

Filed on behalf of: GoSecure, Inc.

Entered: March 28, 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 SURREPLY

Exhibit List

Exhibit	Description
2001	Declaration of Joseph Greenfield, Ph. D.
2002	<i>Curriculum Vitae</i> of Joseph Greenfield, Ph. D.
2003	Cisco ISP 4200 Series Sensors Datasheet
2004	Snort and Snort Rules Explained, available at https://www.crowdstrike.com/en-us/cybersecurity-101/threat-intelligence/snort-rules/
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 Investments, 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	Cisco – Upgrading, Downgrading, and Installing System Images, available at https://www.cisco.com/en/US/docs/security/ips/5.0/configuration/guide/cli/cliimage.html#wp1091978
2010	RESERVED
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

The POPR showed that Petitioner failed to demonstrate a reasonable likelihood that the asserted prior art discloses or renders obvious “transmitting to one or more computer systems other than the first computer system information ... *for preventing future attacks, to the one or more computer systems.*” POPR 20-28.¹ The claims say one thing (transmitting information to computer systems that are to be protected from attacks), and the Petition describes another thing (transmitting information to an IDS/IPS that is not the focus of attacks). POPR 27.

Apparently recognizing this fatal deficiency, Petitioner tries to revive the Petition with a belated claim construction of “computer system.” Reply 2. Petitioner's new argument fails for three reasons. *First*, Petitioner's construction, even if adopted, does not save the Petition. As Petitioner now concedes, Capalik only discloses transmitting information from a “decoy” system to an IDS/IPS. *Id.* 1 (“Capalik teaches a decoy computer system that transmits activity-identifying information to an IDS/IPS.”). But Capalik's IDS/IPS is *not* the subject of “future attacks.” POPR 21. Thus, transmission to the IDS/IPS cannot satisfy “transmitting to one or more computer systems ... information ... *for preventing future attacks, to the one or more computer systems*” under the plain language of the claim. *Id.* 20-

¹ All emphases added and citations omitted unless noted otherwise.

24. And if Petitioner's argument—that “computer systems” encompass Capalik's IDS/IPS because the IDS/IPS is coupled to the endpoints (Reply 2)—were correct (it is not), then Petitioner has utterly failed to show that Capalik's IDS/IPS is the claimed “computer system[] *other than the first computer system.*” Capalik's IDS/IPS is also coupled to its decoy computer (Ex. 1004, Figure 5), which Petitioner maps as the “first computer system” (Pet. 19-20). But Petitioner fails to explain why, under its claim interpretation, the IDS/IPS is not “the first computer system.”

Second, Petitioner's rewrite of the “transmitting” limitation to encompass the art's transmissions to the IDS/IPS contradicts the intrinsic record. To start, Petitioner omits that the claim language, “for preventing future attacks, *to the one or more computer systems*” limits the set of possible “computer systems” to which the information is transmitted. Petitioner improperly reads out “for preventing future attacks, to the one or more computer systems” from the claim. Reply 2 (asserting that the limitation “broadly ... capture[s]” transmissions to any device in “the protected network”). “It is highly disfavored to construe terms in a way that renders them void, meaningless, or superfluous.” *Wasica Fin. GmbH v. Cont'l Auto. Sys., Inc.*, 853 F.3d 1272, 1288 n.10 (Fed. Cir. 2017)). And the specification repeatedly distinguishes IDS/IPS and computer systems, further undercutting Petitioner's construction. *See, e.g.*, '872 patent 2:1-2 (“the *IDS or the IPS* can detect attempts to access *computer systems* without authorization”).

By contrast, Petitioner does not identify a *single* example in the specification where “computer system” includes the IDS/IPS. The best Petitioner can muster is to try to improperly conflate a “computer system” with a “distributed computer system.” Reply 2 (citing ’872 patent 3:26-28). The Board should not construe them to be synonymous when the specification distinguishes between the two. *See, e.g., Speedtrack, Inc. v. Endeca Techs., Inc.*, 524 F. App’x 651, 656-57 (Fed. Cir. 2013) (“category description” did not include “category description identifiers” because “specification distinguish[es] between” the two). Indeed, Petitioner’s argument is illogical. If the “entire collection of devices and networks depicted in Fig. 1” (Reply 2), including the decoy network device (102) and IDS/IPS (142), comprises a “computer system,” what is the claimed “first computer system” and the “other” computer system?

The bottom line: the specification describes two embodiments—(1) transmitting the information to an IDS/IPS (’872 patent 18:46-50); and (2) transmitting it to “protected network devices” that are actually the subject of future attacks (*id.* 18:43-46). 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).

Third, PO’s district court complaint is entirely consistent with the POPR (*see, e.g.,* POPR 24), and is extrinsic evidence that cannot contradict the intrinsic record.

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 28 (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 29-30) 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" evidence² 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

² 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: / S. Giri Pathmanaban /

S. Giri Pathmanaban (Reg. No. 75,986)
giri.pathmanaban@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 28th 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: / S. Giri Pathmanaban /

S. Giri Pathmanaban (Reg. No. 75,986)
giri.pathmanaban@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.