Filed on behalf of: GoSecure, Inc.

Entered: July 9, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CROWDSTRIKE, INC.,
Petitioner,

v.

GOSECURE, INC.,
Patent Owner.

Case IPR2025-00070
Patent 9,954,872

PATENT OWNER'S BRIEF ON REMAND

TABLE OF CONTENTS

I. '68 Petition: Petitioner's "narrow" construction of "association" is wrong and that Petition should be denied. 1

II. The Board should deny both petitions because Petitioner's gamesmanship cannot meet its burden. 3

III. '70 Petition: Petitioner's "broader" construction of "association" warrants discretionary denial under *Ecto World*. 6

IV. Conclusion. 10

TABLE OF AUTHORITIES

Page(s)

Cases

Dabico Airport Solutions Inc. v. AXA Power APS,
IPR2025-00408, Paper 21 (Stewart June 18, 2025) 9

Ecto World, LLC v. RAI Strategic Holdings, Inc.,
IPR2024-01280, Paper 13 (Stewart May 19, 2025) 7

Hulu, LLC v. Sound View Innovations, LLC,
IPR2018-00864, Paper 35 (Sep. 9, 2019).....8

Littelfuse, Inc. v. Mersen USA EP Corp.,
29 F.4th 1376 (Fed. Cir. 2022) 2

Ortho-McNeil Pharm. v. Mylan Labs., Inc.,
520 F.3d 1358 (Fed. Cir. 2008) 2

Samsung Elecs. Am., Inc. v. UNILOC 2017 LLC,
IPR2020-00046, Paper 6 (Apr. 1, 2020).....6

Western Digital Corp. v. Spex Techs., Inc.,
IPR2018-00084, Paper 14 (Apr. 25, 2018).....4

Regulations

37 C.F.R. § 42.104(b)(3).....3

Other Authorities

Dennis Crouch, *Hedging on Claim Construction: USPTO Says Keep It to One IPR Petition*, June 30, 2025 .....5, 6

Patent Owner GoSecure, Inc. submits this brief pursuant to the Acting Director's June 25 Order Granting Director Review, Vacating Institution, and Remanding to the Board (Paper 25).

The Board previously instituted two proceedings against the '872 patent in IPR2025-00068 ('68 IPR) and -00070 ('70 IPR). Petitioner had justified its two petitions based on advancing two different constructions of the term "association," one broader (in the '70 IPR) and one narrower (in the '68 IPR). The Acting Director vacated both institution decisions and remanded to the Board to decide "which of the two proceedings, if any, to institute." Paper 25 at 4. In particular, the Acting Director stated that "the proper course is to allow Patent Owner to submit whatever arguments are necessary for the panel to make a claim construction determination." *Id.*

For the reasons discussed below, the Board should deny institution of both proceedings based on Petitioner's approach to claim construction.

I. '68 Petition: Petitioner's "narrow" construction of "association" is wrong and that Petition should be denied.

In the '68 Petition, Petitioner advances a "narrow interpretation of 'association'" ('68 Pet. 30) that "require[s] characterizing whether the action, event, or operation between an activity's source and target is authorized or unauthorized (i.e., as benign or malignant)" ('68 Pet. 5). Petitioner alternatively characterizes this construction as defining an "association type" ('68 Pet. 5) or that it "requir[es] the

claimed 'association' of an activity source and target to include some indication of whether the activity is authorized or unauthorized" ('68 Pet. 6).

Petitioner's narrow construction is wrong. First, Petitioner provides no evidence that the plain meaning of "association" requires characterizing an event as authorized or unauthorized. Notably, Petitioner's expert does not take any position on the plain meaning of "association" in either of his declarations. '68 Ex.1003 ¶40; '70 Ex.1003 ¶40.

Second, the doctrine of claim differentiation contradicts Petitioner's construction. For example, claim 19 depends on claim 1 and recites "*wherein the association includes a type* that represents whether or not the activity source has modified the activity target to perform the unauthorized activities." By reading the "type" into claim 1, Petitioner's construction would render claim 19 meaningless. *Ortho-McNeil Pharm. v. Mylan Labs., Inc.*, 520 F.3d 1358, 1362 (Fed. Cir. 2008) ("[T]his court strives to reach a claim construction that does not render claim language in dependent claims meaningless."). Similarly, claim 10 requires "identifying a respective association… as unauthorized." Petitioner's apparent attempt to read this part of claim 10 into claim 1 is improper. *Littelfuse, Inc. v. Mersen USA EP Corp.*, 29 F.4th 1376, 1380 (Fed. Cir. 2022) (rejecting construction that "would not merely render the dependent claims superfluous, but would mean that those claims would have no scope at all").

Third, the specification does not support Petitioner's construction. The '872 patent repeatedly lists determining a "type" of the association as "optional" or otherwise not inherent to an association. *See* '872 patent 12:32-36 ("When the type of associations is identified… at least a subset of the associations can be visually distinguished…."); 13:39 ("(optional) association type"); 14:2 (same). Petitioner does not cite to any lexicography or any other passage that would require an association in itself to necessarily include a type. To the contrary, Petitioner broadly cites 22 lines from the '872 patent without discussing how this passage supports the construction Petitioner advances. Pet. 5 (citing '872 patent 13:34-56). Yet that exact passage explicitly states that association types are "optional."

The Board should not construe "association" according to Petitioner's narrow construction, and should deny the '68 Petition.

II. The Board should deny both petitions because Petitioner's gamesmanship cannot meet its burden.

The Board's rules require that "the *petition* must set forth … [h]ow the challenged claim is to be construed." 37 C.F.R. § 42.104(b)(3). But here, Petitioner explicitly asserts that the term "association" has "two possible interpretations" due to "the intrinsic record's ambiguity." '68 Pet. 5; '70 Pet. 5. The two petitions, taken together, merely present the Board with *options* for claim construction and argue that either construction is possible due to alleged ambiguity in the intrinsic record. Petitioner effectively argues that "association" is indefinite and absolves itself from

any responsibility of taking a position on its meaning—placing the onus on the Board and GoSecure to resolve the alleged ambiguity in claim construction. That is not sufficient to meet Petitioner's burden.

To be sure, this is not a case where a petitioner adopts, but does not advocate for, a patent owner's construction. *Cf. Western Digital Corp. v. Spex Techs., Inc.*, IPR2018-00084, Paper 14 at 11 (Apr. 25, 2018) (petitioner not required "to express its subjective agreement regarding correctness of its proffered claim constructions"). Here, Petitioner's affirmative position is that "association" is ambiguous, with two plausible meanings that can only be resolved by *Patent Owner picking one*. *See* '068 Paper 19 at 4 ("Petitioner filed parallel petitions, stipulating that the second petition was unnecessary *if PO acknowledged the broader interpretation of 'association.'*") (emphasis added). That is not GoSecure's burden in an IPR.

Notably, even in its Response to GoSecure's Director Review Request, Petitioner never asserts that either construction is correct or the other is wrong. Petitioner only states that it "ascribed meaning" to the term "association" and asserted that it "dedicated multiple pages to establishing that the intrinsic record supports its broader interpretation." '68 Paper 19 at 4. Petitioner never asserts that the narrow construction *is wrong*. To the contrary, Petitioner explicitly states that the specification is ambiguous such that 'association' could be interpreted to" be

narrowly interpreted. '68 Pet. 5. Petitioner explicitly describes it as "advanc[ing]" *both* constructions. '68 Pet. at 5, 30; '70 Pet. at 5.

Petitioner's expert exposes the gamesmanship, stating in his two declarations that "the ['68/'70] Petition ***proposes the Board adopt the [narrower/broader] interpretation*** of 'association between the activity source and the activity target.'" '68 Ex.1003 ¶40; '70 Ex.1003 ¶40.

In contrast, Patent Owner has shown that Petitioner's narrow construction is *wrong*. Of course, Petitioner still attempts to preserve an indefiniteness argument for district court by refusing to admit that its narrow construction is wrong. '68 Pet. 4 n.1.

The Board should reject Petitioner's "procedural gamesmanship." Dennis Crouch, *Hedging on Claim Construction: USPTO Says Keep It to One IPR Petition*, June 30, 2025, https://patentlyo.com/patent/2025/06/hedging-construction-petition.html. Petitioner cannot equivocate among multiple "possible" constructions that result from alleged "ambiguity" in the specification and expect to have met its statutory and regulatory burden in these cases. *Id.* (CrowdStrike "present[ed] the PTAB with a menu of options while arguing that 'the intrinsic record's ambiguity' prevented them from choosing between constructions."). This approach should be rejected for the same reasons that the Board has rejected petitions that apply constructions that it asserts to be wrong. *See Samsung Elecs. Am., Inc. v. UNILOC*

2017 LLC, IPR2020-00046, Paper 6 at 7-8 (Apr. 1, 2020) (declining to address grounds based on constructions Petitioner asserted were wrong).

The Board should not endorse Petitioner's claim construction gamesmanship and should deny both proceedings.

III. '70 Petition: Petitioner's "broader" construction of "association" warrants discretionary denial under *Ecto World.*

In the '70 Petition, CrowdStrike advances a "broader" construction of "association" and asserts that claim 1 is obvious based on Capalik alone under this interpretation. '70 Pet. 5-7, 9. The Petition does not dispute that Capalik was previously presented to the Office based on its incorporation by reference into the '872 patent and the disclosure, by the Applicant, of several Office Actions from that application. '70 Pet. 74-75. But the Petition also made no attempt to articulate an error by the Examiner. *Id.* Instead, Petitioner merely referenced "the strength of the Proposed Grounds" to assert that the Examiner "did not appreciate *Capalik's* qualifications as prior art, its disclosures, and how this reference in combination with other references… render the Challenged Claims obvious." *Id.* at 75.

The Acting Director has held that this exact type of analysis from a petitioner is insufficient: "generalized statements as to the strength of [a] Petition fail to identify sufficiently a material error." *See Ecto World, LLC v. RAI Strategic Holdings, Inc.*, IPR2024-01280, Paper 13 at 6 (Stewart May 19, 2025) (precedential). The petition had acknowledged that the prior art had been submitted

to the Office during prosecution but "did not address whether, nor even allege that, the Office materially erred in its decision to allow the application." *Ecto World* at 3 (quotation omitted). The Acting Director acknowledged that "Board panels have disagreed as to… whether a petitioner must explain how the Examiner erred or whether a petitioner can simply rely on its unpatentability contentions to imply that an error occurred." *Id.* at 5. The Acting Director "resolve[d] that dispute and clarified that a petitioner must provide an analysis" even when the Examiner did not apply the reference in a rejection. *Id.* In such cases, "a petitioner must explain… how the Examiner erred in overlooking the prior art." *Id.* The Acting Director also found petitioner's generalized arguments about the strength of the merits to "improperly shift[] Petitioner's burden to demonstrate material error onto the Board." *Id.* at 6 n. 2.

As a precedential decision, *Ecto World* is the law of the PTAB and the Board must follow it. Patent Trial and Appeal Board, *Standard Operating Procedure 2 (Revision 11)* at 3 ("A precedential decision establishes binding authority."). The Acting Director's decision not to authorize additional briefing on *Ecto World* for director review does not mitigate the Board's need to consider it on remand. *Ecto World* became the law of the PTAB 17 days after the first institution decisions in these cases, but it is the law of the PTAB for the remanded decisions. SOP 2 at 7 ("A precedential decision is binding Board authority in subsequent matters involving

similar facts or issues."); *see, e.g., Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-00864, Paper 35 at 18 (Sep. 9, 2019) (Board need not address contentions contradicting precedential decisions) (citing SOP 2 at 7).

Nor has there been any waiver of discretionary denial here. In recent cases, the Office has applied intervening policy changes to deny petitions based on arguments never raised by patent owners in their POPRs or discretionary briefs. For example, in *Ecto World*, the Petition was denied on remand based on *Fintiv* even though the patent owner never made a *Fintiv* argument in its POPR. *Ecto World*, Paper 16 at 15-16. That denial was based on an intervening recission of a 2022 Director memorandum, which occurred after the POPR was filed but before institution. *Id.* As another example, the Acting Director denied a petition based on a new policy of "settled expectations" that the patent owner never raised in its POPR or pre-institution discretionary denial request. *Dabico Airport Solutions Inc. v. AXA Power APS*, IPR2025-00408, Paper 21 at 2-3 (Stewart June 18, 2025). Here, just as in *Ecto World* and *Dabico*, the USPTO changed a policy on discretionary denial after the POPR. The Board should apply that change of policy to the Petition in the pre-institution phase.

Applying the new *Ecto World* precedent—under Petitioner's broader construction for which it uses only Capalik in Ground 1—heavily favors discretionary denial of the '70 Petition. During prosecution, the Examiner did not

explicitly construe "association," but appeared to interpret the term broadly to cover "events" in the Jiang reference.[1] Ex.1002 at 132. Additionally, the Examiner cited to the Aziz reference[2] for the transmission of such information to another computer system, where the Aziz reference transmits an activity signature to networking equipment such as a router, gateway, switch, bridge, controller server, or controller. Ex.1002 at 133; Aziz [0019]-[0020]. The grounds of the '70 Petition are cumulative and redundant to the combination of Jiang and Aziz in applying Capalik—which was presented to the Examiner—as teaching a broad interpretation of "association" that is transmitted to networking equipment (intrusion detection system or IDS). And Petitioner failed to show any Examiner error as required by *Ecto World*.

Petitioner's failure to show Examiner error is not mitigated by the number of references submitted to the Office. For example, the art asserted in *Ecto World* was submitted among "over 1,000 other references" to the Office, and the applicant did not respond to the Examiner's request to identify any reference as particularly relevant to the Examiner. *Ecto World*, Paper 16 at 14. In contrast, the Capalik

---

[1] U.S. Patent Application Publication 2008/0320594 ("Jiang").

[2] U.S. Patent Application Publication 2012/0331553 ("Aziz"). Petitioner has not filed this prosecution art as an exhibit, and Patent Owner cites to Aziz as a matter of public record and part of the intrinsic record of the '872 patent.

reference is one of just eight applications incorporated by reference into the '872 patent. Ex.1001 1:8-41. Additionally, no fewer than 17 office actions from prosecution of Capalik or its related applications (U.S. and international) were submitted in an IDS during prosecution of the '872 patent. Ex.1002 at 213-214. In an IDS with 115 citations, Capalik and its related applications constituted 15% of the IDS—roughly 1 in 7 citations. *Id.* Petitioner did not find some needle in an IDS haystack, but rather asserted a reference that figured prominently during prosecution and on the face of the '872 patent.

For these reasons, the '70 Petition should be denied under § 325(d) and *Ecto World*.

IV. Conclusion.

For the reasons set forth above, the Board should deny both Petitions.

Respectfully submitted,

Dated: July 9, 2025

By: /s/ *S. Giri Pathmanaban*

S. Giri Pathmanaban (Reg. No. 75,986)
gpathmanaban@cgsh.com
CLEARY, GOTTLIEB, STEEN & HAMILTON LLP
1841 Page Mill Road
Palo Alto, California 94304
Telephone: 650.815.4100

Counsel for Patent Owner
GoSecure, Inc.

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 9th day of July, 2025, a true and correct copy of the foregoing **Patent Owner's Brief on Remand** was 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/ S. Giri Pathmanaban*

S. Giri Pathmanaban (Reg. No. 75,986)
gpathmanaban@cgsh.com
CLEARY, GOTTLIEB, STEEN & HAMILTON LLP
1841 Page Mill Road
Palo Alto, California 94304
Telephone: 650.815.4100

Counsel for Patent Owner
GoSecure, Inc.