

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GETTATTLE, INC.
Petitioner

v.

AFTERWORDS, INC.
Patent Owner

IPR Case No. 2025-00677
Patent No. 10,430,811

**PETITIONER'S OPPOSITION TO PATENT OWNER'S CONTINGENT
MOTION TO AMEND UNDER 37 C.F.R. § 42.121**

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I. INTRODUCTION

Petitioner, GetTattle, Inc. (“Petitioner”) respectfully opposes the Contingent Motion to Amend submitted by Patent Owner, Afterwords, Inc. (“Patent Owner”). Proposed substitute claims in a motion to amend must meet the requirements of 35 U.S.C. § 316(d) and 37 C.F.R. § 42.121 before determining substantive patentability. *See Lectrosonics, Inc v. Zaxcom, Inc.*, IPR 2018-01129, 2019 WL 1118864, at *2 (P.T.A.B. Feb. 25, 2019). Patent Owner’s proposed substitute claims 20 and 21 fail to meet the requirements of 35 U.S.C. § 316(d) and 37 C.F.R. § 42.121 in at least two ways: (1) they introduce new subject matter and 2) they are non-responsive to the instituted grounds for unpatentability in this proceeding.

First, Patent Owner’s proposed substitute claims violate 35 U.S.C. § 316(d)(3) and 37 C.F.R. § 42.121(a)(2)(ii) by introducing new matter unsupported by the record for U.S. Patent No. 10,430,811 (“the ‘811 Patent”). *See* Decision Granting Institution of *Inter Partes* Review, at p. 31 (Paper No. 9) (Oct. 7, 2025).

Patent Owner’s amendments rely on the “autonomous, self-contained, web-container package with branching logic” language in the original as-filed ‘811 Patent specification. *See* Ex. 1003, at p. 129, ¶ 65. However, Patent Owner seeks the benefit of the filing date of U.S. Provisional No. 62/104,043 (“the ‘043 Provisional”) which notably lacks the “autonomous, self-contained, web-container package with branching logic” language. *See* Patent Owner’s Contingent Motion to Amend, at p.

23 (Paper No. 14) (Jan. 14, 2026). Accordingly, the Board should deny Patent Owner’s substitute claims 20 and 21 under 35 U.S.C. § 316(d)(3) and 37 C.F.R. § 42.121.

Second, Patent Owner’s proposed substitute claims violate 37 C.F.R. § 42.121(a)(2)(i) by failing to respond to the grounds of unpatentability involved in this proceeding. Specifically, the amendments fail to address Grounds 1 through 4 of the Petition for *Inter Partes* Review because the substitute claims add material that is disclosed in Douglas and Ganesh. Douglas claims a process “wherein the survey generator generates one or more of follow-up commands or follow-up questions based on the received response.” *See* Ex. 1007, claim 1. Additionally, Ganesh discloses survey content that can be “dynamically selected based on any number of factors including... responses to previously pushed questions.” Ex. 1008, ¶ 6.

For both of these independently sufficient reasons, Patent Owner’s Contingent Motion to Amend should be denied.

II. PATENT OWNER’S AMENDMENTS FAIL TO PROPERLY AMEND

Patent Owner fails to clearly mark changes to substitute claims 20 and 21. Under 37 C.F.R. § 42.121(b), Patent Owner must “include a claim listing... [that] show[s] the changes clearly.” “Where a motion seeks to replace an original patent claim with a new claim, the new claim should be identified as a proposed substitute

claim, specifying the original claim for which the new claim is a proposed substitute, *with all changes relative to the original claim clearly identified and discussed.*”

See Office Patent Trial Practice Guide, July 2019 Update, 84 Fed. Reg. 33925 (July 16, 2019).

In Appendix A of the Contingent Motion to Amend, Patent Owner fails to clearly mark all changes to proposed claims 20 and 21. The following table outlines bold and underlined language in proposed substitute claims 20 and 21 that Patent Owner failed to clearly identify relative original independent claims 1 and 19:

Changes Marked by Patent Owner	Actual Changes by Patent Owner
<u>Proposed Claim 20:</u> A system for implementing transaction-specific surveys comprising: (a) a point-of-sale interface used in conducting a commercial transaction between a consumer and a vendor, the point-of-sale interface being configured to record transaction data relating to the commercial transaction wherein the transaction data comprises at least one purchase detail identifier and a survey token; (b) a survey server computing device configured to receive and store the transaction data generated by the point-of-sale interface, wherein: (i) the survey server computing device comprises (A) a vendor database storing a plurality of purchase detail identifiers, and (B) a campaign data structure having survey question data and a configurable Condition that is	<u>Proposed Claim 20:</u> A system for implementing transaction-specific surveys comprising: (a) a point-of-sale interface used in conducting a commercial transaction between a consumer and a vendor, the point-of-sale interface being configured to record transaction data relating to the commercial transaction wherein the transaction data comprises at least one purchase detail identifier and a survey token; (b) a survey server computing device configured to receive and store the transaction data generated by the point-of-sale interface, wherein: (i) the survey server computing device comprises (A) a vendor database storing a plurality of purchase detail identifiers, and (B) a campaign data structure having survey question data and a configurable Condition that is

satisfied by the detection of a given purchase detail identifier; and wherein (ii) the survey server computing device is configured to perform the operations comprising (A) receiving a survey token, (B) retrieving the transaction data having the stored survey token corresponding to the received survey token, (C) determining whether the transaction data includes the given purchase detail identifier such that the configurable Condition is satisfied, and if the configurable Condition is satisfied, generating a first Survey Question using the given survey question data and the purchase detail identifier, and (D) generating a Survey Module comprising software code that implements branching logic that is configured to display a second Survey Question based on a first user-generated input in response to the first Survey Question;

(c) a vendor survey interface configured to perform the operations comprising: (i) transmitting the survey token to the survey server computing device; (ii) receiving from the survey server computing device the Survey Module; (iii) generating a graphical user interface on a display screen; (iv) running the Survey Module to display the first and second Survey Question as an integrated component within the graphical user interface; (v) generating a Respondent Header based on user-generated inputs in response to the at least one Survey Question; and (vi)

satisfied by the detection of a given purchase detail identifier; and wherein (ii) the survey server computing device is configured to perform the operations comprising (A) receiving a survey token, (B) retrieving the transaction data having the stored survey token corresponding to the received survey token, (C) determining whether the transaction data includes the given purchase detail identifier such that the configurable Condition is satisfied, and if the configurable Condition is satisfied, generating a **first** Survey Question using the given survey question data and the purchase detail identifier, and (D) generating a Survey Module comprising software code **that implements branching logic that is configured to display a second Survey Question based on a first user-generated input in response to the first** ~~**for displaying the at least one**~~ Survey Question;

(c) a vendor survey interface configured to perform the operations comprising: (i) transmitting the survey token to the survey server computing device; (ii) receiving from the survey server computing device the Survey Module; (iii) generating a graphical user interface on a display screen; (iv) running the Survey Module to display the **first and second** ~~**at least one**~~ Survey Question as an integrated component within the graphical user interface; (v) generating a Respondent Header based on user-generated inputs in response to the at least one Survey

transmitting the Respondent Header to the survey server computing device.	Question; and (vi) transmitting the Respondent Header to the survey server computing device.
<u>Proposed Claim 21:</u> A computer-implemented method for providing transaction-specific surveys comprising the operations of: (a) providing a survey server configured to receive and store transaction data generated by a point-of-sale interface relating to a commercial transaction between a consumer and a vendor, wherein (i) the transaction data comprises purchase detail identifiers and a survey token; and (ii) the survey server comprises (A) a vendor database storing a plurality of purchase detail identifiers, and (B) a campaign data structure having survey question data and a configurable Condition that is satisfied by the detection of a given purchase detail identifier; (b) receiving by the survey server, a survey token; (c) retrieving by the survey server, the transaction data having the stored survey token corresponding to the received survey token; (d) determining by the survey server, whether the transaction data includes the given purchase detail identifier such that the configurable Condition is satisfied, and if the configurable Condition is satisfied, generating a first Survey Question using the survey	<u>Proposed Claim 21:</u> A computer-implemented method for providing transaction-specific surveys comprising the operations of: (a) providing a survey server configured to receive and store transaction data generated by <u>a</u> point-of-sale interface relating to a commercial transaction between a consumer and a vendor, wherein (i) the transaction data comprises purchase detail identifiers and a survey token; and (ii) the survey server comprises (A) a vendor database storing a plurality of purchase detail identifiers, and (B) a campaign data structure having survey question data and a configurable Condition that is satisfied by the detection of a given purchase detail identifier; (b) receiving by the survey server, a survey token; (c) retrieving by <u>the</u> survey server, the transaction data having the stored survey token corresponding to the received survey token; (d) determining by <u>the</u> survey server, whether the transaction data includes the given purchase detail identifier such that the configurable Condition is satisfied, and if the configurable Condition is satisfied, generating a <u>first</u> Survey Question using the survey

question data and the purchase detail identifier; (e) generating by the survey server, a Survey Module comprising software code for (i) displaying the first Survey Question as an integrated component within a graphical user interface and (ii) <u>implementing branching logic that displays a second Survey Question based on a first user-generated input in response to the first Survey Question</u>; (f) transmitting by the survey server, the Survey Module to a vendor survey interface; and (g) receiving by the survey server, a Respondent Header generated based on user-generated inputs in response to the at least one Survey Question.	question data and the purchase detail identifier; (e) generating by the survey server, a Survey Module comprising software code for (i) displaying the <u>at least one first</u> Survey Question as an integrated component within a graphical user interface and (ii) implementing branching logic that displays a second Survey Question based on a first user-generated input in response to the first Survey Question; (f) transmitting by the survey server, the Survey Module to a vendor survey interface; and (g) receiving by the survey server, a Respondent Header generated based on user-generated inputs in response to the at least one Survey Question.
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As outlined above, Patent Owner fails to comply with 37 C.F.R. § 42.121(b) by repeatedly declining to document additions and substitutions to the original claim language. Therefore, Patent Owner's Contingent Motion Amend should be denied for failing to properly amend.

III. THE PROPOSED SUBSTITUTE CLAIMS IMPERMISSIBLY INTRODUCE NEW SUBJECT MATTER

A motion to amend cannot introduce new matter. 35 U.S.C. § 316(d)(3); 37 C.F.R. § 42.121(a)(2)(ii). Any claimed subject matter that lacks written description support in the original disclosure is considered "new matter" that violates 35 U.S.C. § 112(a). *See TurboCare Div. of Demag Delaval Turbomach. Corp. v. Gen. Elec.*

Co., 264 F.3d 1111, 1118 (Fed. Cir. 2001). Patent Owner's proposed substitute claims 20 and 21 add new subject matter because there is no written description support for these limitations purportedly relating to Survey Module software code executed by a vendor interface:

- (i) generating a Survey Module comprising software code that implements branching logic (Proposed Claim 20)
- (ii) implementing branching logic that displays a second Survey Question based on a first user-generated input in response to the first Survey Question (Proposed Claim 21)

Additionally, proposed substitute claim 20 includes amended language that was undocumented by Patent Owner in the claim listing on Appendix A of the Contingent Motion to Amend. These unmarked amendments provide additional grounds for denial under 37 C.F.R. § 42.121(b). Thus, substitute claims 20 and 21 add new matter and should be denied.

A. Patent Owner's Assertions Regarding the Relation of the Marked Amendments to the Vendor Interface are False.

Patent Owner asserts that "[t]he substitute claims clarify that the Survey Module comprises software code that implements branching logic and that the software executes at the vendor interface to dynamically display subsequent survey questions based on user inputs, thereby reducing server round trips and

minimizing latency.” *See* Patent Owner’s Contingent Motion to Amend, at p. 6 (Paper No. 14) (Jan. 14, 2026). Patent Owner further argues that because both Ganesh and Douglas “teach a server-centric system in which survey logic resides on a centralized server,” the substitute claims contain amendments overcoming Petitioner’s grounds for unpatentability. *Id.*

However, as their express language confirms, Patent Owner’s amendments contained in proposed substitute claims 20 and 21 are unrelated to the vendor interface. Patent Owner adds this underlined language to proposed substitute claim 20 in connection with operations of the *survey server* as opposed to the vendor interface:

(i) The survey server computing device is configured to perform the operations comprising... (D) generating a Survey module comprising software code that implements branching logic that is configured to display a second Survey Question based on a first user-generated input in response to the first Survey Question.

Similarly, Patent Owner adds this underlined language to proposed substitute claim 21 which likewise is generated by the *survey server* as opposed to the vendor interface:

(e) generating by the survey server a Survey Module comprising software code...(ii) implementing branching logic that displays a second Survey Question based on a first user-generated input in response to the first Survey Question.

Proposed substitute claim 21 also explicitly includes “transmitting *by the survey server*, the Survey Module to a vendor survey interface” for the computer-implemented method for providing transaction-specific surveys that Patent Owner seeks to claim. *See* Patent Owner’s Contingent Motion to Amend, at p. 22 (Paper No. 14) (Jan. 14, 2026) (emphasis added).

Patent Owner never actually claims that the branching logic does not communicate back to the survey server. The repeated assertions in Patent Owner’s Contingent Motion to Amend mislead the Board by arguing as if their amendments read as follows:

...comprising software code...(ii) implementing branching logic that displays a second Survey Question based on a first user-generated input in response to the first Survey Question ***without further communication between the survey server and the vendor survey interface prior to the display of the second Survey Question.***¹

Under the *Phillips* standard, Patent Owner’s actual amendments in proposed substitute claims 20 and 21 include embodiments with back-and-forth communication between the client and the server (i.e., there can be client-side branching logic that still involves survey server communication between questions). *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-1313 (Fed. Cir. 2005) (“[T]he

¹ The bolded and italicized language has been added by Petitioner to illustrate what the underlined amendment made by Patent Owner does not accomplish. This language is from proposed substitute claim 21.

ordinary and customary meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art at the time of the invention...”); *see also* Changes to the Claim Construction Standard for Interpreting Claims in Trial Proceedings Before the Patent Trial and Appeal Board, 83 Fed. Reg. 51340, 51342 (Oct. 11, 2018) (replacing the broadest reasonable interpretation standard with “the same claim construction standard used by Article III federal courts and the ITC”). Because of the placement of the “branching logic” language within the claim, a person of ordinary skill in the art would interpret proposed claims 20 and 21 as relating to (1) operations of the survey server and (2) generations by the survey server.

Further, Patent Owner incorrectly implies that the “first user-generated input” is the same as the content of the input. The fact that there is an answer and not necessarily the *content of the answer* is what generates a second question. A person of ordinary skill in the art would interpret the ordinary and customary meaning of “first user-generated input,” as used in proposed substitute claims 20 and 21, to mean that server receipt of a first question generates a second question. For example, under Patent Owner’s exact proposed claim language, a user-generated input of “parking garage” to the question “Did you like your cheeseburger?” would trigger a second survey question.

As the foregoing makes clear, Patent Owner is mischaracterizing proposed substitute claims 20 and 21. They do not demonstrate vendor interface relatedness or accomplish what Patent Owner repeatedly claims they do. Patent Owner cannot make amendments that relate to the *survey server* (as opposed to the vendor interface) and then argue that they accomplish something unrelated to the claim structure. By resorting to this sleight of hand, Patent Owner further demonstrates the failure of its Contingent Motion to Amend to comply with 37 C.F.R. § 42.121 or 35 U.S.C. § 316(d).

B. Patent Owner Lacks Key Support for the Amendments to the Proposed Claims from the ‘043 Provisional.

Since Patent Owner claims priority of the filing date of the ‘043 Provisional for both proposed amended claims, Patent Owner has the burden to clearly show that the amendments have support from the as-filed application for the ‘811 Patent *and* the ‘043 Provisional. *See Lectrosonics, Inc. v. Zaxcom, Inc.*, IPR 2018-01129, 2019 WL 1118864, at *3 (P.T.A.B. Feb. 25, 2019). However, Patent Owner fails to show support from the ‘043 Provisional for critical language allegedly clarifying the Survey Module comprises software code that implements branching logic to dynamically configure questions based on user-generated inputs. *See* Patent Owner’s Contingent Motion to Amend, at p. 6 (Paper No. 14) (Jan. 14, 2026).

Disclosure is essential to written description support since “the test requires an objective inquiry into the four corners of the specification from the perspective of a [person of ordinary skill in the art].” *Knowles Elecs. LLC v. Cirrus Logic, Inc.*, 883 F.3d 1358, 1365 (Fed. Cir. 2018) (quoting *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1351 (Fed. Cir. 2010)). The original disclosure must “reasonably convey[] to those skilled in the art that the inventor had possession of the claimed subject matter as of the filing date.” *Ariad*, 598 F.3d at 1572 (Fed. Cir. 1997). The ‘043 Provisional clearly does not and Patent Owner thus fails to meet the written disclosure requirement. Speculative undisclosed modifications are insufficient. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572 (Fed. Cir. 1997) (It is insufficient “that the disclosure, when combined with the knowledge in the art, would lead one to speculate as to the modifications that the inventor might have envisioned, but failed to disclose.”).

Any “motion [to amend] must set forth written description support for each proposed substitute claim *as a whole*, and not just the features added by the amendment” to satisfy 37 § C.F.R. 42.121(b)(1-2). *Lectrosonics, Inc. v. Zaxcom, Inc.*, IPR 2018-01129, 2019 WL 1118864, at *3 (PTAB Feb. 25, 2019) (emphasis added). This means Patent Owner must include a claim listing, which clearly shows the amendments with support from the as-filed patent application *and* the earlier filed disclosure for which benefit of the filing date is sought. 37 C.F.R. §

42.121(b)(1-2). Patent Owner provides a table on pages 19-23 of the Contingent Motion to Amend listing each substitute claim with citations alleging support from the originally filed ‘811 Patent specification and the ‘043 Provisional. But this table fails to demonstrate the requisite support in the ‘043 Provisional.

Patent Owner asserts that the specification of the ‘811 Patent supports the proposition that “the claimed Survey Module is not a mere label for any survey content that shows up on a device.” *See* Patent Owner’s Contingent Motion to Amend, at p. 17 (Paper No. 14) (Jan. 14, 2026). Specifically, Patent Owner repeatedly cites the following language from the specification of the as-filed ‘811 Patent: “The survey may be assembled into ***an autonomous, self-contained, web-container package with branching logic*** that changes the questions presented or the order of the questions presented based upon a survey respondent’s answers to prior survey questions.” Ex. 1001, col. 11, lines 30-34 (emphasis added). Tellingly, there are no comparable citations to the ‘043 Provisional.

The only related word or variant from “an autonomous, self-contained, web-container package with branching logic” is “branch” as it appears in paragraphs 37, 65, 71, and 78 of the ‘043 Provisional. *See generally* Ex. 2002. “Autonomous,” “self-contained,” “web-container package” and “logic” are all missing from the ‘043 Provisional.

Moreover, even the functions performed by the branches are dissimilar. The type of branching described in the ‘043 Provisional only relates to these limited functions that are devoid of the requisite logic: (1) determining whether the survey token is valid (Para. 37); (2) determining whether no more transactional lines exist for the purchase or whether a maximum number of questions have been generated (Para. 65); (3) determining whether a promotion should be generated (Para. 71); and (4) determining whether the question style selected is multiple choice (Para. 78). Therefore, there is no support in the ‘043 Provisional for the use of “branching logic” in combination with the function of changing the questions presented based on a survey respondent’s answers to prior survey questions —as added in both proposed claim 20 and 21.

Patent Owner’s failure to disclose the critical “autonomous, self-contained, web-container package with branching logic” language in the ‘043 Provisional means the proposed claim amendments improperly introduce new matter under 37 C.F.R. §42.121(a)(2)(ii) and 35 U.S.C. § 316(d)(3). Patent Owner can’t get there from here.

IV. THE PROPOSED SUBSTITUTE CLAIMS ARE NON-RESPONSIVE

Patent Owner’s proposed substitute claims violate 37 C.F.R. § 42.121(a)(2)(i) by failing to respond to the grounds of unpatentability involved in this proceeding. A motion to amend should be denied when “[t]he amendment does not respond to a

ground of unpatentability involved in the trial.” 37 C.F.R. § 42.121(a)(2)(i). As is the case here, narrowed claims can be non-responsive. *See Aqua Prods., Inc. v. Matal*, 872 F.3d 1290, 1317 (Fed. Cir. 2017). A patent owner’s prerequisite of establishing responsiveness is meant to “ensure that the proposed amendment ha[s] a minimal level of relevancy to the IPR.” *Id.* Proposed amendments must not “cause delay, increase the complexity of review, [or] place additional burdens on the petitioner and the Board.” *See* Changes to Implement Inter Partes Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 Fed. Reg. 48680, 48705 (Aug. 14, 2012).

Petitioner has asserted the following grounds for unpatentability:

Ground	Claims Challenged	35 U.S.C. §	Reference(s)/Basis
1	19	102	Douglas ²
2	1-7, 10, 13, 16, 18	102	Douglas
3	19	102	Ganesh ³
4	1-7, 10, 13, 16, 18	102	Ganesh

² U.S. Publication No. 2015/0193794 (“Douglas”, Ex. 1007) with a priority date of January 8, 2014.

³ U.S. Publication No. 2014/0337098 (“Ganesh”, Ex. 1008) with a priority date of May 9, 2013.

The amendments to independent claims 1 and 19, as contained in the proposed substitute claims 20 and 21, fail to address the above listed grounds. These amendments are non-responsive to Petitioner’s position that “branching logic that displays a second Survey Question based on a first user-generated input in response to the first Survey Question” is disclosed in Douglas and Ganesh. Douglas claims a process “wherein the survey generator generates one or more of follow-up commands or follow-up questions based on the received response.” *See* Ex. 1007, claim 1. Additionally, Ganesh discloses survey content that “may be dynamically selected based on any number of factors including...responses to previously pushed questions.” Ex. 1008, ¶ 6.

The following sections explain for each ground for unpatentability how the amendments contained in proposed claims 20 and 21 are anticipated by Douglas and Ganesh. As previously explained, Patent Owner’s amendments contained in proposed substitute claims 20 and 21 relate to the survey server, as opposed to the vendor interface, despite Patent Owner’s false assertions to the contrary. Therefore, these sections focus on how Douglas and Ganesh disclose “branching logic” as it relates to functioning with the survey server. A brief discussion is included for

ground 4 on how Ganesh teaches a survey content determination module capable of executing software code locally on a vendor survey interface.⁴

Since the amendments to independent claims 1 and 19 fail to address the grounds of unpatentability, Petitioner respectfully requests that Board deny proposed substitute claims 20 and 21 pursuant 37 C.F.R. § 42.121(a)(2)(i).

A. [Grounds 1 & 2] The Amendment in Proposed Claims 20 and 21 are anticipated under 35 U.S.C. § 102 by Douglas.

Patent Owner seeks to cancel and replace independent claim 1 with proposed claim 20. The following excerpt is the only clearly marked amendment in proposed claim 20:

(ii) The survey server computing device is configured to perform the operations comprising... (D) generating a Survey module comprising software code that implements branching logic that is configured to display a second Survey Question based on a first user-generated input in response to the first Survey Question.

Patent Owner seeks to cancel and replace claim 19 with proposed claim 21.

The following excerpt is the only clearly marked amendment in claim 21:

(e) generating by the survey server a Survey Module comprising software code...(ii) implementing branching logic that displays a second Survey Question based on a first user-generated input in response to the first Survey Question.

⁴ In the on-going patent litigation in the United States District Court for the Middle District of Florida, Tampa Division (Civil Action No. 8:24-cv-01386-TPB-CPT), Petitioner expressly reserves the right to argue obviousness under 35 U.S.C. § 103 if the proposed claims are instituted as well as any other invalidity, non-infringement or other arguments.

Independent claim 1 of Douglas claims “wherein the survey generator generates one or more of follow-up commands or follow-up questions based on the received response.” *See* Ex. 1007, at claim 1. The survey in Douglas “may be generated based on the type of trigger signal (or trigger signals) received by the trigger processor 102.” Ex. 1007, ¶ 33. Further, “[t]he response processor 104 or survey generator 103 may create and transmit additional survey queries based on the responses received from customer device 106.” Ex. 1007, ¶ 35. Douglas provides an example of this process, which is similar to Patent Owner’s amendment in substitute claims 20 and 21, as follows:

[T]he customer may receive a survey after he leaves Target. The survey may ask the customer why he did not purchase anything. One of the optional responses may include “Could not find the product I was looking for.” If the customer selects this option, and the response is received at response processor 104, survey generator 103 may transmit a follow-up survey question, asking the customer to select the type of product he was looking for (e.g., “electronics”, “clothing”, “furniture”, “toys”, “appliances”). Ex. 1007, ¶ 69.

As the foregoing confirms, the concept of generating follow-up questions based on the survey response received by a customer is disclosed in both the specification and claim 1 of Douglas.

Further, Douglas discloses executable code (scripts) within the content delivered to a client device. Paragraph 54 of Douglas provides that “[t]he web pages delivered to the client device may include, for example, HTML documents, which

may include images, style sheets and *scripts* in addition to text content.” Ex. 1007, ¶ 54 (emphasis added).

Both Petitioner and Patent Owner agree that a person of ordinary skill in the art would be someone “familiar with ... network-based technologies” and possessing “2-3 years of experience in software engineering.” *See* Petition for Inter Partes Review, at p. 10 (Paper No. 1) (Mar. 3, 2026); Patent Owner’s Response, at p. 8 (Paper No. 13) (Jan. 14, 2026). Under this definition, a skilled artisan would know the term “scripts” with reference to HTML documents refers to a set of instructions written in a scripting language. Therefore, as understood by someone skilled in the art, Douglas expressly discloses software code that is embedded within messages sent from the survey server to the client device or any other device used for conducting a survey.

Patent Owner cites to paragraphs of Zatkovich’s Declaration to support its bare contention that “[o]ne of ordinary skill in the art would understand that such content [in para. 54 of Douglas] does not include executable software code.” *See* Patent Owner’s Contingent Motion to Amend, at p. 8 (Paper No. 14) (Jan. 14, 2026). The alleged support from Zatkovich’s Declaration calls into question the reliability of his opinion since he acknowledges that JavaScript, a scripting language, is a program that produces executable logic but then repeatedly says scripts are not software code. *See* Ex. 2001 at ¶¶ 80, 94, and 120.

Since proposed claims 20 and 21 incorporates the elements of current independent claims 1 and 19, respectively, and the only clearly marked amendment regards software code that can implement “branching logic” as it relates to the survey server, proposed claims 20 and 21 are non-responsive to grounds 1 and 2 of the Petition as still being anticipated under 35 U.S.C. § 102 by Douglas.

B. [Grounds 3 and 4] The Amendment in Proposed Claims 20 and 21 are anticipated under 35 U.S.C. § 102 by Ganesh.

For the sake of brevity, Petitioner does not repeat a quotation of the proposed claim amendments but refers to subsection A above.

Ganesh teaches a portable computing device (“PCD”) that can communicate with the survey server via a point of sale (“POS”) system. In some embodiments, Ganesh discloses that “the PCD 110 may establish bi-directional communications with the POS 125 as understood by one of ordinary skill in the art and thereby provide communication with the survey server 105A via POS 125.” Ex. 1008, ¶ 44.

Ganesh further provides that “[t]he survey content may have been preselected or may be *dynamically selected based on* any number of factors including, but not limited to... *responses to previously pushed questions*.” Ex. 1008, ¶ 6 (emphasis added). Figure 5 of Ganesh illustrates an example of provisioning a dynamic time of purchase (“TOP”) survey to a consumer during check-out. Ex. 1008, Fig. 5. Ganesh describes this process in part as follows:

Subsequently, at decision block 570, the survey server 105A determines if more survey content is available. If “yes” then the method 500 proceeds to block 575 and a next survey content is selected from the database 120A. As described above, the next survey content may be selected based on feedback provided in answer to previously pushed survey content, for example. Ex. 1008, ¶ 66.

Further, Ganesh contemplates that “one of ordinary skill in programming is able to write computer code... to implement the disclosed invention... so disclosure of a particular set of program code instructions... is not considered necessary for an adequate understanding of how to make and use the invention.” Ex. 1008, ¶ 76.

As the foregoing confirms, Ganesh discloses software code to implement “branching logic” that dynamically selects additional survey content based on answers to previously provided survey content. Since proposed claims 20 and 21 incorporates the elements of current independent claims 1 and 19, and the only clearly marked amendment regards “branching logic” as it relates to the survey server, proposed claims 20 and 21 are non-responsive to grounds 3 and 4 of the Petition as still being anticipated under 35 U.S.C. § 102 by Ganesh.

IV. UNMARKED AMENDMENTS ARE ALSO NON-RESPONSIVE

Patent Owner fails to clearly mark changes to substitute claim 20 as it relates to the vendor survey. The following language in proposed substitute claim 20 was amended from independent claim 1 by Patent Owner as stricken and underlined below:

(c) a vendor survey interface configured to perform the operations comprising: ... (iv) running the Survey Module to display the ~~at least one~~ first and second Survey Question as an integrated component within the graphical user interface.

In addition to maintaining that substitute claim 20 should be denied for not complying with 37 C.F.R. § 42.121(b), Petitioner further submits that this unmarked amendment is non-responsive because the amendment is anticipated by Douglas and Ganesh.

As noted above, Douglas also expressly discloses an HTML document that can include scripts. Scripts are known to a skilled artisan as executable software code, such as JavaScript. Therefore Douglas also discloses the claimed survey module being software code for displaying the first and second questions within the graphical user interface.

Contrary to Patent Owner's assertions on pages 9 and 10 of its Contingent Motion to Amend, Ganesh teaches a survey content determination module, TOP module 540A, capable of generating executable software code sent to and executed by a vendor survey interface such as a POS system. In Ganesh, "TOP module 540B in the survey server 105A performs the various steps of pushing TOP survey content to, and receiving TOP survey content from, the PCD 110." Ex. 1008, ¶ 40. Similar to how the TOP module 540B works in survey server 105A, TOP module 540A may perform its function in POS 125. "[I]t is envisioned that the provisioning of a TOP

survey may be accomplished in some embodiments by a TOP module 540A ***integrated within a POS 125*** and in communication with a database 120A.” Ex. 1008, ¶ 40 and FIG. 2 (emphasis added).

As the foregoing confirms, Ganesh anticipates a survey content module, TOP module 540A, capable of pushing various survey content to an integrated component of a vendor survey interface or graphical user interface such as a POS system. Thus, the unmarked amendment to proposed claim 20 is likewise non-responsive.

V. CONCLUSION

For the foregoing reasons, Patent Owner’s proposed substitute claims 20 and 21 fail to comply with the requirements of 35 U.S.C. § 316(d) and 37 C.F.R. § 42.121 by (1) impermissibly introducing new matter and (2) being non-responsive to the grounds of unpatentability instituted by the Board in this *inter partes* review. Proposed claim 20 is also unmarked providing additional grounds for denial. As such, Petitioner respectfully requests that the Board deny Patent Owner’s Contingent Motion to Amend Under 37 C.F.R. § 42.121.

VI. Page Limit Certification

Pursuant to 37 C.F.R. §§42.24(a)(1)(vi) and (b)(3), Petitioner certifies this Opposition Motion is under the 25 page limit, when excluding a table of contents, a table of authorities, a certificate of service or word count, or appendix of exhibits or claim listing

Respectfully submitted,

Dated: April 7, 2026

/ Timothy J. Bechen /
Timothy J. Bechen, Lead Counsel
Reg. No. 48,126

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. §§ 42.6, this is to certify that I caused to be served a true and correct copy of the foregoing **PETITIONER'S OPPOSITION TO PATENT OWNER'S CONTINGENT MOTION TO AMEND UNDER 37 C.F.R. § 42.121** by electronic mail upon Patent Owner at the correspondence address of the Patent Owner as follows:

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