

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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QUALTRICS, LLC,  
Petitioner,

v.

OPINIONLAB, INC.,  
Patent Owner.

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Case CBM2016-00003  
Patent 8,041,805 B2

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

DEFRANCO, *Administrative Patent Judge*.

DECISION

Denying Institution of Covered Business Method Patent Review  
*37 C.F.R. § 42.208*

## I. INTRODUCTION

OpinionLab, Inc. is the owner of U.S. Patent No. 8,041,805 B2 (“the ’805 patent”). Qualtrics, LLC filed a Petition (“Pet.”) for covered business method (“CBM”) review of claims 1–33 of the ’805 patent.<sup>1</sup> OpinionLab, in turn, filed a Preliminary Response (“Prelim. Resp.”) opposing institution of CBM review.

We have jurisdiction under 35 U.S.C. § 324(a). After considering the Petition and Preliminary Response, we conclude that Qualtrics fails to demonstrate that the ’805 patent is a “covered business method patent” as defined by § 18(d)(1) of the Leahy–Smith America Invents Act, Pub. L. No. 112–29, § 6, 125 Stat. 284, 299–305 (2011) (“AIA”). We, therefore, deny the Petition for CBM review of the ’805 patent.

## II. BACKGROUND

### A. *Related Proceedings*

In a previous *inter partes* review proceeding, namely, IPR2014-00366 (“the -366 IPR”), Qualtrics challenged many of the same claims of the ’805 patent as it does now, only on different grounds. Specifically, following trial in the -366 IPR, we determined that Qualtrics had failed to prove, by a preponderance of the evidence, that the claims of the ’805 patent were unpatentable under 35 U.S.C. § 103. IPR2014-00366, Paper 14 (PTAB July 30, 2015). Now, in seeking CBM review, Qualtrics challenges the claims of the ’805 patent under 35 U.S.C. § 101 as directed to a patent-ineligible abstract idea. Pet. 39–61.

The ’805 patent is also the subject of two district court actions: *OpinionLab, Inc. v. Qualtrics Labs, Inc.*, 1:13-cv-01574 (N.D. Ill.), and *OpinionLab, Inc. v. iPerceptions Inc.*, 1:12-cv-05662 (N.D. Ill.). Pet. 2.

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<sup>1</sup> Qualtrics Labs, Inc. is also listed as a real party-in-interest. Pet. 2.

*B. The '805 Patent*

The '805 patent is directed to a system and method for soliciting “page-specific” feedback from website users. Ex. 1002, 1:16–19, 1:64–66. User feedback is solicited on a page-specific basis by incorporating a “user-selectable element,” or “viewable icon,” into each web page of the website.<sup>2</sup> *Id.* at 1:66–2:5, 5:37–50, 11:59–12:6, Figs. 2, 10, 11. The icon incorporated in each web page solicits the user’s subjective reaction to various aspects of the particular web page being viewed by the user. *Id.* When the user rolls over or clicks on the icon, a rating scale and/or question box appears within the user’s browser window. *Id.* at 5:65–6:27, 12:40–14:10, Figs. 3–6. The rating scale and/or question box appears within the same browser window on which the user is viewing the particular web page itself. *Id.* at 12:23–39; *compare* Fig. 2 with Figs. 3, 5 (depicting icon 50 on web page 28 as being replaced by rating scales 60, 70). Software associated with the icon operates to collect and store the user’s reactions in a database for subsequent reporting to an interested party. *Id.* at 2:6–18, 15:27–31, Figs. 8A, 8B, 9, 11, 12

*C. The Challenged Claims*

Of the challenged claims, claims 1, 10, 18, and 26 are independent. Common to each of the independent claims is an “element viewable on each of a plurality of particular webpages” for soliciting “page-specific user feedback” from a website user “while the user remain[s] at the particular webpage” and “regardless of user scrolling.” Claim 1 is illustrative of the claimed invention:

1. One or more computer-readable non-transitory storage media embodying software operable when executed to:

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<sup>2</sup> The '805 patent also describes the user element or icon in terms of a “user reaction measurement tool.” Ex. 1002, 3:26–58, 11:59–12:6.

*provide a user-selectable element viewable on each of a plurality of particular web pages of a website upon initial display of a particular web page and soliciting page-specific user feedback concerning the particular web page upon initial display of the particular web page, the user-selectable element appearing identically and behaving consistently on each of the plurality of particular web pages; and*

*receive the page-specific user feedback concerning the particular web page for reporting to an interested party, the page-specific user feedback concerning the particular webpages having been provided by a user while the user remained at the particular web page, and the page-specific user feedback comprising one or more page-specific subjective ratings of the particular web page and one or more associated page-specific open-ended comments concerning the particular web page, the page specific user feedback allowing the interested party to access page-specific subjective ratings and associated page-specific open-ended comments across the plurality of particular web pages to identify one or more particular web pages for which the page-specific user feedback is notable relative to page-specific user feedback for other particular web pages;*

*wherein the user-selectable element is viewable within a browser window upon initial display of the particular web page and remains viewable within the browser window, at least prior to the user selection, regardless of user scrolling.*

Ex. 1002, 25:40–26:3 (emphasis added).

### III. ANALYSIS

A transitional proceeding under section 18 of the AIA may be instituted only for a patent that is a covered business method (“CBM”) patent. AIA § 18(a)(1)(e). As the petitioner, Qualtrics bears the burden of demonstrating that the ’805 patent is a CBM patent. *See* 37 C.F.R. § 304(a). The AIA defines a CBM patent as “a patent that *claims* a method or corresponding apparatus for performing data processing or other operations used in the practice, administration, or management of a financial product or service, except that the term does not include patents for technological inventions.” AIA § 18(d)(1) (emphasis added); 37 C.F.R.

§ 42.301(a). The determination of whether a patent is eligible for CBM review focuses on “what the patent claims.” *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,734, 48,736 (Aug. 14, 2012) (response to comment 8). A patent need have only one claim directed to a CBM to be eligible for review. *Id.*

Qualtrics makes several arguments in support of its contention that the ’805 patent is a CBM patent. Pet. 18–39. First, Qualtrics argues that the claimed invention is directed to a financial product or service because *the specification* states that the claimed invention may be used in connection with websites that conduct “commercial transactions.” Pet. 22–24. But, as discussed above, the relevant inquiry is on *the claims* and whether they are directed to a financial product or service. Here, the claims are devoid of any terms that could be reasonably argued as rooted in the financial sector or limited to a monetary transaction. Instead, the claims recite a software capability of general utility that crosses many sectors, commercial and non-commercial alike.

Put simply, the claims recite a “user-selectable element,” i.e., an icon, that *solicits and receives feedback* from users without requiring them to navigate between webpages, i.e., “while the user remain[s] at the particular webpage” and “regardless of user scrolling.” As such, the claimed invention is nothing more than a website tool for gathering information—a quick and easy way to solicit contemporaneous reactions from website users. Ex. 1002, 2:51–67, 6:9–17. Soliciting feedback from website users is hardly the exclusive domain of the financial sector. Indeed, contrary to what Qualtrics argues, the specification of the ’805 patent acknowledges the general utility of the claimed invention, stating that “the present invention may be similarly applied in connection with polling, surveying, product development research, market research, [and] usability testing.” Ex. 1002, 4:5–17. Thus, the specification contemplates both commercial and non-

commercial applications for the claimed website tool. As such, we are not persuaded by Qualtrics' attempt to characterize the claimed invention as limited to "commercial" applications when both the claims and the specification indicate a more general utility.

Next, Qualtrics argues that the claimed invention is limited to a financial product or service because "collecting user feedback is primarily used to improve the effectiveness of websites, including their marketing, interface usability, and customer communications functions." Pet. 24. Even if true, however, the use of consumer feedback to improve the capabilities of a website does not necessarily make that use financial in nature. The statute authorizing review of CBM patents was *not* meant for "technologies common in business environments across sectors and that have no particular relation to the financial services sector, such as computers, communications networks, and business software." 157 Cong. Rec. S5441 (Sept. 8, 2011) (statement of Sen. Leahy). Using consumer feedback for improving the quality of a product or service is a common practice that applies not only to commercial (.com) websites, but also to educational (.edu), government (.gov), and non-profit (.org) websites, many of which have no financial bent. *See* Ex. 1001 ¶¶ 32–50 (describing the "well-worn principle" of soliciting feedback on internet websites, including ".gov" and ".edu" domains). Indeed, Qualtrics itself recognizes that "[s]urveys have played a central role in business for decades," and, in particular, "[t]he solicitation of customer satisfaction feedback in the form of one or more ratings conducted as part of a survey was well-known in the art." Pet. 18; *see also* Ex. 1001 ¶¶ 29–50. Given the breadth of survey technology in the business world, we find that, more aptly, the claimed software capability crosses

the gamut of many business environments, with no particular relation to the financial sector.

Of course, Qualtrics argues that the specification's mention of using the claimed invention as a measure of the website's value suggests it is financial in nature. Pet. 31–33 (citing Ex. 1002, 1:32–33). Qualtrics overlooks, however, that this potential use is purely *exemplary*, and that, as discussed above, both the specification and the claims actually speak in broader terms that include not only valuing the website in terms of “clicks,” but also collecting information for purposes of “polling, surveying, product development research, market research, [and] usability testing.” Ex. 1002, 4:5–17. Thus, far from being limited to a valuation tool, the specification and claims of the '805 patent make clear that the claimed invention is amenable to any number of a broad spectrum of uses where consumer feedback is desired.

Also, we are not persuaded by Qualtrics' argument that the '805 patent's discussion of “collecting user demographics” is financial in nature because it “*might be* available for a fee.” Pet. 29–30 (emphasis added). First and foremost, the argument is based on speculation. Qualtrics does not cite any part of the specification that describes a fee for the collection of information, demographic or otherwise. And we are not persuaded by Qualtrics' conjecture about possible scenarios under which “data gathered by the [claimed] method *might be* available for a fee.” *Id.* at 30 (citing Ex. 1001 ¶¶ 107–108) (emphasis added). Again, our focus is on *the claims*, which simply recite that user feedback is collected “for reporting to an interested party,” without any further restriction. Ex. 1002, 25:51, 26:63, 27:49–50, 28:56–57. In that regard, we do not discern any claim language that gives rise to a fee or other movement of money.

In sum, we reject Qualtrics' narrow reading of the specification and claims. The fact that the specification may describe the website tool as *capable of being used for commercial purposes* does not mean that the claims are limited to such applications. Rather, as claimed, the website tool is concerned, quite simply, with soliciting feedback from website users and the manner in which it is accomplished, i.e., by means of a viewable element, or icon, that allows page-specific feedback "while the user remain[s] at the particular webpage" and "regardless of user scrolling." Again, the focus of our inquiry is on the claims of the '805 patent and whether they describe performing data processing or other operations used in the practice, administration, or management of a financial product or service. *See* AIA § 18(d)(1). They do not. The claims are of general utility, describing simply a website tool that can be used in a wide variety of applications, without any particular connection to a financial product or service.

Qualtrics' position, in essence, would mean that any patent claiming something that might have potential application to a financial product or service would be eligible for CBM patent review, regardless of its general utility and application outside of finance. We are not persuaded that Qualtrics' position is consistent with the statutory language, which requires us to focus on what is recited by *the claims*.

#### IV. CONCLUSION

Based on the present record and particular facts of this proceeding, we determine that the information presented in the Petition does not establish that the '805 patent qualifies as a "covered business method patent" under § 18(d)(1) of the AIA. Therefore, we do not institute a covered business method patent review on any of the asserted grounds as to any of the challenged claims.

CBM2016-00003  
Patent 8,041,805 B2

V. ORDER

In consideration of the foregoing, it is ORDERED that the Petition is denied and no trial is instituted.

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