IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

MIDLAND/ODESSA DIVISION

DIALECT, LLC, Plaintiff, v. META PLATFORMS, INC., Defendant.	Case No. 7:25-cv-00060-DC-DTG

DEFENDANT META PLATFORMS, INC.'S
OPENING CLAIM CONSTRUCTION BRIEF

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. LEGAL STANDARD 2

A. Claim Construction 2

B. Indefiniteness 3

III. BACKGROUND 3

A. The ’209 Patent 3

IV. ANALYSIS 6

A. “usable at each stage of processing the received user utterance” (’209 patent, claim 1) 6

1. “each stage of processing the received user utterance” 6

2. “usable” 11

V. CONCLUSION 14

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Adaptix, Inc. v. Apple, Inc.,
No. 5:13-CV-01776-PSG, 2015 WL 332111 (N.D. Cal. Jan. 23, 2015) 7

Bushnell Hawthorne, LLC v. Cisco Sys., Inc.,
813 F. App'x 522 (Fed. Cir. 2020) 8

CamelBak Prods., LLC v. Zak Designs, Inc.,
No. 5:21-CV-05109, 2023 WL 137485 (W.D. Ark. Jan. 9, 2023) 8

CollegeNet, Inc. v. ApplyYourself, Inc.,
418 F.3d 1225 (Fed. Cir. 2005).....10

Comark Commc'ns, Inc. v. Harris Corp.,
156 F.3d 1182 (Fed. Cir. 1998).....2

Datamize, LLC v. Plumtree Software, Inc.,
417 F.3d 1342 (Fed. Cir. 2005).....3

Energizer Holdings, Inc. v. Int'l Trade Comm'n,
435 F.3d 1366 (Fed. Cir. 2006).....8

Halliburton Energy Servs., Inc. v. M-I LLC,
514 F.3d 1244 (Fed. Cir. 2008).....3, 7

Interval Licensing LLC v. AOL, Inc.,
766 F.3d 1364 (Fed. Cir. 2014).....2

IQASR LLC v. Wendt Corp.,
825 F. App'x 900 (Fed. Cir. 2020) 9, 11, 13, 14

Iqasr LLC v. Wendt Corp.,
No. 16-cv-01782-MSK-KMT, 2019 WL 1075477 (D. Colo. Mar. 7, 2019).....13

JobDiva, Inc. v. Monster Worldwide, Inc.,
No. 13-CV-8229 KBF, 2014 WL 5034674 (S.D.N.Y. Oct. 3, 2014) 7

Markman v. Westview Instruments, Inc.,
517 U.S. 370 (1996).....2

Nautilus, Inc. v. Biosig Instruments, Inc.,
572 U.S. 898 (2014).....3, 7, 8, 10

Phillips v. AWH Corp.,
415 F.3d 1303 (Fed. Cir. 2005) (en banc)....................2, 3

Sensor Elec. Tech., Inc. v. Bolb, Inc.,
No. 18-CV-05194-LHK, 2019 WL 4645338 (N.D. Cal. Sept. 24, 2019)....................7

Sulzer Textil A.G. v. Picanol N.V.,
358 F.3d 1356 (Fed. Cir. 2004)....................3

Vitronics Corp. v. Conceptronic, Inc.,
90 F.3d 1576 (Fed. Cir. 1996)....................2

WAPP Tech Ltd. P'ship v. Bank of Am., N.A.,
No. 4:21-CV-670, 2022 WL 2463569 (E.D. Tex. July 6, 2022) 9, 11, 13

Federal Statutes

35 U.S.C. § 112 ¶ 2 ....1, 3, 11, 14

Other Authorities

U.S. Patent No. 7,398,209.................... *passim*

I. INTRODUCTION

In this five-patent case brought by Plaintiff Dialect, LLC ("Dialect"), Defendant Meta Platforms, Inc. ("Defendant") respectfully asks the Court to address just one term/phrase at claim construction: "usable at each stage of processing the received user utterance," which is found in asserted claim 1 of U.S. Patent No. 7,398,209 ("the '209 patent"). For multiple reasons, this phrase is indefinite under 35 U.S.C. § 112 ¶ 2, and the Court should so hold.

The phrase appears in limitation 1[b], which recites "maintaining a dynamic set of prior probabilities or fuzzy possibilities usable at each stage of processing the received user utterance." The problem is, an ordinarily skilled artisan would not know what are the "stage[s] of processing the received user utterance" at which the "dynamic set of prior probabilities or fuzzy possibilities" must be "usable." The claim itself does not say, and no intrinsic or extrinsic evidence would enable a POSITA to understand, much less with reasonable certainty, which steps recited in claim 1 are "stage[s] of processing the received user utterance." Moreover, because the claim preamble uses the transitional term "comprising"—which generally means a claim is open-ended and does not exclude the performance of unrecited steps—a POSITA would not even know if those "stage[s]" must be steps recited in the claim, or can encompass unrecited steps (and if so, which ones). Without knowing what the "stage[s] of processing the received user utterance" are, a POSITA is left guessing when the "dynamic set of prior probabilities or fuzzy possibilities" must be "usable," rendering the boundaries of the claim not reasonably certain.

The substantial uncertainty facing a POSITA doesn't stop there, unfortunately. A POSITA would also not know with reasonable certainty what the "dynamic set of prior probabilities or fuzzy possibilities" must be "usable" *for*. Anything is "usable" in the abstract. Dice are "usable" when playing chess, even though no rules of chess depend on having them. Sunglasses are "usable" when mowing a lawn, even though they can't be used to cut grass or power a lawnmower.

Without knowing how, or for what purpose, the "dynamic set of prior probabilities or fuzzy possibilities" must be "usable"—which neither the claim language nor any intrinsic or extrinsic evidence answer with reasonable certainty—the boundaries of the claim are even more unclear to a POSITA. Those boundaries are also unclear because a POSITA would not know with reasonable certainty what "usable" requires beyond the "dynamic set of prior probabilities or fuzzy possibilities" merely existing. The specification gives examples of "using" probabilistic or fuzzy set matching methods, but never explains what the (presumably broader) limitation "usable" requires or even uses the term, nor does any other intrinsic evidence.

The result of these uncertainties is that the boundaries of the claim are genuinely unclear, "leaving the skilled artisan to consult the unpredictable vagaries of any one person's opinion," which renders the claim indefinite. *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1374 (Fed. Cir. 2014).

II. LEGAL STANDARD

A. Claim Construction

Claim construction is a matter of law. *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 387 (1996). "The appropriate starting point [] is always with the language of the asserted claim itself." *Comark Commc'ns, Inc. v. Harris Corp.*, 156 F.3d 1182, 1186 (Fed. Cir. 1998). That language should be read first and foremost in light of the specification, which is "the single best guide to the meaning of a disputed term." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1315 (Fed. Cir. 2005) (en banc). The correct claim construction is the one that "stays true to the claim language and most naturally aligns with the patent's description of the invention." *Id*. at 1316. The claim language, written description, and patent prosecution history thus form the intrinsic record that is most significant when construing a term. *Id.* at 1315–17; *see also Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996).

The Court's ultimate goal in construing claim terms is "giv[ing] the jury guidance that 'can be understood and given effect by the jury once it resolves the issues of fact which are in dispute.'" *Sulzer Textil A.G. v. Picanol N.V.*, 358 F.3d 1356, 1366 (Fed. Cir. 2004) (quoting *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 718 (Fed. Cir. 1984)). The jury must be able to "intelligently determine the questions presented." *Id.* (citation and internal quotation marks omitted). Thus, the plain and "ordinary meaning" of technical terms is only helpful when that meaning is "readily apparent even to lay [people]." *Phillips*, 415 F.3d at 1314.

B. Indefiniteness

A patent claim is invalid for indefiniteness under pre-AIA 35 U.S.C. § 112 ¶ 2[1] if the claim language, "read in light of the patent's specification and prosecution history, fail to inform, with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014). The purpose of this "definiteness requirement" is "to ensure that the claims delineate the scope of the invention using language that adequately notifies the public of the patentee's right to exclude." *Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1347 (Fed. Cir. 2005). "Otherwise, competitors cannot avoid infringement, defeating the public notice function of patent claims." *Halliburton Energy Servs., Inc. v. M-I LLC,* 514 F.3d 1244, 1249 (Fed. Cir. 2008).

III. BACKGROUND

A. The '209 Patent

The alleged invention of the '209 patent is about using context to execute a spoken request, just like humans do in everyday interactions, but applied to computer-based "[s]ystems and methods for receiving natural language queries and/or commands and execut[ing] the queries

[1] Although the AIA's revisions to Section 112 ¶ 2 are not material, the pre-AIA version of the statute applies here because the application for the '209 patent was filed in 2003.

and/or commands." '209 patent, Abstract. The specification explains that "[c]ognitive research on human interaction shows that a person asking a question or giving a command typically relies heavily on context and the domain knowledge of the person answering." *Id.* at 1:27–30. For example, "[s]ome questions can only be interpreted in the context of previous questions, knowledge of the domain, or the user's history of interests and preferences." *Id.* at 9:7–9. The specification asserts that "[o]n the other hand, machine-based queries . . . may be highly structured and are not inherently natural to the human user." *Id.* at 1:31–34. Thus, according to the specification, "human questions and machine processing of queries may be fundamentally incompatible." *Id.* at 1:34–35. The patent's proposed solution is to "make[] maximum use of context, prior information, domain knowledge, and user specific profile data to achieve a natural environment for . . . making queries or commands in multiple domains." *Id.* at 1:65–2:1.

For example, "a question with the keyword[] 'temperature' implies a context value of weather for the question," which can be used to determine that the user is requesting "weather information for the local area or other locations." *Id.* at 17:49–51, 7:40–56. As another example from the specification: "Suppose a user is interested in retrieving the value of her stock portfolio. The user may utter 'please get the value of my stock portfolio.' The system 90 may review this request together with stored data such as the user's profile and determine keywords such as 'get the value' and 'my stock portfolio.' The system 90 may then generate queries to determine the stocks in the user's portfolio, the number of shares and the source for current pricing information." *Id.* at 22:48–56. "These queries may then be sent to one or more agent domains, such as a domain which may access a database containing the user's profile and a domain which accesses stock pricing sources to determine the answers to these questions." *Id.* at 22:56–60. While the alleged invention utilizes speech recognition technology (e.g., "[t]he speech recognition engine 120 recognizes words and phrases, using information in the dictionary and phrase tables 112," *id.* at 16:53–55), it does not purport to improve speech recognition in any way. Rather, the specification acknowledges that "[s]peech recognition has steadily improved in accuracy and today is successfully used in a wide range of applications." *Id.* at 1:40–41.

The relevant claim language is emphasized below in claim 1 of the '209 patent:[2]

> 1. A method responsive to a user generated natural language speech utterance, comprising:
>
> [a] receiving the user generated natural language speech utterance, the received user utterance containing at least one request;
>
> [b] maintaining a dynamic set of prior probabilities or fuzzy possibilities ***usable at each stage of processing the received user utterance***;
>
> [c] recognizing words and phrases contained in the received utterance using information in one or more dictionary and phrase tables;
>
> [d] parsing the recognized words and phrases to determine a meaning of the utterance, wherein determining the meaning includes determining a context for the at least one request contained in the utterance based on one or more keywords contained in the recognized words and phrases;
>
> [e] selecting at least one domain agent based on the determined meaning, the selected domain agent being an autonomous executable that receives, processes, and responds to requests associated with the determined context;
>
> [f] formulating the at least one request contained in the utterance in accordance with a grammar used by the selected domain agent to process requests associated with the determined context;
>
> [g] invoking the selected domain agent to process the formulated request; and
>
> [h] presenting results of the processed request to the user, the presented results generated as a result of the invoked domain agent processing the formulated request.

[2] Consecutive letters for each limitation have been added here for identification.

IV. ANALYSIS

A. "usable at each stage of processing the received user utterance" ('209 patent, claim 1)

Claim Term	Defendant's Proposed Construction	Plaintiff's Proposed Construction
usable at each stage of processing the received user utterance	Indefinite	Plain and ordinary meaning

As Dr. Mark Crovella thoroughly explains in his attached declaration, two aspects of the phrase "usable at each stage of processing the received user utterance" in claim 1 independently create a lack of reasonable certainty about the scope of the claim: (1) "each stage of processing the received user utterance" and (2) "usable." Crovella Decl. ¶ 27.[3]

1. "each stage of processing the received user utterance"

Limitation 1[b], which contains this phrase, requires "maintaining a dynamic set of prior probabilities or fuzzy possibilities usable at each stage of processing the received user utterance." To determine whether a given "dynamic set of prior probabilities or fuzzy possibilities" meets the requirement of being "usable at each stage of processing the received user utterance," an important threshold question a POSITA would face is: what are the "stage[s] of processing the received user utterance" to which the claim language is referring? Crovella Decl. ¶ 39. The answer is critical because different answers could entirely change the boundaries of the claim. *Id.* For example, if X, Y, and Z are the only "stage[s] of processing the received user utterance," then a given "dynamic set of prior probabilities or fuzzy possibilities" need only be "usable" at X, Y, and Z to satisfy this part of limitation 1[b]. But if A, B, and C are <u>also</u> "stage[s] of processing the received user utterance" then a "dynamic set of prior probabilities or fuzzy possibilities" that is "usable" only at

[3] "Crovella Decl." refers to the Declaration of Dr. Mark E. Crovella, Ph.D. filed herewith.

X, Y, and Z could not satisfy the claim language. *Id.* In this way, knowing what the "stage[s] of processing the received user utterance" are, is essential for a POSITA to understand the scope of the claim with reasonable certainty. *Id.*

The issue is, a POSITA would not know with reasonable certainty what those "stage[s]" are. *Id.* As a result, the claim language could "lead those skilled in the art to perform different tests and get different results" about whether the claim is satisfied. *JobDiva, Inc. v. Monster Worldwide, Inc.*, No. 13-CV-8229 KBF, 2014 WL 5034674, at *19 (S.D.N.Y. Oct. 3, 2014).

To begin with, there is no explicit or implicit antecedent basis in claim 1 for "each stage of processing the received user utterance," nor does the claim otherwise identify those "stage[s]."[4] Crovella Decl. ¶¶ 40–41. "[A] claim could be indefinite if a term does not have proper antecedent basis where such basis is not otherwise present by implication or the meaning is not reasonably ascertainable." *Halliburton*, 514 F.3d at 1249. For example, in *Adaptix, Inc. v. Apple, Inc.*, No. 5:13-CV-01776-PSG, 2015 WL 332111 (N.D. Cal. Jan. 23, 2015), the court found the phrase "each cluster" indefinite under *Nautilus* because it "lacks any clear antecedent basis" in the claim language and "could potentially [refer to] any one or more of the subcarriers recited in the preceding limitations." *Id.* at *4–5. The problem was that "exactly which [of those subcarriers] is not taught or claimed." *Id.* at *5. As a result, it "might mean several different things and no informed and confident choice is available among the contending definitions," despite examples in the specification. *Id.* at *1 (quoting *Interval Licensing*, 766 F.3d at 1371). The same reasoning applies here. The word "stage" does not appear anywhere else in claim 1 (nor for that matter does

[4] "For a claim term to have antecedent basis support, an indefinite article (for instance, 'a' or 'an') must precede a claim term the first time the claim term is used in the claims." *Sensor Elec. Tech., Inc. v. Bolb, Inc.*, No. 18-CV-05194-LHK, 2019 WL 4645338, at *31 (N.D. Cal. Sept. 24, 2019).

it appear in any other claims), so there is no explicit antecedent basis for "each stage of processing the received user utterance." Crovella Decl. ¶ 40. While an antecedent basis can exist by implication, *Energizer Holdings, Inc. v. Int'l Trade Comm'n*, 435 F.3d 1366, 1371 (Fed. Cir. 2006), there is also no implied antecedent basis here. Crovella Decl. ¶ 41. For example, no other step recited in the body of claim 1 is designated as, or refers to, "processing the received user utterance"; the method steps in the claim are "receiving," "maintaining," "recognizing," "parsing," "selecting," "formulating," "invoking," and "presenting." *Id.*

To be sure, "[t]he lack of antecedent basis signals a potential indefiniteness problem but does not end the inquiry." *Bushnell Hawthorne, LLC v. Cisco Sys., Inc.*, 813 F. App'x 522, 526 (Fed. Cir. 2020). The ultimate question continues to be whether the claim language, read in light of the specification and prosecution history, would give a POSITA reasonable certainty about the boundaries of the claim. *Nautilus*, 572 U.S. at 901; *see also CamelBak Prods., LLC v. Zak Designs, Inc.*, No. 5:21-CV-05109, 2023 WL 137485, at *6 (W.D. Ark. Jan. 9, 2023) ("[W]hether a term is given an explicit antecedent basis or not, the inquiry remains whether the term fails to inform, with reasonable certainty, those skilled in the art about the scope of the invention." (cleaned up)). Review of the intrinsic evidence confirms that the answer here is "no."

As Dr. Crovella thoroughly explains, neither the specification nor the prosecution history of the '209 patent would have enabled a POSITA to determine, with reasonable certainty, what the "stage[s] of processing the received user utterance" are. Crovella Decl. ¶¶ 42–53. The specification never explicitly discusses "processing the received user utterance," much less identify the "stage[s]" thereof. *Id.* ¶ 43. The specification mentions a "stage" of something only four times, none of which would give a POSITA reasonable certainty on this issue, as Dr. Crovella explains. *Id.* ¶¶ 43–51; '209 patent at 1:61–2:9, 3:46–4:19, 17:1–16, 22:34–23:33. For example, the specification at column 17 refers to "each stage" of a user's dialog with the system and describes dynamically updating "fuzzy set possibilities or prior probabilities for the words in the dictionary and phrase tables" in order to maximize the probability of correctly recognizing words spoken by the user. '209 patent at 17:1–16. But this part of the specification is discussing "each stage" of the user's dialog with the system, not "each stage of processing the received user utterance." *Id.*; Crovella Decl. ¶¶ 48–49. To be sure, as Dr. Crovella acknowledges, this portion of the specification could suggest to a POSITA that limitation 1[c] may be a "stage of processing the received user utterance," because limitation 1[c] recites "recognizing words and phrases contained in the received utterance using information in one or more dictionary and phrase tables." Crovella Decl. ¶ 49; '209 patent at 25:54–56. But a POSITA could not be reasonably certain of even that tentative inference because the discussion in column 17 relates only to "an[] embodiment" and does not identify recognizing words in a user's dialog as a "stage of processing the received user utterance." Crovella Decl. ¶ 49; *IQASR LLC v. Wendt Corp.* ("*IQASR II*"), 825 F. App'x 900, 906 (Fed. Cir. 2020) ("[N]on-limiting examples do not on their own expressly define the bounds—the *limits*—of the claim."); *WAPP Tech Ltd. P'ship v. Bank of Am., N.A.*, No. 4:21-CV-670, 2022 WL 2463569, at *20 (E.D. Tex. July 6, 2022) (explaining that "reliance on a particular disclosed embodiment is unavailing" to cure indefiniteness because "claim scope is ordinarily not limited to the disclosed embodiments"). The same is true of column 17's description of a parser determining a context for a user's utterance "by applying prior probabilities or fuzzy possibilities," even though it could suggest to a POSITA that limitation 1[d] may also be a "stage of processing the received user utterance."[5] '209 patent at 17:41–56; Crovella Decl. ¶¶ 52–53.

[5] Limitation 1[d] recites "parsing the recognized words and phrases to determine a meaning of the utterance, wherein determining the meaning includes determining a context for the at least

And even assuming *arguendo* that limitations 1[c] and 1[d] each constitute "stage[s] of processing the received user utterance," a POSITA still would not know with reasonable certainty what the other "stage[s]" are, if any. Crovella Decl. ¶ 49. As the Supreme Court explained in *Nautilus*, "[i]t cannot be sufficient that a court can ascribe *some* meaning to a patent's claims"—what the statute demands is "reasonable certainty." 572 U.S. at 911.

In the absence of any intrinsic evidence that would allow a POSITA to determine, with reasonable certainty, what the relevant "stage[s]" are, the POSITA is left guessing. Crovella Decl. ¶ 55. A POSITA would not know with reasonable certainty which, if any, method steps recited in the body of the claim are "stage[s] of processing the received user utterance." *Id.* And looking beyond the steps actually recited in the claim, a POSITA would also not know whether unrecited steps may constitute a "stage of processing the received user utterance." *Id.* In other words, a POSITA would not even know if those "stage[s]" are limited to steps recited in the claim, or can encompass unrecited steps (and if so which ones). Indeed, the claim preamble uses the transitional term "comprising," which generally means a claim is open-ended and does not exclude the performance of unrecited steps. *CollegeNet, Inc. v. ApplyYourself, Inc.*, 418 F.3d 1225, 1235 (Fed. Cir. 2005). Thus, a POSITA would not know whether acts that constitute "processing the received user utterance," but which are not recited in the claim, could nevertheless be a "stage of processing the received user utterance" that must satisfy limitation 1[b]—i.e., at which the claimed "dynamic set of prior probabilities or fuzzy possibilities" must be "usable." Crovella Decl. ¶ 55. Further exacerbating the problem, a POSITA would not have known how broadly or granularly to identify each "stage." *Id.* ¶ 56. As Dr. Crovella explains, there was no established understanding of "stage"

---

one request contained in the utterance based on one or more keywords contained in the recognized words and phrases." '209 patent at 25:57–62.

in the context of software that a POSITA could turn to (in contrast to terms that did have a generally understood meaning in that context, such as "function," "module," "subroutine," and the like). *Id.* As a result, a POSITA would not have known how to determine whether a given set of computer instructions constitute a single "stage" versus multiple "stage[s]" for purposes of limitation 1[b]. *Id.* For all these reasons, "each stage of processing the received user utterance" renders limitation 1[b]—and by extension claim 1—indefinite under Section 112 ¶ 2.

2. "usable"

Adding to the already substantial uncertainty described above is the term "usable" in limitation 1[b]. Because "usable" is an adjective that modifies the recited "dynamic set of prior probabilities or fuzzy possibilities"—in that it specifies a criterion that a given "dynamic set of prior probabilities or fuzzy possibilities" must meet—the question a POSITA would face is how to decide, with reasonable certainty, whether a given "dynamic set of prior probabilities or fuzzy possibilities" are "usable" as required by limitation 1[b], or not. *Id.* ¶ 28. As Dr. Crovella explains, a POSITA would lack reasonable certainty about how to make this determination because "usable" is recited as a requirement without specifying how, or for what purpose, the recited "dynamic set of prior probabilities or fuzzy possibilities" must be "usable." *Id.* ¶ 29.

And there is no intrinsic evidence that would enable a POSITA to resolve this uncertainty—no mention of "usable" in the specification (much less examples or a definition), and no discussion in the prosecution history. *Id.* ¶¶ 30–35. While the specification gives examples of "using" probabilistic or fuzzy set matching methods, or of probabilistic or fuzzy set decision and matching methods being "applied," none of these examples discuss the concept of "usable" or convey a reasonably certain meaning for this term. *Id.* ¶¶ 31–34. Moreover, these examples are tied to particular embodiments, which tell a POSITA nothing about the boundaries of the claim. *IQASR II*, 825 F. App'x at 906; *WAPP Tech*, 2022 WL 2463569, at *20. For example, the specification describes "an[] embodiment," depicted in Figure 4A, in which "probabilistic or fuzzy set decision and matching methods may be applied to deal with inconsistent, ambiguous, conflicting and incomplete information or responses." '209 patent at 22:34–37, 23:30–33. While this identifies a purpose for which "probabilistic or fuzzy set decision and matching methods" may be "applied," it is only for a particular embodiment, and that purpose is not reflected in the claim language. Moreover, limitation 1[b] does not recite "applying" a dynamic set of prior probabilities or fuzzy possibilities; it requires only that they be "usable." What if a dynamic set of prior probabilities or fuzzy possibilities is never "applied" (or "us[ed]") as described in these examples from the specification? Might they still be "usable" as recited in limitation 1[b]? If so, under what circumstances? Neither these examples nor anything else in the specification give a POSITA reasonable certainty about the boundaries of "usable." Crovella Decl. ¶ 34.

Even looking beyond the intrinsic evidence, there was no generally accepted understanding available to a POSITA of what "usable" meant in relation to "prior probabilities or fuzzy possibilities" (or a "dynamic set of prior probabilities or fuzzy possibilities"), or even more generally within the context of the method recited in claim 1—i.e., a "method responsive to a user generated natural language speech utterance." *Id.* ¶¶ 36–37. Dr. Crovella identifies specific examples that underscore this point. *Id.* ¶ 36 (citing L. Rabiner & B. Juang, FUNDAMENTALS OF SPEECH RECOGNITION (1993)).

As a result of all this, a POSITA would have had nothing to draw on but a lay understanding of "usable," along the lines of "able to be used" or "capable of being used." *Id.* ¶ 38. But a lay understanding, too, would fail to provide a POSITA with reasonable certainty about the boundaries of the claim because it still begs a question that the claim language does not address and which a POSITA would not know how to answer, namely: how, or for what purpose, must the recited "dynamic set of prior probabilities or fuzzy possibilities" be "usable"? *Id.* Although the specification gives one example of a purpose (as discussed above), it is only in the context of exemplary embodiments, and such "non-limiting examples do not on their own expressly define the bounds—the *limits*—of the claim." *IQASR II*, 825 F. App'x at 906; *see also WAPP Tech*, 2022 WL 2463569, at *20 (exemplary embodiments cannot cure indefiniteness because "claim scope is ordinarily not limited to the disclosed embodiments").

The court's analysis in *Iqasr LLC v. Wendt Corp.* ("*Iqasr I*"), No. 16-cv-01782-MSK-KMT, 2019 WL 1075477 (D. Colo. Mar. 7, 2019), is instructive and dealt with an analogous issue. There, the method claim recited in relevant part a step of "non-magnetically sorting separating low susceptance microparticles." *Id.* at *3. The problem was that "low susceptance" had no scientific meaning and lacked any definition in the intrinsic evidence. *Id.* at *9 ("Although the patent uses the phrase 'low susceptance' frequently, it offers no clear definition of the term and indeed, disclaims reliance on any 'scientific' meaning."). The term also had no established understanding in the relevant art. *Id.* (explaining that plaintiff's expert "does not point to any industry papers or reports or other communications where that phrase is used"). The court observed that while "the dictionary definition of 'susceptance' means 'the character of being susceptible,' . . . that simply begs the question: susceptible to what?" *Id.* While the specification identified "particles with low or magnetic or perhaps even low sensor susceptibility" as examples of "low susceptance microparticles," "[n]othing in either the intrinsic or extrinsic evidence indicates that the susceptibility that the patent speaks of is, exclusively, susceptibility to magnetic sensors." *Id.* As a result, a POSITA would not have "a clear understanding of what 'low-susceptance microparticles' are," rendering the term indefinite. *Id.*

Similar reasoning applies here, but with even more force. A lay understanding of "usable"—such as "able to be used" or "capable of being used"—begs a question that a POSITA not be able to answer with reasonable certainty, namely: able to be used or capable of being used *how or for what*? There is no intrinsic or extrinsic evidence that answers this question, much less with reasonable certainty. At most, the specification gives examples, such as that "probabilistic or fuzzy set decision and matching methods *may* be applied *to deal with inconsistent, ambiguous, conflicting and incomplete information or responses*," '209 patent at 23:30–33 (emphases added), but these descriptions of exemplary embodiments do not give a POSITA reasonable certainty about the boundaries of the claim. Crovella Decl. ¶¶ 31–34; *see also IQASR II*, 825 F. App'x at 906 ("A patentee cannot simultaneously use non-modal verbs[6] to avoid limiting the scope of an invention while also arguing that those same examples define the limits of the invention.").

For all these reasons, the term "usable" adds to the already substantial uncertainty that a POSITA would face in determining the boundaries or scope of limitation 1[b] and independently renders claim 1 indefinite under Section 112 ¶ 2.

V. CONCLUSION

For the foregoing reasons, Defendant respectfully requests the following claim constructions:

Claim Term	Claim Construction
usable at each stage of processing the received user utterance ('209 patent, claim 1)	Indefinite

[6] "May" is a common example of a non-modal verb.

Respectfully submitted,

Dated: November 21, 2025

By: */s/ Melissa R. Smith*

MELISSA SMITH Texas Bar No. 24001351
melissa@gillamsmithlaw.com
GILLAM & SMITH, LLP
303 S. Washington Ave.
Marshall, Texas 75670
Tel. 903.934.8450
Fax 903.934.9257

DAVID SILBERT *Pro Hac Vice forthcoming*
dsilbert@keker.com
SHARIF E. JACOB *Pro Hac Vice forthcoming*
sjacob@keker.com
PAVEN MALHOTRA *Pro Hac Vice forthcoming*
PMalhotra@keker.com
CHRISTINA LEE *Pro Hac Vice forthcoming*
clee@keker.com
KRISTEN E. LOVIN *Pro Hac Vice forthcoming*
KLovin@keker.com
VISHESH NARAYEN *Pro Hac Vice forthcoming*
VNarayen@keker.com
STEPHANIE J. GOLDBERG *Pro Hac Vice forthcoming*
SGoldberg@keker.com
ASEEM MEHTA *Pro Hac Vice forthcoming*
amehta@keker.com
AMRUTHA DORAI *Pro Hac Vice forthcoming*
adori@keker.com
KEKER, VAN NEST & PETERS LLP
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

Attorneys for Defendant
META PLATFORMS, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the parties, or the attorney(s) of record for all parties to the above cause in accordance with the Federal Rules of Civil Procedure on this 21st day of November 2025.

/s/ Melissa R. Smith
Melissa R. Smith