

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

K.MIZRA LLC,
Patent Owner.

Case No. IPR2026-00304
Patent 8,438,120

PATENT OWNER'S PRELIMINARY SUR-REPLY

Google's Petition should be denied, with its Reply highlighting critical deficiencies in the Petition's theories.

I. Watanabe Fails to Update an Estimate in a Current Iteration

As explained in the POPR, Watanabe's "recombination" process does not use elitism, as Watanabe expressly discloses an option to *add* an "elite strategy" to Watanabe's 23 other embodiments. Watanabe, 67:26-34. Critically, the general disclosure of an "elite strategy" does not overcome the Petition's deficiencies.

Specifically, even this noted optional strategy in Watanabe is performed to preserve best vectors for *subsequent iterations*, *not* to update an estimate of a target vector in a *current iteration* in the manner required by the challenged claims. The Petition concedes, "Watanabe's 'solution vector having the highest fitness in the *most recent solution vector set*' *constitutes the best result* with respect to the present and previous iterations." Pet., 46 (emphasis added). Under Petitioner's own theory, Watanabe computes and always presumes that the *most recent solution vector* set contains the best solution. Thus, Petitioner fails to demonstrate the presence of any "selection" of a randomly sampled hyperparameter vector in Watanabe as being the "best" across all prior iterations *and* the present iteration. Watanabe fails to disclose at least element [1.4] of claim 1 and similar features of claims 13 and 14.

Google's Reply fails to squarely address this shortcoming. Rather, it simply

refers back to its Petition as somehow establishing how Watanabe allegedly “satisfies” elements [1.3] and [1.4], with broad citations to pages 1-2, 13-18, and 43-48. Reply, 2. Thus, rather than clearly rebutting the POPR’s discussion of the Petition’s shortcomings, Google instead asks the Board to play archeologist and comb through the record for an answer. The required disclosure is not present in the reference and Google’s invitation is a clear indication of the Petition’s shortcomings, namely that it identifies no mechanism in Watanabe through which a selected best-result vector enters the update computation.

II. The Reply’s Other Arguments Fail to Remedy Watanabe’s Deficiencies

Google next argues that the “claims are invalid under any potential interpretation” of “hyperparameter,” but as noted in the POPR, the Board need not engage in any other pre-institution claim construction as under any construction, element [1.4] is lacking. POPR, 7-8.

Google’s discussion of Schaefer also fails to tip the scale in its favor. Schaefer uses the term “elitism selection,” but Google fails to establish that this term demonstrates the presence of any “selection” of a randomly sampled hyperparameter vector in Watanabe as being the “best” across all prior iterations *and* the present iteration, and the use of that vector, as required by the claims. Schaefer thus fails to shore up Google’s failure of proof as to this required showing. And in any event, Google relies on Watanabe “even without reference to

Shaefer.” Reply, 3.

Last, Google relies on the general advantages of “elitist strategy” without tying that term to the features expressly required by the challenged claims. This shortcut method of trying to establish all features of the challenged claims should be rejected. Google once again ignores Watanabe’s actual teachings concerning “an elite strategy,” which confirm there is no “selection” and “updating” within an iteration as claimed. The Petition even admits that Watanabe’s initialization and mutation techniques only produce a “best result instantaneously,” (*see* Pet. 46), as opposed to selecting a randomly-selected vector producing a best result “in the present and any previous iterations.” As Google’s theory of Watanabe computes and always presumes that the most recent solution vector set contains the best solution, Petitioner fails to demonstrate the presence of any “selection” of a randomly sampled hyperparameter vector in Watanabe as being the “best” across all prior iterations and the present iteration. The shortcoming is fatal to all challenges presented in the Petition and is not remedied by the Reply.

III. Conclusion

For these reasons, denial of the Petition is respectfully requested.

Dated: August 6, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2026, a true and correct copy of the foregoing document was served via email, by consent, to Petitioner by serving the correspondence email addresses of record as follows:

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