

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
U.S. Patent No. 10,430,811 B1

PATENT OWNER'S SUR-REPLY TO PETITIONER'S REPLY

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. THE BOARD SHOULD REJECT PETITIONER’S ATTEMPT TO RECAST PATENT OWNER’S CLAIM CONSTRUCTION	1
a. “Point-of-Sale Interface”	2
b. “Survey Module”	4
III. Douglas does not anticipate the Challenged Claims	7
a. Douglas does not disclose a survey module	7
b. Douglas does not disclose a vendor survey interface	9
c. Douglas does not disclose a campaign data structure or vendor database	11
IV. Ganesh does not anticipate the Challenged Claims	13
a. Ganesh does not disclose a survey module.	13
b. Ganesh does not disclose a campaign data structure or vendor database.	15
V. CONCLUSION	16

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Blue Calypso, LLC v. Groupon, Inc.</i> , 815 F.3d 1331 (Fed. Cir. 2016)	11
<i>Enzo Biochem, Inc. v. Gen-Probe, Inc.</i> , 424 F.3d 1276 (Fed. Cir. 2005)	2
<i>Harmonic Inc. v. Avid Tech., Inc.</i> , 815 F.3d 1356 (Fed. Cir. 2016)	1
<i>Invitrogen Corp. v. Clontech Lab'ys, Inc.</i> , 429 F.3d 1052 (Fed. Cir. 2005)	2
<i>Phillips v. AWH Corp.</i> , 415 F.3d 1303 (Fed. Cir. 2005)	4
<i>Tree Defender, LLC v. Mike Hurst Citrus Serv. Inc.</i> , 2026 WL 411754 (M.D. Fla. Feb. 11, 2026).....	4

Other Authorities

37 C.F.R. § 42.6(e).....	17
IPR Case No. 2025-00677	1
U.S. Patent No. 10,430,811.....	1
U.S. Patent No. 10,430,811 B1	<i>passim</i>

Patent Owner, AfterWords, Inc. (“**Patent Owner**”), respectfully submits this Sur-Reply to Petitioner GetTattle, Inc.’s (“**Petitioner**”) Reply brief (“**Reply**”) challenging the novelty of Claims 1-7, 10, 13, 16, 18-19 (“**Challenged Claims**”) of U.S. Patent No. 10,430,811 (“**811 Patent**”).

I. INTRODUCTION

Petitioner’s Reply falls short of bridging the substantial gaps between the Challenged Claims and the teachings of the cited references, U.S. Publication No. 2015/0193794 to Douglas, *et al.* (“**Douglas**”) and U.S. Publication No. 2014/0337098 to Ganesh, *et al.* (“**Ganesh**”). Neither Douglas nor Ganesh teach or disclose the Survey Module, campaign data structure, vendor interface, and vendor database that are part of Patent Owner’s independent claims 1 and 19.

Petitioner bears the burden of showing with particularity why the Challenged Claims are unpatentable. *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016). Given the cited references do not teach every element of Patent Owner’s claims, Patent Owner respectfully requests that the Board enter a final decision affirming the validity of the Challenged Claims.

II. THE BOARD SHOULD REJECT PETITIONER’S ATTEMPT TO RECAST PATENT OWNER’S CLAIM CONSTRUCTION

Rather than advocate for its own proposed claim constructions, Petitioner disputes two phrases used in Patent Owner's proposed constructions. Petitioner suggests, but does not request, that the phrase: (i) "or receiving" be excluded from Patent Owner's proposed construction of point-of-sale interface, and (ii) "executable logic" be excluded from the proposed construction of Survey Module.

Petitioner's arguments are refuted by the intrinsic evidence, and importantly, Petitioner does not present expert testimony to support the proposed deviation from Patent Owner's claim constructions. The testimony of Patent Owner's expert, Ivan Zatkovich, stands un rebutted. For at least these reasons, Patent Owner requests a ruling in favor of Patent Owner's claim constructions. *Invitrogen Corp. v. Clontech Lab'ys, Inc.*, 429 F.3d 1052 (Fed. Cir. 2005) ("Unsubstantiated attorney argument regarding the meaning of technical evidence is no substitute for competent, substantiated expert testimony."); *Enzo Biochem, Inc. v. Gen-Probe, Inc.*, 424 F.3d 1276, 1284 (Fed. Cir. 2005) ("Attorney argument is no substitute for evidence.").

a. "Point-of-Sale Interface"

Petitioner contends that because the '811 Patent Purchase System Client to Server Interface 115 ("server interface") is part of the Point of Sale Client 100 ("POS Client"), the server interface 115 could not possibly send and receive transaction data generated at a point of sale. EX1001, '811 Patent, Fig. 2 (showing the server interface 115 as part of the POS Client). Petitioner's argument does not

acknowledge the reality that software and hardware components within a system function in part by transmitting and receiving data internally within the system.

Here, nothing precludes the server interface 115 from receiving transaction data generated by the POS terminal 105 that is also shown in Figure 2 as being part of the POS Client 100. The “POS terminal 105 represents anywhere a purchase takes place.” *Id.*, C5:31-34. “[T]he POS terminal 105 may collect price, quantity, and name of each item purchased”—*i.e.*, the POS terminal 105 receives transaction data. *Id.*, C9:6-14 & C5:35-37 (“[T]ransaction data that may include price, quantity, and name of each item purchased.”).

The server interface 115 sends transaction data to the survey server 140. *Id.*, C9:36-38; EX2001, Zatkovich Decl. ¶ 44 (“[T]he ‘Purchase System Client to Server Interface’ (115) send[s] purchase detail information (transaction data) from the point-of-sale device to be recorded on the survey server.”). Not only does the POS terminal 105 receive transaction data generated at the point of sale, but the server interface 115 also must necessarily receive transaction data generated at a point of sale before performing the function of sending the transaction data to the survey server 140.

Patent Owner’s proposed construction of point-of-sale interface is supported by the intrinsic evidence and expert testimony. EX2001, Zatkovich Decl. ¶¶ 39, 41, 44, 47, 60. Petitioner’s argument lacks evidentiary support and improperly limits

the functionality of the survey interface 115 to transmitting transaction data that must necessarily be received before it is transmitted. Petitioner's Reply does not present an adequate rationale for rejecting or modifying Patent Owner's proposed claim construction of "point-of-sale interface."

b. "Survey Module"

Patent Owner's proposed construction of "Survey Module" as "software code with executable logic for implementing a survey" is likewise well grounded in the intrinsic evidence and expert testimony. EX2001, Zatkovich Decl. ¶¶ 71-81. Petitioner contends the phrase "with executable logic" should be excluded from Patent Owner's proposed claim construction because the phrase is not used in the claims, and Patent Owner repeatedly relies on the '811 Patent specification to support the proposed construction.

Petitioner's arguments run afoul of key tenets of claim construction that the claims should be construed "in view of the specification," and the specification "is always highly relevant to the claim construction analysis." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005). Where the specification consistently characterizes an invention in a particular way, those portions impliedly define the claim term to include that functionality. *Tree Defender, LLC v. Mike Hurst Citrus Serv. Inc.*, 2026 WL 411754, *3-4 (M.D. Fla. Feb. 11, 2026) (holding that titles,

technical field descriptions, and background sections “impliedly defined” claim term based on consistent characterization throughout the specification).

Here, the ‘811 Patent consistently describes the Survey Module as performing multiple functions, including logic operations, and the Survey Module function is not limited to displaying questions. First, the ‘811 Patent claims themselves demonstrate that the Survey Module performs more than displaying questions. EX2001, Zatkovich Decl. ¶¶ 73-75. Claim 8 recites that Survey Module redirects a web browser to an Exit Page if a configurable Condition is satisfied. EX1001, ‘811 Patent, Claim 8. Claim 18 similarly recites a logic operation where the Survey Module determines whether a configurable condition is satisfied before sending a notification. EX1001, ‘811 Patent, Claim 18.

The ‘811 Patent includes other examples of logic that are implemented by the Survey Module. The ‘811 Patent that a Survey Module performs user authentication and the handling of authentication information:

[T]he Guest **Survey Module** (GSM) . . . includes multiple services required for implementing the inventive method [GSM Create/Edit Guest] — [is an] optional feature allows guest to create/edit their Information The [GSM Guest Authentication] service allows a guest to either create or authenticate The [GSM Create/Edit Guest] allows the merchant's web page to react to a failed guest authentication or to handle a new authentication Service-confirmation returns the Guest GUID for successful insertion or an edit success or fail error message.

These functions are described as being implemented by the Survey Module and would require the use of branching logic. The [GSM Create/Edit Guest] service, for example, “returns the Guest GUID for successful insertion” or “fail error message.” The selection among multiple return values based on an input denotes the use of executable branching logic as part of making the selection.

The ‘811 Patent also teaches that the Survey Module “allows merchants, such as retailers and service providers, to integrate a check-level survey module into their own branded web-site using java tags.” *Id.*, C2:52-56, C11:15-18, C17:12-15. Guests participate in the survey with “survey features being delivered to the merchant web-site using a . . . Guest **Survey Module** . . . web-service as the data-integration and storage platform.” *Id.* Thus, the Survey Module delivers the survey features to a vendor survey interface, and the ‘811 Patent teaches that the survey is implemented as “a web-container package with branching logic that changes the questions presented.” *Id.*, C11:30-34.

The ‘811 Patent independent claims recite that the vendor survey interface runs (*i.e.*, executes) the Survey Module to display at least one survey question. The ‘811 Patent teaches that the Survey Module includes branching logic and that the Survey Module is executable. Given the support in the claims and specification, a person of ordinary skill in the art would readily read the ‘811 Patent and understand

the term Survey Module as encompassing “software code with executable logic.” EX2001, Zatkovich Decl. ¶ 75.

III. DOUGLAS DOES NOT ANTICIPATE THE CHALLENGED CLAIMS

a. Douglas does not disclose a survey module.

Douglas does not disclose a Survey Module with executable software code transmitted to a vendor survey interface. EX1001, ‘811 Patent, Claims 1 & 19. Petitioner contends, without supporting citations to expert testimony or portions of Douglas, that: (i) “Douglas discloses software code embedded within messages sent from the survey server;” (ii) a person of ordinary skill in the art would view “scripts” and “HTML documents” as software code with executable logic; and (iii) Internet browsing software running on a customer device is “the conduit for executing the script (*e.g.* JavaScript) sent from the Survey System 101 of Douglas.” Reply at 5-8.

The reason that Petitioner’s Reply does not cite to expert testimony or portions of Douglas is that neither support Petitioner’s arguments. Although Petitioner claims the survey system 101 in Douglas sends JavaScript to a customer device—Douglas does not contain any disclosure about transmitting JavaScript. Douglas does reference transmitting “web pages, relating to, for example, online banking applications” where the webpages comprise “HTML documents, which may include, images, style sheets and scripts in addition to text content.” EX1007, Douglas ¶ [0054]. However, the transmitted webpages are only mentioned in

connection with “banking applications and the like,” and Douglas does not state that its surveys are transmitted in webpage, HTML, or “script” format.

The only disclosure in Douglas concerning the format of its surveys is that a “survey may be presented as a notification, text message, email, SMS, MMS, or presented to the customer device on the user interface,” and “[s]urveys may include visual graphics, images, animations, videos, and other digital media.” *Id.* ¶ [0033]. These formats are not software code, and Petitioner has not presented expert testimony stating otherwise. The consequence is that Douglas does not teach a “Survey Module comprising software code,” as claimed by Patent Owner.

Petitioner emphasizes that Douglas discloses sending “HTML documents” and “scripts” and asks the Board to assume that Douglas meant to say that its surveys can be sent in those formats. This is tantamount to an argument that it would have been obvious to one of skill in the art to combine Douglas’s teaching concerning transmitting surveys as “a notification, text message, email, SMS, MMS” and its separate teaching about transmitting online banking applications in HTML or script format. However, Petitioner has not raised obviousness as a grounds for invalidity in this proceeding.

In any event, even if Petitioner was correct that Douglas teaches the transmission of surveys in HTML or script format, Patent Owner’s expert has explained that “HTML is not a programming language nor can it produce an

executable software code.” EX2001, Zatkovich Decl. ¶ 81. The expert declaration submitted with the petition offers nothing that would rebut this testimony and makes no mention of HTML, scripts, or executable logic. EX1005, Declaration of Yuriy Brun, Ph.D.

The only software used to display survey questions in Douglas is installed on the customer device 106 prior to receiving the survey and is independent from any transmitted survey. EX2001, Zatkovich Decl. ¶ 90. Using an existing, installed software application to display survey questions is different than implementing a survey by receiving and executing a Survey Module with software code, as claimed by Patent Owner. *Id.* ¶¶ 90, 92.

Moreover, the only logical operations that occur in Douglas, such as determining whether to provide additional survey questions based on a customer’s previous response, occur on the centralized survey system. EX1007, Douglas ¶¶ [0035] (“[S]urvey generator 103 may create and transmit additional survey queries based on the responses received.”), [0037], [0059], [0069]. This server-centric architecture is distinguishable from Patent Owner’s system, where Survey Module software code is generated by the survey server and sent to a vendor interface for execution. *See* EX1001, ‘811 Patent, Claims 1 & 19.

b. Douglas does not disclose a vendor survey interface.

Petitioner is correct that Douglas teaches survey questions “presented to the customer device on the user interface.” However, that does not mean that Douglas discloses the vendor survey interface claimed by Patent Owner. Claim 1 recites 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 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 Question; and (vi) transmitting the Respondent Header to the survey server computing device.

EX1001, ‘811 Patent, Claim 1. As an initial matter, the customer device user interface referenced by Douglas must be distinct from Patent Owner’s vendor survey interface that itself performs the operation of “generating a graphical user interface on a display screen.” Put another way, a component such as a vendor survey interface that generates a graphical user interface cannot be the same as the user interface itself.

Petitioner’s argument conflates the concept of a user interface with a system interface. As explained by Patent Owner’s expert: “A POSITA understands that there are two basic types of interfaces a user interface and a system interface.” EX2001, Zatkovich Decl. ¶ 41 (emphasis original). Douglas refers to a “user interface,” which “displays information to a user and allows the user to interact with that information.” *Id.* On the other hand, Patent Owner’s “vendor survey interface” is a system interface, *id.* ¶ 42, which “allows one system component to communicate information to and from another system component,” *id.* ¶ 41.

As a system interface, Patent Owner’s vendor survey interface performs distinct functions from the user interface taught by Douglas. Petitioner does not contend that Douglas’s user interface is capable of performing the above-listed functions, such as transmitting the survey token to the survey server or generating a Respondent Header. Even if Petitioner could claim that Douglas teaches these functions, which it does not, these functions would be performed by various and disparate components and not by a single vendor survey interface. Thus, Douglas would not teach every element of the ‘811 Patent claims “arranged or combined in the same way as in the claims.” *Blue Calypso, LLC v. Groupon, Inc.*, 815 F.3d 1331, 1341 (Fed. Cir. 2016) (“[A] prior art reference will anticipate if it ‘disclose[s] each and every element . . . arranged or combined in the same way as in the claim.’”) (citation omitted).

In short, the user interface of Douglas is not a system interface, like Patent Owner’s vendor survey interface, and Douglas’s user interface does not perform the same functions. As a result, Douglas does not anticipate the Challenged Claims.

c. Douglas does not disclose a campaign data structure or vendor database.

Patent Owner’s claims also require a campaign data structure and vendor database not taught by Douglas. Claims 1 and 19 recite “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 “a vendor database storing a plurality of purchase detail identifiers.” EX1001, ‘811 Patent, Claims 1 & 19. These claims

generate survey questions by checking whether a configurable condition is met through comparing transaction data to purchase details stored in the vendor database.

Douglas describes generating questions about items purchased by a consumer, EX1007, Douglas ¶ [0039], but there is no disclosure of comparing transaction data against purchase details stored to a vendor database to determine whether a configurable condition is met, EX2001, Zatkovich Decl. ¶¶ 108-110. Patent Owner's system enables customization of surveys by establishing configurable conditions for question generation before a consumer interacts with a merchant. EX1001, '811 Patent, C12:24-62.

In part because Douglas does not perform the same functions as Patent Owner's claims, Douglas also does not use the same structure. Douglas does not recite a component that includes both a configurable condition and survey question data, nor does Douglas describe a vendor database that stores purchase detail identifiers used in the process of generating questions.

Douglas also omits mention of pre-existing survey questions stored to a campaign data structure. Creating survey questions using a trigger signal is not the same as employing the use of pre-existing questions, and one of skill in the art would appreciate that survey questions can be generated by any number of alternative methods. EX2001, Zatkovich Decl. ¶ 107. Without the disclosure of campaign data structure having configurable conditions and survey question data, or the disclosure of a vendor database, Douglas cannot anticipate the Challenged Claims.

IV. GANESH DOES NOT ANTICIPATE THE CHALLENGED CLAIMS

a. Ganesh does not disclose a survey module.

Ganesh does not disclose a Survey Module with software code transmitted to a vendor survey interface for execution. EX1001, ‘811 Patent, Claims 1 & 19. Ganesh’s system includes a TOP software module 540B running on a survey server 105A to generate survey content that is transmitted to a portable computing device (“PCD”) 110. EX1008, Ganesh, ¶ [0052]. Petitioner equates the TOP software module 540B to Patent Owner’s survey module, but the elements are not same.

Patent Owner claims a Survey Module that is executed “to display the at least one Survey Question as an integrated component within the graphical user interface.” EX1001, ‘811 Patent, Claims 1 & 19. There are no teachings in Ganesh that its TOP software module 540B displays questions, and instead, the TOP software module 540B primarily functions to “query database 120A and determine survey content, such as survey questions, to be pushed to PCD 110.” EX1008, Ganesh, ¶¶ [0039], [0054]. In some cases, the TOP software module 540B performs functions that include “communicating with the POS 125 to recognize items being scanned for purchase,” “executing algorithms for selection of top survey content,” and “updating database 120.” *Id.*, ¶ [0040]. None of these functions are equivalent to displaying a survey question as part of a graphical user interface.

Petitioner's Reply also incorrectly equates the POS module 125 in Ganesh to Patent Owner's vendor survey interface. Petitioner points to Ganesh's general disclosure that "various functions" performed in the survey server 105A can also be performed by the POS module 125. *Id.*, ¶ [0039]. Petitioner points to this general disclosure as teaching that a survey module can be transmitted to a vendor survey interface to implement a survey. This comparison cannot establish anticipation, however, because Ganesh says nothing about transmitting the TOP software module 540B anywhere, and the POS module 125 does not perform the functions executed by Patent Owner's vendor survey interface, such as generating a graphical user interface or a Respondent Header. EX1001, '811 Patent, Claim 1.

Petitioner is correct that Ganesh teaches the display of survey questions. This feature alone does not establish anticipation, and Petitioner has not shown that Ganesh generates or displays survey questions in the same manner using the same elements claimed by Patent Owner.

Lastly, Petitioner contends that the "software code" element of Patent Owner's claims does not apply because Ganesh states it does not require "a particular set of program code instructions." EX1008, Ganesh ¶¶ [0039], [0076]. Even if it were true that Ganesh's system can function with multiple types of program instructions, anticipation still requires that Ganesh disclose the operation of "generating a Survey Module comprising software code for displaying the at least

one Survey Question.” The absence of such teachings in Ganesh is a dispositive factor that precludes anticipation.

b. Ganesh does not disclose a campaign data structure or vendor database.

Petitioner’s Reply contends that the selection algorithm referenced by Ganesh is the same as Patent Owner’s campaign data structure, which includes a configurable condition that prompts a survey question when the condition is satisfied. Simply put, a selection algorithm is not a data structure.

Petitioner correctly notes that both the ‘811 Patent and Ganesh teach systems that generate survey questions relating to items being purchased. That similarity alone is not enough. There could be innumerable ways of generating survey questions. A skilled artisan would understand that Ganesh’s selection algorithm requires a developer to write and install software that implements the algorithm. EX2001, Zatkovich ¶ 127. Requiring software algorithms teaches away from the use of data structures, such as Patent Owner’s campaign data structures. *Id.*

Petitioner offers no expert testimony or other evidence to support the contention that an algorithm is the same as a data structure. Patent Owner’s expert testimony that these are two distinct technical features stands un rebutted. Even if it were possible to draw a comparison between Ganesh’s selection algorithm and Patent Owner’s campaign data structures, Ganesh does not provide any details that would facilitate this analysis. Ganesh is silent about the methods or factors used in

its selection algorithm, and the passing reference to a selection algorithm cannot anticipate the Challenged Claims.

V. CONCLUSION

For the foregoing reasons, Petitioner has not met its burden of proving that the '811 Patent's claims are anticipated by Douglas or Ganesh. Petitioner's Reply does not cure the deficiencies in its case. Patent Owner respectfully requests that the Board enter a final decision affirming the validity of the Challenged Claims, or, alternatively, enter an order granting Patent Owner's Revised Motion to Amend and affirming the patentability of the substitute claims and those claims that depend from the substitute claims.

Dated: May 15, 2026

Respectfully submitted,

/s/ Jeffrey B. Fabian

Jeffrey B. Fabian, Lead Counsel

(Reg. No. 70,164)

jfabian@shumaker.com

Samantha Regala, Back-Up Counsel

(Reg. No. 78,959)

sregala@shumaker.com

J. Todd Timmerman, Back-Up Counsel

(*pro hac vice*)

ttimmerman@shumaker.com

Shumaker, Loop & Kendrick, LLP

101 E. East Kennedy Boulevard

Suite 2800

Tampa, Florida 33602

Phone: (813) 229-7600

Facsimile: (813) 229-1160

Counsel for Patent Owner, AfterWords, Inc.

CERTIFICATION UNDER 37 C.F.R. § 42.24

Patent Owner states that the present brief is in conformance with 37 C.F.R. §42.24(c) having a word count of approximately 3,564 words and thus properly below the 5,600 word count limit for a sur-reply. The word count excludes the cover page, table of authorities, table of contents, signature block, and certificate of service. Including those items brings the word count to approximately 4,035 words.

CERTIFICATE OF SERVICE

It is certified that a copy of Patent Owner's Sur-Reply has been served on Petitioner as provided in 37 C.F.R. § 42.6(e) via electronic mail transmission addressed to the persons at the address of record as follows:

Timothy J. Bechen, timothy.bechen@woodsrogers.com
Josh Long, josh.long@woodsrogers.com
Nathan Evans, nathan.evans@woodsrogers.com

Dated: May 15, 2026

/s/ Jeffrey B. Fabian
Jeffrey B. Fabian, Lead Counsel
(Reg. No. 70,164)
jfabian@shumaker.com
Shumaker, Loop & Kendrick, LLP
101 East Kennedy Boulevard
Suite 2800
Tampa, Florida 33602
Phone: (813) 229-7600
Facsimile: (813) 229-1160