

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 SUR-REPLY TO PATENT OWNER'S REPLY TO
OPPOSITION TO REVISED MOTION TO AMEND
UNDER 37 C.F.R. § 42.121**

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I. INTRODUCTION

Petitioner, GetTattle, Inc. (“Petitioner”) submits the present Sur-reply to PO’s Reply to Opposition to RMTA. For the sake of brevity, Petitioner highlights positions in opposition to PO’s Reply to the Opposition to RMTA but does not waive or concede any positions submitted by PO not directly rebutted herewith. Petitioner maintains the RMTA should fail and PO’s Reply does not cure or overcome said positions.

II. AMENDMENTS FAIL TO MEET 37 C.F.R. §42.121(b)

37 C.F.R. §42.121(b) requires a proper motion to amend include “a claim listing, which ... show the changes clearly.” (emphasis added). This claim listing may be contained in an appendix. Patent Owner, upon filing the Revised Motion to Amend, includes two separate Appendices. Appendix A is the amended claim listing. *Paper No. 24, page 3, line 8*. But Appendix B is listed as “citations and quotes to written description support for each element of the substitute claims.” *Paper No. 24, page 4, lines 17-18*.

The substitute claims of Appendix A are different from the substitute claims of Appendix B. Two separate sets of substitute claims obviates Patent Owner’s statement that “the claim listing in Appendix A to the Revised Motion meets th[e] requirement” of 37 C.F.R. §42.121(b) because this ignores confusion arising from marked-up claims of Appendix B.

Having two separate Appendices both referencing substitute claims but having two separate sets of claim amendments fails the “clearly” requirement of 37 C.F.R. §42.121(b). The amendment should be properly denied.

III. THE PROPOSED SUBSTITUTE CLAIMS IMPERMISSIBLY INTRODUCE NEW SUBJECT MATTER

In its Reply brief filed July 07, 2026, Patent Owner continues to incorrectly recites its own patent and patent family as supporting branching logic within the Survey Module.

Petitioner asks the Board to recognize the plain and ordinary meaning of Patent Owner’s own terminology used in drafting the present application and own terminology in drafting revised amended claims. Patent Owner asks this Board to read the ‘811 Patent and then derive an unsupported conclusion on the how the claimed Survey Module operates.

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.

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). But a further reading of claims 20 and 38 illustrate these claims recite branching logic that “is configured to” perform an operation without actively reciting a determination step.

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 stating “Surveys are created using the transaction data as well as Campaign data structure, which includes configurable Conditions, Survey Questions, and branching logic set according to merchant preferences.”

The amendments are predicated on the “branching logic” being embedded within the Survey Module such that this branching logic is capable of being executed within the Survey Module to determine “a second survey question based on first user-generated input in response to the first Survey Question.”

But the ‘811 Patent discloses in col. 11, ll. 19-29, the Campaign data structure includes “branching logic set according to merchant preferences.” This campaign data structure relates to generating a survey. Ex. 1001 col. 13, ll. 4-19. *See also* Ex. 1010, ¶¶ 26-30. The second disclosure of “branching logic” 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. Ex. 1001 col. 11, ll. 30-38.

Nothing within the ‘811 Patent discloses embedding branching logic within the Survey Module itself that is sent to the user interface.

Rather, as recognized by a POSITA, this branching logic exists to generate the survey itself prior to being sent to the user and not embedding branching logic for dynamic question allocation during the actual survey itself.

By contrast, PO improperly asks this Board to interpret the branching logic as supporting surveys being dynamically generated not prior to submission to the customer, but instead during the customer’s engagement of the survey itself.

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.

Petitioner maintains that Patent Owner attempts to mis-state the ‘811 Patent passage reciting “[t]he survey may be assembled into an autonomous, self-contained web-container package with branching logic that changes the questions present or the order of the questions presented based upon a survey respondent’s answers to prior survey questions.” Ex. 1001 at page 139, ¶ 65.

Patent Owner asks this Board to interpret the term “with” to mean including branching logic inside of the web-container package. But this interpretation is contrary to the four-corners of the ‘811 Patent specification. Instead, the term “with” means using the branching logic to generate the web-container package as part of the Campaign Data Structure. Ex. 1010, ¶¶ 31-34

First off, there is no support in the ‘811 Patent for branching logic being executed inside the web-container package. For instance, where ¶ 65 discloses the web-container package, the remaining discussion of Fig. 5 including ¶¶ 65-67, merely note a customer answering questions and the answers being sent back to the server.

Secondly, there is overwhelming support for the branching logic being used to generate the web-container 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.

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).

Patent Owner cannot make amendments that relate to the *survey server* and then argue that these amendments (branching logic) accomplish something solely

disclosed as relating to the campaign data 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).

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).

Patent Owner states “neither reference teaches a Survey Module with software code for implementing branching logic that is sent to, or run by, a vendor survey interface.” Paper No. 26, p. 10, ll. 7-8. This statement ignores the actual language of amended claims 20 and 38.

Patent Owner had the full breadth of terminology available when drafting the presented amendments. Patent Owner curated the terminology of the proposed amendments and had the chance to recite terminology expressly aligned with proposed interpretations. For example, in claim 20, element (c)(iv)(B), Patent Owner elected to amend the language to recite “determining the second Survey

Question.” Now Patent Owner says this language means determining the second Survey Question based on the answer to the first survey question.

Instead of using exact terminology in the claim amendments, Patent Owner seeks claim amendments different from claim interpretations. In response, on page 11 of the Patent Owner’s Reply Brief, PO states “Petitioner’s proposed reading of substitute claims 20 and 38 does not consider the claims as a whole.” Petitioner respectfully submits PO’s interpretation relative to Douglas and Ganesh wants this Board to ignore the whole of the claim.

For instance, claim 20 recites the vendor survey interface “determine[es] the second Survey Question.” PO wants this claim to be interpreted as reciting the “determining the second Survey Question” based on an answer to the first survey question. PO also wants this claim to be interpreted as “determining the second Survey Question” without communicating with the survey server computing device.

In its Contingent Motion to Amend, Patent Owner states its system “minimizes the required communication between system devices that could delay server processing, which is an advantage not achieved by the system of Douglas or Ganesh.” Paper No. 24, p. 11, ll. 8-11.

Col. 11, lines 48-51 of the ‘811 Patent states “[t]he answers may be sent one-at-a-time in real time to the server or, alternatively, answers may be grouped together

and sent to the server in batches.” The ‘811 Patent itself discloses embodiments of sending individual answers to the survey server.

Moreover, nothing within claims 20 and 38 **require** determining of the second question actually be based on the first answer and this operation be performed at the vendor survey interface. A true reading of the claim amendments is that there is branching logic that *can* determine a second question based on a prior answer but no affirmative recitation of an executable step of actually determining the second question based on the first answer.

Claim 20 recites “branching logic this is configured to determine a second Survey Question based on a first-user generated input response to the first Survey Question.” Claim 20 only recites “determining the second Survey Question” and omits any explicit requirement or limitation that this determination step be performed in response to a first answer or be solely performed at a local computing device (where the vendor survey interface operates).

Similarly, claim 38 recites the Survey Module comprising software code for “implementing branching logic that determines a second Survey Question based on a first user-generated input in response to the first Survey Question.” But at no point does claim 38 affirmatively recite actually determining a second Survey Question as claimed, only that branching logic can perform such function. Similarly, there are

no requirements that this branching logic function be performed solely or exclusively at the vendor survey interface.

A first inquiry is if Patent Owner could have amended the claims with the full and exact terminology leading to their proposed interpretation? Petitioner submits this is unlikely because as noted above and in prior filings, the '811 Patent never actually discloses dynamic question generation at the survey server level. Rather the “branching logic” for the survey generation is in the campaign data structure at the survey generation level.

A second inquiry then is if the Patent Owner could not have included the exact language in the claims, how is it proper to then interpret the claims as reciting something outside the disclosure?

Petitioner submits this Board is required to look not at what the Patent Owner asserts the claims recite, but instead what they actually recite.

Douglas and Ganesh both engage customers with survey questions and describe scripting languages as part of the survey transmission.

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).

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.

Therefore, even if the Board were to grant the revised motion to amend based on compliance with 37 C.F.R. §41.121, the revised motion to amend fails as not overcoming the disclosures of Douglas and Ganesh.

V. CONCLUSION

For the foregoing reasons, Patent Owner's proposed substitute claims 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 5600 word 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: July 28, 2026

/ Timothy J. Bechen /
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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 SUR-REPLY TO PATENT OWNER'S REPLY TO OPPOSITION TO RMTA** by electronic mail upon Patent Owner at the correspondence address of the Patent Owner as follows:

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