

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 REVISED
CONTINGENT MOTION TO AMEND UNDER 37 C.F.R. § 42.121**

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I. INTRODUCTION

Petitioner, GetTattle, Inc. (“Petitioner”) respectfully opposes the Revised 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 20¹ and 38 fail to meet the requirements of 35 U.S.C. § 316(d) and 37 C.F.R. § 42.121 in at least three ways: (1) failure to show changes made, (2) introducing new subject matter, and (3) non-responsive to the instituted grounds for unpatentability in this proceeding.

First, under 37 C.F.R. §42.121(b), Patent Owner is required to clearly indicate the changes that are made. Petitioner will show the proposed amendments and accompanying support fail this requirement.

Secondly, 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”). The proposed substitute claims do not overcome the Board’s guidance regarding branching logic. *See* Patent Owner’s Contingent Motion to Amend, at p. 23 (Paper No. 14) (Jan. 14,

¹ And by extension proposed claims 21-37 dependent from claim 20.

2026); *see also* Decision Granting Institution of *Inter Partes* Review, at p. 31 (Paper No. 9) (Oct. 7, 2025) (“At this point in the proceeding, we do not agree with Patent Owner that the recited *survey module* must be autonomous, self-contained, or a web-container package.”). Patent’s Owner’s proposed substitute claims further violate 35 U.S.C. § 316(d)(3) by introducing new matter beyond the ‘811 Patent specification. Claims 20 and 38 recite branching logic as to the Survey Module but the ‘811 Specification discloses branching logic not at the Survey Module level but instead at the Campaign data structure. *See* Ex. 1001, at col. 11, ll. 19-21. Additionally, the ‘811 Patent, at best, discloses branching logic execution not based on “the first survey question” as claimed but instead of a group of prior-questioned and prior-answered survey questions.

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

II. AMENDMENTS FAIL TO PROPERLY AMEND

Patent Owner fails to clearly mark changes to substitute claims as required under 37 C.F.R. § 42.121(b).

In the *Revised Contingent Motion to Amend*, Exhibit A, page 44, Patent Owner notes amendments to Claim 34, image pasted below.

34. (Substitute for claim 15 if claim 15 is cancelled) The system of claim [[33]] 33, wherein:

This amendment is improper as to form. The claim is noted as a substitute for claim 15, but does not show amendments made to claim 15. Claim 15, as originally presented in the ‘811 Patent, depends from claim 14. Whereas the proposed substitute claim 34 incorrectly lists claim 15 as dependent from claim 33.

Similar to the Board’s *Preliminary Guidance on Patent Owner’s Contingent Motion to Amend* on page 6, here the proposed language to be added and/or deleted by amendment is not clearly indicated and the proposed claims are deficient.

Further, the amended claim listing in Appendix A does not match the substitute claim listings in Appendix B. The relevant portions as posted as follows:

Proposed Claim	Appendix A	Appendix B
Claim 20(c)(iv)	“...(iv) running the Survey Module to <u>perform operations comprising (A) displaying the at least one first Survey Questions as an integrated component within the graphical user interface, and (B) determining the second Survey Question;</u> (v) generating a Respondent Header based on user-generated inputs <u>that comprise the first user-generated input</u> in response to the ~~at least one first~~ Survey Question...”	“...(iv) running the Survey Module to display the ~~at least one first and second~~ Survey Questions as an integrated component within the graphical user interface...”
Claim 27	“... (b) the display screen that displays the graphical user interface ~~[[i]]~~ as an integrated component of a customer response client computing device...”	No change reflected.
Claim 28(c)	“(F) if the second configurable Condition is satisfied, generating a ~~thirdsecond~~ Survey Question using the survey question data and the certain purchase detail identifier.”	No change reflected
Claim 29	“(a) the purchase detail identifiers comprise a product/service identifier that represents a product ~~[[s]]~~ /service available for purchase through the vendor; and (b) the <u>first Survey Question or the second Survey Question</u> ~~comprises~~ <u>is</u> a Product Survey Question relating to the product/service.”	No change reflected.
Claim 30	“...(b) the <u>first Survey Question or the second Survey Question</u> ~~comprises~~ <u>is</u> a Facility Survey Question relating to the vendor facility.”	No change reflected.
Claim 31	“...(b) the <u>first Survey Question or the second Survey Question</u> ~~comprises~~ <u>is</u> a Vendor Personnel Survey Question relating to the vendor personnel.”	No change reflected.
Claim 32	“...(b) the <u>first Survey Question or the second Survey Question</u> ~~comprises~~ <u>is</u> a	No change reflected

	Service Mode Survey Question relating to the mode of service.”	
Claim 38	“(g) receiving by the survey server, a Respondent Header generated based on user-generated inputs <u>that comprise the first user-generated input</u> in response to the at least one <u>first</u> Survey Question.”	No change reflected

By not “show[ing] the changes clearly” in both the claim listing and the chart alleging support for each proposed claim, Patent Owner fails to comply with the regulatory requirements of 37 C.F.R. § 42.121(b). 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). New matter is subject matter that is not present in the specification, claims, or drawings on the patent’s filing date, which is determined by analysis under 35 U.S.C. § 112(a) and its written description requirement. *See TurboCare Div. of Demag Delaval Turbomach. Corp. v. Gen. Elec. Co.*, 264 F.3d 1111, 1118 (Fed. Cir. 2001). To satisfy the written description requirement, a patent/specification must describe the claimed invention in sufficient detail such that one skilled in the art can conclude that the inventor had possession of the claimed invention. *See, e.g., Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319 (Fed. Cir. 2003) (citing *In re Rasmussen*, 650 F.2d 1212 (CCPA 1981)). Patent

Owner's proposed substitute claims add new subject matter because there is no written description support for "a Survey Module comprising software code for... implementing branching logic." *See* Patent Owner's Revised Contingent Motion to Amend at p. 38 and 46 (Paper No. 24) (May 15, 2026).

Proposed claim 20 recites:

(b)(ii)(D) generating a Survey Module comprising software code for displaying one or more survey questions and for implementing branching logic that is configured to determine a second Survey Question based on a first user-generated input in response to the first Survey Question; and

(c)(iv) running the Survey Module to perform operations comprising ... (B) determining the second survey Question.

Proposed claim 38 recites:

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

In summary, Patent Owner attempts to recite in both Independent claims the Survey Module has software code for selecting a second question based on a first input. *See* Patent Owner's Revised Contingent Motion to Amend at p. 38 and 46-47 (Paper No. 24) (May 15, 2026).

These amendments are unsupported and thus add new matter. *See* Ex. 1010, ¶¶ 14-41.

A. Patent Owner Lacks Key Support for the Amendments to the Proposed Claims from the ‘811 Patent.

The terms “branching logic” is used at 2 locations the ‘811 Patent. However, the as-filed specification of the ‘811 Patent in the ‘490 Application never indicates that “Survey Module” includes software code that implements “branching logic.” Ex. 1010, ¶ 35.

The first instance is noted in col. 11, ll. 19-29, disclosing the Campaign data structure includes “branching logic set according to merchant preferences.” This disclosure relates to the questions being “prepared outside of the Campaign” itself.

For further clarity, the “merchant preferences” and the branching logic is further explained in col. 13, ll. 4-19. Beginning on line 4, the passage references prior-submitted questions and answers. From there, the ‘811 Patent states:

It will be appreciated that merchant preferences may cause questions to be generated that depend on previous questions generated and responses received. For example, a merchant may prefer that a particular question no longer be generated when no or few customers queried respond to it. In addition, a merchant may prefer that a question that has been answered numerous times no longer be generated as a large enough sample has been generated for analysis. The merchant may specify that after the question has been answered a certain number of times that another question be asked instead of the question. Ex. 1001 col. 13, ll. 4-19.

The “branching logic” as disclosed by the ‘811 Patent exists at the survey generation step, specifically determining if various questions should be eliminated based on responses from prior surveys. Ex. 1010, ¶¶ 26-30.

The second instance of “branching logic” in the ‘811 Patent is col. 11, ll. 30-38, mirrors the first instance noting the branching logic is used as part of the assembly of the web-container package for an order of the questions.

Patent Owner attempts to assert this passage supports a position that the Survey Module includes branching logic executed at the Customer Response Client 120 for dynamically selecting a second question to be asked based on the content of the first answer received to the first question. This is incorrect. *See* Ex. 1010, ¶¶ 33-34 and 37-39.

Rather, based on the supporting sections of the ‘811 Patent (col. 11, ll. 19-29 and col. 13, ll. 4-19), this passage discloses that the sequence of questions is generated not at the Survey Module level, but at the Campaign Data Structure level. Ex. 1010, ¶ 30. Thus, based on the scope of the ‘811 Patent, “the survey may be assembled into an autonomous, self-contained package.” The package is assembled using the branching logic executed at the Campaign Data structure level “to change the questions presented or the order of questions presented” based on these merchant preferences. Ex. 1010, ¶¶ 34-35.

There is no support within the specification of the as-filed ‘811 Patent that the Survey Module itself implements or otherwise has branching logic composed of software executable written or otherwise encoded within the survey sent to the customer. Ex. 1010, ¶¶ 31-34. Rather, to a skilled artisan, the ‘811 Patent discloses

the branching logic running at the campaign management level in determining future survey questions based on prior-received survey responses.

Branching logic at the Campaign data structure level is not the same as branching logic at a “Survey Module” that comprises software code. While paragraphs 64 and 74-75 of the ‘490 Application support the conclusion that the sequencing of questions is generated at the Campaign data structure level, Patent Owner’s proposed amended claims further support the conclusion that the campaign data structure is different from the Survey Module.

A “campaign data structure” is defined as part of the *survey server* (Proposed Claims 20(b)(i)(B) and 38(a)(ii)(B)), whereas the “Survey Module” is *what the survey server allegedly generates* according to proposed claims 20(b)(ii) and 38(e). Further, there is no support for branching logic based on user question response, as it is instead merely based off stored purchase details and merchant preferences recorded at the server. *See* Ex. 1010, ¶¶ 22-24.

Under the *Phillips* standard, Patent Owner’s actual amendments in proposed substitute claims 20 and 38 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 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 38 as relating to (1) operations of the survey server and (2) generations by the survey server. *See* Ex. 1010, ¶ 29.

Further, Patent Owner incorrectly implies that the “first user-generated input” is the same as the content of the input. The presence of an answer and not necessarily the *content of the answer* can generate 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 38, to mean that server receipt of a first question generates a second question. *See* Ex. 1010, ¶ 48. 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 38. They do not demonstrate vendor interface relatedness

or accomplish what Patent Owner repeatedly claims they do. *See* Ex. 1010, ¶¶ 39-40.

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). Patent Owner cites support for the ‘043 Provisional in Appendix B at paragraphs 10, 27, 45, 54-57, 61-69, 74-81, 90, 118-131, 146, claims 1, 3, 14, 19, 20, and Figs. 1-2, 4-5, 7-8. Patent Owner’s Revised Contingent Motion to Amend at p. 83 (Paper No. 24) (May 15, 2026). However, these amendments are unsupported by the ‘043 Provisional and thus impermissibly add new matter.

The ‘043 Provisional describes that a survey taker’s answers are “sent to the server” and a survey “question generator” *at the server* generates survey questions,

rather than the answers being interpreted by any type of branching logic software of a Survey Module provided to a vendor survey interface. *See, e.g.*, Ex. 2002 ¶¶ 57, 61-68. There is no support for execution of “branching logic” within a Survey Module comprising software code *solely* at the client device.

The term “branch” appears in paragraphs 37, 65, 71, and 78 of the ‘043 Provisional. *See generally* Ex. 2002. However, even the functions performed by the branches are devoid of the requisite logic. *See* Ex. 2002 ¶¶ 37, 65, 71, and 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 38. *See* Ex. 1010, ¶ 41.

Given the foregoing, 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).

C. Patent Owner Lacks Key Support for the Amendments to the Proposed Claims from the ‘611 Patent and ‘434 Application.

Patent Owner cites the ‘611 Patent at paragraphs 62-64, claim 1(b)(ii), claim 14(e), and Figs. 2, 5-6 and the ‘434 Application at paragraphs 68-70, claim 1, claim 20(e),² and Figs. 2, 5-6. However, the term “branching logic” is not mentioned at all in the ‘611 Patent or the ‘434 Application.

² Claim 20(e) does not exist in the file history for the ‘434 Application. Ex. 1002.

Patent Owner's main support from the '611 Patent and '434 Application comes from the following language:

At block **415**, the server retrieves purchase detail associated with the survey token and generates questions for the purchase... the questions generated are related to the items purchased and preference data associated with merchant preferences.... [T]hese questions are then formatted into web pages 160 which are then sent to browser 130. *See* Ex. 2003 ¶ 64; Ex. 1002 ¶ 70.

However, this language merely supports the idea that the *server* can retrieve purchase details to generate questions *related to the items purchased and merchant preferences for asking questions*. Branching logic and the generation of follow up questions based on user-answers to previous questions is not disclosed or taught anywhere in the '611 Patent or the '434 Application. *See* Ex. 1010, ¶ 41.

IV. PROPOSED 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).

For the sake of brevity, Petitioner only addresses the proposed amendments to claims 20 and 38. For the remaining, unamended terms, and the dependent claims of claim 1 (new as proposed dependent claims of claim 20), Petitioner maintains reliance on previously-filed positions before the Board.

Petitioner asserts the following grounds for unpatentability:

Ground	Claims Challenged	35 U.S.C. §	Reference(s)/Basis
1	19 (<u>38</u>)	102	Douglas ³
2	1-7, 10, 13, 16, 18 (<u>20-26, 29, 32, 35, 37</u>)	102	Douglas
3	19 (<u>38</u>)	102	Ganesh ⁴
4	1-7, 10, 13, 16, 18 (<u>20-26, 29, 32, 35, 37</u>)	102	Ganesh

These amendments are non-responsive because the claims fail to overcome Petitioner’s position that “software code ... for implementing branching logic that is configured to determine a second Survey Question based on a first user-generated

³ U.S. Publication No. 2015/0193794 (“Douglas”, Ex. 1007) with a priority date of January 8, 2014.

⁴ U.S. Publication No. 2014/0337098 (“Ganesh”, Ex. 1008) with a priority date of May 9, 2013.

input in response to the first Survey Question” is disclosed in Douglas and Ganesh. *See generally* Ex. 1010, ¶¶ 42-90.

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.

Ganesh discloses survey content that “may be dynamically selected based on any number of factors including...responses to previously pushed questions.” Ex. 1008, ¶ 6.

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 38 pursuant 37 C.F.R. § 42.121(a)(2)(i).

A. [Grounds 1 & 2] The Amendment in Proposed Claims 20 and 38 are anticipated under 35 U.S.C. § 102 by Douglas.

First and foremost, Patent Owner’s proposed amendments relate to the survey server, as opposed to the vendor interface, despite Patent Owner’s false assertions to the contrary. Ex. 1010, ¶¶ 28-29, 34.

Secondly, proposed amendments recite a determining step without context of how that determination is performed. *Id.* ¶ 73. Where Patent Owner had the full breadth of terminology at his disposal, the language actually proposed fails to recite if the determination step is based on receipt of a first user-generated input or the content of the first user-generated input. *Id.* ¶ 74.

Patent Owner attempts to ask this Board to interpret the claims beyond what its actual language. In his May 15, 2026 Expert Declaration, on page 10, Mr. Zatkovich states in Paragraph 28 that the “new language of the claims make it necessary: ... b) to present alternate or additional questions based on the user’s response to a prior question.” Ex. 2005, ¶ 28. This is unequivocally false. Ex. 1010, ¶ 75.

If Patent Owner wanted claims 20 and 38 to recite presenting alternate or additional questions based on the user’s response, Patent Owner should have actually recited that terminology in the claims. Instead, the proposed amendments simply state “determining ... based on” without reciting what determining means and what is the result of the determining step.

Patent Owner further qualifies this “determining” step based on branching logic. Patent Owner’s own expert notes branching logic as being an IF THEN statement. Ex. 2005, ¶ 15. See also Ex. 1010, ¶ 61.

Under a broadest reasonable interpretation and based on the actual terminology proposed in claims 20 and 38, there is no express requirement for analyzing the content of the first user-generated input. Moreover, under the Patent Owner’s own stated branching logic, IF a user-generated input is received, THEN a second question can be presented, such that the receipt of an input triggers the branching logic and not the content of the input. Ex. 1010, ¶ 75.

Furthermore, the proposed amendments do not recite a location for the execution of the software code for implementing branching logic. Patent Owner asserts to the Board that this branching logic is performed at the client or local processing device, e.g. the customer response client 120. *See e.g.*, Patent Owner’s Revised Contingent Motion to Amend at 18 (Paper No. 24) (May 15, 2026). But again, there is a wide discrepancy between what the proposed claims actually recite and what Patent Owner claims they mean.

Proposed claim 20 is a system claim reciting three elements: point-of-sale interface; survey server; and vendor survey interface. As outlined above, the generating of the Survey Module is recited within the Survey Module. But the “vendor survey interface” merely recites the broad limitation of “determining the second Survey Question.” Ex. 1010, ¶ 45.

Claim 20 does not recite “determining the second Survey Question *based on the content of the first user-generated input as determined by the branching logic.*” *Id.* ¶ 48. When viewing what proposed claim 20 actually recites, the vendor survey interface “determines the second Survey Question” ***without*** reciting that this determining step is “based on a first user-generated input.” *Id.* ¶ 47.

Had the Patent Owner intended for the vendor survey interface determining step to be predicated on first user-generated input, the Patent Owner could have actually stated that within the recitation of the function of the survey server. But, as

currently written, a reasonable interpretation of claim 20 recites the survey server having “branching logic” without reciting or requiring “branching logic” in the vendor survey interface.

Claim 38, while reciting a method step, suffers the same incongruence between what is actually recited and Patent Owner’s asserted interpretation. Claim 38 recites “generating by the survey server, a Survey Module comprising software code for ... (ii) implementing branching logic that determines a second Survey Question based on a first user-generated input.”

But similar to claim 20, there is no active recitation of the performance or execution of this branching logic at or by the vendor survey interface. Rather, step (f) recites transmitting the Survey Module to the vendor survey interface; and step (g) recites receipt back at the survey server a Respondent Header including the first-user generated input. Or stated succinctly, there is no active recitation in claims 20 and 38 for the execution of branching logic within the vendor survey interface.

Additionally, claims 20 and 38 do not require or restrict the branching logic and the determining step to be performed solely or exclusively at the vendor survey interface. Ex. 1010 at ¶ 49

Petitioner again notes the exact language of the claims 20 and 38 recite the implementation of branching logic, but the claims do not restrict or prohibit the location of the execution of the branching logic. As noted above, the claims do not

recite the branching logic executing on the user device (e.g. the vendor survey interface). Similarly, the claims do not restrict or require the branching logic to be solely executed at one location or distributed across multiple locations. Ex. 1010 at ¶ 49

Again, Petitioner asks the Board to look at what the claim recites versus what the claim does not recite. Patent Owner asserts the claims recite an improved system eliminating the need for back/forth communication between the remote device and the survey server. But claim 20 does not recite “determining the second Survey Question” based on the first user-generated input and independent of communication with the survey module. Similarly, claim 38 includes similar missing claim elements restricting or prohibiting additional communications as part of the first question to second question transition to support Patent Owner’s asserted interpretation.

These proposed amendments remain anticipated by Douglas. Ex. 1010, ¶ 42-43.

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 38, 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. *See* Ex. 1010, ¶ 50, 68, 70, 71.

Further, Douglas discloses executable code (scripts) within the content delivered to a client device. Ex. 1010, ¶¶ 51-58. 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. *See* Ex. 1010, ¶ 56. 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. *Id.*

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). This position appears at odds with Zatkovich’s Declaration where 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.

Finally, Douglas provides for the “functions described as being performed at various components may be performed at other components, and the various components [m]ay be combined or separated.” Ex. 1007 at ¶ 70. To a person skilled in the art, Douglas does not expressly restrict the software functions to be expressly executed on any specific processing device or devices. Ex. 1010, ¶¶ 57-58. Therefore, under the disclosure of Douglas, the script and branching logic functions,

as well as the interactive nature of the surveys, can be locally executed customer device 106 and is not expressly restricted to the survey system 101.

Since proposed claims 20 and 38 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 38, and by extension proposed dependent claims, 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 38 are anticipated under 35 U.S.C. § 102 by Ganesh.

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.

Ganesh further states “the term ‘application’ may also include files having executable content, such as: object code, scripts, ...” Ex. 1008, ¶ 16. Scripts can be understood to include programming code, such as Javascript, and therefore includes branching logic. *See* Ex. 1010 ¶¶ 86-87, 90.

Ganesh discloses software code to implement “branching logic” that dynamically selects additional survey content based on answers to previously provided survey content. *Id.* Since proposed claims 20 and 38 incorporate the elements of current independent claims 1 and 19, and the only clearly marked amendment recite to “branching logic” as it relates to the survey server, proposed claims 20 and 38, and by extension proposed dependent claims, are non-responsive to grounds 3 and 4 of the Petition as still being anticipated under 35 U.S.C. § 102 by Ganesh. *Id.* ¶ 76.

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) being improper as to showing the amendments; (2) impermissibly introducing new matter and (3) being non-responsive to the grounds of unpatentability instituted by the Board in this *inter partes* review. As such, Petitioner respectfully requests that the Board deny Patent Owner's Revised 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: June 16, 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 REVISED 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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