

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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META PLATFORMS, INC.,  
Petitioner,

v.

DIALECT, LLC,  
Patent Owner.

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Case IPR2025-01333  
Patent 9,263,039

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**PATENT OWNER'S REQUEST FOR DISCRETIONARY DENIAL**

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**PATENT OWNER’S EXHIBIT LIST**

Exhibit No.	Description
2001	Decision Denying Institution of <i>Inter Partes</i> Review, <i>Microsoft Corporation v. Dialect, LLC</i> , IPR2025-00657, Paper 12 (PTAB Aug. 14, 2025)
2002	Patent Owner Preliminary Response, <i>Microsoft Corporation v. Dialect, LLC</i> , IPR2025-00657, Paper 7 (PTAB July 15, 2025)
2003	Defendant’s Preliminary Invalidity Contentions, <i>Dialect, LLC v. Meta Platforms, Inc.</i> , Civ. No. 7:25-cv-60 (W.D. Tex. Sept. 17, 2025)
2004	Redacted Order in <i>Dialect, LLC v. Samsung Electronics Co., Ltd.</i> , Civ. No. 2-23-cv-00061 (E.D. Tex. Aug. 28, 2023)
2005	Order Acknowledging Stipulation of Dismissal With Prejudice, <i>Dialect, LLC v. Amazon.com, Inc.</i> , Civ. No. 1:23-cv-00581 (E.D. Va. Jan. 23, 2025)
2006	Second Amended Docket Control Order in <i>Dialect, LLC v. Bank of America, N.A.</i> , Civ. No. 2:24-cv-00207 (E.D. Tex. June 27, 2025)

## IPR2025-01333 Patent Owner’s Request for Discretionary Denial

Pursuant to the Director’s Memorandum issued on March 26, 2025, Patent Owner Dialect, LLC (“Dialect” or “Patent Owner”) files this request and brief on discretionary denial, setting forth reasons why the Director should exercise discretion to deny the Petition for *inter partes* review (“IPR”) of claims 13-15, 17, and 18 of U.S. Patent No. 9,263,039 (the “’039 Patent”), as requested by Meta Platforms, Inc. (“Petitioner” or “Meta”).

### I. INTRODUCTION

The ’039 patent has a priority date of August 5, 2005, and zero days of patent term adjustment, which means that the ’039 patent is now expired. There is no reason for the Board to dedicate over a year’s worth of Office resources to review the validity of a patent that has already expired. This logic and policy is magnified here, where the ’039 patent has already been the subject of a prior failed *inter partes* review proceeding, and Petitioner has merely copied this prior failed effort with the intent of joining a petition that has already been denied. *See Oracle Corp. v. Virtamove, Corp.*, IPR2025-00964, Paper 11 (PTAB Sept. 26, 2025) (noting that “Petitioner requests joinder of the above-captioned cases to other proceedings previously subject to discretionary denial of institution” and applying the same denial analysis to the later-filed cases).

As acknowledged in the Petition, Meta’s Petition is a “ a copycat of the petition from *Microsoft Corporation v. Dialect, LLC*, IPR2025-00657 on the 039

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Patent.” Pet., 1. The Office discretionarily denied that petition under 35 U.S.C. § 314(a) following a holistic assessment including “strong settled expectations” based on the age of the ’039 patent, and a prior trial date in which the validity of the ’039 patent will be decided. *Microsoft Corporation v. Dialect, LLC*, IPR2025-00657, Paper 12, 2-3 (PTAB Aug. 14, 2025) (Ex2001).

Further, the Office noted that Microsoft’s subsidiary previously owned the ’039 patent, and retained a license when it sold the patent. In denying the Microsoft Petition, the Board commented that “it is not an appropriate use of Office resources where a party’s wholly owned subsidiary owned, maintained, sold, and retained a license for a patent, but, as is the case here, the party now advocates for its unpatentability.” *Id.* By submitting the current copycat Petition, Meta does nothing more than present itself as Microsoft’s alter ego for carrying out the challenge that was already deemed “not an appropriate use of Office resources.” *Id.* This attempt should be rejected.

There is no reason to refer Meta’s copycat Petition to the merits panel after the Director already determined that the copied petition warranted denial. The factors that favored denial of the Microsoft Petition remain in place and favor denial here as well.

## **II. OUTCOME OF MICROSOFT'S PRIOR IPR PETITION**

Microsoft filed a petition challenging claims 13-15, 17, and 18 of the '039 patent on March 24, 2025. Following briefing on discretionary denial, on August 14, 2025, and after Patent Owner had filed its Preliminary Response (Ex2002), the Office issued its decision discretionarily denying the petition. *Microsoft Corporation v. Dialect, LLC*, IPR2025-00657, Paper 12 (PTAB Aug. 14, 2025).

The decision was based on a holistic assessment of all of the evidence and arguments presented, and highlighted a number of points. Ex2001, 3. The Office noted concerns with a Petitioner's subsidiary previously owning the patent and retaining a license to it (Ex2001, 2), the "strong settled expectations" due to the age of the patent (here 9 years old) (Ex2001, 2), and that a parallel district court trial involving a real-party-in-interest would occur before issuance of a final written decision (Ex2001, 3).

## **III. ARGUMENT**

Not only is there is no reason to treat Meta's copycat petition any differently than Microsoft's petition, discretionary denial is more appropriate in a copycat petition since another denial would respect the finality of the prior denial of the copied petition.

### **A. Strong Settled Expectations Favor Denial**

Many of the same factors highlighted in the decision concerning the copied petition remain present in this case. The "strong settled expectations" for this nine

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(9) year old patent weighs only more heavily now than when the copied petition was decided. The '039 patent issued on Feb. 16, 2016, and the four- and eight-year required maintenance fees to keep the patent in force were paid. Accordingly, the '039 patent has been in force for over nine years before Petitioner filed its Petition. Moreover, the '039 patent expired on August 5, 2025. Under current USPTO policy, the '039 patent is not a patent that warrants Board review. *See IRhythm Technologies, Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10 at 3 (PTAB, June 6, 2025) (Director's Decision Granting Discretionary Denial).<sup>1</sup>

Reaching a different decision here than in the Microsoft IPR could result in completely reversing that well-reasoned decision. Should Meta convince the Office to institute an *inter partes* review, seemingly nothing could prevent Microsoft from filing another petition and moving to join Meta's *inter partes* review, despite the Board's prior finding that it was not an efficient use of Office resources to allow Microsoft to challenge a patent previously owned by its own subsidiary. There is no justifiable reason to add this complexity into this proceeding, especially at the cost of the finality of the decision concerning the copied petition. Meta may respond that it should have an opportunity to challenge the '039 patent independently of Microsoft, but Meta surrendered that opportunity

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<sup>1</sup> IPR2025-00363 is the lead case of five to which this Director's Decision applies.

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by copying Microsoft's petition, which was already determined to be "not an appropriate use of Office resources." Moreover, Patent Owner should not be unfairly burdened by continuing to try to defend the '039 patent's validity despite the strong settled expectations.

The settled expectations also weigh even more heavily considering that the '039 patent has been involved in commercial transactions, including ownership transfers and settlements of prior litigations. These commercial transactions show that the '039 patent has had recognized value in the industry, and Dialect has been a willing licensor of its portfolio of patents including and related to the '039 patent. In addition to the transfer and license discussed in the Board's discretionary denial in the copied case (Ex2001, 2), the '039 patent has been subject to enforcement action in district court followed by settlements with other companies, including Samsung. Ex2004. Dialect has also raised and settled its disputes over the '039 patent with other companies, including Amazon, via district court litigation involving the Dialect portfolio. Ex2005. As a matter of policy, the IPR system should not be employed by Petitioners as a tool for hold outs to gain leverage in negotiations against a willing licensor with a history of settling its infringement disputes with others in the industry.

**B. District Court Activities Still Weigh in Favor of Denial**

Petitioner's challenges are based on the Maes and Ross references. Once again, Petitioner has presented overlapping validity contentions in a district court proceeding, *see* Ex2003, 33 (pdf page) (citing Maes and Ross), much like the overlapping invalidity contentions in the parallel *Bank of America* case underlying the Microsoft denial decision.

Further, trial in the parallel *Bank of America* case remains scheduled to occur many months prior to when a final written decision in this case could be expected (around January 31, 2027). Ex2006 (moving trial date from January 26, 2026 to May, 4, 2026). While Meta may complain that the *Bank of America* case's trial date should have no bearing on whether Meta's Petition should be discretionarily denied, that is contrary to current Office policy. Specifically, per the Director's September 16, 2025 Memorandum entitled "PTAB consideration of prior findings of fact and conclusions of law,"<sup>2</sup> the parties must keep the Board apprised of developments regarding adjudication of validity or patentability of the challenged patent claims, or substantially similar patent claims, such as claim construction, findings of fact, or conclusions of law, in "any other judicial or administrative matter that would affect, or be affected by, a decision in the

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<sup>2</sup> Available at [https://www.uspto.gov/sites/default/files/documents/Memo\\_re\\_prior\\_findings\\_of\\_fact\\_and\\_conclusions\\_of\\_law\\_9\\_16\\_25.pdf](https://www.uspto.gov/sites/default/files/documents/Memo_re_prior_findings_of_fact_and_conclusions_of_law_9_16_25.pdf).

proceeding.” This is because the Director’s policy requires Office consideration of related adjudications involving the patent-at-issue in a district court, regardless of whether that district court proceeding involves the same petitioner presenting the IPR challenge. Moreover, the outcome of the Bank of America litigation ensures that this IPR would not be an efficient use of Office resources. If Bank of America succeeds in invalidating the ’039 patent in district court litigation, then this IPR would not be needed. On the other hand, if Patent Owner is successful in defending the ’039 patent’s validity in the Bank of America litigation, then that outcome should be persuasive evidence to the Board that the same outcome should be reached here. Either way, that District Court outcome is scheduled to occur well before a final decision would be reached in this IPR, and the timing weighs in favor of discretionary denial.

**C. Petitioner’s Weak Challenges Also Weigh in Favor of Denial**

Additionally, the merits of the petition remain weak, as explained in the preliminary response filed in the Microsoft IPR. *See* Ex2002. Indeed, the merits of the asserted challenges rely heavily on expert testimony to fill in disclosure gaps in the asserted references in violation of USPTO policy and 35 U.S.C. § 311(b).<sup>3</sup>

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<sup>3</sup> “A petitioner in an inter partes review may request to cancel as unpatentable 1 or more claims of a patent only on a ground that could be raised under section 102 or 103 and ***only on the basis of prior art consisting of patents or printed publications.***” 35 U.S.C. § 311(b) (emphasis added).

The '039 patent discloses methods for processing speech and non-speech communications, and challenged claim 13 includes the step of “comparing the text combinations” contained in a user’s query “to entries in a context description grammar” (element [13.5]), the step of “accessing a plurality of domain agents that are associated with the context description grammar” (element [13.6]), and the step of “generating a relevance score based on results from comparing the text combinations to entries in the context description grammar” (element [13.7]). Then, per element [13.8], claim 13 includes the step of “selecting one or more domain agents based on results from the relevance score.”

In the Petition, Petitioner relies on the “Ross” reference<sup>4</sup> to disclose elements [13.6], [13.7], and [13.8]. *See* Pet., 54-61. This is wrong. Petitioner points to Ross’s “recency of relevant access to the context” as allegedly disclosing a “relevance score” as claimed in element [13.7]. Pet., 56. Per Ross, the context grammars in a context list are ordered based on priority of prior access, but this order has nothing to do with any comparison of text combinations from a current user query. Rather, the ordering is established prior to processing a current query, and the process of ordering of context grammars exists separate from and independent of any comparison of a current query’s text combinations to entries in the context stack. Therefore, it is wrong for Petitioner to contend that the priority

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<sup>4</sup> Ex. 1022, U.S. Patent Application Publication No. 2002/0133354 (“Ross”).

order of a context manager's entries is "based on results from comparing the text combinations to entries in the context description grammar," as claimed in element [13.7].

The Petition also uses misleading characterizations in its argument to hide the shortcoming of Ross. Addressing Ross's Figure 4, the Petition contends that "within context list 62, in priority order, 70-1 (appearing at the top of the context list) is the most-recently accessed grammar having the highest recency of access characteristic (highest '*relevance score*'); 70- 2 (appearing in the middle of the context list) is the next most-recently accessed grammar having a medium recency of access characteristic (medium '*relevance score*'); and 70-3 (appearing at the bottom of the context list) is the least accessed grammar having the lowest recency of access characteristic (lowest '*relevance score*')." Pet., 58 (citing Ex. 1003, ¶152). But even if Ross's order of grammars in the context stack had some bearing on the relevancy of each grammar, that order is not "based on results from comparing the text combinations [in a query being evaluated] to entries in the context description grammar," as claimed in element [13.7]. Rather, the order simply relates to which grammar in the stack was last accessed.

Further, element [13.6] requires the step of "accessing *a plurality* of domain agents that are associated with the context description grammar," but Ross selects only the first application that has a grammar that can accept the user's phrase,

regardless of where in the stack that grammar is arranged. *See* Ross, [0053]. This disclosure confirms that element [13.6] is missing from Ross.

Petitioner’s theory has at least one more shortcoming. In element [13.8], claim 13 performs the step of “selecting one or more domain agents *based on results from the relevance score.*” (emphasis added). Applying this method of “selecting” to Petitioner’s incorrect characterization of Ross would require selecting the most recent grammar in the stack every time because, according to Petitioner, the top entry is always the entry with the highest “relevance score.” This is not how Ross works.

While Ross does order the context stack such that the most recently accessed grammar is positioned on the top of the stack, this order has no inherent bearing on the relevance of that grammar entry to the current query’s text combinations. Per Ross, “[t]he context manager 50 tests the utterance against these grammars (indicated by the contexts 70 in the context list 62) in priority order, and passes the commands on to the first application 26 that has a grammar that will accept the phrase.” Ross, [0053]. In other words, if the third grammar in Ross’s stack is the first grammar that will accept a user’s phrase, this means that Ross is bypassing two higher grammars with—according to Petitioner—higher relevance scores to reach the third grammar. And again, Ross is only accessing one grammar, the first grammar that can accept the phrase in question.

Ross orders its stack according to the most recently accessed grammar, but whether the most recently accessed grammar can process a user's phrase—and would therefore be somehow relevant to the user's query—is a separate question that is irrelevant to the characteristic of stack order. Ross plainly does not fit the claimed steps of claim 13, including the step of “accessing *a plurality* of domain agents that are associated with the context description grammar” (element [13.6]), the step of “generating a relevance score based on results from comparing the text combinations to entries in the context description grammar” (element [13.7]), and the step of “selecting one or more domain agents based on results from the relevance score” (element [13.8]).

The Petition's addressing of the claimed elements [13.6], [13.7], and [13.8] is wrong, and this is fatal to the Petition. Indeed, this error confirms that the Petition's challenge as to claim 13 is not strong, but rather facially deficient and unlikely to succeed. Moreover, each of the other challenged claims depend from claim 13, thus confirming that each challenge presented in the Petition is deficient.

As such, the weakness of Petitioner's merits argument further warrants discretionary denial because there is no reason to dedicate Office resources to address challenges that are plainly deficient. The Petition should be denied.

#### IV. CONCLUSION

For the reasons presented above, the Director should exercise discretion to deny the Petition, and no *inter partes* review should be instituted.

Dated: September 30, 2025

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, 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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