

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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AO KASPERSKY LAB,

Petitioner,

v.

OPEN TEXT INC.,

Patent Owner.

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Case IPR2023-00289

Patent No. 8,418,250

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**PATENT OWNER'S SUR-REPLY**

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<i>Henny Penny Corp. v. Frymaster LLC</i> , 938 F.3d 1324 (Fed. Cir. 2019) .....	2, 6, 15
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<i>Wasica Fin. GmbH v. Cont’l Auto. Sys., Inc.</i> , 853 F.3d 1272 (Fed. Cir. 2017) .....	2, 6, 15

### EXHIBIT LIST

Exhibit	Description
2001	Declaration of Professor Nenad Medvidovic, Ph.D.
2002	<i>Curriculum Vitae</i> of Professor Nenad Medvidovic, Ph.D.
2003	<i>Webroot, Inc. and Open Text Inc., v. CrowdStrike, Inc. and CrowdStrike Holdings, Inc.</i> , Case No. 6:22-cv-00241-ADA-DTG, First Amended Complaint for Patent Infringement, Dkt. 60 (W.D. Tex., Sept. 8, 2022) (excerpted)
2004	<i>Sonrai Memory Ltd. v. Kingston Tech. Co. and Kingston Tech. Corp.</i> , Case No. 6:21-cv-1284-ADA, Order Denying Kingston Tech. Co. and Kingston Tech. Corp.'s Opposed Motion to Stay Pending Resolution of <i>Inter Partes</i> Review, Dkt. 94 (W.D. Tex., Oct. 18, 2022)
2005	<i>mCom IP, LLC v. Cisco Systems, Inc.</i> , Case No. 6:22-cv-00261-ADA, Order Denying Defendant's Motion to Stay Pending <i>Inter Partes</i> Review, Dkt. 42 (W.D. Tex., Oct. 20, 2022)
2006	<i>Intellectual Ventures I LLC et al. v. Hewlett Packard Enterprise Co.</i> , No. 6:21-cv-00596-ADA, Order Denying Hewlett Packard Enterprise Company's Opposed Motion to Stay Pending Resolution of <i>Inter Partes</i> Review, Dkt. 104 (W.D. Tex., Dec. 22, 2022)
2007	<i>Webroot, Inc. and Open Text Inc., v. AO Kaspersky Lab. et al.</i> , Case No. 6:22-cv-243-ADA-DTG, March 9, 2022 Transcript of Motions Hearing, Dkt. 133 (W.D. Tex. Dec. 15, 2022) (excerpted)
2008	Dani Kass, "Catching Up On Patent Litigation With Judge Albright" (Law360 Mar. 14, 2023); <a href="https://www.law360.com/pulse/articles/1582438/print?section=pulse/courts">https://www.law360.com/pulse/articles/1582438/print?section=pulse/courts</a>
2009	<i>Webroot, Inc. and Open Text Inc., v. AO Kaspersky Lab. et al.</i> , Case No. 6:22-cv-243-ADA-DTG, Order Granting Fourth Amended Scheduling Order, Dkt. 160 (W.D. Tex. Jan. 22, 2023)

<b>Exhibit</b>	<b>Description</b>
2010	<i>Webroot, Inc. and Open Text Inc., v. Sophos Ltd.</i> , Case No. 6:22-cv-00240-ADA-DTG, Minute Entry for proceedings held before Judge Derek T. Gilliland, Notice of Electronic Filing, Dkt. 102 (W.D. Tex., Mar. 7, 2023)
2011	<i>Webroot, Inc. and Open Text Inc., v. AO Kaspersky Lab. et al.</i> , Case No. 6:22-cv-243-ADA-DTG, Scheduling Order, Dkt. 39 (W.D. Tex. Aug. 8, 2022)
2012	<i>Webroot, Inc. and Open Text Inc., v. AO Kaspersky Lab. et al.</i> , Case No. 6:22-cv-243-ADA-DTG, Claim Construction Order, Dkt. 236 (W.D. Tex. Mar. 16, 2023)
2013	<i>Webroot, Inc. and Open Text Inc., v. Sophos Ltd.</i> , Case No. 6:22-cv-00240-ADA-DTG, Defendant Sophos Ltd.'s Preliminary Invalidity Contentions (W.D. Tex., Sept. 13, 2022) (excerpted)
2014	<i>Webroot, Inc. and Open Text Inc., v. Trend Micro, Inc.</i> , Case No. 6:22-cv-00239-ADA-DTG, Defendant's Preliminary Invalidity Contentions (W.D. Tex., Sept. 13, 2022) (excerpted)
2015	<i>Ex Parte</i> James M. Brennan, et al., Appeal 2021-003606, Application 15/285,875, Decision On Appeal Statement of the Case (PTAB Jul. 26, 2022)
2016	<i>Webroot, Inc. and Open Text Inc., v. CrowdStrike, Inc. and CrowdStrike Holdings, Inc.</i> , Case No. 6:22-cv-00241-ADA, Complaint for Patent Infringement, Dkt. 1 (W.D. Tex., Mar. 4, 2022)
2017	<i>Webroot, Inc. and Open Text Inc., v. AO Kaspersky Lab. et al.</i> , Case No. 6:22-cv-243-ADA-DTG, Plaintiffs' SurReply Claim Construction Brief, Dkt. 147 (W.D. Tex. Jan. 6, 2023) (excerpted)
2018	Transcript of Deposition of Wenke Lee dated September 29, 2023
2019	Declaration of Nenad Medvidovic, Ph.D. in Support of Patent Owner's Response

Patent Owner's Sur-Reply to  
Petitioner's Reply  
Patent No. 8,418,250

Exhibit	Description
2020	<i>Webroot, Inc. and Open Text, Inc. v. AO Kaspersky Lab, et al.</i> , Case No. 22-cv-00243-AdA-DTG, Opening Claim Construction Brief From: AO Kaspersky Lab et al., Dkt. 86 (W.D. Tex. Oct. 28, 2022) (excerpted)

## **I. INTRODUCTION**

Open Text Inc. ("Patent Owner") submits this Sur-Reply to the Reply of AO Kaspersky Lab ("Petitioner") in support of its Petition for *Inter Partes* Review ("IPR") of U.S. Patent No. 8,418,250 ("the '250 patent").

## **II. THE CITED REFERENCES ARE NOT ANALOGOUS ART TO THE '250 PATENT**

### **A. Kester Is Not Analogous Art To The '250 Patent**

#### **1. Kester is not in the same field of endeavor**

In the petition, Petitioner asserted that Kester is directed to "classifying a computer object as malware." (Petition 10-11.) That is wrong for the reasons addressed in Patent Owner's Response. (POR 23-26.) Kester is an enterprise workflow and productivity tool. Its focus is ensuring that employees in an enterprise are accessing the resources within the scope of their responsibilities, and prevent them from veering off course. At most, Kester includes a passing reference to "malicious applets and scripts." (EX-1004 Fig. 4A, [0082].) But Kester contains no disclosure regarding when or why an application should be categorized as "malicious applets or scripts," no disclosure regarding what might distinguish an application as safe as opposed to a malicious applet, and no disclosure as to what policy should be applied to applications categorized as a malicious applet or script.

(EX-2019 ¶¶71, 108.) A single passing reference to “malicious applets and scripts” does not place Kester in the same field of endeavor as the '250 patent.

In its Reply, Petitioner implicitly acknowledges the weakness of its argument that Kester is directed to “classifying a computer object as malware” by shifting to a new characterization of the relevant field of endeavor. Petitioner now argues that the relevant field of endeavor for the '250 patent should be expanded to include “classifying and controlling specific software objects.” (Reply 2-3.)

As an initial matter, Petitioner cannot belatedly shift its argument to propose a new field of endeavor that is broader than what it discussed in the petition. *See, e.g., 3M Company v. Bay Materials, LLC*, IPR2022-01214, 2024 WL 168075, at \*15 (P.T.A.B. Jan. 16, 2024) (“The new argument and evidence presented in the Reply, directed to making out that essential aspect of the challenge, is untimely.”); *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d 1359, 1369–70 (Fed. Cir. 2016) (“the expedited nature of IPRs bring with it an obligation for petitioners to make their case in their petition to institute”); *Wasica Fin. GmbH v. Cont'l Auto. Sys., Inc.*, 853 F.3d 1272, 1286–87 (Fed. Cir. 2017) (“Shifting arguments in this fashion is foreclosed by statute, our precedent, and Board guidelines.”) (citations omitted); *Henny Penny Corp. v. Frymaster LLC*, 938 F.3d 1324, 1330–31 (Fed. Cir. 2019) (“it is of the utmost importance that petitioners in the IPR proceedings adhere



to the requirement that the initial petition identify with particularity the evidence that supports the grounds for the challenge to each claim... [a]ccordingly, an IPR petitioner may not raise in reply an entirely new rationale for why a claim would have been obvious”) (quotations omitted).

In addition, Petitioner gives little weight to the disclosure of the '250 patent and instead focuses its analysis on Kester. However, Kester is not the proper starting point for determining the relevant field of endeavor for analogous art. The field of endeavor is determined based on the '250 patent. *See Netflix, Inc. v. DivX, LLC*, 80 F.4th 1352, 1359 (Fed. Cir. 2023) (citation omitted) (holding that field of endeavor is determined “by reference to explanations of the invention’s subject matter in the patent application, including the embodiments, function, and structure of the claimed invention”). By relying on its purported prior art to determine the field of endeavor, Petitioner’s analysis is not based on “the foresight of a person of ordinary skill,” but rather on “the hindsight of the inventor’s successful achievement.” *Id.*, 80 F.4th at 1358.

Petitioner’s newly proposed field of endeavor—“classifying and controlling specific software objects”—also is exceedingly ambiguous in contrast to the specific problem addressed by the '250 patent. The '250 patent is directed specifically to the rapid determination of whether an object is safe or malware. (EX-1001 1:4-5, 3:8-

18, 4:65-5:2, 8:4-7, 11:42-57, cls. 1, 13, 25; EX-2019 ¶¶ 103-105.) At a high level, “classifying” and “controlling” can apply to many software systems and methods. The Board should reject Petitioner’s belated invitation to adopt a field of endeavor so broad that it renders the analogous art requirement meaningless.

## **2. Kester is not reasonably pertinent**

Continuing its improper “field of endeavor” analysis, Petitioner argues that the ’250 patent sought to address the problem of “classifying and controlling specific software objects, including identification of inadequate malware detection software.” (Reply 4.) However, Petitioner pays little attention to “malware”—much less, rapid determination of whether an object is malware—and focuses on the general idea of classifying and controlling objects. Again, Petitioner’s overly broad characterization of the problem addressed by the ’250 patent would include within the realm of reasonably pertinent art such disparate references as database management systems, electronic mail, file directories, and multimedia players. This confirms that Petitioner’s characterization of the problem is incorrect.

The problem that the ’250 patent sought to address was not merely identifying inadequate malware protection software. Rather, the inventions claimed in the ’250 patent sought to improve upon time-consuming prior art methods for determining whether an object is malware or safe, including those that relied on manual or semi-

manual detailed analysis of an object and a human administrator to make the determination. (EX-1001 2:4-27.) In other words, the problem addressed by the '250 patent is not merely identifying malware, but improving upon the *automation* (namely, generating a mask that defines acceptable behavior for a computer object, and doing so automatically) of identifying malware to overcome the significant latency involved in manual prior art techniques.

Kester is not reasonably pertinent to this problem. Indeed, Kester includes a singular reference to “malicious applets and scripts” and another to “malware,” and neither of these references appear in the context of improving upon time-consuming prior art methods for determining whether an object is malware or safe. On the contrary, Kester embodies the very problem that the '250 patent sought to solve because it requires that a human reviewer conduct a detailed analysis of each application and instance of network activity. (EX-1004 [0089], [0178]-[0179].) Petitioner acknowledges that Kester does not disclose automatically generating a mask. (Reply 18, citing Petition 28-30.) Indeed, Kester explicitly and repeatedly discusses the need for a human reviewer to monitor and control behavior. (EX-1004 [0089], [0178]-[0179].) Thus, Kester embodies the very time consuming problem that the '250 patent sought to address.

**B. Honig Is Not Analogous Art to the '250 Patent or Kester**

Petitioner argues that “Honig teaches a method and system for classifying applications as normal or anomalous.” (Petition 11.) In its Reply, Petitioner makes a conclusory argument that this is consistent with the field of “classifying and controlling specific software objects.” (Reply 7-8.) Petitioner does not address Patent Owner's argument that Honig is focused on addressing the costs and inefficiencies associated with model generation, as opposed to improving upon time consuming methods of malware detection. (POR 31.) Thus, Petitioner has not met its burden to show that Honig is in the same field of endeavor as the '250 patent.

Honig also is not reasonably pertinent to the problem solved by the '250 patent. Honig focuses on model generation. (Reply 7-8.) Petitioner now characterizes the problem being a “need to classify an object as anomalous if the actual monitored behavior is not normal (extending beyond the mask).” (Reply 7-8.) This argument was not raised in the petition and cannot be raised for the first time in Petitioner's reply. *See, e.g., 3M Company*, 2024 WL 168075 at \*15; *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d at 1369–70; *Wasica Fin. GmbH*, 853 F.3d at 1286–87; *Henny Penny Corp.*, 938 F.3d at 1330–31. Nevertheless, Petitioner also fails to explain how a POSITA would have considered Honig's teachings of model generation relevant to the problems described in the '250 patent.

### III. GROUND 1 DOES NOT RENDER THE CLAIMS OBVIOUS

#### A. The Claims Require A Mask That Defines Only Acceptable Object Behavior

Petitioner’s grounds hinge on an implicit construction of the term “mask ... that defines acceptable behavior for the computer object”—recited in all challenged claims—that would allow *acceptable* object behavior to be defined in terms of *unacceptable* object behavior. (See Reply 8-10.) As discussed in Patent Owner’s Response, Petitioner’s construction is inconsistent with the district court’s claim construction, the intrinsic record, and the district court arguments of former petitioner CrowdStrike, Inc. (“CrowdStrike”).<sup>1</sup> (See Response 12-14.) The Board should reject Petitioner’s construction and instead find that a purported “mask” that allegedly defines acceptable object behavior by reference to unacceptable

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<sup>1</sup> Petitioner AO Kaspersky Lab, who is also a direct competitor of Webroot and petitioner in another IPR proceeding (IPR2023-01334), filed a motion to join this proceeding, and that motion was granted on December 21, 2023. See *AO Kaspersky Lab v. Open Text Inc.*, IPR2023-01334 (“IPR-1334”), Paper 9 (P.T.A.B. Dec. 21, 2023) (“Decision”). See *AO Kaspersky Lab v. Open Text Inc.*, IPR2023-01334, Reply, Paper 10 (P.T.A.B. Feb. 22, 2024) (“Reply”).

behavior—such as Kester's hash/policy table—does not disclose or render obvious this limitation.

Patent Owner's proposed construction is consistent with the district court's construction. In construing the challenged claims, the district court agreed with Patent Owner and found that this term needed no construction and should be given its plain and ordinary meaning. (EX-2012 at 4.) But the court also noted that "the plain-and-ordinary meaning of this term is not the inverse of a mask of unacceptable behavior." (*Id.*) Thus, the court appears to have accepted CrowdStrike's argument that, in view of the intrinsic record, the claimed "acceptable behavior" cannot be defined by reference to *unacceptable* behavior. (*See* EX-2020 at 9-12.)

Petitioner appears to agree that the Board should consider the district court's claim construction, but disputes what the court's construction means. (Reply at 8-9.) Petitioner's attempt to distinguish Patent Owner's proposed construction from the court's construction ignores the context of the parties' district court dispute. Former petitioner CrowdStrike argued, for example, that "claim construction is thus necessary to clarify that this term refers to a list of acceptable behaviors, rather than a list of unacceptable behaviors." (EX-2020 at 9.) CrowdStrike noted that "[t]he specification *never* describes the mask as including 'unacceptable,' 'abnormal,' 'unexpected,' or 'non-allowable' behaviors." (*Id.* at 10 (citing EX-2020 at 4:21-27,

14:61-67, 15:30-34, 15:59-62).) And citing the claim language itself, CrowdStrike explained that “[a]ny definition that could allow a list of *unacceptable* actions to ‘define[] *acceptable* behavior’ bends the English language to the breaking point.” (*Id.* at 9) In other words, CrowdStrike—the original petitioner in this proceeding—argued unambiguously in the district court that not only must the claimed mask define *acceptable* behaviors, but also that it must *not* define *unacceptable* behaviors. (*See id.*)

Petitioner's Reply argument is also inconsistent with the intrinsic record, which discloses that a “mask” must specifically define acceptable behaviors, rather than being defined by the omission of certain behaviors from a list of unacceptable behaviors. For instance, the claims expressly require a mask that “defines acceptable behaviour for [a] computer object.” (EX-1001 cl. 1; see also cls. 13, 25.) This language is consistent with the context in which the term “mask” is used throughout the specification of the '250 patent, which repeatedly describes a mask as defining acceptable object behavior, rather than simply *any* behavior for that object as Petitioner contends. (*See, e.g.*, EX-1001 15:5-12 (“Any behavior that extends beyond the mask is identified and can be used to continually assess whether the object continues to be safe or not.”); 15:42-50 (“[T]he process is then monitored whilst running, and is monitored each time it is run in the future in a monitoring state

step 35 to determine whether its behavior falls within its pre-authorized mask 36.).) And during prosecution, the applicant clarified that the claimed mask defines acceptable behavior, rather than *any* behavior, allowing for a more streamlined monitoring of a computer object by comparing its behavior against a mask to determine if the object is acting within the confines of the mask (EX-1002 403 (describing how a mask “is used to monitor the permitted behaviour of [an] object.”).)

Petitioner mischaracterizes Patent Owner's argument as both “an impermissible attempt to amend the claim language” and “a disclaimer of claim scope.” (Reply at 9.) But as is clear from Patent Owner's Response and the discussion above, Patent Owner interprets the plain and ordinary meaning of the claim term “mask ... that defines acceptable behavior for the computer object” in view of the claim language, the intrinsic record, and the district court's claim construction order, in view of the arguments and evidence offered by Petitioner's co-defendants. The Board should reach the same conclusion as the district court, and find that the claimed mask must define only acceptable object behavior, without reference to unacceptable object behavior.



**B. Kester Does Not Disclose Or Suggest A Mask That Defines Acceptable Object Behavior**

Aside from disputing Patent Owner's interpretation of the district court's claim construction, Petitioner largely reiterates arguments from the Petition.<sup>2</sup> These arguments fail under the proper construction of "mask ... that defines acceptable behavior for the computer object" and for the reasons set forth in Patent Owner's Response.

For one of its few new arguments, Petitioner asserts that, even if the claimed mask must define only acceptable object behavior, as Patent Owner contends, Kester still teaches the limitation. (Reply 12.) Petitioner disputes that Kester's hash/policy table includes unacceptable behavior. Petitioner is incorrect. While Petitioner finds it "unclear how behavior being 'predetermined' or 'expected' does not also mean that the behavior is acceptable" (Reply 13), Kester distinguishes between

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<sup>2</sup> Once again mischaracterizing Patent Owner's argument, Petitioner first asserts that Patent Owner "does not dispute that Kester's [sic] teaches a 'mask' or that Kester's 'mask' defines acceptable behavior as claimed by the '250 patent." (Reply 11.) Contrary to Petitioner's assertion, Patent Owner does in fact dispute Petitioner's contentions that Kester teaches a mark and that Kester's mask defines acceptable object behavior. (See, e.g., § III.A, *supra*; Response 32-33.)

“predetermined” or “expected” behavior on the one hand, and “allowed” behavior on the other. For instance, Kester states:

“If the hash and collection data corresponds to a hash stored in the hash/policy table 204 and the collection data associate with the hash in the hash/policy table 204, *the process continues to a state 1410 where the policy associated with the hash is applied in response to the network access request. In this case, the behavior or network attributes of the application matches with an expected behavior for the application. These policies can include* allowing the application to access the network, *denying access to the network*, alerting the user that access to the network may receive further scrutiny by the network administrator, or allow for a certain amount of time for accessing the network.

(EX-1004 [0143] (emphasis added).) In other words, even for “predetermined” or “expected” application behavior, access may not be allowed based on Kester’s hash/policy table. (*See id.*) Thus, Kester’s hash/policy table is not a mask that defines acceptable behavior, but rather a handbook for responding to particular predetermined scenarios, as Petitioner appears to acknowledge. (*See* Reply 13 (“[The determination of whether an application is operating in a ‘predetermined’ or ‘expected’ manner depends on the matching of its behavior characteristics, i.e., ‘properties or features’ listed in the table entry.]”) (citing EX-1004 [0070]).)

Petitioner also argues that “[i]t is unclear how a mask that is capable of distinguishing acceptable object behavior on a workstation-by-workstation basis

means that the mask must also include disallowed behavior rather than simply defining allowed behavior for the workstation and anything outside of the allowed behavior for the workstation is outside of the allowed behavior and therefore disallowed.” (Reply 14.) But what Petitioner points to as Kester’s “mask” merely outlines actions to take in given predetermined scenarios, including what actions to take when *unacceptable* behavior is observed. (EX-1004 [0143].) If the action is predetermined to be unacceptable, it is disallowed per the hash/policy table. (*Id.*) If the predetermined action is somewhat questionable, a warning may be generated. (*Id.*) Petitioner’s purported lack of clarity on these questions undercuts its analysis. Contrary to Kester’s teachings, Petitioner conflates “predetermined” or “expected” with “acceptable,” as the latter term is used in the challenged ’250 patent claims. (Reply 14-15.)

Similarly, Petitioner argues that Kester’s expected network activity may include one or more network attributes, such as a specific protocol, IP address, and/or port. (EX-1004 [0046]) But this is yet another example of why Kester does not teach a “mask” of acceptable behavior – it merely teaches “behavior” generally, or “attributes,” and how to respond to any given behavior or attribute, or combination of the two. (EX-1004 [0046], [0083], [0185].) The fact that Kester’s expected network activity may include permissible activity in addition to impermissible

activity does not mean that expected network activity is a mask that defines acceptable behavior as that term has been—and should be—construed.

Lastly, Petitioner incorrectly argues that Patent Owner failed to assert that Kester does not disclose “reclassifying the computer object as malware when the actual monitored behavior extends beyond that permitted by the mask.” (Reply 17.) But Petitioner cites Patent Owner's Response, in which Patent Owner expressly argued that “because Kester's expected network activity defines unacceptable behavior, it cannot be used as a tool for informing when an application must be reclassified as malware.” (Reply 17) (citing IPR-289, POR 40).) To reiterate, because Kester fails to disclose a mask that defines acceptable behavior, it also cannot disclose the “reclassifying” element of claims 1, 13, and 25.

**C. Petitioner's Combination Of Kester And Honig Does Not Teach “Automatically” Generating The Claimed Mask**

Petitioner concedes that Kester alone does not teach automatically generating a mask, and instead relies on Honig's teachings to argue that the combination of Kester and Honig renders this limitation obvious. (Reply 18-19.) Petitioner's reliance is misplaced.

Petitioner incorrectly argues that Kester “provide[s] motivation to look to adaptive learning systems for combination.” (Reply 19.) Petitioner's argument raises the following question: why would Kester, a system that teaches using human

reviewers to analyze activity and make judgment calls as to what activity they determine to be “expected” or “predetermined” and how to treat that activity, and motivate a POSITA to seek out adaptive learning models, which provide the opposite functionality from Kester? Petitioner fails to answer this question in its Petition or its Reply.

Petitioner also (again) misstates Patent Owner's argument, asserting that “Patent Owner does not appear to dispute that Honig teaches automatically generating a mask.” There is nothing to dispute – there is no argument in the petition that Honig teaches automatically generating a mask. Because Honig does not teach generating a mask at all, let alone automatically, and because this argument is never set forth in the Petition, Petitioner cannot belatedly raise this argument now. *3M Company*, 2024 WL 168075 at \*15; *Intelligent Bio-Sys., Inc. v. Illumina Cambridge Ltd.*, 821 F.3d at 1369–70; *Wasica Fin. GmbH*, 853 F.3d at 1286–87; *Henny Penny Corp.*, 938 F.3d at 1330–31.

Petitioner also argues that Honig discloses a model generator that automatically generates a model of normal behavior for a computer object. But Petitioner fails to explain why a POSITA would have been motivated to combine Honig's teachings with Kester's to disclose automatically generating a mask as claimed in the '250 patent. As noted above, Kester necessarily relies on a human

reviewer to identify actions occurring in a workplace, and inputting responses to take in the event of each action.

Petitioner also fails to explain how a POSITA would have implemented such a combination. Kester's teaching is entirely dependent on the judgment calls of the human reviewer. Specifically, Kester requires a human reviewer to review conduct and decide what action to take amongst a variety of different options, including allowing an action, denying the action, allowing the action with limitations, generating alerts when the action is taken, and a wide variety of other possibilities. (EX-1004 [0003], [0042], [0057] [0059]; EX-2019 ¶¶ 69, 72-73, 78, 86.) Honig, on the other hand, is a binary system – there is no teaching in Honig that is amenable to Kester's dynamic human-judgment-based approach. (EX-1005 2:29-50, 2:67-3:2; 8:15-24; 21:39-53)

Petitioner is also wrong that such a combination is expressly contemplated by Kester. Kester contains a single reference to adaptive learning systems, and only in one context – categorization. (EX-1004 [0092].) Categorization is a broad concept that does not equate to a mask of acceptable behavior. If Kester actually contemplated Petitioner's combination with Honig, Kester would have referenced adaptive learning systems in the context of the hash/policy database and identifying predetermined, expected, acceptable, or unacceptable behavior. Yet Kester only

describes using adaptive learning systems for broad categorization. (EX-1004 [0092].) This is consistent with the remainder of Kester's disclosure, which focuses on using human reviewers to identify predetermined or expected activity. (EX-1004 [0070], [0089]-[0090], [0187], Fig. 20; IPR-289, EX-2019 ¶ 126.)

**D. Kester and Honig Do Not Render Obvious Claims 7 and 19**

Petitioner points to hashing information about an application as evidence that Kester teaches a hashing process as claimed in claims 7 and 19. However, Kester only teaches hashing an *application*, not hashing *data* relating to the application's behavior, "including information about the behavior of the object running on one or more remote computers." (EX-1001 cl. 1; EX-1004 [0051]-[0052].) Specifically, Kester teaches that when an application is launched, a hash of the application is provided, not a hash of the behavior of the application. (*Id.*) Petitioner's reliance on Dr. Lee is unavailing because Dr. Lee only references "application related data," which Petitioner infers includes data including information about the application's behavior. However, nowhere does Kester teach hashing data that includes information about the application's behavior, and Petitioner fails to identify in its reply where the petition alleges this, much less has support for such a proposition.

Accordingly, the petition fails to establish that Kester discloses this limitation, and Petitioner fails to remedy this shortcoming in its Reply Brief.

**E. Kester and Honig Do Not Render Obvious Claims 12 and 24**

Petitioner again attempts to infer nonexistent teachings from Kester's disclosure that are . For example, Petitioner cites Dr. Lee's statement "that an application that is 'not operating in a predetermined manner [is] categorized or re-categorized' and that '[t]he application is re-categorized based on parsed properties or features which are different than the parsed properties or features associated with the original categorization of the application.'" (Reply 23 (citing EX-1003 ¶ 164.) Dr. Lee opines that Kester teaches "comparing at the base computer the non-permitted behaviour (e.g., 'the parsed properties or features that are different') with the behaviour of other objects (e.g., 'the parsed properties or features associated with the original categorization of the application')." (Reply 23-24; EX-1003 ¶¶ 164, 166.) But Dr. Lee's inference finds no support in Kester.

Petitioner attempts to remedy this deficiency by arguing that Patent Owner failed to dispute that Honig teaches "allowing behavior for the object if said behavior is known to be not malicious for other objects." Petitioner is wrong. The Petition relies on Honig only for its teaching of updating or altering an existing model. (Petition 45-46.) As such, Honig does not teach this limitation alone.

Petitioner argues that Patent Owner imports "immediately" into the claim terms, but that is also incorrect. Neither Kester nor Honig, alone or in combination,



teaches allowing behavior if the behavior is not malicious for other objects. There is no disclosure in either reference that teaches this limitation. Kester hints at the idea of revisiting prior classifications or policies, and Honig teaches further developing its binary model. Neither actually teaches a comparison of behavior among different objects. The fact that Kester and Honig do not teach “immediately” allowing behavior is indicative of these deficiencies in these references. Kester and Honig both simply teach eventually revisiting prior analyses, and even then, neither reference teaches doing so based on “if said behavior is known to not be malicious for other objects.”

Lastly, there is no motivation to combine Kester and Honig. As noted above and in Patent Owner's Response, the two references are not analogous art. Further a POSITA would not have been motivated to combine Honig with Kester because Kester expressly teaches a human reviewer making the decision to revisit prior analyses, not allowing behavior if said behavior is known to not be malicious for other objects. Petitioner's new, impermissible, and unsupported arguments regarding alleged motivations to combine also fail to explain how Honig's teachings would aid Kester in reducing false alarms, particularly given that Kester is reliant on human behavior.

**F. Kester and Honig Do Not Render Obvious Claims 2, 9-11, 14, 19, 21-23, or 27-30**

Because Petitioner's obviousness challenges against all dependent claims depend on Petitioner's deficient analysis of the independent claims, and Petitioner's Reply fails to present any arguments otherwise, the remaining dependent claims fail for the same reasons as the independent claims.

**IV. GROUND 2 DOES NOT RENDER THE CLAIMS OBVIOUS**

Ground 2 fails for the same reasons as Ground 1, and Petitioner fails to present any rebuttal to Patent Owner's points made in its Response.

**V. CONCLUSION**

For the foregoing reasons, the Board should find the challenged claims of the '250 patent patentable.

Date: April 2, 2024

Respectfully submitted,

KING & SPALDING LLP

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**CERTIFICATION OF WORD COUNT**

The undersigned hereby certifies that the portions of the above-captioned **PATENT OWNER SUR-REPLY** specified in 37 C.F.R. § 42.24 have 4,217 words, in compliance with the 5,600 word limit set forth in 37 C.F.R. § 42.24. This word count was prepared using Microsoft Word 365 v.2022.

Date: April 2, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing **PATENT OWNER SUR-REPLY** was served by filing the documents through the Patent Trial and Appeal Case Tracking System (P-TACTS), as well as served via electronic mail, in their entirety on the following:

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