

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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CROWDSTRIKE, INC.,  
Petitioner  
v.

GOSECURE, INC.,  
Patent Owner

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Case No. IPR2025-00070  
Patent No. 9,954,872

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**RESPONSE TO PATENT OWNER’S BRIEF ON REMAND REGARDING  
THE CORRECT CONSTRUCTION OF “ASSOCIATION”**

As the Office advises, Petitioner moved quickly to bring its invalidity challenges. It filed parallel petitions—IPR2025-00068 (“IPR68”) and IPR2025-00070 (“IPR70”)—approximately five months after being served. Each petition challenged all claims, relying principally on the *Capalik* publication by one of the ’872 Patent’s inventors. Petitioner’s speed meant its petitions were filed before infringement contentions or a *Markman* process revealed Patent Owner’s (“PO”) interpretation of “association.” To account for the possibility that PO would take advantage of ambiguity in the ’872 Patent to distinguish its own prior art (*Capalik*), IPR70 advanced a broader interpretation of “association,” supported by the intrinsic record, and IPR68 assumed a narrower interpretation. Petitioner invited PO to reject the narrow construction, obviating the need for two petitions. Paper 3, 5. But PO *refused*. Paper 8, 4 (insisting that there is no “requirement . . . for [PO] to advance claim interpretations” and that “CrowdStrike could have waited” months longer to file a petition after the parties “exchange[d] claim construction positions in January 2025”). The Board instituted both proceedings, correctly observing that PO did not address the meaning of “association” and did “not explain why a petitioner should be encouraged to delay the filing of its petition.” IPR68, Paper 13, 11.

PO’s refusal to engage with the scope of its own patent wasted substantial resources. Its gamesmanship required the Board to institute both proceedings and the parties to brief requests for Director Review. The Director was also forced to

expend resources, remanding for PO to affirmatively address the meaning of “association.” Paper 25, 4. On remand, PO finally does what it should have months earlier: It agrees with Petitioner that the narrow construction is incorrect. Paper 26, 1-3.

Notably, although the Director asked PO to explain “how the Board should construe the term “association” and authorized “a brief of no more than ten pages” to do so, PO declines to explain which construction is correct and why. Instead, in fewer than two pages, PO merely contends that the narrow construction in IPR68 is incorrect. It does not address the broad construction on which IPR70 is based and does not propose any alternative construction. Because PO does not dispute IPR70’s interpretation of “association,” the Board should institute that proceeding.

The remainder of PO’s brief is spent contravening the Director’s decision to deny additional briefing on discretionary denial. Paper 26, 3-10. PO belatedly seeks to establish that, despite IPR70 being based on a correct (and now undisputed) construction of “association,” and despite the Board having already concluded that institution is merited, the Board should nonetheless exercise its discretion to deny institution. As set forth below, it should not. The Director remanded only to determine the correct construction of “association.” That issue is now resolved, and IPR70 should be instituted.

**I. Petitioner Satisfied its Burden to Construe “Association”—PO is the Sole Party Engaged in Gamesmanship**

PO advances an inconsistent argument that, because Petitioner presented alternative constructions and *never expressly rejected* the narrow alternative, it failed to satisfy its burden to ascribe meaning to the claims. Paper 26, 3-6. PO concedes that it would have been proper to bring “alternative claim constructions in a single petition.” Paper 8, 5 (“something CrowdStrike could have easily done”). It also concedes that a Petitioner may not expressly disagree with an advanced claim construction. Paper 26, 5-6 (citing PTAB precedent barring a petitioner from expressly disagreeing with construction). Yet PO argues that Petitioner failed to satisfy its burden of ascribing meaning to “association,” in part, by refusing to expressly state “that the narrow construction *is wrong*.” *Id.* at 4. If alternative constructions may be advanced so long as a Petitioner avoids expressly stating that one is wrong, PO *cannot be correct* that Petitioner failed to satisfy its burden simply by complying with this PTAB precedent. PO also incorrectly asserts, “even in its Response to GoSecure’s Director Review Request, Petitioner never asserts that either construction is correct[.]” Paper 26, 4. Petitioner’s Response was unambiguous: “*Because it was based on a correct construction*, with ample intrinsic support, *Petitioner prioritized its broader challenge in IPR70*.” Paper 20, 1. (emphasis added).

In sum, Petitioner satisfied its burden by advancing a correct construction of “association” in IPR70 and demonstrating that it was well supported by the intrinsic

record. Petitioner presented an alternative construction, which PO concedes was allowed. And Petitioner declined to expressly describe that alternative as wrong, which PO agrees was required under PTAB precedent. This approach does not constitute gamesmanship that supports denying institution. Petitioner simply complied with the decisions PO cites in its brief. It was PO's refusal to engage with the meaning of its own patent's claim language that wasted substantial resources of the parties, the Board, and the Director, constituting improper gamesmanship.

## **II. PO's Request for Discretionary Denial Should be Rejected**

PO advocates for discretionary denial because Petitioner allegedly "failed to show any Examiner error as required by *Ecto World*." Paper 26, 6-10. PO attempts to excuse its own failure to raise this in its POPR. *Id.* at 8. PO's generalized statements that precedent is binding on later cases does not save its belated attempt to newly address §325(d). Indeed, PO previously sought to supplement the record with this exact argument. Ex. 3101. Petitioner explained that *Ecto World* simply resolves a split and did not announce a new standard. *Id.* The Director denied PO's request to belatedly raise a discretionary denial argument it could have, but did not, raise earlier. *Id.* The Board should similarly decline to consider this new argument.

Even if the Board were to excuse PO's waiver and apply *Ecto World* even though the Director would not, the record shows Examiner error. The '872 Patent improperly seeks to recapture subject matter PO dedicated to the public in *Capalik*.

Paper 1, 10. As the grounds establish, *Capalik*—a 102(b) patent publication with an overlapping inventor—teaches the independent claims and many dependent claims. Because *Capalik* was not discussed during prosecution, the Examiner did not appreciate its disclosure or even that *Capalik* was prior art to the '872 Patent at all. *Id.* at 75. Indeed, the '872 specification addressed *Capalik* in the “Related Applications” section, which initially listed applications that were direct family members (i.e., continuation and provisional applications). Ex. 1001, 1:6-40. It is entirely understandable for the Examiner to have missed that applications discussed later in this section *were actually prior art*, “related” only in subject matter (e.g., *Capalik*). PO should not be permitted to avoid PTAB review of its improper claim scope recapture just because it obfuscated its recapture during prosecution.

PO is also wrong that there was no Examiner error because *Capalik* is allegedly cumulative of *Jiang* and *Aziz*. Paper 26, 8-9. While PO focuses on the concept of “association,” Examiner error need not be related to this isolated concept. *Id.* Instead, Examiner error exists if *Capalik* “includes specific teachings” not in *Jiang* and *Aziz* that “impact patentability.” *Ecto World*, Paper 13 at 5. That is the case here. The applicant argued that *Aziz* does not transmit identifying information but instead simulates network data transmission. Ex. 1002, 52-53. As the Board concluded at institution, *Capalik* is not so limited. Paper 15, 19-22.

In sum, IPR70 is based on an undisputed construction and should be instituted.

Respectfully submitted,

Dated: July 16, 2025

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**CERTIFICATE OF SERVICE**

Pursuant to 37 C.F.R. §§ 42.6(e), the undersigned certifies that on July 16, 2025, a true and correct copy of the foregoing Response to Patent Owner’s Brief on Remand Regarding the Correct Construction of “Association” was served electronically on counsel for Patent Owner at the following address:

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