey server computing device as transaction data. *Id.*, C7:42-44, 49. A survey token identifying the transaction is generated and given to the

customer. *Id.*, C7:44-45, 50-51. The survey token is associated with the details of the purchase and stored with the purchase details on the survey server computing device 140 as transaction data for future access. *Id.*, C6:26-30, C9:39-42.

Receipt of the transaction data by the survey server computing device 140 does not automatically trigger the sending of a survey to the customer for the transaction data. *Id.*, C9:39-44. Rather, survey transmission is triggered by the customer submitting a survey token corresponding to the stored survey token for the transaction through the customer response client 120 to the survey server computing device 140. *Id.*, C10:55-67 – C11:1-18.

The "vendor survey interface" performs operations that include executing Survey Module software code to display one or more survey questions as an integrated component of a graphical user interface ("***GUI***"). *Id.*, Claims 1 & 19. The GUI can be implemented as a website, and the technology enabled by the '811 Patent allows merchants to integrate "a check-level survey module into their own branded web-site." *Id.*, C2:52-64. This in turn "allows customers to participate in a survey within the merchant's website and to interact with their check details and other survey features being delivered to the merchant website using a Customer Survey Module." *Id.*, C2:52-64, C17:11-15.

Implementing the vendor survey interface as a website provides "a customizable interface for collecting customer responses (feedback)" sent to a

customer browser. *Id.*, C6:22-24, C11:15-19 ("[Q]uestions are then formatted into web pages 160 that can be embedded into a merchant's branded website and sent to the customer browser 130."). The vendor survey interface also utilizes customer survey responses to generate a respondent header that is sent to the survey server computing device. *Id.*, C26:31-42.

Independent claims 1 and 19—the only independent claims at issue—both specify that the Survey Module is generated by the survey server computing device and comprises executable software code for displaying survey questions. *Id.*, Claims 1 & 19. The '811 Patent specification teaches that the survey may be "assembled into an autonomous, self-contained, web-container package with branching logic that changes the questions presented or the order of the questions presented based upon a survey respondent's answers to prior survey questions." *Id.*, C11:30-34. The Survey Module software code is transmitted by the survey server computing device to the vendor survey interface, which executes the Survey Module software code to display the survey as an integrated part of a GUI. *Id.*

In short, the '811 Patent is directed to a system that uses configurable conditions stored to a campaign data structure to enable customizable surveys. The system creates a Survey Module with executable software code and sends the Survey Module to a vendor survey interface that displays the survey as part of a GUI. The Survey Module allows customers to participate in a survey and interact with their

check details and other survey features being delivered to the vendor survey interface. *Id.*, C2:57-60. The ‘811 Patent accomplishes this functionality by employing elements that are not found in the Douglas or Ganesh references.

IV. THE ‘811 PATENT FAMILY

The application that resulted in the ‘811 Patent was filed on June 28, 2019. The ‘811 Patent is a continuation-in-part of U.S. Application No. 16/279,387 filed on February 19, 2019, which issued as U.S. Patent No. 10,380,611. Patent No. 10,380,611 is a continuation of U.S. Application No. 14/997,434 filed on January 15, 2016, which is now abandoned. Application No. 14/997,434 claims priority to U.S. Provisional Application No. 62/104,043 filed on January 15, 2015. Thus, the earliest priority date of the ‘811 Patent is January 15, 2015.

V. PERSON OF ORDINARY SKILL IN THE ART

The Board’s October 7, 2025 decision granting institution of *Inter Partes* Review adopted the Petitioner’s proposed definition of the ordinary skilled artisan. Patent Owner does not challenge this definition.

VI. CLAIM CONSTRUCTION

In an *inter parties* review, claim terms are construed using the same standards applied in civil actions in federal district court. 37 C.F.R. § 42.100(b). Claim terms are given their ordinary and customary meaning, as would be understood by one of

ordinary skill in the art. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). "A construction that is 'unreasonably broad' and that does not 'reasonably reflect the plain language and disclosure'" should not be accepted. *Microsoft Corp. v. Proxyconn, Inc.*, 789 F.3d 1292, 1298 (Fed. Cir. 2015) (citation omitted).

Claim construction starts by considering the intrinsic evidence, including the claims and the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1313–14 (Fed. Cir. 2005). The specification "is dispositive; it is the single best guide to the meaning of a disputed term." *Id*. at 1315. The specification "acts as a dictionary when it expressly defines terms used in the claims or when it defines terms by implication." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996). When facts are in dispute, the Board may also consult extrinsic evidence such as expert testimony or technical dictionaries to construe a term in the relevant art. *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 574 U.S. 318, 331–32 (2015).

Here, Patent Owner proposes construing four claim terms, including the three terms that Petitioner sought to construe:

Claim Term	**Claims**	**Petitioner's Proposed Construction**	**Patent Owner's Proposed Construction**
"point-of-sale interface"	1, 3, 7, 19	"an executable software component embedded within the POS terminal, separate and	"software or hardware for sending or receiving transaction data generated at a point of sale"

		unique from server engine software”	
“purchase detail identifier”	1, 6, 9–15, 19	“a data category that identifies elements of a commercial transaction as generated by the POS terminal”	“information identifying details about a purchase”
“survey token”	1, 5, 6, 19	“a data field generated by the point-of-sale system and provided to the customer by the point-of-sale system in response to a commercial transaction for pairing a customer with a survey”	“information for identifying a customer or transaction”
“Survey Module”	1-2, 8, 14-19	N/A	“software code with executable logic for implementing a survey”

A. “point of sale interface”

A skilled artisan reading the ‘811 Patent would readily understand that the term “point-of-sale interface” refers to software or hardware that facilitates the communication of data generated at a point of sale. Petitioner’s proposed construction should be rejected as unsupported by the ‘811 Patent specification and improperly limited to a particular technical environment—*i.e.*, software embedded in a POS terminal. The Board’s October 2025 decision construed the term as “software for displaying information to be viewed or interacted with locally at a

transaction location," but the point-of-sale interface of Patent Owner's claims is not directed to locally displaying information.

As opined by Patent Owner's expert, Ivan Zatkovich, a person of skill in the art would understand that there are user interfaces and system interfaces. A person of skill in the art would further understand that a system interface is a connection between two computer components that requires software on both the sending side and the receiving side of the connection to achieve an interface. EX2001, Declaration of Ivan Zatkovich ¶¶ 39, 41 ("*Zatkovich Decl.*").

The '811 Patent discloses a system embodiment where a POS client 100 includes a Purchase System Client to Server Interface 115 ("server interface") that links the POS client 100 to a survey server 140. EX1001, '811 Patent, Fig. 2, C5:27-31, C6:3-6 ("Purchase system client to server interface 115 provides an interface between purchase system client 100 and server 140."). This fits squarely within the definition of a system interface as that term would be understood by a person of ordinary skill in the art. EX2001, Zatkovich Decl. ¶ 60. The server interface 115 also corresponds to the point-of-sale interface recited in the claims. *Id.* ¶ 44 ("The point-of-sale interface of the claims directly corresponds with functions of the 'Purchase System Client to Server Interface' (115).").

The '811 Patent states that after a customer makes a purchase, the POS terminal 105, which is part of the POS client 100, sends transaction data to the survey

server 140. *Id.*, C7:47-50. The survey server 140 stores the transaction data collected from the POS client 100. *Id.*, C6:27-30 & Fig. 2. These operations are facilitated by the survey interface 115 and are consistent with Patent Owner's proposed construction of the term "point-of-sale interface." EX2001, Zatkovich Decl. ¶ 47 ("[T]he claim requirements of the point-of-sale interface correspond to functions of the purchase system client to server interface (115).").

The specification does not support Petitioner's construction that the software must be "embedded with a POS terminal, separate and unique from server engine software." For one, Patent Owner's POS client 100 includes separate components for the POS terminal 105 and the server interface 115, which demonstrates that the interface 115 can be an identifiable component of the overall POS system and should not be limited to an embedded part of the POS terminal 105. *Id.*, C5:27-31, C6:3-6, & Fig. 2. The '811 Patent also teaches that the POS client 100 and survey server 140 "may reside on the same electronic device," *Id.*, C7:6-7, which contradicts Petitioner's proposed requirement that the point-of-sale interface must be "separate and unique from [the] server engine."

The Board's construction of the term point-of-sale interface is limited to a component that displays and allows users to interact with information, but these functions correspond to a graphical user interface, which is a distinct component of independent claims 1 and 19. EX1001, '811 Patent, Claim 1(c)(iii) & Claim 19(e);

EX2001, Zatkovich Decl. ¶¶ 58-59. The Board's construction cited to a portion of Patent Owner's specification describing a user interface. See Oct. 7, 2025 Decision Granting Institution of Inter Partes Review, p. 14 ("October 2025 Decision"). As explained by Patent Owner's expert, however, the point-of-sale interface recited in the claims is a system interface that provides a connection or shared boundary between two computer components. EX2001, Zatkovich Decl. ¶ 60.

A plain and ordinary reading of the '811 Patent reveals that the term "point-of-sale interface" refers to software that facilitates communication of transaction data generated at a point of sale, and that is how the term would be understood by one of ordinary skill in the art. Petitioner's proposed construction should be rejected as reading unsupported limitations into claims.

B. "purchase detail identifier"

Patent Owner's proposed construction of "purchase detail identifier" is supported by the intrinsic evidence and aligned with the Board's prior construction of this term as "information identifying details about a purchase." See October 2025 Decision, p. 17. The '811 Patent includes plenary disclosure of what type of information is included in "purchase detail," and one of ordinary skill in the art would understand that this disclosure informs construction of the term "purchase detail identifier."

Starting with the claims, dependent claims 10-12 recite that the purchase detail identifier can represent a variety of information relating to a purchase, including a vendor facility, vendor personnel, or a product available for sale through a vendor. EX1001, '811 Patent, Claims 10-12. The claims themselves, therefore, support Patent Owner's proposed construction. EX2001, Zatkovich Decl. ¶ 69.

The '811 Patent specification also supports the proposed construction and describes a system that collects and utilizes "information identifying details about a purchase." The POS client 100 shown in Figure 2 includes a "purchase detail component 110 [that] collects transaction data that may include price, quantity, and name of each item purchased." EX1001, '811 Patent, C5:35-39, C9:6-14.

The specification refers to the term "purchase detail" as transaction data that "can include a wide variety of data," such as "the items purchased (using a product identifier), transaction amounts (i.e., price), the server (i.e., waitress or waiter), the table, the time of day, the mode of service delivery, and more." *Id*., C7:49-50, C12:1-6. "[T]he purchase detail can be used to generate customized questionnaires" with "transaction-related questions." *Id*., C9:21-29.

The '811 Patent discloses that "[a]ll data categories or purchase detail identifiers can be organized into database records called Attribute Groups" that share preselected attributes such as facility size or a menu item classification. *Id*., C4:63-C5:26 (emphasis added). The claims recite a system and method that determines

whether transaction data includes a given purchase detail identifier and that generates a survey question using the purchase detail identifier. *Id*., Claims 1 & 19.

It is no coincidence that the terms "purchase detail" and "purchase detail identifier" are both used by the '811 Patent to refer to transaction data, and both terms refer to the data used to generate survey questions. The discussion of the term "purchase detail" applies with equal force to construing the term "purchase detail identifier" and supports Patent Owner's proposed construction.

Petitioner seeks to limit this term by construing it as a single data category generated by a POS terminal. The '811 Patent is clear, however, that purchase detail refers to a wide variety of transaction data that is used to generate surveys and should not be construed as limited to "a data category." *Id*., C6:12-15, C:9:6-34, C11:11-18. The transaction data used by the system can include information such as a loyalty program account number or a customer email address gathered from customer records management ("CRM") or a loyalty program database, which weighs against limiting purchase detail to data generated by the POS terminal. *Id*., C5:39-54.

The '811 Patent also discloses that the purchase detail is collected by the purchase detail component 110, and the purchase detail component 110 and the POS terminal 105 are separate elements of the POS client 100. This further indicates that the source of the purchase detail identifier should not be limited to only the POS

terminal, as Petitioner suggests. For this additional reason, the term purchase detail identifier should be construed as "information identifying details about a purchase" without incorporating the limitations suggested by Petitioner.

C. "survey token"

Patent Owner concurs with the Board's prior construction of the term "survey token" as "information for identifying a customer or transaction." See October 2025 Decision, p.16. This construction is consistent with how a person of ordinary skill in the art would understand the term. EX2001, Zatkovich Decl. ¶ 63-64. Moreover, the '811 Patent defines the term "token" as "any identifying information that identifies a particular customer or transaction" and specifies that the system "may collect a survey token that identifies the particular customer or transaction." EX1001, '811 Patent, C:5:42-47.

The '811 Patent also unequivocally defines the term "survey token" with reference to information identifying a transaction or customer. The specification provides specific examples of survey tokens and states that a token can be a "(i) randomly generated number; (ii) a customer account ID, or (iii) a combination of transaction data elements, such a facility identifier and the date and time of the transaction." *Id*., C2:40-45. A token can also be a "loyalty program account number" or a customer "name, email address, or the like." *Id*., C5:50-55.

Similar to Petitioner's proposed construction for "purchase detail identifier," Petitioner seeks to narrow the term "survey token" by proposing the term be limited to a single data field generated by a POS terminal. The problem for Petitioner is that such a construction is squarely at odds with the '811 Patent specification.

Rather than limiting a "survey token" to data generated by a POS terminal, the '811 Patent states that a "token can be generated by the point of sale system or can be connected to the merchant's customer records management (CRM) software and/or loyalty program database." *Id*., C5:51-54 (emphasis added). In one embodiment, the token is generated by the survey server 140 before being sent to the POS terminal and given to a customer. *Id*., C5:47-51.

The '811 Patent also teaches that the survey token is not limited to a single data field but can be a "a composite of multiple types of data," such as "a facility identification number, transaction number (e.g., a receipt or check number), and transaction date." *Id*., C5:55-62. In one example, the survey token is "preferably a concatenation of STORE+DATE+CHECK." *Id*., C17:36-39.

In short, the '811 Patent clearly contemplates that the survey token has multiple potential origins and can be generated using a combination of data fields. The Board should reject Petitioner's invitation to adopt a construction of "survey token" that is contradicted by the specification and instead affirm the prior construction of this term as "information for identifying a customer or transaction."

D. "Survey Module"

Patent Owner's proposed construction for the term Survey Module reflects that the Survey Module is a package of software code that performs multiple types of operations relating to implementation of a survey. The Board's October 2025 Decision construed the term Survey Module as "software code for displaying a survey question." See October 2025 Decision, p. 19. Patent Owner respectfully disagrees with this construction as too limiting and instead proposes "software code with executable logic for implementing a survey."

One of ordinary skill in the art would read the '811 Patent claims and specification and know that the claimed Survey Module includes software code that performs more than the single function of displaying questions. EX2001, Zatkovich Decl. ¶ 75. Support for this conclusion is found in claim 8 that recites a system with "Survey Module software code that redirects the web browser of the customer response client computing device to the Exit Page, if the second configurable Condition is satisfied." EX1001, '811 Patent, C27:1-17 (Claim 8). That the Survey Module is redirecting a web browser illustrates that the Survey Module functionality is not limited to displaying questions. EX2001, Zatkovich Decl. ¶¶ 73-75.

Claim 18 (one of the Challenged Claims) further demonstrates that the functionality of the Survey Module is not limited to displaying questions. In claim 18, the system includes an Event that triggers a notification and a second

configurable condition that can be satisfied by a survey response. EX1001, '811 Patent, Claim 18. The Survey Module software code is configured to determine when the configurable condition is satisfied, id., which again illustrates that narrowing the construction of Survey Module to the function of displaying questions is too limiting and contrary to the '811 Patent claims.

Patent Owner's proposed construction more accurately characterizes the functionality of the Survey Module by specifying that the Survey Module can perform multiple functions that are concomitant to "implementing a survey" and not just display a survey question. That the Survey Module is configured to perform a multitude of functions is enabled by the inclusion of "software code with executable logic," as specified in Patent Owner's proposed construction.

Patent Owner's claims state that the Survey Module includes "software code." One of skill in the art would intuitively know that the term "software code" refers to "instructions that can stored and executed (i.e. can be run) on a computer," and it is these instructions that implement the logical operations performed as part of implementing a computerized survey. EX2001, Zatkovich Decl. ¶ 79.

The '811 Patent specification confirms the Survey Module includes executable logic that can, among other functions, dynamically change the questions or the order of questions in a survey based on user inputs. EX1001, '811 Patent, C11:30-34 ("The survey may be assembled into an autonomous, self-contained,

web-container package with branching logic that changes the questions presented or the order of the questions presented based upon a survey respondent's answers to prior survey questions.”). Changing survey questions or order of questions are the types of logical operations performed as part of implementing a survey in its entirety and not merely displaying a survey question.

Moreover, rather than just performing the generic operation of displaying a question, Patent Owner’s Survey Module “allows merchants, such as retailers and service providers, to integrate a check-level survey module into their own branded web-site using java tags.” *Id.*, C2:52-56, C11:15-18, C17:12-15. This integration “allows customers to participate in a survey within the merchant’s web-site and to interact with their check details and other survey features being delivered to the merchant web-site using a Customer Survey Module.” *Id*., C2:56-63 (emphasis added). The Survey Module provides a “web-service as the data-integration and storage platform.” *Id.*

A skilled artisan would understand that for a Survey Module to perform functions that facilitate participation in a survey, interaction with check details, or data integration and storage, the Survey Module would need to be delivered as “software code with executable logic for implementing a survey” and not just code for displaying a survey. The ‘811 Patent confirms that the Survey Module can include software that runs “multiple services required for implementing the

inventive method," including services for authenticating customers, identifying a customer check, and determining the completion state of a survey. *Id.*, C21:57-C25:4.

A specification "is the single best guide to the meaning of a disputed term." Phillips, 415 F.3d at 1315. Here, the specification teaches that the Survey Module performs a variety of operations that implement a survey and provides substantial support for Patent Owner's proposed construction that the Survey Module is understood as "software code with executable logic for implementing a survey."

VII. INSTITUTED GROUNDS FOR UNPATENTABILITY

Ground 1: Claim 19 is anticipated by Douglas. *See* EX1007.

Ground 2: Claims 1-7, 10, 13, 16, and 18 are anticipated by Douglas.

Ground 3: Claim 19 is anticipated by Ganesh. *See* EX1008.

Ground 4: Claims 1-7, 10, 13, 16, and 18 are anticipated by Ganesh.

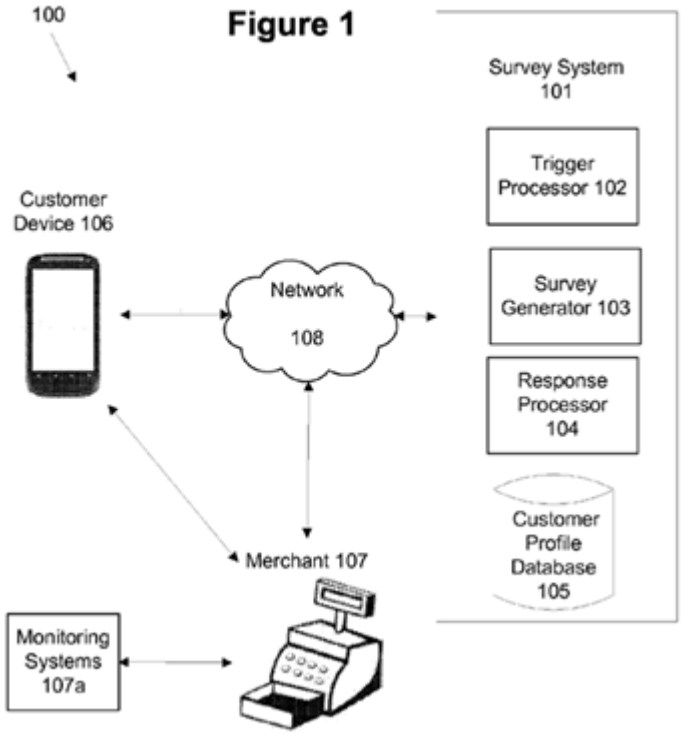
VIII. SUMMARY OF THE PETITION'S APPLIED REFERENCES

A. Douglas (Exhibit 1007)

Douglas discloses a system for presenting surveys to customers visiting a merchant location that are based on trigger events relating to customer actions. *See, e.g.*, EX1007, ¶¶ [0023], [0030], [0041]. The system is designed to present surveys to customers immediately following the trigger events to "provide a more customer-friendly experience" and avoid the delays concomitant with methods that "print a

survey on the customer's receipt, or provide a web link that a customer can later visit to fill out the survey." *Id.*, ¶ [0003].

Douglas utilizes a survey system 101 that includes: (a) a trigger processor 102; (b) a survey generator 103; (c) a response processor 104; and (d) a customer profile database 105. *Id.*, ¶ [0012]. The survey system 101 communicates across a network 108 with a customer device 106 and a merchant system 107. *Id.*, ¶ [0012] & Fig. 1. Components of the system are depicted in Douglas's Figure 1 below:



The survey generator 103 creates surveys for the customer device 106 based on trigger signals received from the trigger processor 102. *Id.* ¶ [0032]. The trigger signals are generated by the customer device 106 or merchant system 107 and sent to the trigger processor 102 in real time (*e.g.*, as soon as the triggering event is

detected). *Id.*, ¶¶ [0023], [0032]. The trigger signals are generated when, for instance, a customer enters a merchant's physical location, lingers in a certain spot within the store, purchases a product, returns a product, or when the system recognizes a customer facial expression or temperature change. *Id.*, ¶¶ [0023], [0026]-[0030], [0038], [0041].

The system is configured to provide "further questions to the customer based on how the customer responds to the initial query." *Id.*, ¶ [0034]-[0037], [0069]. The further questions are created by the survey generator after receiving customer responses. *Id.*, ¶ [0034] ("[S]urvey generator 103 may create and transmit additional survey queries based on the responses received from the customer device 106.").

The survey generator 103 runs on the backend survey system 101 that is remote from the customer device 106. *Id.*, ¶ [0059] ("Backend 218 may be associated with one or more servers that enable the . . . survey system 101.") & Fig. 1 (showing the Survey Generator 103 as remote from the customer device 106). Douglas thus discloses a centralized system that relies on regular communication between a customer device 106 and the remote survey system 101 where the logic of determining follow-up questions is executed by the centralized system and not by an autonomous web-container package.

B. Ganesh (Exhibit 1008)

Ganesh discloses a system for conducting a time-of-purchase ("***TOP***") survey during the checkout process using a customer's portable computing device ("***PCD***"). EX1008, ¶ [0006]. Similar to Douglas, Ganesh's system is designed to present customers with a survey while the customer is at the merchant location. *Id.* According to Ganesh, customers are unlikely to participate in a survey after completing a purchase. *Id.*, ¶ [0004] ("[F]illing out a survey on a PCD after a receipt has been generated (*i.e.*, after the purchase transaction has been completed) is unlikely."). Ganesh attempts to address this issue by presenting surveys during checkout. *Id.* Ganesh touts its advantages include that "the feedback provided by a consumer while waiting in the checkout line is fresh from the consumer's mind and may be more accurate." *Id.*, ¶ [0024].

The significant components of Ganesh's system are shown in Figure 1 below and include: (i) a survey server 105A with an integrated TOP module 540B; (ii) a POS module 125; (iii) a survey ID module 126; and (iv) a PCD 110. *Id.*, ¶¶ [0034]-[0036] & Fig. 1.

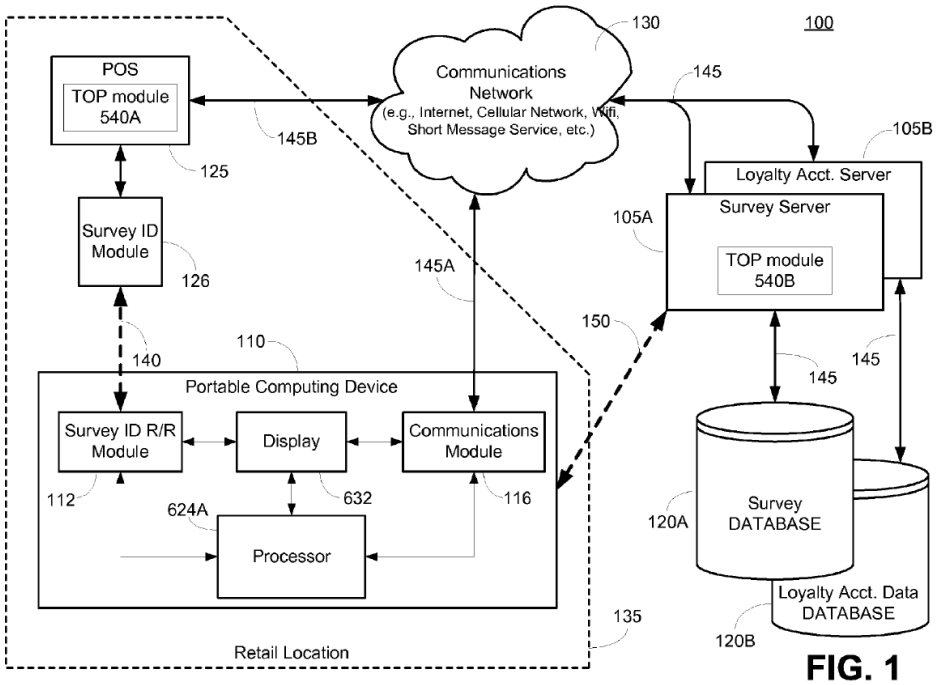


FIG. 1

The POS 125 recognizes when the consumer is in the process of completing a purchase and uses the survey ID module 126 to present a survey ID (such as a QR code) to the consumer. *Id.*, ¶ [0036]. The consumer PCD 110 reads the survey ID to establish communication with the survey server 105B and receive survey content. *Id.* The selection and determination of survey content to push to a portable consumer device is determined by the TOP module 540B residing on the survey server 105A. *Id.*, ¶ [0052] ("[T]he TOP module 540B [queries] database 120A and determine survey content, such as survey questions, to be pushed to PCD 110.").

If a consumer response is recorded, the survey server 105A pushes additional survey content to the PCD 110 if such additional content is available. *Id.* ¶ [0055] ("Once the survey response is recorded . . . the survey server 105A determines if

there is additional content to be pushed to PCD 110."), ¶¶ [0056], [0059]-[0060], [0066]. "The exchange of survey content, questions and answers, between survey server 105A (via TOP module 540B) and the consumer (via PCD 110) may continue until the checkout process is completed." *Id.*, ¶ [0039]. Ganesh's system is designed to operate through constant communication between the survey server 105A and the consumer device 110, which is a distinct mode of operation from Patent Owner's system, as discussed in more detail below.

IX. PETITIONER HAS NOT MET ITS BURDEN OF DEMONSTRATING THAT CHALLENGED CLAIMS ARE UNPATENTABLE.

Petitioner asserts four (4) grounds of unpatentability—grounds 1 and 2 alleging anticipation of claims 1-7, 10, 13, 16, and 18-19 by Douglas and grounds 3 and 4 alleging anticipation of the same claims by Ganesh. All four grounds challenge one of the two independent claims of the '811 Patent (claims 1 and 19), and both independent claims recite elements that are not found in Douglas or Ganesh, including a Survey Module, a campaign data structure, and a vendor database. The absence of these elements from Douglas and Ganesh requires that the Petition be denied as to all four asserted grounds of unpatentability. The Petition should be denied as to grounds 1 and 2 for the additional reason that Douglas does not disclose the vendor interface of independent claims 1 and 19.

Part of the reason that elements claimed by Patent Owner are not taught by Douglas and Ganesh is that the systems disclosed by these references are designed to function based on a server-centric mode of operation that is distinguishable from Patent Owner's system. The distinguishable mode of operation serves the principal design goal of Douglas and Ganesh to provide systems that gather consumer feedback in real time while a consumer is physically present at a merchant location. *See* EX1007, Douglas ¶ [0003]; EX1008, Ganesh ¶ [0004]-[0005].

Unlike Douglas and Ganesh, Patent Owner's system is not squarely focused on gathering immediate customer feedback at a merchant location. Instead, Patent Owner's system, as claimed, is also designed to generate customizable surveys that take advantage of the rich, purchase activity details captured by POS systems and surveys that can be integrated into a vendor survey interface, such as a merchant-branded website. EX1001, '811 Patent, C1:35-62, C2:1-63, C6:22-24, C7:55-61, C17:12-16. As discussed in more detail below, Patent Owner's system accomplishes these objectives using technical features not found in Douglas and Ganesh, including the Survey Module, campaign data structure, vendor database, and vendor survey interface recited in independent claims 1 and 19.

A. Grounds 1 & 2: Douglas does not anticipate the challenged claims

1. *Douglas does not disclose a Survey Module or vendor survey interface, as claimed by Patent Owner.*

Douglas does not disclose a Survey Module with executable software code that is transmitted to a vendor survey interface to implement a survey. Douglas instead teaches a centralized framework where survey logic is implemented by a backend 218 survey system 101. EX1007, Douglas ¶¶ [0012], [0059] & Fig. 1.

The backend survey system 101 in Douglas includes the survey generator 103 that creates survey questions based on trigger signals. *Id.* ¶ [0023], [0032]-[0033], [0059]. The survey questions are sent to the customer device 106 for display as "a notification, text message, email, SMS [*i.e.*, a short-message-service text message], MMS [multi-media message service], or presented to the customer device on the user interface." *Id.*, ¶ [0033]. The "[s]urveys may include visual graphics, images, animations, videos, and other digital media for the customer." *Id*.

The "[s]urvey system 101 may interact with the customer using one or more software applications *on customer device 106* . . . . [that] provide one or more user interfaces." *Id.*, ¶ [0018] (emphasis added). "The one or more software applications may be web-based applications and/or native mobile applications *installed on the customer device 106*." *Id*. (emphasis added).

Douglas is clear that the software applications used to display survey questions are *installed on the customer device 106* prior to receiving the survey. *See* EX2001, Zatkovich Decl. ¶ 90 ("[T]he applications that are installed and reside on the Douglas customer device are independent from any transmitted survey."). Using

an existing, installed software application to display survey questions is different than implementing a survey by receiving and executing a Survey Module with software code, which is a feature that is claimed by Patent Owner but not disclosed in Douglas.

Douglas does not teach that a server creates a Survey Module with executable logic that is used to generate or display survey content on a graphical user interface, as recited in both independent claims 1 and 19 of the '811 Patent. As recognized by Patent Owner's expert, "[t]he type of graphical user interface disclosed in Douglas . . . would be software that is already present on the customer's computer device such as a Web Browser." *Id.* ¶ 92.

Moreover, the only logical operations that occur, such as determining whether to provide additional survey questions based on a customer's previous response, require that the responses first be transmitted back to the centralized survey system 101 for processing by the survey generator 103. EX1007, Douglas ¶¶ [0035] ("[S]urvey generator 103 may create and transmit additional survey queries based on the responses received."), [0037], [0059], [0069]. If there are other methods that Douglas's system could employ to make decisions about further questions to display, no such methods are disclosed. EX2001, Zatkovich Decl. ¶ 101.

This distinction is highlighted by Patent Owner's claim 18, which claims a function where the Survey Module includes software code that analyzes whether a

second configurable condition is met and sends a notification to a vendor representative. EX1001, '811 Patent, Claim 18. Douglas makes a passing reference to a survey question that asks if a customer needs assistance, but there is no disclosure about generating a notification or what component would execute any logic relating to the notification. EX1007, Douglas ¶ [0038]. Such logic, if it exists, would only be performed by the backend survey system 101 and not a Survey Module created by the survey server and sent to a vendor interface for execution.

Douglas mentions the word "software" 19 times, and each mention is linked to the backend survey system 101 or the customer device 106. *Id.* "Douglas provides no suggestion of software that is part of the survey itself" or teach executing the software code by a vendor survey interface, as claimed by Patent Owner. *Id.* ¶ 101. In other words, the survey content transmitted to the customer device 106 does not contain any executable software capable of making decisions that implement a survey. *Id.* ¶¶ 95-101.

The survey content sent to the customer device 106 by Douglas's system includes notifications, text messages, graphics, images, animations, and videos, and potentially webpages that comprise "HTML documents, which may include images, style sheets and scripts in addition to text content." EX1007, Douglas ¶¶ [0033], [0054]. One of ordinary skill in the art would understand that such content does not include executable software code. *Id.*, Zatkovich Decl. ¶¶ 79-82, 89, 93. Software

code, which is the term used in the '811 Patent claims 1 and 19, includes programming languages like Java that produce executable logic. *Id.* ¶ 80.

The server-centric nature of Douglas is not a mere implementation detail—the design is fundamental to the disclosed system, which relies on a server's continuous analysis of event data, such as customer location or lingering behavior. To illustrate, Douglas teaches that a "merchant 107 may be able to identify where the customer is/has traveled in the store, and provide trigger signals to . . . . determine how long a customer is staying in a specific area." EX1007, Douglas, ¶¶ [0023], [0026]. The trigger signals are sent to the "[s]urvey generator 103 [that] may create one or more surveys for customer device 106 based on the received trigger signal." *Id.*, ¶¶ [0031]-[0032].

The surveys generated by Douglas can be customized to a customer's particular location or biometrics, and the survey design depends on real-time communication between a centralized server and a customer device 106. For instance, if a trigger signal "determines that the customer has lingered at a certain section of the store . . . survey generator 103 may send one or more surveys to customer device 106" asking the customer if "he or she would like more detailed information about the product or products he or she is currently looking at" while lingering. *Id.*, ¶ [0038]. The system also monitors facial expressions or biometrics and generate surveys based on those inputs. *Id.*, ¶ [0041]. In each case, the core

functionality of seeking immediate customer feedback is enabled by the communication between the survey system 101 and the customer device 106 where the survey system 101 is generating survey content and making decisions.

The centralized mode of operation used by Douglas is distinct from Patent Owner's claimed system where Survey Module software code is generated by the survey server and sent to a vendor interface for execution at the point of display. EX1001, '811 Patent, Claims 1 & 19. The '811 Patent teaches that the Survey Module can be an autonomous, self-contained software package. *Id.*, C11:30-34. Thus, the survey logic can be implemented on a mobile device and is not confined to a centralized survey server, which "minimize[s] the required communication between system devices that could delay survey processing." *Id.*, C11:15-18, Claim 5 ("[W]herein vendor survey interface is implemented as a software application running on a mobile computer device."). This is an advantage not achieved by Douglas and Ganesh and a technical feature that stands alone as a point of novelty over these references.

Another novel feature over Douglas is that Patent Owner's Survey Module software code can be executed by the vendor interface to display survey questions as an integrated component within a GUI. *Id.*, Claims 1 & 19. The GUI generated by the vendor survey interface can be a merchant-branded website that incorporates the Survey Module. *Id.*, C2:52-64, C6:22-24, C7:55-61, C17:12-16 ("Customer

Survey Module (GSM) of the current invention allows merchants to integrate a GSM into their branded website allowing integration to both survey templates and actual check details.").

Douglas states only that a survey question can be "presented to the customer device on the user interface," EX1007, Douglas ¶ [0033], which is distinct from the functionality claimed by Patent Owner of executing Survey Module software code to display a survey as "*an integrated component within* a graphical user interface." EX1001, '811 Patent, Claims 1 & 19 (emphasis added). The integration functionality provided by Patent Owner's Survey Module software code and vendor survey interface enables technical features that are not taught by Douglas, such as displaying surveys as an integrated component of a merchant-branded website. Given the absence of teachings in Douglas concerning the integration of a survey within a GUI created by a vendor survey interface, this feature also renders independent claims 1 and 19 novel over Douglas.

2. *Douglas does not teach a campaign data structure or vendor database*.

Patent Owner's claimed system also includes a campaign data structure and a vendor database that are not taught by Douglas. In Patent Owner's system, "[s]urveys are created using the transaction data as well as the [c]ampaign data structure, which includes configurable Conditions, Survey Questions, and branching logic set according to merchant preferences." *Id.*, C11:19-22, C6:15-20.

Independent claims 1 and 19 comprise "a campaign data structure having survey question data and a configurable Condition that is satisfied by the detection of a given purchase detail identifier" as well as a "vendor database storing a plurality of purchase detail identifiers." *Id.*, C26:14-17, C28:61-63. Upon receiving transaction data relating to a purchase, the system determines "whether the transaction data includes the given purchase detail identifier such that the configurable Condition is satisfied." *Id*. If the condition is satisfied, the system generates a survey question using pre-existing survey question data from the campaign data structure and the purchase detail identifier. *Id.*

In short, the independent claims recite a system that generates survey questions using logical operations that check whether a configurable condition is satisfied by comparing transaction data to purchase details stored to a vendor database. The result is a survey that is tailored to a specific transaction and customized to gather feedback on purchase details selected by a merchant.

Douglas also describes creating survey questions about items purchased by a consumer—but that is where the similarities to Patent Owner's system end. EX1007, Douglas ¶ [0039] ("Survey generator 103 may create one or more Surveys based on the purchase data."). Douglas does not disclose the use of specific operations claimed by Patent Owner, which compare transaction data against

purchase details stored to a vendor database to determine whether a configurable condition is met. EX2001, Zatkovich Decl. ¶¶ 108-110.

Put another way, Douglas discloses the simple step of creating a question about a purchase detail, but the reference does not disclose creating questions about *pre-selected* purchase details *only if a configurable condition is met*. This functionality is significant in that it serves a design objective of the '811 Patent to provide customizable, context-based surveys. *Id.* ¶ 108-109; EX1001, '811 Patent, C2:14-21, C9:21-34. Douglas not only omits this functionality, but it also omits the structural elements that perform this function, including the campaign data structure that comprises the configurable condition and the vendor database that stores purchase detail identifiers. The omission of the Survey Module, campaign data structure, and vendor database from Douglas renders the '811 Patent's independent claims novel over this reference.

Douglas also omits mention of pre-existing survey questions stored to a campaign data structure. Other than summarily citing to certain paragraphs of Douglas, the Petition does not address the use of pre-existing survey questions. The October 2025 Decision cited paragraph [0033] of Douglas and indicated that "the Douglas system must have pre-existing survey questions," which is a tacit acknowledgement that this feature is not expressly disclosed, and any anticipation finding must rest on an inherent disclosure.

Notably, paragraph [0033] of Douglas states only that the system "may create one or more surveys for customer device 106 based on the received trigger signals." EX1007, Douglas ¶ [0033]. Creating survey questions using a trigger signal is not the same as employing the use of pre-existing questions. One of skill in the art would appreciate that survey questions can be generated by any number of alternative methods such that the use of pre-existing questions is not necessarily present in Douglas or implied by its teachings. EX2001, Zatkovich Decl. ¶ 107; *see also PersonalWeb Techs., LLC v. Apple, Inc.*, 917 F.3d 1376, 1382 (Fed. Cir. 2019) ("[W]e conclude that the Board's inherency finding . . . lacks substantial evidence. While it is possible that Woodhill's system utilizes an unstated Binary Object Identifier lookup table . . . mere possibility is not enough."). That Douglas does not teach the generation of surveys using pre-existing survey question data further illustrates the novelty of the '811 Patent independent claims over Douglas.

B. Grounds 3 & 4: Ganesh does not anticipate the challenged claims

1. *Ganesh does not disclose a Survey Module as claimed by Patent Owner.*

Ganesh does not disclose a Survey Module with software code that is transmitted from a server to a vendor interface where the software code is executed as part of implementing the survey. Instead, Ganesh relies on centralized, server-centric communication and processing as a required mode of operation where survey logic is performed by a survey server 105A. This design is driven by Ganesh's

principal aim of "provisioning a consumer survey during the checkout process" to address the stated problem of low survey participation after a customer has completed a purchase. EX1008, Ganesh ¶ [0004].

Ganesh's system uses the TOP software module 540B running on the survey server 105A to generate survey content that is pushed to the remote PCD 110. *Id.*, ¶ [0052] ("[T]he TOP module 540B [queries] database 120A and determine survey content, such as survey questions, to be pushed to PCD 110."). "Each PCD 110 may run or execute web browsing software or functionality to access the server 105 and its various survey applications including TOP module 540B." *Id.*, ¶ [0044].

Petitioner contends that the TOP module 540B generates software code to display a survey question that is sent to the PCD 110 where an application, such as a web browser plug-in, displays the survey. *See* Petition pp. 34–37. This contention does not accurately characterize the operations that are being performed by the survey server 105A of Ganesh.

Ganesh instead teaches that the survey server 105A memory 119B includes computer-readable instructions for implementing its system—not that such instructions constitute software code that is sent to a remote interface. EX1008, Ganesh ¶ [0052] ("The memory 119B may include instructions for executing one or more of the method steps described herein."). Ganesh includes no disclosure concerning the generation of software code. EX2001, Zatkovich Decl. ¶¶ 117-118.

Ganesh also teaches that survey content is generated through queries to a query database 120A. EX1008, Ganesh ¶ [0052] ("[T]he memory 119B may include a survey content determination module that works with, or as part of, the TOP module 540B to query database 120A and determine survey content, such as survey questions, to be pushed to PCD 110."). Nothing indicates that the survey content determination module or the TOP module 540B generate executable software code sent to, and executed by, a vendor survey interface. EX2001, Zatkovich Decl. ¶ 118 ("There is no teaching or suggestion that the content determination module actually generates software to be included in the survey.").

Like Douglas, the only software that arguably relates to displaying survey content is software that is pre-installed on the PCD 110, such as a web browser. EX1008, Ganesh ¶ [0044] ("Each PCD 110 may run or execute web browsing software."), ¶ [0045] ("A PCD 110 may execute, run or interface to a multimedia platform that may be part of a plug-in for an Internet web browser.").

A person of ordinary skill in the art would recognize that a web browser plug-in or any other type of application installed on the PCD device is not executable software code that is received from a survey server 105A as part of a survey module. EX2001, Zatkovich Decl. ¶ 120. A skilled artisan would also understand that "the use of a browser to perform a survey only discloses that the survey questions are provided as HTML script, which is not software code." *Id.*

The absence of a Survey Module with executable software code that is transmitted to the PCD 110 is highlighted by the fact that the only survey logic disclosed in Ganesh is performed by the survey server 105A. Ganesh teaches that after a consumer response is recorded, the survey server 105A—not software code associated with the PCD 110—determines if additional content is available to send to the PCD 110. EX1008, Ganesh ¶ [0055] ("Once the survey response is recorded . . . the survey server 105A determines if there is additional content to be pushed to PCD 110."), ¶¶ [0056], [0059]-[0060], [0066].

The stepwise flow of Ganesh's system requires the PCD 110 to send a survey question response to the survey server 105A before the server 105A can generate the next question to be sent to the PCD 110. *Id.* ¶¶ [0052], [0055]-[0056], [0059]-[0060]. "The exchange of survey content, questions and answers, between survey server 105A (via TOP module 540B) and the consumer (via PCD 110) may continue until the checkout process is completed." *Id.*, ¶ [0039].

Rather than requiring the constant exchange of survey content between a survey server and a survey interface, Patent Owner's system, as claimed, generates a Survey Module with software code that is sent to, and executed by, a vendor survey interface. The '811 Patent claims recite operations and elements that are different from Ganesh's system, and the claims of the '811 Patent are novel over of Ganesh.

2. *Ganesh does not teach the use of a campaign data structure or vendor database*.

According to Ganesh, its survey server 105A is capable of applying selection algorithms to select one or more items being purchased to be the subject of survey questions sent to the consumer. *Id.* ¶ [0064]. Ganesh does not provide any details about the selection algorithms, such as what quantitative or qualitative methods are used or what factors are considered as part of the undisclosed algorithms. Applying an algorithm to select an item is a different functionality than applying a configurable condition, and Ganesh's vague reference to an unknown algorithm does not defeat the novelty of Patent Owner's independent claims.

A skilled artisan would understand the process described in Ganesh to require a developer to write and install software that implements the selection algorithms on the survey server. EX2001, Zatkovich ¶ 127. Requiring software algorithms teaches away from the use of data structures, such as Patent Owner's campaign data structures, that can be expediently configured to customize survey content. *Id.*

Patent Owner's independent claims 1 and 19 recite operations that compare transaction data against pre-selected purchase detail identifiers from a vendor database to determine if a configurable condition is met. EX1001, '811 Patent, Claims 1 & 19. Ganesh does not disclose operations that generate survey content by comparing data types—*i.e.,* comparing transaction data to purchase detail identifiers

stored to a vendor database—nor does Ganesh teach the use of data structures as part of selecting purchased items.

Put another way, Ganesh omits both the comparison step recited by independent claims 1 and 19 and the specific structures used to implement this step. Without teachings directed to these elements of Patent Owner's claims, Ganesh cannot establish anticipation of the Challenged Claims.

C. Petitioner cannot rely on inherency to salvage unpatentability Grounds 1-4 because Douglas and Ganesh do not inherently disclose the omitted elements of claims 1 and 19

Petitioner cannot rely on an inherency argument to bridge the gap between the '811 Patent and Douglas and Ganesh. Petitioner would need to show that these references ***necessarily*** include a Survey Module, a campaign data structure, and a vendor database and not merely that the references ***could* or *probably*** include these elements. *See Trintec Indus., Inc. v. Top–U.S.A. Corp.*, 295 F.3d 1292, 1295 (Fed. Cir. 2002) ("Inherent anticipation requires that the missing descriptive material is 'necessarily present,' not merely probably or possibly present, in the prior art.") (quoting *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999)).

Petitioner would also need to show that Douglas and Ganesh inherently and necessarily include a Survey Module, a campaign data structure, and a vendor database that *work in the same manner* claimed by Patent Owner. *See Nokia of Am.*

Corp. v. Gen. Access Sols., Ltd., No. IPR2023-01415, 2024 WL 1241505, at *6 (PTAB Mar. 22, 2024) ("Petitioner has failed to meet its burden regarding inherency . . . [while] Barratt '470 might include a controller, it is not the case that Barratt '470 necessarily includes a controller *arranged in the same manner*.") (emphasis added).

The *Nokia of Am. Corp. v. Gen. Access Sols., Ltd.* case is illustrative in this regard. There, the patent owner claimed a system having a controller for selecting data signals. *Nokia*, 2024 WL 1241505 at *6-7. The petitioner argued that a communication base station disclosed in a prior art reference must inherently include a controller to manage communication data signals. *Id.* The Board found that while it is true the prior art system might include a controller, the prior art did not ***necessarily*** disclose the controller claimed by the patent owner, which functioned by alternately selecting signals. *Id.* at *7. In other words, even if the prior art included the same element, the element did not necessarily work in the same way claimed by the patent owner. As a result, the patent at issue was not anticipated.

The Board's decision in *Bright Data Ltd. v. Oxylabs, Uab*, No. IPR2023-01442, 2024 WL 1436014 (PTAB Apr. 3, 2024), reached a similar result where the patent owner claimed a system for capturing and archiving data selected by a consumer on a website. The petitioner cited a prior art reference having a "smart server" that operated in the background to extract data from websites as a consumer navigated the web. *Id.* at *8. It was not enough that both the prior art and the patent

at issue disclosed technology for capturing data from a website as a consumer navigated the Internet. Given that the prior art functioned in a somewhat different manner, the prior art reference was not anticipating. *Id.*

In this case, even assuming *arguendo* that Douglas and Ganesh teach some of the same elements as Patent Owner's claims, Douglas and Ganesh do not *necessarily* disclose that those elements function in the same way as Patent Owner's system. For instance, Douglas and Ganesh teach creating survey questions about purchased items. EX1007, Douglas ¶ [0039]; EX1008, Ganesh ¶¶ [0025], [0064]. However, a "POSITA would understand that survey questions can be generated by any number of methods." EX2001, Zatkovich ¶ 107.

Douglas and Ganesh do not *necessarily* disclose the same methods or elements claimed by Patent Owner to generate questions about purchased items. Neither reference teaches or suggests the use of campaign data structures, configurable conditions, or the comparison of transaction data to purchase detail identifiers to determine of a condition is satisfied. Absent such disclosures, it would be error to conclude that Douglas and Ganesh inherently teach the same manner of generating questions claimed by Patent Owner. *See Rosco, Inc. v. Mirror Lite Co.*, 304 F.3d 1373, 1381 (Fed. Cir. 2002) (holding that a reference did not inherently anticipate where there were multiple ways to obtain the claimed result, and the reference did not necessarily use the anticipating process); *PersonalWeb Techs.*, 917

F.3d at 1382 (reversing a finding of inherent anticipation where it was *possible* that a prior art reference used a Binary Object Identifier to locate binary objects but mere possibility was not enough to establish inherency).

In a similar vein, even if Douglas and Ganesh could be considered to teach survey modules, the references do not *necessarily* teach that the survey server generates software code to include in a Survey Module that can be executed to display survey questions, as recited in both of Patent Owner's independent claims. *See* EX1001, '811 Patent, Claims 1 & 19. Douglas and Ganesh at best disclose software installed on consumer device that displays survey questions. EX1007, Douglas ¶ [0018]; EX1008, Ganesh ¶¶ [0044]-[0045]. However, it would be error to conclude that the installed software included software code that was *necessarily* generated by a survey server.

The '811 Patent claims a novel set of elements that are arranged and function in a novel manner. The mere possibility that the systems in Douglas or Ganesh could carry out some of the same functions cannot be used to establish anticipation through inherent disclosure.

X. DR. BRUN'S TESTIMONY DOES NOT ESTABLISH DISCLOSURE OF A SURVEY MODULE OR CAMPAIGN DATA STRUCTURE

Dr. Brun's declaration does not include a specific discussion of the Survey Module or campaign data structure claimed by Patent Owner. The declaration

merely cites to certain paragraphs of Douglas and Ganesh and summarily concludes that these paragraphs disclose a "Survey Module." EX1005, ¶¶ 49, 83, 102, 134.

Dr. Brun does not even attempt to explain how the alleged survey modules in Douglas and Ganesh include "software code," nor does Dr. Brun point to sections of Douglas and Ganesh teaching that such survey modules are sent to a portable consumer computing device and executed for the purpose of "displaying the at least one Survey Question." EX1001, Claims 1 and 19.

Nearly all of Dr. Brun's testimony is focused on repeating conclusory assertions made in the Petition. The declaration does not meaningfully address the Survey Module claimed by Patent Owner, and his declaration can therefore be disregarded for purposes of considering the present preliminary response. *See, e.g.*, *Nokia*, 2024 WL 1241505 at *7 (disregarding expert testimony as "unhelpful" where the testimony consisted of conclusory assertions); *Edmund Optics, Inc., Petr., v. Semrock, Inc., Pat. Owner.*, IPR2014-00583, 2015 WL 5376245, at *4 (PTAB Sept. 9, 2015) (finding expert testimony "not useful" where it did little more than repeat, without citation to additional evidence, conclusory arguments); *Dominion Dealer Sols., LLC Petr. v. Autoalert, Inc. Pat. Owner*, 8,08, 2013 WL 6514072, at *1 (PTAB

Oct. 10, 2013) (giving little to no weight to unsupported conclusions or assertions of the expert testimony).

XI. CONCLUSION

The Petition fails to demonstrate that the '811 Patent's claims are anticipated by Douglas or Ganesh. Patent Owner respectfully submits that the Board should enter a final decision affirming the validity of the Challenged Claims, or, alternatively, enter an order granting Patent Owner's Motion to Amend and affirming the patentability of the substitute claims and those claims that depend from the substitute claims.

Dated: January 14, 2026

Respectfully submitted,

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CERTIFICATION UNDER 37 C.F.R. § 42.24

Under the provisions of 37 C.F.R. § 42.24(d), the undersigned hereby certifies that the word count for the foregoing Patent Owner's Preliminary Response to Petition totals 10,080 words, which is less than the 14,000 words allowed under 37 C.F.R. § 42.24(b)(1).

Dated: January 14, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE UNDER 37 C.F.R. § 42.6(e)

Pursuant to 37 C.F.R. § 42.6(e), I certify that I caused to be served a true and correct copy of the foregoing Patent Owner's Response by delivering a copy via email on January 14, 2026 to counsel of record for the Petitioner at the following email addresses: Timothy J. Bechen, timothy.bechen@woodsrogers.com; Josh Long, josh.long@woodsrogers.com; and Nathan Evans, nathan.evans@woodsrogers.com.

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