

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

DIALECT, LLC,
Patent Owner.

Case IPR2024-00753
Patent 7,640,160

PATENT OWNER'S SUR-REPLY

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PATENT OWNER’S EXHIBIT LIST

Exhibit No.	Description
2001	Patent Owner’s Power of Attorney
2002	U.S. Patent 7,693,720 (“the ’720 Patent”)
2003	U.S. Patent 8,015,006 (“the ’006 Patent”)
2004	U.S. Patent 8,195,468 (“the ’468 Patent”)
2005	U.S. Patent 9,263,039 (“the ’039 Patent”)
2006	U.S. Patent 9,495,957 (“the ’957 Patent”)
2007	Order (Construing Claim Terms), Dialect, LLC v. Amazon.com Inc., Civ. No. 1:23cv581, Dkt. 213 (E.D. Va. Apr. 29, 2024)
2008	Reserved
2009	Reserved
2010	Declaration of Benedict Occhiogrosso in Support of Patent Owner’s Response
2011	Deposition Transcript of Christopher Schmandt, taken January 29, 2025
2012	Reserved
2013	Reserved
2014	Deposition Transcript of Christopher Schmandt (taken June 20, 2025)
2015	Errata Sheet for Deposition Transcript of Christopher Schmandt (signed June 25, 2025)

Patent Owner Dialect, LLC (“Dialect” or “Patent Owner”) files this Sur-Reply responding to Petitioner Google LLC’s Reply of May 16, 2025 (“Reply”). For the reasons below and as set forth in Patent Owner’s Response (“POR”), the Petition fails to establish the unpatentability of claim 12 of U.S. Patent No. 7,640,160 (the “’160 patent”).

I. THE PETITION’S GROUND FAILS TO DISCLOSE EVERY CLAIMED FEATURE

Petitioner’s Reply seeks to find the claimed “expected contexts” in three places. First, the Reply asks the Board to consider “possible contexts” in Kennewick to be the claimed “expected contexts.” Second, the Reply asks the Board to consider “contexts associated with earlier question(s)” to be the claimed “expected contexts.” Finally, the Reply looks to Ross’s reordering of contexts in a context stack to be the claimed “expected contexts.”

None of these formulations meet the requirements of claim 12, however. Mainly, this is because the sole challenged claim—claim 12 of the ’160 patent—discloses not only a category of contexts referred to “one or more expected contexts,” but also a process of winnowing the “one or more expected contexts” down to a “most likely context for the [user’s] utterance.”

Per claim 12, the claimed method compares text combinations generated from a user’s utterance “against one or more expected contexts stored in a context stack” as part of the process of identifying matching contexts. Those matching

contexts are then scored, and a most likely context is determined. Thus, there are at least three categories of contexts that are required by claim 12: “one or more expected contexts,” the identified matching contexts that result from comparing text combinations from a user’s utterance against the one or more expected contexts, and a most likely context that results from the scoring of the identified matching contexts.

Petitioner’s theory of invalidity fails to establish these three categories of contexts. Simply put, there is no interpretation of Kennewick advanced by Petitioner that includes each of these categories because Kennewick searches its entire context stack for matches to identify and then score matching contexts. Indeed, even under Petitioner’s theory that Kennewick’s “possible contexts” satisfy claim 12’s “expected contexts,” Kennewick does not identify matching contexts from among the “possible contexts,” and then score the identified matching contexts to determine a most likely context. Similarly, associating contexts with earlier questions does not cause Kennewick to treat those contexts as “expected” and then identify matching contexts from among those contexts, and then score the identified matching contexts to determine a most likely context. Kennewick lacks the three categories of contexts needed per challenged claim 12.

Further, as made clear from the second deposition of Mr. Schmandt, Petitioner’s proposed combination with Ross does not alter Kennewick’s approach

of searching an entire context stack for matches to identify and then score matching contexts. Rather, Petitioner’s theories rely on the notion that Kennewick and Ross look to all contexts in a context stack and not just expected contexts. POR, 13; Ex. 1016 (Schmandt Reply Decl.), ¶ 14 (“Nothing in the plain language of claim 12 requires that this claimed context stack also store other contexts—the claimed context stack could exclusively store expected contexts”); Ex. 2014 (Second Schmandt Deposition), 48:20-25 (confirming that Petitioner does not have “any evidence that shows an expected context stack and a context stack that’s not expected”).

All that the combination would do in view of Ross would be to change the order of Kennewick’s entries in a context stack, but all entries would still be scored. Perhaps recognizing this deficiency, Mr. Schmandt further clarified that he envisioned that each context entry in the proposed combination could have a “timestamp,” and that the “timestamp” could be used to winnow context entries before searching. But he also admitted that concept was not in Ross. Instead, Mr. Schmandt effectively projected the teachings of the ’160 patent’s context-specific-matchers, and approach to winnowing contexts, into his combination without any support in the patents and printed publications relied upon in the Grounds.

For these reasons, the sole Ground in the Petition fails to establish unpatentability of claim 12.

II. PETITIONER'S CHALLENGE FAILS ON THE MERITS

The POR addressed how the Petition's two different theories of Kennewick and theory concerning a combination of Kennewick and Ross each fail. *See* POR, 25-38. The Reply once again argues these same theories of how the prior art allegedly discloses "expected contexts," but each theory is neither correct nor even logical.

A. Petitioner Fails to Apply a Proper Interpretation of the Claimed Steps

An overall deficiency with Petitioner's theories is one of claim construction. Petitioner alleges that "the scoring step 12[c] could take place in parallel with, or even as part of, the identifying step 12[b] performed by Kennewick." Reply, 12. But this theory undercuts the antecedence existing in claim 12. Per claim 12, there are three claimed categories of contexts: "one or more expected contexts," the identified matching contexts that result from comparing text combinations from a user's utterance against the one or more expected contexts, and a most likely context that results from the scoring of the identified matching contexts. Further, the claim expressly requires the claimed steps of "identifying ... wherein identifying the matching contexts includes comparing ...," "scoring," and "selecting." Petitioner's theory that the scoring and identifying can be collapsed into a single step represents an improper recasting of the claim to suit malformed theories of invalidity that cannot withstand scrutiny. Indeed, the "scoring" step

requires “scoring each of the identified matching contexts,” but Petitioner’s improper writing of the claim reduces this step into “scoring each of the contexts,” and eliminates claimed steps from claim 12.

B. Petitioner’s First Theory of “expected contexts” in Kennewick Fails

Turning to each theory, Petitioner points to “possible contexts” in Kennewick, and contends that “because these ‘possible contexts’ are recognized as possibly matching the user’s intent, the ‘possible contexts’ are a first way that Kennewick discloses the ‘**one or more expected contexts.**’” Pet., 38 (citing Schmandt, ¶78); Reply, 2 (restating this theory from the Petition). Petitioner also argues that “neither claim 12 nor the written description imposes any requirement as to the point in time when a context may be ‘expected,’ nor is there any requirement that the system expressly flag or otherwise identify a context as ‘expected.’” Reply, 2.

But these arguments miss the point that claim 12 requires three categories of contexts, including the process by which those categories are established, and Kennewick fails to disclose or suggest these features. This shortcoming of Kennewick is reinforced with Petitioner’s next argument, which states, “Kennewick does not say that all contexts are scored, only ‘possible’ contexts.” Reply, 2. But scoring “possible contexts” in Kennewick confirms that Kennewick is missing a step, because in claim 12 of the ’160 patent, the claimed method

compares text combinations generated from a user's utterance "against one or more expected contexts stored in a context stack" as part of the process of identifying matching contexts, the matching contexts are then scored, and a most likely context is determined. Even if Kennewick's "possible contexts" were sufficient to disclose the claimed "one or more expected contexts," Kennewick jumps right to scoring, without the predicate step in claim 12 of identifying matching contexts from among the "expected contexts."

Petitioner further muddies its first theory of Kennewick by asserting that "all of the 'possible contexts' as described by Kennewick can be the claimed 'expected contexts.'" Reply, 3. This is consistent with the testimony given by Mr. Schmandt at deposition, where he explained that every context entry in a context stack is a possible context (and an expected context). Ex. 2011, 70:14-15. But this does not solve Petitioner's problem in matching Kennewick to claim 12, because Petitioner contends that Kennewick scores all "possible contexts." Reply, 2. Rather than practicing claim 12, Kennewick is simply scoring every entry in a context stack to find a highest score. This first theory therefore eliminates the predicate step in claim 12 of identifying matching contexts from among the "expected contexts," and fails.

For these reasons, Petitioner's first theory based on "possible contexts" in Kennewick fails to disclose or suggest "one or more expected contexts" as recited in 12[b].

C. Petitioner's Second Theory of "expected contexts" in Kennewick Also Fails

Second, Petitioner contends that Kennewick's "one or more contexts associated with earlier question(s) is another way that Kennewick discloses and renders obvious the 'one or more expected contexts.'" Pet., 39 (citing Schmandt, ¶78); *see also* Reply, 3-4 (recounting Petition's second theory). But again this theory fails because Kennewick expressly discloses the use of "previous context" in the scoring process of Kennewick's embodiment. Ex. 2010 (Occhiogrosso Declaration), ¶88.

Kennewick teaches using "previous context" to score possible contexts. As Kennewick explains, a most likely context or domain "is determined from weighting a number of factors including, the user profile 110, the domain agent's data content and *previous context*." Kennewick, ¶0153 (emphasis added). Element 12[c] is claim 12's "scoring" step, but Petitioner's second theory fails because Kennewick's previous context, which is used as part of the scoring step, does not fit the concept or use of "expected contexts" recited in element 12[b], where expected contexts are used to identify matching contexts rather than being scored. Ex. 2010 (Occhiogrosso Declaration), ¶¶89-90.

As noted in the POR, even if context entries with dialog history were incorrectly considered a set of “expected” contexts, element 12[b] still requires the set of contexts to be compared against text combinations to identify matching contexts. Petitioner broadly posits that text combinations are compared against “context keywords in the context stack” (Pet., 39), but this ignores that Petitioner’s theory would require a narrower comparison to only those entries “associated with an earlier question,” and Petitioner fails to show such a narrower comparison. Ex. 2010 (Occhiogrosso Declaration), ¶94.

D. Petitioner’s Third Theory of “expected contexts” in view of Ross Also Fails

In the Petition, Petitioner contended “a person of ordinary skill in the art, seeking to further understand or implement Kennewick’s disclosures, would have appreciated that Ross picks up where Kennewick leaves off and would have turned to Ross for its more detailed teachings.” Pet., 37. And Petitioner’s Reply fails to rebut Patent Owner’s discussion of Ross as presented in the POR. *See* POR, 31-38. As such, Petitioner continues to suggest that Ross solves the deficiencies of Kennewick in its first and second theories, but this is incorrect.

As Petitioner concedes, Ross sorts contexts “in priority order, such that the most-recently accessed context—such as the context associated with the most-recently accessed application—will be the first (but not necessarily only) context evaluated when processing the next user utterance.” Reply, 4. But Ross’s stack

order has no bearing on how many of Kennewick's previous contexts are used as part of the identifying step. Even in a combination of Kennewick and Ross, there is no use of expected contexts to identify matching contexts, following by a scoring of those identified matching contexts to determine a most likely context.

Petitioner faults Patent Owner's argument as "improperly attack[ing] Ross individually when Petitioner's mapping involved the combination of Kennewick and Ross." Reply, 22. The problem with Petitioner's theory, however is that the proposed combination of Kennewick and Ross makes no sense. Petitioner relies on Kennewick to disclose "express motivation for matching, identifying, and scoring multiple expected contexts." Reply, 22. But Ross's contexts are arranged in order starting with the most-recently accessed context such that no scoring is required to find a selected context. All that Ross requires is a match of fixed content, like grammars, and not dynamic content such as the claimed contexts with prior utterances. Thus, Kennewick scores every context to find the selected context because, in Kennewick (unlike Ross¹), partial matches can be identified for Kennewick's subsequent storing process. This means that since Kennewick scores

¹See Ex. 2014, 10:21-11:15 (first opining on how Ross would process a "partial match," then "backtracking" after confirming Ross does not reference a "partial match").

every context in Kennewick's context stack, the order of those entries in the combination would actually mean nothing until scoring takes place.

In other words, rather than “pick[ing] up where Kennewick leaves off,” Ross provides a different search technique that reorders a context stack so that Ross's search can end upon finding a matching context—in contrast to scoring the entire context stack as performed by Kennewick.

Petitioner's Reply confirms this. In Reply, Petitioner only relies on Ross's reordering of its context stack to provide the claimed “expected contexts.” Reply, 18-20 (“Ross discloses “**expected contexts**” by virtue of matching and subsequently reordering contexts in a context stack.”) (emphasis in original). Indeed, Ross reorders his context list and selects the “top priority context 70 [that] can process (i.e., recognize) the phrase” and “directs translation of the phrase to the [corresponding] application 26.” Ex. 2010 (Occhiogrosso Declaration), ¶¶102-03.

But modifying Kennewick's context list to allow it to be reordered like Ross teaches does not convert Kennewick's, or the combination's, context entries into “expected contexts.” This was confirmed at the second deposition of Mr. Schmandt who testified (Ex. 2014, 21:3-23) (emphasis added):

Q Well, it seems to me that doesn't make much sense to keep going down the stack if Ross already knows it's going to stop and use the highest priority context. Why

would it look at lower priority contexts if it's already received a match that fits?

A *So Ross in isolation wouldn't necessarily do this, you're correct.* But Ross in combination with Kennewick may well do it because Kennewick stores a lot more information in the context stack than what Ross stores or at least what Ross discusses here. *What Ross discusses here is simply having a grammar*, okay. What Kennewick discusses is having other information, synonyms, history, things such as that which can influence making a more sophisticated decision.

Even with reordering of Kennewick's context stack entries in the combination, the proposed combination of Kennewick and Ross, according to Petitioner's expert, would still have to use the entire stack search methodology of Kennewick. In fact, Petitioner's expert sought to further modify the proposed combination, based on something Ross was "agnostic" to (that is, does not disclose), to add a context specific matcher—like found in the '160 patent—of a "timestamp" so as to narrow the entire context stack down and only search "newer" contexts (Ex. 2014, 14:21-16:6) (emphasis added):

[T]he e-mail application is at the top of this stack because I've used it very recently, but the calendar application is pretty far down, okay and *must postulate further that we keep timestamp*, which is typical of these kinds of system.

All right. So at some point I look at the e-mail context and I can look at the e-mail context and I can say okay, print it will work here. Let's just assume that print it doesn't work for the browser page and the Facebook page and the spreadsheet pages for the sake of argument, right. Well, if I haven't -- if I have -- if I start at the top and look at those other contexts and I see oh, well, you know, I was looking at the browser 10 minutes ago, I don't have to look any further back in the past, so it could be a reasonable implementation to say well, okay, I'm going to just stop here. I don't have to look any further because it doesn't make any sense for somebody to say print it referring to something they did 15 minutes ago.

Thus, what Petitioner's expert did was to take the combination of Kennewick and Ross, and further add to it based on nothing found in Kennewick or Ross. Such a theory fails at least under 35 U.S.C. § 311 as it is not based on the Grounds asserted, and also fails the legal principal that the teachings of the '160 patent cannot be used as a supplemental disclosure for what is absent from the prior art.

Given these differences, Petitioner has not shown how a combination of Kennewick and Ross would include each feature of the claimed invention. As a result, neither Petitioner nor its declarant explains any viable theory of how Kennewick allegedly discloses "expected contexts." For the foregoing reasons,

Kennewick also does not disclose or render obvious element 12[b] of claim 12 of the '160 patent.

III. CONCLUSION

For the reasons presented above, Patent Owner asks that the Board issue a final written decision confirming the patentability of claim 12 over Petitioner's challenge.

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CERTIFICATE OF WORD COUNT

The undersigned certifies that the foregoing PATENT OWNER'S RESPONSE complies with the type-volume limitation in 37 C.F.R. § 42.24(c)(4). According to the word-processing system's word count, the brief contains 2,740 words, excluding the parts of the brief exempted by 37 C.F.R. § 42.24(a).

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CERTIFICATE OF SERVICE

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