UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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QUALTRICS, LLC,
Petitioner,

v.

OPINIONLAB, INC.,
Patent Owner.

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Case IPR2014-00366
Patent 8,041,805 B2

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

DEFRANCO, *Administrative Patent Judge.*

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

I. INTRODUCTION

Qualtrics, LLC, filed a Petition ("Pet.") requesting *inter partes* review of claims 1, 2, 5, 8, 10, 11, 14, 17–19, 22, 25–27, 30, and 33 of U.S. Patent No. 8,041,805 B2 ("the '805 patent"). After considering the Petition, we instituted an *inter partes* review of all the challenged claims on the ground of unpatentability under 35 U.S.C. § 103. After institution, OpinionLab, Inc., the owner of the '805 patent, filed a Patent Owner Response ("PO Resp."), to which Qualtrics filed a Reply ("Reply"). We entertained oral argument from both parties.[1] We have jurisdiction under 35 U.S.C. § 6(c). For the reasons that follow, we determine that Qualtrics has not proven, by preponderant evidence, that any of the challenged claims are unpatentable.

II. BACKGROUND

A. *The '805 Patent*[2]

The '805 patent is directed to a system and method for soliciting and reporting feedback from a user of a commercial website. Ex. 1001, 1:15–19. Typical websites measure a user's reaction to the website *as a whole*. *Id.* at 1:35–56. In contrast, the system of the '805 patent solicits and reports user feedback on a *page-specific* basis by incorporating a "user reaction measurement tool" into each web page of the website. *Id.* at 5:25–36, 11:59–66. The tool appears as a "viewable icon" on each web page and solicits the user's subjective reaction to the particular web page being displayed. *Id.* at 5:37–50, 11:66–12:6, Fig. 2. When the user clicks on the icon, a rating scale and/or a comment box appears within the user's browser

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[1] A transcript ("Tr.") has been entered into the record. Paper 44.

[2] The '805 patent is the subject of concurrent district court actions, *OpinionLab, Inc. v. Qualtrics Labs, Inc.*, No. 1:13-cv-01574 (N.D. Ill.), and *OpinionLab, Inc. v. iPerceptions Inc.*, No. 1:12-cv-05662 (N.D. Ill.). Pet. 2.

window. *Id.* at 5:65–6:21, 12:40–14:10, Figs. 3–6. The rating scale and

comment box allow the user to provide subjective reactions to various

aspects of the particular web page while remaining at the web page itself.

Id. at 14:11–18; *compare* Fig. 2 *with* Figs. 3, 5 (depicting icon 50 on web

page 28 as being replaced by rating scales 60, 70).

Software associated with the icon operates to collect and store the

user's reaction in a database for subsequent reporting to a website owner.

Id. at 2:6–18. The website owner can generate a report for analyzing and

identifying user reactions and feedback related to particular web pages. *Id.*

at 15:27–21:54, Figs. 8A, 8B, 9. The report allows the website owner to

assess the success of each web page in the eyes of the user community. *Id.*

at 13:49–52.

B.   *The Challenged Claims*

Of the challenged claims, claims 1, 10, 18, and 26 are independent.

Claim 1 is representative and recites:

> 1.   One or more computer-readable non-transitory
> storage media embodying software operable when executed to:
> provide a user-selectable element viewable on each of a
> plurality of particular web pages of a website upon initial
> display of a particular web page and soliciting page-specific
> user feedback concerning the particular web page upon initial
> display of the particular web page, the user-selectable element
> appearing identically and behaving consistently on each of the
> plurality of particular web pages; and
> receive the page-specific user feedback concerning the
> particular web page for reporting to an interested party, ***the
> page-specific user feedback concerning the particular
> webpages having been provided by a user while the user
> remained at the particular web page***, and the page-specific
> user feedback comprising one or more page-specific subjective
> ratings of the particular web page and one or more associated

> page-specific open-ended comments concerning the particular web page,
>
> the page specific user feedback allowing the interested party to access page-specific subjective ratings and associated page-specific open-ended comments across the plurality of particular web pages to identify one or more particular web pages for which the page-specific user feedback is notable relative to page-specific user feedback for other particular web pages;
>
> wherein the user-selectable element is viewable within a browser window upon initial display of the particular web page and remains viewable within the browser window, at least prior to the user selection, regardless of user scrolling.

Ex. 1001, 25:40–26:3 (emphasis added).

C. The Instituted Grounds of Unpatentability

In the Preliminary Proceeding,[3] we instituted trial on only one of the three grounds proposed by Qualtrics, in particular, determining Qualtrics had a "reasonable likelihood" of proving the challenged claims unpatentable as obvious over the combined teachings of CustomerSat,[4] Medinets,[5] and HTML Spec.[6] Dec. to Inst. 12. Having instituted trial under the "reasonable likelihood" standard of 35 U.S.C. § 314(a), we decide now whether

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[3] A "Preliminary Proceeding," as defined by our rules, "begins with the filing of a petition for instituting a trial and ends with a written decision as to whether a trial will be instituted." 37 C.F.R. § 42.2.

[4] *Customer Satisfaction Measurement, Surveys and Market Research by CustomerSat.com, The Internet Survey Experts*, https://web.archive.org/web/19980526190826/http:/www. Customersat.com/ (retrieved Nov. 21, 2013 from Internet Archive, Wayback Machine), 1–76 (May 26, 1998) (Ex. 1003).

[5] DAVID MEDINETS, PERL5 BY EXAMPLE: THE EASIEST WAY TO LEARN HOW TO PROGRAM, Que Corp., 1–66 (1996) (Ex. 1004).

[6] World Wide Web Consortium (W3C), *HTML 4.0 Specification*, Dave Raggett *et al.* (eds.), 1–366 (Apr. 24, 1998) (Ex. 1014).

Qualtrics has proven unpatentability of the challenged claims by a "preponderance of the evidence," as required by 35 U.S.C. § 316(e).

III. ANALYSIS

A.   Claim Construction

In an *inter partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which they appear. 37 C.F.R. § 42.100(b).   Under this standard, claim terms generally are given their ordinary and customary meaning, as understood by one of ordinary skill in the art in the context of the patent's entire written disclosure. *In re Translogic Tech., Inc.*, 504 F.3d 1249, 1257 (Fed. Cir. 2007). However, a "claim term will not receive its ordinary meaning if the patentee acted as his own lexicographer and clearly set forth a definition of the disputed claim term in either the specification or prosecution history." *CCS Fitness, Inc. v. Brunswick Corp.*, 288 F.3d 1359, 1366 (Fed. Cir. 2002). Here, although Qualtrics advances a construction of several claim terms of the '805 patent (Pet. 6–14), OpinionLab does not believe that any specific definition is necessary (PO Resp. 4–5 n. 4). We conclude that the claim terms do not require an express construction in order to analyze the challenged claims relative to the asserted prior art.

B.   The Ground of Obviousness

Our analysis centers on a single limitation of independent claims 1, 10, 18 and 26, one that is common to all of the claims, namely, "page-specific user feedback . . . having been provided by a user while the user remained at the particular web page." Qualtrics relies primarily on CustomerSat's disclosure of "Pop!Up questionnaires" for teaching this

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