

From: [Director_PTABDecision_Review](#)
To: ["Peters, Steven"](#); [Adam Seitz](#); [Pathmanaban, Giri](#); [Naples, Clement](#); [Todd, Daniel S.](#); [Hlavka, David J.](#); [Paul Hart](#)
Subject: RE: IPR2025-00068 and -00070: Request for Supplemental Briefing to address new Director decisions on discretion
Date: Wednesday, June 18, 2025 4:09:00 PM
Attachments: [image001.png](#)

Counsel,

Patent Owner's request for authorization to file supplemental briefing with regard to Patent Owner's Request for Director Review in the above-captioned proceedings is denied.

Thanks.

IPR2025-00068 and IPR2025-00070
Ex. 3102

From: Peters, Steven <speters@cgsh.com>
Sent: Tuesday, June 17, 2025 5:14 PM
To: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>
Cc: Adam Seitz <adam.seitz@eriseip.com>; Pathmanaban, Giri <gpathmanaban@cgsh.com>; Naples, Clement <cnaples@cgsh.com>; Todd, Daniel S. <dtodd@cgsh.com>; Hlavka, David J. <dhlavka@cgsh.com>; Paul Hart <paul.hart@eriseip.com>
Subject: RE: IPR2025-00068 and -00070: Request for Supplemental Briefing to address new Director decisions on discretion

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Honorable Director,

Patent Owner wishes to address briefly Petitioner's misrepresentation regarding Mr. Alperovitch's knowledge of the application leading to the '872 patent. ***His knowledge is not speculative and Petitioner knows that.*** Nine months ago, Patent Owner produced to Petitioner, in the district court litigation, documents that show that Mr. Alperovitch (Petitioner's Co-Founder) was specifically briefed on details of U.S. Application 13/163,590 (the parent application of the '872 patent) during a meeting of Patent Owner's Board of Directors in February 2012. Patent Owner will gladly file these documents, which are already in Petitioner's possession, with a brief under cover of a Protective Order.

The remainder of Petitioner's email demonstrates that further briefing is warranted on these important issues.

Respectfully submitted,
Steven Peters

Counsel for Patent Owner

Steven Peters

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From: Paul Hart <paul.hart@eriseip.com>

Sent: Tuesday, June 17, 2025 4:15 PM

To: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>

Cc: Adam Seitz <adam.seitz@eriseip.com>; Pathmanaban, Giri <gpathmanaban@cgsh.com>; Naples, Clement <cnaples@cgsh.com>; Todd, Daniel S. <dtodd@cgsh.com>; Hlavka, David J. <dhlavka@cgsh.com>; Peters, Steven <speters@cgsh.com>

Subject: Re: IPR2025-00068 and -00070: Request for Supplemental Briefing to address new Director decisions on discretion

Dear Honorable Director,

Patent Owner's ("PO") Request for Director Review argued (1) that the Board improperly instituted two petitions challenging the same patent and (2) that the Board erred by construing "computer system" to capture the disclosed embodiments.

On May 30th, PO requested additional briefing to newly argue that the proceedings should have been discretionarily denied under 35 U.S.C. § 325(d), following the Director's clarifying decision in *Ecto World*. The Director denied PO's request on June 6th.

PO now seeks to newly introduce two additional arguments for discretionary denial, neither of which have been addressed in the underlying record or the Request for Director Review. As with the prior request to insert new issues into the pending Director Review, PO identifies no authority supporting the position that an instituted proceeding may be revisited to assess new discretionary factors. As set forth below, PO's request for additional briefing should be denied.

In short, PO contends that the facts here align with the Director's recent decisions in *iRhythm* and *Tessell*—the former addressing "settled expectations" and the latter addressing "unfair dealings." PO is wrong. The evidentiary record here bears no resemblance to *iRhythm* or *Tessell*, and PO's suggestions to the contrary are wholly unsupported.

In *iRhythm*, the director denied institution based on the petitioner having known about the application that issued as the challenged patent more than a decade before filing its IPR. The opinion found that, under the new “settled expectations” prong, Petitioner’s failure to have challenged the patent after such a significant amount of time (e.g., over half the life of the patent) outweighs the other factors.

In *Tessell*, nearly all named inventors on the challenged patent were either founders or employees of Petitioner. The opinion found it unfair to permit the inventors to leave the assignee company, start a competing company, and then challenge their own patent.

Neither the timing at issue here nor the relationship between the parties is similar to these cases. Regarding timing, the record demonstrates only that Petitioner filed IPRs against an unrelated company in October and November of 2022, relying on (as prior art) the patent application publication that ultimately issued into the Challenged Patent. In 2023, as PO notes, Petitioner served PO with a subpoena seeking discovery relevant to its invalidity case in its litigation with the unrelated company. PO filed suit on May 2024, alleging that Petitioner infringed the Challenged Patent, and Petitioner filed its petitions on October 31, 2024. This short time frame during which Petitioner had knowledge of the application that issued as the Challenged Patent stands in stark contrast to the decade-long knowledge underlying the *iRhythm* decision.

The remaining allegation—that Petitioner had knowledge as of 2012— is without support in the record and should not be credited as more than speculation. PO correctly notes that one founder of CrowdStrike/Petitioner (Dmitri Alperovitch) served briefly on the GoSecure/PO Board (from November 2011 to May 2012). Mr. Alperovitch left CrowdStrike in February 2020. Entirely without evidentiary support on the current record, PO alleges Mr. Alperovitch knew of the application that issued as the Challenged Patent as a result of his brief tenure on the GoSecure/PO Board in 2012. PO points the Director to its Complaint in the parallel litigation, but that allegation in the Complaint is bare speculation without citation to any evidentiary support.

In sum, the evidentiary record demonstrates only that Petitioner had knowledge of the application that issued as the Challenged Patent for approximately two years before filing these petitions. PO identifies no evidentiary support for earlier knowledge, and PO does not attempt to explain how Mr. Alperovitch’s brief time on the GoSecure/PO Board might constitute “unfair dealings.” Accordingly, PO’s request for additional briefing should be denied.

Respectfully,

 **Paul Hart**
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On Jun 16, 2025 at 9:55:02 AM, Director_PTABDecision_Review

<Director_PTABDecision_Review@uspto.gov> wrote:

Counsel,

Petitioner may respond with its position as to Patent Owner's request via email by Tuesday, June 17th.

Thank you.

From: Peters, Steven <speters@cgsh.com>

Sent: Monday, June 16, 2025 8:37 AM

To: Director_PTABDecision_Review <Director_PTABDecision_Review@uspto.gov>

Cc: Paul Hart <paul.hart@eriseip.com>; Adam Seitz <adam.seitz@eriseip.com>; Paul Hart <paul.hart@eriseip.com>; Pathmanaban, Giri <gpathmanaban@cgsh.com>; Naples, Clement <cnaples@cgsh.com>; Todd, Daniel S. <dtodd@cgsh.com>; Hlavka, David J. <dhlavka@cgsh.com>

Subject: IPR2025-00068 and -00070: Request for Supplemental Briefing to address new Director decisions on discretion

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IPR2025-00068 and -00070

Honorable Director,

Patent Owner requests supplemental briefing for its Director Review Requests in the above-captioned cases in view of two recent decisions, *iRhythm Techs, Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10 (Stewart June 6, 2025) and *Tessell, Inc. v. Nutanix, Inc.*, IPR2025-00322, Paper 14 (Stewart June 12, 2025), both of which issued after Patent Owner filed its Director Review Requests. Specifically, Patent Owner requests supplemental briefing to address Patent Owner's settled expectations and Petitioner's unfair dealings.

Petitioner has known about the application that led to the '872 patent since at least 2012, when Dmitri Alperovitch left his position on Patent Owner's Board of Directors to co-found and become Chief Technical Officer of Petitioner CrowdStrike. See Ex. 1027 (GoSecure's district court complaint) at 7-10. Additionally, Petitioner has separately known of the '872 patent (which issued in 2018) since at least April 2023, when Petitioner served Patent Owner with a third-party subpoena specifically identifying the '872 patent as relevant prior art in a patent litigation with another company (OpenText). Indeed, Petitioner used the published application that led to the '872 patent as prior art in IPRs that it filed against OpenText.

The Director's recent decisions in *iRhythm* and *Tessell* show that these cases, still in their early stages and each with a pending Director Review Request, are not appropriate uses of the Board's resources because Petitioner has known about the application resulting in the '872 patent for thirteen years and because of Petitioner's unfair dealings.

Patent Owner requests a 3-page brief and would not oppose a response from Petitioner of the same length.

Respectfully submitted,
Steven Peters
Counsel for Patent Owner

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