Filed on behalf of: GoSecure, Inc.

Entered: February 5, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CROWDSTRIKE, INC.,
Petitioner,

v.

GOSECURE, INC.,
Patent Owner.

Case IPR2025-00068
Patent 9,954,872

PATENT OWNER'S RESPONSE TO PETITIONER'S RANKING AND EXPLANATION FOR TWO PETITIONS CHALLENGING U.S. PATENT NO. 9,954,872

I. Introduction

Patent Owner GoSecure, Inc. ("GoSecure") submits its Response to Petitioner's Explanation of Material Differences Between Petitions and Ranking (Paper 3) ("Rank."), filed by Petitioner CrowdStrike, Inc. ("CrowdStrike").

This is a garden variety case where there should only be one petition on one patent. No exceptional circumstances exist to warrant the rare granting of two petitions on the same patent. The '872 patent has only 21 claims, of which three are independent. GoSecure has only asserted 1 of those independent claims against CrowdStrike. The '872 patent's claims are not lengthy, its three independent claims recite nearly identical limitations, and both of CrowdStrike's petitions challenge all claims of the patent. CrowdStrike spreads three largely duplicative challenges to the independent claims over two petitions for no reason, under the pretext of a contrived "distinct interpretation" of one claim term. Rank. 1. But CrowdStrike could have easily addressed its two interpretations in one petition if it had optimized its presentation of the grounds. CrowdStrike did not, and only explains its actions by contending it "was unable to advance proposed grounds covering both possible constructions in a single petition." *Id.* 4. But that is no different from the circumstances every petitioner faces given the word count limit of an *inter partes* review petition. For the reasons set forth in GoSecure's concurrently filed Preliminary Responses, no basis exists to grant institution of either petition, and as

established herein, at the very least, no basis exists to support granting institution of both of CrowdStrike's redundant petitions.

II. Background

Absent exceptional circumstances, only one petition should be filed against a single patent. *SolarEdge Techs. Ltd., v. SMA Solar Tech., AG.*, IPR2020-00966, Paper 9 at 10 (PTAB Jan. 11, 2021). The Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019) ("CTPG") provides that "one petition should be sufficient to challenge the claims of a patent in most situations." CTPG at 59. Thus, "multiple petitions by a petitioner are not necessary in the vast majority of cases." *Id.* The CTPG recognizes that multiple petitions filed against the same patent at the same time "may place a substantial and unnecessary burden on the Board and the patent owner and could raise fairness, timing, and efficiency concerns." *Id.* (citing 35 U.S.C. § 316(b)).

The CTPG recognizes two specific exceptions where more than one petition may be appropriate: (1) when the patent owner has asserted a large number of claims in litigation; and (2) when there is a dispute about priority date. *Id.* Neither exception applies here, and CrowdStrike does not even contend either does.

III. More Than One Petition Is Not Warranted

The '872 patent has only 21 claims, and no priority date issue is implicated by either petition. While the CTPG recognizes that a "large number of claims in

litigation" may necessitate multiple petitions, that presumes that each of said multiple petitions challenges a distinct set of claims, because addressing many claims in one petition may be difficult. CTPG at 59. That plainly does not apply here—each petition here challenges ***all claims*** of the '872 patent.

The sole "material difference" allegedly necessitating CrowdStrike's two petitions is a "distinct interpretation" of one claim term, where one petition applies a "broader" interpretation and the other applies a "narrower" interpretation. Rank. 3. But the CTPG "nowhere indicates that mere alternative arguments that are different from each other constitute sufficient justification for filing multiple petitions." *Square, Inc. v. 4361423 Canada Inc.*, IPR2019-01630, Paper 13 at 10 (PTAB Apr. 2, 2020) (denying institution). In fact, the Board has repeatedly found two petitions unnecessary even when those petitions addressed alternative claim constructions. *See, e.g.*, *Medtronic Vascular, Inc. v. TMT Sys., Inc.*, IPR2021-01533, Paper 20 at 12 (PTAB Mar. 22, 2022) (petitioner's "different proposed constructions" for two related claim terms did not justify two petitions); *Fitbit, Inc. v. Koninklijke Philips N.V.*, IPR2020-00772, Paper 14 at 26 (PTAB Oct. 19, 2020).

The Board's *Fitbit* decision is particularly pertinent: there, the Board found that multiple petitions were not warranted when "differing claim constructions" impacted only "one aspect of the claims," the "other subject matter" was comparable "under either construction," and the two petitions included "comparable discussions

under both constructions for much of the analysis." *Fitbit* at 26. Each of those factors is also present here: the overlap between petitions is stark, considering that King, the document CrowdStrike relies upon in its "Narrow" interpretation petition, is part of the "Broad" petition's challenge of certain dependent claims. CrowdStrike's Broad petition summarizes King and alleges a motivation to combine King that tracks the text in the Narrow petition. The only portion of the Narrow petition that does not appear in the Broad petition is minimal – CrowdStrike's limitation 1(b) analysis under the Narrow construction, which totals no more than roughly a dozen paragraphs. This minor difference does not justify two petitions.

CrowdStrike asserts its multiple petitions are warranted because in "parallel litigation, Patent Owner has not proposed a specific construction of 'association.'" Rank. 2. But in an *inter partes* review, a petitioner must set forth how "the challenged claim is to be construed" and how "the construed claim is unpatentable." 37 C.F.R. § 42.104(b)(3)–(4). Even if some hypothetical requirement existed for patent owners to advance claim interpretations so that petitioners could refine their challenges (there is none), CrowdStrike neglects to mention that the parties were scheduled to exchange claim construction positions in January 2025, well before CrowdStrike's statutory deadline to file a petition. Ex. 1026, 6. CrowdStrike could have waited for that exchange to reduce the burden on the parties and the Board, but it unilaterally chose the opposite, more burdensome path. It did so to secure a stay

of the district court litigation as early as possible. That CrowdStrike elected to file IPRs ahead of the parties' claim construction exchanges is no basis for it to file multiple petitions. Further, petitioners routinely address alternative claim constructions in a single petition—something CrowdStrike could have easily done.

There is nothing unusually complex about the prior art that would distinguish CrowdStrike's petitions from the many cases where one petition is sufficient. *See Apple Inc. v. Koss Corp.*, IPR2021-00679, Paper 14 at 12 (PTAB Oct. 12, 2021). The '872 patent claims are not lengthy. And though CrowdStrike makes the conclusory assertion that it needed different obviousness combinations that could not fit in one petition (Rank. 2), CrowdStrike's Broad petition already includes multiple challenges, and CrowdStrike could have dropped its Capalik only or Capalik/Goel grounds and instead included the Capalik/King ground, together with one of the "Broad" interpretation grounds, in one petition. The word limit of petition filings, which were thoughtfully chosen and applicable to both petitioners and patent owners, forces parties to decide what positions to take, rather than simply pursuing a shotgun approach. CrowdStrike asks the Board to excuse its failure to make such a choice and instead impose additional burden on the Board and GoSecure.

The Board should not exercise its discretion to institute more than one petition (if it institutes at all). If the Board is inclined to institute either of CrowdStrike's Petitions, GoSecure respectfully submits the Board should institute IPR2025-00068.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 5th day of February, 2025, a true and correct copy of the foregoing **Patent Owner's Response to Petitioner's Ranking and Explanation for Two Petitions Challenging U.S. Patent No. 9,954,872** was served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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