

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GETTATTLE, INC.
Petitioner

v.

AFTERWORDS, INC.
Patent Owner

Patent No. 10,843,811

DECLARATION OF YURIY BRUN, PH.D.
IN SUPPORT OF
PETITIONER'S OPPOSITION TO PATENT OWNER'S
REVISED CONTINGENT MOTION TO AMEND

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A. Introduction

1. This Declaration is being prepared in connection with the *Petitioner's Opposition to Patent Owner's Revised Motion to Amend* as part of the *Inter Partes Review* (IPR Case No. 2025-00667) relating to U.S. Patent No.

10,430,811 ("the '811 Patent," EX1001) pending before the U.S. Patent Trial and Appeal Board. I have been retained by counsel for Petition, GetTattle ("Petitioner"), to provide my expert opinion in these proceedings.

2. My name is Yuriy Brun, Ph.D., and I have provided a summary of my background and qualifications, as well as a full CV, in my previous declaration for this IPR, EX1006, dated February 28, 2025.

B. Assignment

3. I have been asked to provide my opinions on the *Inter Partes* Petition being submitted to the Patent Trial and Appeal Board as prepared by counsel for Petitioner.

4. In forming my opinions, I have considered the '811 patent and its file history, as well as the IPR2025-00677 file history including but not limited to the Board's *Preliminary Guidance Patent Owner's Contingent Motion to Amend*, *Patent Owner's Contingent Motion to Amend*, *Patent Owner's Revised Contingent Motion to Amend*, *Expert Declaration of Ivan Zatkovich in support of Patent*

Owner's Contingent Motion to Amend and Expert Declaration of Ivan Zatkovich in support of Patent Owner's Revised Contingent Motion to Amend.

5. I have also considered prior art references:

- a. U.S. Publication No. 2015/0193794 ("Douglas"); and
- b. U.S. Publication No. 2014/0337098 ("Ganesh").

C. Legal Standards

6. It is my understanding that for a reference to be used to render claims of a patent unpatentable under 35 U.S.C. §102 and/or 35 U.S.C. §103, it must be a prior art reference as defined by 35 U.S.C. §102 as the status was in effect at the time the invention was made, and as interpreted by controlling case law.

7. It is my understanding that for a patent to be anticipated under 35 U.S.C. §102, all of the limitations of the claim under study must be present within the reference. For example, for a patent to be anticipated under 35 U.S.C. §102 by a single reference, all of the limitations of the claim must be present and disclosed within the four corners of the single reference.

8. I understand that in *Inter Partes* review, claim terms in an unexpired patent are given their broadest reasonable construction in light of the specification of the patent in which those terms appear, as those terms would be interpreted by a person of ordinary skill in the art.

9. I have been informed that in an inter partes review, the burden of proof is on the petitioner to prove unpatentable those issued claims that were actually challenged in the petition for review and for which the Board instituted review. I also understand that the petitioner has the burden of proving a proposition of unpatentability by a preponderance of the evidence.

10. I have been informed that claims in an IPR proceeding are given their ordinary and customary meaning as understood by one of ordinary skill in the art. I further understand that this is the same claim construction standard as used in a District Court proceeding.

11. I have been informed that any proposed amendments to patent claims during an *Inter Partes* review cannot add new matter beyond the scope of the patent itself, as well as patents and applications to which there are claims of priority, whereby adding new matter would include proposed claim amendments not supported by the disclosure of the patent and the patents and applications to which there are claims of priority.

12. I have been informed that "a person of ordinary skill in the art" ("POSITA") is a hypothetical person to whom an expert in the relevant field could assign a routine task with reasonable confidence that the task would be successfully carried out. I have been informed that the level of skill in the art may be evidenced by references published at or around the time of the filing of

the patent under consideration. Therefore, in performing my analysis I have considered the cited references as evidencing the level of skill in the art, and have applied the level of ordinary skill in the art based upon such information as well as my experience and knowledge in the relevant field.

13. The Petitioner has defined a person of ordinary skill in the art as "someone who has, through education or practical experience, at least 2-3 years of experience in software engineering, such as the development of data sets, database management, and networking integration for dynamic content generation and network-based distribution."

D. Revised Motion to Amend Unsupported by '811 Patent

14. In the *Patent Owner's Revised Contingent Motion to Amend Under 37 C.F.R. § 42.121*, Patent Owner presents new claim 20 as proposed replacement of claim 1 and new claim 38 as proposed replacement of claim 19.
15. Claim 20 adds that the generating step of Survey Module comprises 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.

16. Claim 20 further adds that the vendor survey interface performs operating steps to display the first Survey Question and “determine the second Survey Question.”
17. In reviewing the proposed additions to claim 20, I do not believe that the amended language requires the second Survey Question to be based on the content contained within or substance of the answer to the first Survey Question.
18. The term branching logic is a general computer software term well known to a skilled artisan and includes any scenario where a second step can be conditional upon a first step. This branching logic, in one form, can be an IF THEN conditional statement, whereby IF a first step occurs, THEN a second action can be performed.
19. The proposed additions to claim 20 recite a computing scenario where the display of the second Survey Question can be predicated on a receipt of a first answer to a first Survey Question. A user entering an answer and hitting submit can be the IF inquiry such that displaying second Survey Question can be the THEN resultant function.
20. The proposed additions to claim 20 do not require and do not expressly recite a determination of a second Survey Question based on a content contained within the first answer and can therefore be interpreted to include

embodiments where mere submission of any answer can trigger the branching logic.

21. Claim 38 recites the 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.”

22. In reviewing the proposed additions to claim 38, I do not believe that the amended language requires the second Survey Question to be based on the content contained within or substance of the answer to the first Survey Question.

23. The proposed additions to claim 38 recite a computing scenario where the display of the second Survey Question can be predicated on a receipt of a first answer to a first Survey Question. A user entering an answer and hitting submit can be the IF inquiry such that displaying second Survey Question can be the THEN resultant function.

24. The proposed additions to claim 38 do not require and do not expressly recite a determination of a second Survey Question based on a content contained within the first answer and can therefore be interpreted to include embodiments where mere submission of any answer can trigger the branching logic.

25. Claims 20 and 38 recite the branching logic being embedded within the Survey Module, specifically the branching logic being within the software code of the Survey Module.
26. Column 11, lines 19-22 of the '811 Patent state "Survey are created using the transaction data as well as the Campaign data structure, which includes configurable Conditions, Survey Questions, and branching logic set according to merchant preferences." Ex1001 at col. 11, ll. 19-22.
27. Column 13, lines 9-19 of the '811 Patent further states, in relation to Fig. 6, that "merchant preferences may cause questions to be generated that depend on previous questions generated and responses received." This passage gives the example of omitting a question from future surveys when "no or few customers queried respond to it." This passage gives another example of eliminating a question "after the question has been answered a certain number of times" and that "another question be asked instead of the question." Ex1001 at col. 11, ll. 9-19.
28. The '811 Patent, in the disclosure of the flowchart of Fig. 6, further states the steps of blocks 515, 520, 525, 530 and 535 are performed at the server 140. Ex1001 at col. 12, l. 39 – col. 13, l. 8.

29. Based on these passages and the overall disclosure of the '811 Patent, I believe that the branching logic is described as existing at the Server, specifically the Server Engine 140 of Fig. 2.
30. The branching logic in the '811 Patent is for generating a sequence of questions prior to transmitting the question(s) to the survey recipient.
Ex1001 at col. 13, ll. 6-7.
31. The '811 Patent further states 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."
Ex1001 at col. 11, ll. 30-34.
32. I believe that the term "with" of col. 11, ll. 30-34 discloses building the survey module using the branching logic at the server 140, the branching logic being used to determine which questions should be included in the survey itself.
33. I do not believe the term "with" as used in col. 11, ll. 30-34 describes embedding the branching logic into the web-container package because the '811 Patent does not expressly state that that branching logic is within the web-container package and there are no disclosures of branching logic factors or considerations to be embedded within the web-container package.

34. I further believe that passage on col. 11, ll. 30-34 of the '811 Patent discloses the usage of the branching logic at the survey server for generating the one or more questions based on the merchant preferences based on the express disclosure of col. 13, lines 9-19 of the '811 Patent stating "merchant preferences may cause questions to be generated that depend on previous questions generated and responses received" as being performed at the Server Engine 140.

35. I do not believe that the '811 Patent inherently states or implies inclusion of branching logic at the Survey Module that is transmitted to the user because: (a) there is no actual disclosure of branching logic being embedded within the survey module; (b) there is no disclosure of branching logic factors or considerations to be included as part of an embedded decision sequence within the survey module; (c) there is no disclosure of customer-survey interactions where the survey itself dynamically modifies questions at the time of the survey being taken; and (d) the branching logic and consideration factors of the merchant preferences are disclosed as existing at the survey generation done at the server engine 140.

36. The Board's *Preliminary Guidance*, on page 10, states "Patent Owner has failed in its Motion to provide adequate evidence at this stage to demonstrate

that these disclosures pertaining to ‘branching logic’ are integrated into a ‘Survey Module’ as recited.”

37. On page 15, Para. 43, of the Expert Declaration of Ivan Zatkovich in support of the Patent Owner’s Contingent Motion to Amend, Mr. Zatkovich disagrees with Board.

38. Based at least on the declarations noted above, I believe Mr. Zatkovich is incorrect and the Board has correctly indicated that the ‘811 Patent fails to disclose the branching logic as being embedded within the survey module.

39. I believe that the ‘811 Patent does not disclose the branching logic being integrated within the Survey Module as recited in claims 20 and 38 and therefore the proposed amendments add new matter.

40. Based at least one Paragraphs 14-39 above, I do not believe the proposed amendments are proper as they are not supported by the scope of the ‘811 Patent.

41. I further do not believe that additionally cited patents and applications, including U.S. App. 16/456,490, U.S. App. 16/279,386, and U.S. App. 62/104,043 provide support for the proposed amendments including support for the inclusion of branching logic at the survey module.

E. Douglas anticipates Proposed Claims

42. It is my opinion that proposed Claim 20 is unpatentable under 35 U.S.C. §102 because Douglas identically discloses all of the claimed limitations recited therein.

43. My positions as submitted in Paras. 50-83 of my prior Declaration remain applicable.

44. Claim 20 adds that the generating step of Survey Module comprises 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.

45. Claim 20 further adds that the vendor survey interface performs operating steps to display the first Survey Question and “determine the second Survey Question.”

46. Claim 38 recites the 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.”

47. The proposed additions to claims 20 and 38 recite a computing scenario where the display of the second Survey Question can be predicated on a receipt of a first answer to a first Survey Question. A user entering an answer

and hitting submit can be the IF inquiry such that displaying second Survey Question can be the THEN resultant function.

48. The proposed additions to claims 20 and 38 do not require and do not expressly recite a determination of a second Survey Question based on a content contained within the first answer and can therefore be interpreted to include embodiments where mere submission of any answer can trigger the branching logic.

49. Claims 20 and 38 recite the branching logic being embedded within the Survey Module, specifically the branching logic being within the software code of the Survey Module.

50. The term branching logic is a general computer software term well known to a skilled artisan and includes any scenario where a second step can be conditional upon a first step. This branching logic, in one form, can be an IF THEN conditional statement. An example of a conditional statement is “if A then B.” Another example of a conditional statement is “If A then B else C.”

51. A markup language is a system for annotating text with tags or symbols that define how the content should be structured, displayed, or interpreted, separate from the content itself.

52. HTML, which stands for hypertext markup language, is one example of a type of markup language, typically used with web browser applications.

53. Javascript is a type of scripting language capable of performing branching logic. Javascript may be written directly within the HTML code, including using a <script> identifier.
54. HTML having Javascript script therein can including branching logic in the form of conditional statements.
55. Douglas states “The web pages delivered to client device may include, for example, HTML documents, which may include images, style sheets and scripts in addition to text content.” EX1007 at Para. 54.
56. Douglas discloses using scripts within an HTML document and Javascript is one well-known form of a script. Therefore, Douglas discloses embedding Javascript in the web pages delivered to a client device, where Javascript can include branching logic.
57. While Para. 54 of Douglas gives one example of the web page including HTML documents and scripts relating to “online banking applications and the like,” nothing in Para. 54 or Douglas in general restricts or prohibits HTML documents and scripts sent from the web server(s) 210 for general communication with the client device.
58. Douglas discloses sending surveys to customers and therefore nothing in Douglas restricts or prohibits the sending of HTML documents and scripts relating to surveys.

59. In reviewing Mr. Zatkovich's Declaration in support of Patent Owner's Contingent Motion to Amend, including Para. 55-59, I disagree with Mr. Zatkovich's declaration in Para. 56 that the Douglas script of Para. 54 is an HTML tag and excludes Javascript.

60. I agree with Mr. Zatkovich in Para. 57 that Javascript is a programming language and can be labeled as a scripting language, but otherwise disagree with the statement in Para. 60 that "Douglas discloses no functionality that requires software contained within its survey web page, least of all, functionality requiring branching logic."

61. I agree with Mr. Zatkovich in Para. 15 that branching logic may include "If a condition is met THEN perform an operation."

62. Claims 20 and 38 recite an embodiment of branching logic that determines a second survey Question based on the receipt of a first user-generated input without requiring actual knowledge of the content of the first user-generated input.

63. When applying branching logic to the terms of claims 20 and 38, the IF statement is if a first user-generated input is received and the THEN is to determine a second Survey Question based on this receipt.

64. Claims 20 and 38 do not recite analysis of the first user-generated input and thus support a state determination of YES or NO for receipt of a first user-

generated input. Under branching logic, YES can then determine the second question to be presented and NO can then determine no additional questions or the survey is not being completed.

65. Douglas discloses a computerized system and method for generating and communicating surveys to customers, these surveys being transmitted to and conducted at the user's personal computing device. Douglas at Abstract.

66. Douglas surveys "may include a plurality of questions or queries for the customer." Ex1007 at Para. 64.

67. Douglas surveys may be interactive, including how it relates to the questions. This can include receiving "responses to the survey may be received from the customer." Ex1007 at Para. 68. Therefore, Douglas discloses a single survey having multiple questions within the survey itself and the user engaging with or answering multiple questions within the single survey.

68. As Douglas discloses using a scripting language which includes branching logic and Douglas discloses a survey with multiple questions, Douglas then discloses branching logic of determining the receipt of a first survey answer (as the IF statement) and then presenting the second survey question (as the THEN statement).

69. Douglas further states “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.” Ex1007 at Para. 70.

70. Douglas additionally discloses the survey “may be interactive, and provide further questions to the customer based on how the customer responds to the initial query or queries.” Ex1007 at Para. 34.

71. Douglas discloses an embodiment where the survey system 101 can generate a follow-up survey based on receipt of a prior survey question. Ex1007 at Para. 37.

72. Based on Para. 70 and some of the functions of the survey system 101 being performed at a customer device 106, Douglas further discloses branching logic as recited in claims 20 and 38.

73. Claim 20 further recites the Survey Module “determining the second Survey Question.” Nothing in this claim expressly requires this determining step to be “based on the first-user generated input.” Therefore, in reading claim 20, the software code of the Survey Module is capable of “implementing branching logic” but there is no affirmative requirement that the second Survey Question be based on the first user-generated input.”

74. It is my understanding that Patent Owner could have included the express restriction in element (c)(iv)(B) of the determining of the second

Survey Question “based on the first user-generated input.” Therefore, I interpret claim 20 based on the actual proposed language and not based on Patent Owner’s asserted interpretations of the claim language.

75. In Paras. 27-28 of his Declaration, Mr. Zatkovich interprets the proposed amended language to mean “to present alternate or additional questions based on the user’s response to a prior question.” I disagree because the proposed language actually says “based on the user’s response” and not based on a content of the first user-generated input. Under an IF THEN scenario of presenting a second question based on the receipt of a first question, the second question is not an “alternate or additional” question but would be the intended second question.

F. Ganesh anticipates Proposed Claims

76. It is my opinion that proposed Claims 20 and 38 are unpatentable under 35 U.S.C. §102 because Ganesh identically discloses all of the claimed limitations recited therein.

77. Ganesh is a published patent application disclosing a computerized method and system for tracking user engagements during a commercial transaction and then generating survey questions to the user based on the commercial transaction. Ex1008 at Abstract.

78. Ganesh discloses in Para. 52 a “survey content determination module” that includes querying database 120 and survey content to be pushed to the user’s personal computing device (PCD). Ex1008 at Para. 52.
79. Ganesh discloses in Para. 38 survey server 105A having knowledge of items being purchased. Claim 3 of Ganesh further notes selecting survey content based on the item purchased. Additionally, Ganesh Para. 64 discloses block 545 of directing survey questions to the user based on the purchased items. x1008 at Para. 38.
80. Proposed claim 20 adds that the generating step of Survey Module comprises 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.
81. Claim 20 further adds that the vendor survey interface performs operating steps to display the first Survey Question and “determine the second Survey Question.”
82. Claim 38 recites the 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.”

83. The proposed additions to claims 20 and 38 recite a computing scenario where the display of the second Survey Question can be predicated on a receipt of a first answer to a first Survey Question. A user entering an answer and hitting submit can be the IF inquiry such that displaying second Survey Question can be the THEN resultant function.
84. The proposed additions to claims 20 and 38 do not require and do not expressly recite a determination of a second Survey Question based on a content contained within the first answer and can therefore be interpreted to include embodiments where mere submission of any answer can trigger the branching logic.
85. Claims 20 and 38 recite the branching logic being embedded within the Survey Module, specifically the branching logic being within the software code of the Survey Module.
86. Ganesh discloses the inclusion of markup language files and scripts.
Ex1008 at Para. 16.
87. Similar to Douglas, Ganesh disclosing markup language files thereby discloses HTML and scripts can include Javascript, which as a programming language can include branching logic.
88. Ganesh discloses branching logic relating to surveys, including in Para. 64 disclosing “If the consumer does respond to the pushed survey content,

then the 'yes' branch is followed from decision block 560 to block 565 and the response is recorded in database 120A. Fig. 1 illustrates access to the database 120A is via the survey server 105A and therefore the survey server 105A must receive the costumer's response to the survey questions. Ex1008 at Para. 64.

89. Ganesh discloses dynamic surveys, specifically "features for determining the survey content dynamically based on the items being purchased during the transaction" and other factors. Ex1008 at Para. 30.

90. Because Ganesh discloses (a) inclusion of scripts and markup language in content sent to user; (b) scripts can include branching logic; (c) surveys can have multiple questions and receipt of an answer to Question A triggers presenting Question B; and (d) the survey content can be dynamically selected, Ganesh discloses the proposed added terms of claims 20 and 38.

G. Conclusion

91. It is my opinion that the proposed amended claims are improper as adding new matter and not supported by the '811 Patent and its family.

92. It is my opinion that the proposed amended claims of the '811 Patent are invalid under 35 U.S.C. §102 based on the grounds outlined above.

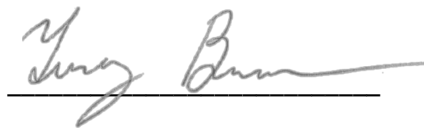
H. Right to Supplement

93. I reserve the right to amend or supplement this declaration, as appropriate, in response to any new arguments raised by the PTAB or the Patent Owner.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believe true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

I declare under penalty of perjury under the laws of the United States of American that the foregoing is true and correct.

Executed on June 16, 2026

A handwritten signature in dark ink, appearing to read "Yuriy Brun", is written over a horizontal line.

Yuriy Brun