

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AO KASPERSKY LAB,

Petitioner

v.

OPEN TEXT INC.,

Patent Owner

Case IPR2023-01011
Patent No. 10,257,224

PATENT OWNER'S PRELIMINARY RESPONSE

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Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

EXHIBIT LIST

Exhibit	Description
2001	<i>CrowdStrike, Inc. v. Open Text Inc.</i> , IPR2023-00126, Paper 11 (PTAB May 19, 2023)
2002	<i>Webroot, Inc. and Open Text Inc. v. AO Kaspersky Lab</i> , Case No. 6:22-cv-00243-ADA-DTG, Wavier of Summons AO Kaspersky Labs, Dkt. 16 (E.D. Tex May 24, 2022)

Patent Owner's Preliminary Response
to Petition for *Inter Partes* Review
Patent No. 10,257,224

Pursuant to 37 C.F.R. § 42.107(b), Open Text Inc. ("Patent Owner") submits this Preliminary Response to the Petition of AO Kaspersky Lab ("Petitioner") seeking *inter partes* review of U.S. Patent No. 10,257,224 ("the '224 patent").

On May 5, 2023, the Board instituted *inter partes* review of the '224 patent in *CrowdStrike, Inc. v. Webroot Inc.*, IPR2023-00126 (PTAB May 5, 2023) (the "CrowdStrike Proceeding"). Petitioner filed its petition for *inter partes* review and motion for joinder on June 2, 2023, within one month of institution of the CrowdStrike Proceeding, seeking joinder with the CrowdStrike Proceeding. (Paper 1; Paper 2.) The grounds raised by Petitioner in this proceeding are identical in substance to the grounds raised by CrowdStrike, Inc. in the CrowdStrike Proceeding. Patent Owner opposes institution of *inter partes* review in this proceeding for the same reasons addressed in Patent Owner's Preliminary Response in the CrowdStrike Proceeding. *See CrowdStrike*, IPR2023-00126, Paper 6. Patent Owner incorporates the arguments presented therein by reference.

In addition, if the Board does not grant Petitioner's joinder motion in this proceeding, or grant's Patent Owner's pending request for rehearing of the Board's institution decision in the CrowdStrike Proceeding (*see* EX-2001, Request for Rehearing in IPR2023-00126, Paper 11), Patent Owner opposes institution because Petitioner would be time-barred from requesting *inter partes* review of the '224 patent.

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Under 35 U.S.C. §315(b), the one-year bar period began when Patent Owner filed Petitioner's waiver of service with the district court. *Brinkmann Corp. v. A&J Mfg., LLC*, Case No. IPR2015-00056, Paper 10 at 6-7 (PTAB Mar. 23, 2015) (citing Fed. R. Civ. P. 4(d)(4) ("these rules apply as if a summons and complaint had been served at the time of filing the waiver").) Patent Owner filed Petitioner's Waiver of Service of Summons on May 25, 2022. (EX-2002 at Dkt. 16.) Petitioner did not file its petition until June 2, 2023. (Paper 1.) Thus, Petitioner was effectively served with a complaint alleging infringement of the '224 patent on May 24, 2022, more than one year before filing its petition on June 2, 2023. Absent joinder, or if institution in the CrowdStrike Proceeding is denied on rehearing, the petition is time-barred. *See* 35 U.S.C. §315(b).

For the foregoing reasons, the Board should decline to institute *inter partes* review of the '224 patent.

Date: September 11, 2023

Respectfully submitted,

KING & SPALDING LLP

BY: /Brian Eutermoser/

Brian Eutermoser
Registration No. 64,058

*Attorney for Patent Owner
Open Text Inc.*

CERTIFICATION OF WORD COUNT

The undersigned hereby certifies that the portions of the above-captioned **PA-
TENT OWNER PRELIMINARY RESPONSE** specified in 37 C.F.R. § 42.24
have 378 words, in compliance with the 14,000 word limit set forth in 37 C.F.R.
§ 42.24. This word count was prepared using Microsoft Word 365 V.2022.

Date: September 11, 2023

Respectfully submitted,

KING & SPALDING LLP

BY: /Brian Eutermoser/

Brian Eutermoser
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*Attorney for Patent Owner
Open Text Inc.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing **PATENT OWNER PRELIMINARY RESPONSE** and all supporting **EXHIBITS 2001-2002** were served by filing the documents through the Patent Trial and Appeal Case Tracking System (P-TACTS) and sent via electronic mail, in their entireties on the following:

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