

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CROWDSTRIKE, INC.,
Petitioner

v.

SKYSONG INNOVATIONS, LLC,
Patent Owner

Inter Partes Review Case No. IPR2025-01170
U.S. Patent No. 11,892,897 B2

**PATENT OWNER'S REPLY BRIEF
IN SUPPORT OF DISCRETIONARY DENIAL**

I. INTRODUCTION

The Director has authorized the Patent Owner to file this Reply addressing specific points in Petitioner’s Opposition to Discretionary Denial. The Petition, the Patent Owner Preliminary Response (“POPR”), and Opening Brief Requesting Discretionary Denial (“DD Brief”) set forth a full merits record, including a detailed analysis of *Sabottke* and other prior art. This Reply focuses on correcting key errors in Petitioner’s Opposition and on highlighting commercialization of the ’897 Patent.

II. THE OFFICE DID NOT ERR UNDER § 325(D); *SABOTTKE* WAS CONSIDERED

Petitioner’s § 325(d) theory hinges on treating *Sabottke* as “new” art that the Office overlooked. The record shows otherwise. *Sabottke* and the other core references were cited on an IDS (EX1002 at 173, 362, 373, 375); the specification itself discusses Twitter-based exploit prediction as background (EX1001, 15:35-46); and the Examiner’s search and reasons for allowance reflect consideration of *Sabottke* (EX1002 at 173, 362, 522). *See* DD Brief, 15-16; POPR, 18.

Petitioner also misstates why the claims were allowed. The July 2023 Amendments added limitations directed to: (1) analyzing multiple datasets from multiple sources including hacker communications; (2) using features that include measures derived from social connections of hackers; and (3) predicting real-world exploitation. DD Brief, 16 (citing, EX1002, 173, 362). The Notice of Allowance ties patentability to that amended combination, not to any “Random Forest vs. SVM”

distinction. EX1002, 522. *Sabottke* does not disclose that specific combination, as the POPR already explains claim-by-claim. *See* POPR, 18-33.

Under *Advanced Bionics*, once the same or substantially the same art is before the Office, the burden shifts: Petitioner must show “material error,” not merely offer a different view. IPR2019-01469, Paper 6 at 7-10. Petitioner points to no concrete mistake in the Examiner’s treatment of *Sabottke* or of the amended claims; it simply re-argues the art and asks the Director to substitute its view for the Examiner’s. That is not “material error” under *Advanced Bionics*. *Id.* at 9. On this record – *Sabottke* cited, distinguished, and considered in the amendments tied to patentability, with no error identified – both *Advanced Bionics* prongs favor discretionary denial.

III. PETITIONER’S STATISTICS ON STAY, TRANSFER, AND TIME-TO-TRIAL ARE INCOMPLETE

A. *FINTIV* FACTOR 1 – STAY

No motion to stay is pending in the WDTX litigation, and Petitioner has stated that “CrowdStrike *intends* to move for a stay *if* its IPR proceedings are instituted.” Paper 9 at 9 (emphasis added). On the current schedule, the projected institution date is February 8, 2026. Any stay motion will therefore reach the WDTX court only after that date, and any ruling would follow full briefing and consideration. By then, claim construction will have been briefed and argued at the February 18, 2026 *Markman* hearing, fact discovery will have opened on February 19, 2026, and the Court and parties will have invested substantial resources. *See* EX2004.

In this posture, a stay is not “likely.” WDTX courts, including Judge Gilliland, have denied post-*Markman* stays when the Court and parties have already expended significant effort, and a PTAB final written decision is due after trial. In *Datanet LLC v. Dropbox Inc.*, Judge Gilliland denied a stay post-*Markman* with trial set before the PTAB deadline, explaining the case was “anything but at its ‘infancy,’” that simplification was “speculative,” and that “the patent property is a wasting asset, and justice is ill served by delay in final resolution.” No. 6:22-CV-01142-OLG-DTG, 2023 U.S. Dist. LEXIS 230030, at *9-11 (W.D. Tex. Dec. 28, 2023).

Petitioner’s suggestion that general timing statistics could justify discounting this concrete schedule only underscores the speculative nature of its position. To find a stay “likely,” the Director would have to assume: (1) institution, (2) a stay motion in this post-*Markman* posture, and (3) that the WDTX court would grant that motion even though *Markman* has been held, discovery is underway, and the February 1, 2027 trial date precedes the PTAB’s projected February 8, 2027 deadline. *Fintiv* Factor 1 does not require this serial speculation. Factor 1 favors discretionary denial.

B. *FINTIV* FACTOR 2 – TIME TO TRIAL AND TRANSFER

Fintiv looks to “the court’s trial date,” not district-wide median statistics. *Apple Inc. v. Fintiv Inc.*, IPR2020-00019, Paper 15 (PTAB May 13, 2020) (informative). Here, the WDTX court has entered a scheduling order setting trial in the CrowdStrike case for February 1, 2027, one week before the projected February

8, 2027 Final Written Decision. DD Brief, 5-6. The EDTX court in the Fortinet case has set trial for November 2, 2026, months before the same PTAB deadline. *Id.* at 9.

Petitioner points to national median time-to-trial statistics and a general transfer success rate but offers no transfer order and no alternative trial date from the proposed transferee court. *Fintiv* factor 2, however, turns on the actual trial date in this case, not on averages or probabilities. Here, the only operative date in the record is the WDTX trial set for February 1, 2027, which is earlier than the projected PTAB deadline. Factor 2 therefore favors discretionary denial.

IV. SIGNIFICANT DISTRICT COURT INVESTMENT AND SUBSTANTIAL OVERLAP DESPITE LIMITED SOTERA+ STIPULATION

After Patent Owner filed its DD Brief, CrowdStrike served its preliminary invalidity contentions in WDTX. Those contentions, served November 6, 2025, assert the same core prior art references as this Petition—*Sabottke, Smyth, Phillips, Nunes, Kuperman, Marin, and Bozorgi*—with additional references. This confirms what Patent Owner’s Opening DD Brief predicted: the invalidity theories in WDTX and in this IPR very substantially overlap in both art and arguments. DD Brief, 12.

Petitioner argues its *Sotera+* stipulation cures any *Fintiv* Factor 4 concern. It does not. The stipulation is expressly conditional and applies only if the Board institutes this IPR. Until then, CrowdStrike is actively asserting in WDTX the same core prior art it relies on here, and the Court and parties are already in claim construction and discovery on those overlapping references. *Fintiv* Factor 4 is

assessed based on the record as it exists now, not on a contingent future posture, and the current record shows substantial overlap in prior art and issues between this IPR and the district court case. *Fintiv* Factors 3 and 4 therefore favor discretionary denial.

V. THE '897 PATENT HAS BEEN COMMERCIALY IMPLEMENTED

Petitioner asserts that the '897 patent has not been commercialized. That is incorrect. In his Second Declaration, Dr. Shakarian explains that he co-founded IntelliSpyre (later CYR3CON) to commercialize an ASU-derived and licensed cybersecurity portfolio including the '897 Patent, and that the patented technology was implemented in CYR3CON's PR1ORITY platform. He describes deployments of PR1ORITY for enterprise and OEM customers via web dashboards, APIs, and secure feeds; revenues from 2018-2021; investment raised; and the subsequent acquisition of CYR3CON's assets and technology, including PR1ORITY, by Cyber Security Works (now Securin, Inc.). EX2011, ¶¶7, 11.

As Dr. Shakarian explains, PR1ORITY's commercial success was directly tied to the patented features, and no competing product offered equivalent functionality at the time. On this record, there is concrete proof of commercialization, customer adoption, and acquisition value grounded in the claimed technology.

VI. CONCLUSION

Based on the foregoing and in light of the record to date in this IPR, the Director should deny institution of this IPR.