

Filed on behalf of: GoSecure, Inc.

Entered: May 16, 2025

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CROWDSTRIKE, INC.,
Petitioner,

v.

GOSECURE, INC.,
Patent Owner.

Case IPR2025-00068
Patent 9,954,872

PATENT OWNER'S REQUEST FOR DIRECTOR REVIEW

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I. INTRODUCTION

The Director should vacate the institution decision and terminate this proceeding for three independent reasons.

First, the Board instituted two IPR petitions by the same Petitioner challenging the same 21 claims of the same patent on indistinguishable art and similar grounds, directly conflicting with the USPTO's guidance that "multiple petitions should be rare" and reserved for truly "exceptional" situations. In IPR2025-00070, the Board did not address discretionary denial based on parallel petitions, and instead instituted solely on Petitioner's preferred ranking without considering Patent Owner GoSecure's arguments for discretionary denial. In IPR2025-00068, the Board found that the "large number" (21) of claims and alleged "complex subject matter" of the patent warranted a second petition to address a second interpretation of the claim term "association." But Petitioner used claim construction as a pretext to expand its word count, and did not use any new art to address this other construction. The Board abused its discretion in finding Petitioner entitled to two petitions.

Second, the Board abused its discretion in instituting *either* proceeding because it shifted the burden of persuasion on to Patent Owner. The Board endorsed Petitioner's approach—asserting that a claim term is too ambiguous to resolve two plausible constructions without Patent Owner choosing not to dispute one. That is a

backdoor indefiniteness argument and allows petitioners to skirt their regulatory requirement to construe the claims, requesting instead that the Board and Patent Owner simply pick from two options. Petitioner bears the burden of persuasion, and the Board erred by allowing the Petitioner to allege that the record is too ambiguous to determine the meaning of “association.”

Finally, the Board erred in construing the term “computer system” to encompass a “network” where the claims and specification repeatedly distinguish between a “computer system” and “network.” The Director should vacate the Institution Decision and terminate this proceeding.

II. LEGAL STANDARDS

Director Review of a Board's decision on institution aims to “correct errors at the institution stage, for example, to avoid unnecessary trials for patent owners.” Dir. Rev. Process, §2.B (updated Mar. 18, 2025). The Director reviews decisions to institute presenting “(a) an abuse of discretion, (b) important issues of law or policy, (c) erroneous findings of material fact, or (d) erroneous conclusions of law.” *Id.* Institution is discretionary under 35 U.S.C. § 314(a).

Absent exceptional circumstances, only one petition should be filed against a single patent. *SolarEdge Techs. Ltd., v. SMA Solar Tech., AG.*, IPR2020-00966, Paper 9 at 10 (PTAB Jan. 11, 2021). The Patent Trial and Appeal Board Consolidated Trial Practice Guide (Nov. 2019) (“CTPG”) provides that “one petition

should be sufficient to challenge the claims of a patent in most situations.” CTPG 59. Thus, “multiple petitions by a petitioner are not necessary in the vast majority of cases.” *Id.* The CTPG recognizes that multiple petitions filed against the same patent at the same time “may place a substantial and unnecessary burden on the Board and the patent owner and could raise fairness, timing, and efficiency concerns.” *Id.* (citing 35 U.S.C. § 316(b)).

III. BACKGROUND

Petitioner filed two IPR petitions against claims 1–21 of the '872 patent: IPR2025-00068 (“IPR68”) and IPR2025-00070 (“IPR70”). Both petitions use U.S. Patent Application Publication 2008/0016570 to Capalik (“Capalik”) as the primary reference for every ground. Together, the two petitions assert eight grounds, shown in the table below.

Petition/Ground #	Claims	References
IPR70 Ground 1	1–6, 12, 15, 20, 21	Capalik
IPR70 Ground 2	1–6, 12, 14, 15, 20, 21	Capalik and Goel
IPR68 Ground 1	1–12, 14–16, 18–21	Capalik and King
IPR70 Ground 3	7–11, 14, 16, 18, 19	Capalik, Goel, and King ¹
IPR70 Ground 4	13	Capalik, Goel, and Pike
IPR70 Ground 5	17	Capalik, Goel, and Farley
IPR68 Ground 2	13	Capalik, King, and Pike
IPR68 Ground 3	17	Capalik, King, and Farley

¹ Grounds 3–5 of IPR70 are technically six grounds (with and without Goel).

Petitioner justified its two petitions by arguing that it could not resolve the meaning of “association” in independent claims 1, 20, and 21 due to “the intrinsic record’s ambiguity.” IPR68, Paper 3 (“Ranking”) 1. As a result, according to Petitioner, “there are two possible interpretations of ‘association,’” one that Petitioner called “broader” and the other “narrower.” Ranking 1–2; *see* IPR68, Paper 1 (“IPR68 Petition”) 4–5 (arguing that “‘association’ could be interpreted” in two ways and not advocating for either construction). Petitioner further asserted that “Patent Owner has not proposed a specific construction of ‘association’” in the district court and that “like the intrinsic record, its infringement allegations do not clearly reveal any particular meaning it ascribes to the term.” Ranking 2. Thus, IPR70 included grounds that purported to apply the “broader interpretation of ‘association,’” and IPR68 included grounds that purported to apply the “narrower interpretation” of that term. Ranking 2.

Petitioner asserted that it was unable to cover “both possible constructions in a single petition” because of “the complexity of the subject matter and the number of claims challenged.” Ranking 3. Petitioner offered no evidence that the subject matter is too “complex[]” for one petition, nor did it explain why 21 claims proved too many. Nevertheless, Petitioner ranked the IPR70 petition, addressing the “broader interpretation,” higher than IPR68. Ranking 5.

GoSecure responded to Petitioner's Ranking, noting that there were no exceptional circumstances that warranted the rare granting of two petitions against the same patent. IPR68, Paper 8 ("Response") 1. GoSecure showed that Petitioner's challenges are largely duplicative and that Petitioner used claim construction as a pretext to expand its word count. Response 1–3. GoSecure pointed out that under the Board's rules, petitioners are required to set forth how "the challenged claim is to be construed" and that Petitioner's complaint that it did not know GoSecure's interpretation of "association" was a problem of Petitioner's own making because Petitioner filed its IPR petitions before claim construction discovery in the district court. Response 4 (quoting 37 C.F.R. § 42.104(b)(3)).

The Board instituted both IPRs. IPR70, Paper 15 ("IPR70 ID"); IPR68, Paper 13 ("IPR68 ID"). In IPR70, the Board declined to exercise discretion merely "[b]ecause Petitioner ranks the instant Petition higher." IPR70 ID 10. In IPR68, the Board concluded that "Petitioner has challenged a large number of claims directed to complex subject matter" and that the challenge "is complicated by the potential for Patent Owner to argue for a narrow construction of 'association' in limitation 1(b)." IPR68 ID 11. The Board found that "Patent Owner has not weighed in on whether 'association' should be interpreted narrowly or broadly." *Id.*

IV. DIRECTOR REVIEW SHOULD BE GRANTED TO CORRECT THE BOARD'S ABUSE OF DISCRETION AND CLARIFY AN IMPORTANT ISSUE OF POLICY.

GoSecure requests that the Director vacate the Institution Decisions and terminate both proceedings. The Board erred in three ways. First, the Board abused its discretion by instituting two proceedings against the same claims of the same patent absent exceptional circumstances. Second, the Board abused its discretion by instituting IPRs where the Petitioner has alleged that it cannot construe the claims because “the intrinsic record is ambiguous.” Third, the Board erred by construing “computer system” contrary to the intrinsic record.

A. The Board abused its discretion by instituting both IPRs.

The Board abused its discretion by instituting two parallel proceedings on the same patent without any justifying exceptional circumstances. “[M]ultiple petitions by a petitioner are not necessary in the vast majority of cases.” CTPG 59. Two petitions challenging a patent by the same petitioner “should be rare” but might be needed when “the patent owner has asserted a large number of claims in litigation or when there is a dispute about priority date requiring arguments under multiple prior art references.” *Id.*

The Board relied on three propositions—(1) 21 claims is a “large number,” (2) the technology is “complex,” and (3) two hypothetical constructions of one term demand separate petitions. None survive scrutiny.

First, the Board erred in finding that the '872 patent's 21 claims justified two petitions. IPR68 ID 11. But only one of the three independent claims is asserted in district court. The claims are not lengthy, as all 21 claims fit in roughly 2 columns of the patent. Tellingly, *Petitioner was able to challenge all 21 claims in a single petition*. Indeed, in IPR70, Petitioner asserted five grounds including two distinct grounds against every independent claim. And Petitioner needed little over a page to address (unasserted) independent claims 20–21 by referring back to its claim 1 analysis. IPR70, Paper 1 (“IPR70 Petition”) 38–40; *see also* IPR68 Petition 67–69. So, one petition was more than enough to challenge all of the claims, let alone the asserted claims. Further, the Board has consistently held that 21 claims is not a “large number” of claims that would justify multiple petitions. *See, e.g., Netskope, Inc. v. Bitglass, Inc.*, PGR2021-00092, Paper 11 at 21, 24–25 (Dec. 14, 2021) (21 claims is not a “large number” justifying two petitions); *Applied Materials, Inc. v. Demaray LLC*, IPR2021-00106, Paper 14 at 11 (May 11, 2021) (finding challenged patent “contains a reasonable number of claims (21 claims)”). And although Petitioner *challenged* 21 claims, the CTPG focuses on how many claims are *asserted* in parallel litigation (CTPG 59)—and here only 19 are asserted against Petitioner in district court.

Second, the Board abused its discretion by concluding, arbitrarily and without *any* explanation, that the claims involve “complex subject matter.” IPR68 ID 11.

Once again, the Petitions themselves contradicted the Board's findings because each Petition challenged all 21 claims of allegedly "complex subject matter" *in a single petition*. Further, the Board's own Institution Decision suggested that it does not view the patent as any more complex than an average PTAB case, as it adopted a definition of a POSITA that requires only a bachelor's degree with two years of industry experience. IPR68 ID 11–12. The Board cannot arbitrarily decide that the subject matter is "complex" merely to justify multiple petitions. That would eviscerate the guidance that multiple petitions should be "rare." CTPG 59.

Third, the Board erred by crediting Petitioner's made-up claim construction dispute about the term "association." Even if the claims were susceptible to a "narrower" and a "broader" interpretation, there is no need for two petitions because, presumably, prior art that invalidates a claim under a "narrower" interpretation should also invalidate a claim under a "broader" interpretation. Nor does the CTPG provide for a Petitioner's assertions of ambiguity in claim construction as a justification for instituting multiple petitions. *See* CTPG 59–61.

But even if Petitioner needed to address two interpretations of "association" (which it did not), it could have and should have done so in a single Petition, and neither the number of claims nor the alleged complexity of the technology prevented Petitioner from doing so. Petitioner did not even use new prior art to address the "narrower" construction. In the **IPR68** Petition, which purports to address the

“narrower” interpretation, Petitioner asserts that the independent claims are obvious based on a combination of Capalik and King; but Petitioner combined Capalik and King in Ground 3 of the *IPR70* Petition to attack 9 dependent claims under the “broader” interpretation. Indeed, Petitioner’s challenge to dependent claim 19 in IPR70 is substantively identical to its challenge to independent claim 1 in IPR68. *Compare* IPR70 Petition 64–66 (“Capalik/King[] teaches identifying a type of association between the activity source and the activity target, as depicted in King’s dependency graph generated by Graph Gen [citing King Fig. 3.2]”), *with* IPR68 Petition 37 (“[A] POSITA would have understood King’s Fig. 3.2(b) identifies and displays associations between activity sources and activity targets of each activity....”). Not only could Petitioner have easily addressed the “narrower” interpretation of “association” in the IPR70 petition, Petitioner did. Petitioner’s attempt to end-run around the word limit is further proven by the fact that Petitioner brought *two* distinct grounds against the independent claims in the IPR70 petition. Petitioner did not need to do so, but its use of two grounds demonstrates that Petitioner could have easily fit its Capalik-King ground into a single petition had Petitioner simply chosen *one* ground to address the “broader” interpretation instead of insisting on two grounds.

The Board further abused its discretion in the IPR70 case by basing its discretionary denial analysis entirely on Petitioner’s own ranking of the petitions.

Specifically, Petitioner ranked the IPR70 petition higher than the IPR68. Ranking 5. The Board decided not to discretionarily deny the Petition based solely on that ranking. IPR70 ID 10. The Board abused its discretion by applying a framework where a petitioner's ranking trumps all other considerations (including a patent owner's response) in determining whether to institute parallel petitions. The Director should clarify that this is not USPTO policy. To the contrary, "[t]he Board will consider the parties' submissions in determining whether to exercise its discretion." CTPG 61. The Board failed to consider GoSecure's submissions in IPR70, including GoSecure's request that the Board only institute—if anything—the IPR68 case which purports to address the narrower construction. Response 5.

Because none of the CTPG's recognized exceptional circumstances are present here, the Board's decision to institute both IPRs was an abuse of discretion.

B. The Board abused its discretion by instituting where Petitioner alleged the claims were ambiguous.

The Board abused its discretion by instituting in either case. 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, however, Petitioner asked the Board to select a construction, or better yet forced Patent Owner to pick one—flipping the burden of persuasion. Petitioner merely presented the Board with *options* for claim construction and argued that either construction is possible due to alleged ambiguity in the intrinsic record. Petitioner effectively argued that

“association” is indefinite and absolved itself from any responsibility of taking a position on its meaning—placing the onus on the Board and GoSecure to resolve claim construction. That is not sufficient.

The Board erred by burdening *Patent Owner* with bringing clarity to the Petition where Petitioner proffers only confusion. For example, the Board wrote that “Patent Owner has not weighed in on whether ‘association’ should be interpreted narrowly or broadly”—but *neither did Petitioner*. IPR68 ID 11. 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”).

Petitioner and the Board justified multiple constructions by citing to the possibility of GoSecure adopting a narrower interpretation to avoid prior art—but that is a possibility in nearly every IPR. Here, Petitioner’s affirmative position is that “association” is ambiguous, with two plausible meanings that can only be resolved by *Patent Owner picking one*. That is not GoSecure’s burden in an IPR. Petitioner’s alleged problem of not knowing GoSecure’s position is a problem of Petitioner’s own making, as it chose to file its IPR petitions (and moved the district court to stay the case) before claim construction discovery began in the district court.

C. The Board's construction of "computer system" is erroneous.

The Board erred in its overbroad construction of "computer system" in independent claim 1, without which Petitioner's prior art challenges all undisputedly fail. Claim 1 recites a "method of identifying unauthorized activities on a first *computer system attached to a computer network*," including the step of "transmitting to one or more *computer systems other than the first computer system information* identifying one or more of the activity sources ... *for preventing future attacks, to the one or more computer systems*, associated with the one or more of the activity sources" (the "transmitting" limitation). The Board construed "computer system" to encompass "a *network* that includes protected network devices and one or more other components" based on new arguments by Petitioner raised for the first time in its *Reply* to the POPR. IPR68 ID 13. Thus, under the Board's construction, the "transmitting" limitation encompasses transmitting the information to *any* component in a "protected network" regardless of whether the transmitted information relates to preventing future attacks against the destination device. IPR68 ID 12. But the Board's construction contravenes Federal Circuit law: the Board ignored that the claim and specification expressly distinguish a computer system from a network.

Claim 1 recites "a first computer system *attached to a computer network*." Dependent claim 4 further recites "receiving data through the *network*." The

Board's analysis thus contradicts controlling Federal Circuit law. *Bd. of Regents of the Univ. of Texas Sys. v. BENQ Am. Corp.*, 533 F.3d 1362, 1371 (Fed. Cir. 2008) (“Different claim terms are presumed to have different meanings.”). GoSecure chose to claim transmitting information to prevent future attacks to “computer systems,” not a “computer network,” and the Board's construction renders that difference in claim language meaningless. *Merck & Co., Inc. v. Teva Pharms. USA, Inc.*, 395 F.3d 1364, 1372 (Fed. Cir. 2005) (“A claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so.”).

Likewise, the specification repeatedly distinguishes computer systems from a network. '872 patent Figure 6C (“computer systems *on the network*”); *id.* 2:44–47 (transmitting a fingerprint “to one or more other computer systems *on the network*”); *id.* 14:61–64 (“identifying unauthorized activities on a computer system (e.g., the virtual machine 113-1) *attached to a computer network*”).

Instead, the Board presumed a broad meaning of “computer system” with no evidence—not even Petitioner's expert—and then concluded that it did not “see a reason” to narrow it. *Id.* 13 (“we do not see a reason that its plain meaning would be limited to network devices”). That approach to claim construction is impermissible. *See Intel Corp. v. Qualcomm Inc.*, 21 F.4th 784, 793 (Fed. Cir. 2021) (“[T]he question is what the contextually correct meaning *is*, not whether anything affirmatively limits an undisputed ordinary meaning.”). The Board's approach is, at

best, akin to the “broadest reasonable interpretation” standard the Board abandoned in 2018. *See* 37 C.F.R. § 42.100(b).

The Board misapplied the specification. Specifically, the Board found that disclosure of “one or more other computer systems (e.g., protected network *devices* 136)” supports that a computer system can encompass a *network*. IPR68 ID 14–15 (quoting ’872 patent 18:44–58). Not so. The use of exemplary language “e.g.” in this passage does not suggest that a computer system is broad enough to encompass a *network*; it merely shows that network devices 136 are example computer systems. The ’872 patent never suggests that “computer system” encompasses a network. Petitioner’s own expert distinguished a “network” from “devices on the network.” IPR68 Ex. 1003 ¶ 46 (“Performing such an analysis allows an administrator to protect the network and devices on the network from future attacks.”).

The Board also misapplied the specification’s use of “distributed computer system” to support its construction. IPR68 ID 15–16. The ’872 patent uses the term “distributed computer system” to describe Figure 1, which includes clients 101, communications network 148, decoy computer network 102, protected computer network 104, and firewall/router 198. ’872 patent 3:26–28. Thus, the “distributed computer system” is broader than even a computer network. But the Board broke down the phrase “distributed computer system” into component parts “distributed” and “computer system,” concluding that “computer system” must be broader than

the “distributed computer system” in Figure 1. IPR68 ID 15–16. That approach is wrong. *Intel Corp.*, 21 F.4th at 791 (“[I]t is not always appropriate to break down a phrase and give it an interpretation that is merely the sum of its parts.”). The patent shows the *exact opposite* is true: “distributed computer system” is *broader* than “computer system” in the ’872 patent because “distributed computer system” encompasses *everything*—all of the networks, all of the devices, and all of the networking equipment of Figure 1. The Board’s interpretation produces the absurd result that “computer system” is broader than *everything*, including the “computer network” to which the claims require a computer system to be attached. As the Federal Circuit has said, such an “interpretation cannot be correct as it would essentially require that the structure recited in claim [1] connect to itself.” *Am. Piledriving Equip., Inc. v. Geoquip, Inc.*, 637 F.3d 1324, 1333 (Fed. Cir. 2011).

The Board based institution on this erroneous construction, which applies to each independent claim. There is no dispute that the Petition failed to address a plain meaning requiring the computer system to be a system subject to attack and not just any network. The Director should correct the Board’s improper claim construction, vacate the institution decision, and terminate this proceeding.

V. CONCLUSION

For the reasons set forth above, the Director should vacate the institution decision and terminate this proceeding.

Respectfully submitted,

Dated: May 16, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on this 16th day of May, 2025, a true and correct copy of the foregoing **Patent Owner's Request for Director Review** was served by electronic mail on Petitioner's lead and backup counsel at the following email addresses:

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