

**UNITED STATES PATENT AND TRADEMARK OFFICE**  

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**  

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GETTATTLE, INC.  
Petitioner

v.

AFTERWORDS, INC.  
Patent Owner

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IPR Case No. 2025-00677  
U.S. Patent No. 10,430,811 B1

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

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Patent Trial and Appeal Board  
U.S. Patent and Trademark Office  
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## **I. INTRODUCTION**

Patent Owner AfterWords, Inc. (“Patent Owner”) replies to Petitioner GetTattle, Inc.’s (“**Petitioner**”) Opposition to the Revised Contingent Motion to Amend, Paper No. 26 (June 16, 2026) (“**Opposition**”). Patent Owner respectfully submits that its Revised Contingent Motion to Amend (“**Revised Motion**”) should be granted in the event the Board accepts the grounds of unpatentability advanced by Petitioner. The proposed substitute claims are clear and definite, have written description support, and recite features that are not taught by U.S. Pub. No. 2015/0193794 to Douglas, *et al.* (“**Douglas**”) or U.S. Pub. No. 2014/0337098 to Ganesh, *et al.* (“**Ganesh**”). The burden of persuasion remains squarely on Petitioner during every phase of the *inter partes* review proceeding, and Petitioner has not satisfied its burden of showing, with particularity, that either the original claims or the proposed substitute claims are unpatentable. *Harmonic Inc. v. Avid Tech., Inc.*, 815 F.3d 1356, 1363 (Fed. Cir. 2016) (“[A] petitioner has the burden from the onset to show with particularity why the patent it challenges is unpatentable.”).

## **II. PATENT OWNER’S CLAIM AMENDMENTS ARE MARKED**

Patent Owner’s substitute claims, as set forth in Appendix A to the Revised Motion, are marked to show the proposed changes to the claims of the ‘811 Patent. Appendix B also lists the proposed substitute claims along with detailed citations to

portions of specifications from the ‘811 Patent Family that support each element of the substitute claims.

Petitioner contends the Revised Motion should be denied because Appendix B does not also mark proposed changes to the ‘811 Patent claims. There is no requirement, however, that a motion to amend must include two claim listings that both mark proposed claim amendments. The code of federal regulations (“**Regulations**”) require that a “motion to amend claims must include a claim listing . . . in an appendix to the motion, show[ing] the changes” to the claims. 37 C.F.R. § 42.121(b). Simply put, the claim listing in Appendix A to the Revised Motion meets this requirement. It is not a basis to deny the Revised Motion because Petitioner believes Patent Owner should have included a second appendix that also meets the same requirement.

Petitioner also contends the Revised Motion should be denied because Substitute claim 34 does not reflect that the claim it is replacing, claim 15, originally depended from claim 14. There is no dispute, however, that substitute claim 34 properly depends from substitute claim 33. Patent Owner’s substitute claim 34, therefore, has the correct dependency.

It is notable that Petitioner had no trouble discerning that substitute claim 34 replaces substitute claim 15 or that claim 15 was originally dependent on claim 14.

There is no ambiguity as to the original claim dependency, and the substitute claim dependence is correct.

In considering a motion to amend, the Board “will consider the entirety of the record to determine whether Patent Owner’s amendments respond to the . . . ground of unpatentability.” *Power Integrations, Inc. v. Semiconductor Components Indus., LLC*, 2018 WL 547276, at \*2 (P.T.A.B. Jan. 23, 2018). Even where a minor marking deficiency exists, minor deficiencies do not warrant denying a motion to amend if harmless and not prejudicial. *ZyXEL Comms. Corp. v. UNM Rainforest Innov.*, 107 F.4th 1368, 1382 (Fed. Cir. 2024) (“[A]ny error was harmless. . . . because ZyXEL was not prejudiced.”); *Unified Patents Inc. v. Ideahub, Inc.*, 2022 WL 443888, at \*25 n.6 (P.T.A.B. Feb. 7, 2022) (“[T]here are no citations to the application. This is considered to be a harmless error because the relied-upon disclosures from the patent appear to have substantially similar.”).

The dependence of substitute claim 34 is correct, and the substitute claims are clear on their face considering the entirety of the record. This is evidenced by the fact Petitioner had no trouble in discerning the original dependence of claim 34. Petitioner cannot point to any prejudice it faces from the redline markings to the substitute claims, and Petitioner’s argument concerning the marking of substitute claim 34 does not warrant denying the Revised Motion.

### **III. THE SUBSTITUTE CLAIMS DO NOT PRESENT NEW MATTER**

The ‘811 Family<sup>1</sup> teaches a system that performs operations that include: (i) constructing a survey having branching logic; (ii) packaging the survey and branching logic into a Survey Module; and (iii) transmitting the Survey Module to a vendor survey interface for execution. EX1003, ‘490 Application ¶ [009], [0034], [0064]-[0065], [0074]-[0075], [00100]; EX2003, ‘387 Application ¶¶ [009], [0034], [0069]-[0075], [0099]; EX1002, ‘434 Application ¶¶ [013], [040], [077]-[082], [0105]; EX2002, ‘043 Provisional Application ¶¶ [010], [027], [060]-[067], [090]. Users participate in the survey with “survey features being delivered to the merchant web-site using a . . . Guest **Survey Module**.” EX1003, ‘490 Application ¶¶ [009], [00100]; EX2002, ‘043 Provisional Application ¶¶ [010], [090].

Petitioner correctly highlights that Patent Owner’s survey server builds a survey with branching logic, and the branching logic is associated with elements such as the campaign data structure and merchant preferences. Opposition at 7-8. Petitioner incorrectly concludes, however, that because the survey server uses branching logic, the branching logic cannot also be incorporated into the Survey Module. There is no disputing Patent Owner’s surveys use branching logic, and the Survey Module implements the surveys. It naturally follows that a person of

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<sup>1</sup> The ‘811 Family includes: (1) App. No. 16/456,490 (“**490 Application**”) (EX1003, ‘490 Application File History); (2) App. No. 16/279,387 (“**387 Application**”) (EX2003, ‘387 Application File History); (3) App. No. 14/997,434 (“**434 Application**”) (EX1002, ‘434 Application File History); and (4) Provisional App. No. 62/104,043 (“**043 Provisional Application**”) (EX2002, ‘043 Application File History).

ordinary skill in the art (“**POSITA**”) would understand that the Survey Module incorporates branching logic.

As explained by Patent Owner’s expert, each application in the ‘811 Family teaches that the Survey Module includes Java tags, and a POSITA would know that Java tags embed software. EX2005, May 2026 Declaration of Ivan Zatkovich ¶¶ 30-36 (“**Zatkovich May 2026 Decl.**”); EX1003, ‘490 Application ¶ [00150]; EX2003, ‘387 Application ¶ [00148]; EX1002, ‘434 Application ¶ [0154]; EX2002, ‘043 Provisional Application ¶ [0136]. A POSITA would further understand that any component with software requires branching logic. EX2005, Zatkovich May 2026 Decl. ¶¶ 13, 29.

The ‘811 Family specifically teaches that the “Guest **Survey Module** (GSM)” performs branching logic operations, such as an operation that “allows [a] guest to create/edit their information” or that allows “the merchant’s web page to react to a failed guest authentication.” EX1003, ‘490 Application ¶¶ [00132]-[00137]; EX2003, ‘387 Application ¶¶ [0130]-[0135]; EX1002, ‘434 Application ¶¶ [0136]-[0141]; EX2002, ‘043 Provisional Application ¶¶ [0118]-[0123]. The branching logic is not just used to *assemble* the Survey Module, as Petitioner suggests. Opposition at 8. The ‘811 Family teaches that the logical operations are *performed* by the Survey Module, which is how the Survey Module can “minimize the required communication between system devices.” EX1003, ‘490 Application ¶ [0065].

Moreover, the ‘490 Application refers to generating survey questions and the survey itself with branching logic. *Id.* ¶¶ [0063]-[0064] (“Surveys are created using the . . . Campaign data structure, which includes . . . the branching logic.”). Once created, the survey is assembled into a Survey Module that is as an autonomous “web-container package *with* branching logic.” *Id.* ¶ [0065]. The word “with” does not mean “using,” and instead, it reflects that the Survey Module includes the branching logic within the survey that was already created.

Each application in the ‘811 Family specifically discloses the branching logic operation of generating a current question based on a response to a prior question. EX1003, ‘490 Application ¶¶ [0064]-[0065], [00116]; EX2003, ‘387 Application ¶ [0077]; EX1002, ‘434 Application ¶ [083]; EX2002, ‘043 Provisional Application ¶ [069] & claims 3 and 20. Even if the ‘811 Family does not expressly state that the Survey Module performs branching logic that generates a question based on a prior answer, “a POSITA would read each of these [‘811 Family] applications and understand that the logical operations are conducted by the Survey Module.” EX2005, Zatkovich May 2026 Decl. ¶ 41. The reason is simple—the ‘811 Family applications “state specifically that the surveys include logical operations . . . and the Survey Module is used to integrate surveys into a merchant website.” *Id.*

The testimony of Patent Owner’s expert concerning how a POSITA would read and understand the ‘811 Family stands un rebutted. Tellingly, Petitioner’s

expert testifies only as to his personal opinion stating: “I do not believe that the ‘811 Patent inherently states or implies inclusion of branching logic.” EX1010 ¶ 35. Nowhere does Petitioner’s expert offer insight about how a POSITA would read the ‘811 Family of applications.

The test for written description support does not consider how an expert would read the patent at issue. Instead, the test requires “an objective inquiry into the four corners of the specification from the perspective of a PHOSITA.” *Knowles Elecs. LLC v. Cirrus Logic, Inc.*, 883 F.3d 1358, 1365 (Fed. Cir. 2018). Testimony directed to an expert’s personal opinion is irrelevant and should be disregarded. *Symantec Corp. v. Computer Assocs.*, 522 F.3d 1279, 1291 (Fed. Cir. 2008) (“That testimony simply recites how each expert would construe the term . . . . Such expert testimony, which does not identify the ‘accepted meaning in the field’ to one skilled in the art, is unhelpful.”); *Sinorgchem Co., Shandong v. Int’l Trade Comm’n*, 511 F.3d 1132, 1137 n.3 (Fed. Cir. 2007) (“We attribute no weight to that testimony because the experts did not identify any evidence that those skilled in the art would recognize.”).

Petitioner’s expert declaration is also properly disregarded as conclusory. The declaration spans 92 paragraphs but does not cite any sources other than the ‘811 Family, Douglas, and Ganesh. The declaration is replete with statements about what the expert “believes” Patent Owner’s applications teach. *See, e.g.*, EX1010 ¶ 29 (“[In] the ‘811 Patent, **I believe** that the branching logic is described as existing at

the Server.”), ¶ 33 (“**I do not believe** the term “with” as used in col. 11, ll. 30-34 describes embedding the branching logic.”), ¶ 40 (“**I do not believe** the proposed amendments are proper.”). The subjective and uncorroborated testimony of Petitioner’s expert should be afforded no weight in ruling on the Revised Motion. *Juniper Networks, Inc. v. Mobile Telecomm. Techs., LLC*, 2017 WL 3208723, at \*4 (P.T.A.B. July 28, 2017) (“Dr. Kesan’s testimony is conclusory and does not provide a sufficient explanation as to why a PHOSITA would understand such a requirement.”); 37 C.F.R. § 42.65(a) (“Expert testimony that does not disclose the underlying facts or data . . . is entitled to little or no weight.”).

Petitioner construes substitute claims 20 and 38 to recite that a second question is generated based on a response to a first question without regard to the content of the response. Opposition at 10-11. Even if Petitioner’s construction is accepted, that still does not undermine the written description support for substitute claims 20 and 38 in light of Patent Owner’s specific disclosure that survey questions can be generated based on prior responses. EX1003, ‘490 Application ¶ [0065] (“[B]ranching logic that changes the questions presented . . . based upon a survey respondent’s answers.”); EX2002, ‘043 Provisional Application ¶ [069] (“[M]erchant preferences may cause question generation to depend on previous questions generated and responses received.”).

Lastly, Petitioner also contends that the Revised Motion should be denied because the ‘387 Application (resulting in the ‘611 Patent) and the ‘434 Application do not use the term “branching logic.” As an initial matter, the Regulations do not impose a burden on a patent owner to show written description support within every application in a patent family. The Regulations instead require that a patent owner show “support in an earlier-filed disclosure . . . for which the benefit of the filing date of the earlier-filed disclosure is sought.” 37 C.F.R. § 42.141(b)(2). Here, Patent Owner claims priority to the ‘043 Provisional Application, and the Revised Motion cites plenary support for the substitute claims in the provisional application.

To the extent that written description support is required within the ‘387 and ‘434 Application, the absence of the term “branching logic” does not change that a POSITA would read the applications as supporting the substitute claims. *Ariad Pharm., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1352 (Fed. Cir. 2010) (“[T]he written description requirement does not demand . . . that the specification recite the claimed invention *in haec verba*.”). Both the ‘387 and the ‘434 Application teach a survey module with branching logic, and a POSITA would read the applications as supporting the substitute claims. EX2005, Zatkovich May 2026 Decl. ¶¶ 40-41 (“The ‘387 Application, ‘434 Application, and the ‘043 Provisional Application disclose multiple additional examples of survey features that are implemented with

branching logic . . . . a POSITA would read each of these applications and understand that the logical operations are conducted by the Survey Module.”).

In short, a POSITA would read each application in the ‘811 Family as supporting the substitute claims, and the claims do not present new matter.

#### **IV. RESPONDING TO THE GROUNDS OF UNPATENTABILITY**

The substitute claims are patentable over Douglas and Ganesh at least because neither reference teaches a Survey Module with software code for implementing branching logic that is sent to, or run by, a vendor survey interface. Petitioner contends that the substitute claims do not implicate the vendor survey interface, and, therefore, the claims should be construed as limiting any branching logic to the survey server—just like the systems in Douglas and Ganesh. Opposition at 15-17. However, accepting Petitioner’s invitation to focus on the language of the claims, it is apparent the substitute claims are not so limiting.

Substitute claims 20 and 38 recite that the Survey Module software code is configured to perform two operations—“displaying one or more survey questions” and “implementing branching logic that is configured to determine a second Survey Question.” Substitute claim 20 also states that the vendor survey interface functions include “running the Survey Module” to perform the same two operations—“displaying the at least one first Survey Question” and “determining the second Survey Question.”

Petitioner contends that instead of claiming the vendor survey interface is “running the Survey Module,” claim 20 should recite that vendor survey interface is “running the software code.” Petitioner does not acknowledge that the vendor survey interface performs the same operations that the Survey Module is generated to perform—displaying survey questions and determining a second question. Petitioner offers no explanation how the vendor survey interface could perform those operations without running the software code that is part of the Survey Module, nor does Petitioner attempt to argue that a POSITA would attribute a meaning to the phrase “running the Survey Module” that does not involve executing software.

Substitute claim 38 is written from the perspective of the survey server and omits the phrase “running the Survey Module,” but the claim does recite the operations of transmitting the Survey Module to the vendor survey interface and receiving user-generated responses to a survey question. Given that the Survey Module comprises software code for displaying questions, and responses to the questions are received, a POSITA would instantly appreciate that the vendor survey interface must have run the Survey Module software to display questions.

Petitioner’s proposed reading of substitute claims 20 and 38 does not consider the claims as a whole. Even under the broadest reasonable construction, substitute claims 20 and 38 each recite a Survey Module with software code that is sent to and executed by a vendor survey interface. For the reasons explained in Patent Owner’s

Revised Motion, these are features that are not found in Douglas or Ganesh. The absence of these features means that the references do not anticipate the substitute claims, and a POSITA would not have looked to Douglas or Ganesh to arrive at Patent Owner's substitute claims.

## **V. CONCLUSION**

For the foregoing reasons and those stated in its Revised Motion, Patent Owner requests that this Contingent Motion to Amend be granted in the event claims 1 and/or 19 are found to be unpatentable.

Dated: July 7, 2026

Respectfully submitted,

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**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) and spans no more than twelve pages excluding a table of contents, table of authorities, and certificate of service.

**CERTIFICATE OF SERVICE**

It is certified that a copy of Patent Owner's 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:

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