

Filed on behalf of: GoSecure, Inc.

Entered: March 31, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CROWDSTRIKE, INC.,
Petitioner,

v.

GOSECURE, INC.,
Patent Owner.

Case IPR2025-00067
Patent 9,106,697

PATENT OWNER'S SURREPLY

Exhibit List

Exhibit(s)	Description
2001-2004	Reserved
2005	<i>Microsoft Corp. v. ThroughPuter, Inc.</i> , IPR2023-00852, Paper 18 (PTAB Nov. 9. 2023)
2006	Declaration of June Ann Munford, <i>Microsoft Corp. v. ThroughPuter, Inc.</i> , IPR2023-00852, Ex. 1012
2007	<i>SalesForce.com, Inc. v. WSOU Invs., LLC</i> , IPR2022-00357, Paper 12 (PTAB July 13, 2022)
2008	<i>Microsoft Corp. v. ThroughPuter, Inc.</i> , IPR2022-01566, Paper 13 (PTAB May 31, 2023)
2009	Reserved
2010	Disclaimer Pursuant to 37 C.F.R. 1.321(a)
2011	Univ. of Mich. Libr., Catalog-Library Search: <i>computer intrusions</i> , https://search.lib.umich.edu/catalog?query=computer+intrusions&utm_source=lib-use-search-page (last visited Mar. 26, 2025, 9:24 AM)

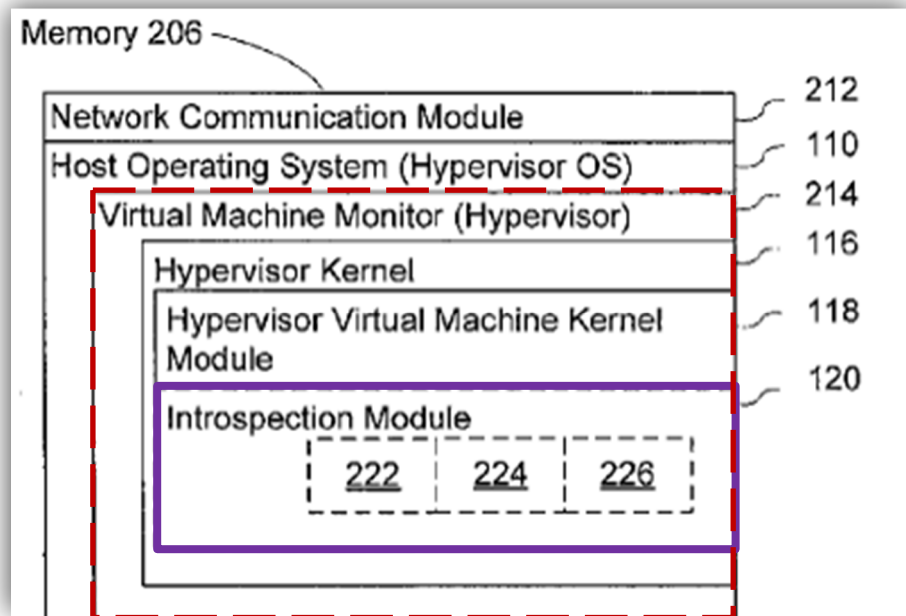
I. Petitioner's New Claim Construction Argument Fails

Claim 1 recites a “computer implemented method of identifying unauthorized activities” and the plain language and structure of the claim specify that the method is performed “at the virtual machine monitor.” This is not an “implicit narrow construction,” as Petitioner argues (Reply 1)—it is what the claim says. The POPR explained how the Petition fails to establish a reasonable likelihood of success with respect to claim 1 because the Petition points exclusively to activity in the prior art occurring *entirely outside* of its reference's virtual machine monitor (VMM) to allegedly meet certain limitations. POPR 22-25. Now, Petitioner seeks to revive its flawed Petition by advancing a strained construction that has no support in the intrinsic record. The Board should reject Petitioner's construction.

First, the plain and ordinary meaning of “at the virtual machine monitor” and its import is clear. That should be the end of the matter. *Toshiba Corp. v. Imation Corp.*, 681 F.3d 1358, 1369 (Fed. Cir. 2012) (“Absent disclaimer or lexicography, the plain meaning of the claim controls.”).

Second, even if there were some uncertainty about the meaning of this phrase, Petitioner offers no reasoned basis for rewriting “at the virtual machine” to read “by the ... decoy system.” Reply 2. Petitioner's argument boils down to the acknowledgment that the '697 patent describes embodiments in which a signature is not generated “at the virtual machine.” *Id.* But the '697 patent also describes

embodiments in which the converse is true. Only the latter is claimed. *Apple Inc. v. Andrea Elecs. Corp.*, 949 F.3d 697, 708 (Fed. Cir. 2020) (claim need not cover every embodiment when “the plain language of a limitation of the claim” does not cover every embodiment) (citation omitted). For example, with reference to Figure 2 (reproduced in part below), the specification explains that the **“introspection module” 120**—which is located ***within the virtual machine monitor 214***—“generates and retrieves forensic data (or fingerprint).” ’697 patent at 6:65-7:2. More specifically, the “trace analyzer 226” within introspection module 120 “uses the raw attack information to generate a signature of the attack.” *Id.* at 10:13-22.



’697 patent, Fig. 2 (excerpted, annotated)

As such, the entire premise of Petitioner’s Reply—i.e., that “[n]owhere in the ’697 Patent is there any teaching or suggestion that a VMM creates a

fingerprint/signature indicative of attack activity[]” (Reply 2)—is wrong. Likewise, Petitioner’s argument that the patent “never suggests a signature generation engine contained within the VMM[]” (*id.* 3), is a red herring and incorrect. Petitioner fails to acknowledge its own argument that the patent “refers to a fingerprint as a signature” (Pet. 44 n.5) and ignores the clear intrinsic support for creating fingerprints *at a virtual machine monitor* as claimed. *See also, e.g.,* ’697 patent, Fig. 6C step 636 (“Create ... a fingerprint”), 14:39-41 (“programs ... to perform the method [of Figure 6] are executed at the virtual machine monitor”).

Third, Petitioner’s refrain that the ’697 patent and its reference share an inventor (Reply 1) is nothing more than another failed attempt to map the specification of the two documents to each other, which is legally insufficient: as Judge Giles Rich’s famous saying goes, “the name of the game is *the claim*.” *In re Hiniker Co.*, 150 F.3d 1362, 1369 (Fed. Cir. 1998) (emphasis added) (citation omitted).

Finally, Petitioner’s attempt to manufacture “direct[] conflict[]” between PO’s district court complaint and its POPR is misguided. Reply 3. No conflict exists and, even if it did, the district court complaint is extrinsic evidence that cannot overcome the intrinsic record. The Board should reject Petitioner’s strained construction and deny institution. POPR 20-27.

II. Petitioner Has Not Shown King was Publicly Accessible

PO's Preliminary Response established that Petitioner's evidence and arguments in support of King's alleged public availability were woefully deficient of the Board's standard to present "evidence sufficient to establish a reasonable likelihood that [King] was publicly accessible" before June 24, 2010. POPR 36 (quoting *Hulu v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 13 (PTAB Dec. 20, 2019) (precedential)). Despite being granted an extensive amount of briefing to remedy its initial one-sentence Petition showing, Petitioner's new Reply arguments and evidence still do not satisfy the Board's requirement.

First, Petitioner attempts to brush aside its failure to establish that the University of Michigan's Library was searchable in 2010 (POPR 32-33) and alleges that "evidence attesting to library 'general practice for indexing, cataloging, and shelving theses'" Reply 4 (quoting *In re Hall*, 781 F.2d 897, 899 (Fed. Cir. 1986)), is routinely accepted. *Id.* But Petitioner does not cite or point to such evidence in the Petition, Reply, or Exhibit 1009. There is none. The Board decision Petitioner cites (*Unified Pats. Inc. v. Sound View Innovations, LLC*, IPR2018-00599, Paper 50 at 45 (PTAB Sept. 9, 2019)) does not suggest otherwise. The Board's final written decision there considered a much more developed librarian declaration and factual record; it did not categorically hold that present-day testimony can be sufficient to show public accessibility of alleged prior art.

Second, Petitioner attempts to brush aside its failure to address *ThroughPuter* by arguing the MARC record there was “significantly less detailed.” Reply 5 (citing *Microsoft Corp. v. ThroughPuter, Inc.*, IPR2023-00852, Paper 18 (PTAB Nov. 9, 2023)). But contrary to Petitioner’s argument, the Board’s *ThroughPuter* decision did not rely on the level of detail in the *ThroughPuter* MARC record, but rather the insufficiency of that petitioner’s evidence and arguments to show how, with the exercise of reasonable diligence, the reference could have been found. These same failures exist here as well. Petitioner’s cases are easily distinguished and only further highlight the deficiencies in its Petition.

For example, Petitioner argues indexing in other databases and holdings in other routine decisions support its threadbare allegations. Reply 5. But Petitioner is wrong. In *Advanced Micro Devices Inc. v. Realtek Semiconductor Corp.*, for example, the petitioner had presented significantly more evidence than Petitioner has, and had shown that the MARC records in question “were searchable”—evidence and argument that is critically missing here. IPR2023-00788, Paper 12 at 24 (PTAB Oct. 26, 2023). Exhibit 1009 does not contain any testimony that the MARC records in question were searchable. Instead, Petitioner can only attest through attorney argument that King’s library record was “searchable by author ... and title.” Reply 6. There is no evidence to support this bald contention. *See id.*

In *Boeing Co. v. Regents of the University of California*, contrary to Petitioner's suggestion in its Reply, the Board did not find it "sufficient" that a thesis was indexed by ProQuest; rather, the Board relied upon a librarian declaration *and* a declaration from a ProQuest representative detailing ProQuest's procedures and records specific to the document at issue—evidence which (again) is not present here. IPR2024-00761, Paper 8 at 12-15 (PTAB Oct. 4, 2024).

Petitioner also argues that the "005" field, which indicates the last modification to a MARC record, within King's MARC record, supports its contentions. But again, that is not sufficient on this record. At best, Petitioner's arguments go to "technical accessibility." Petitioner has still failed to show public accessibility, for which more is required. *See* POPR 29 (arguing that acquisition date is insufficient to meet Petitioner's burden).

Petitioner then turns to "[n]ewly introduced" evidence¹ from the author of the King thesis. Reply 6-7. But Dr. King's testimony likewise does not help Petitioner. Dr. King testifies about "details concerning my research ..., efforts to disseminate this research, and how a person interested in my research would have located the

¹ Though requested by Petitioner, the Board did not authorize new evidence, and should not consider Exhibit 1028 for exceeding its authorization; should the Board consider it, fairness dictates that PO's Exhibit 2011 also be considered.

King Dissertation.” Ex. 1028 ¶ 2. But Dr. King’s “research” is not at issue, his thesis is. Efforts to disseminate his “research” do not show public availability of Exhibit 1006. And a reference “is not publicly accessible if the only people who know how to find it are the ones who created it[]” (*Samsung Elecs. Co. v. Infobridge Pte. Ltd.*, 929 F.3d 1363, 1372 (Fed. Cir. 2019)), or those who are specifically guided to the research by the author himself. Dr. King’s testimony only shows, at best, the unremarkable conclusion that a person who already knew about Dr. King and tracked his activities would have found his thesis by searching his thesis’ title and/or his name. *See* Ex. 1028 ¶¶ 3-6. Nor does the fact that an article allegedly cited Dr. King’s thesis compel a finding that it was publicly accessible; the article is not in the record and there is no explanation as to how those authors found King (e.g., perhaps they found it by knowing Dr. King himself). *See id.* ¶ 7.

Finally, PO pointed out how Petitioner had not provided a hypothetical keyword search for an ordinary artisan to find King, which is a common way to show public accessibility, and was a critical failure in *ThroughPuter*. POPR 35. Petitioner now attempts, through Dr. King, to introduce such testimony. But Dr. King’s testimony is unsupported and, in any event, wrong. Dr. King attests that an interested individual would have found his thesis given keywords “such as ‘computer intrusions.’” Ex. 1028 ¶ 8. Petitioner alleges, therefore, that Dr. King’s thesis was “discoverable through” such keyword searches. Reply 7. Petitioner cites no

documents in support—for good reason. A present-day keyword search of the University of Michigan Library using the phrase “computer intrusions” (in quotes, as in Dr. King’s Declaration and Petitioner’s Reply), shows six results, ***none of which is Dr. King’s thesis***. Ex. 2011.

Accordingly, none of Petitioner’s belatedly-presented evidence changes the conclusion that it has failed to show public accessibility of King, and that institution should be denied on the basis that King has not been shown to be prior art.

III. Ranking Paper

Petitioner concedes that it could have fit grounds challenging both of its constructions into one petition (*see* Paper 8 at 5). Instead, in support of its attempts to needlessly duplicate these proceedings and institute two petitions where one would have been sufficient, Petitioner continues to complain that PO did not construe “association” in its POPR (though PO was under no duty to do so). PO has not introduced any confusion into these proceedings; it was Petitioner that chose to file multiple Petitions and to do so ahead of the parties’ claim construction exchanges. There is no need to contravene the wisdom of the Consolidated Trial Practice Guide and institute more than one petition, as doing so would “place a substantial and unnecessary burden on the Board and the patent owner” and would “raise fairness, timing, and efficiency concerns.” PTAB, *Consolidated Trial Practice Guide* 59 (Nov. 2019).

Respectfully submitted,

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By: / Raghav Bajaj /

Raghav Bajaj (Reg. No. 66,630)
raghav.bajaj@lw.com
Latham & Watkins LLP
300 Colorado Street, Suite 2400
Austin, TX 78701-3295
Telephone: 737.910.7300
Fax: 737.910.7301

*Counsel for Patent Owner
GoSecure, Inc.*

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 31st day of March, 2025, a true and correct copy of the foregoing **Patent Owner's Surreply and Exhibit 2011** were served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

Paul R. Hart, (Reg. No. 59,646)
Paul.Hart@eriseip.com
PTAB@eriseip.com
ERISE IP, P.A.
717 17th St., Suite 1400
Denver, Colorado 80202
Telephone: 913.777.5600
Fax: 913.777.5601

Adam P. Seitz (Reg. No. 52,206)
Adam.Seitz@eriseip.com
ERISE IP, P.A.
7015 College Blvd., Suite 700
Overland Park, Kansas 66211
Telephone: 913.777.5600
Fax: 913.777.5601

By: / Raghav Bajaj /

Raghav Bajaj (Reg. No. 66,630)
raghav.bajaj@lw.com
Latham & Watkins LLP
300 Colorado Street, Suite 2400
Austin, TX 78701-3295
Telephone: 737.910.7300
Fax: 737.910.7301

Counsel for Patent Owner
GoSecure, Inc.