

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,

Petitioner,

v.

HEADWATER RESEARCH LLC,

Patent Owner

IPR2026-00138

Patent No. 9,609,544

**PATENT OWNER'S SUPPLEMENTAL BRIEF IN SUPPORT OF
DISCRETIONARY DENIAL OF INSTITUTION**

Google’s supplemental briefing (Paper 12) addresses issues raised by Headwater’s Preliminary Response (“POPR”) rather than any arguments raised in Headwater’s request for discretionary denial. Google, however, presents no reason why the arguments raised in Headwater’s POPR are not dispositive on the merits, and thus strongly weigh in favor of discretionary denial.

Google does not dispute that the Board’s reasoning denying institution in IPR2024-00945 was resolved adversely to Google after considering the *exact same combination* of elements of Rao and Freund Google presents in this case, and the *exact same arguments* Headwater raises in this case, regarding claim 2 of the ’544 patent. *See* Paper 12 at 3 (providing no alleged distinction over IPR2024-00945). Instead, Google alleges that other cases, which did *not* consider the same arguments and evidence presented in this proceeding, should apply. *See* Paper 12 at 1, 3 (citing IPR2024-00942 and Ex. 1032).

Neither of the cases Google relies on addressed the issues raised here. Exhibit 1032 only considered Headwater’s arguments regarding *claim 1* of the ’544 patent, not the arguments regarding claim 2 presented here. *See* Ex. 1032 at 26 (acknowledging Headwater presented no arguments regarding dependent claims, as is typical for pre-institution arguments).¹ And while Google alleges that “claims very

¹ Because Headwater explained why Google’s claim 2 theory failed in its POPR

similar to claim 2 of the '544 patent [were] unpatentable” in IPR2024-00942 (Paper 12 at 3), that is not correct. Claim 2 of the '544 patent recites, in part, “...the first device application is in the foreground of user interaction when the user of the device is directly interacting with that application or perceiving any benefit from that application.” Ex. 1001, claim 2. The only claims in IPR2024-00942 in which that petition relied on a combination of Rao and Freund that related to *any* “foreground” classification were claims 56 and 57 (IPR2024-00942, Paper 1 (Petition) at 78–79), and these claims were of different scope, such that the petition presented arguments that Rao *itself* had relevant disclosures for those claims (*id.* at 78–79), rather than relying *solely* on Freund’s disclosures as Google did here (*see* instant Petition at 52).

Google presents no reason why the cases that addressed *different* issues would be controlling, particularly in light of IPR2024-00945 which explicitly addressed *the exact same merits argument* presented by Headwater here. *See* Ex. 2018 at 31 (crediting Headwater’s argument that “none of the Petition’s motivations would have justified combining Rao’s and Freund’s contradictory teachings regarding treatment of foreground activity”).

(and previously explained why the combination of elements underlying that theory failed in IPR2024-00942), Google’s assertion that “Patent Owner has not disputed the merits of the Board’s prior institution decision” (Paper 12 at 1) is incorrect.

The fact that Google has no substantive response on the merits of its position confirms that institution of IPR would be an inefficient use of Board resources. Google conclusorily alleges that Headwater's disclaimer means that "review would be an efficient use of the Board's resources" (Paper 12 at 3 (capitalization omitted)), but Google does not explain how it hopes to prevail in the instituted proceeding. Of course, even a *streamlined* proceeding is more inefficient than no proceeding at all, where (as here) that streamlined proceeding would be doomed to fail.

Google also alleges efficiency because two "related patents" are being challenged in IPR2026-00049 and -00050. Paper 12 at 3. But Google does not explain how its vague allegation that these patents are "related" supports a finding of efficiency. *See id.* For instance, Google identifies no issues of substantive overlap between those proceedings and this proceeding, or any other rationale for how any relationship might promote efficiency. *See id.*

Finally, because Google already proposed this exact same combination of Rao with Araujo in IPR2024-00945, and the Board after considering the same arguments advanced in Headwater's POPR found Google's theory deficient, Google has no plausible justification for (much less *settled expectations* in) relying on the same failed theory in this case. Headwater also did not reasonably expect Google to raise the same combination of Rao with Freund that the Board previously considered and rejected. These expectations further favor denial.

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Respectfully submitted,

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CERTIFICATE OF SERVICE (37 C.F.R. § 42.6(e))

The undersigned hereby certifies that the above document was served on May 7, 2026, by filing this document through the Patent Trial and Appeal Case Tracking System (P-TACTS) as well as delivering a copy via electronic mail upon the following attorneys of record for Petitioner:

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