

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GETTATTLE, INC.,
Petitioner,

v.

AFTERWORDS, INC.,
Patent Owner.

IPR2025-00677
Patent 10,430,811 B1

Before LINDA E. HORNER, MATTHEW S. MEYERS, and
RYAN H. FLAX, *Administrative Patent Judges*.

FLAX, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
Denying Patent Owner's Revised Contingent Motion to Amend
35 U.S.C. § 318(a)

I. INTRODUCTION

AfterWords, Inc. (“Patent Owner”) is the owner of U.S. Patent 10,430,811 B1 (Ex. 1001, “the ’811 patent”). Paper 4, 1 (Patent Owner Mandatory Notices). On March 3, 2025, GetTattle, Inc. (“Petitioner”) filed a Petition for *inter partes* review challenging the patentability of claims 1–7, 10, 13, 16, 18, and 19 of the ’811 patent. Paper 1, 1 (“Pet.”). We instituted trial on October 7, 2025. Paper 9 (“Institution Decision” or “DI”).

On January 14, 2026, Patent Owner filed a Response (Paper 13, “Resp.”) and a Contingent Motion to Amend (Paper 14, “MTA”). Petitioner filed a Reply (Paper 16, “Reply”) to Patent Owner’s Response and an Opposition (Paper 15) to the MTA on April 7, 2026. Per Patent Owner’s request, we entered Preliminary Guidance with respect to the MTA on April 22, 2026. Paper 22. Patent Owner filed a Sur-reply (Paper 23, “Sur-reply”) to Petitioner’s Reply and replaced the MTA with a Revised Contingent Motion to Amend (Paper 24, “RMTA”) on May 15, 2026. Petitioner filed an Opposition to the RMTA on June 16, 2026 (Paper 26, “Opp. RMTA”), and Patent Owner responded with a Reply to that Opposition on July 7, 2026 (Paper 27, “Reply RMTA”), which was followed by Petitioner’s Sur-reply to that Reply (Paper 28, “Sur-reply RMTA”).

No oral argument was requested by either party (*see* Ex. 3004), and no final hearing was held. *See* Paper 29. No motions concerning evidence were filed by either party.

Petitioner bears the burden of proving unpatentability of the challenged claims and this ultimate burden of persuasion never shifts to Patent Owner. *Dynamic Drinkware, LLC v. Nat’l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015). As we address the parties’ positions, it is

always in the context of this burden. To prevail, Petitioner must prove unpatentability by a preponderance of the evidence. *See* 35 U.S.C. § 316(e) (2018); 37 C.F.R. § 42.1(d) (2023).

After considering the parties’ arguments and supporting evidence, as discussed in detail below, we conclude that Petitioner proves by a preponderance of the evidence that the challenged claims of the ’811 patent are unpatentable.

As noted above, in this proceeding, Patent Owner proposes claim amendments. As provided under our Rules, a petitioner also bears the ultimate burden to show by a preponderance of the evidence that any proposed substitute claim is unpatentable. 37 C.F.R. § 42.121(d)(2). However, “[b]efore considering the patentability of any substitute claims, . . . the Board first must determine whether the motion to amend meets the statutory and regulatory requirements set forth in 35 U.S.C. § 316(d) and 37 C.F.R. § 42.121,” and a patent owner bears the burden of persuasion to show by a preponderance of the evidence that the motion to amend complies with these requirements. *See Lectrosonics, Inc. v. Zaxcom, Inc.*, IPR2018-01129, Paper 15 at 4 (PTAB Feb. 25, 2019) (precedential); 35 U.S.C. § 316(d); 37 C.F.R. § 42.121 (e.g., the amendment proposes a reasonable number of substitute claims, responds to a ground of unpatentability on trial, and there is support for each proposed substitute claim).

Having considered the parties’ positions on the RMTA and the record, as discussed below, we *deny* Patent Owner’s RMTA.

A. REAL PARTIES-IN-INTEREST

Petitioner identifies “[t]he real party in [interest] is GetTattle, Inc.”
Pet. 11. Patent Owner identifies “[t]he real party-in-interest is AfterWords, Inc.” Paper 4, 1.

B. RELATED MATTERS

Petitioner does not identify any related matters in the “Related Matters” section of the Petition. Pet. 11. However, Petitioner elsewhere identifies that “[t]here is [an] on-going patent litigation in the United States [sic, States] District Court for the Middle District of Florida, Tampa Division (Civil Action No. 8:24-cv-01386-TPB-CPT),” without specifying that the ’811 patent, or a related patent, is involved. *Id.* at 7; *but see id.* at 11 (citing Ex. 1004, which is the related complaint involving the ’811 patent).

Patent Owner confirms, “[t]here is pending litigation in the Tampa Division of the Middle District of Florida between Patent Owner and Petitioner in the case *AfterWords, Inc. v. GetTattle, Inc.*, Case No. 8:24-cv-01[3]86-TPB-CPT. The related district court litigation involves U.S. Patent No. 10,4[3]0,811.” Paper 4, 1.

C. THE ’811 PATENT AND RELEVANT BACKGROUND

The ’811 patent, titled “TRANSACTION-SPECIFIC CUSTOMER SURVEY SYSTEM,” issued on October 1, 2019, from U.S. Application 16/456,490, which was filed on June 28, 2019. Ex. 1001, codes (10), (21), (22), (45), (54). The ’811 patent indicates priority as a continuation-in-part to U.S. Application 16/279,387 (filed on February 19, 2019), which was a continuation of U.S. Application 14/997,434 (filed on January 15, 2016),

and further indicates priority to U.S. Provisional Application 62/104,043 (filed on January 15, 2015).¹ *Id.* at codes (60), (63).

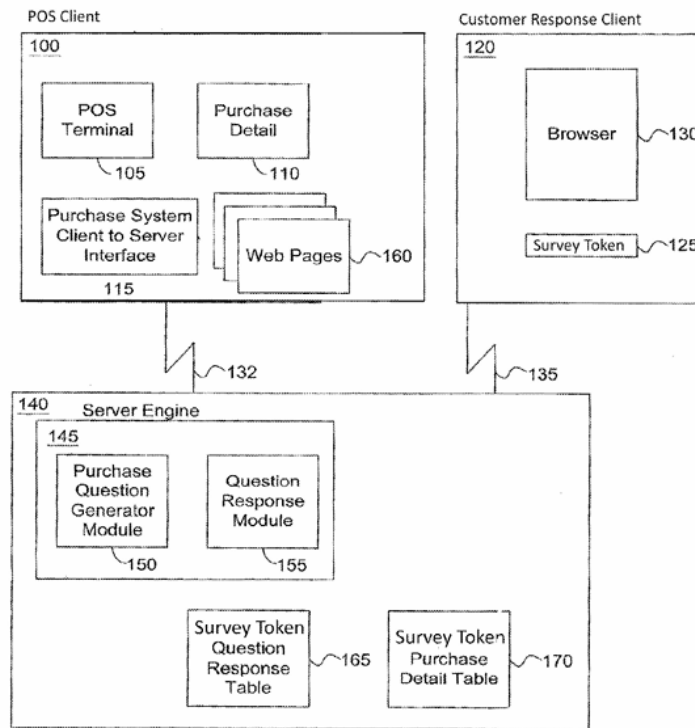
The '811 patent relates generally to

a method and system for automatically generating context-based survey questions predicated on the customers' actual purchase experience with the merchant, thus eliminating for the customer the need to respond to obvious, redundant, and even irrelevant questions, and providing to the merchant customer feedback directly bound to the actual purchase event and correlating data. Purchase information is stored at the time of purchase and the customer is given an identifier for the purchase. Then, at the customer's convenience, either at the point of sale or through a networked computer, the customer can provide responses to questions that are selectively and automatically generated based on the items purchased, or other definable attributes associated with the sale, and based upon configurable preferences of the merchant. Survey questions are displayed and feedback responses are stored, analyzed and associated with purchase information in real time.

Id. at Abstr. As described by the '811 patent, such a system has the advantages of automatically presenting customers with non-generic, service/product specific surveys, based on real time transaction data from a point-of-sale, that are less cumbersome to complete. *Id.* at 1:35–2:34.

¹ Petitioner acknowledges these filings and does not contest the priority of the '811 patent in this proceeding. Pet. 3, 10.

The '811 patent's Figure 2, below, illustrates such a system:



“FIG. 2 shows a block diagram for a system for receiving customer feedback,” i.e., survey responses, “in a GSM-Web Services configuration.” *Id.* at 3:15–16; *see also id.* at 2:57–63 (GSM refers to Guest Survey Module).² The system shown in Figure 2, and described throughout the '811

² As discussed in further detail below in addressing the merits, the GSM-Web (Guest Survey Module) embodiment is relevant, as it relates to a “Survey Module,” recited in the claims. The web-service (WS)-based GSM is discussed at columns 17–25 of the '811 patent and is described as capable of performing a variety of functions. Ex. 1001, 17:11–25:4. Fig. 2 (above, as well as Figs. 3–6) illustrates that survey server 140 generates survey questions (at module 150, using a Campaign data structure), which are forwarded to a customer's (web) browser 130 (formatted into web pages 160), and customer responses to these survey questions are then returned to and received (one at a time or grouped) at the server's 140 response module 155. *See id.* at 5:27–13:8. Although it performs several functions, the GSM

patent, is composed of computer devices and executable software operated thereby, and Figure 2 shows the three primary components of such a system: POS Client 100, Customer Response Client 120, and Server 140. POS Client 100 represents a vendor or merchant that sells a product or service to a customer; POS refers to the point-of-sale, where some device is used to transact the sale. *See id.* at 1:14–3:9 (Background and Summary), 7:14–19, 16:13–19. Customer Response Client 120 represents a device that a customer uses to complete a survey about a product or service purchased from the vendor. *Id.* Server 140 represents a system (with a server engine 145) that creates a survey for the vendor to be taken by the customer. *Id.* POS client 100 and Server 140 are networked, as are Server 140 and Customer Response Client 120. *Id.* at 5:27–11:60.

The described process begins when a customer buys something from a vendor at POS terminal 105; at that point, the POS client 100 identifies purchase detail information associated with that purchase, e.g., the product, time of sale, employee involved, and price, and creates a survey token 125 paired with this identifying information, which can be used to initiate a related survey. *Id.* The customer and Server 140 are provided with survey token 125. *Id.* Server 140 is equipped with information about the vendor and potential sales, stored as purchase detail table 170; Server 140 can identify this information based on survey token 125. *Id.* Server 140 operates based on a Campaign, which is a data structure that includes vendor

is not described as functioning to determine a second survey question based on a customer's response to a first survey question. *See id.* at 17:11–25:4. The relevance of this to claim construction, Petitioner's challenges, and the RMTA is discussed below.

preferences on how a survey will be conducted (questions, events, incentives, etc.). *Id.* The customer sends survey token 125 to Server 140, e.g., via input at web browser 130 and the vendor's website, and Server Engine 145 then uses purchase question generator module 150, in association with question response module 155 and purchase detail table 170, i.e., software and data, to generate a question for the customer based on the purchase, which may be conducted at the vendor's website via browser 130 of Customer Response Client 120. *Id.*

The customer interacts with the survey, e.g., at the vendor's website, via a survey module (also identified as a Customer Survey Module (CSM) or Guest Survey Module (GSM)). *Id.* at 2:52–63; *see also* 11:13–18 (“purchase question generator module 150 generates questions based on the detail retrieved. Typically, these questions are then formatted into web pages 160 that can be embedded into a merchant's branded website and sent to the customer browser 130.”). According to the '811 patent, *modules* are programs, equated to computer implemented steps, running on computer systems. *Id.* at 16:13–19; *see also id.* at 14:64–15:10 and Fig. 9 (describing an exemplary form of survey questionnaire).

Because the survey module element and its functions are at issue in this proceeding, the GSM embodiment mentioned above is worth discussing in greater detail. As noted, a “WS-Based GSM” (meaning a web-service-based guest survey module—*see* Ex. 1001, 2:51–63) embodiment is described in the '811 patent beginning at column 17. The '811 patent states:

The WS-based 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. All administration of the GSM occurs

within a Data Collection Handler (DCH) web-based portal. The WS features are implemented as a multi-unit (MU) role based services; this allowing an MU login to be setup by survey Attribute Group scope for either centralization or decentralization based upon MU login scope to units.

Id. at 17:10–21. The GSM is described as capable of using the survey token to determine what POS unit was used by a customer. *Id.* at 17:43–48. In this portion of the Specification, it explains that “surveys are template based,” and a “Campaign data structure” can include settings that describe surveys that can be deployed, survey master questions list, survey questions, respondent headers containing information about a survey response, respondent details, and incentive masters; although associated therewith, none of this is described as a part of the GSM. *Id.* at 18:1–29; *see also id.* at 18:39–21:30 (further describing these features).

“The GSM includes multiple services required for implementing the inventive method on the system,” such as: a GetGSMUnit that identifies a Data Collection Handler web-based portal; an optional GSM Customer Authentication that allows a returning customer to authenticate; an optional GSM Create/Edit Customer that allows a customer to create/edit their information; a GenerateSurvey that generates survey data (regardless of its title, this feature is not, however, described as creating a survey in the sense that the survey server does so); an EditSurvey that allows the edited survey data to be stored; and a GetSurveyState that allows a survey to be validated. *Id.* at 21:61–22:8; *see also id.* at 22:9–24:43 (describing the details of these functions). Particularly relevant to this proceeding, none of these functions/elements nor any other part of the GSM embodiment or the more general Survey Module is described as including branching logic to choose

survey questions in any way, much less based on prior user responses to other survey questions.

The '811 patent concludes with nineteen claims, of which claims 1 and 19, reproduced below, are independent claims:

1. A system for implementing transaction-specific surveys comprising:

(a) a point-of-sale interface used in conducting a commercial transaction between a consumer and a vendor, the point-of-sale interface being configured to record transaction data relating to the commercial transaction wherein the transaction data comprises at least one purchase detail identifier and a survey token;

(b) a survey server computing device configured to receive and store the transaction data generated by the point-of-sale interface, wherein:

(i) the survey server computing device comprises (A) a vendor database storing a plurality of purchase detail identifiers, and (B) a campaign data structure having survey question data and a configurable Condition that is satisfied by the detection of a given purchase detail identifier; and wherein

(ii) the survey server computing device is configured to perform the operations comprising (A) receiving a survey token, (B) retrieving the transaction data having the stored survey token corresponding to the received survey token, (C) determining whether the transaction data includes the given purchase detail identifier such that the configurable Condition is satisfied, and if the configurable Condition is satisfied, generating a Survey Question using the given survey question data and the purchase detail identifier, and (D) generating a Survey Module comprising software code for displaying the at least one Survey Question;

(c) a vendor survey interface configured to perform the operations comprising: (i) transmitting the survey token to the

survey server computing device; (ii) receiving from the survey server computing device the Survey Module; (iii) generating a graphical user interface on a display screen; (iv) running the Survey Module to display the at least one Survey Question as an integrated component within the graphical user interface; (v) generating a Respondent Header based on user-generated inputs in response to the at least one Survey Question; and (vi) transmitting the Respondent Header to the survey server computing device.

19. A computer-implemented method for providing transaction-specific surveys comprising the operations of:

(a) providing a survey server configured to receive and store transaction data generated by point-of-sale interface relating to a commercial transaction between a consumer and a vendor, wherein

(i) the transaction data comprises purchase detail identifiers and a survey token; and

(ii) the survey server comprises (A) a vendor database storing a plurality of purchase detail identifiers, and (B) a campaign data structure having survey question data and a configurable Condition that is satisfied by the detection of a given purchase detail identifier;

(b) receiving by the survey server, a survey token;

(c) retrieving by survey server, the transaction data having the stored survey token corresponding to the received survey token;

(d) determining by survey server, whether the transaction data includes the given purchase detail identifier such that the configurable Condition is satisfied, and if the configurable Condition is satisfied, generating a Survey Question using the survey question data and the purchase detail identifier;

(e) generating by the survey server, a Survey Module comprising software code for displaying the at least one Survey Question as an integrated component within a graphical user interface;

(f) transmitting by the survey server, the Survey Module to a vendor survey interface; and

(g) receiving by the survey server, a Respondent Header generated based on user-generated inputs in response to the at least one Survey Question.

Id. at 26:2–29:15 (claims). Claims 1 and 19 are similar. Claim 1 is directed to a system for implementing a survey and claim 19 directed to a method largely using that system. *Id.* The remaining challenged claims 2–7, 10, 13, 16, and 18 depend directly or indirectly from independent claim 1. *Id.*

D. PETITIONER’S ASSERTED GROUNDS FOR UNPATENTABILITY

Petitioner asserts the following grounds for unpatentability:³

Ground	Claims Challenged	35 U.S.C. § ⁴	Reference(s)/Basis
1	19	102	Douglas ⁵
2	1–7, 10, 13, 16, 18	102	Douglas
3	19	102	Ganesh ⁶
4	1–7, 10, 13, 16, 18	102	Ganesh

Pet. 3, 12. In support of these grounds for unpatentability, Petitioner submits, *inter alia*, the Declarations of Yuriy Brun, Ph.D. Exs. 1005, 1010.

³ It is not apparent why the Petition separates independent claim 19 from the other challenged claims under grounds 1 and 3 because all grounds are based on anticipation by either Douglas or Ganesh. But, Petitioner asserts that “[e]ach ground raised in th[e] Petition is meaningfully distinct.” Pet. 14.

⁴ The earliest priority date of the ’811 patent is January 15, 2015, which is after the relevant AIA revisions to the Patent Act took effect on March 16, 2013. 35 U.S.C. § 100 (note); *see* Ex. 1001, code (60). For the purposes of this Final Decision, AIA § 102 applies.

⁵ L. Douglas and R.A. Secrist, US 2015/0193794 A1, pub. July 9, 2015 (“Douglas”). Ex. 1007.

⁶ S. Ganesh and J. Menendez, US 2014/0337098 A1, pub. Nov. 13, 2014 (“Ganesh”). Ex. 1008.

Patent Owner submits, *inter alia*, the Declarations of Ivan Zatkovich.
Exs. 2001, 2005.

II. DISCUSSION AND ANALYSIS OF PETITIONER’S CHALLENGES

A. LEGAL STANDARDS ON PATENTABILITY

“In an [*inter partes* review], 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) (citing 35 U.S.C. § 312(a)(3) (requiring *inter partes* review petitions to identify “with particularity . . . the evidence that supports the grounds for the challenge to each claim”)). The ultimate burden of persuasion in an *inter partes* review never shifts to Patent Owner. *See Dynamic Drinkware*, 800 F.3d at 1378 (discussing the burdens of proof in *inter partes* review). Although we may indicate that certain arguments or evidence presented by Patent Owner are not persuasive, it is always within this context.

“[A] prior art reference will anticipate if it ‘disclose[s] each and every element of the claimed invention . . . arranged or combined in the same way as in the claim.’” *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1341 (Fed. Cir. 2016) (quoting *In re Gleave*, 560 F.3d 1331, 1334 (Fed. Cir. 2009) (alterations by Federal Circuit)). “However, a reference can anticipate a claim even if it ‘d[oes] not expressly spell out’ all the limitations arranged or combined as in the claim, if a person of skill in the art, reading the reference, would ‘at once envisage’ the claimed arrangement or combination.” *Id.* (quoting *Kennametal, Inc. v. Ingersoll Cutting Tool Co.*, 780 F.3d 1376, 1381 (Fed. Cir. 2015) (alteration by Federal Circuit); *In re Petering*, 301 F.2d 676, 681 (CCPA 1962)).

B. ORDINARY SKILL IN THE ART

Petitioner contends:

As of the effective priority date of the ‘811 patent, a person of ordinary skill in the relevant field at the time would be familiar with the pre-existing point of sale and network-based technologies as above, for example in Section I.D. above as well as the “BACKGROUND OF THE INVENTION” portion of the ‘811 patent specification. Ex. 1001, col. 1, l. 21 – col. 5, l. 10.

This person would include someone who has, through education or practical experience, at least 2-3 years of experience in software engineering, such as the development of data sets, database management, and networking integration for dynamic content generation and network-based distribution.

Pet. 10.

Patent Owner “does not challenge this definition.” Resp. 8.

As has Patent Owner, we accept and use Petitioner’s proposed definition of the ordinarily skilled artisan. It appears to comport with the level of skill in the art reflected in the prior art of record and the ’811 patent. *See Okajima v. Bourdeau*, 261 F.3d 1350, 1355 (Fed. Cir. 2001) (“the prior art itself [may] reflect[] an appropriate level” of the ordinary level of skill in the art) (quoting *Litton Indus. Prods., Inc. v. Solid State Sys. Corp.*, 755 F.2d 158, 163 (Fed. Cir. 1985)).

C. CLAIM CONSTRUCTION

The Board interprets claim terms in an *inter partes* review using the same claim construction standard that is used to construe patent claims in a civil action in federal district court. 37 C.F.R. § 42.100(b). In construing claims, district courts and the Board here, by default, give claim terms their ordinary and customary meaning, which is “the meaning that the term would have to a person of ordinary skill in the art in question at the time of the

invention.” *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (en banc). “[W]e need only construe terms ‘that are in controversy, and only to the extent necessary to resolve the controversy.’” *Nidec Motor Corp. v. Zhongshan Broad Ocean Motor Co.*, 868 F.3d 1013, 1017 (Fed. Cir. 2017) (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999)).

Should claim terms require express construction, sources for claim interpretation include “the words of the claims themselves, the remainder of the specification, the prosecution history [i.e., the intrinsic evidence], and extrinsic evidence concerning relevant scientific principles, the meaning of technical terms, and the state of the art.” *Phillips*, 415 F.3d at 1314 (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004)). “[T]he claims themselves [may] provide substantial guidance as to the meaning of particular claim terms.” *Id.* However, the claims “do not stand alone,” but are part of “‘a fully integrated written instrument’ . . . consisting principally of a specification that concludes with the claims,” and, therefore, the claims are “read in view of the specification.” *Id.* at 1315 (quoting *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 978–79 (Fed. Cir. 1995) (en banc)). Any special definition for a claim term must be set forth in the specification “with reasonable clarity, deliberateness, and precision.” *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994). Without such a special definition requiring it, however, limitations may not be read from the specification into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

The Petition lists three claim terms for which some degree of interpretation is argued: “point of sale interface,” “survey token,” and

“purchase detail identifier.” Pet. 12–14. Minimal argument or support is provided, other than asserting definitions of these terms with citations to the ’811 patent disclosure and/or Dr. Brun’s Declaration. *Id.*

Patent Owner identifies four claim terms for construction: “point-of-sale interface,” “purchase detail identifier,” “survey token,” and “Survey Module.” Resp. 10–21.

The claim terms identified for interpretation were each addressed in our Institution Decision. DI 11–19. We address the parties’ positions below.

1. “point-of-sale interface”

The language “point-of-sale interface” is recited in independent claims 1 and 19, and dependent claims 3 and 7. Ex. 1001, 26:2–29:15. For context, the full clause of claim 1 recites, “a *point-of-sale interface* used in conducting a commercial transaction between a consumer and a vendor, the *point-of-sale interface* being configured to record transaction data relating to the commercial transaction wherein the transaction data comprises at least one *purchase detail identifier* and a *survey token*.” *Id.* at 26:4–9 (italics used here and below when highlighting claim terms at issue). Claim 19 is substantially similar in using this term. *Id.* at 28:53–56.

In our Institution Decision, we interpreted “point-of-sale interface” as meaning *software for displaying information to be viewed or interacted with locally at a transaction location*. DI 13–15.

Parties’ Positions

Petitioner asserts that “‘Point of Sale Interface’ should be construed as an ‘executable software component embedded within a point-of-sale terminal,’” because “[t]he general term point-of-sale has its ordinary

meaning of a terminal for conducting a point-of-sale transaction,” and “interface is computer executable instructions.” Pet. 13 (citing Ex. 1001, 4:32–37; Ex. 1005 ¶ 20). As indicated above, we interpreted this claim language differently at institution.

Patent Owner argues that “point-of-sale interface” means “software or hardware for sending or receiving transaction data generated at a point of sale.” Resp. 9–13; Ex. 2001 ¶ 62; *see also* Sur-Reply 2–4. Patent Owner, relying largely on testimony of its witness, Mr. Zatkovich, argues that, contrary to our initial interpretation of this claim language, it is not directed to locally displaying information as would a *user* interface, but rather to a *system* interface that facilitates communications of transaction data generated at a point of sale. *Id.* at 10–13 (citing Ex. 1001, 5:27–31, 6:3–6, 6:27–30, 7:47–50, Fig. 2; Ex. 2001 ¶¶ 39, 41, 44, 47, 58–60).

Petitioner responds and argues that Patent Owner’s proposed construction should be rejected because the ’811 patent describes a “purchase system client to server interface 115” as providing the interface between the purchase system client 100 and the server 140, and this interface 115 is described as within the POS client 100 and is a part of its processing system—it does not receive transaction data from a point of sale, as argued by Patent Owner, because it is within that point of sale. Reply 3–4 (citing Ex. 1001, 6:3–5, 7:6–8, Fig. 2).

Analysis

As we noted in our Institution Decision, the claim language does little to identify any certain meaning of “point-of-sale interface.” *See* DI 13–15. However, as identified above, the full claim clause initially reciting point-of-sale interface, “a *point-of-sale interface* used in conducting a commercial

transaction between a consumer and a vendor, the *point-of-sale interface* being configured to record transaction data relating to the commercial transaction wherein the transaction data comprises at least one *purchase detail identifier* and a *survey token*,” is inconsistent with Patent Owner’s proposed interpretation of the term. *Id.* at 26:4–9.

The claim requires the “point-of-sale interface” to be used to *conduct* the commercial transaction between the consumer and the vendor and *record* the purchase detail identifier and survey token—these functions appear to have little if anything to do with a system interface, contrary to Patent Owner’s arguments. The respective claim language instead appears to refer to a user interface where a transaction is conducted. The expressly claimed function of the *point-of-sale interface* is to be used in the commercial transaction and to record the *purchase detail identifier* and the *survey token*, not to transmit or receive such data.

Patent Owner appears to equate the claim’s recited “point-of-sale interface” with the client to server interface 115 described in the Specification, i.e., a system interface. *See* Ex. 1001, 6:3–6. But, according to the ’811 patent, POS (point-of-sale) terminal 105 collects purchase data such as the survey token and other information that would be the purchase detail identifier data. Ex. 1001, 9:6–14 (discussing Fig. 2). POS terminal 105 is described as part of the client system 100, which the customer employs to make a purchase, i.e., the claimed *commercial transaction*. *Id.* at 8:60–9:5. Thus, the recited “point-of-sale interface,” recited as recording this data, is understood to be a user interface, not a system interface.

As we explained in our Institution Decision, looking to the ’811 patent’s written description, the Specification never uses the term “point-of-

sale interface,” thus, we again break the claim term down to its components to understand its meaning within the context of the entire Specification. *See* DI 13–15. The ’811 patent states that “moder[n] Point-of-Sale (POS) systems . . . capture rich details around their customers’ purchasing activity.” Ex. 1001, 1:52–54. The Specification further states that “[t]he transaction data may be stored locally to a point-of-sale (“POS”) device or to a remote location, such as a cloud service provider.” *Id.* at 2:23–25.

Regarding the associated term “interface,” the written description states, “[i]n general, as used herein, an interface is a component of computer executable instructions stored in a tangible, non-transitory medium and executed by processor 12 to present a display of information related to the interface allowing someone to view and/or interact with the presented information.” *Id.* at 4:32–37.

Nothing in the ’811 patent’s prosecution history sheds further light on the meaning of this language. *See* Pet. 12–14; Resp. 10–13; Ex. 1003.

Based on the intrinsic record, we find that the ’811 patent describes a *point-of-sale* as being local to a transaction, e.g., a sale/purchase of a product or service, as compared to remote from such a transaction. And, we find that the ’811 patent explains that when it uses the term *interface*, it means software for presenting a display of information to allow someone to view and/or interact with the information. We find no reason to depart from the interpretation we assigned to this term at institution.

Therefore, on this record, we interpret “point-of-sale interface” to mean *software for displaying information to be viewed or interacted with locally at a transaction location*.

2. “survey token”

The term “survey token” is recited in claims 1, 5, 6, and 19. Ex. 1001, 26:2–29:15. According to claim 1, the system is configured such that a *survey token* is recorded by the *point-of-sale interface* and is transmitted to a *survey server* computing device by a *vendor survey interface*. *Id.* at 26:2–42 (claim 1); *see supra* Section II.C.1 (quoting relevant claim language).

In our Institution Decision, we found that “survey token” means *information for identifying a customer or transaction*. DI 15–16.

Parties’ Positions

Petitioner asserts that “survey token” means “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,” because “[t]he ‘811 Patent defines the term token and notes a survey token is a data field ‘given to the customer at the time of sale and associated with the customer’s purchase in the purchase detail table[] 170.’” Pet. 13 (citing Ex. 1001, 6:56–59; Ex. 1005 ¶ 23).

Patent Owner, agreeing with the Board’s determination at institution, argues that “survey token” means “information for identifying a customer or transaction.” Resp. 10, 16–17.

Petitioner does not address this term further in its Reply. *See generally* Reply.

Analysis

The claim language does little to specify a meaning of “survey token.” Turning to the ‘811 patent’s written description, it states, “[w]ith this invention, transaction data is stored at the time of purchase and the customer is given a survey token correlating to the purchase. The token can be any

data or information that is useful for identifying the customer or transaction, such as a (i) randomly generated number; (ii) a customer account ID, or (iii) a combination of transaction data elements, such [as] a facility identifier and the date and time of the transaction.” Ex. 1001, 2:38–45.

Nothing in the ’811 patent’s prosecution history sheds further light on the meaning of this language. *See* Pet. 12–14; Ex. 1003.

We find the ’811 patent’s Specification sufficiently describes the concept of a “survey token.” Based on the intrinsic record, we find that “survey token” means *information for identifying a customer or transaction*.

3. “purchase detail identifier”

The term “purchase detail identifier” (singular or plural) is recited in claims 1, 6, 9–15, and 19. Ex. 1001, 26:2–29:15. According to claim 1, as noted above, the recited *point-of-sale interface* of the claimed system is configured to record *transaction data* that comprises “at least one purchase detail identifier and a survey token.” *Id.* at 26:4–9; *see supra* Section II.C.1 (quoting relevant claim language).

At institution, we determined that “purchase detail identifier” means *information identifying details about a purchase*. DI 16–17.

Parties’ Positions

Petitioner asserts that “purchase detail identifier” means “a data category that identifies elements of a commercial transaction as generated by the POS terminal,” and, although the “term is not expressly defined by the ’811 Patent, the meaning is inferred by the ordinary meaning of ‘purchase detail’ and usage of the term ‘data category’” in the patent. Pet. 14 (citing Ex. 1001, 5:13–14; Ex. 1005 ¶ 29).

Patent Owner argues that “purchase detail identifier” means “information identifying details about a purchase.” Resp. 10, 13–16. This is the same meaning as applied in our Institution Decision.

Petitioner does not address this term further in its Reply. *See generally* Reply.

Analysis

Claims 10–15 further define “purchase detail identifiers” as representing a product/service available for purchase through the vendor, representing a vendor facility used by the vendor for commercial transactions, identifying vendor personnel, representing a mode of service, and identifying an internal location within a vendor facility. Ex. 1001, 27:36–28:26. Thus, in each of these dependent claims, *purchase detail identifier* is information relating to the vendor or the purchase of products.

Turning to the ’811 patent’s written description, it states “[a]ll data categories or purchase detail identifiers can be organized into database records called Attribute Groups. An Attribute Group is a collection of data classes or purchase detail identifiers sharing a preselected attribute and that [is], thus, organized according to definable and changeable merchant user defined, or auto generated criteria.” *Id.* at 4:63–5:1. The Specification further states, “Attribute Groups can also be used for other data categories (i.e., purchase detail identifiers) as well” and “[a]ll data categories and purchase detail identifiers are capable of being placed in Attribute Groups.” *Id.* at 5:13–20. Thus, the Specification suggests that “purchase detail identifiers” are data consisting of details identifying a purchase.

Nothing in the ’811 patent’s prosecution history sheds further light on the meaning of this language. *See* Pet. 12–14; Ex. 1003.

Based on the intrinsic record, we interpret “purchase detail identifier” to mean *information identifying details about a purchase*.

4. “survey module”

This claim term is the focus of the primary dispute at trial. Patent Owner argues its meaning forecloses unpatentability and also proposes substitute claims directed to the functions of a *survey module* in attempt to distinguish the claimed invention over the prior art.

The term “survey module” is recited in claims 1, 2, 8, and 14–19. Ex. 1001, 26:2–29:15. According to claim 1, a *survey module* is generated by the *survey server* computing device and “compris[es] software code for displaying the at least one Survey Question”; moreover, the *survey module* is received at the *vendor survey interface* from the *survey server* computing device and is run at the *vendor survey interface* “to display the at least one Survey Question as an integrated component within the graphical user interface.” *Id.* at 26:2–42. For further context, claim 2, which depends from claim 1, recites that “the Survey Module is a webpage frame configured for display as an integrated component of the host vendor webpage.” *Id.* at 26:43–48. Dependent claims 14–18 further define software code of the *survey module*. *Id.* at 27:58–28:50.

In our Institution Decision, we found that “Survey Module” means *software code for displaying a survey question*. DI 17–19.

Parties’ Positions

Petitioner, in the Petition, takes no express position on the meaning of *survey module*. See Pet. 13–14.

Patent Owner, prior to institution of trial, called the term *survey module* “[t]he critical claim element to [its] Preliminary Response,” and

argued it should “be given its ‘ordinary and customary meaning.’” Prelim. Resp. 13. At that point, Patent Owner did not identify the ordinary meaning of the term. *Id.*

Patent Owner now argues, in disagreement with our interpretation at institution, that “Survey Module” means “software code with executable logic for implementing a survey,” arguing that our initial interpretation was “too limiting.” Resp. 10, 18–21; *see also* Sur-Reply 4–7. As support for the position that the recited *survey module* must do more than display survey questions, Patent Owner points to dependent claim 8, which depends from claim 1 and requires that the *survey server* computing device incorporate within the *survey module* software code that redirects the web browser (claim 1 does not recite any “web browser,” so it is unclear to what this refers)⁷ to an exit page. *Id.* at 18. Similarly, Patent Owner points to claim 18, which also depends from claim 1 and adds that the *survey server* computing device can incorporate into the *survey module* software code that determines if a “second configurable Condition is satisfied,” and can “implement the Event to transmit an electronic notification to the vendor” *Id.* at 18–19; *see* Ex. 1001, 28:48–49 (claim 18).

Patent Owner also argues that the software of the *survey module* must be able to, “among other functions, dynamically change the questions or the order of questions in a survey based on user inputs.” Resp. 19 (citing Ex. 1001, 11:30–34). Patent Owner argues that the invention requires merchants to “integrate a check-level survey module into their own branded

⁷ However, this supports our position at Institution that the *survey module* can be simply “a webpage frame configured for display as an integrated component of the host vendor webpage.” *See* DI 17–19; Ex. 1001, 26:2–48.

web-site using java tags,” which “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.” Resp. 20 (citing Ex. 1001, 2:52–63, 11:15–18, 17:12–15).

Patent Owner relies on descriptions in the ’811 patent that the system allows merchants to integrate a check-level survey module into their own branded website using java tags and allows customers to participate in a survey within the merchant’s website and interact with their check details and other survey features using a Customer Survey Module. Resp. 20–21 (citing Ex. 1001, 2:52–56, 11:15–18, 17:12–15, 21:57–25:4). Patent Owner’s expert testifies that one having ordinary skill in the art would understand “using java tags” (e.g., where a *survey module* might use java tags) to refer to embedded java applets within a web page, where the tag identifies the name and location of java software, and when the customer accesses the web page containing the *survey module*, the survey and applet software would be downloaded and run on the customer’s computer. Ex. 2005 ¶¶ 30–36.⁸

In its Reply, Petitioner argues that Patent Owner seeks to unduly narrow the meaning of this term by requiring “executable logic” to be a part of the *survey module*, which is not a part of independent claims 1 and 19’s usage of the term. Reply 5.

⁸ This testimony is proffered to show how the ’490 application (that became the ’811 patent) and earlier applications in the chain of priority provide written description support for the proposed substitute claims, discussed below at Section III. It is also relevant here as to whether the intrinsic record supports Patent Owner’s proposed construction of “Survey Module.”

Analysis

The question posed is whether the recited *survey module* is, in its most fundamentally claimed form, an integrated survey question display mechanism, as we determined at institution in this proceeding, or if it must be an autonomous survey execution mechanism that runs on a customer's device, without reliance on the *survey server* to supply and determine the survey questions and follow up questions and other survey actions, as Patent Owner now argues.

Patent Owner argues that our initial interpretation was “too limiting” respective of its currently advocated interpretation; however, Patent Owner's currently proposed construction is certainly narrower than what we applied at institution because it requires integrated software that does more than display a survey, for example, software that executes a survey and, as Patent Owner argues, dynamically changes questions autonomously.

In short, we find the answer to the posed question is that all the recited *survey module must* do is display a survey question to a customer, as claimed. It can possibly do more, and it may be somewhat autonomous in certain functions, but is not necessarily so, and more is neither claimed in independent claims 1 and 19 nor described in the Specification as essential functionality of the *software module*. We explain further below.

Patent Owner relies on the following language from the Specification to support its position: “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.” Ex. 1001, 11:30–34; *see also* Resp. 19–20 (quoting this passage). This paragraph from the

Specification further states, “[i]n this instance, the answers can likewise be assembled into a single, self-contained package. In this manner, the system 100 can minimize the required communication between system devices that could delay survey processing.” *Id.* at 11:34–38.

This passage does indicate that an embodiment of the invention can include some form of self-contained survey as a web-container package that has branching logic to determine what survey questions to present. But, neither this passage nor the surrounding passages of the Specification attribute these features to a *survey module*. None of the terms *survey module*, *module*, *CSM* (customer survey module), or *GSM* (guest survey module) appears anywhere near this passage so as to connect it to the recited *survey module*. Therefore, we do not find this passage to be illuminating evidence as to the meaning of the disputed claim term.

Moreover, Patent Owner’s argument that the invention requires allowing customers to participate in a survey on a merchant’s website using a module (e.g., at Resp. 20) does not suggest or require that all functions, mechanisms, and information required to implement the survey must be localized at the customer’s device. For example, Figure 2 of the ’811 patent (*see above at Section I.C*) shows a customer response client 120 that includes the browser 130 where a customer would take an online survey, i.e., on a merchant’s website. Ex. 1001, Fig. 2; *see also id.* at 5:27–8:19 (describing Fig. 2). The other components of the survey system, such as the POS client 100 and the server engine 140 (which generates questions and handles responses), are not part of the customer’s browser, they are separate. And, the POS client 100 includes the merchant’s webpages 160; again, not part of the customer’s browser 130. The server engine 145 includes the

purchase question generator module 150 and the question response module 155, which are used to execute a survey—also not part of the customer’s browser 130. Figures 4–6 and 8 illustrate how this system operates: once a survey token is submitted by a client to the *survey server*, that *survey server* generates questions (which can be “formatted into webpages 160 that can be embedded into a merchant’s branded website and sent to the customer browser 130” by the server 140) and receives answers and generates more questions. *Id.* at Figs. 4–6, 8; *see also id.* at 7:41–13:19, 13:62–14:63 (describing these figures).

The ’811 patent summarizes as follows:

Purchase system client 100, server 140, and customer response client 120 may reside on the same electronic device or may reside on separate electronic devices. Additionally, one or more of the system components can be implemented on separate systems or electronic devices, such as when the purchase detail database 110 resides in a remote cloud service provider separate from the purchase system client 100.

Id. at 7:6–13. Thus, although embodiments of the invention may allow for some sort of (semi)autonomous survey-executing module to be supplied to a customer, this is not the foundation of the invention and is not a requirement, and no part of the Specification indicates that such a module dynamically selects survey questions.

For completeness, we review all instances of “Survey Module” in the claims. Claim 1 recites that “a Survey Module compris[es] software code for displaying the at least one Survey Question,” and claim 2 further defines the *survey module* as “a webpage frame configured for display as an integrated component of the host vendor webpage.” Ex. 1001, 26:2–48; *see also* Prelim. Resp. 10 (asserting the survey module “comprises software

code for displaying the at least one Survey Question”; it “implements a dynamic survey”). Claim 8 depends from claim 1 and adds that “the survey server computing device is further configured to perform the operation of incorporating within the Survey Module software code that redirects the web browser of the customer response client computing device to the Exit Page.” *Id.* at 27:12–16. Claim 14 depends from claim 10 and thereby from claim 1 and requires “the survey server computing device is configured to . . . incorporat[e] within the Survey Module software code for displaying the Facility Survey Question.” *Id.* at 27:65–28:8. Claim 15 depends from and recites basically the same relevant language as claim 14. *Id.* at 28:24–26. Claim 16 depends from claim 1 and recites, quite similar to claim 2, “the survey server computing device is further configured to perform the operation of incorporating within the Survey Module software code for displaying the at least one General Survey Question.” *Id.* at 28:29–33. Claim 17 depends from claim 1 and recites “the Campaign data structure further comprises a Max Question configurable Condition setting a maximum number of survey questions included within the Survey Module.” *Id.* at 28:34–37. Claim 18 also depends from claim 1 and recites “the survey server computing device is further configured to . . . incorporat[e] within the Survey Module software code that determines whether the second configurable Condition is satisfied.” *Id.* at 28:44–47. Independent claim 19 is substantially similar to independent claim 1 and recites “generating by the survey server, a Survey Module comprising software code for displaying the at least one Survey Question as an integrated component within a graphical user interface” and “transmitting by the survey server, the Survey Module to a vendor survey interface.” *Id.* at 29:7–12.

In the context of the claims themselves, in the most fundamental and basic reading of the term, a *survey module* has software code for displaying a survey question. Based on the language of the claims (above), the *survey module* may also perform some other functions or have other attributes, such as: be a webpage frame integrated into a vendor's webpage; have software code for redirecting to an exit page; have software code for displaying a facility survey question or an internal facility survey question or a general survey question; have a maximum number of survey questions; have software code that determines a second configurable condition's satisfaction; or may display a question as an integrated component in a GUI. Although some of these functions or features could utilize executable logic for implementing some aspects of a survey (that is not recited, however), none of these functions or features requires the ability to "dynamically change the questions or the order of questions in a survey based on user inputs" as argued by Patent Owner.

The '811 patent's written description uses the term *survey module*, primarily in relation to a web-based (internet browser) customer survey feature that can be integrated into a merchant's website, but never expressly defines or suggests a definition for the term. *See, e.g.*, Ex. 1001, 2:52–63, 21:57–63. Other than in the claims, the written description uses the term *survey module* five times; it also uses the acronyms CSM (for Customer Survey Module) or GSM (for Guest Survey Module) several times (the claims never use these terms or acronyms). *See* Ex. 1001, 2:52–63, 17:11–

67, 21:56–23:20. The Specification introduces the term *survey module* as follows:

Specifically, in accordance with the present invention, there is provided a method of providing a web-service (WS) that allows merchants, such as retailers and service providers, to integrate **a check-level survey module** into their own branded web-site using java tags or any suitable means known to one of skill in the art. This WS feature 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 (CSM** or **GSM (Guest Survey Module))** web-service as the data-integration and storage platform.

Ex. 1001, 2:52–63 (emphasis added to highlight term). The “CSM” is not thereafter described in any detail, but at least once the GSM acronym is substituted for the customer survey module (*see id.* at 21:58), suggesting the two terms/acronyms are interchangeable. In the portion of the Specification describing “EXAMPLES,” the ’811 patent discusses “illustrative embodiments of individual modules,” including the GSM, which is described as being integrated into the merchant's branded website to allow integration of survey templates and check details to allow for “either centralization or decentralization,” where “[t]he target website will then prompt the customer to enter the survey token.” *Id.* at 16:32–25:28. The WS-GSM communicates with “the system” that creates and stores a collection of surveys, and, if check details exist, “survey[s] the check items sold,” and, if check details do not exist, “deliver[s] the general survey questions, or [] reject[s] the survey.” *Id.* at 19:22–41.

The GSM *can* perform functions such as accepting a survey token, generating a response details table, generating a response required flag (but not enforcing it), identifying DCH (data collection handler) unit, customer

authentication, allowing customers to create/edit their information, generate survey data, and survey completion validation; although, for some of these functions it is unclear whether or not communications with the survey server may be required. Ex. 1001, 17:10–25:4. Other survey functions, such as creating/storing the list of master survey questions, generating and storing result headers (in a table), generation of the survey master GUID and response instance GUID, web portal tasking function, are performed somewhere else. *See generally id.*

Nothing in the '811 patent's prosecution history sheds further light on the meaning of this language. *See* Pet. 12–14; Ex. 1003.

On this record, we find that the claim language itself, in view of how the term is discussed in the written description, is sufficiently clear on the meaning and scope of *survey module*. Based on the record, we interpret “survey module” to mean *software code for displaying a survey question*. More features or functionality *may* be included in a *survey module* in accordance with the invention; however, no more is required.

5. Summary on Claim Construction

We expressly construe only the claim terms as discussed above. *See Nidec Motor Corp.*, 868 F.3d at 1017.

D. PETITIONER'S ASSERTED PRIOR ART

We review and summarize relevant portions of Petitioner's asserted prior art references below. Petitioner asserts that Douglas and Ganesh are each prior art under 35 U.S.C. § 102. Pet. 15, 31. There is no dispute here that each reference is prior art. *See generally* Resp.

1. Douglas (Ex. 1007)

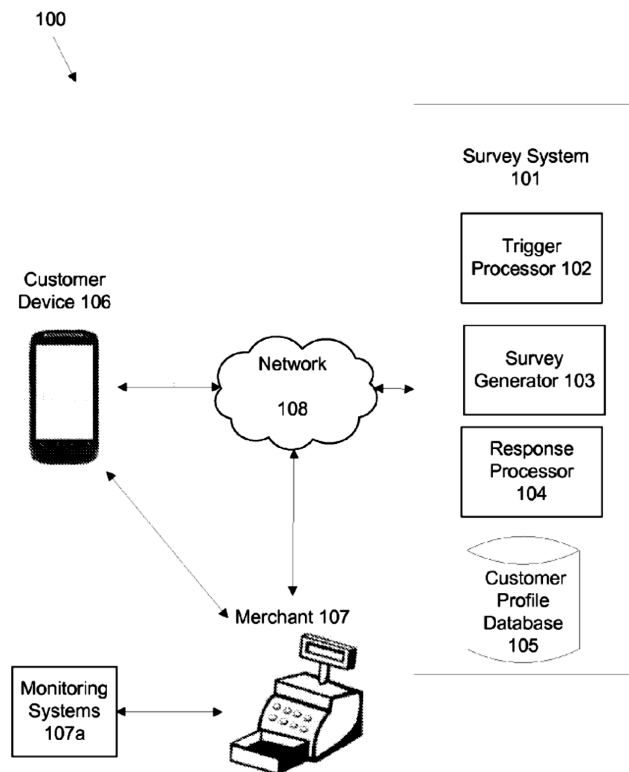
Douglas, titled “SYSTEM AND METHOD FOR GENERATING REAL-TIME CUSTOMER SURVEYS BASED ON TRIGGER EVENTS,” is the July 9, 2015, publication of U.S. Application 14/592,315, which was filed on January 8, 2015, and indicates priority to U.S. Provisional Application 61/924,921, which was filed on January 8, 2014. Ex. 1007, codes (21), (22), (43), (54), (60).

Douglas discloses that its invention relates to the following:

A system and method for real-time surveys includes a communication interface that receives event data associated with a customer via a network from a mobile device of the customer, a survey generator that generates a survey based on the event data, a survey transmission interface that transmits the survey to the mobile device, and a survey response receiver that receives a response to the survey. The survey generator generates one or more of follow-up commands or follow-up questions based on the received response and the survey transmission interface transmits the one or more of follow-up commands or follow-up questions to the mobile device.

Id. at Abstr.

Douglas’s Figure 1, below, illustrates a system for conducting a customer survey:



“FIG. 1 depicts a schematic diagram of a system for detecting a trigger event from a customer at a merchant location, generating a survey based on the trigger event, and providing the survey to the customer.” *Id.* ¶ 8. Figure 1 illustrates that the system has three main networked components: merchant 107, customer device 106, and survey system 101. As shown above, survey system 101 includes trigger processor 102, survey generator 103, response processor 104, and customer profile database 105, which are computer systems executing software applications. *Id.* ¶¶ 12–13.

Douglas discloses that this system works as follows: a customer with customer device 106 engages in a purchase transaction (e.g., shops) at merchant 107 point of sale (POS); data (customer, product, purchase amount, date, location, etc.) about this transaction is collected by merchant 107; purchase data becomes a trigger signal that is sent to trigger processor

102 of survey system 101 by either merchant 107 or customer device 106; survey generator 103 of survey system 101 creates an interactive survey about the shopping experience based on the purchase data and transmits the survey to and conducts the survey with the customer. *Id.* ¶¶ 17–58. The transmitted survey may take the form of content on a web browser or an application at customer device 106. *Id.*

Douglas further discloses that the survey generator 103 creates a survey for, and transmitted to, the customer device 106 (e.g., a computer or mobile phone) based on the trigger signals, presented as an interactive survey where the content of the survey depends on the type of trigger signal. *Id.* ¶¶ 33–34, 46–47. The surveys are interactive in that a user can click a screen to provide responses to questions and further questions can be provided based on prior responses to earlier questions. *Id.* ¶¶ 34–35, 69.

Customer responses to surveys, as well as customer profile information, can be stored at profile database 105. *Id.* ¶ 44. Surveys may be delivered as web content, accessed with the client device over the Internet as web pages, and may include, *inter alia*, HTML documents, images, style sheets, scripts, programs, JAVA, and APIs, in addition to text content. *Id.* ¶¶ 54–58.

2. Ganesh (Ex. 1008)

Ganesh, titled “SYSTEM AND METHOD FOR TIME OF PURCHASE CONSUMER SURVEY,” is the November 13, 2014, publication of U.S. Application 13/890,783, which was filed on May 9, 2013. Ex. 1008, codes (21), (22), (45), (54).

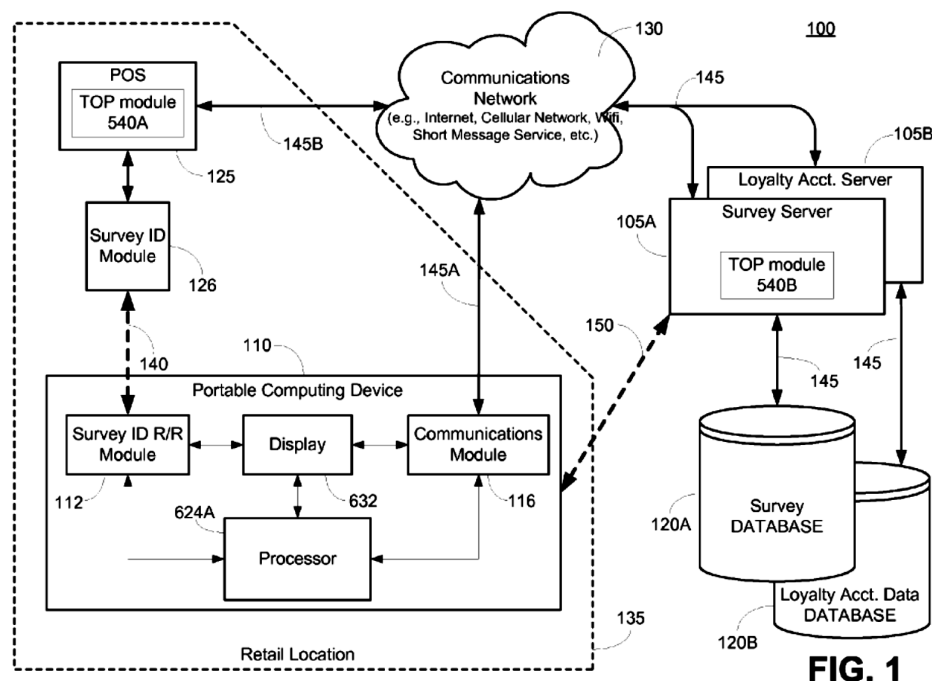
Ganesh discloses its invention relates to the following:

A method and system are described for conducting a consumer survey during a checkout process at a retailer location with a

consumer who is associated with a portable computing device (“PCD”). A survey ID associated with a time of purchase (“TOP”) survey is presented as a QR code to the consumer during the checkout process. Based on the Survey ID, provision of a TOP survey is initiated. Survey content is selected and pushed to the PCD. The survey content may have been preselected or may be dynamically selected based on factors including, but not limited to, recognition of items being scanned during the checkout process, responses to previously pushed survey content, historical purchasing patterns of the consumer, time of day, etc. Provisioning of a TOP survey may end at the conclusion of the checkout process so that the consumer can complete payment and leave the retail location.

Id. at Abstr.

Ganesh illustrates a system for conducting a customer survey at Figure 1, which is reproduced below:



“FIG. 1 is a high level diagram illustrating exemplary components of a system for provisioning a time of purchase (‘TOP’) survey to a consumer in

a retail location.” *Id.* ¶ 9. System 100, illustrated at Figure 1, has three main networked components: portable computing device 110 (PCD) representing a customer (customer’s device); point of sale (POS) module 125 representing a retailer; and survey server 105A associated with other servers and databases (105B, 120A, 120B) representing computer executable means for generating and conducting a survey. *Id.* ¶¶ 6–7, 16–23, 34–37.

Ganesh discloses that its system 100 functions as follows: a customer having an associated portable computing device (PCD, e.g., a mobile phone) shops at a retailer establishment (storefront or “brick and mortar” location); a trigger (e.g., QR code) survey ID is created at the point of sale and provided to the customer, the trigger is unique to the transaction (identifies the customer and goods purchased); the customer’s PCD transmits the survey ID information and content to survey server 105A; survey server 105A may have knowledge of the goods scanned at the point of sale and the customer; when the customer activates the trigger, e.g., by scanning the QR code with their PCD, the customer’s PCD establishes communication with survey server 105A, which pushes to the customer a customized and potentially dynamic survey based on the transaction. *Id.* ¶¶ 15–55, 61, 64–65, Fig. 3. The customer survey may be provided on the mobile phone’s web browser as an executable code plug-in. *Id.* ¶¶ 37, 45.

Ganesh discloses applications and content, which are software files having executable content, code, scripts, etc. *Id.* ¶¶ 16–17, 76. Surveys are provided as applications and executable content, pushed from a survey server to a user’s device. *Id.* ¶¶ 16–19. Ganesh describes its surveys as “dynamic,” as well as conducted in real time, meaning that the nature of an answer to a question may be used to dictate the next survey question. *Id.*

¶ 26. Ganesh’s surveys are conducted on a website hosted by a survey server using a web browser survey application. *Id.* ¶ 31. A TOP module 540B in the survey server 105A performs the various steps of pushing survey content to and receiving survey content from the user’s device. *Id.* ¶ 46. Survey server 105A can use a query database to select survey content and may utilize branching logic (“yes” and “no” branches and responses from the user) to determine how to conduct the survey. *Id.* ¶¶ 55, 66.

E. GROUND 1 AND 2—ANTICIPATION OF CLAIMS 1–7, 10, 13, 16, 18, AND 19 BY DOUGLAS

Because of the substantial overlap between Grounds 1 and 2, we discuss them together.

Under Ground 1, Petitioner asserts that Douglas anticipates independent claim 19 and, under Ground 2, Petitioner asserts that Douglas anticipates independent claim 1 and dependent claims 2–7, 10, 13, 16, and 18. Pet. 14–31 (citing Ex. 1005 ¶¶ 31–83; Ex. 1007, Abstr., ¶¶ 12, 18–21, 26–29, 33–35, 37–39, 61–62, 64, 66, 68–69, Figs. 1–3).

Patent Owner opposes Grounds 1 and 2. Resp. 25–36, 41–44 (citing, *inter alia*, Ex. 1001, 1:35–62, 2:1–21, 2:52–64, 6:15–20, 6:22–24, 7:55–61, 9:21–34, 11:15–22, 11:30–34, 17:12–16, 26:14–17, 28:61–63, claims 1, 19; Ex. 1007⁹ ¶¶ 3, 12, 18, 23, 26, 31–33, 35, 37–39, 41, 54, 59, 69, Fig. 1; Ex. 2001 ¶¶ 79–82, 89, 90, 92–93, 101, 107–110).¹⁰

⁹ Patent Owner also cites to Douglas (Ex. 1007) at ¶¶ 95–101, however, Douglas has only 71 numbered paragraphs. *See* Ex. 1007.

¹⁰ Patent Owner attacks Dr. Brun’s testimony as overlooking the recited *survey module* and *campaign data structure* and for being overly conclusory and repetitive of assertions from the Petition. Resp. 45–46. Patent Owner asks that we “disregard[]” Dr. Brun’s “declaration . . . for purposes of considering the present preliminary response [*sic* Response].” *Id.* at 45.

We review and analyze the parties' positions below.

1. Petitioner's Positions

Petitioner begins, under Ground 1, with the '811 patent's independent claim 19.

Petitioner maps the method steps and limitations of claim 19 to the disclosure of Douglas and first asserts that, regarding the claim's preamble ("*A computer-implemented method for providing transaction-specific surveys*")¹¹, Douglas discloses exactly this method at, *inter alia*, its Abstract and Figure 1. Pet. 15–16, 20 (citing Ex. 1007, Abstr., ¶¶ 27, 33, 39, 62, Fig. 1); *see also* Ex. 1005 ¶¶ 31–49 (witness testimony supporting Petitioner's contentions).

Turning to the first step of claim 19's method ("*(a) providing a survey server configured to receive and store transaction data generated by point-of-sale interface relating to a commercial transaction between a consumer and a vendor*" and "*(i) the transaction data comprises purchase detail identifiers and a survey token*" and "*(ii) the survey server comprises (A) a vendor database storing a plurality of purchase detail identifiers, and (B) a campaign data structure having survey question data and a configurable Condition that is satisfied by the detection of a given purchase detail identifier*"), Petitioner asserts that Douglas discloses such a *survey server* as Survey System 101, which is networked with a merchant point-of-sale system 107, and also discloses that a survey generator 103 creates a survey

Patent Owner's request is considered, but we are not persuaded to disregard Dr. Brun's testimony. We find Dr. Brun credible to testify as to the subject matter of his declarations. *See, e.g.*, Ex. 1005 ¶¶ 3, 5–12; Ex. 1006.

¹¹ As noted above, we highlight claim language with italics.

(pre-existing or modified questions—*campaign*) based on purchase data, e.g., SKUs (*purchase detail identifier*) from the point-of-sale, which are sent to a customer device 106 in response to a trigger (*survey token*) from the customer indicating the purchase. Pet. 16–17, 20 (citing Ex. 1007 ¶¶ 12, 27, 33, 39, Fig. 2).

Regarding the next step of claim 19 (“(b) receiving by the survey server, a survey token”), Petitioner asserts that Douglas discloses its survey generator creates a survey based on a trigger signal (*survey token* from customer/merchant) that connects the customer with the purchase and the correct survey. Pet. 17, 20 (citing Ex. 1007 ¶ 33).

As for the next step of claim 19 (“(c) retrieving by survey server, the transaction data having the stored survey token corresponding to the received survey token”), Petitioner asserts that Douglas discloses purchase data can include date and time of purchase, purchase amount, product type, merchant name, purchase location, etc., and that this information associated with the purchase (*transaction data*) is stored as part of the survey token/trigger information corresponding to the customer’s survey token/trigger. Pet. 17–18, 20 (citing Ex. 1007 ¶ 27). Douglas states that this purchase data associated with the customer’s trigger signal is sent to trigger processor (of survey system) by the merchant at the completion of the purchase. Ex. 1007 ¶ 27.

Regarding the next step of claim 19 (“(d) determining by survey server, whether the transaction data includes the given purchase detail identifier such that the configurable Condition is satisfied, and if the configurable Condition is satisfied, generating a Survey Question using the survey question data and the purchase detail identifier”), Petitioner asserts

this step is disclosed by Douglas where its survey generator 103 creates a survey responsive to the purchase data, which may be specially tailored based on that data, and sends it to a customer device (responsive to the respective trigger associating the customer with the purchase). Pet. 18, 20 (citing Ex. 1007 ¶¶ 27, 39).

Petitioner then addresses the next two steps of claim 19 (“(e) *generating by the survey server, a Survey Module comprising software code for displaying the at least one Survey Question as an integrated component within a graphical user interface*” and “(f) *transmitting by the survey server, the Survey Module to a vendor survey interface*”), which Petitioner asserts Douglas discloses as its survey system 101 communicating with the customer device 106 via a network 108, transmitting the survey to that customer device, and displaying (requiring *software*) the survey so the customer interacts with the survey via a graphical user interface, e.g., clicking/touching a screen of a mobile phone (*survey interface*). Pet. 19–20 (citing Ex. 1007 ¶¶ 34–35, 39, Fig. 1). Douglas discloses examples of survey questions that may be displayed on the touchscreen of a customer’s device. *See* Ex. 1007 ¶¶ 34–35.

As for the final step of claim 19 (“(g) *receiving by the survey server, a Respondent Header generated based on user-generated inputs in response to the at least one Survey Question*”), Petitioner asserts it is taught by Douglas disclosing that customer responses to survey questions (*respondent header*) are received by the survey server 101, which can further process commands based on the responses. Pet. 19–20 (citing Ex. 1007 ¶¶ 68–69).

Petitioner has accounted for each element and step of independent claim 19’s method as disclosed by Douglas.

Under Ground 2, Petitioner turns to independent claim 1 and dependent claims 2–7, 10, 13, 16, and 18, and asserts that Douglas anticipates each claim. *See* Ex. 1005 ¶¶ 50–83 (witness testimony supporting Petitioner’s contentions).

First addressing claim 1’s preamble (“*A system for implementing transaction-specific surveys*”), Petitioner asserts (similarly to Ground 1), that Douglas discloses such a system of networked computer components. Pet. 21–22, 28–29 (citing Ex. 1007, Abstr., ¶¶ 18, 20–21, 27–29, 33–39, Fig. 2). And, regarding the most general components of this system and the merchant component’s functionality, as recited by claim 1 (“*(a) a point-of-sale interface used in conducting a commercial transaction between a consumer and a vendor, the point-of-sale interface being configured to record transaction data relating to the commercial transaction wherein the transaction data comprises at least one purchase detail identifier and a survey token,*” “*(b) a survey server computing device configured to receive and store the transaction data generated by the point-of-sale interface,*” and “*(c) a vendor survey interface*”), Petitioner points to the same disclosure of Douglas as noted above, specifically Survey System 101, which is networked with a merchant point-of-sale system 107, and survey generator 103, where transaction data is recorded at the point-of-sale system, which also generates a trigger signal (*survey token*) associated with customer information, each of which is sent to the server engine. *Id.*

Next, turning to claim 1’s recited elements of the survey server (“*(i) the survey server computing device comprises (A) a vendor database storing a plurality of purchase detail identifiers, and (B) a campaign data structure having survey question data and a configurable Condition that is*

satisfied by the detection of a given purchase detail identifier,” where the survey server is configured for “(A) receiving a survey token, (B) retrieving the transaction data having the stored survey token corresponding to the received survey token, (C) determining whether the transaction data includes the given purchase detail identifier such that the configurable Condition is satisfied, and if the configurable Condition is satisfied, generating a Survey Question using the given survey question data and the purchase detail identifier, and (D) generating a Survey Module comprising software code for displaying the at least one Survey Question”), Petitioner asserts that Douglas discloses purchase detail identifiers as purchase data including, e.g., SKUs associated with the purchased product (*purchase detail identifiers and transaction data*) provided to the survey generator 103, discloses that its survey generator 103 creates a survey question based on this purchase data and sends the survey question (*survey module*) to the customer’s device 106 (once a survey is triggered—condition satisfied by a token respective of a purchase). Pet. 22–23, 28–29 (citing Ex. 1007 ¶¶ 12, 27, 39, 61–62, 64).

Turning to the next recited component of claim 1, i.e., the vendor survey interface (“*(c) a vendor survey interface configured to perform the operations comprising: (i) transmitting the survey token to the survey server computing device; (ii) receiving from the survey server computing device the Survey Module; (iii) generating a graphical user interface on a display screen; (iv) running the Survey Module to display the at least one Survey Question as an integrated component within the graphical user interface; (v) generating a Respondent Header based on user-generated inputs in response to the at least one Survey Question; and (vi) transmitting the*

Respondent Header to the survey server computing device”), Petitioner asserts it is disclosed by Douglas as a customer device 106 (*vendor survey interface*) that is networked and communicates with the rest of the survey system 101 so the survey can be communicated to that customer device 106 (responsive to the trigger/token). Pet. 23, 29 (citing Ex. 1007 ¶¶ 18, 20, 34, Fig. 1). Petitioner asserts that Douglas discloses this customer device 106 includes a display for interacting with the survey (a *graphical user interface; survey module*) by touch or clicking on a screen. *Id.* (citing Ex. 1007 ¶¶ 18, 33, 35, 39). The customer’s survey inputs (*response header*) are then received by the survey server 101 as responses (to response processor 104) where additional interaction may take place based on customer inputs. *Id.* at 24 (citing Ex. 1007 ¶¶ 33, 44, 68–69, Fig. 3).

Petitioner has accounted for each element and step of independent claim 1’s system as disclosed by Douglas.

As for claim 2, which depends from claim 1 and adds that “(a) *the vendor survey interface is implemented as a web server computing device; (b) the graphical user interface is a host vendor webpage; (c) and the Survey Module is a webpage frame configured for display as an integrated component of the host vendor webpage*,” Petitioner asserts that Douglas teaches this claimed subject matter in disclosing using a web-based app and/or native mobile app. Pet. 24 (citing Ex. 1007 ¶ 18).

Claim 3 depends from claim 1 and recites “*the point-of-sale interface is implemented as a point-of-sale computing device*,” which Petitioner asserts is taught by Douglas’s disclosure of a POS system as a computing device, operated by a merchant’s employee, for example. Pet. 24. (citing Ex. 1007 ¶ 29).

Claim 4 depends from claim 3 and adds “*(a) the point-of-sale computing device transmits the transaction data to a cloud server, and (b) the survey server computing device is configured to receive and store the transaction data transmitted by the cloud server,*” which Petitioner asserts is taught by Douglas in its disclosing the survey system 100 receiving transaction data over a network 108, including purchase data particular to a transaction. Pet. 24–25 (citing Ex. 1007 ¶ 27).

Regarding claim 5, which depends from claim 1 and recites “*vendor survey interface is implemented as a software application running on a mobile computing device, and the survey token is input by the consumer to the vendor survey interface,*” Petitioner asserts that Douglas teaches this claimed subject matter in disclosing the customer device 106 is a mobile device with a survey interface thereon, that device being linked via customer profile information and a profile database 105 at the survey system 101. Pet. 25 (citing Ex. 1007 ¶¶ 18–19).

Claim 6 depends from claim 1 and adds “*the survey token comprises a combination of purchase detail identifiers that identify the commercial transaction,*” which Petitioner asserts is taught by Douglas in disclosing trigger signals having purchase data. Pet. 25 (citing Ex. 1007 ¶ 27).

Claim 7 depends from claim 1 and adds “*the point-of-sale interface and the vendor survey interface are both implemented as a software application running on a mobile computing device,*” which Petitioner asserts is taught by Douglas in disclosing customer device 106 is a mobile device with a survey interface, which can also act as a POS payment method, including an account. Pet. 25–26 (citing Ex. 1007 ¶¶ 18, 21, 27).

Regarding claim 10, which depends from claim 1 and recites “(a) *the purchase detail identifiers comprise a product/service identifier that represents a products/service available for purchase through the vendor; and (b) the Survey Question comprises a Product Survey Question relating to the product/service,*” Petitioner asserts that Douglas teaches this claimed subject matter in disclosing purchase data includes product information, e.g., SKUs, and generating surveys based on such data. Pet. 26 (citing Ex. 1007 ¶¶ 27, 64).

Claim 13 depends from claim 1 and recites “(a) *the purchase detail identifiers comprise a service mode identifier that represents a mode of service; and (b) the Survey Question comprises a Service Mode Survey Question relating to the mode of service,*” which Petitioner asserts is taught by Douglas in disclosing that survey questions may ask a customer to rate their experience and customer service. Pet. 26 (citing Ex. 1007 ¶ 66).

Turning to claim 16, which depends from claim 1 and adds “(a) *the survey question data includes at least one General Survey Question that is not specific to the transaction data; and (b) the survey server computing device is further configured to perform the operation of incorporating within the Survey Module software code for displaying the at least one General Survey Question,*” Petitioner asserts this is taught by Douglas in disclosing its survey asks customers to rate prices, facilities, and whether they would recommend the vendor. Pet. 26–27 (citing Ex. 1007 ¶ 66).

Finally, claim 18 depends from claim 1 and recites “*the system of claim 1, wherein: the Campaign data structure further comprises an Event that triggers an electronic notification transmitted to a vendor representative and a second configurable Condition that is satisfied based*

on a Survey Question response; and wherein (b) the survey server computing device is further configured to perform the operations of (E) incorporating within the Survey Module software code that determines whether the second configurable Condition is satisfied, and (F) that implements the Event to transmit an electronic notification to the vendor representative, if the second configurable condition is satisfied,” which Petitioner asserts is taught by Douglas in disclosing presenting follow-up questions to customers in an interactive way, based on customer responses to earlier questions. Pet. 27–28 (citing Ex. 1007 ¶¶ 34, 37).

Petitioner has also accounted for Douglas teaching each element or step of challenged claims 2–7, 10, 13, 16, and 18.

2. Patent Owner’s Positions and Petitioner’s Responses

Patent Owner argues that Douglas fails to teach the recited *survey module, campaign data structure, vendor database, and vendor survey interface*. Resp. 26–27. Patent Owner argues that Douglas (and Ganesh, as applicable to Grounds discussed below) disclose systems that are “server-centric,” meaning that it is a survey server that implements a survey, and that these references’ systems implement the survey while a customer is physically present at a merchant (although Patent Owner concedes that each reference’s survey is taken on the customer’s own device, which could be anywhere). *Id.*

Patent Owner first argues that Douglas fails to disclose a *survey module*, as Patent Owner interprets that term, because Douglas’s centralized survey generator creates the survey questions based on triggers, and those questions are sent to the customer’s device for display on the user interface. Resp. 27–28; *see also* Sur-Reply 7–9. Patent Owner agrees that Douglas’s

systems use *software* on the customer's device, e.g., web-based applications, so the customer can interact with the survey, but argues such applications must be installed on the customer's device prior to receiving the survey.¹² Resp. at 28 (citing Ex. 2001 ¶ 90 (witness opinion)). Patent Owner argues that Douglas's disclosed software on the customer's device does not have executable logic to generate or display survey content. *Id.* at 29. And, Patent Owner renews the argument that the claimed *survey module* must be an "autonomous, self-contained software package" sent to the vendor interface. *Id.* at 32.

Patent Owner identifies that the survey content running on a customer's device can be webpages running scripts, but argues this is not *software* for implementing or displaying the survey. *See* Resp. 30; *see also* Sur-Reply 10–11. And, Patent Owner argues that the claimed *survey module* is executed by the vendor interface within a GUI (*graphical user interface*), which is novel over Douglas. Resp. 32–33.

Patent Owner argues that Douglas fails to teach the claimed *campaign data structure* and *vendor database*. Resp. 33; *see also* Sur-Reply 11–12. According to Patent Owner, via the *campaign data structure*, the system generates a survey if the *configurable condition* is satisfied by the *purchase data*, arguing that some comparison of transaction data against purchase details (stored in the *vendor database*) occurs according to the invention. *Id.* at 34–35. Patent Owner argues that, in Douglas's system, questions about a

¹² This theory is somewhat at odds with Patent Owner's other position that the surveys in Douglas and Ganesh are provided and taken with some immediacy, while the customer is still on site at the merchant during/after the purchase.

purchase detail are created by a survey generator, but the questions are not created about “*pre-selected purchase details only if a configurable condition is met.*” *Id.* at 35.

Specific to claim 18, which requires the *survey module* to have software that analyzes if a *second configurable condition* is met and notifies a vendor, Patent Owner argues that Douglas does not teach this claim limitation; at once acknowledging that Douglas’s systems do include customers responding to survey questions about needing assistance, but arguing it is without notifications or identifying what system component executes related logic. Resp. 29–30.

Finally, Patent Owner also argues that “Petitioner cannot rely on inherency . . . because Douglas [does] not disclose the omitted elements of claims 1 and 19.” Resp. 41–44. The “missing elements” are argued to be the recited *survey module*, *campaign data structure*, and *vendor database*. *Id.*

Turning to Petitioner’s responses to these arguments, Petitioner argues that Douglas’s disclosure of HTML *scripts* are instructions as *software code* embedded in messages sent from Douglas’s survey server to the client device used for conducting the survey. Reply 7 (citing Ex. 1007 ¶ 54). Petitioner argues that, even under Patent Owner’s proposed construction of *survey module*, such HTML scripts constitute executable logic for implementing a survey and displaying survey questions. *Id.* at 8 (citing Ex. 2001 ¶¶ 79–80 (Patent Owner’s witness’s testimony)). Petitioner also argues that Douglas’s surveys are not limited to using only software already installed on a customer’s device because Douglas discloses HTML

code/scripts, which is understood as locally hosted by a web-browser and then executing the HTML document/scripts for the survey. *Id.* at 9.

Petitioner also responds that Douglas discloses a *vendor survey interface* as a user interface on the customer device 106, e.g., native apps or web browser running the survey. Reply 9–11.

In response to Patent Owner’s arguments over the recited *campaign data structure* and *vendor database*, Petitioner argues that Patent Owner is overly narrowing the meaning of *campaign data structure* and that the ordinary meaning of the term relates to data of survey questions and some condition tied to the data of a purchase, where the campaign data structure is satisfied when questions are correlated with transactions, which is disclosed by Douglas’s interactive survey based on purchase data. Reply 11–13 (citing Ex. 1007 ¶¶ 27–28, 33–34). Petitioner also argues that Douglas discloses a *vendor database*, i.e., a storing medium or structure with purchase detail identifiers, because it discloses storing information about vendor locations. *Id.* at 13–15.

3. Analysis

We have considered the parties’ positions in view of the record. We find that Petitioner has identified that each claim limitation is disclosed by Douglas and that the prior art anticipates each challenged claim. As discussed below, we have considered, but are not persuaded by Patent Owner’s arguments to the contrary.

In our Institution Decision, we did not agree with Patent Owner’s positions, i.e., that the recited *survey module* must be autonomous, self-contained, or a web-container package. See DI 30–33. As here, we interpreted this term to mean *software code for displaying a survey question*.

At institution, we found that Douglas teaches, in response to a customer providing a *survey trigger* (e.g., purchase data signals), a survey generator creates a transaction-specific survey (e.g., “Was the item you found too expensive?”) and transmits it to the customer’s device (e.g., a mobile phone with a touchscreen); the survey is interactive; and the customer touches or clicks their device’s screen to respond to the survey questions. Ex. 1007 ¶¶ 34–35. And, we further found at institution that Douglas discloses that its survey “interact[s] with the customer using one or more software applications on customer device 106,” which may be, e.g., a computer or mobile phone, further, “[t]he one or more software applications may be provided by survey system 101, or merchant 107, or a third party,” and finally, “[t]he one or more software applications may be web-based applications and/or native mobile applications installed on the customer device 106.” *Id.* ¶¶ 18–20; *see also* Prelim. Resp. 35 (conceding as much).

Our preliminary findings remain sound in view of the fully mature record in this proceeding.

Patent Owner’s own summary of Douglas appears to agree substantially with our findings. *See* Resp. 21–23. Patent Owner does argue that Douglas’s survey system is centralized and that the question-presentation-decision-maker of that system is remote from the customer’s device—an argument seeking to distinguish Douglas from the *survey module*, which Patent Owner argues autonomously runs a survey from the user’s device. This is not persuasive.

As an initial matter, Patent Owner’s arguments foundationally rely on the Board adopting its proposed interpretation of the claim term *survey*

module, which we do not do. *See supra* Section II.C.4. Thus, most of Patent Owner’s arguments are unpersuasive for this reason.

Moreover, Douglas discloses a survey system where a survey server responds to a triggering survey token, created by a merchant (relating to a transaction) and sent by a customer, that connects the customer with a particular purchase, by creating a purchase-specific survey question and sending it to a customer’s electronic device, where the survey question is displayed on a web-browser using software, and the customer’s survey answers may then spur the system to generate and follow up with additional questions. *See* Ex. 1007 ¶¶ 18–20, 27–29, 33–39. This includes the claimed *survey module* at issue, as we interpret this claim term.

Patent Owner’s argument that the survey content running on a customer’s device as webpages running scripts is not *software* for implementing or displaying the survey is not persuasive. Douglas discloses its surveys are implemented on mobile devices via an internet browser or mobile app, running software applications (e.g., dynamic web pages, HTML, Java, scripts), and even Mr. Zatkovich’s testimony seems to counter Patent Owner’s position in confirming that Java scripts (used in Douglas) *are* software. *See* Ex. 1007 ¶¶ 13, 18–20, 54–58; Ex. 2001 ¶ 80. Similarly, for the same reasons, we are not persuaded by Patent Owner’s argument that the claimed *survey module* executed by a vendor interface GUI is not disclosed by Douglas’s survey running on web pages on a customer’s mobile phone screen.

We are also not persuaded by Patent Owner’s arguments that Douglas fails to disclose the *claimed campaign data structure* and *vendor database*. As discussed above (*see, e.g., supra* Section II.D.1), Douglas’s system

stores data about the merchants and their products and customer profiles, it understands a variety of conditions to which special, tailored questions apply, e.g., returning an item, lingering in an aisle, purchasing a specific item; the questions are interactive based on responses, surveys are generated based on special triggers. Petitioner asserts this data collection and configuration is the claimed campaign data structure and database; we agree.

There is no dispute that Douglas's customer's mobile device and its touch screen are used to display and run an interactive survey, and that this user device receives data and survey questions from a survey generator and thus constitutes the claimed *interface*. Also, Douglas's systems include a customer profile database 105, and also information about the merchant (e.g., retailer Target in one example, and its location, interior layout, products), the selection of initial and follow-up prepared survey questions based on the merchant and the customer information and on conditions and customer responses to prior questions (e.g., about time spent shopping, reasons for item return or purchase, need for assistance, quality of service/experience). These features constitute the claimed *campaign data structure* (and related *condition*) and *vendor database*. Therefore, we find that, like *survey module*, the other contested claim elements (*campaign* and *condition*, *vendor database*, *interface*) are taught by the prior art.

Regarding dependent claim 18, the only dependent claim separately argued by Patent Owner, although Douglas does not expressly name where notifications are ultimately presented, e.g., on the user's device or at the server, Douglas discloses providing the claimed notifications if a second configurable condition is met. *See* Ex. 1007 ¶¶ 40–43. For example, if a customer states during a survey that they would like assistance during

shopping or is interested in more information about a product, the survey generator can generate a follow up, and the system provides such responses to the merchant in real time. *Id.*

Regarding Patent Owner's argument addressing inherency, we are not persuaded. First, we do not agree with Patent Owner that the prior art fails to disclose the claimed *survey module*, *campaign data structure*, and *vendor database*, as discussed above. Second, Patent Owner's argument relies on our adopting its proposed interpretation of these claim terms, which we do not. *See supra* Section II.C. We do not agree with Patent Owner that Petitioner asserts either reference inherently discloses any claimed subject matter or relies on inherency in any way in asserting its challenges. The prior art does not have to use the same terminology or phrasing of the challenged claims to disclose their limitations.

4. Summary

We have considered Petitioner's assertions, Patent Owner's arguments, and the evidence of record, and find that Petitioner has sufficiently mapped the limitations/steps of independent claims 1 and 19, and dependent claims 2–7, 10, 13, 16, and 18 to the disclosure of Douglas. We are unpersuaded by any of Patent Owner's arguments. Based on the record, Petitioner has shown by a preponderance of the evidence that the challenged claims are each anticipated by Douglas.

F. GROUNDS 3 AND 4—ASSERTED ANTICIPATION OF CLAIMS 1–7, 10, 13, 16, 18, AND 19 BY GANESH

Because of the substantial overlap between Grounds 3 and 4, we discuss them together.

Under Ground 3, Petitioner asserts that Ganesh anticipates independent claim 19 and, under Ground 4, asserts that Ganesh anticipates

independent claim 1 and dependent claims 2–7, 10, 13, 16, and 18.

Pet. 31–48 (citing Ex. 1005 ¶¶ 84–134; Ex. 1008, Abstr., ¶¶ 18, 22–23, 25–26, 31–34, 36, 38, 44–45, 51–53, 55, 64–66, Figs. 1–2).

Patent Owner opposes Grounds 3 and 4. Resp. 26–27, 36–44 (citing, *inter alia*, Ex. 1001, 1:35–62, 2:1–63, 6:22–24, 7:55–61, 17:12–16, claims 1, 19; Ex. 1007 ¶¶ 18, 39; Ex. 1008 ¶¶ 4–5, 25, 39, 44–45, 52, 55–56, 59–60, 64, 66; Ex. 2001 ¶¶ 107, 117–118, 120, 127)

We review and analyze the parties’ positions below.

1. Petitioner’s Positions

Under Ground 3, Petitioner asserts that independent claim 19 is anticipated by Ganesh and begins with claim 19’s preamble (“*A computer-implemented method for providing transaction-specific surveys*”), asserting that the subject matter is disclosed by Ganesh as a computerized method for tracking commercial transactions and generating survey questions for a customer based on a transaction. Pet. 31–32, 36–37 (citing Ex. 1008, Abstr., Fig. 2); *see also* Ex. 1005 ¶¶ 84–102 (witness testimony supporting Petitioner’s contentions).

Turning to the first step recited by claim 19 (“(a) *providing a survey server configured to receive and store transaction data generated by point-of-sale interface relating to a commercial transaction between a consumer and a vendor*” and “(i) *the transaction data comprises purchase detail identifiers and a survey token*” and “(ii) *the survey server comprises (A) a vendor database storing a plurality of purchase detail identifiers, and (B) a campaign data structure having survey question data and a configurable Condition that is satisfied by the detection of a given purchase detail identifier*”), Petitioner points to Ganesh’s disclosure of survey server 105A,

illustrated at Fig. 2, as the claimed survey server, and asserts that Ganesh also discloses this server engine is in networked communication with PCD 110 (portable computing devices, e.g., mobile phone) of a customer and POS 125 (point of sale of a vendor), and this server has data on items for purchase at the vendor. Pet. 32–33 (citing Ex. 1008 ¶ 38, Figs. 1, 2).

Petitioner asserts that Ganesh’s disclosure of a survey ID (presented to a customer) is the recited *survey token*, which relates to purchased items and the customer, as understood by the survey server, which generates survey content based thereon (the *campaign*). *Id.* at 33, 36–37 (citing Ex. 1008 ¶¶ 34, 38, 55, 66, Figs. 1, 3).

Petitioner addresses claim 19’s next step (“(b) *receiving by the survey server, a survey token*”) and asserts that Ganesh discloses survey ID R/R module 112 recognizes a survey ID (the *token*) and establishes network communications between the customer and survey server 105A. Pet. 33, 36–37 (citing Ex. 1008 ¶ 51).

Turning to the next step of claim 19 (“(c) *retrieving by survey server, the transaction data having the stored survey token corresponding to the received survey token*”), Petitioner asserts that Ganesh discloses a survey content determination module (part of the survey server, *see* Ex. 1008, Fig. 2) that includes querying database 120 and pushes survey content to a customer personal computing device. Pet. 34, 36–37 (citing Ex. 1008 ¶ 52).

Regarding the next step of claim 19 (“(d) *determining by survey server, whether the transaction data includes the given purchase detail identifier such that the configurable Condition is satisfied, and if the configurable Condition is satisfied, generating a Survey Question using the survey question data and the purchase detail identifier*”), Petitioner asserts

that Ganesh discloses survey server 105A has knowledge of purchased items (*transaction data* and *purchase detail identifiers*) and selects survey content based on items purchased (*condition*), and then sends survey questions to the customer. Pet. 34, 36–37 (citing Ex. 1008 ¶¶ 38, 64, Fig. 5).

Turning to the next two steps of claim 19 (“(e) *generating by the survey server, a Survey Module comprising software code for displaying the at least one Survey Question as an integrated component within a graphical user interface*” and “(f) *transmitting by the survey server, the Survey Module to a vendor survey interface*”), Petitioner asserts that Ganesh discloses its survey content determination module (of the survey server) generates software code to display a survey question (*survey module*), which goes to the customer’s portable computing device (*vendor survey interface*, e.g., mobile phone with a *graphical user interface*), where an application, such as a web browser plug-in, displays the survey. Pet. 34–37 (citing Ex. 1008 ¶¶ 36, 45, 52).

As for the final step of claim 19 (“(g) *receiving by the survey server, a Respondent Header generated based on user-generated inputs in response to the at least one Survey Question*”), Petitioner asserts that Ganesh discloses that, as the survey takes place, the customer may answer questions with certain responses (*respondent header*), e.g., a “yes,” which then prompts the survey server system to follow a “yes” branch of decisions. Pet. 35 (citing Ex. 1008 ¶¶ 36, 55, 64, Fig. 1).

Petitioner has accounted for each element and step of independent claim 19’s method as disclosed by Ganesh.

Under Ground 4, Petitioner turns to independent claim 1 and dependent claims 2–7, 10, 13, 16, and 18 and asserts that Ganesh anticipates

each. *See* Ex. 1005 ¶¶ 103–134 (witness testimony supporting Petitioner’s contentions).

Addressing claim 1’s preamble (“*A system for implementing transaction-specific surveys*”), and the most general recited components of this system (“*(a) a point-of-sale interface used in conducting a commercial transaction between a consumer and a vendor, the point-of-sale interface being configured to record transaction data relating to the commercial transaction wherein the transaction data comprises at least one purchase detail identifier and a survey token,*” “*(b) a survey server computing device configured to receive and store the transaction data generated by the point-of-sale interface,*” and “*(c) a vendor survey interface*”), Petitioner asserts that Ganesh discloses such a system of networked computer components. Pet. 37–38, 45–46 (citing Ex. 1008, Abstr., ¶¶ 18, 22–23, 25, 31–34, 38, 64, 65). Petitioner asserts Ganesh discloses the point-of-sale interface configured to record transaction data of a commercial transaction, which includes a *purchase detail identifier* and a *survey token*. *Id.* at 45 (citing Ex. 1008 ¶¶ 23, 31–34, 38).

Turning to claim 1’s recited elements of the survey server (“*(i) the survey server computing device comprises (A) a vendor database storing a plurality of purchase detail identifiers, and (B) a campaign data structure having survey question data and a configurable Condition that is satisfied by the detection of a given purchase detail identifier,*” where the survey server is configured for “*(A) receiving a survey token, (B) retrieving the transaction data having the stored survey token corresponding to the received survey token, (C) determining whether the transaction data includes the given purchase detail identifier such that the configurable*

Condition is satisfied, and if the configurable Condition is satisfied, generating a Survey Question using the given survey question data and the purchase detail identifier, and (D) generating a Survey Module comprising software code for displaying the at least one Survey Question”), Petitioner asserts that Ganesh discloses surveys created and implemented at a time of purchase (TOP) where a code (e.g., a QR code) serves as a survey ID (survey token) for the user (customer), where survey questions are posed about the items purchased. Pet. 38–39, 45–46 (citing Ex. 1008 ¶¶ 25, 34, 38, 64–65).

As for the next recited component of claim 1, i.e., the vendor survey interface (“(c) a vendor survey interface configured to perform the operations comprising: (i) transmitting the survey token to the survey server computing device; (ii) receiving from the survey server computing device the Survey Module; (iii) generating a graphical user interface on a display screen; (iv) running the Survey Module to display the at least one Survey Question as an integrated component within the graphical user interface; (v) generating a Respondent Header based on user-generated inputs in response to the at least one Survey Question; and (vi) transmitting the Respondent Header to the survey server computing device”), Petitioner asserts that Ganesh discloses its survey server 105A communicates with its point of sale (POS, i.e., the vendor/merchant) 125 via network 130, that POS 125 monitors scanned items and relays the information to survey server 105A, where a survey selection algorithm selects survey questions based on items being purchased and pushes survey content to the customer’s personal computing device (PCD) 110. Pet. 39–40 (citing Ex. 1008 ¶¶ 64–65). Petitioner asserts the survey server uses a QR code, which directs the

customer to a website for taking the survey, where the customer uses their PCD (e.g., a mobile phone) to interact with the survey via the PCD display and the customer's survey responses are transmitted back to the survey server and recorded. *Id.* at 39–40, 45–46 (citing Ex. 1008 ¶¶ 18, 22, 31, 44–45, 55, 65).

Petitioner has accounted for each element and step of independent claim 1's system as disclosed by Ganesh.

As for claim 2, which depends from claim 1, it adds that “(a) *the vendor survey interface is implemented as a web server computing device; (b) the graphical user interface is a host vendor webpage; (c) and the Survey Module is a webpage frame configured for display as an integrated component of the host vendor webpage,*” and Petitioner asserts that Ganesh teaches this claimed subject matter in disclosing the customer uses their device to access a QR code from the system, which directs the customer to a website for taking the survey. Pet. 40 (citing Ex. 1008 ¶ 31).

Claim 3 depends from claim 1 and recites “*the point-of-sale interface is implemented as a point-of-sale computing device,*” which Petitioner asserts is taught by Ganesh in disclosing its POS system is provided during the retail checkout process, i.e., a point-of-sale computing device for scanning (products). Pet. 40–41 (citing Ex. 1008 ¶¶ 23, 36).

Claim 4 depends from claim 3 and adds “(a) *the point-of-sale computing device transmits the transaction data to a cloud server, and (b) the survey server computing device is configured to receive and store the transaction data transmitted by the cloud server,*” which Petitioner asserts is taught by Ganesh teaching cloud servers for storing transaction data for the

survey in a memory and database, where the data includes customer device information. Pet. 41 (citing Ex. 1008 ¶¶ 43, 53).

Regarding claim 5, which depends from claim 1 and recites “*vendor survey interface is implemented as a software application running on a mobile computing device, and the survey token is input by the consumer to the vendor survey interface,*” Petitioner asserts that Ganesh’s QR code is input by the customer using their PCD (portable computing devices, e.g., customer mobile phones), which links to a website to taking the survey, which uses software. Pet. 41–42 (citing Ex. 1008 ¶ 31).

Claim 6 depends from claim 1 and adds “*the survey token comprises a combination of purchase detail identifiers that identify the commercial transaction,*” which Petitioner asserts is taught by Ganesh’s QR code (or some other trigger) to direct a customer to a website for the survey. Pet. 42 (citing Ex. 1008 ¶ 31).

Claim 7 depends from claim 1 and adds “*the point-of-sale interface and the vendor survey interface are both implemented as a software application running on a mobile computing device,*” which Petitioner asserts is taught by Ganesh in disclosing a variety of PCDs, which include software. Pet. 42 (citing Ex. 1008 ¶ 22).

Regarding claim 10, which depends from claim 1 and adds “*(a) the purchase detail identifiers comprise a product/service identifier that represents a products/service available for purchase through the vendor; and (b) the Survey Question comprises a Product Survey Question relating to the product/service,*” Petitioner asserts that this subject matter is taught by Ganesh in disclosing its survey server has data on scanned products (items) that includes identifiers by necessity, and that it also lists examples of

products, e.g., headphones, being purchased, where, upon recognition of such a specific purchase, survey questions are pushed to the consumer about that product. Pet. 42–43 (citing Ex. 1008 ¶¶ 25, 38).

Claim 13 depends from claim 1 and recites “*(a) the purchase detail identifiers comprise a service mode identifier that represents a mode of service; and (b) the Survey Question comprises a Service Mode Survey Question relating to the mode of service,*” which Petitioner asserts is taught by Ganesh in its disclosing the headphones purchase example and that the survey questions can relate both to the product and the service of the transaction, e.g., whether the user was happy with the service. Pet. 43 (citing Ex. 1008 ¶ 26).

Turning to claim 16, which depends from claim 1 and adds “*(a) the survey question data includes at least one General Survey Question that is not specific to the transaction data; and (b) the survey server computing device is further configured to perform the operation of incorporating within the Survey Module software code for displaying the at least one General Survey Question,*” Petitioner asserts this is taught by Ganesh’s disclosure of a survey question such as, “On a scale of 1 to 10 how did you find the in-store shopping experience?” Pet. 44 (citing Ex. 1008 ¶ 25).

Finally, claim 18 depends from claim 1 and recites “*the system of claim 1, wherein: the Campaign data structure further comprises an Event that triggers an electronic notification transmitted to a vendor representative and a second configurable Condition that is satisfied based on a Survey Question response; and wherein (b) the survey server computing device is further configured to perform the operations of (E) incorporating within the Survey Module software code that determines*

whether the second configurable Condition is satisfied, and (F) that implements the Event to transmit an electronic notification to the vendor representative, if the second configurable condition is satisfied,” which Petitioner asserts is taught by Ganesh’s disclosure of follow-up questions and surveys based on the user’s responses, including the headphones example and the detection of the product’s purchase followed by questions about that product, then follow-up questions based on the user’s response. Pet. 44 (citing Ex. 1008 ¶¶ 25–26).

Petitioner has also accounted for Ganesh teaching each element or step of challenged claims 2–7, 10, 13, 16, and 18.

2. Patent Owner’s Positions

Many of Patent Owner’s arguments over Grounds 3 and 4 are essentially the same as those presented over Grounds 1 and 2. We do not review those positions again, as we have explained above that they are not persuasive.

Patent Owner argues that Ganesh does not disclose the recited *survey module*, according to its proposed claim construction, because Ganesh relies on a centralized, server centric communication system where the survey logic is performed at the survey server, not the *survey module*. Resp. 36–39 (citing Ex. 1008 ¶¶ 4, 44, 52); *see also* Sur-Reply 13–15. Patent Owner contends that the computer-readable instructions for implementing its survey system (on the survey server’s memory) are not *software* code that is sent to a remote interface; no *software* code is generated. *Id.* at 37 (citing Ex. 1008 ¶ 52; Ex. 2001 ¶¶ 117–118).

Patent Owner also argues that Ganesh does not teach the claimed *campaign data structure* or *vendor database* because, although Ganesh

teaches algorithms for selecting purchase items and survey questions, that is a different functionality than applying a configurable condition. Resp. 40–41 (citing Ex. 1008 ¶ 64; Ex. 2001 ¶ 127); *see also* Sur-Reply 15–16.

3. Analysis

We have considered the parties’ positions in view of the record. We find that Petitioner has identified that each claim limitation is disclosed by Ganesh and that the prior art anticipates each challenged claim. As discussed below, we have considered, but are not persuaded by Patent Owner’s arguments.

Regarding Patent Owner’s argument over the recited *survey module* element of the claims, we find it unpersuasive.

Ganesh teaches that content, i.e., files with executable content, e.g., scripts, code, applications, etc., is pushed from the survey server to the customer’s device, e.g., phone, to implement the survey. *See, e.g.*, Ex. 1008 ¶¶ 16–19. This is software, generated at the server, sent to the user’s device (i.e., the claimed survey interface), where it implements a survey and displays survey questions. Patent Owner’s argument focuses on the word “generate”—as in the claimed survey server must generate the recited *survey module* having *software*—arguing that the server does not generate software, but that only pre-installed software on a device runs a survey. Ganesh discloses that during or after a commercial transaction, the customer activates a trigger (a token) that opens a web browser application on their mobile device that includes a survey application and a survey server pushes survey content to that device—survey content is described by Ganesh to be executable software including survey questions and data (a survey module) pushed to the customer. Ex. 1008 ¶¶ 16–17, 20, 31, 38, 40. Ganesh

discloses that survey content is pushed from the server to the PCD, which discloses that the app or webpage software is provided by the server and sent to the customer. *See, e.g.*, Ex. 1008 ¶¶ 7, 16–17, 20, Fig. 3–5.

Regarding Patent Owner’s argument that Ganesh fails to disclose the claimed *campaign data structure* or *vendor database*, we are not persuaded.

Ganesh’s disclosed dynamic survey uses an algorithm(s) with branching logic, which teaches utilizing the claimed configurable condition (e.g., if this, then that; or when this happens and then that happens, etc.). *See, e.g.*, Ex. 1008, Abstr., ¶¶ 25–26, 54–56, 60, 64–66, Figs. 3–5. Ganesh teaches the system confirms a survey ID and pushes survey content to a customer’s phone, it recognizes the goods purchased, and dynamically customizes the survey questions (*see e.g., id.* ¶ 25, Figs. 3–5), this dynamicism also includes tailoring a first question to the identity of the transaction or shopping experience and also tailoring a second question per the answer to a first question (*see id.* ¶ 26). Ganesh’s systems utilize survey content preselected or dynamically selected based on a number of factors, including information about the merchant and its products “according to the wishes of the manufacturer.” *Id.* ¶¶ 6, 25. This discloses the claimed *campaign data structure* and *vendor database* (with a plurality of purchase detail identifiers).

4. Summary

We have considered Petitioner’s assertions, Patent Owner’s arguments, and the evidence of record, and find that Petitioner has sufficiently mapped the limitations/steps of independent claims 1 and 19, and dependent claims 2–7, 10, 13, 16, and 18 to the disclosure of Ganesh. We are unpersuaded by any of Patent Owner’s arguments. Based on the

record, Petitioner has shown by a preponderance of the evidence that the challenged claims are each anticipated by Ganesh.

III. REVISED MOTION TO AMEND

As noted above, Patent Owner replaced a Contingent Motion to Amend, after we provided Preliminary Guidance thereon, with a Revised Contingent Motion to Amend (“RMTA”), which proposes replacing original claims 1–19 of the ’811 patent with substitute claims 20–38. RMTA 27–47 (claim list); *see* 37 C.F.R. § 42.121(f)(3). Because we conclude that Petitioner shows by a preponderance of the evidence that challenged claims 1–7, 10, 13, 16, 18, and 19 are unpatentable, we consider Patent Owner’s RMTA. As also noted above, with respect to the RMTA, Petitioner filed an Opposition to the RMTA, which was followed by Patent Owner’s Reply to that Opposition, which was followed by Petitioner’s Sur-reply to that Reply. Papers 26, 27, and 28.

The parties’ burdens with respect to the RMTA are noted above, i.e., Petitioner bears the ultimate burden on proving unpatentability, but Patent Owner does have a burden to show its RMTA complies with certain statutory and regulatory requirements. *See* 37 C.F.R. § 42.121(d).

A. PROPOSED SUBSTITUTE CLAIMS

As noted, Patent Owner proposes substitute claims 20–38 as amended replacements for claims 1–19 (if these original claims are cancelled).¹³

¹³ Although Patent Owner proposes substitute claims for each of original claims 1–19, we note that original claims 8, 9, 11, 12, 14, 15, and 17 were not challenged as unpatentable in this proceeding and will not be cancelled in view of the final decision in this proceeding.

RM TA 27–47. Proposed amended claim 20 is intended as a substitute for claim 1; we reproduce proposed substitute claim 20 below:¹⁴

20. A system for implementing transaction-specific surveys comprising:

(a) a point-of-sale interface used in conducting a commercial transaction between a consumer and a vendor, the point-of-sale interface being configured to record transaction data relating to the commercial transaction wherein the transaction data comprises at least one purchase detail identifier and a survey token;

(b) a survey server computing device configured to receive and store the transaction data generated by the point-of-sale interface, wherein:

(i) the survey server computing device comprises (A) a vendor database storing a plurality of purchase detail identifiers, and (B) a campaign data structure having survey question data and a configurable Condition that is satisfied by the detection of a given purchase detail identifier; and wherein

(ii) the survey server computing device is configured to perform the operations comprising (A) receiving a survey token, (B) retrieving the transaction data having the stored survey token corresponding to the received survey token, (C) determining whether the transaction data includes the given purchase detail identifier such that the configurable Condition is satisfied, and if the configurable Condition is satisfied, generating a first Survey Question using the given survey question data and the purchase detail identifier, and (D) generating a Survey Module comprising software code for displaying one or more survey questions and for implementing branching logic that is configured to determine a second Survey Question based on a first user-generated input in response to the first ~~the at least one~~ Survey Question;

¹⁴ Underlined language reflects subject matter added to the original claims and strike-through indicates deletion.

(c) a vendor survey interface configured to perform the operations comprising: (i) transmitting the survey token to the survey server computing device; (ii) receiving from the survey server computing device the Survey Module; (iii) generating a graphical user interface on a display screen; (iv) running the Survey Module to perform operations comprising (A) displaying the ~~at least one~~ first Survey Question as an integrated component within the graphical user interface, and (B) determining the second Survey Question; (v) generating a Respondent Header based on user-generated inputs that comprise the first user-generated input in response to the ~~at least one~~ first Survey Question; and (vi) transmitting the Respondent Header to the survey server computing device.

Id. at 37–38.

To summarize, the proposed amendments modify the *survey module* generated by the *survey server* such that, rather than having software code for displaying at least one survey question, the *Survey Module* has software code for displaying one or more survey questions and also for implementing branching logic configured to determine a second survey question based on a user's response to a first survey question. The *survey server* transmits the *survey module* to a *vendor survey interface*, where the *survey module* runs to display the first survey question and determines the second survey question based on the user's response to the first survey question. *Id.*

Proposed substitute claim 38 is intended to replace independent claim 19. *Id.* at 45–47. To summarize, claim 38 is amended similarly to proposed substitute claim 20 in that the recited *survey module* has software code for displaying one or more survey questions and for implementing branching logic to determine a second survey question based on user input in response to the first survey question. *Id.*

Proposed substitute claims 21–37 are intended to replace dependent claims 2–18 and are amended to update their dependency and modify the claim language in view of the changes to the independent claims. *Id.* at 39–45. “Only independent claims 20 and 38 include substantive revisions,” according to Patent Owner. RMTA 2.

B. STATUTORY AND REGULATORY REQUIREMENTS

Patent Owner bears the burden to show that its motion to amend complies with the requirements of 35 U.S.C. § 316(d)(1), (3) and 37 C.F.R. § 42.121(a)(2), (a)(3), (b)(1), and (b)(2).

A motion to amend must propose a reasonable number of substitute claims. 35 U.S.C. § 316(d)(1)(B); 37 C.F.R. § 42.121(a)(3). We find that Patent Owner’s RMTA proposes a reasonable number of substitute claims by proposing substitute claims 20–38 as replacements for original claims 1–19 on a one-for-one basis. RMTA 2–3, 27–47.

Patent Owner must clearly indicate the changes made to the claims. 37 C.F.R. § 42.121(b). Petitioner argues that the RMTA falls short here because substitute claim 34 incorrectly indicates a deletion of dependency from *new* claim 33 rather than *original* claim 15, to be replaced by dependency from new claim 33, and because there are discrepancies between the listing of claims provided in Appendix A versus Appendix B. Opp. RMTA 1, 3–5. We consider the discrepancy with claim 34 to be a typographical error and look to the RMTA’s Appendix A as the correct listing of claims identifying proposed changes (Appendix B may be inconsistent with Appendix A, but Patent Owner provides Appendix B in an attempt to show written description support for the substitute claims). *See*

RMTA 1, 4. For these reasons, we find Patent Owner has complied with this requirement.

A motion to amend must respond to a ground of unpatentability involved in the proceeding. 37 C.F.R. § 42.121(a)(2)(i). Petitioner argues the RMTA is “non-responsive to the instituted grounds for unpatentability in this proceeding” because Patent Owner “fail[s] to overcome Petitioner’s position” that Douglas and/or Ganesh anticipate the claimed invention even if branching logic for determining a follow-up survey question based on a prior response is included in the claimed invention, as recited in the proposed substitute claims’ *survey module* element. Opp. RMTA 1–3, 13–23. Petitioner presents arguments explaining why Douglas and/or Ganesh disclose such an element (primarily, as part of a survey server’s functions). *Id.* Even assuming for the sake of argument that Petitioner is correct that Douglas and/or Ganesh anticipates the proposed substitute claims, Patent Owner takes the opposite position and presents extensive argument addressing the issue, specifically asserting that neither Douglas nor Ganesh discloses a *survey module* with software that implements branching logic to determine a follow-up survey question based on a prior response. RMTA 18–24.

The rule does not require that Patent Owner’s proposed amendments successfully distinguish over asserted prior art to meet this requirement, only that they “respond to a ground of unpatentability involved in the trial.” 37 C.F.R. § 42.121(a)(2)(i). Here, we find that Patent Owner’s proposed amendments attempt to distinguish over the asserted prior art and challenges brought in the Petition over which trial is instituted. Therefore, we find

Patent Owner's RMTA responds to a ground of unpatentability involved in this proceeding.

A motion to amend may not enlarge the scope of the claims of the patent. 35 U.S.C. § 316(d)(3); 37 C.F.R. § 42.121(a)(2)(ii). Patent Owner's Motion has not enlarged the scope of the claims of the patent. RMTA 2, 27–47. Each independent claim is amended to narrow the scope of the *survey module* element and how it functions, and no substantive amendments are made to the dependent claims other than to make them comport with language changes to the independent claims and correct dependency. *Id.* We find the RMTA complies with this rule.

A motion to amend may not introduce new subject matter. 35 U.S.C. § 316(d)(3); 37 C.F.R. § 42.121(a)(2)(ii). As explained further below, we find that the RMTA fails this requirement.

The prohibition against adding new matter when amending claims is related to 35 U.S.C. § 112(a) and its requirement that claims find written description support in the specification.

The written description requirement and its corollary, the new matter prohibition of 35 U.S.C. § 132, both serve to ensure that the patent applicant was in full possession of the claimed subject matter on the application filing date. When the applicant adds a claim or otherwise amends his specification after the original filing date, . . . the new claims or other added material must find support in the original specification.

TurboCare Div. of Demag Delaval Turbomachinery Corp. v. General Elec. Co., 264 F.3d 1111, 1118 (Fed. Cir. 2001) (citing, *inter alia*, *Schering Corp. v. Amgen Inc.*, 222 F.3d 1347, 1352 (Fed. Cir. 2000)).

Whether one identifies the issue as one of claiming new matter under 35 U.S.C. § 132 or a lack of written description under 35 U.S.C. § 112(a),

the inquiry is the same—whether the newly claimed subject matter added by proposed amendment is disclosed in the original application, as filed.¹⁵ The test for satisfying the written description requirement “is whether the disclosure of the application relied upon reasonably conveys to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.” *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010) (en banc). “In order to satisfy the written description requirement, the disclosure as originally filed does not have to provide *in haec verba* support for the claimed subject matter at issue,” but the disclosure must convey with reasonable clarity to those skilled in the art that the inventor was in possession of the invention. *Purdue Pharma L.P. v. Faulding, Inc.*, 230 F.3d 1320, 1323 (Fed. Cir. 2000).

Patent Owner identifies the subject matter of the dispute:

Proposed substitute independent claims 20 and 38 (corresponding to the ‘811 Patent independent claims) have been amended to specify that the Survey Module comprises software code ‘for displaying *one or more survey questions and for implementing branching logic that is configured to determine a second Survey Question based on a first user-*

¹⁵ This relationship is highlighted in MPEP § 2163.06(I) relating to amendments made during patent prosecution: “If new subject matter is added to the disclosure, . . . the examiner should object to the introduction of new matter under 35 U.S.C. [§§] 132 or 251 as appropriate If new matter is added to the claims, the examiner should reject the claims under 35 U.S.C. [§] 112(a) . . . written description requirement. *In re Rasmussen*, 650 F.2d 1212 . . . (CCPA 1981).” And, MPEP § 608.04(a) explains, “[m]atter not present on the filing date of the application in the specification, claims, or drawings that is added after the application filing is usually new matter.” New claims, e.g., added by amendment in *inter partes* review, or added in a reissue application, can be identified as improperly introducing new matter. See MPEP §§ 1411.02, 1453.

generated input in response to the first Survey Question.’ The substitute independent claims also recite that the vendor survey interface runs the Survey Module to ‘determining the second Survey Question.’

RM TA 1. Petitioner argues that this limitation “constitutes new subject matter because there is no written description support for” *this survey module*. Opp. RM TA 5–13.

Patent Owner asserts that there is support for each claim element, including the new *survey module*, “within each application in the ‘811 Patent family,” and purports to identify this at, *inter alia*, Appendix B and tables of the RM TA.¹⁶ RM TA 4, 7, 13–14 (tables). Patent Owner argues that the disclosure of a “web-service (WS) that allows merchants . . . to integrate a check-level **survey module** into their own branded web-site” discloses the now-claimed survey module. *Id.* at 7 (citing Ex. 1003 ¶¶ 9, 100; Ex. 2003 ¶¶ 9, 99; Ex. 1002 ¶¶ 13, 105; Ex. 2002 ¶¶ 10, 90 (these are all the same or similar paragraphs)).

Patent Owner cites the following portions of the ‘490 application, the ‘387 application, the ‘434 application, and the ‘043 provisional as being written description support for the proposed substitute claims’ newly recited

¹⁶ As noted above (*see supra* Section I.C), the ‘811 patent was filed as U.S. Application 16/456,490 (Ex. 1003, “the ‘490 application”), as a continuation-in-part of U.S. Application 16/279,387 (Ex. 2003, “the ‘387 application”), which was a continuation of U.S. Application 14/997,434 (Ex. 1002, “the ‘434 application”), and further asserts priority to U.S. Provisional Application 62/104,043 (Ex. 2002, “the ‘043 provisional”). Some of these exhibits include more from the respective application’s file history than just the originally filed specification and some are not paginated. Therefore, when we cite to these exhibits in this section, we refer to the respective specifications as filed and to paragraphs therein, unless otherwise indicated.

“Survey Module comprising software code for displaying one or more survey questions and for implementing branching logic that is configured to determine a second Survey Question based on a first user-generated input in response to the first Survey Question”:¹⁷

- Ex. 1002 (the ’434 application) ¶¶ 13, 51, 68–70, 77–79, 83, 85, 105, 120, 136–141, 154, Figs. 2, 3, 5, 6, claim 1;
- Ex. 1003 (the ’490 application) ¶¶ 9, 45, 65, 70–71, 77, 100, 116, 132–137, 150, Fig. 3;
- Ex. 2002 (the ’043 provisional) ¶¶ 10, 27, 37, 45, 54–57, 61–69, 71, 74–81, 90, 103, 118–131, 136, 146, Figs. 1, 2, 5, 7, 8, claims 3, 19, 20; and
- Ex. 2003 (the ’387 application) ¶¶ 9, 45, 71–73, 77, 79, 99, 114, 130–135, 148, Fig. 3.

RM TA 4–18. These paragraphs across the four applications are substantially similar to their counterparts, as well as to the counterpart portions of the ’811 patent’s Specification; none discloses any subject matter the others essentially do not. Therefore, as explained below, although we have considered each, we primarily cite the ’490 application that issued as the ’811 patent as representative.

Petitioner argues the *survey module* described in the various specifications (noted above) does not include or implement branching logic. Opp. RM TA 7. Petitioner argues that branching logic may be used by a campaign data structure to implement merchant survey preferences at a survey generation step, or a part of the assembly of a web-container package for an order of questions, but this is not part of the *survey module* because it

¹⁷ Patent Owner also cites Ex. 2005 ¶¶ 12, 13, 21, 29, 32–36, 39, 41, 47 (witness testimony), which we have considered.

is part of the survey server. *Id.* at 7–9. Petitioner argues that, considering the '043 provisional's, the '434 application's, and the '490 application's specifications, none discloses that a *survey module* uses branching logic to select second survey questions, but they disclose a survey server is responsible for generating survey questions. *Id.* at 11–13.

In its Reply to Petitioner's Opposition, Patent Owner agrees that the disclosed survey server builds a survey using branching logic in association with the campaign data structure and merchant preferences, but that the *survey module* implements the survey and concludes "[i]t naturally follows that a person of ordinary skill in the art ('**POSITA**') would understand that the Survey Module incorporates branching logic," based on the fact that "Java tags embed software" and "any component with software requires branching logic."¹⁸ Reply RMTA 4–5 (citing, *inter alia*, Ex. 2005 ¶¶ 13, 29, 30–36). Patent Owner argues that the autonomous web-container package disclosed in the '490 application is the *survey module*. *Id.* at 6 (citing Ex. 1003 ¶¶ 63–65).

In its Sur-reply to this Opposition, Petitioner argues that Patent Owner "improperly asks this Board to interpret the branching logic as supporting surveys being dynamically generated not prior to submission to the customer, but instead during the customer's engagement of the survey itself." Sur-reply RMTA 4.

We analyze the parties' positions and relevant evidence below.

¹⁸ It is worth noting that this statement of fact supports Petitioner's contentions that Douglas's and Ganesh's inclusion of Java, scripts, or other software, in survey content pushed to customer's devices, meets the *survey module* limitation of the original claims. *See supra* Sections II.E and II.F; *see also* Reply 7–9, 16–18 (addressing the issue in detail).

Considering the cited specifications in their entirety and paying particular attention to the Patent Owner's highlighted portions, we do not agree with Patent Owner that any provides a written description of the newly recited *survey module* that functions to determine a second survey question to display based on a customer's response to a prior survey question. Nowhere in any specification is this described as a function of a *survey module*, either generally or in the more specific GSM embodiment of a *survey module*.

As we noted above, the various specifications are very similar, even if they may have slight differences. Therefore, we discuss the '490 application's specification as exemplary of all their disclosures; it is also essentially identical to the '811 patent's specification.

Like the '811 patent, the '490 application introduces the concept of a *survey module* that can be integrated into a merchant's branded website and may include java tags, whereby customers may interact with survey features; one embodiment is the Customer or Guest Survey Module (CSM/GSM). Ex. 1003 ¶ 9. The '490 application's Figures 2–6, like those of the '811 patent, illustrate how the survey system, including the GSM-Web Services, works, i.e., a survey server/engine 140/145 includes a question generator module 150 and a question response module 155, which is where survey questions are generated, which are typically formatted into web pages 160 that can be embedded into the merchant's website. *Id.* ¶¶ 30–69. A campaign with conditions, survey questions, events, incentives, exit pages, groupings, and general logic is part of the question generator module 150 and used in constructing survey questions. *Id.* ¶ 34. It is the survey server 140 that receives a survey token and generates respective survey questions

using branching logic, sends questions to the client computer (e.g., as webpages), receives customer responses, and generates additional survey questions based on merchant preferences in the campaign. *Id.* ¶¶ 45–47, 63–75. Customer responses to survey questions are sent to the server 140. *Id.* ¶ 66.

Patent Owner relies heavily on paragraph 65 of the '490 application; it states:

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. In this instance, the answers can likewise be assembled into a single, self-contained package. In this manner, the system 100 can minimize the required communication between system devices that could delay survey processing.

Ex. 1003 ¶ 65. This paragraph neither mentions a *survey module* nor ties these features to a *survey module* as such an element is recited in the original '811 patent claims or in the proposed substitute claims.

The '490 application describes a scenario where follow-up survey questions may be generated depending on previous question's responses:

It will be appreciated that merchant preferences may cause questions to be generated that depend on previous questions generated and responses received. For example, a merchant may prefer that a particular question no longer be generated when no or few customers queried respond to it. In addition, a merchant may prefer that a question that has been answered numerous times no longer be generated as a large enough sample has been generated for analysis. The merchant may specify that after the question has been answered a certain

number of times that another question be asked instead of the question.

Id. ¶ 75. As in the previously quoted paragraph, this functionality is nowhere tied to a *survey module*. Nor is a *survey module* even mentioned. These functions take place at the survey server 140, which is where the '490 application describes the merchant's survey campaign data resides and where branching logic can be implemented *to determine survey questions*.

The GSM ("WS-Based GSM," meaning a web-service-based guest survey module) embodiment, noted above,

allows merchants to integrate a GSM into their branded website allowing integration to both survey templates and actual check details. All administration of the GSM occurs within a Data Collection Handler (DCH) web-based portal. The WS features are implemented as a multi-unit (MU) role based services; this allowing an MU login to be setup by survey Attribute Group scope for either centralization or decentralization based upon MU login scope to units.

Ex. 1003 ¶ 100. The GSM can use a survey token to determine what POS (point-of-sale) unit was used by a customer. *Id.* ¶ 102. The '490 application explains that "[t]he GSM includes multiple services required for implementing the inventive method on the system," such as: a GetGSMUnit that identifies a Data Collection Handler web-based portal; an optional GSM Customer Authentication that allows a returning customer to authenticate; an optional GSM Create/Edit Customer that allows a customer to create/edit their information; a GenerateSurvey¹⁹ that generates survey data; an

¹⁹ Contrary to the name of this function, it does not actually generate a survey or questions, which is the function of the survey server. *See* Ex. 1003 ¶¶ 63, 132, 139. "The [GenerateSurvey] service generates the actual survey response rows or may generate an error message according to survey setup requirements. Example service options include: o UnitID (required);]

EditSurvey that allows the edited survey data to be stored; and a GetSurveyState that allows a survey to be validated. *Id.* ¶ 132; *see also id.* ¶¶ 133–145 (describing the details of these functions). None of these functions/elements nor any other part of the GSM embodiment is described as including branching logic to *choose survey questions* in any way, much less based on prior user responses to other survey questions.

Nowhere in the '490 application, which is exemplary of each application in the '811 patent's family of record here, does it attribute to a *survey module* software code for implementing branching logic that is configured to determine a second survey question based on a first user-generated input in response to a first survey question. Such functionality in *survey module* software, generated at a survey server and sent to a vendor survey interface to run there and perform these functions, is not described in and is not supported by a written description as required under 35 U.S.C. § 112(a).

In summary, we find that the RMTA, particularly proposed substitute claims 20 and 38, introduces new subject matter that is not supported by a written description under 35 U.S.C. § 112(a) and, therefore, the RMTA fails under 35 U.S.C. § 316(d)(3) and 37 C.F.R. § 42.121(a)(2)(ii) and must be *denied* for this reason.

o MasterSurveyGUID (required)[;] o Check Number (optional)[;]
o CheckDateTime (optional)[;] o CustomerGUID (optional)[;] o Return:
Survey Instance GUID or NULL if not possible[;] o Return: Service Error
Message[.]” *Id.* ¶ 139 (formatting modified).

Because the RMTA does not meet the foundational statutory and regulatory requirements, we decline to reach Petitioner's arguments as to the asserted unpatentability of the proposed substitute claims.

C. CONCLUSION ON REVISED MOTION TO AMEND

Because the RMTA does not meet foundational statutory and regulatory requirements for a motion to amend, it is *denied*.

IV. CONCLUSION²⁰

Having considered the positions advocated by each party and the record before us, we conclude that Petitioner proves by a preponderance of the evidence that each challenged claim of the '811 patent is anticipated by Douglas and by Ganesh. Accordingly, we find that claims 1–7, 10, 13, 16, 18, and 19 of the '811 patent are unpatentable. Moreover, we find that Patent Owner's Revised Contingent Motion to Amend adds new matter in every proposed substitute claim, and, therefore, the motion is *denied*.

²⁰ 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, 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).

In summary:

Claims	35 U.S.C. §	Reference(s)/ Basis	Claim(s) Shown Unpatentable	Claim(s) Not Shown Unpatentable
19	102	Douglas	19	
1–7, 10, 13, 16, 18	102	Douglas	1–7, 10, 13, 16, 18	
19	102	Ganesh	19	
1–7, 10, 13, 16, 18	102	Ganesh	1–7, 10, 13, 16, 18	
Overall Outcome			1–7, 10, 13, 16, 18, 19	

Motion to Amend Outcome	Claim(s)
Original Claims Cancelled by Amendment	
Substitute Claims Proposed in the Amendment	20–38
Substitute Claims: Motion to Amend Granted	
Substitute Claims: Motion to Amend Denied	20–38
Substitute Claims: Not Reached	

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that claims 1–7, 10, 13, 16, 18, and 19 of U.S. Patent 10,430,811 B1 are determined to be unpatentable;

FURTHER ORDERED that Patent Owner’s Contingent Revised Motion to Amend is *denied*; and

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

IPR2025-00677
Patent 10,430,811 B1

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