

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

QUALTRICS, LLC,
Petitioner,

v.

OPINIONLAB, INC.,
Patent Owner.

Case CBM2015-00164
Patent 6,421,724 B1

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. 6,421,724 B1 (“the ’724 patent”). Qualtrics, LLC filed a Petition (“Pet.”) for covered business method (“CBM”) review of claims 1–9 of the ’724 patent.¹ OpinionLab, in turn, filed a Preliminary Response (“Prelim. Resp.”) in opposition to the Petition.

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 ’724 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.

II. BACKGROUND

A. *Related Proceedings*

The ’724 patent was challenged previously in a petition seeking *inter partes* review. Specifically, in IPR2014-00314, Qualtrics challenged claims 1, 2, 4–6, 8, and 9 as unpatentable under 35 U.S.C. §§ 102 and 103. We denied institution, determining that Qualtrics had not established a reasonable likelihood of prevailing in proving the challenged claims unpatentable over the asserted prior art. IPR2014-00314, Paper 14 (PTAB June 30, 2014). The ’724 patent is also the subject of two district court actions, namely, *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.

B. *The ’724 Patent*

The ’724 patent is directed to a “web site response measurement tool” for collecting feedback and measuring opinion of users of the website. Ex. 1001, 1:6–

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

9. Many websites provide feedback tools that measure user opinion about the website as a whole. *Id.* at 1:43–58. In contrast, the website response measurement tool of the '724 patent captures feedback data “on a page-by-page basis,” which allows the feedback data to be compared across the various webpages of the site. *Id.* at 1:58–61. As described, the website measurement tool includes a “first icon” in a predetermined location on a particular webpage. *Id.* at 4:10–13, Fig. 2. A user moves a mouse pointer over the first icon, which in turn, causes a “second icon” to become viewable on the same webpage as the first icon. *Id.* at 4:17–19, Figs. 3, 4. This second icon appears as a “five-point scale,” with rating levels ranging from positive to negative. *Id.* While remaining on the particular webpage, the user can rate his/her reaction to the webpage by moving the mouse pointer over the desired rating and clicking the mouse button. *Id.* at 4:19–22. The user’s selection is then stored in a database for subsequent analysis and reporting to the website owner. *Id.* at 4:25–39, Fig. 6.

C. *The Challenged Claims*

Of the challenged claims, claims 1, 3–5, and 7–9 are independent. Claims 2 and 6 depend from independent claims 1 and 5, respectively. Common to the independent claims is the recitation of “a first icon viewable on [a] particular web page” that is capable of “causing a second icon to become viewable on the particular web page.” Claim 1 is illustrative of the independent claims, describing the first and second icons as follows:

1. A system for measuring subjective user reaction concerning a particular web page of a website, comprising:

a first icon viewable on the particular web page independent of input from a user subsequent to the user accessing the particular web page,

the first icon soliciting a subjective user reaction to the particular web page as a whole from the user independent of

input from the user subsequent to the user accessing the particular web page,

the first icon operable to receive user input indicating a desire to provide a subjective user reaction to the particular web page as a whole, *the user input causing a second icon to become viewable on the particular web page*, the second icon comprising a plurality of multi-level rating scales for rating the particular web page, each multi-level rating scale being associated with a particular characteristic of the particular web page including at least one positive rating, a neutral rating, and at least one negative rating; and

software associated with the second icon and operable to receive the subjective user reaction to the particular web page as a whole for reporting to a website owner.

Ex. 1001, 6:22–42 (emphases added).

D. Asserted Grounds of Unpatentability

Qualtrics asserts that claims 1–9 are unpatentable under 35 U.S.C. § 101 as directed to a patent-ineligible abstract idea. Pet. 36–54.

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 ’724 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 patent 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 cites claim 1 and makes several arguments in support of its contention that the '724 patent is a CBM patent. Pet. 20–32. First, Qualtrics argues that the “user response tool (i.e., survey)” of claim 1 is broad enough to cover 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.” *Id.* at 20–21; *see also id.* at 23 (“a business website is used for marketing and customer communications” for improving a business’s products and services). Even if true, however, the use of feedback to improve the marketing, usability, and communication of a website does not make that use financial in nature.

The statute authorizing review of CBM patents was not meant to be applied “to 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) (emphasis omitted). Here, the claims are devoid of any terms that reasonably could be argued as having any particular relation to a financial product or service. Nor does Qualtrics propose a claim construction that is financial in nature. *See* Pet. 13–17. Rather, the claims speak in terms that apply generally to *soliciting feedback* from website visitors across a variety of sectors. Put simply, the claims recite a first icon, which solicits the user to take a survey, and a second icon, which presents the user with the survey. These interacting, dual icons are nothing more than an information-gathering tool—a quick and easy way for a website visitor to provide their opinion about a particular webpage.

Soliciting feedback for improving the quality of a product or service is hardly the exclusive domain of the financial sector. Instead, it spans across many sectors that include not only business (.com) websites, but also educational (.edu), government (.gov), and non-profit (.org) websites, many of which have no financial bent. *See* Ex. 1003 ¶¶ 29–60 (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 (citing Ex. 1003 ¶¶ 29–60). Given the breadth of survey technology in the world of opinion-polling, we are not persuaded that the claims, on their face, recite any particular term that ties them to a financial product or service, as required for CBM eligibility under § 18(d)(1) of the AIA. More aptly, the claimed survey tool is a technology that crosses the gamut of many business environments, with no particular relation to the financial services sector.

Nor does Qualtrics point to any language in the specification of the ’724 patent that limits the scope of the challenged claims to a financial product or service. Qualtrics argues that the specification’s discussion of using the survey tool for marketing and valuation of a website suggests that the claimed invention is of a financial nature. Pet. 22–29 (citing Ex. 1001, 1:23–42). Qualtrics overlooks, however, that those potential uses are purely *exemplary*, and that the specification actually speaks in broader terms of “business partners, prospects *and many others*,” including “[e]mployees . . . looking for guidance and support information.” Ex. 1001, 1:26–30. In fact, when describing the preferred embodiment, the specification explains that the website owner can “tailor their page revisions to appeal to a certain segment of users.” *Id.* at 5:24–25. Thus, far from being limited

to one segment of the business world, the specification suggests that the survey tool is amenable to any one of a broad spectrum of websites wishing to obtain feedback from their visitors.

We also are not persuaded by Qualtrics' argument that the specification's disclosure of charging a fee for reporting survey results to the website owner moves the claimed invention into the realm of a financial product or service. Pet. 29–32. First and foremost, *the claims* say nothing about charging a fee for the survey report—they merely require “software . . . for reporting to the website owner.” There is no mention of a fee. Moreover, the specification makes clear that “[i]n a preferred embodiment,” the software is configured to provide the report “for free.” Ex. 1001, 6:7–10. Thus, contrary to what Qualtrics argues, neither the claims nor the specification reduce the claimed survey tool to a monetary transaction.

In sum, we reject Qualtrics' narrow reading of the specification and claims. The fact that the specification may describe the survey tool as capable of being used for marketing and valuation purposes does not mean that the challenged claims are limited to such uses. As claimed, the survey tool is concerned, quite simply, with soliciting feedback from the users of a website and how that solicitation is accomplished, i.e., by means of interacting, dual icons. Again, the focus of our inquiry is on the claims of the '724 patent and whether they describe a method of 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 survey tool, 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 challenged 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 '724 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.

V. ORDER

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

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