

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CROWDSTRIKE, INC.,
Petitioner
v.

GOSECURE, INC.,
Patent Owner

Case No. IPR2025-00068
U.S. Patent No. 9,954,872

**PETITIONER'S REPLY TO
PATENT OWNER'S PRELIMINARY RESPONSE**

I. “Computer Systems” is Not Limited to Individual Endpoint Devices

The claims recite (1) a “first computer system” that monitors activities and generates activity-identifying information and (2) transmitting said information to “one or more computer systems other than the first computer system” to protect it from attacks associated with the activities. Describing this claimed functionality, the ’872 Patent teaches a decoy computer system that monitors activities and transmits identifying information to a protected computer system. *See* Ex. 1001, Fig. 1 (depicting a “distributed computer system”), 4:5-5:9 (the distributed computer system of Fig. 1 includes a decoy computer system that “includes one or more decoy network device(s)” and a protected computer system that includes “protected network devices” and “an IDS/IPS system”), 18:44-58 (teaching the “decoy network device transmits” an activity-identifying “fingerprint to one or more protected network devices” or “to the IDS/IPS system”).

The POPR does not dispute that Capalik teaches a decoy computer system that transmits activity-identifying information to an IDS/IPS in a protected computer system. But the POPR argues that Capalik nonetheless fails to disclose the “transmitting limitation.” This argument is premised on an implicit narrow construction that the claimed “one or more computer systems other than the first computer system” are individual endpoint devices within a protected computer network. POPR, 24 (alleging “claim 1 expressly requires that the attack-identifying

information ultimately reach one or more protected network devices”). According to Patent Owner (“PO”), “sending the information to the IDS/IPS is not enough,” even where the IDS/IPS is coupled to protected endpoint devices in a protected network. *Id.* (insisting the information “must ultimately reach” the endpoint devices themselves). PO’s narrow construction of “computer systems” is unsupported by the intrinsic record and contradicts its allegations in parallel district court litigation.

The POPR’s argument turns entirely on whether the claimed “computer systems” should be construed narrowly to mean the individual endpoint devices themselves—as PO contends—or more broadly to capture the protected network, including protected endpoint devices and the IDS/IPS—as Petitioner contends. Only the broader construction finds support in the intrinsic record. Indeed, the patent uses “computer system” as a general term that captures everything from individual modules within a computing device to collections of multiple computer networks. On one end of the spectrum, the ’872 Patent uses “computer system” to refer to a virtual machine module within a decoy network device. Ex. 1001, 11:15-19 (“a computer system (e.g., the virtual machine 113-1)”), Fig. 2 (depicting virtual machine 113-1 as a module in “decoy network device 106”). On the other end of the spectrum, the patent uses “computer system” to describe the entire collection of devices and networks depicted in Fig. 1. *Id.* 3:26-28 (describing Fig. 1 as a distributed “computer system”). Because Fig. 1—a “computer system”—explicitly

depicts the protected computer network as well as the IDS/IPS and protected endpoint devices within that network, PO cannot be correct that the claimed “computer system” is limited to the protected endpoint devices themselves. Given the patent’s non-limiting use of “computer system,” the Board should interpret the claims broadly to include transmitting information from the decoy system to the protected system. It should not, as PO requests, more narrowly require that the information reaches the individual endpoint devices within the protected system.

Supporting Petitioner’s interpretation, the specification is clear that sending information to the IDS/IPS **and then** to the endpoint devices is contemplated in only **some** embodiments. Ex. 1001, 18:44-58 (teaching that only “some embodiments” involve transmitting the fingerprint to the IDS/IPS and then using it to modify the endpoint protected devices). “Even when the specification describes only a single embodiment, the claims of the patent will not be read restrictively unless the patentee has demonstrated a clear intention to limit the claim scope.” *Liebel-Flarsheim Co. v. Medrad, Inc.*, 358 F.3d 898, 906 (Fed. Cir. 2004).

Finally, PO’s implicit narrow construction directly conflicts with the broader interpretation PO has advanced in parallel litigation. In its Complaint, PO asserts that Petitioner’s Accused Products infringe this limitation by transmitting information to the “CrowdStrike **cloud** via the Falcon platform,” rather than to any individual endpoint device. Ex. 1027 (Complaint), ¶69 (emphasis added).

II. The Record Demonstrates that King was Publicly Available

At institution, a petitioner must establish “a reasonable likelihood that the reference was publicly accessible before the critical date of the challenged patent.” *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 13 (PTAB Dec. 20, 2019) (precedential); *see also Equistar Chems., LP v. Exxonmobil Chem. Patents Inc.*, IPR2017-0153, Paper 14 at 14 (finding evidence of public availability sufficient to institute and quoting *TriVascular, Inc. v. Samuels*, 812 F.3d 1056, 1068 (Fed. Cir. 2016) for the proposition that “there is a significant difference between a petitioner’s burden . . . at institution, and actually proving [its case] at trial”). The existing record demonstrates that King was publicly available before the priority date and that a fully developed record is at least reasonably likely to prove this.

PO initially challenges the timing of Ms. Munford’s analysis, insisting that her review of King’s MARC record in 2024 cannot serve as public accessibility evidence as of the critical date in 2010. POPR, 29-30. PO is incorrect. Courts routinely accept evidence attesting to library “general practice for indexing, cataloging, and shelving theses in estimating the time it would have taken to make the dissertation available to the interested public.” *In re Hall*, 781 F.2d 897, 899 (Fed. Cir. 1986); *see also Unified Patents Inc. v. Sound View Innov., LLC*, IPR2018-00599, Paper 50, 45 (final written decision crediting 2018 analysis of MARC record as evidence of thesis indexing and availability as of 1999).

PO's remaining arguments seek to align the instant record with *Microsoft Corp. v. ThroughPuter, Inc.* in which the Board found a significantly less detailed MARC record of a thesis, allegedly indexed by a Japanese University, insufficient to satisfy the public availability requirement. IPR2023-00852, Paper 18 (PTAB Nov. 9, 2023). PO's reliance on *ThroughPuter* is misplaced for a number of reasons. First, King's MARC record from the University of Michigan Library Catalog contains multiple 035¹ Fields—absent in the MARC records of *ThroughPuter*—demonstrating that King was indexed in major online searchable databases including OCLC, ProQuest, and the University of Michigan Library Catalog. Databases like these are routinely cited by the Board as evidence of public availability. *See AMD, Inc. v. Realtek Semiconductor Corporation*, IPR2023-00788, Paper 12, 25-26 (finding sufficient that thesis was indexed by UC-Berkeley Library Catalog and OCLC); *The Boeing Co. v. Laser Spallation Techs., LLC*, IPR2024-00761, Paper 8, 12-15 (finding sufficient that thesis was indexed with ProQuest). Second, King's MARC record contains a Field 005² entry, indicating that all listed indexing occurred as of August 30, 2007. The Board has relied on Field 005 to establish public

¹ Field 035 represents system control numbers from external databases or cataloging systems. <https://www.loc.gov/marc/bibliographic/bd035.html>

² Field 005 indicates the last modification date of a MARC record. <https://www.loc.gov/marc/bibliographic/bd005.html>.

accessibility. *See Kinaxis Inc. v. Blue Yonder Group, Inc.*, IPR2021-01205, Paper 16, 12-15. No such 005 data was at issue in *ThroughPuter*.

Furthermore, King's MARC record indicates that King was indexed by the University of Michigan Library Catalog as of November 28, 2006 (Field 008) and searchable by author (Field 100) and title (Field 245). Ex. 1009, 22. The Board routinely credits such MARC records as evidence of indexing in a search engine and public availability. *See* IPR2018-00599, Paper 50, 31 (finding public availability on a similar MARC record indexing in Cornell University Library Catalog); *see also In re Hall*, 781 F.2d at 899–900 (“a single cataloged thesis in one university library . . . constitute[s] sufficient accessibility to those interested in the art exercising reasonable diligence”).

Newly introduced here, responsive to the POPR, Dr. Samuel T. King's declaration further confirms that King was publicly accessible before 2010. Dr. King attests that he is the author of King (his Ph.D. dissertation) and that he submitted King to the University of Michigan for publication in 2006. Ex. 1028, ¶2. King comprehensively described Dr. King's research that had been presented and published in numerous papers prior to his dissertation. *Id.*, ¶¶3-4. Further, leading up to his dissertation defense, Dr. King presented his work in at least a dozen academic symposia, often using the exact title of King for the presentations. *Id.*, ¶5. Dr. King explains that individuals attending his presentations or reading his earlier

publications would have been directed to King, and with reasonable diligence, could have located it via library records or the University of Michigan website using his name or the title of his dissertation. *Id.*, ¶3. Dr. King also confirms that the title of his dissertation, “Analyzing Intrusions Using Operating System Level Information Flow” was sufficiently descriptive to be discoverable through keyword searches such as “computer intrusions” and/or “operating system level information flow.” *Id.*, ¶8. His thesis advisor, Dr. Peter Chen, also maintained a publicly accessible University of Michigan website documenting these publications and presentations, including a description and direct link to King, as evidenced by an archived version of Dr. Chen’s website from 2007. *Id.*, ¶6. Demonstrating that interested researchers could find King, it was cited by at least one academic article published in the Association for Computing Machinery (ACM) journal in 2008. *Id.*, ¶7.

III. The Ranking Paper, PO’s Response, and the Impact re King

As explained in the Ranking Paper, ambiguity exists as to how PO intends to interpret “association.” Paper 3, 1-2. To account for the possibility that PO may advocate a narrow construction of “association,” Petitioner filed IPR2025-00067, which relies on King in all proposed grounds. *Id.* Petitioner also filed IPR2025-00069, which applies a broader interpretation of “association,” and which does not depend on King for all grounds. Because the broader interpretation aligns with the intrinsic record, Petitioner ranked IPR2025-00069 as its preferred petition. The

Ranking Paper explained that PO could render moot IPR2025-00067—and with it, the instant King evidentiary issue—by confirming that it does not intend to advocate for the narrow construction. *Id.*, 5. PO declined this offer, ignoring the meaning of “association” entirely and leaving open the possibility that it may advocate for the narrower construction accommodated by IPR2025-00067 (and requiring reliance on King). Because PO leaves open that it may advocate for a narrow construction, the Board should institute IPR2025-00067 and -69. PO’s refusal to address the key issue underlying the Ranking Paper also introduced confusion regarding the ultimate impact of the instant King evidentiary issue. First, if the Board determines that the broad interpretation of “association” is correct, it need not address the public accessibility of King at all and should institute IPR2025-00069, which is Petitioner’s preferred petition and for which institution does not depend on King’s public accessibility. Second, if the Board leaves open the possibility that either the narrow or broad interpretation of “association” *could be* correct, it should institute all four petitions. In doing so, it should reject PO’s challenge to the sufficiency of King’s public availability evidence, allowing Petitioner to further develop the relevant record post-institution if needed. Indeed, because IPR2025-00069 relies on King for certain dependent claims, the King record will be developed post-institution in those proceedings. Thus, denying institution of IPR2025-00067 based on allegedly inadequate public availability evidence would not enhance efficiency.

Dated: March 25, 2025

Respectfully submitted,

ERISE IP, P.A.

BY: /s/ Paul R. Hart

Paul R. Hart, Reg. No. 59,646

Paul.Hart@eriseip.com

Erise IP, P.A.

717 17th St., Suite 1400

Denver, Colorado 80202

P: (913) 777-5600

F: (913) 777-5601

COUNSEL FOR PETITIONER

**CERTIFICATE OF SERVICE ON PATENT OWNER
UNDER 37 C.F.R. § 42.105(a)**

Pursuant to 37 C.F.R. §§ 42.6(e) and 42.105(b), the undersigned certifies that on March 25, 2025, a complete and entire copy of this Petitioner's Reply to Patent Owner's Preliminary Response and Exhibits were served on Patent Owner via email at the following address:

LATHAM & WATKINS LLP

S. Giri Pathmanaban - giri.pathmanaban@lw.com

Raghav Bajaj - raghav.bajaj@lw.com

Daniel S. Todd - daniel.todd@lw.com

Steven W. Peters - steven.peters@lw.com

Respectfully submitted,

By: /s/ Paul R. Hart
Paul R. Hart, Reg. No. 59,646

COUNSEL FOR PETITIONER