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*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

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."). Patent Owner did not request discretionary denial, and on June 20, 2025, the Acting Director referred the case to the Board. Paper 7. On July 10, 2025, Patent Owner filed a Preliminary Response to the Petition (no supporting evidence was filed). Paper 8 ("Prelim. Resp.").

Under 37 C.F.R. § 42.4(a), we have authority to determine whether to institute trial in an *inter partes* review. We may institute an *inter partes* review if the information presented in the petition filed under 35 U.S.C. § 311, and any preliminary response filed under § 313, shows that there is a reasonable likelihood that Petitioner would prevail with respect to at least one of the claims challenged in the petition. 35 U.S.C. § 314.

After reviewing the parties' submissions in view of the existing record, we conclude that Petitioner demonstrates a reasonable likelihood it would prevail in showing that at least one challenged claim of the '811 patent is unpatentable under the presented grounds. *See* Pet. Therefore, we *grant* institution of *inter partes* review. Our reasoning is discussed below.

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 does identify that "[t]here is [an] on-going patent litigation in the United Stated 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).

Patent Owner states, "[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. 10,480,811." 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 of 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 to a U.S. Provisional Application 62/104,043 (filed on January 15, 2015).[1] *Id.* at codes (60), (63).

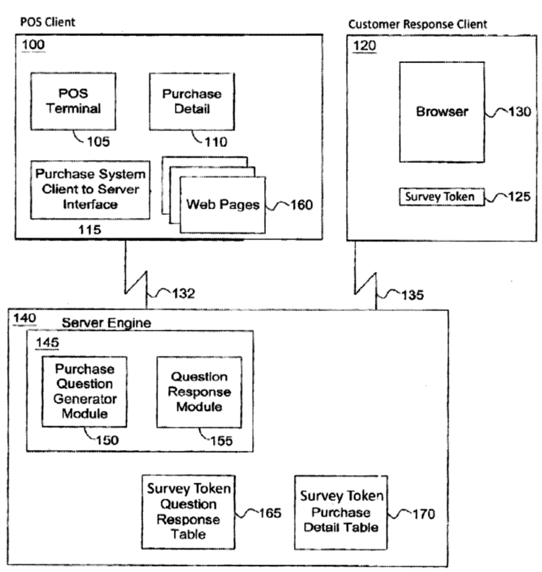
[1] Petitioner acknowledges these filings and does not contest the priority of the patent in this proceeding. Pet. 3, 10.

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.

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). The system shown in Figure 2, and described throughout the '811 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 Engine 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 Engine 140 represents a system that creates a survey for the vendor to be taken by the customer. *Id.* POS client 100 and Server Engine 140 are networked, as are Server Engine 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 Engine 140 are provided the survey token 125. *Id.* Server Engine 140 is equipped with information about the vendor and potential sales, stored as purchase detail table 170; Server Engine 140 can identify this information based on survey token 125.

Id. Server Engine 140 operates based on a Campaign of vendor preferences on how a survey will be conducted (questions, events, incentives, etc.). *Id.* The customer sends survey token 125 to Survey Engine 140, e.g., via input at web browser 130 and the vendor's website, and Survey Engine 140 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).

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:[2]

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

Pet. 3–4. In support of these grounds for unpatentability, Petitioner submits, *inter alia*, the Declaration of Yuriy Brun, PhD. Ex. 1005. The qualifications of this witness to testify as to the subject matter of their declaration stand uncontested, on this record. As noted above, Patent Owner has not yet submitted any evidence in support of its positions nor was required to do so.

II. DISCUSSION AND ANALYSIS

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

[2] 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.

[3] 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 Institution Decision, AIA § 102 applies.

[4] L. Douglas and R.A. Secrist, US 2015/0193794 A1, pub. July 9, 2015 ("Douglas"). Ex. 1007.

[5] S. Ganesh and J. Menendez, US 2014/0337098 A1, pub. Nov. 13, 2014 ("Ganesh"). Ex. 1008.

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")). This burden of persuasion never shifts to Patent Owner. *See Dynamic Drinkware, LLC v. Nat'l Graphics, Inc.*, 800 F.3d 1375, 1378 (Fed. Cir. 2015) (discussing the burden of proof in *inter partes* review).

An *inter partes* review may be instituted if the information presented in the petition, in view of the patent owner's preliminary response and the preliminary record, shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least one of the claims challenged in the petition. 35 U.S.C. § 314.

"[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 LEVEL OF 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 states, "[f]or 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." Prelim. Resp. 14.

We accept and use Petitioner's proposed, and unopposed, 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

Our claim construction positions herein are preliminary and for the purpose of clarifying the proceeding. Further argument by the parties is permitted, but should be explicitly made and set forth in a designated section of briefing if made.

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 acknowledges Petitioner's positions on the interpretation of these claim terms, and states it "does not agree with Petitioner's proposed constructions," but "does not challenge them for [the] purposes of th[e] Preliminary Response." Prelim. Resp. 7, 13. Patent Owner asserts that the "critical claim element . . . is the term 'Survey Module,' which . . . may be given its 'ordinary and customary meaning' as understood by a person of ordinary skill in the art in question and in accordance with the prosecution history of the '811 Patent." *Id.* at 13–14. Patent Owner does not extrapolate on what this ordinary and customary meaning is, whether considering the understanding of the ordinarily skilled artisan or the '811 patent's prosecution history. *See id.*

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 added here and below when highlighting claim terms at issue).

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 noted above, although not agreeing with this interpretation, Patent Owner also does not contest it. Prelim. Resp. 13.

The claim language does little to identify any meaning of "point-of-sale interface." Looking to the '811 patent's written description, it never uses the term "point-of-sale interface," but it states "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.

We are pointed to and find nothing in the '811 patent's prosecution history that sheds any further light on the meaning of this language. *See* Pet. 12–14; Prelim. Resp. 12–13; 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. Therefore, combining these explanations from the Specification, 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).

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).

As noted above, although not agreeing with this interpretation, Patent Owner also does not contest it. Prelim. Resp. 13.

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 a facility identifier and the date and time of the transaction." Ex. 1001, 2:38–45.

We are pointed to and find nothing in the '811 patent's prosecution history that sheds any further light on the meaning of this language. *See* Pet. 12–14; Prelim. Resp. 12–13; 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).

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).

As noted above, although not agreeing with this interpretation, Patent Owner also does not contest it. Prelim. Resp. 13.

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.

We are pointed to and find nothing in the '811 patent's prosecution history that sheds any further light on the meaning of this language. *See* Pet. 12–14; Prelim. Resp. 12–13; Ex. 1003.

Based on the intrinsic record, at this point we interpret "purchase detail identifier" to mean *information identifying details about a purchase.*

4. "survey module"

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." *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.

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

Patent Owner calls the term *survey module* "[t]he critical claim element to [its] Preliminary Response," and argues it should "be given its 'ordinary and customary meaning.'" Prelim. Resp. 13. Patent Owner also argues this meaning is "in accordance with the prosecution history of the '811 Patent." *Id.* at 13–14. However, in its claim construction arguments, Patent Owner neither identifies what this ordinary meaning is nor identifies how it applies to or is illuminated by the '811 patent prosecution history. *Id.*

As noted above, 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"). 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.

We are pointed to and find nothing in the '811 patent's prosecution history that sheds any further light on the meaning of this language. *See* Pet. 12–14; Prelim. Resp. 12–13; 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 of *survey module*. Based on the record at this point, we interpret "survey module" to mean *software code for displaying a survey question*.

5. Summary on Claim Construction

At this stage of the proceeding, we expressly, but preliminarily, construe only the claim terms as discussed above. *See Nidec Motor Corp.*, 868 F.3d at 1017. If either party intends to further argue claim construction at trial, they must do so in a clearly designated section of their briefing and expressly identify such arguments. *See, e.g.*, 37 C.F.R. § 42.104(b)(3) (content of petition); *see also* Board's Consolidated Trial Practice Guide (CTPG) at 46, 48–45 (Nov. 2019).[6] Claim construction arguments should not be relegated to patentability arguments on the facts.

D. PETITIONER'S ASSERTED PRIOR ART

We review and summarize the relevant portions of Petitioner's asserted prior art references below. There is currently no dispute that each reference is prior art.

[6] Available at www.uspto.gov/TrialPracticeGuideConsolidated. Familiarity with the Trial Practice Guide is expected.

1. Douglas (Ex. 1007)

Petitioner asserts that Douglas is prior art under 35 U.S.C. § 102. Pet. 15.

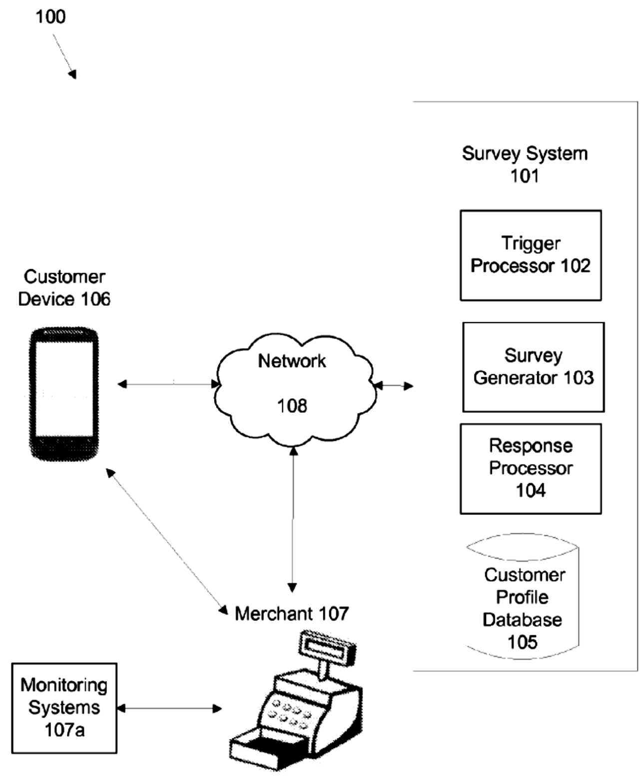
Douglas, titled "SYSTEM AND METHOD FOR GENERATING REAL-TIME CUSTOMER SURVEYS BASED ON TRIGGER EVENTS," is the July 9, 2015, publication of U.S. Application 14/592,315, which was filed on January 8, 2015, and indicates priority to U.S. Provisional Application 61/924,921, which was filed on January 8, 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.*

2. Ganesh (Ex. 1008)

Petitioner asserts that Ganesh is prior art under 35 U.S.C. § 102. Pet. 31.

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:

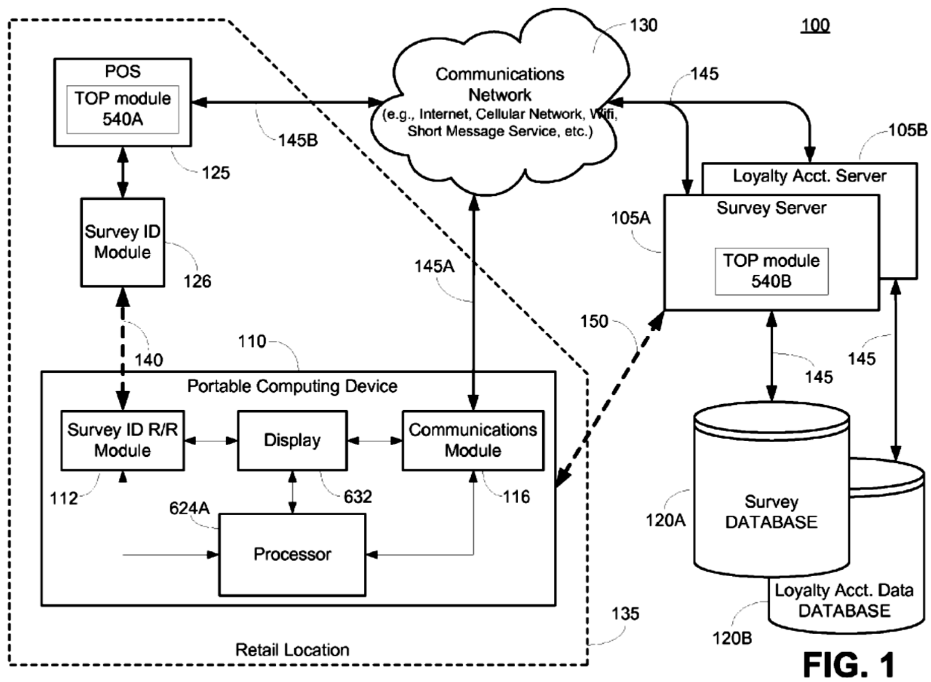


FIG. 1

"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.

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

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. Prelim. Resp. 25–38 (citing, *inter alia*, Ex. 1001, 1:39–40, 1:46–50, 2:52–63, 11:30–38, 17:12–17, 26:28–30, 26:33–39, 26:64–67, 29:1–12; Ex. 1007, Abstr., ¶¶ 5–6, 18, 33–35, 37, 64, 68–69, Figs. 1, 3–5, claims 1, 11).

Because of the substantial overlap between Grounds 1 and 2, we discuss them together. We review and analyze the parties' positions below. We make the following preliminary determinations (*see also supra* Section II.D.1 (summarizing Douglas)), none of which constitutes a final determination of any fact or issue of patentability.

1. Petitioner's Positions

Petitioner begins, under Ground 1, with the '811 patent's independent claim 19; therefore, so shall we.

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*"), 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 (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 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). We focus on independent claim 1 here.

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 and illustrates the system at Fig. 2. 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, specifically the POS client 100 (*point of sale interface*), server engine 110, and customer response client 120 (where the customer takes the survey, i.e., the *vendor survey interface*) illustrated in Fig. 2, where transaction data is recorded at the POS client, 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. We do not consider the challenged dependent claims at this time, but will do so in any final decision.

2. Patent Owner's Positions

Patent Owner argues that the prior art, Douglas in particular, does not teach the claimed survey module, which, as noted above, Patent Owner identifies as the "critical claim element." Prelim. Resp. 13, 25, 34. Patent Owner argues that the prior art's teaching of an interactive survey where the survey generator contains the logic relating to the survey and crafts a survey responsive to customer input, rather than a survey module itself running the survey logic on a mobile computing device, without the home server's input, so as to provide "an autonomous, self-contained, web-container package," forecloses anticipation. *Id.* at 25–26.

Patent Owner also argues that, even if the prior art discloses some sort of survey module, there is no disclosure of the prior art survey module having "software code for *displaying* (as opposed to generating) survey questions." *Id.* at 27.

Patent Owner argues that Douglas's survey, which is transmitted to a customer's device, "does not contain any software logic capable of making decisions," and such "decisions" are made by the survey generator. *Id.* at 35. Patent Owner (again) takes the position that any survey questions presented to the customer must be generated not by a survey server (or generator) as in Douglas, but by the survey module. *Id.* at 36–37.

Recognizing that the ultimate burden here is always upon Petitioner, we are not persuaded to deny institution by any of Patent Owner's arguments.

At this point in the proceeding, we do not agree with Patent Owner that the recited *survey module* must be autonomous, self-contained, or a web-container package. As discussed above, we preliminarily interpret this term to mean *software code for displaying a survey question*. We find no support in the current record to add to this definition any additional requirements related to autonomy, self-containment, or a web-based context for the *survey module*.

The Petition (at 19) points to Douglas as teaching the claimed *survey module*, i.e., in Douglas, software sent to the customer for taking a product survey on the display of the customer's computer device. 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.

Moreover, Douglas also 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). Thus, Douglas appears to disclose a survey system where a survey server responds to a triggering survey token created by a merchant 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 by 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 appears to include the claimed *survey module* at issue.

As for Patent Owner's argument that the recited *survey module* must have software logic capable of making decisions, and must autonomously develop and conduct the survey at the customer's interface/device, this is simply not part of the claims' requirements as we understand them at this point. Claims 1 and 19 recite that it is the *survey generator* that generates a survey question, and that the *survey module* has software code to display it. Ex. 1001, 26:19–30, 29:1–10. No part of claims 1 and 19 suggests that the *survey module* creates a question, responds to a customer answer, is autonomous, or makes any decisions on its own.

For the reasons above, we are not persuaded by Patent Owner's arguments over Grounds 1 and 2 at this stage of the proceeding.

3. Summary

We have considered Petitioner's assertions, Patent Owner's arguments, and the evidence of record, and find that, on the current record, Petitioner has sufficiently mapped the limitations/steps of independent claims 1 and 19 to the disclosure of Douglas. Based on the evidence presented at this stage of the proceeding, Petitioner has shown under Grounds 1 and 2 that there is a reasonable likelihood that at least one of the '811 patent's claims is anticipated by Douglas. At this point in the proceeding, we focus only on independent claims 1 and 19, but we institute trial on all challenged claims and all grounds, which we will address in any final decision.

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

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. Prelim. Resp. 25–30, 38–47 (citing, *inter alia*, Ex. 1001, 1:39–40, 1:46–50, 2:52–63, 11:30–38, 17:12–17, 26:28–30, 26:33–39, 26:64–67, 29:1–12; Ex. 1008 ¶¶ 26, 55, 65–66, Fig. 3).

Because of the substantial overlap between Grounds 3 and 4, we discuss them together. We review and analyze the parties' positions below. We make the following preliminary determinations (*see also supra* Section II.D.2 (summarizing Ganesh)), none of which constitutes a final determination of any fact or any issue of patentability.

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 *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, Fig. 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). We focus on independent claim 1 here.

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 the POS client records transaction data of a commercial transaction, which includes a purchase detail identifier and a survey token. *Id.*

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 Ganesh discloses its survey server 105A communicates with its point of sale (POS, i.e., the vendor/merchant) via network 130, that POS 125 monitors sale 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.

2. Patent Owner's Positions

Patent Owner's arguments against Ganesh mirror those discussed above concerning Douglas. *See* Prelim. Resp. 25–29.

Patent Owner argues that Ganesh does not disclose the claimed *survey module*. *Id.* at 38. Patent Owner acknowledges that Ganesh's customer surveys are interactive and that additional survey content can be generated in response to customer feedback, but argues again that, according to the claims, such decisions and content generation must be made by the survey module at the customer's device rather than by the survey server or the POS system. *Id.* at 43–45. Patent Owner argues that the claims require the customer taking the survey to interact only with the survey module, and not the survey server. *Id.* at 46.

These arguments are not persuasive.

According to Ganesh, customers take a product survey, created by a survey server, on the display of their mobile phone, which can execute, run, or interface with a multimedia platform that may be part of a plug-in for an Internet web browser, which displays the survey and with which the customer interacts to take the survey; the survey server creates survey content and pushes it to the customer's device, where a content dissemination module transmits survey contents. Ex. 1008 ¶¶ 45, 52. This appears to disclose *software code for displaying a survey question* that is sent to the customer's mobile phone by a survey server to display a survey so the customer may interact therewith.

For the reasons above, we are not persuaded by Patent Owner's arguments over Grounds 3 and 4 at this stage of the proceeding.

3. Summary

We have considered Petitioner's assertions, Patent Owner's arguments, and the evidence of record, and find that, on the current record, Petitioner has sufficiently mapped the limitations/steps of independent claims 1 and 19 to the disclosure of Ganesh. Based on the evidence presented at this stage of the proceeding, Petitioner has shown under Grounds 3 and 4 that there is a reasonable likelihood that at least one of the '811 patent's claims is anticipated by Ganesh. At this point in the proceeding, we focus only on independent claims 1 and 19, but we institute trial on all challenged claims and all grounds, which we will address in any final decision.

III. CONCLUSION

On the record before us at this stage in the proceeding, Petitioner has demonstrated a reasonable likelihood of showing at trial that at least one challenged claim of the '811 patent is unpatentable under at least one ground. Accordingly, we institute an *inter partes* review of the challenged claims of the '811 patent on all grounds alleged by Petitioner. Our findings at this stage of the proceeding are preliminary. This decision does not reflect a final determination on the patentability of the claims.

ORDER

Accordingly, it is hereby:

ORDERED that, pursuant to 35 U.S.C. § 314, an *inter partes* review of claims 1–7, 10, 13, 16, 18, and 19 of the '811 patent, in accordance with each ground of challenge in the Petition, is hereby *instituted*; and

FURTHER ORDERED that, pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4(b), *inter partes* review of the '811 patent will commence on the entry date of this Decision, and notice is hereby given of the institution of a trial.

For PETITIONER:

Timothy J. Bechen
Josh Long
Nathan Evans
WOODS ROGERS VANDEVENTER BLACK PLC
timothy.bechen@woodsrogers.com
josh.long@woodsrogers.com
nathan.evans@woodsrogers.com

For PATENT OWNER:

Jeffrey B. Fabian
Samantha Regala
SHUMAKER, LOOP & KENDRICK, LLP
jfabian@shumaker.com
sregala@shumaker.com