

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE OFFICE OF THE UNDER SECRETARY OF COMMERCE
FOR INTELLECTUAL PROPERTY AND DIRECTOR OF THE
UNITED STATES PATENT AND TRADEMARK OFFICE

CROWDSTRIKE, INC.,
Petitioner,

v.

GOSECURE, INC.,
Patent Owner.

IPR2025-00068 (Patent 9,954,872 B2)
IPR2025-00070 (Patent 9,954,872 B2)¹

Before COKE MORGAN STEWART, *Acting Under Secretary of
Commerce for Intellectual Property and Acting Director of the United States
Patent and Trademark Office.*

ORDER

Granting Director Review, Vacating the Decisions Granting Institution, and
Remanding to the Patent Trial and Appeal Board for Further Proceedings

¹ This order applies to each of the above-listed proceedings.

GoSecure, Inc. (“Patent Owner”) filed a request for Director Review of the Decision granting institution (“Decision,” Paper 13) in each of the above-captioned cases, and CrowdStrike, Inc. (“Petitioner”) filed an authorized response to each request. *See* Paper 18 (“DR Request”); Paper 19.² In each request, Patent Owner argues that the Board abused its discretion by instituting two proceedings against the same claims of the same patent and that there are no exceptional circumstances that justify this result.³ DR Request 6–10. Petitioner responds that the Board properly instituted both proceedings because each petition advanced a distinct interpretation for one of the claim terms at issue and Patent Owner failed to take a position on the meaning of that term. Paper 19, 1–4.

The Board abused its discretion in granting institution of two petitions challenging the same claims in this instance. *See* Decision 11; IPR2025-00070, Paper 15, 10. The Board’s Consolidated Trial Practice Guide

² Unless otherwise indicated, all citations are to the record in IPR2025-00068. Similar papers were filed in IPR2025-00070.

³ While its request was pending, Patent Owner requested authorization to submit supplemental briefs raising discretionary denial arguments, including arguments based on the recent decision in *iRhythm Technologies, Inc. v. Welch Allyn, Inc.*, IPR2025-00363, Paper 10 (June 6, 2025). *See* Exs. 3101, 3102. Those requests were denied because Patent Owner failed to raise any basis for discretionary denial in its Preliminary Responses and because these proceedings are not subject to the Interim Processes for PTAB Workload Management. *Id.*; *see* Interim Processes for PTAB Workload Management Memorandum (Mar. 26, 2025) 3 (“The processes described herein will be implemented in IPR and PGR proceedings where the deadline for the patent owner to file a preliminary response has not yet passed”); FAQs for Interim Processes for PTAB Workload Management, FAQ 5, *available at* <https://www.uspto.gov/patents/ptab/faqs/interim-processes-workload-management>.

IPR2025-00068 (Patent 9,954,872 B2)

IPR2025-00070 (Patent 9,954,872 B2)

explains that “one petition should be sufficient to challenge the claims of a patent in most situations” and “multiple petitions by a petitioner are not necessary in the vast majority of cases.” *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide (“CTPG”) 59 (84 Fed. Reg. 64,280 (Nov. 21, 2019)).⁴

Petitioner filed two petitions primarily to present two different constructions of the claim term “association”—a broader construction and a narrower construction. Paper 3, 1. Petitioner advanced five obviousness grounds based on Capalik⁵ after applying the broader interpretation in IPR2025-00070 and advanced three obviousness grounds based on Capalik and King⁶ after applying the narrower interpretation of the term in IPR2025-00068. *Id.* at 2–5. As Patent Owner points out, the two petitions assert eight different grounds with significant overlap. DR Request 3. Allowing Petitioner more than one petition to challenge the same claims under two different claim constructions effectively expands the permitted word count and places “a substantial and unnecessary burden on the Board and the patent owner and could raise fairness, timing, and efficiency concerns.” *See* CTPG 59 (citing 35 U.S.C. § 316(b)).

Under these circumstances where two different claim constructions were advanced in two petitions, the Board should have construed the claim term and instituted review of, at most, one of the petitions. Instead, the

⁴ *Available at* <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

⁵ US Application Publication No. 2008/0016570, published Jan. 17, 2008 (Ex. 1004).

⁶ Samuel T. King, *Analyzing Intrusions Using Operating System Level Information Flow* (2006) (Ph.D. dissertation, University of Michigan) (Ex. 1006).

IPR2025-00068 (Patent 9,954,872 B2)

IPR2025-00070 (Patent 9,954,872 B2)

Board relied on the fact that Patent Owner had not “weighed in on” the claim construction issue as a reason to institute both petitions. Decision 11. As Petitioner has already briefed its claim construction arguments, the proper course is to allow Patent Owner to submit whatever arguments are necessary for the panel to make a claim construction determination.

Accordingly, Director Review is granted, and the case is remanded to the Board panel to determine which of the two proceedings, if any, to institute. Before the Board can make that determination, however, Patent Owner is authorized to file within fourteen days a brief of no more than ten pages explaining how the Board should construe the term “association.” Petitioner is authorized to file a five-page brief responding to Patent Owner’s arguments no later than seven days after Patent Owner files its brief. The Board shall consider the parties’ claim construction arguments in making its determination. Absent good cause, the Board panel shall issue a decision on remand within 30 days of the due date for Petitioner’s brief.

In consideration of the foregoing, it is:

ORDERED that Director Review is granted;

FURTHER ORDERED that the Board’s Decisions granting institution of *inter partes* review (Paper 13; IPR2025-00070, Paper 15) are vacated;

FURTHER ORDERED that Patent Owner is authorized to file a ten-page brief explaining how the Board should construe the term “association” within fourteen days of the date of this decision;

FURTHER ORDERED that Petitioner is authorized to file a five-page brief responding to Patent Owner’s arguments no later than seven days after Patent Owner files its brief; and

IPR2025-00068 (Patent 9,954,872 B2)

IPR2025-00070 (Patent 9,954,872 B2)

FURTHER ORDERED that the cases are remanded to the Board for further proceedings consistent with this decision.

IPR2025-00068 (Patent 9,954,872 B2)

IPR2025-00070 (Patent 9,954,872 B2)

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