UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GETTATTLE, INC.
Petitioner

v.

AFTERWORDS, INC.
Patent Owner

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

PATENT OWNER'S PRELIMINARY RESPONSE UNDER 37 C.F.R. § 42.107(a) TO PETITION FOR *INTER PARTES* REVIEW OF U.S. PATENT NO. 10,430,811

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes and Rules

I. INTRODUCTION

Pursuant to 35 U.S.C. § 313 and 37 C.F.R. § 42.107, Patent Owner, AfterWords, Inc. ("***Patent Owner***"), submits the following Preliminary Response to the Petition for *Inter Partes* Review ("***Petition***") of Claims 1-7, 10, 13, 16, 18-19 (the "***Challenged Claims***") of U.S. Patent No. 10,430,811 (EX1001, the "***'811 Patent***") filed by Petitioner, GetTattle, Inc. ("***Petitioner***").

The Petition should be dismissed without instituting *inter partes* review at least because the references cited by the Petition do not teach or disclose "a Survey Module comprising software code for displaying the at least one Survey Question" ("***Survey Module***") as recited in the two independent claims (1 and 19) challenged by the Petition.

The Petition contends the Challenged Claims are anticipated, yet the references cited by the Petition do not disclose "each and every element of the claimed invention," a required showing for anticipation. *See, e.g., Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1341 (Fed. Cir. 2016) ("Under 35 U.S.C. § 102(b), 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.'") (citation omitted).

In an *inter partes* review proceeding, the "petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable." *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016). This burden of persuasion never shifts to the patent owner. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015).

Given that the references cited in the Petition do not teach each and every element of the Challenged Claims, the Petition does not satisfy the threshold for instituting *inter partes* review. Accordingly, institution of *inter partes* review of the Challenged Claims of the '811 Patent should be denied.

II. THE '811 PATENT

A. The '811 Patent Advanced the State of the Art

The '811 Patent discloses an improved customer experience platform. EX1001, col. 1, ll. 14-18. More specifically, it discloses a system and method for capturing data relating to a purchase, using the data to automatically generate a transaction-specific survey relating to the purchase, providing the transaction-specific survey to the customer in the form of a Survey Module, and storing customer responses to the survey. EX1001, col. 2, ll. 14-34.

Historically, customer experience platforms have not made use of the rich details relating to a purchase captured by point-of-sale ("***POS***") systems, resulting in overly generalized and impersonal customer surveys. EX1001, col. 1, ll. 35-39.

Furthermore, customer surveys have been cumbersome to complete, often resulting in customers foregoing answering any of the questions in the survey. EX1001, col. 1, ll. 39-50. The inventors, in developing the solution described in the '811 Patent, set out to solve these identified existing problems in the market for customer experience platforms by inventing a system and method that make use of the rich details about a transaction captured by POS systems to automatically generate transaction-specific surveys that are more likely to yield detailed, actionable customer feedback. EX1001, col. 2, ll. 14-34.

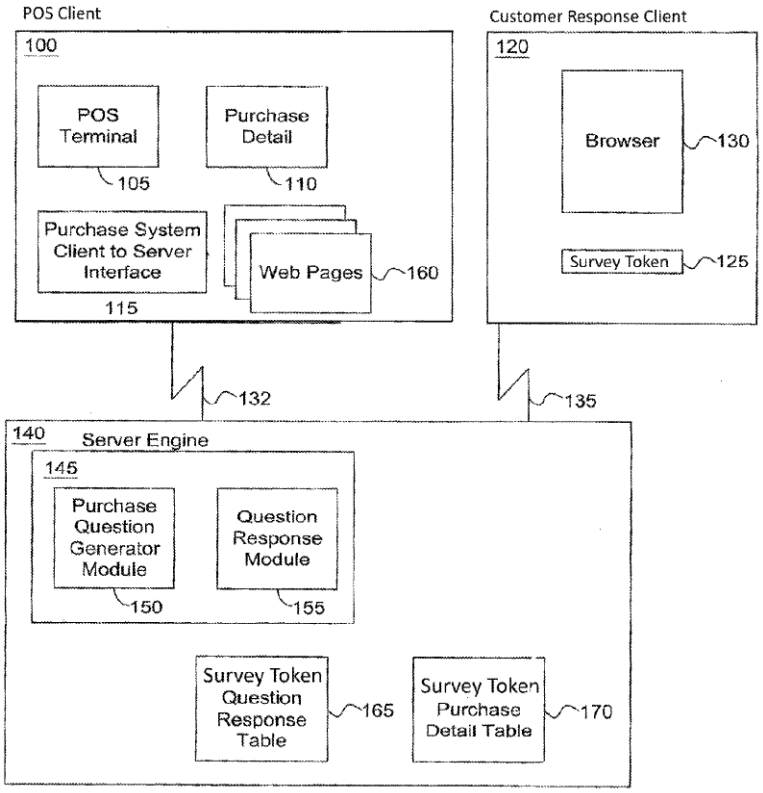
In order to provide these more 'intelligent' surveys that generate customized questions based on the user's specific context [*id.*], the specification and claims identify the use of a "Survey Module." The Survey Module may include software that can makes dynamic decisions as the user interacts with the survey and is configured to display survey questions as an integrated component within a graphical user interface. *Id.*, EX1001, col. 17, ll. 11-21. Accordingly, independent claim 1, shown below, recites a computer system for receiving customer feedback and information relating to a purchase, and more particularly, automatically generating a transaction-specific survey for a purchase and linking the survey to the transaction data:

Claim Element	Claim Language
[1.1]	1. A system for implementing transaction-specific surveys comprising:
[1.2]	(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;
[1.3]	(b) a survey server computing device configured to receive and store the transaction data generated by the point-of-sale interface, wherein:
[1.3.1]	(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
[1.3.2]	(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**;
[1.4]	(c) a vendor survey interface configured to perform the operations comprising:
[1.4.1]	(i) transmitting the survey token to the survey server computing device;

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

Challenged Claims 2-7, 10, 13, 16, and 18 are dependent system claims.

Claim 1 of the ‘811 Patent comprises three primary components: (a) a point-of-sale interface, (b) a survey server computing device, and (c) a vendor survey interface. EX1001, col. 26, ll. 4-42. These components are depicted in the block diagram shown in Figure 2 of the ‘811 Patent:



Point-of-Sale Interface

The "point-of-sale interface" 115 is configured to record transaction data relating to a commercial transaction where the transaction data comprises at least one "purchase detail identifier" and a "survey token." EX1001, col. 26, ll. 4-9. The transaction data may include information such as price, quantity, and name of each item purchased, time and date of purchase, employees on duty, the mode of service delivery, and or any other relevant information associated with a purchase. EX1001, col. 5, ll. 35-39. The point-of-sale interface 115 provides an interface between POS client 100 and survey server computing device 140 through communication link 132. EX1001, col. 6, ll. 3-7, 10-11.

Petitioner proposes the constructions set forth below. While Patent Owner does not agree with Petitioner's proposed constructions, Patent Owner does not challenge them for purposes of this Preliminary Response only as this Preliminary Response does not require construction of such claim terms.

Claim Term	**Petitioner's Proposed Construction**
"point-of-sale interface"	"an executable software component embedded within the POS terminal, separate and unique from server engine software"
"purchase detail identifier"	"a data category that identifies elements of a commercial transaction as generated by the POS terminal"
"survey token"	"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"

See Petition, p. 13 (setting out proposed constructions).

Survey Server Computing Device

The "survey server computing device" 140 is configured to receive and store the transaction data recorded by point-of-sale interface 115. EX1001, col. 26, ll. 10-12. The received transaction data comprises at least one purchase detail identifier and a survey token. EX1001, col. 26, ll. 4-9.

A typical survey server computing device 140 includes a server engine 145, response table 165, and purchase detail table 170. EX1001, col. 6, ll. 7-8. Server

engine 145 includes purchase question generator module 150 and question response module 155. EX1001, col. 6, ll. 8-10.

The purchase question generator module 150 generates questions based on purchase information stored in purchase detail table 170 and preference data associated with merchant preferences. EX1001, col. 6, ll. 12-15. The merchant preferences can be formatted as a Campaign. EX1001, col. 6, ll. 15-16. A Campaign is a data structure that may include Conditions, Survey Questions, Events, Incentives, Exit Pages, groupings, and general logic utilized in constructing Survey Questions. EX1001, col. 6, ll. 17-19.

Surveys are created using the transaction data as well as the Campaign data structure, which may include configurable Conditions, Survey Questions, and branching logic. EX1001, col. 11, ll. 19-21. Branching logic changes the questions presented or the order of the questions presented based on the survey respondent's answers to prior survey questions. EX1001, col. 11, ll. 31-34.

When a customer makes a purchase, details regarding the purchase are sent to and stored on the survey server computing device as transaction data. EX1001, col. 7, ll. 42-44, 49. A survey token identifying the transaction is generated and given to the customer. EX1001, col. 7, ll. 44-45, 50-51. Such survey token is associated with the details of the purchase and stored with the purchase details on the survey server

computing device 140 as transaction data for future access. EX1001, col. 6, 26-30, col. 9, ll. 39-42.

Receipt of the transaction data by the survey server computing device 140 does not automatically trigger the sending of a survey to the customer for the transaction data. EX1001, col. 9, ll. 39-44. Rather the sending of the survey is triggered by the customer submitting a survey token corresponding to the stored survey token for the transaction through the customer response client 120 to the survey server computing device 140. EX1001, col. 10, ll. 55-67 – col. 11, ll. 1-18.

Vendor Survey Interface

The "vendor survey interface" performs operations that include:

1. Transmitting the survey token to the survey server computing device;

2. Receiving a Survey Module from the survey server computing device;

3. Generating a graphical user interface on a display screen;

4. Running the Survey Module to display the at least one Survey Question as an integrated component within the graphical user interface;

5. Generating a Respondent Header based on user-generated inputs in response to the at least on Survey Question; and

6. Transmitting the Respondent Header to the survey server computing device.

Ex1001, col. 26, ll. 31-42 (emphasis added).

Survey Module

Independent claims 1 and 19—the only independent claims at issue—both specify that the "Survey Module" is generated by the survey server computing device and comprises software code for displaying the at least one Survey Question. EX1001, col. 26, ll. 22-30, col. 29, ll. 7-10.

The '811 Patent specification teaches that the survey may be "assembled into an autonomous, self-contained, web-container package with branching logic that changes the questions presented or the order of the questions presented based upon a survey respondent's answers to prior survey questions." EX1001, col. 11, ll. 30-34. The Survey Module can be a Web Service based Survey Module that allows merchants to integrate a customer survey into their branded website. EX1001, col. 17, ll. 12-14.

In short, the Survey Module allows customers to participate in a survey that is integrated into a merchant's website and to interact with their check details and other survey features being delivered to the merchant's website. EX1001, col. 2, ll. 57-60. The Survey Module, as claimed, may include software code that implements a dynamic survey with branching logic where the next question asked depends on the answer to a prior question.

The survey may be assembled as an autonomous, self-contained, web-container package so that everything needed to implement the survey is delivered to the vendor survey interface by the time a customer takes the survey. *See* EX1001, col. 11, ll. 30-34. Thus, by use of a Survey Module, the required communication between system devices that could delay survey processing is minimized. EX1001, col. 11, ll. 35-38.

Independent claim 19, shown below, recites a method for providing transaction-specific surveys:

Claim Element	**Claim Language**
[19.1]	19. A computer-implemented method for providing transaction-specific surveys comprising the operations of:
[19.2]	(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
[19.2.1]	(i) the transaction data comprises purchase detail identifiers and a survey token; and
[19.2.2]	(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;
[19.3]	(b) receiving by the survey server, a survey token;

[19.4]	(c) retrieving by survey server, the transaction data having the stored survey token corresponding to the received survey token;
[19.5]	(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;
[19.6]	(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**;
[19.7]	(f) transmitting by the survey server, the **Survey Module** to a vendor survey interface; and
[19.8]	(g) receiving by the survey server, a Respondent Header generated based on user-generated inputs in response to the at least one Survey Question.

The method recites the generation by the survey server computing device of a Survey Module (*i.e.*, an autonomous, self-contained, web-container package, *see* EX1001, col. 11, ll. 30-31) comprising software code for displaying the at least one Survey Question as an integrated component within a graphical interface. EX1001, col. 29, ll. 7-10. The Survey Module is transmitted by the survey server computing device to the vendor survey interface. EX1001, col. 29, ll. 11-12.

B. Prosecution History of the ‘811 Patent

The application that resulted in the ‘811 Patent was filed on June 28, 2019, and the ‘811 Patent issued on October 1, 2019. This application was a continuation-

in-part of U.S. Application No. 16/279,387[1] filed on February 19, 2019, which was a continuation of U.S. Application No. 14/997,434[2] filed on January 15, 2016, which claims priority to U.S. Provisional Application No. 62/104,043 filed on January 15, 2015. Thus, the earliest priority date of the '811 Patent is January 15, 2015. Petitioner's remaining discussion of the prosecution history of the '811 Patent is irrelevant.[3] *See* Petition, pp. 5-7.

C. Claim Construction

Petitioner submitted proposed constructions for the claim terms (1) "point of sale interface," (2) "survey token," and (3) "purchase detail identifier." *See* Petition, pp. 12-14. While Patent Owner does not agree with Petitioner's proposed constructions, Patent Owner does not challenge them for purposes of this Preliminary Response only. The critical claim element to this Preliminary Response is the term "Survey Module," which Petitioner does not assert requires construction. Accordingly, the claim term "Survey Module" may be given its "ordinary and customary meaning" as understood by a person of ordinary skill in the art in question

[1] This application resulted in the issuance of U.S. Patent No. 10,380,611.

[2] This application was abandoned. The file history for this application is found at Exhibit 1002.

[3] This discussion is directed to an argument advanced by Petitioner in the District Court Litigation, which cannot be addressed in these proceedings, and will not be addressed by Patent Owner here.

and in accordance with the prosecution history of the ‘811 Patent. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005); 37 C.F.R. § 42.100(b).

D. Level of Ordinary Skill in the Art

For the purposes of this Preliminary Response only, Patent Owner applies Petitioner’s definition of a person of ordinary skill in the art. *See* Petition, p. 10.

III. SUMMARY OF THE PETITION’S APPLIED REFERENCES

A. Douglas (Exhibit 1007)

U.S. Publication 2015/0193794 (EX1007, “***Douglas***”) discloses a customer experience platform. EX1007, ¶ 2. More specifically, Douglas discloses a system and method for generating surveys for a customer visiting a merchant location based on one or more trigger events. EX1007, ¶ 2.

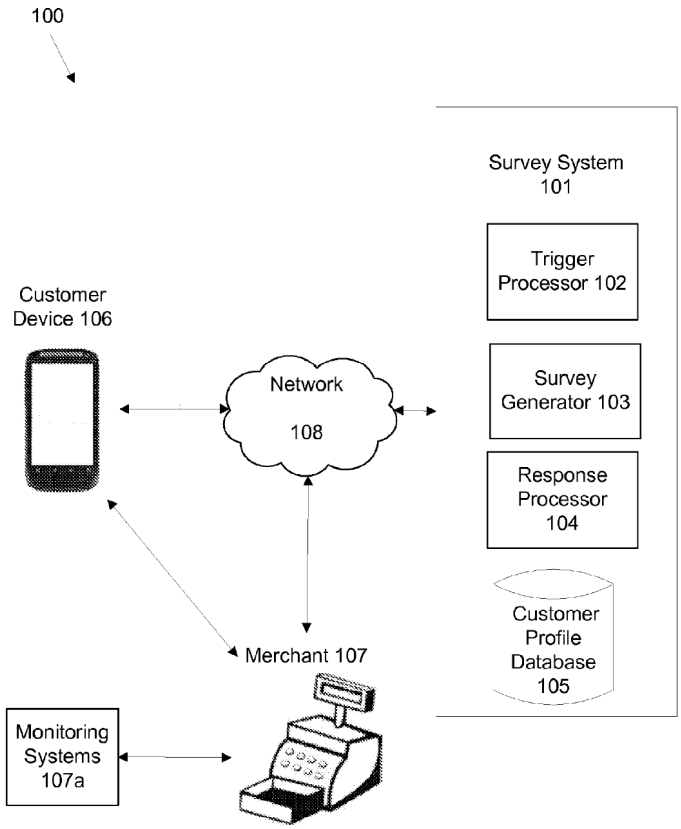
The system disclosed in Douglas comprises four primary components: (a) a communication interface, (b) a survey generator, (c) a survey transmission interface, and (d) a survey response receiver. EX1007, Abstract, ¶ 5, Claim 1. The communication interface is configured to receive event data associated with a customer via a network from a mobile device of the customer. EX1007, Abstract, ¶ 5, Claim 1. The survey generator 103 is configured to generate a survey based on such event data. EX1007, Abstract, ¶ 5, Claim 1. The survey transmission interface is configured to then transmit the survey to the customer’s mobile device. EX1007,

Abstract, ¶ 5, Claim 1. The survey response receiver is configured to receive a response to the survey. EX1007, Abstract, ¶ 5, Claim 1.

Upon receipt of a response to the survey, the survey generator 103 generates one or more follow-up commands or follow-up questions based on the received response. EX1007, Abstract, ¶ 5, Figure 3 step 305, Claim 1. The survey transmission interface then transmits the follow-up commands or follow-up questions to the customer's mobile device. EX1007, Abstract, ¶ 5, Claim 1.

Parts of the Douglas system are depicted in Figures 1 and 2:

Figure 1



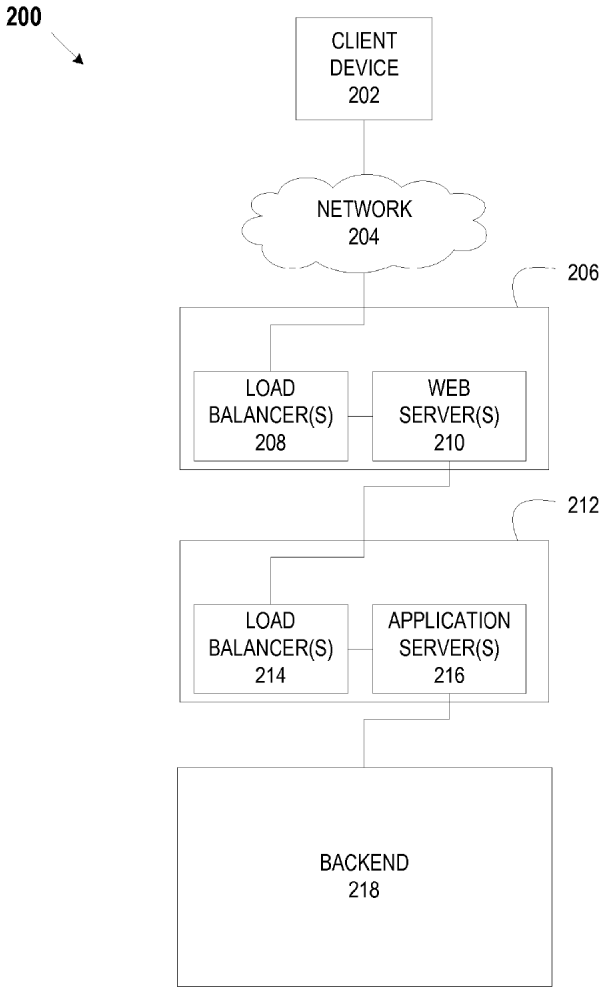


FIGURE 2

The method disclosed in Douglas comprises the steps of:

1. receiving, via a network at a communication interface, event data associated with a customer, wherein the event data is transmitted by a mobile device of the customer,

2. generating, using a survey generator, a survey based on the event data,

3. transmitting, using a survey transmission interface, the survey to the mobile device,

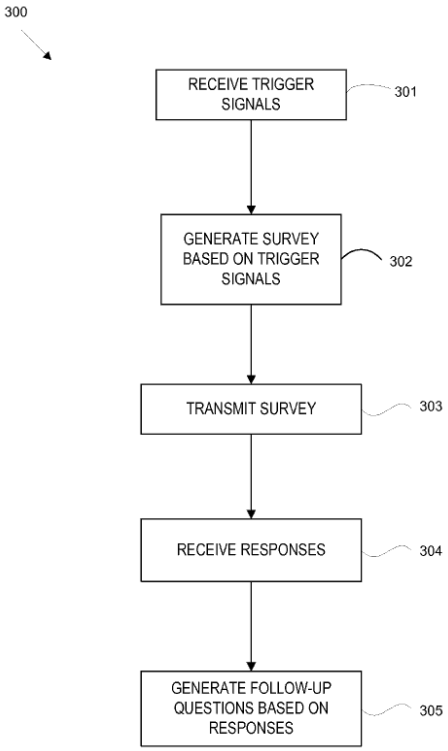
4. receiving, via the network at a survey response receiver, a response to the survey, wherein the response to the survey is transmitted by the mobile device,

5. generating, using the survey generator, one or more of follow-up commands or follow-up questions based on the received response; and

6. transmitting, via the network using the survey transmission interface, the one or more of follow-up commands or follow-up questions to the mobile device.

EX1007, ¶ 6, Claim 11. The Douglas method is depicted in Figure 3:

Figure 3



The system and method disclosed in Douglas teach that when a customer responds to a survey, the responses are received by a survey response receiver and the survey generator generates one or more follow-up commands or follow-up

questions based on the response, which are then transmitted to the customer's mobile device. EX1007, ¶¶ 5, 6, Claims 1, 11. Douglas thus discloses a system that relies on regular communication between a customer's mobile device 106 and the survey system 101 where the logic of determining the follow-up commands or follow-up questions is executed by the centralized survey system, not by an autonomous, self-contained, web-container package.

B. Ganesh (Exhibit 1008)

U.S. Publication 2014/0337098 (EX1008, "***Ganesh***") also discloses a customer experience platform. EX1008, ¶ 6. Specifically, Ganesh discloses a system and method for conducting a consumer survey during a checkout process at a retailer location with a consumer who is associated with a portable computing device. EX1008, ¶ 6.

Ganesh's system comprises a survey server that comprises a time of purchase ("***TOP***") module, computer program, or other means configured to:

1. present a survey ID embedded in a machine readable code to the consumer during the checkout process, wherein the survey ID is associated with a TOP survey;

2. based on the survey ID, initiate provision of the TOP survey;

3. select a first survey content associated with the TOP survey;

4. push the first survey content associated with the TOP survey to the consumer;

5. receive a response to the pushed first survey content;

6. store the received response to the first survey content; and

7. determine that the checkout process has concluded.

EX1008, Claims 11, 21, 31. The system selects additional survey content associated with the TOP survey based on a response to previously pushed survey content, pushes the additional survey content to the consumer, receives a response, and stores the received response. EX1008, Claims 14, 24, and 34.

The selection and determination of survey content to push to a portable consumer device is determined by the TOP module 540 residing on the survey server, as depicted in Ganesh's Figures 1 and 2 below:

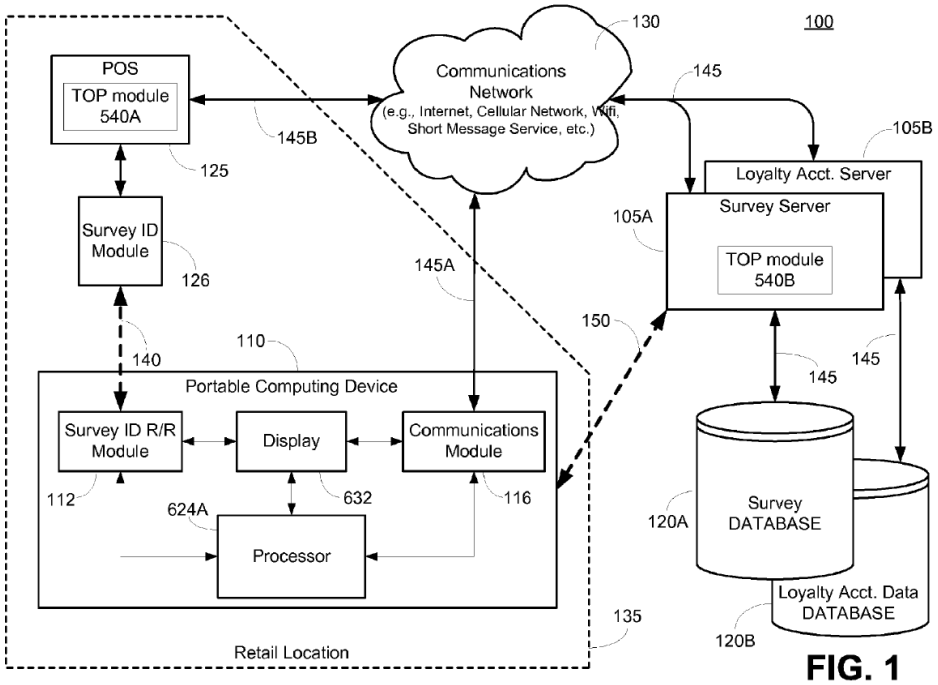


FIG. 1

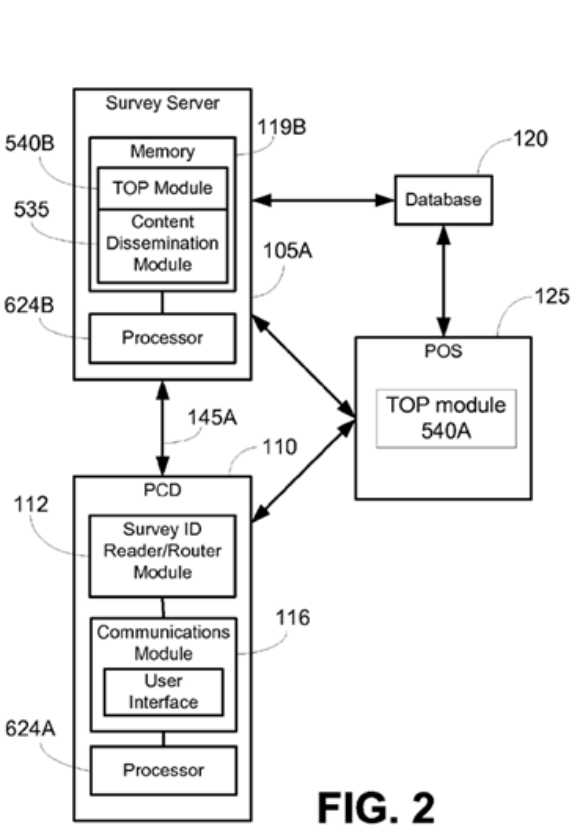


FIG. 2

Claim 1 of Ganesh recites a substantially similar method for conducting a consumer survey during a checkout process at a retailer location with a consumer who is associated with a portable computing device. EX1008, Claim 1. Claim 4 discloses the additional steps of selecting additional survey content associated with the TOP survey based on a response to previously pushed survey content, pushing the additional survey content to the consumer, receiving a response to the additional survey content, and storing the received response to the additional survey content. EX1008, Claim 4.

The Ganesh method is depicted in Figures 3, 4, ands 5:

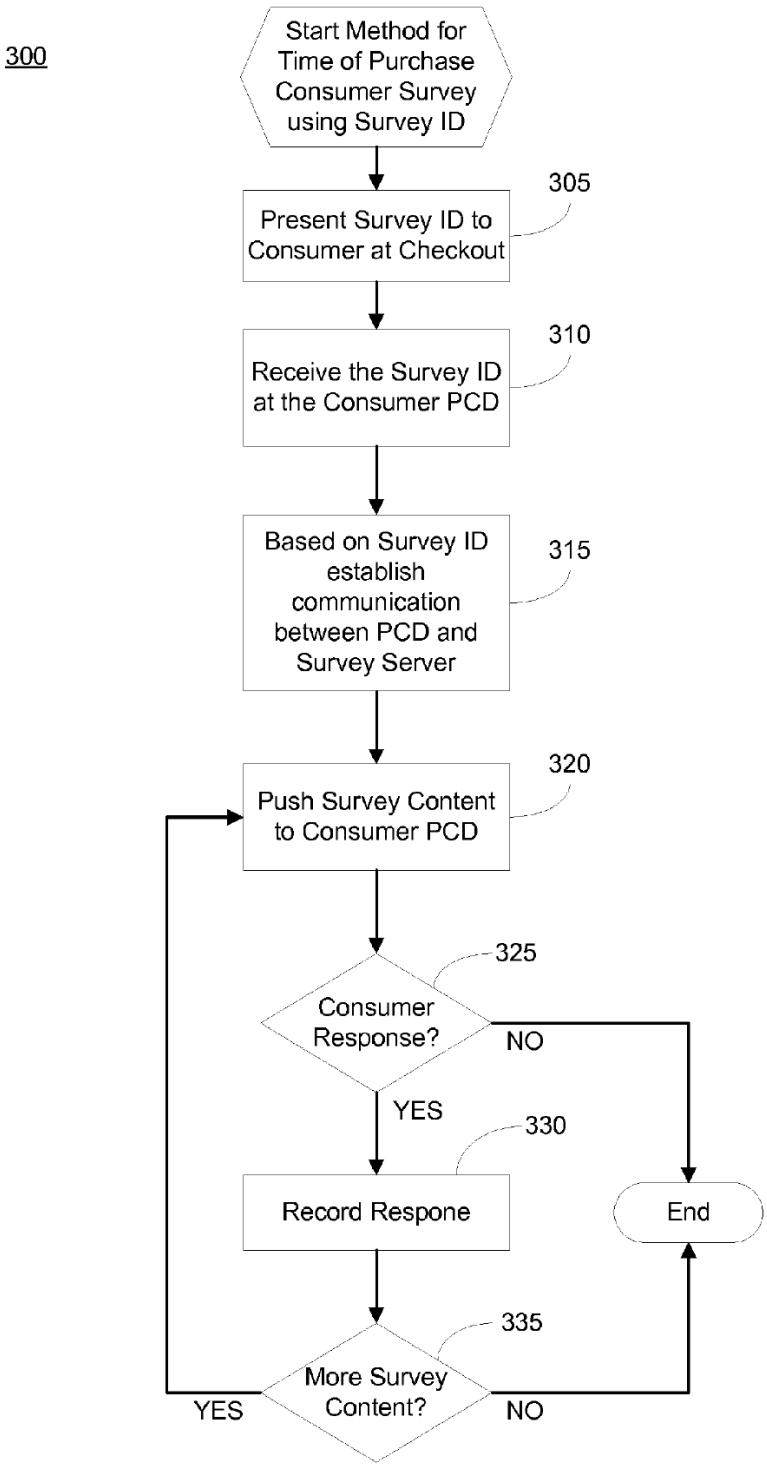


FIG. 3

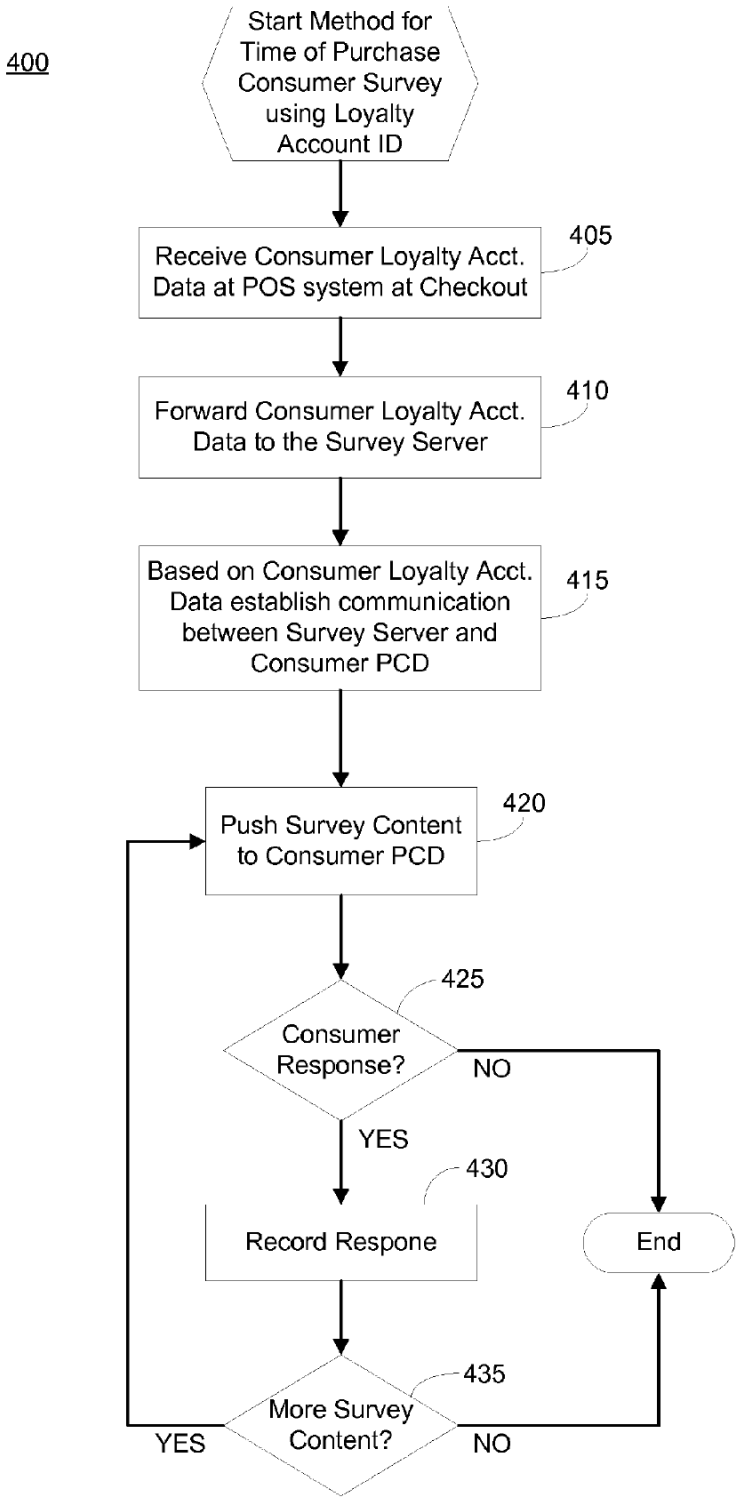

400
Start Method for Time of Purchase Consumer Survey using Loyalty Account ID
Receive Consumer Loyalty Acct. Data at POS system at Checkout
405
Forward Consumer Loyalty Acct. Data to the Survey Server
410
Based on Consumer Loyalty Acct. Data establish communication between Survey Server and Consumer PCD
415
Push Survey Content to Consumer PCD
420
Consumer Response?
425
NO
YES
Record Respone
430
End
More Survey Content?
435
YES
NO

FIG. 4

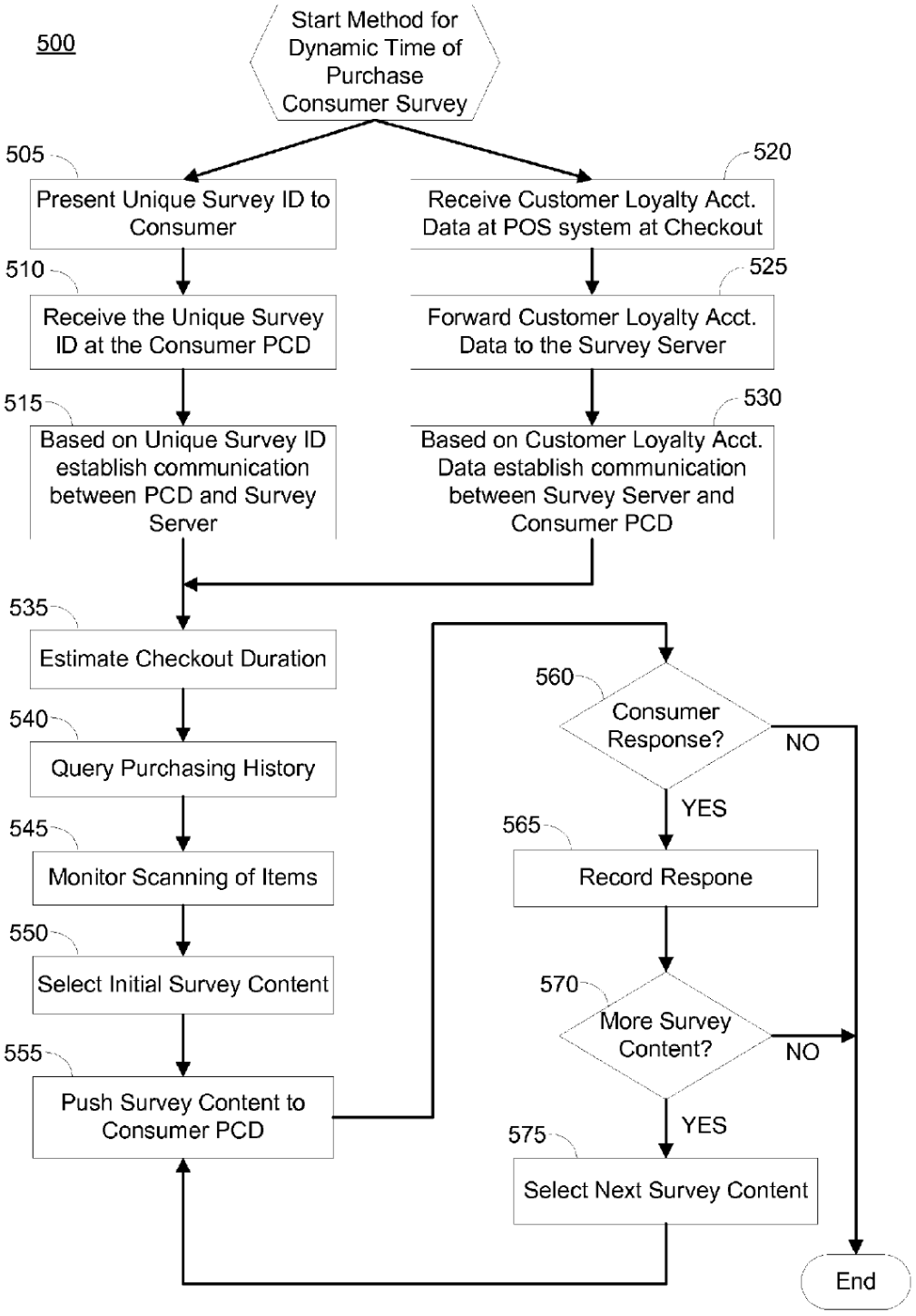

500
Start Method for Dynamic Time of Purchase Consumer Survey
505
Present Unique Survey ID to Consumer
510
Receive the Unique Survey ID at the Consumer PCD
515
Based on Unique Survey ID establish communication between PCD and Survey Server
520
Receive Customer Loyalty Acct. Data at POS system at Checkout
525
Forward Customer Loyalty Acct. Data to the Survey Server
530
Based on Customer Loyalty Acct. Data establish communication between Survey Server and Consumer PCD
535
Estimate Checkout Duration
540
Query Purchasing History
545
Monitor Scanning of Items
550
Select Initial Survey Content
555
Push Survey Content to Consumer PCD
560
Consumer Response?
NO
YES
565
Record Respone
570
More Survey Content?
NO
YES
575
Select Next Survey Content
End

FIG. 5

The system and method disclosed in Ganesh teach that if the consumer responds to pushed survey content, then the "yes" branch is followed from decision block 560 to block 565 and the response is recorded in database 120A. EX1008, ¶¶ 55, 59, 65. Subsequently, at decision block 570, the survey server 105A determines if more survey content is available, including survey content based on feedback provided in response to previously pushed survey content. EX1008, ¶ 66. If more survey content is available, then the method 500 proceeds to block 575 and a next survey content is selected from the database 120A and pushed to the consumer. EX1008, ¶ 66. If no more survey content is identified at block 570, then the "no" branch is followed and the method 500 ends. EX1008, ¶ 66.

The TOP module 504B in the survey server 105A queries the survey database 120A to identify whether there is additional survey content based on feedback provided in response to previously pushed survey content and pushes any such additional survey content to the consumer. EX1008, ¶¶ 39, 40, 52, 55, 59, Claim 14. Ganesh teaches that the exchange of survey content, questions, and answers occurs between the survey server 105A (via TOP module 540B) and the consumer (via personal communication device 110). EX1008, ¶¶ 39, 40, 44. The TOP module 540A may also be in the POS 125 in some embodiments. EX1008, ¶ 40, 53.

IV. THE PETITION DOES NOT SATISFY THE STATUTORY THRESHOLD FOR INSTITUTING INTER PARTES REVIEW

Summary of Grounds for Declining to Institute an Inter Partes Review

Petitioner asserts four (4) grounds of unpatentability. None of the grounds establishes a reasonable likelihood that Petitioner will prevail at least because neither Douglas nor Ganesh discloses a **Survey Module**.

Both Douglas and Ganesh teach systems and methods that rely upon regular communication between a survey server and a customer computing device where any logic relating to the survey is contained in and performed by the centralized survey server. *See* EX1007 (Douglas), ¶ 69 ("At block 305, follow-up actions to take based on the customer responses may be determined . . . [by] Survey generator 103 [that] may provide additional Surveys to the customer based on the responses received.") and Figure 1 (showing survey generator 103 within the survey system 101 separate and apart from the consumer device 106); EX1008 (Ganesh), ¶ 55 ("Once the survey response is recorded at block 330, then . . . the survey server 105A determines if there is additional content to be pushed to [portable consumer device].").

By contrast, Patent Owner's Survey Module comprises software code for displaying the at least one Survey Question and may be "assembled into an autonomous, self-contained, web-container package." EX1001, col. 11, ll. 30-34.

Thus, the survey logic can be performed on a mobile computing device and is not confined to a centralized survey server. EX1001, Claim 7 ("[T]he point-of-sale interface and the vendor survey interface are both implemented as a software application running on a mobile computing device."). This is a technical feature that stands alone as a novel feature over Douglas and Ganesh.

"A claim is anticipated only if each and every element as set forth in the claim is found . . . in a single prior art reference." *Verdegaal Bros., Inc. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987). The single reference "must also disclose those elements [as] 'arranged as in the claim.'" *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed. Cir. 2008) (citation omitted).

Given that Douglas and Ganesh do not disclose every element of Patent Owner's independent claims, the references do not anticipate any Challenged Claim. For at least that reason, a trial should not be instituted.

Moreover, it would not be enough for Petitioner to contend merely that Douglas and Ganesh inherently include a survey module. First, Petitioner would need to show that these references ***necessarily*** included a Survey Module and not merely that they ***could*** **or** ***probably*** included a Survey Module. *See, e.g.*, *Trintec Indus., Inc. v. Top–U.S.A. Corp.*, 295 F.3d 1292, 1295 (Fed. Cir. 2002) ("Inherent anticipation requires that the missing descriptive material is 'necessarily present,'

not merely probably or possibly present, in the prior art.") (quoting *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999)).

Second, Petitioner would also need to show that these references included a Survey Module that *works in the same manner* as Patent Owner's claimed Survey Module—*i.e.*, as an autonomous, self-contained package. *See, e.g.*, *Nokia of Am. Corp. v. Gen. Access Sols., Ltd.*, No. IPR2023-01415, 2024 WL 1241505, at *6 (P.T.A.B. Mar. 22, 2024) ("Petitioner has failed to meet its burden regarding inherency . . . [while] Barratt '470 might include a controller, it is not the case that Barratt '470 necessarily includes a controller arranged in the same manner."). This is true because "[d]ifferences between the prior art reference and a claimed invention, however slight, invoke the question of obviousness, not anticipation." *Net MoneyIN*, 545 F.3d at 1371.

Here, even assuming *arguendo* that Petitioner attempted to create a genuine issue of fact by arguing that Douglas and Ganesh each include a Survey Module, there is absolutely no disclosure that these references include a Survey Module that has software code for *displaying* (as opposed to generating) survey questions. Nor is there any disclosure that the references teach a Survey Module that is transmitted to a portable customer computing device and runs on such device while functioning

as an autonomous, self-contained package. Simply put, it would be too far of leap to contend that all of these features are inherently disclosed in the cited reference.

The *Nokia of Am. Corp. v. Gen. Access Sols., Ltd.* case is illustrative in this regard. There, the patent owner claimed a system having a controller for selecting data signals. *Nokia*, 2024 WL 1241505 at *6-7. The petitioner argued that a communication base station disclosed in a prior art reference must inherently include a signal controller, as claimed by the patent owner. *Id.* While there is some commonsense appeal to that argument, the Board found that the prior art reference did not ***necessarily*** disclose a controller that alternately selected signals in the manner performed by the patent owner's controller. *Id.* at *7. As a result, the patent at issue could not be anticipated, and the Board denied the petition and declined to institute a review.

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

navigated the Internet. Given that the prior art functioned in a somewhat different manner, the prior art reference was not anticipating. *Id.*

In this case, there is no question that Patent Owner's system and method use a technically distinct Survey Module not disclosed in Douglas or Ganesh. This distinction is important and provides Patent Owner's system and method advantages over existing technology.

The "Background" discussion of the '811 Patent identifies as a disadvantage of the state of the art that surveys are often unnecessarily cumbersome to complete. EX1001, col. 1, ll. 39-40. As a result, consumers often forego responding to the survey. EX1001, col. 1, ll. 46-50. To address the need for a less cumbersome survey, the claims of the '811 Patent incorporate a Survey Module. EX1001, col. 26, ll. 28-30, 33-35, 36-39, col. 29, ll. 1-12. The Survey Module is generated by the survey server computing device. EX1001, col. 26, ll. 28-30, col. 29, ll. 1-10.

The vendor survey interface is configured to receive the Survey Module, transmitted from the survey server computing device. EX1001, col. 26, ll. 33-35, col. 29, ll. 11-12. The vendor survey interface is further configured to run the Survey Module to display the at least one survey question as an integrated component within the graphical user interface. EX1001, col. 26, ll. 36-39, col. 29, ll. 7-10.

By integrating the Survey Module within the graphical user interface, customers are able to participate in the survey within a merchant's website using the Survey Module. EX1001, col. 2, ll. 52-63, col. 17, ll. 12-17. In this manner, the system can minimize the required communication between system devices that could delay survey processing. EX1001, col. 11, ll. 35-38. As such, the operation of Patent Owner's survey is much less cumbersome than that of customer experience platforms in the art at the time of the invention of the '811 Patent.

The novelty of Patent Owner's system and the specific grounds raised by Petitioner for instituting an *inter partes* review are discussed in more detail below.

A. Grounds 1 and 2 should not be instituted. The challenged claims are not anticipated under 35 U.S.C. § 102 in view of Douglas because Douglas does not teach the use of a Survey Module.

Petitioner asserts as Grounds 1 and 2 that independent claims 1 and 19 and dependent claims 2-7, 10, 13, 16, and 18 of the '811 Patent are anticipated by Douglas. As set forth below, however, the Petition fails to establish a reasonable likelihood that Douglas anticipates such claims, because Douglas does not disclose the use of the Survey Module found in such claims.

Petitioner asserts the following sections of Douglas disclose the use of a Survey Module:

Paragraph	Text
18	Survey system 101 may be operated by a financial institution, a third party, or merchant 107. Survey system 101 may interact with the customer using one or more software applications on customer device 106. The applications may provide one or more user interfaces on customer device 106 that accept inputs from the customer, provide the inputs to survey system 101 and/or merchant 107, and output information to the customer on a screen of customer device 106. The one or more software applications may be provided by survey system 101, or merchant 107, or a third party. The one or more software applications may be web-based applications and/or native mobile applications installed on the customer device 106.
27	The trigger signal may comprise purchase data associated with a purchase made by customer at merchant 107. The customer may purchase one or more products at merchant 107 using, for example, a mobile payment account associated with customer device 106. The customer may make the purchase using a card associated with an account stored in the customer's profile in customer profile database 105. The purchase data may comprise the date and time of purchase, the purchase amount, the product type, the name of the merchant, the purchase location, and other information associated with the purchase or the purchased products. Purchase data may include Stock Keeping Units (SKUs) associated with the purchased product or products. The purchase data may include data associated with any coupons used by the customer for the purchase. Merchant 107 may send the purchase data to trigger processor 102 as soon as the purchase is completed.
33	Survey generator 103 may create one or more surveys for customer device 106 based on the received trigger signals. As used herein, the term "survey" refers to a request for information or feedback from the customer. A survey may be presented as a notification, text message, email, SMS, MMS, or presented to the customer device on the user interface. The survey may be interactive. The survey may request additional information from the customer. The survey may be generated based on the type of trigger signal (or trigger signals) received by trigger processor 102. The survey may ask about the products purchased and/or the locations visited within the merchant. The survey may be provided to customer device 106 in real-time

	and/or immediately after departing the merchant's physical location. For example, the survey may be provided as a customer passes through an aisle in an attempt to receive real-time or near real-time feedback about products in that aisle. The survey also may be provided to the customer when the customer passes through a sensor upon exiting the physical location of the merchant. Surveys may include visual graphics, images, animations, videos, and other digital media for the customer. The content of a survey may depend on the type of trigger signal (or the various combinations of trigger signals) received (for example, location trigger signals, product data trigger signals, purchase data trigger signals, etc.).
34	In one example, a customer may enter a store location. The store or customer device may detect, using various sensors discussed herein, for example, the customer's presence and provide a trigger signal to trigger processor 102 indicating the customer's presence in the store. The store or customer device may then detect that the customer has left the store without making a purchase (e.g., if the trigger processor 102 does not receive purchase data a predetermined time after the customer enters or leaves the store). Survey generator 103 may create a survey and transmit it to the customer. The survey may solicit feedback from the customer, and may include one or more questions for the customer, such as "Did you find what you were looking for?", "Was the item you found too expensive?", or "What item were you looking for?" The survey may be transmitted to customer device 106 as soon as it is determined that the customer has left the store. The survey also may be transmitted to customer device 106 if the customer has not made a purchase within a predetermined time after the customer entered the store. The survey may be interactive, and provide further questions to the customer based on how the customer responds to the initial query or queries.
38	In various embodiments, merchant 107 or customer device 106 may send one or more trigger signals to trigger processor 102 indicating the customer's location within the store. If trigger processor 102 determines that the customer has lingered at a certain section of the store for a predetermined amount of time (for example, more than 30 seconds), survey generator 103 may send one or more surveys to customer device 106. The surveys may ask the customer if he or she would like more detailed information about the product or products he

	or she is currently looking at. The trigger signal may be sent to an employee or manager of merchant 107, indicating the customer's location and requesting assistance. The survey may ask the customer if he or she would like to be assisted by a customer service representative. The survey may provide the customer with information about similar products, discounts, coupons, sales, or deals related to the product the customer is currently nearby within the store.
39	In another example, merchant 107 or customer device 106 may send one or more trigger signals to trigger processor 102 when the customer purchases one or more products at the store. Survey generator 103 may create one or more surveys based on the purchase data and send them to customer device 106. The survey may request information from the customer about various aspects of the customer's shopping experience (e.g., the quality of customer service, the competitive nature of the prices for each product, the quality of the store, the availability of discounts).
61	In block 301, trigger signals may be received. For example, when a customer enters a merchant physical store location, the customer device 106, merchant 107, and/or trigger processor 102 may detect the customer's presence at or in the store. A user interface on customer device 106 may prompt the customer to enter login information, such as a username and password. If the customer has previously shopped at the store, the customer may have previously indicated that the store may track the customer's location. The customer may be prompted by the user interface on customer device 106 to confirm his presence in the store. Thereafter, trigger processor may receive one or more trigger signals from merchant 107 and/or customer device 106 based on customer actions in the store.
62	Trigger signals may be based, for example, on the customer's location within the store, the amount of time the customer spends in a certain area of the store, whether the customer purchases anything in the store, what products the customer purchases, whether the customer scans product data or requests a price check on one or more products in the store, temperature data associated with the customer, facial recognition data associated with the customer, whether the customer returns items to the store, and other information.

64	At block 302, one or more surveys may be generated based on the received trigger signals. The surveys may include a plurality of questions or queries for the customer, based on the received trigger signals. The surveys may be interactive and solicit customer responses. Continuing with the previous example, survey generator may receive the trigger signals from trigger processor 102 and generate one or more surveys. Survey processor may generate a first survey for the customer based on his location in Target and the amount of time he spent there. Survey generator 103 may be configured to generate a survey with questions relating to specific products if the customer spent at least a predetermined amount of time in an area proximate to those products. The amount of time may vary depending on the type of product. For the customer in Target, survey generator 103 may generate a survey with information about digital televisions. The survey may ask the customer if he is interested in learning more about digital televisions offered at Target.com. The survey may ask the customer if he would like assistance from a store employee. The survey may ask the customer what brand of television he is looking for.
66	Survey generator 103 may generate a survey based on the trigger signal indicating he has left the store. The survey may ask the customer to rate his experience, the products, the prices, the facilities, the customer service, and whether he would recommend the store to friends. The survey generator 103 may detect that the customer never purchased any products (as no trigger signal was received that would indicate this). The survey may ask the customer whether he would like to be contacted by a customer sales representative. Method 300 may proceed to block 303.

See Petition, pp. 29-31. Petitioner's assertion is, however, unsupported. While the cited paragraphs of Douglas disclose the generation and transmission of surveys to consumers, they do not disclose the generation and transmission of them as a Survey Module with software code for displaying a survey question.

The survey system disclosed in Douglas may interact with a customer using one or more applications on the customer's device, which may provide one or more user interfaces on the device that accept inputs from the customer, provide inputs to the survey system and/or merchant, and output information to the customer on the screen of the device. EX1007, ¶ 18. But those are applications on the customer's device that allow the customer to review survey questions and respond to them. Douglas does not disclose a survey that is a software module itself.

In fact, Douglas indicates the survey generated does not contain any software logic to interact with the customer. In order for any decisions to be made, such as whether to provide additional questions based on a customer's previous response, the responses to the existing questions must first be sent to the response processor 104 on a centralized server. Then "[t]he response processor 104 or survey generator 103 may create and transmit additional Survey queries based on the responses received from customer device 106." EX1007, ¶ 35 In other words, the survey transmitted to the survey device does not contain any software logic capable of making decisions such as adding context specific questions. Douglas teaches that those decisions must be made by the survey generator.

Douglas defines the term "survey" as simply a "request for information or feedback from the customer." EX1007, ¶ 33. Douglas teaches that "[a] survey may

be presented as a notification, text message, email, SMS, MMS, or presented to the customer device on the user interface." EX1007, ¶ 33. Such a survey "may include visual graphics, images, animations, videos, and other digital media for the customer." EX1007, ¶ 33. Douglas does not teach that the survey may be presented as a software module.

Douglas also discloses that the survey may be interactive, solicit customer responses, and request additional information from the customer. EX1007, ¶¶ 33, 34, 64, 68. By "interactive," Douglas explains the survey may:

> [P]rompt the customer to respond using a key on a keypad (e.g., depress a key, scroll a wheel, etc.), clicking the screen using a mouse or other peripheral device connected to the customer device 106, pressing a button on the side of customer device 106, by touching one or more responses on a touchscreen of customer device 106, by speaking a selection, by use a motion (e.g., customer device 106 may include a gyroscope or other motion detector to detect when the customer moves the device a certain angle, or shakes, swings, maneuvers, and/or otherwise moves customer device 106, etc.).

EX1007, ¶ 35. The "interactive" survey disclosed in Douglas is one that prompts the customer to take some action to respond to the questions in the survey.

The survey disclosed by Douglas may also provide further questions to the customer based on how the customer responds to the initial query or queries of the survey. EX1007, ¶ 34. Missing from the sections of Douglas cited by Petitioner,

however, is an explanation of how and where such further questions are generated and displayed. This is found elsewhere in Douglas. Unlike the invention of the '811 Patent, where the customer interacts directly with a Survey Module that displays follow up questions, Douglas teaches a system and method where:

> [A] survey generator . . . generates a survey based on the event data, a survey transmission interface . . . transmits the survey to the mobile device, and a survey response receiver . . . 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.

EX1007, Abstract; *see also* EX1007, ¶¶ 5, 6, 35, 37, 69, Figs. 3, 4, 5, Claims 1, 11. The survey system and method disclosed in Douglas teaches only what the '811 Patent seeks to avoid, a system and method where the customer is interacting with a remote survey server computing device that must decide whether a particular answer requires a follow-up survey question, and send the follow-up survey question to the vendor survey interface for presentation to the customer:

> The customer's responses may be received by response processor 104. The response processor 104 or survey generator 103 may create and transmit additional survey queries based on the responses received from customer device 106.

EX1007, ¶ 35. Douglas discloses a system and method where customer responses are transmitted to a remote server, which determines whether more survey content

is necessary and, if it is, generates such content and pushes it to the customer's device. Douglas does not disclose a Survey Module as claimed in the '811 Patent, and so does not anticipate the '811 Patent under 35 U.S.C. § 102. Grounds 1 and 2 of the Petition should accordingly not be instituted.

B. Grounds 3 and 4 should not be instituted. The challenged claims are not anticipated under 35 U.S.C. § 102 in view of Ganesh because Ganesh does not teach the use of a Survey Module.

Petitioner further asserts as Grounds 3 and 4 that independent claims 1 and 19 and dependent claims 2-7, 10, 13, 16, and 18 of the '811 Patent are anticipated by Ganesh. Like with Douglas, the Petition fails to establish a reasonable likelihood that Ganesh anticipates such claims, because Ganesh also does not disclose the use of the Survey Module found in such claims.

Petitioner cites the following sections of Ganesh as disclosing a Survey Module:

Paragraph	Text
18	In this description, the term "QR code" is used generally to refer to any type of matrix barcode (or multi-dimensional bar code) or trigger to a TOP survey and is not meant to limit the scope of any embodiment to the use of the specific type of barcode understood in the art to be a quick response code. That is, it is envisioned that any given embodiment of the systems and methods within the scope of this disclosure may use triggers in the form of barcodes, plain text user entries, NFC transmissions, WiFi transmissions, short wave radio transmissions (e.g., Bluetooth), light modulations, sound modulations. etc. Moreover, as one of ordinary skill in the art understands, a matrix barcode is an optical machine-readable label that may be associated

	with data such as data representative of a TOP survey. An exemplary matrix barcode may include black modules (square dots) arranged in a square grid on a white background. The information encoded by the barcode may be comprised of four standardized types of data (numeric, alphanumeric, byte/binary, Kanji) or, through supported extensions, virtually any type of data. As one of ordinary skill in the art further understands, a matrix barcode may be read by an imaging device, such as a camera, and formatted algorithmically by underlying software using error correction algorithms until the image can be appropriately interpreted. Data represented by the barcode is then extracted from patterns present in both horizontal and vertical components of the image.
25	Additionally, certain embodiments for conducting TOP surveys may recognize the nature of goods being purchased in the transaction and dynamically customize survey questions as the checkout process develops. For example, a first question of an exemplary survey may be triggered before any items are scanned for purchase and may be a general question: “On a scale of 1 to 10 how did you find the in-store shopping experience?” The exemplary embodiment may then recognize that a certain brand of headphones, for example, has been scanned at the point of sale (“POS”) by the clerk and subsequently push a survey question to the consumer that is triggered by such recognition: “Did you need assistance in finding where the headphones where located in the store?” Similarly, it is envisioned that certain embodiments may recognize specific items being scanned, such as the exemplary headphones, and subsequently push a survey question to the consumer according to the wishes of the manufacturer of the headphones (or any interested third party such as, but not limited to, a competitive manufacturer, a manufacturer of complimentary goods, a marketing firm, etc.): “What was the primary reason that you selected Brand X headphones?”.
26	Returning to the exemplary dynamic TOP survey that may be pushed to a consumer during the checkout process by some embodiments, the nature of an answer to a question asking about the consumer’s experience with assistance in the headphone aisle of the store may be used to dictate the next survey question: “Were you happy with the assistance provided?” Similarly, the answer to that question may be used by the retail store to immediately address issues with, or

	positively reinforce habits of, the personnel responsible for providing assistance in the headphone aisle. In this way, the near real time feedback captured by certain embodiments may be leveraged by retail store management to improve future customer shopping experiences.
31	An exemplary embodiment may include the presentation of a quick response ("QR") code or some other machine readable trigger at the POS (e.g. transmissions via NFC, Bluetooth, WiFi, Light modulation, Sound modulation, etc.). Upon being presented with the QR code, the consumer may scan it with a QR reader application on his PCD. As is understood by one of ordinary skill in the art, the QR reader application may use the scanned QR code to direct a web browser application in the PCD to a mobile website that contains a TOP survey application. As is further understood by one of ordinary skill in the art, some PCDs may include a QR code scanner application in the operating system of the PCD. Regardless, by using the provided QR code, the PCD may direct the consumer to a website hosted by a survey server for filling out a TOP survey. The consumer may then use the PCD as an interface to the survey server, pushing survey content between the survey server and PCD during the checkout process. As described above, the survey content within the TOP survey may be predetermined or may be driven by the purchasing history of the consumer or by the actual items being purchased during the transaction.
36	To further the example, the retailer establishment, such as a storefront or other "brick and mortar" location, may be represented by retail proximity 135. A consumer associated with a loyalty account of the retailer, proceeds to checkout after shopping in the retailer's store 135. The consumer carries a cellular telephone, i.e. a portable computing device 110, running a survey ID reader and router module 112. The POS 125 recognizing that the consumer is in the process of completing the purchase transaction (i.e., the clerk is scanning items for purchase) uses survey ID module 126 to present a survey ID to the consumer. Notably, the presented survey ID may be unique to the specific purchase transaction in some embodiments.
44	When the server 105 is coupled to the network 130, the server 105 may communicate through the network 130 with various different PCDs 110 associated customers of a retailer. Each PCD 110 may run or execute web browsing software or functionality to access the server 105 and its

	various survey applications including TOP module 540B. Any device that may access the network 130 either directly or via a tether to a complimentary device, may be a PCD 110 according to the computer system 100. The PCDs 110, as well as other components within system 100 such as, but not limited to, a wireless router (not shown), may be coupled to the network 130 by various types of communication links 145. These communication links 145 may comprise wired as well as wireless links. The communication links 145 allow a PCD 110 to establish virtual links 150 with the server 105. While a virtual link 150 is depicted between the server 105, an actual wired or wireless link 140 may exist between the PCD 110 and the POS 125 via survey ID module 126. This link 140 may only be used to relay the survey ID (e.g., QR code) to the PCD 110 as a uni-directional communications channel. In other exemplary embodiments, the PCD 110 may establish bi-directional communications with the POS 125 as understood by one of ordinary skill in the art and thereby provide communication with survey server 105A via POS 125.
45	A PCD 110 may include a display 632, a processor 624 and a communications module 116 that may include one or more of a wired and/or wireless communication hardware and a radio transceiver 117. It is envisioned that the display 632 may comprise any type of display device such as a liquid crystal display ("LCD"), a plasma display, an organic light-emitting diode ("OLED") display, a touch activated display, and a cathode ray tube ("CRT") display, a brail display, an LED bank, and a segmented display. A PCD 110 may execute, run or interface to a multimedia platform that may be part of a plug-in for an Internet web browser.
51	As illustrated in FIG. 2, the PCD 110 may include a processor 624A, a memory 119A (see FIG. 6), a survey ID R/R module 112 and a communications module 116 coupled to the processor 624A. The memory 119A may include instructions for executing one or more of the method steps described herein. Further, the processor 624A and the memory 119A may serve as a means for executing one or more of the method steps described herein. A survey ID R/R module 112 operates to recognize a survey ID for establishing communications with survey server 105A, thereby providing survey server 105A with a means for pushing TOP survey content to a consumer associated with PCD 110.

52	FIG. 2 shows that the survey server 105A may include a processor 624B and a memory 119B coupled to the processor 624B. The memory 119B may include instructions for executing one or more of the method steps described herein. Further, the processor 624B and the memory 119B may serve as a means for executing one or more of the method steps described herein. As illustrated, the memory 119B may include a survey content determination module that works with, or as part of, the TOP module 540B to query database 120A and determine survey content, such as survey questions, to be pushed to PCD 110. Further, as illustrated, the memory 119B may include a Content Dissemination ("CD") module 535 that works with, or as a part of, the TOP module 540B to transmit various survey contents to PCD 110.
55	At block 310, the consumer may scan the survey ID with a PCD 110. At block 315, scanning the survey ID causes PCD 110 to establish communications with a survey server 105A, such as via a URL as is understood by one of ordinary skill in the art. Subsequently, at block 320 the survey server 105A may query database 120A to select and push TOP survey content back to the PCD 110. At decision block 325, if the consumer does not respond, then the "no" branch is followed in the method and the TOP survey ends. If the consumer does respond to the pushed survey content, then the "yes" branch is followed to block 330 and the survey server records the response in database 120A. Once the survey response is recorded at block 330, then the method proceeds to decision block 335 and the survey server 105A determines if there is additional content to be pushed to PCD 110. Notably, the selection and determination of survey content to push to PCD 110 may be determined by algorithms residing in memory 119B and executed by TOP module 540 and processor 550B (see FIG. 2).
64	Returning to the method 500, at block 540 the survey server 105A may use the loyalty account data to query purchasing history data associated with the consumer. Consequently, TOP survey content selection algorithms executed by the survey server 105A may select survey content based on such purchasing history. At block 545, the POS 125 may monitor scanned items and relay such information to the survey server 105A. Advantageously, by monitoring the items being scanned and transmitting the data to the survey server, TOP survey content selection algorithms executed by the survey server 105A may select

	survey content directed to the items that are being purchased by the consumer.
65	Based on at least information relative to blocks 535-545, at block 550 an initial survey content may be selected and pushed to the PCD 110 at block 555. At decision block 560, if the consumer does not respond to the pushed survey content, then the "no" branch is followed and the method 500 ends. If the consumer does respond to the pushed survey content, then the "yes" branch is followed from decision block 560 to block 565 and the response is recorded in database 120A.

See Petition, pp. 37, 45-48. Similar to Douglas, though, Petitioner's assertion is unsupported. While the cited paragraphs of Douglas disclose the generation and transmission of surveys to consumers, they do not disclose the generation and transmission of them as a Survey Module.

Like Douglas, Ganesh discloses a system and method, where depending on a consumer's response to survey content, additional survey content may be generated and pushed to the consumer:

> [T]he nature of an answer to a question asking about the consumer's experience with assistance in the headphone aisle of the store may be used to dictate the next survey question.

EX1008, ¶ 26. But also like Douglas, the determination whether to push additional survey content to the consumer based on the consumer's response is made by a remote TOP module residing in either a survey server or a POS system. For example, Figure 3 demonstrates that whenever the consumer makes a response to a survey question, that response is transmitted to the survey server. The survey server

then decides what additional questions or content should be presented to the consumer. In other words, the survey transmitted to the consumer's device does not contain any software logic capable of making decisions such as adding context specific questions. Ganesh, like Douglas, teaches that those decisions must be made by the server.

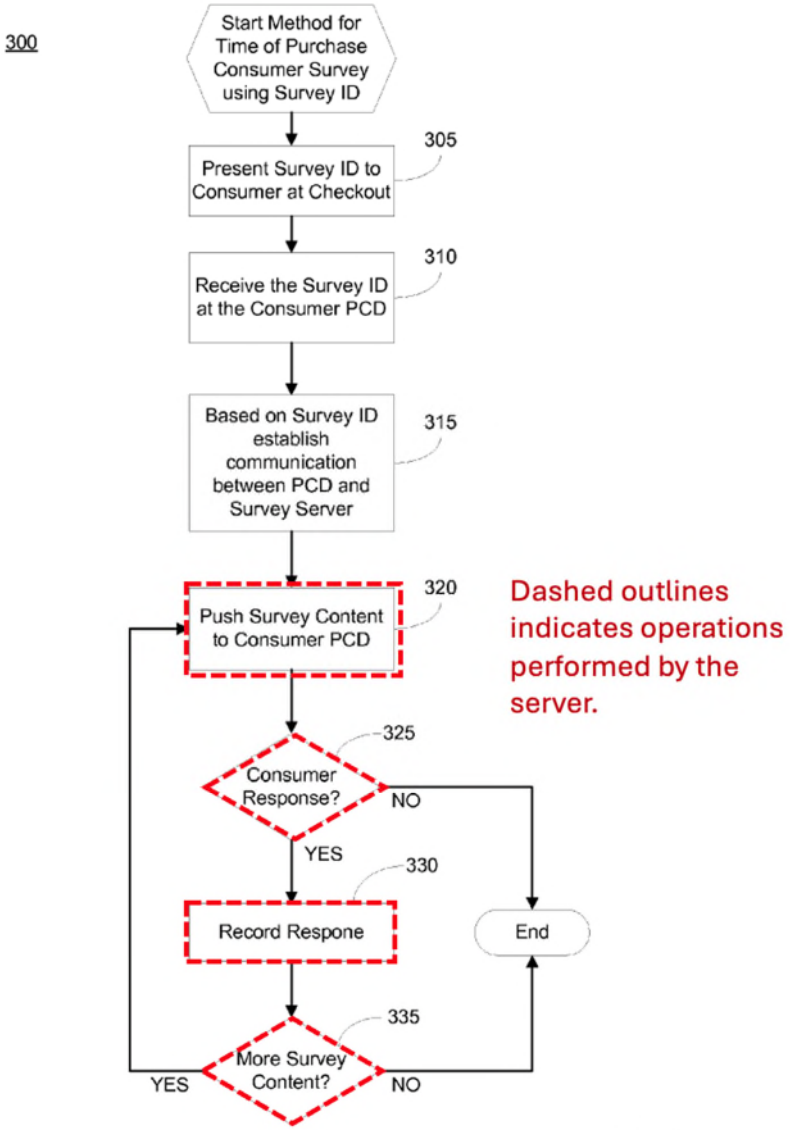


FIG. 3

> At block 310, the consumer may scan the survey ID with a PCD 110. At block 315, scanning the survey ID causes PCD 110 to establish communications with a survey server 105A, such as via a URL as is understood by one of ordinary skill in the art. Subsequently, **at block 320 the survey server 105A may query database 120A to select and push TOP survey content back to the PCD 110**. At decision block 325, if the consumer does not respond, then the "no" branch is followed in the method and the TOP survey ends. If the consumer does respond to the pushed survey content, then the "yes" branch is followed to block 330 and the survey server records the response in database 120A. **Once the survey response is recorded at block 330, then the method proceeds to decision block 335 and the survey server 105A determines if there is additional content to be pushed to PCD 110.** Notably, the selection and determination of survey content to push to PCD 110 may be determined by algorithms residing in memory 119B and executed by TOP module 540 and processor 550B (see FIG. 2).

EX1008, ¶ 55;

> Returning to the FIG. 3 method at decision block 335, **if the survey server 105A determines that there is additional survey content to push to PCD 110, then the "yes" branch is followed back to block 320 and the method continues.** If the survey server 105A determines that there is no additional content to push to PCD 110, then the "no" branch is followed from decision block 335 and the method 300 ends.

EX1008, ¶¶ 65-66.

The survey system and method disclosed in Ganesh also teaches what the ‘811 Patent seeks to avoid, a system and method where the consumer is not interacting with a Survey Module, but rather with a remote survey server computing device that must decide whether a particular answer requires a follow-up survey question, and send the follow-up survey question to the vendor survey interface for presentation to the consumer. Ganesh therefore also does not disclose a Survey Module as claimed in the ‘811 Patent, and so does not anticipate the ‘811 Patent under 35 U.S.C. § 102. Grounds 3 and 4 of the Petition should not be instituted.

V. DR. BRUN’S TESTIMONY DOES NOT ESTABLISH DISCLOSURE OF A SURVEY MODULE

Dr. Brun’s declaration does not include a specific discussion of the Survey Module claimed by Patent Owner. The declaration merely cites to certain paragraphs of Douglas and Ganesh and summarily concludes that these paragraphs disclose a “Survey Module.” EX1005, ¶¶ 49, 83, 102, 134.

Dr. Brun does not even attempt to explain how the alleged survey modules in Douglas and Ganesh include “software code,” nor does Dr. Brun point to sections of Douglas and Ganesh teaching that such survey modules are sent to a portable

consumer computing device and executed for the purpose of "displaying the at least one Survey Question." EX1001, Claims 1 and 19.

Nearly all of Dr. Brun's testimony is focused on repeating conclusory assertions made in the Petition. The declaration does not meaningfully address the Survey Module claimed by Patent Owner, and his declaration can therefore be disregarded for purposes of considering the present preliminary response. *See, e.g.*, *Nokia*, 2024 WL 1241505 at *7 (disregarding expert testimony as "unhelpful" where the testimony consisted of conclusory assertions); *Edmund Optics, Inc., Petr., v. Semrock, Inc., Pat. Owner.*, IPR2014-00583, 2015 WL 5376245, at *4 (P.T.A.B. Sept. 9, 2015) (finding expert testimony "not useful" where it did little more than repeat, without citation to additional evidence, conclusory arguments); *Dominion Dealer Sols., LLC Petr. v. Autoalert, Inc. Pat. Owner*, 8,08, 2013 WL 6514072, at *1 (P.T.A.B. Oct. 10, 2013) (giving little to no weight to unsupported conclusions or assertions of the expert testimony).

VI. CONCLUSION

The Petition fails to demonstrate a reasonable likelihood that the Petitioner will prevail as to any of the challenged claims. *Inter partes* review of the '811 Patent should therefore be denied.

Dated: July 10, 2025

Respectfully submitted,

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CERTIFICATION UNDER 37 C.F.R. § 42.24

Under the provisions of 37 C.F.R. § 42.24(d), the undersigned hereby certifies that the word count for the foregoing Patent Owner's Preliminary Response to Petition totals 10,285 words, which is less than the 14,000 words allowed under 37 C.F.R. § 42.24(b)(1).

Dated: July 10, 2025

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

Pursuant to 37 C.F.R. § 42.6(e), I certify that I caused to be served a true and correct copy of the foregoing Patent Owner's Preliminary Response by delivering a copy via email on July 10, 2025 to counsel of record for the Petitioner at the following email addresses: Timothy J. Bechen, timothy.bechen@woodsrogers.com; Josh Long, josh.long@woodsrogers.com; and Nathan Evans, nathan.evans@woodsrogers.com.

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