

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

QUALTRICS, LLC,
Petitioner,

v.

OPINIONLAB, INC.,
Patent Owner.

Case IPR2014-00366
Patent 8,041,805 B2

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

DEFRANCO, *Administrative Patent Judge*.

DECISION
Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Qualtrics, LLC, filed a Petition requesting an *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”). Paper 1 (“Pet.”). Patent Owner, OpinionLab, Inc., filed a Preliminary Response. Paper 9 (“Prelim. Resp.”). We have jurisdiction under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

After considering the Petition and Preliminary Response, we determine that Qualtrics has established a reasonable likelihood of prevailing on the claims challenged in the Petition. Accordingly, we institute an *inter partes* review of claims 1, 2, 5, 8, 10, 11, 14, 17-19, 22, 25-27, 30, and 33 of the ’805 patent.

II. BACKGROUND

A. ’805 Patent¹

The ’805 patent is directed to a system and method for reporting user reactions, i.e., feedback, to particular web pages of a website. Ex. 1001, 1:16-19. Typical commercial websites measure a user’s reaction to the website *as a whole*. *Id.* at 1:35-56. In contrast, the claimed invention collects 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 11:59-66. Appearing within a user’s browser window is a “viewable icon” that solicits a user’s subjective reaction about the particular web page. *Id.* at 11:67–12:6. When the user selects the icon with a mouse pointer, a multi-level rating scale becomes viewable within the browser

¹ Qualtrics indicates that the ’805 patent is the subject of co-pending cases in the U.S. District Court for the Northern District of Illinois, captioned *OpinionLab, Inc. v. Qualtrics Labs, Inc.*, 1:13-cv-01574; and *OpinionLab, Inc. v. iPerceptions Inc.*, 1:12-cv-05662. Pet. 2.

window. *Id.* at 12:40-46. The rating scale permits the user to rate his/her subjective reaction to a particular web page by moving the mouse pointer over a desired rating and clicking the mouse button. *Id.* 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. A website owner can generate a report for analyzing user reaction and feedback related to particular web pages of the website. *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. Illustrative Claim

Of the challenged claims, claims 1, 10, 18, and 26 are independent. Claim 1 is illustrative of the claimed invention 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.

Independent claim 10 includes limitations similar to those of claim 1, but recites the user-selectable element in terms of a “first element” and adds the recitation that feedback occurs through a “second element” displayed in response to a user’s selection of the first element. *See* Prelim. Resp. 6. Independent claims 18 and 26 recite limitations similar to those of claims 1 and 10, respectively, except they cover a method rather than software. *See* Ex. 1001, 27:41, 28:31.

C. Evidence of Record

Qualtrics relies upon the following prior art as the basis for its assertion against the challenged claims of the ’805 patent.²

References	Patents/Printed Publications	Date	Exhibit
CustomerSat	<i>Customer Satisfaction Measurement, Surveys and Market Research by CustomerSat.com, The Internet Survey Experts</i> , https://web.archive.org/web/19980526190826/http://www.customersat.com/ (retrieved Nov. 21, 2013 from Internet Archive, Wayback Machine).	May 26, 1998	1003

² Qualtrics also proffers the Declaration of John Chisholm, who founded the online survey research company that Qualtrics alleges as having published the CustomerSat reference. Ex. 1005 ¶¶ 13, 27.

Medinets	DAVID MEDINETS, PERL5 BY EXAMPLE: THE EASIEST WAY TO LEARN HOW TO PROGRAM, Que Corp.	1996	1004
HTML Spec	World Wide Web Consortium (W3C), <i>HTML 4.0 Specification</i> , Dave Raggett <i>et al.</i> (ed.).	Apr. 24, 1998	1014

D. Asserted Grounds of Unpatentability

Qualtrics asserts the following grounds in challenging the patentability of claims 1, 2, 5, 8, 10, 11, 14, 17-19, 22, 25-27, 30, and 33 of the '805 patent. Pet. 3.

Statutory Ground	Basis	Challenged Claims
§ 102	CustomerSat	1, 2, 5, 8, 10, 11, 14, 17-19, 22, 25-27, 30, and 33
§ 103	CustomerSat and Medinets	1, 2, 5, 8, 10, 11, 14, 17-19, 22, 25-27, 30, and 33
§ 103	CustomerSat, Medinets, and HTML Spec	1, 2, 5, 8, 10, 11, 14, 17-19, 22, 25-27, 30, and 33

III. ANALYSIS

A. Claim Construction

In an *inter partes* review, claim terms are given their broadest reasonable interpretation in light of the specification in which they appear and the understanding of one skilled in the relevant art. *See* 37 C.F.R. § 42.100(b). With that standard in mind, we have considered the claim terms that the parties identify for interpretation.³ *See* Pet. 6-14; Prelim. Resp. 22-23. At this stage of the proceeding, we determine that no particular claim terms require an express construction.

³ We note that, for purposes of this proceeding, OpinionLab does not dispute the constructions proposed by Qualtrics. Prelim. Resp. 23.

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