

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOGLE INC.,  
Petitioner,

v.

DIALECT, LLC,  
Patent Owner

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IPR2024-00753  
Patent 7,640,160 B2

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Held: August 1, 2025

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BEFORE: NEIL T. POWELL, GEORGE R. HOSKINS, and JON.  
M. JURGOVAN, Administrative Patent Judges.

The above-entitled matter came on for hearing on August 1, 2025,  
commencing at 11:00 a.m., via video teleconference.

IPR2024-00753  
Patent 7,640,160 B2

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P R O C E E D I N G S

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JUDGE JURGOVAN: This is the trial hearing for  
IPR2024-00753 concerning U.S. Patent number 7,640,160 B2.  
The date is August 1st, 2025. It's approximately 11:00 Eastern  
Time.

On the panel with me today are Judges George Hoskins  
and Neil Powell. I am Jon Jurgovan. Could we please have the  
parties enter their appearances, starting with the Petitioner first,  
please?

MS. KEEFE: Good morning, Your Honors. Heidi  
Keefe, appearing on behalf of Petitioners. With me is Andrew  
Mace, who's appearing by phone.

JUDGE JURGOVAN: And representing?

MS. KEEFE: Google.

JUDGE JURGOVAN: Thank you. Patent Owner,  
would you please enter your appearance?

MR. HELGE: Good afternoon, Your Honors. My name  
is Wayne Helge, H-E-L-G-E, the counsel for Patent Owner,  
Dialect, from the Bunsow De Mory Firm. And, Your Honors, with  
me in this room is back-up Counsel, James Wilson, although we  
don't expect him to appear on camera or on the transcript.

JUDGE JURGOVAN: Thank you. First of all, I'd like

1 to thank the parties for agreeing to move the hearing date to today.  
2 My wife had major surgery that was scheduled after the first  
3 hearing order went out -- right on the same date of our hearing.  
4 So, I thank you again for your flexibility in moving the date.

5 By the parties' agreement, and as stated in the second  
6 hearing order, each party will have 30 minutes to present their  
7 arguments. You may reserve time for rebuttal. Petitioner, how  
8 much time would you like to reserve for rebuttal?

9 MS. KEEFE: I'd like to reserve 15 minutes, Your Honor,  
10 and we certainly hope your wife is doing better.

11 JUDGE JURGOVAN: Thank you very much, she is.  
12 And Patent Owner, how much time would you like to reserve for  
13 rebuttal?

14 MR. HELGE: Just four minutes, please, Your Honor.

15 JUDGE JURGOVAN: Four minutes. Okay, thank you.  
16 Okay. You may share your demonstratives. As you are speaking,  
17 when you do so, please refer to them -- if you're not sharing the  
18 demonstratives, please refer to them by slide number. And also, as  
19 you're pointing out evidence in the record, or papers, please  
20 identify the paper number and exhibit number, page -- line  
21 numbers, et cetera, so that the record will be clear as to what you're  
22 referring to when the hearing transcript is prepared.

23 This is a public hearing. The public line is open, so if for  
24 any reason you need to discuss confidential information, please let

1 us know in advance so that we can close the public line. None of  
2 the information in this record has been designated confidential so  
3 we don't expect that that will be the case. If you experience any  
4 technical difficulties, we'll observe a pause until those are cleared  
5 up.

6 And then, finally, after the call, please remain on the line  
7 in case the court reporter has any questions to ask you regarding  
8 terms that may not have been understood.

9 With that, I think we're ready to begin, unless the parties  
10 have any questions. Hearing none, Petitioner, it's your burden so  
11 you will start out here today.

12 MS. KEEFE: Thank you, Your Honor. And I've found  
13 in the past that -- for bandwidth reasons, it's better if I just give you  
14 the slide numbers instead of sharing them so I'll be doing it that  
15 way.

16 JUDGE JURGOVAN: As you like.

17 MS. KEEFE: Good morning, panel. I'd like to start with  
18 us looking at Slide 2. Through all of the briefing in this case, the  
19 dispute has crystalized into a single issue. Does the prior art  
20 disclose comparing the text combination against one or more  
21 expected contexts stored in a context stack as required in Claim 12  
22 at Limitation B2? The answer is, yes, as the Board already found,  
23 and Patent Owner's arguments have really not changed.

24 But before we dive in, let's step back briefly to set the

1 stage. All three of the references that will be discussed today: the  
2 '160 Patent, Kennewick and Ross, deal with the same issue, or  
3 problem, of trying to make computers better at understanding  
4 human speech. In fact, the titles of the '160 in Kennewick are  
5 identical, as you can see at Slide 5, Systems and Methods for  
6 Responding to Natural Language Speech Utterance. And Ross,  
7 very similarly, on Slide 7, is a System and Method for  
8 Determining Utterance Context in a Multi-Context Speech  
9 Application.

10 All these systems realized that matching transcribed text,  
11 while useful, was not enough. Simply put, context matters, and  
12 needs to be taken into account.

13 To borrow an example from the prior art here, if a user is  
14 sitting in front of a computer and says, open the first message,  
15 open the first message becomes the text that we will be dealing  
16 with -- becomes the textual combination. Open the first can be one  
17 portion of text combination, message can be another, or first  
18 message could be another. They could be split up in any way that  
19 the computer deems fit.

20 Matching the words from the phrase, open the first, could  
21 apply to a mail program, a calendar program, word processing, or  
22 text messaging. The word, message, helps eliminate calendar and  
23 word processing as potential context, but the computer might still  
24 like to know whether the program that is open is the messaging

1 program or the mail program to know best which of the open the  
2 first message application applies to.

3 So, does the prior art in this case disclose matching text  
4 combinations, like open the first message, to one or more expected  
5 combination? And the answer is, yes. And I'd like to turn to Slide  
6 14.

7 Petitioner mapped three alternative grounds for this  
8 limitation. The first were the possible contexts of Kennewick at  
9 paragraph 152 of Kennewick. Second, the inherited context from  
10 prior questions at paragraphs 144 and 145 of Kennewick, and  
11 third, Kennewick in view of Ross.

12 While Petitioner feels strongly that mappings one and  
13 two are still viable, we are happy to rest on the papers on those,  
14 and with Your Honors' permission, I'll focus on the third mapping  
15 of Kennewick in view of Ross.

16 To begin, there seems to now be consensus that Ross  
17 disclosed comparing a text combination to a context. Patent  
18 Owner's response at page 34, admits that Ross matches speech  
19 inputs to a grammar stored in a context list. This should come as  
20 no surprise, since on Slide 37, we see the disclosure in Ross --  
21 sorry, the disclosure on Slide 38 -- the disclosure in Ross of  
22 checking the speech representation against context 70 in paragraph  
23 37.

24 In Slide 9, we see that Ross specifically contemplates

1 that a grammar is a context, and this is a quote from Ross Exhibit  
2 1005 at paragraph 60. Patent Owner also admits this on Slide 39,  
3 when he was asked specifically, "So, in Ross a context can  
4 include, for example, lists of keywords or phrases, right?" And he  
5 answers, "The context may include going to that second list of  
6 keywords."

7 The only question that seems to remain then, whether  
8 Ross discloses using expected combinations -- or sorry, contexts.  
9 First, it's important to know that there's no real discussion in the  
10 '160 Patent of what an expected context is, or is not, or how to find  
11 an expected versus a not expected context in any way. Instead, the  
12 Patent simply uses the word expected in its normal, plain meaning.

13 I point, for example, to Exhibit 1001, the '160 Patent, at  
14 column 23, lines 18 through 20, where expected cloud cover and  
15 expected type of precipitation are mentioned. Ross definitely  
16 compares its texts to expected context using this plain meaning.

17 The context -- turning now to Slide 40. The context list  
18 in Ross is ordered, such that the most recent applications that have  
19 been invoked or used by a user are moved to the head of the list.  
20 This is done because of an expectation that the most recently used  
21 applications will be of the most relevance, and therefore it's  
22 obvious to look at those first when determining whether or not  
23 there's a match.

24 At Slide 47, we actually have a quote from our Petitioner

1 response that talks about this. I would also turn Your Honors'  
2 attention to Slide 42, which is from the Schmandt declaration at  
3 1006, paragraph 7, which indicates a reason you would do this is  
4 because, indeed, the best predictor of future behavior is past  
5 behavior. Therefore --

6 JUDGE JURGOVAN: Counsel, in turning to Slide 40,  
7 what's your -- looking at Ross there, and we see the context 70-1,  
8 70-2, 70-3 --

9 MS. KEEFE: Yes.

10 JUDGE JURGOVAN: -- what's your understanding  
11 there of what the expected context are there?

12 MS. KEEFE: So, 70-1, 70-2, 70-3, are each applications  
13 that have been placed into order by virtue of which was the last  
14 used. So, for example, if the user had been using a Word  
15 application last, then Word would be in 70-1. The user would  
16 potentially have all been using the email program before that, that  
17 would be 70-2. So, in the mapping that we're talking about, all of  
18 those contexts would be applications that had been invoked.

19 JUDGE JURGOVAN: Right. So, there's a FILO stack  
20 there.

21 MS. KEEFE: Yes.

22 JUDGE JURGOVAN: Is 70-1 the expected context or  
23 are they all expected context?

24 MS. KEEFE: Honestly, Your Honor --

1 JUDGE JURGOVAN: All --

2 MS. KEEFE: -- I believe that they are all. I'm sorry, I  
3 didn't --

4 JUDGE JURGOVAN: They are all? Okay.

5 MS. KEEFE: Yeah. And I think they are all expected  
6 contexts.

7 JUDGE JURGOVAN: That's what I was driving at,  
8 thank you.

9 MS. KEEFE: Yes, they are all expected contexts, thank  
10 you. So, turning then to Slide 47, I'd like to just briefly go through  
11 some of the arguments that Patent Owner had made and respond to  
12 those. Patent Owner argues that Ross doesn't have an expected  
13 response -- or, sorry, an expected context, because it discloses a  
14 first-to-match system and therefore fails to disclose the expected  
15 context.

16 The first answer is that that's an improper reading of the  
17 claim itself, which calls out very specifically that you only need to  
18 match the text combination against one or more expected contexts.  
19 So, even if Ross were a first-to-match system, which we dispute,  
20 that would still satisfy the claim because you would be matching  
21 against the first expected context. But Ross is not limited to one  
22 context and a first-to-match only.

23 Turning to Slide 48, for example, looking at paragraph  
24 35 of Ross, Ross specifically says that, "When an utterance is

1 recognized," a text expression, "it will be tested against each  
2 application's grammar to see if the grammar will except this."  
3 And, in fact, in the Board's decision in institution, the Board  
4 specifically recognized that because multiple applications could  
5 overlap in the types of things that might apply to them, there  
6 would always be multiple applications looked at.

7           Slide 49 goes on to explain further that -- for example,  
8 it's not also just about a single, perfect match that's being made.  
9 The claim calls for identifying matches that completely or partially  
10 match. And in our example of open the first message, "open the,"  
11 would partially match against potentially the invoked word  
12 processing program, as well as the calendar, but there would be a  
13 potential perfect match against the messaging for the mail  
14 programs.

15           Turning now to Slide 52, we want to point out that that  
16 argument by Patent Owner, that it's only a first-to-match system,  
17 also ignores the combination of Ross with Kennewick, where  
18 Kennewick talks about giving scores to potentially all matches,  
19 including continuing to go on to match all things down its contact  
20 list, and that will be used in the combination.

21           Finally, there's another argument where Patent Owner  
22 has said that Ross only selects one grammar among the context list  
23 based on a first match, and that that somehow negates it into prior  
24 art, and this is at Slide 55. But Patent Owner's own expert

1 acknowledged that Claim 12 only requires identifying one  
2 matching context. He was asked, "And so the identified matching  
3 context in 12C, that's referring to the one or more contexts that  
4 were identified in 12B, right?" And he answers, "Yes, that's my  
5 understanding."

6 And so with that, Your Honors, unless you have any  
7 other questions, I would reserve the remainder of my time, and I  
8 appreciate your attention.

9 JUDGE JURGOVAN: Let's hear from the Patent Owner  
10 now.

11 MS. KEEFE: I'm sorry. I couldn't quite hear what you  
12 said.

13 JUDGE JURGOVAN: I'm sorry. Let's hear from Patent  
14 Owner now, please. Thank you.

15 MS. KEEFE: Thank you.

16 MR. HELGE: Good morning, Your Honors, may it  
17 please the Board. Your Honors, for sake of convenience, I think it  
18 makes sense for us to remain on Petitioner's demonstratives, and I  
19 think we can dispatch a few of the theories using the evidence that  
20 they presented and relied upon here.

21 Very quickly, Your Honor, I know that Petitioner relied  
22 upon the papers for their first two theories, but I'd like to address  
23 those and look at their evidence on those first two theories. I think  
24 the reason they're giving up on those two theories is they're not

1 very good.

2 So, what I'm going to do -- and, Your Honors, I'm happy  
3 to share my slides. I think you probably don't -- or I think you  
4 already have Petitioner's demonstratives on your screen, so I'm  
5 going to go back to Slide 14 and just do a very quick recap of their  
6 three theories, which I know Your Honors are familiar with.

7 So, looking at Petitioner's demonstratives, Slide 14, as  
8 counsel noted, they do have three theories, two -- the first two  
9 depend upon Kennewick alone. The first one is pointing to  
10 Kennewick's -- and for the reporter, that's K-E-N-N-E-W-I-C-K,  
11 Kennewick -- the possible contexts that show up in paragraph 152  
12 of Kennewick, which we'll go to in just a moment.

13 Second theory is Kennewick alone, and they're relying  
14 there on what they call context associated with earlier questions.  
15 And that theory shows up in the petition, and they rely upon  
16 Kennewick's paragraphs 144, 145, and 166, and we have a slide in  
17 Petitioner's demonstratives that we can point -- or discuss there as  
18 well. And then, as counsel discussed in some depth, the  
19 Kennewick in view of Ross combination.

20 So, Your Honors, I'm going to move to Slide 16 of  
21 Petitioner's demonstratives, and this is paragraph 152 of  
22 Kennewick. And so, this is where they point to their first theory.  
23 They say Kennewick's possible context satisfy the expected  
24 context of the claim at issue Claim 12.

1           Now, if Your Honors recall sort of the general structure  
2 of Claim 12 in element 12B, in particular, the step of identifying  
3 one or more contexts that completely or partially match, includes a  
4 step of comparing text combinations against two things: grammar  
5 expression entries, which I don't think we need to talk too, too  
6 much about today, although I'm happy to discuss if Your Honors  
7 would like. But also, comparing those text combinations against  
8 one or more expected contexts stored in the contexts stack.

9           So, through the structure of the claim, the one or more  
10 expected contexts are in effect and input into this identifying or  
11 matching step. Now, what's critical about Kennewick paragraph  
12 152, and what you see in the very last sentence of paragraph 152,  
13 the possible context in Kennewick are scored. That means, if  
14 there's a matching going on in Kennewick, it is not against  
15 possible context. Rather, the possibly context of the output.

16           So, in our claim, expected context of the inputs of the  
17 matching, and that yields identified matching contexts, whereas in  
18 Kennewick paragraph 152, the possible contexts are at best an  
19 output of the matching. Because we see here that we're talking  
20 about possible contexts being scored. So, there's already been a  
21 matching going on to figure out what's possible.

22           Simply put, Your Honors, paragraph 152 of Kennewick  
23 and the possible context are in the wrong place to render 12B --  
24 any step in 12B, or any portion, in particular, the expected context

1 obvious. They don't render -- paragraph 152 does not render that  
2 element obvious.

3 If Your Honors have no questions about that first point,  
4 I'm happy to move to the second point.

5 JUDGE JURGOVAN: No questions.

6 MR. HELGE: And the second slide, Your Honor, I'd  
7 like to go to is Slide 30 of Petitioner's demonstratives. And this  
8 gets into the second idea of context associated with earlier  
9 questions.

10 Now, Your Honor, looking at paragraph 144, 145, and  
11 166 of Kennewick, in no instance here does Kennewick talk about  
12 using context associated with earlier questions as an input, again,  
13 as I mentioned before, an input to this identifying matching  
14 context. That's not how Kennewick uses what they call context  
15 associated with earlier questions.

16 Now, I think the easiest place to find the truth of what's  
17 really going on in Kennewick is paragraph 166, and they haven't  
18 highlighted this sentence but if you look in paragraph 166, before  
19 the highlights, what this paragraph says is that the domain agent --  
20 I'm reading the second sentence -- the domain agent in 156 scores  
21 the relevance of the results based on results already received, the  
22 context, the criteria, and here you have the history of the dialog.  
23 And that dialog history, you can see in their highlighted sentence,  
24 that's what they're pointing to for this, quote, unquote, "context

1 associated with earlier questions."

2           The problem here, this is involved in scoring. This is the  
3 same thing that possible context -- where a possible context  
4 occurred in this process of Kennewick's paragraph 152. They're  
5 already downstream of this identified matching step.

6           And again, in element 12B of our claim, the expected  
7 contexts are the input. They have to exist, in some capacity before  
8 this identifying one or more context steps occur because they're  
9 used in that process.

10           So, when I look at paragraph 144 and 145 as well, there's  
11 nothing in here that disturbs that conclusion, that the dialog history  
12 is used as part of scoring, not as part of identifying one or more  
13 contexts that completely or partially match, as required in 12B.

14           So, once again, Kennewick alone fails. The possible  
15 contexts of paragraph 152 don't satisfy expected contexts. I mean,  
16 even if you were to say, is it possible the same thing is expected,  
17 the important part for Kennewick, and for evaluating the  
18 patentability of Claim 12 over Kennewick alone, is that those  
19 expected contexts have to be used in the correct step of the process  
20 in the correct order, otherwise the claim isn't practiced, it's a  
21 different process.

22           So, the possible contexts of paragraph 152 don't match  
23 how expected contexts are used in 12B, and they don't match --  
24 excuse me, the dialog history that's discussed on Slide 30, and in

1 paragraphs 144, 145, and 166 of Kennewick, also don't match how  
2 expected contexts are used in element 12B of our claim. So, we  
3 think we can effectively shut out their first theory and their second  
4 theory.

5 And if Your Honors have no other questions about  
6 Kennewick alone, I'm happy to move on to the Kennewick and  
7 Ross combination.

8 JUDGE JURGOVAN: No questions about the second  
9 ground, thank you.

10 MR. HELGE: Thank you, Your Honor. Your Honor, I  
11 think there's a couple things that are really interesting about Ross.  
12 Interestingly, my guess is that Patent Owner and Petitioner don't  
13 really have a tremendous disagreement on how Ross operates. But  
14 here's an important part. Judge Jurgovan, when you ask counsel,  
15 which of those contexts on slide, I think it was Slide 47 -- let's go  
16 to that slide. Is it 47? It may have been 40. I think, Your Honor --  
17 I think it was Slide 40.

18 Judge, you're going to -- you asked whether any of those  
19 contexts were expected, or are all of them expected? And Counsel  
20 was a little bit cautious about answering that question for a while,  
21 and I think you were correct to say, are they all expected? And I  
22 think the important part about Ross, when you propose to combine  
23 it with Kennewick, is you really aren't creating any category of  
24 expected versus unexpected, for example. Importantly, all Ross

1 does is reorder the stack based on an application that was last used.

2 But here's the important part. As Counsel, I think  
3 admitted, if you were to say, open the first -- well, I think we  
4 should just use the example in Ross, right, print it. They say print  
5 it. Print it could refer to a printing function in our application, it  
6 could be referring to an email application. There's really no  
7 hierarchy on which one of those applications, or which one of  
8 those contexts within Ross would have been expected. It could be  
9 the top one that gets selected, it could be the bottom one. It doesn't  
10 matter. There's really no focus being applied in Ross. It's simply a  
11 reordering of the context that already exists.

12 And I think here's the important part about the way  
13 Petitioner is interpreting Ross, which again, I don't think we  
14 disagree with. Ross does have a conflict management system, and  
15 that's why Ross reorders the context, right? Because if there's a  
16 question about which application needs to process the grammar  
17 and Ross isn't sure, Ross goes to the highest one that matches.

18 But here's the problem, how does Ross know how many  
19 contexts potentially match a grammar? Ross has to check the  
20 entire stack, just like Kennewick checks the entire stack.

21 So, the only way Petitioner can even craft a theory that  
22 relies on Ross in combination with Kennewick is by somehow  
23 saying that every context in Ross is expected, because Ross needs  
24 to check the entire stack to know whether an application you

1 haven't opened for a couple days is the application that you're  
2 trying to pull up in your verbal command.

3           The point is, there's nothing in Ross that makes one a  
4 context expected or unexpected, Ross checks them all, just like  
5 Kennewick checks them all. There's no concept of looking at  
6 expected context.

7           Another thing is, Counsel mentioned -- we talked earlier  
8 about -- or she mentioned earlier, we're trying to do better on  
9 processing. And I think that's what this patent was about is trying  
10 to do better. If you can't get a match, you start focusing in on  
11 expected context. And that's not an intellectual exercise. It's not  
12 for us to say, well, run a search, and whatever comes out of the  
13 search, well, that was what was expected. If you need to run a  
14 search to find out what's expected, it probably wasn't expected.

15           JUDGE HOSKINS: Mr. Helge?

16           MR. HELGE: Yes, sir.

17           JUDGE HOSKINS: This is Judge Hoskins. Can you  
18 point to anything in the specification of the challenged patent that  
19 helps your argument, trying to distinguish what's going on in Ross  
20 from, quote, unquote, "expected context"?

21           MR. HELGE: Well, Your Honor, look, I think it's -- it's  
22 really -- column 13 -- and this is an embodiment that was added in  
23 the '160 Patent relative to Kennewick. And it begins, Your Honor,  
24 at the bottom of column 13, line 60, and it goes for about -- to

1 about column 14, line 20. And the idea of accessing a set of  
2 expected context begins really in column 13, line 64. It says,  
3 "Acknowledge enhanced speech recognition may access a set of  
4 expected contexts that are stored in the context stack to determine  
5 a most-likely context."

6 What's interesting about that, Your Honor, and I think  
7 why that's the most relevant point here, and answer to your  
8 question is, we do have, in the preceding sentence, that this  
9 recognition system, this embodiment is used to determine the  
10 intent of the request and/or to correct false recognitions.

11 I think what's mostly on point to Your Honor's question,  
12 is that Ross might be picking the wrong context. Ross picks the  
13 one that was most recently accessed, based on an assumption that  
14 whatever you used most recently is what you're trying to get at, but  
15 it might be the wrong one. Because, again, all Ross does is find,  
16 hey, we may have -- there may be one -- there only may be one  
17 context that can process this grammar, that's the answer. If there  
18 are five within the stack, I'm going to pick the highest one. But it  
19 could have been number two, number three, number four, number  
20 five that could have been more on point. And I think what's going  
21 on with our discussion in column 13 and into column 14 of the  
22 '160 Patent is, the system saying, we can do better. We can  
23 pinpoint. We can focus in and look at this.

24 Now, Your Honor, I think another point that shouldn't be

1 overlooked is, it's not simply the use of expected context that  
2 distinguishes us from Ross. When we do a matching process that  
3 includes looking at expected context, we also have, after that, a  
4 scoring process. Ross doesn't need a scoring process, because  
5 Ross has hierarchy -- if there's three, four that might be good, it  
6 says pick the top. It doesn't have to go through the scoring. Now,  
7 I know that Kennewick has scoring, but Kennewick doesn't have  
8 this predicate staff of comparing expected context to find the  
9 potential matches.

10 I'm not sure if I answered your question, but I would say  
11 that the bottom of column 13 into 14, that embodiment, which  
12 recognizes that there are bad ways to do context recognition, or  
13 context selection, and says we're going to incorporate a concept of  
14 expected contexts to do a better job.

15 JUDGE HOSKINS: What are the bad ways in that  
16 context that is different than what's going on in the specification?

17 MR. HELGE: Well --

18 JUDGE HOSKINS: Excuse me.

19 MR. HELGE: -- I apologize, Your Honor, I hope I didn't  
20 cut you off. Your Honor, interestingly, one of the bad ways to do  
21 it is what's in Kennewick, because that embodiment shows up in  
22 the '160 Patent as well.

23 JUDGE HOSKINS: Where?

24 MR. HELGE: And I think what's going on -- I'm sorry,

1 Your Honor?

2 JUDGE HOSKINS: Where in the '160 Patent does the  
3 Kennewick show up?

4 MR. HELGE: Oh, let me get you the exact citation. We  
5 may have it here.

6 JUDGE HOSKINS: Although really, I mean, for  
7 purposes of the present conversation, we're talking about Ross,  
8 right? So, I don't want to lose sight of that.

9 MR. HELGE: Yeah. Right, right. No, certainly. Your  
10 Honor, we can -- we'll get the citation for that in just a moment.  
11 But that was something that was -- that was in both Kennewick  
12 and the '160 Patent. And I had Google's Exhibit 1007 in front of  
13 me here, and we'll get that exact citation of where it is. I think we  
14 got it here.

15 All right, sorry. I will definitely get that for you, and if I  
16 can't get it for you now here quickly, I'll definitely get that citation  
17 for you on rebuttal. But again, I think what's going on, if you look  
18 at Ross -- like, let's say, for example, Petitioner had relied on Ross  
19 first, now looked at Kennewick and said, hey, let's look at Ross  
20 first, what's Ross doing? Ross is saying, I'm going to look at the  
21 entire stack, I'm going to find however many applications or  
22 contexts could actually process the grammar of what a user said.  
23 And then, regardless of how close number five is to the statement,  
24 or how close number four is to the statement doesn't matter, I'm

1 going to go with number one. And so, the '160 Patent has  
2 improved over that, simply by adding the scoring process, right?  
3 Because now you have the potential for not just being able to  
4 potentially process the grammar but saying, hey, how close is this  
5 statement to the grammar?

6 I mean, I think in Ross it's a very simple example, which  
7 is printed -- and printed is, okay, you don't have to look very -- you  
8 don't have to think very hard to figure out what does print mean  
9 and what does it mean? But, a user's statement could be much  
10 more complicated. Print the third tab on my screen. What are we  
11 talking about here? Now we have to figure out what tabs are,  
12 which application is associated with that, and have to get into  
13 maybe a little bit more parsing through where you say, okay, well,  
14 look, none of these are a perfect match, but five of them are pretty  
15 close in Ross and then, our application -- or our Patent '160, Claim  
16 12, adds the additional set of doing the scoring.

17 So, I would say simply, in Ross, the assumption that  
18 whatever was most recent when there's a conflict is the answer, is  
19 it's an assumption, it's a way to do it. I think we've improved upon  
20 that with regard to picking the correct context, right? I think in  
21 that regard, if the first one isn't right, we get to the very issue that  
22 the '160 was trying to achieve, which is correct false recognitions.  
23 Correct the selection of the wrong application to process this  
24 command.

1           And once again, Your Honor, I think, when we were  
2 talking about Slide 40, Counsel also pointed out Slide 48, which  
3 once again they say, they're fairly emphatic about this, in Slide 48,  
4 that Ross does disclose matching multiple expected contexts. But  
5 again, I think Counsel would say, every context in Ross has to be  
6 expected or their theory doesn't work. And Ross doesn't, in truth,  
7 doesn't have a category for expected contexts. Everything's  
8 possible in Ross, nothing's expected because the last one could be  
9 just as likely as the first one.

10           And I think, Your Honor, one of the things that we could  
11 probably do now to sort of pinpoint this issue, if Your Honors --  
12 I'd like to share my slides very briefly with -- actually, there's two  
13 slides here, where I would say, the Petitioner's went a little outside  
14 the record, trying to come up with some theory that they thought  
15 might resolve this problem in Ross, which is, mainly they have to  
16 look at every context in Ross to make their case.

17           So, Your Honors, I'm sharing right now our Slide 19, and  
18 this was an instance where -- hopefully Your Honors can see that.  
19 This is an instance where Mr. Schmandt was being deposed, and  
20 what he had to do -- I think because he realized that Ross didn't  
21 actually have any way to categorize any context as expected, is he  
22 started to add this concept of a timestamp, and as you see on the  
23 left-hand side, this is from our sur-reply, and then on the right-  
24 hand side, it's Mr. Schmandt's testimony. But what he did is, he

1 added a timestamp in Ross, and then he limited Ross's evaluation  
2 of the contexts to only what he called, quote, unquote, "newer  
3 contexts."

4 And the reason he did that, again, what he was trying to  
5 do, I think, is to create a category of contexts in Ross that are more  
6 likely than others in his mind. Now, we know from Petitioner's  
7 discussion of how Ross works, this actually breaks Ross, because  
8 Ross might need to go to an application that hasn't been accessed  
9 for a while in order to process a user command. And by limiting  
10 Ross to these timestamps, or only the newer applications or  
11 contexts; in fact, Ross wouldn't get you the result you're looking  
12 for, and Ross wouldn't know how to do it. So, this is one instance  
13 where Petitioners went outside the record.

14 In one other one -- and I'm going to go back to, I believe  
15 it is our Slide 12. Let me go back here, and I'm still sharing this,  
16 Your Honor, again, I hope you can see it. But on Slide 12, one  
17 other thing that happened in this case, and this is the top box on  
18 Slide 12, Petitioner said, well, the contexts that are in the claimed  
19 context stack could be expected because they're in the stack, and  
20 other non-expected contexts may be stored elsewhere. And that  
21 came from Mr. Schmandt's reply declaration, but there's nothing in  
22 Ross or Kennewick that supports this idea that there are multiple  
23 stacks, and that expected, or higher likelihoods, contexts would  
24 somehow be stored on that stack separate from other stacks.

1 I think this is (CROSSTALK) --

2 JUDGE JURGOVAN: Counselor?

3 MR. HELGE: Yes, Your Honor.

4 JUDGE JURGOVAN: Yeah. So, before we conclude  
5 here, I just wanted to ask this question: So, the disputed language  
6 says, wherein identifying the matching context includes comparing  
7 the text combinations against grammar expression entries in the  
8 context description grammar. So, there's no dispute, is there, that  
9 Kennewick teaches that?

10 MR. HELGE: I think that's right, Your Honor. I don't  
11 think we're disputing that point. I think that Kennewick -- Ross,  
12 they're trying to figure out --

13 JUDGE JURGOVAN: Okay, so.

14 MR. HELGE: -- when a user makes a request, can the  
15 application of the context process it?

16 JUDGE JURGOVAN: All right. So, we have that. And  
17 then, as I understand what Petitioner is saying is that, okay, so  
18 Ross discloses the next part, which is comparing the text  
19 combinations against grammar -- I'm sorry, against one or more  
20 expected contexts stored in a context. And if you take Kennewick  
21 and you take Ross, and you combine them, then that is the  
22 combination of known technologies for their established purposes.  
23 How do you respond to that?

24 MR. HELGE: Well (CROSSTALK) --

1 JUDGE JURGOVAN: (CROSSTALK) does not  
2 disclose expected context; is that correct?

3 MR. HELGE: Absolutely right, Your Honor. I mean, I  
4 do think there is a real tension in the combination of Ross with  
5 Kennewick, because the whole purpose for Ross to order the  
6 context is to pick the highest one if there's a conflict. And again,  
7 you have to look at them all to know if there's a conflict. In  
8 Kennewick, you look at them all too, and you run this matching  
9 process against all of them to find out what they call possible  
10 contexts.

11 I mean, Kennewick is scoring, Ross is the first to match  
12 if there's a conflict. They are looking at different methodologies to  
13 figure out which one they're going to pick. I think in the general  
14 view, Your Honor, and I don't want to say the general context, but  
15 in the general view, I don't think that we would dispute that they're  
16 both trying to do a similar task, although they're pushing it from a  
17 different direction. But I agree with, Your Honor, your  
18 assessment of our case, which is none of these references -- the  
19 fact that Ross has reordered the context based on most recently  
20 accessed context, that the two theories that we discuss in  
21 Kennewick, none of these are using expected contexts in exactly  
22 the way that our plan requires, which is in order to identify the  
23 matching contexts that are then scored and then selected. So, I  
24 would agree with that, Your Honor.

1           And just as a -- I think that my time is almost up here,  
2   Your Honor. Just as a final point, burden of proof isn't something  
3   that we should, I think, be ignoring here in this case. It is the  
4   Petitioner's burden. The first two theories, I think, are dead, right?  
5   They simply haven't gotten to the point. And Ross -- just the fact  
6   that Ross reorders context doesn't make any of them expected.  
7   The last one is equally as possible as the first, and again, Ross is  
8   not using expected context in the way that our claim requires. And  
9   so, even if you combine these references, I don't think you have  
10   our claim.

11           JUDGE HOSKINS: And why? Why does the  
12   combination not teach the claim? When I say that --

13           MR. HELGE: Well, Your Honor.

14           JUDGE HOSKINS: -- (CROSSTALK) --

15           MR. HELGE: Well, Your Honor, you have to look at  
16   expected contexts as part of a matching step, and what does Ross  
17   do? Ross doesn't look -- Ross doesn't treat anything as expected.  
18   Ross's system looks at everything. That's the same thing as  
19   Kennewick. I mean, if the issue is, Ross reorders the context, and  
20   you look at Kennewick and you say, let's reorder them, does it  
21   make any of them expected? I would submit to you, no, the  
22   system doesn't treat anyone more likely than another, it checks  
23   them all.

24           And so, is there any comparing text combinations against

1 what we're going to call, in the claim, one or more expected  
2 contexts? And the answer to that is, no. The only way Petitioner  
3 can create that theory is by saying, we think everything in Ross is  
4 expected. But checking -- again, I'm going to say, Your Honor, if  
5 you need to run a search to know what's expected, I don't think it  
6 was really expected. And again, it's not intellectually, do we think  
7 it's expected? Does the system have what it calls expected  
8 contexts stored in a context stack, and so that combination does  
9 not, I would submit to Your Honor.

10 JUDGE JURGOVAN: Thank you, Counsel.

11 JUDGE HOSKINS: This is Judge Hoskins. One quick  
12 follow-up. The contexts that are in Ross's context stack, those are  
13 the only contexts that are known to Ross, right? That doesn't  
14 include the entire universe of expected context, correct?

15 MR. HELGE: So, just to answer your question, Judge,  
16 we know that Ross has contexts that correspond to applications  
17 that have been accessed. I guess what I'm trying to think about, is  
18 there a scenario where Ross has a new application that has never  
19 been accessed and would Ross call that an expected context or  
20 not? I don't even think Ross would know --

21 JUDGE HOSKINS: It's just a question of whether it's a  
22 context, I think. Let's suppose that Ross doesn't have Adobe  
23 reader on the computer, and so it doesn't have Adobe reader, or  
24 any sort of Adobe program as something that might be invoked by

1 the user, but then the user speaks into the computer, I want to open  
2 this Adobe file.

3 MR. HELGE: Mm-hmm.

4 JUDGE HOSKINS: So, the Adobe will not be in, then,  
5 Ross's context list because that particular system has not  
6 encountered Adobe before. And so, is that -- in that example, is  
7 Adobe an unexpected context because it's outside of the list that  
8 the computer (CROSSTALK) --

9 MR. HELGE: Your Honor, I mean, it's interesting  
10 because we certainly don't have a claim term unexpected context.  
11 But I think your hypothetical is correct, in that the system would  
12 try to compare what was said, right, the grammar that was said,  
13 open the Adobe file with all of the contexts in its stack, and we try  
14 to figure out if any of them would work.

15 And here's what I think would really happen in Ross.  
16 You have the phrase, open, you have the phrase, the file, you have  
17 Adobe, it wouldn't recognize. It wouldn't say, here's a perfect  
18 match for Adobe. So, it would go through, and it would probably  
19 try to find every context that would apply a grammar of open the  
20 blank file. It wouldn't recognize what Adobe means, it would say,  
21 open the blank file. It would find every application that could  
22 potentially do that. And then, if there were -- again, I'm keeping  
23 with five. But if there were five, they would pick the top one and  
24 say, okay, maybe it's an email program, they would say, open the

1 Adobe file, and the email program would try to do it, and it would  
2 not work. And then, I think the user would have nothing else,  
3 right? That would be it. It would be a failure. Because the system  
4 simply wouldn't understand the term Adobe.

5 I don't think it shows up in Adobe for itself as a context,  
6 it wouldn't show up in the grammar unless the system actually  
7 opened an Adobe file. And I think maybe it would do that, once  
8 you loaded it in, there would have to be some way of getting the  
9 context -- the application into the contexts stack. But that would  
10 be a predicate step, certainly for being able to open an Adobe file.  
11 So, I would agree with you that it would be unexpected to ask a  
12 computer to do something that it's incapable of doing.

13 JUDGE HOSKINS: Okay, thank you.

14 MR. HELGE: Thanks, Your Honor.

15 JUDGE JURGOVAN: Okay. Let's go back to Petitioner  
16 for rebuttal, please.

17 MS. KEEFE: Thank you, Your Honors. Very, very  
18 briefly because I think Your Honors get it. The first thing I'd like  
19 to note, just for the record is, we are not giving up on any theories.  
20 I think that Patent Owner said that we were giving up because we  
21 thought our theories one and two are weak. That's absolutely not  
22 true. I simply think our papers are strong enough that we don't  
23 need to waste the Court's time here. However, for the record, I  
24 will indicate paragraph 152, which is for the first mapping of

1 Kennewick, there's no reason that the scoring can't happen at the  
2 same time as the matching, and so, paragraph 152 does apply, so  
3 all possible contexts can be all expected contexts.

4 For the second mapping, regarding paragraphs 144  
5 through 145, I think the argument was that 166 undoes that, but  
6 that's not true, 166 is talking about scoring results, not contexts.  
7 And in paragraph 144 through 145, the mapping that we were  
8 making is that the expected contexts are the prior history. Because  
9 you're allowed to use that history to then make an abbreviated  
10 request, because it is using the expectation of what came before in  
11 the history. But that's enough for numbers one and two.

12 Your Honors asked a question, I think, about what would  
13 happen if there was Adobe? I think that absolutely is an  
14 unexpected context, because that is something that was not  
15 contemplated, because it's not on the system. It is not a context  
16 that the system can access.

17 I think the only other thing I wanted to address, unless  
18 Your Honors have other questions, is that Ross does not mandate,  
19 despite Patent Owner's repeated attestation, that every single  
20 context always be run every single time. In fact, if we look to  
21 paragraph 35 of Ross, at the very end of paragraph 35, it talks  
22 about the fact, that in this way, the last application that the user  
23 touched or talked to, will get the first opportunity at interpreting  
24 the next user utterance. It doesn't mean that you then have to go

1 on. If in fact a perfect match is made, that might be the end of it.

2           And I find it a little hard to match up Patent Owner's  
3 arguments, because they -- by the one time, they say it's only a first  
4 to match so once you found your match you're done, but then at  
5 the same time they say, but it can't work because it's always  
6 looking at everything, and that's simply not the case. Ross can do  
7 either. Ross may find something first and use it, as it moves down  
8 the list. Ross, on the other hand, may need to check throughout the  
9 list because there are multiple partial matches that are made. And  
10 then, under the combination, we take those results and give them  
11 back to Kennewick for the scoring that's necessary to try to find  
12 the best match.

13           So, unless Your Honors have any other questions.

14           JUDGE JURGOVAN: I have one question. And that is,  
15 so, in your view, does Ross score expected contexts?

16           MS. KEEFE: So, in terms of the way that we are  
17 mapping the result in terms of the claim itself, we're using  
18 Kennewick for the scoring. However -- and so, for the  
19 combination and for the mapping that we made, the scoring comes  
20 from Kennewick. However, I will say, that by virtue of pushing a  
21 context up to the top of the stack, one could also argue that that is a  
22 scoring because it is ranking it in a way first, but that's not the  
23 mapping that we presented.

24           JUDGE JURGOVAN: Thank you.

1 MS. KEEFE: If Your Honors have no further questions,  
2 I cede my time and appreciate your time and attention.

3 JUDGE JURGOVAN: Thank you, Counsel. Let's go to  
4 Patent Owner for rebuttal. And since we asked questions, we'll  
5 restore your original four minutes.

6 MR. HELGE: Thank you very much.

7 JUDGE JURGOVAN: Patent Owner, if you're ready.

8 MR. HELGE: Thank you, Your Honor. I don't expect to  
9 use four minutes. Very briefly, Your Honor, the discussion of  
10 paragraph 152 of Kennewick, where Petitioner is lumping in, in  
11 effect, this identifying and scoring step into one single sort of  
12 mysterious operation, I think the biggest problem with that is  
13 they've destroyed the antecedent basis. The scoring step in our  
14 claim refers back to the identified matching contexts. If you don't  
15 have matching, you can't score matching contexts. And so, it  
16 really strikes me as an attempt by Petitioner to find an identifying  
17 and scoring step where they don't exist. I don't dispute that  
18 Kennewick has scoring, and they do talk about scoring in the  
19 possible contexts. But again, the big issue is, there's no expected  
20 contexts that are being used in Kennewick to identify the matching  
21 contexts. And so, I don't think that argument really works.

22 In paragraphs 144 and 145, it sounds like Petitioner just  
23 discarded paragraph 166 from their dialog history theory, which is  
24 what you will find in the petition. But paragraphs 144 and 145

1 don't talk about using the keywords or the dialog history as the  
2 focus and expected contexts for determining the matching. It's  
3 very high level. It doesn't give you the granularity you need to get  
4 to the expected context use that we have in element 1B.

5           And finally, Your Honors, I know we talked a lot about  
6 Ross. I think that are points on Ross are pretty clear. Adobe  
7 would be unexpected, but also, I don't think the contexts would  
8 know how to deal with it. Like, as I said, Your Honor -- Judge  
9 Hoskins, I was talking about, it would try to run the command  
10 against everything it does have on the stack because that's the  
11 universe of what Ross can deal with. It doesn't say, hey, I've got  
12 another stack somewhere else of unexpected contexts, like  
13 Petitioner posited in their reply and we pointed out in our Slide 12.

14           And I think I'll go back to Counsel's statement about  
15 Slide 40. Every context in Ross is expected. That's the only way  
16 they can try to create some theory, where Ross takes contexts that  
17 already exist and reorders them. But that reordering doesn't mean  
18 that some are expected and some aren't, or that any of them are  
19 expected. Once again, the last context could be the one that  
20 matches the command. There's nothing about the order that really  
21 matters to how Ross makes a pick, unless there are multiple  
22 contexts that could process a command, and then it picks the  
23 highest one. So, we don't think that the expected contexts element  
24 is met in Ross either. And we're not viewing Ross in isolation,

1 we're looking at Ross in the combination. Even in the  
2 combination, it doesn't fit.

3 So, if Your Honors have no other questions, I really  
4 appreciate your time this morning, and I think we're going to see a  
5 couple of you maybe on Tuesday.

6 JUDGE JURGOVAN: Well, thank you very much,  
7 Counsel. I very much appreciate your presentations, and we have  
8 a lot to think about. We'll go back and deliberate and render the  
9 final written decisions in due course. Again, thank you very much  
10 for your flexibility too in rescheduling this hearing, and I wish you  
11 all a great day and weekend.

12 We are adjourned. Please do stay on the line in case the  
13 court reporter has any questions for you.

14 MR. HELGE: Thank you, Your Honors.

15 MS. KEEFE: Thank you.

16 (Whereupon, the above-entitled matter went off the  
17 record at 11:54 a.m.)  
18

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