

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

FILED

2011 NOV -8 PM 4: 23

CLERK OF DISTRICT COURT

BY: 

COLLEGENET, INC.,

Plaintiff,

-vs-

Case No. A-09-CA-544-SS

MARKETLINX, INC. and RAPATTONI  
CORPORATION,

Defendants.

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**ORDER**

BE IT REMEMBERED on this day the Court reviewed the file in the above-styled cause, and specifically Defendant MarketLinx, Inc.'s Motion for Partial Summary Judgment of Invalidity [#132], Plaintiff CollegeNET, Inc.'s response [#140] thereto, and MarketLinx's reply [#145]; CollegeNET's Motion for Partial Summary Judgment on Infringement [#141], MarketLinx's response [#147] thereto, and CollegeNET's reply [#148]; MarketLinx's Motion to Exclude Portions of Christopher Martinez's Testimony [#156], CollegeNET's response [#162] thereto, MarketLinx's reply [#163], and CollegeNET's sur-reply [#164]; and the parties' various motions [##146, 157, 161] for leave to file sealed documents associated with the above motions. Having reviewed the documents, the relevant law, and the file as a whole, the Court now enters the following opinion and orders GRANTING IN PART MarketLinx's motion for summary judgment, and dismissing as moot all other pending motions.

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At the outset, because the motions for leave to file sealed documents are all unopposed, and because the Court cannot adequately address the parties' contentions without examining the sealed documents themselves, the Court GRANTS the parties' motions [##146, 157, 161] for leave to file.

### **Background**

Briefly stated, CollegeNET is suing MarketLinx for the latter's alleged infringement of certain claims in United States Patent 6,910,045 (the '045 patent), and MarketLinx brings the typical claims in response: it is not infringing anything, and the asserted claims in the '045 patent are invalid and unenforceable in any case. The parties have filed cross motions for partial summary judgment, each urging their respective positions, and supporting those positions with evidentiary material so extensive that this Court despairs for the world's forests.

Although the parties' filings contain spirited debates on a variety of issues, the Court need only address one, the issue of obviousness. Because the Court finds the asserted claims in the '045 patent were obvious in light of United States Patent 6,173,284 (the Brown patent), standing alone and in combination with United States Patent 5,974,406 (the IBM patent), the Court concludes the asserted claims are invalid under 35 U.S.C. § 103(a), and grants MarketLinx's motion for partial summary judgment on this basis, without addressing the parties' other arguments.

### **Analysis**

#### **I. Summary Judgment — Legal Standard**

Summary judgment shall be rendered when the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine dispute as to any material fact and that the moving party is entitled to judgment as a matter of law. FED. R. CIV. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–25 (1986); *Washburn v. Harvey*, 504 F.3d 505, 508 (5th Cir.

2007). A dispute regarding a material fact is “genuine” if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). When ruling on a motion for summary judgment, the court is required to view all inferences drawn from the factual record in the light most favorable to the nonmoving party. *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574, 587 (1986); *Washburn*, 504 F.3d at 508. Further, a court “may not make credibility determinations or weigh the evidence” in ruling on a motion for summary judgment. *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133, 150 (2000); *Anderson*, 477 U.S. at 254–55.

Once the moving party has made an initial showing that there is no evidence to support the nonmoving party’s case, the party opposing the motion must come forward with competent summary judgment evidence of the existence of a genuine fact issue. *Matsushita*, 475 U.S. at 586. Mere conclusory allegations are not competent summary judgment evidence, and thus are insufficient to defeat a motion for summary judgment. *Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007). Unsubstantiated assertions, improbable inferences, and unsupported speculation are not competent summary judgment evidence. *Id.* The party opposing summary judgment is required to identify specific evidence in the record and to articulate the precise manner in which that evidence supports his claim. *Adams v. Travelers Indem. Co. of Conn.*, 465 F.3d 156, 164 (5th Cir. 2006). Rule 56 does not impose a duty on the court to “sift through the record in search of evidence” to support the nonmovant’s opposition to the motion for summary judgment. *Id.* “Only disputes over facts that might affect the outcome of the suit under the governing laws will properly preclude the entry of summary judgment.” *Anderson*, 477 U.S. at 248. Disputed fact issues that are “irrelevant and unnecessary” will not be considered by a court in ruling on a summary judgment motion. *Id.*

If the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to its case and on which it will bear the burden of proof at trial, summary judgment must be granted. *Celotex*, 477 U.S. at 322–23.

## **II. Invalidity of Claims Due to Obviousness**

### **A. Presumption of Validity**

Each claim of a patent is presumed to be valid, and a party wishing to prove the invalidity of one or more claims must do so by presenting clear and convincing evidence.<sup>1</sup> *See* 35 U.S.C. § 282 (“A patent shall be presumed valid. . . . The burden of establishing invalidity of a patent or any claim thereof shall rest on the party asserting such invalidity.”); *Microsoft Corp. v. i4i Ltd. P’ship*, 131 S. Ct. 2238, 2242 (2011) (“We consider whether § 282 requires an invalidity defense to be proved by clear and convincing evidence. We hold that it does.”).

This standard of proof is relevant to a court’s summary judgment inquiry because the ultimate question the court must answer is whether a reasonable jury, viewing the evidence in the light most favorable to the nonmoving party, could find in favor of that party. *Anderson*, 477 U.S. at 248. Accordingly, “in ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden.” *Id.* at 254.

### **B. Obviousness Under 35 U.S.C. § 103(a)**

Federal law places several conditions upon patents, including a requirement that the subject matter of the patent be non-obvious at the time of invention: “A patent may not be obtained . . . if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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<sup>1</sup> As in *KSR International, Co. v. Teleflex, Inc.*, the strength of this

having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. § 103(a).

In *Graham v. John Deere Co.*, the United States Supreme Court articulated a basic framework for assessing claims of obviousness under § 103:

Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy.

383 U.S. 1, 17–18 (1966).

“Obviousness is a determination of law based on underlying determinations of fact.” *Star Scientific, Inc. v. R.J. Reynolds Tobacco Co.*, 655 F.3d1364, 1374 (Fed. Cir. 2011). “Whether prior art invalidates a patent claim as obvious is determined from the perspective of one of ordinary skill in the art.” *Id.* As courts have frequently cautioned, “the great challenge of the obviousness judgment is proceeding without any hint of hindsight.” *Id.* at 1375. Thus, “even when all claim limitations are found in prior art references, the fact-finder must not only determine what the prior art teaches, but whether prior art teaches away from the claimed invention and whether there is a motivation to combine teachings from separate references.” *Id.* at 1374–75.

### **C. Application**

Resolution of MarketLinx’s obviousness challenges requires examination of the asserted claims in the ‘045 patent, as compared to the teachings of the Brown and IBM patents.<sup>2</sup>

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<sup>2</sup> Although MarketLinx also argues the asserted claims of the ‘045 patent are obvious in light of a product called Net.MLS, the Court finds there are too many genuinely disputed issues of material fact regarding Net.MLS for it to be an appropriate basis for summary judgment.

**1. The '045 Patent**

In this suit, CollegeNET has elected to assert claims 1, 2, 3, 6, 10, and 14 of the '045 patent. Of those, claims 1 and 10 are independent claims, the former describing a method of practicing the invention, and the latter describing an apparatus capable of doing so; the remaining claims are dependent claims, with claims 2, 3, and 6 dependent on claim 1, and claim 14 dependent on claim 10.

**a. Claims 1, 2, 3, and 6**

Claim 1 of the '045 patent reads, in full:

1. A method of simplifying workflow and improving responsiveness for an institution by conditionally messaging one or more parties based upon data entered by a user into a web form, comprising:

presenting a form on behalf of the institution over a computer network to a form user to enter data;

presenting to the institution a web-based template through which the institution can specify a message, one or more recipients for that message, and a combination of one or more fields and the corresponding field value or values which if matched by data submitted from a form user will automatically cause delivery of that message to the one or more recipients;

comparing data entered by a form user to each combination of the one or more fields and the corresponding field value or values so specified by the institution, and upon detecting a match, delivering the specified message to the one or more recipients.

In slightly more simple terms, Claim 1 describes a method whereby an institution can specify, via a web interface, a set of criteria such that, if a user submits an web form meeting those criteria, a predetermined message will automatically be sent to one or more recipients.

In summary, Claim 2 describes the method of Claim 1, in which the data to field value

comparison occurs as the completed form is received; Claim 3 describes the method of Claim 1, in which each of the steps is performed by a third party; and Claim 6 describes the method of Claim 1, in which the specified message is delivered via email.

**b. Claims 10 and 14**

Although Claim 10 of the '045 patent is an independent claim, it essentially consists of an apparatus capable of performing the method described in Claim 1. Claim 10 of the '045 patent reads, in full:

10. An apparatus for simplifying workflow and improving responsiveness for an institution by conditionally messaging one or more parties based upon data entered by a user into a web form, the apparatus comprising:

a central processing unit;

a computer memory, die computer memory storing instructions for:

presenting a form on behalf of the institution over a computer network to a form user to enter data;

presenting to the institution a web-based template through which the institution can specify a message, one or more recipients for that message, and a combination of one or more fields and the corresponding field value or values which if matched by data submitted from a form user will automatically cause delivery of that message to the one or more recipients;

comparing data entered by a form user to each combination of the one or more fields and the corresponding field value or values so specified by the institution, and

upon detecting a match, delivering the specific message to the one or more recipients.

Mirroring dependent Claim 6, dependent Claim 14 describes the apparatus of Claim 10, in which the software instructions include instructions for sending notifications via email.

**c. The “Counter-Intuitive Approach” of the ‘045 Patent**

Although CollegeNET attacks MarketLinx’s obviousness challenge on several grounds, the primary focus of CollegeNET’s response is that there is a substantive difference between the comparison technique taught by the ‘045 patent, and a traditional database search.

In a traditional database search, the user specifies a set of search criteria, and the searcher goes through everything in the database, returning to the user any entry it might find that meets the specified criteria. The drawback of this approach is that, when the database is very large, the search can take a long time to complete. Under this approach, although a user’s search criteria can be saved if desired, it is not necessary.

By contrast, CollegeNET argues, the ‘045 patent employs a “counter-intuitive” method, whereby the entire database need not be searched for matching criteria, thus potentially saving a great deal of time. CollegeNET claims the ‘045 patent accomplishes this by storing the search criteria as they are entered, and looking for matches only when new web forms are submitted. In the simplest case, where there is only one set of search criteria, this approach requires comparing only two things, the saved search and the incoming form, regardless of how big the database of old forms may be. Taking CollegeNET’s argument to an extreme, this approach does not even require that any such database exist: in theory, after comparing the incoming form with the saved search criteria, the form could simply be discarded.<sup>3</sup> However, unlike in a traditional database search, the ‘045 approach does not work unless the search criteria are saved.

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<sup>3</sup> The Court makes this point solely to highlight the distinction between a traditional database search and CollegeNET’s articulation of the “counter-intuitive” approach embodied in the ‘045 patent. In fact, the ‘045 patent assumes the existence of a database of old forms, and Claim 8 specifically requires such a database.



**2. The IBM and Brown Patents**

Rather than quote from them at length, the Court will provide a general description of the inventions disclosed in the IBM and Brown patents, and quote from them only where relevant to the Court's finding of obviousness.

**a. The IBM Patent**

The IBM patent, United States Patent 5,974,406, is entitled "Automated Matching, Scheduling, and Notification System." As relevant here, the IBM patent describes a method and system by which a user can initiate a database search while logged in to an "automated-search system," but may log out of the system before the search has completed. Later, when the search has completed, the user will receive an automated, personalized notification, based upon information entered by the user via a user interface, specifically including a web interface. Although this invention partially addresses the problem of time-consuming searches of large databases, by allowing the user to "kick off" the search and then log out and do other things until the search has completed, it does not actually reduce the time required to search the database.

The IBM patent's shortcomings aside, it teaches the following. In Claim 1, a method including: (1) "receiving and storing a personalized user notification profile"; (2) "receiving a search query" from a user; (3) "matching said query with information in a database"; and (4) "after said user has logged-off of the automated-search system, notifying said user with said requested information in accordance with said stored user notification profile."

In Claim 5, the method in Claim 1, in which notification is via email.

In Claim 6, an automated matching and scheduling system including: (1) "a user interface

for receiving a search query and a personalized user notification profile from the user”; (2) “a search engine for searching a database for information in response to said search query”; and (3) “a notification system for delivering said information to the user when the user is no longer logged-on to the system, the user being notified of said information in accordance with said user notification profile.”

In Claim 10, the system in Claim 6, in which notification is via email.

In Claim 11, the system in Claim 6, in which the user interface includes information fields on a web page that are used to communicate the search query and user notification profile.

The IBM patent bears many resemblances to the ‘045 patent. In particular, both patents describe methods and systems whereby automated notifications, whose contents may be based on the results of a computer search, are sent to predetermined recipients, based on choices submitted by the user via a user interface, including a web form interface. The Court does not think the claims in the IBM patent anticipate the claims in the ‘045 patent, nor is the Court convinced the IBM patent, standing alone, is sufficient to meet MarketLinx’s summary judgment burden regarding obviousness. However, it is disingenuous to suggest it would have required a quantum leap of imagination for a person of ordinary skill in the art at the time to come up with the invention described in the ‘045 patent, if that person was already familiar with the IBM patent.<sup>4</sup>

**b. The Brown Patent**

The Brown patent, United States Patent 6,173,284, is entitled “Systems, Methods and Computer Program Products for Automatically Monitoring Police Records for a Crime Profile.” The

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<sup>4</sup> The Court notes the parties differ in their formulations of both the relevant field of invention for the ‘045 patent, and a person of ordinary skill in the art. For purposes of its summary judgment analysis, the Court uses the formulations offered by CollegeNET.

Brown patent summarizes the claimed invention as “systems, methods and computer program products that provide for automatically monitoring information or police reports in a police database, including newly entered reports, for matches to predefined crime profiles.” Brown, col. 2, ll. 51–54. These crime profiles “may include one or more request terms . . . , a frequency term, and notification information for the officer who defined the crime profile.” *Id.*, ll. 56–58. The Brown patent further indicates the user may enter his or her search criteria via a web browser, the frequency term can specify “real-time, hourly, daily, or weekly” searches, and the notification can be via email to either the user, or a “designated group of users.” *Id.*, col 3., ll. 11–24.

At first glance, the Brown patent seems to add little to what has already been described in the IBM patent: both include traditional database searches, using search criteria entered by a user via a web browser, with the capability of sending notification of the search results by email to one or more predetermined recipients. However, the Brown patent adds two features the Court finds relevant to the obviousness inquiry.

First, the frequency term. The Brown patent describes a system whereby a user can specify a set of search criteria, and then have that search run against the database on a periodic basis. By itself, this is of little relevance to the teachings of the ‘045 patent, because the ‘045 patent does not disclose any sort of periodic search. However, one of the search frequencies disclosed by the Brown patent is “real-time,” which the Brown patent describes as follows: “If the frequency term is set for each new database entry (i.e., every time a new record is entered into the police database, and thus, the search database), then the police officer may be given essentially real-time notification that an event has recently occurred that matches the search she previously submitted before the event record was entered into the police database.” *Id.*, col. 11, ll. 49–55.

The second significant feature disclosed by the Brown patent is a recognition of the desirability of searching not the entire database, but merely a subset thereof: “The search database is preferably a subset of the police records database. This configuration reduces the memory and processing overhead of executing the procedures on the complete police records database. In particular, the data populating the search database is a data replica of certain fields taken from the production database comprising the police records database.” *Id.*, col. 10, ll. 27–33.

Although the advantages of real-time processing and reduced database size are obviously nothing new to the field of computer science, both of these features are specifically recognized by the Brown patent. Thus, in addition to the concepts of user-specified searches and automatic notification, the Brown patent adds (or recognizes) the following: (1) the addition of a new database entry as a search-triggering event; and (2) the desirability of conducting searches against a small database.

It must be acknowledged, however, the Brown patent discloses a traditional database search, and not the “counter-intuitive” approach CollegeNET argues is disclosed by the ‘045 patent. Even in the “real-time” case, the Brown patent suggests the user-specified search will be run against the entire underlying database, and not simply the incoming entry. Figure 8 of the Brown patent supports this interpretation.

**3. The Asserted Claims are Obvious in Light of the IBM and Brown Patents**

**a. The Parties’ Arguments**

In an attempt to show MarketLinx has not demonstrated the invalidity of the asserted claims

of the '045 patent by clear and convincing evidence, CollegeNET makes three relevant arguments.<sup>5</sup> First, they argue the differences between traditional database searches and the approach taken by the '045 patent are sufficient to defeat obviousness. Second, importing an argument from its response to MarketLinx's anticipation defense, CollegeNET claims the '045 patent is not obvious in light of the prior art because "none of the references disclose the claimed invention's technique in which the particular matching criteria that await the submitted Web form have been pre-associated with an institution-specified message that is sent out when the matching criteria are satisfied by the submitted Web form." Pl.'s Resp. [#140] at 12. Finally, CollegeNET argues MarketLinx failed to address the "secondary considerations" relevant to whether the teachings of the IBM and Brown patents should be combined by the Court when evaluating the obviousness of the '045 patent.

At the outset, the Court rejects CollegeNET's second argument. Regardless of whether the IBM and Brown patents anticipate the pre-association of an institution-specific message with a user's search, they certainly render that feature obvious. The prior art patents describe customizable, automatic notifications to be sent upon completion of a search, the contents of which notifications can be based upon the results of the search. It is difficult to imagine how the '045 patent's claimed notification technique, which provides less functionality than the IBM and Brown patents, can even be deemed novel in light of those patents, much less non-obvious.

CollegeNET's first and main argument is that the technique taught by the '045 patent is not obvious in light of the IBM and Brown patents because it is fundamentally different from the

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<sup>5</sup> Although CollegeNET makes other arguments, they are unavailing. In particular, CollegeNET argues summary judgment must be denied because there is a genuine dispute of material fact about the proper definition of the field of the invention, as well as the definition of a person of ordinary skill in the art. However, because the Court's finding of obviousness holds true under any reasonable definitions of these terms, including CollegeNET's proposed definitions, this is not a material factual dispute, and thus does not preclude summary judgment.

traditional database searches described in those patents. MarketLinx replies by arguing the '045 patent is not limited to the "counter-intuitive" approach described by CollegeNET, and CollegeNET is attempting impermissibly to narrow the scope of the patent to avoid obviousness. The Court agrees with MarketLinx.

The truth of MarketLinx's argument is amply demonstrated by examining Claims 1, 2, and 8 of the '045 patent. In relevant part, Claim 1 describes the data comparison step in general terms: "comparing data entered by a form user to each combination of the one or more fields and the corresponding field value or values so specified by the institution." Claim 2 specifies the method of Claim 1, in which the data is compared "as the completed form is received," the so-called "counter-intuitive" approach. By contrast, Claim 8 specifies the method of Claim 1, in which the data comparison "includes using a search engine to compare stored entries corresponding to data submitted from forms users," a traditional database search. The only reasonable construction of these claims, taken together, is that Claim 1 is intended to encompass both the "traditional" and "counter-intuitive" approaches.

To the extent the '045 patent attempts to disclose an invention based on traditional database searches, it is probably anticipated by the IBM and Brown patents, and it is certainly obvious in light of either of them, and both in combination. Those patents demonstrate that the subject matter of the asserted claims of the '045 patent—user interfaces using web forms and web templates, automated message delivery and notification, and data comparison (particularly via traditional database searches)—alone and in the claimed combinations, would have been obvious to a person of ordinary skill in the art at the time the claimed invention was made. "The combination of familiar elements

according to known methods is likely to be obvious when it does no more than yield predictable results.” *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. 398, 416 (2007).

Although the question is closer regarding Claim 2 and the “counter-intuitive” approach, the Court is convinced MarketLinx has demonstrated no reasonable jury could find in favor of CollegeNET on the issue of obviousness, for two reasons. First, the Court briefly notes the “counter-intuitive” approach is not entirely dissimilar to the “traditional” approach. The real difference between these two approaches is that, under the traditional method, the database to be searched contains stored form data, and the search is initiated when a user submits a set of search criteria; and, under the “counter-intuitive” method, the database to be searched contains pre-submitted sets of search criteria, and the search is initiated when a user submits a form. The Court does not suggest this is a trivial difference, or that it would not be patentable in the absence of the IBM and Brown patents, and the Court is likewise aware of the danger of gauging the novelty of the asserted claims in hindsight. Thus, although the Court notes this as a factor in its conclusion, it reduces its probative value accordingly.

Second, and more importantly, the Court refers to its observations regarding the prior art patents, and in particular the Brown patent. “If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability.” *Teleflex*, 550 U.S. at 417. Further, in conducting its analysis, “a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *Id.* at 418.

In many ways, the differences between the Brown patent and Claim 2 of the ‘045 patent are ones of degree, rather than of kind: whereas the Brown patent refers to the desirability of real-time searches and small database sizes in general terms, Claim 2 of the ‘045 patent explicitly relies on

those premises. Although the Court does not base its conclusion on this point, it briefly notes that intelligent implementation of the system described in the Brown patent reduces its differences from Claim 2 even further: if new entries are added to the database in such a way that they will be reviewed before old ones; or if the system is clever enough not to re-search old database entries at all, a “real-time” search under Brown is almost identical to the system described in Claim 2 of the ‘045 patent.

The Court finally addresses CollegeNET’s third argument, that “secondary considerations” weigh against combining the IBM and Brown patents for the purpose of evaluating the obviousness of the asserted claims in the ‘045 patent.

As an initial matter, the Court finds CollegeNET’s third argument is irrelevant in light of the above discussion, because the asserted claims in the ‘045 patent are obvious in light of the Brown patent alone. The Court further finds the asserted claims, with the exception of Claim 2, are obvious in light of the IBM patent. Thus, the Court need not combine the IBM and Brown patents to support its conclusion of obviousness.

Furthermore, however, the Court disagrees with CollegeNET’s argument. To be sure, “[i]n determining the question of obviousness, inquiry should always be made into whatever objective evidence of nonobviousness there may be.” *Vandenberg v. Dairy Equip. Co.*, 740 F.2d 1560, 1567 (Fed. Cir. 1984). “This court has previously identified, *inter alia*, commercial success, satisfaction of a long-felt need, and copying to be relevant factors in this inquiry.” *Iron Grip Barbell Co. v. USA Sports, Inc.*, 392 F.3d 1317, 1324 (Fed. Cir. 2004). “The so-called ‘secondary considerations’ can often prevent a court from slipping into an impermissible hindsight analysis.” *Vandenberg*, 740 F.2d at 1567.



CollegeNET's evidence of secondary considerations does not persuade the Court that the asserted claims of the '045 patent were non-obvious. First, although CollegeNET provides some evidence of the commercial success of the '045 patent, and a perceived need for such functionality, CollegeNET has failed to demonstrate the required nexus between the asserted claims and the commercial success. *See Iron Grip*, 392 F.3d at 1324 ("Our cases make clear that a nexus must be established between the merits of the claimed invention and evidence of commercial success before that evidence may become relevant to the issue of obviousness.") (quotation omitted). Specifically, CollegeNET's evidence demonstrates the commercial importance of automated reading of submitted forms, a feature that is hardly unique to the '045 patent. *See* Pl.'s Resp. [#140], Att. 4 at 10 (Question: "Now I believe you said if you don't have the ability to read forms automatically, you're not in the business; is that right?" Answer: "Yes. I think that's true.").

Second, the Court is not persuaded the prior art "taught away" from the asserted claims in the '045 patent. For the reasons stated above, the Court finds the Brown patent is not only consistent with the asserted claims in the '045 patent, but, if anything, teaches *toward* those claims, including Claim 2. The IBM patent is likewise consistent with the asserted claims in the '045 patent, with the exception of Claim 2, on which it is essentially silent.

Finally, even though the Brown patent is aimed specifically at a law enforcement application, rather than a more general computer database use, the Court does not believe this forecloses consideration of the Brown patent, alone or in combination with the IBM patent. *See Teleflex*, 550 U.S. at 417 ("When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one.").

Accordingly, the Court rejects CollegeNET's "secondary considerations" argument.

### Conclusion

Having reviewed the prior art patents, CollegeNET's proposed secondary considerations, the other relevant evidence, and the arguments of the parties, the Court finds MarketLinx has met its summary judgment burden on the issue of obviousness. Accordingly, the Court grants their motion for summary judgment on this ground. The Court does not reach the parties' other contentions.

Accordingly,

IT IS ORDERED that the parties' motions [#146, 157, 161] for leave to file sealed documents are GRANTED;

IT IS ORDERED that Defendant MarketLinx, Inc.'s Motion for Partial Summary Judgment of Invalidity [#132] is GRANTED IN PART, as described above;

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that Claims 1, 2, 3, 6, 10, and 14 of United States Patent 6,910,045 are invalid due to obviousness, pursuant to 35 U.S.C. §§ 103 and 282;

IT IS FINALLY ORDERED that all other pending motions are dismissed as moot.

SIGNED this the 8<sup>th</sup> day of November 2011.

  
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SAM SPARKS  
UNITED STATES DISTRICT JUDGE