

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.

WEBROOT, INC.  
Patent Owner

IPR2023-\_\_\_\_\_  
U.S. Patent No. 8,418,250

**PETITIONER'S MOTION FOR JOINDER UNDER 35 U.S.C. § 315(c), 37  
C.F.R. § 42.22, AND § 42.122(b)**

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## I. STATEMENT OF THE PRECISE RELIEF REQUESTED

AO Kaspersky Lab (“Petitioner” or “Kaspersky”) respectfully submits this Motion for Joinder, concurrently with a Petition (“Kaspersky’s Petition”) for *inter partes* review of U.S. Patent No. 8,418,250 (“’250 patent”).

Pursuant to 35 U.S.C. § 315(c), 37 C.F.R. §§ 42.22, and 42.122(b), Kaspersky requests institution of an *inter partes* review and joinder with IPR2023-00289 (“CrowdStrike IPR”), which was instituted on July 21, 2023. *CrowdStrike, Inc. v. Webroot Inc.*, IPR2023-00289, Paper 8 (PTAB July 21, 2023). Kaspersky’s Petition is essentially a copy of the CrowdStrike IPR. It includes the identical grounds presented in the CrowdStrike IPR and therefore would create no additional burden for the Board, the CrowdStrike Petitioners, or Patent Owner if joined. Joinder would therefore lead to an efficient resolution of the validity of the ’250 patent.

Kaspersky is currently being sued by Patent Owner for infringement of the ’250 patent, styled *Webroot, Inc. and Open Text, Inc. v. AO Kaspersky Lab* (Case No. 6:22-CV-00243-ADA-DTG), in the Western District of Texas, Waco Division. Kaspersky has not previously filed any petitions before the PTAB challenging the validity of the ’250 patent.

Kaspersky stipulates that if joinder is granted, it will cooperate with CrowdStrike, whether at hearings, at depositions, in filings, or otherwise, as outlined below. Joinder will not impact the trial schedule because the proceeding based on

the CrowdStrike IPR is in its early stages.

Given the similarities of the proceedings, the lack of undue prejudice to Patent Owner, and the potential benefit to the public and to the Board that would accrue by Kaspersky's cooperative participation in the CrowdStrike IPR proceeding in the event that CrowdStrike Petitioners' participation terminates, the Board should institute IPR and grant Kaspersky's Motion for Joinder.

## II. ARGUMENT

### A. Legal Standard

A petitioner may request joinder, without prior authorization, up to one month after the institution date of the proceeding to which joinder is requested. 37 C.F.R. § 42.122(b); *Taiwan Semiconductor Mfg. Co., Ltd. v. Zond LLC*, IPR2014-00781 and IPR2014-00782, Paper 5 at 3 (PTAB May 29, 2014).

The Board may grant a motion for joining a petitioner for *inter partes* review to another *inter partes* review proceeding. *See* 35 U.S.C. § 315(c). In determining whether to exercise its discretion to grant a motion for joinder, the Board considers: (1) reasons why joinder is appropriate; (2) any new grounds of unpatentability asserted in the petition; (3) what impact (if any) joinder would have on the trial schedule for the existing review; and (4) specifically how briefing and discovery may be simplified. *See Dell, Inc. v. Network-1 Security Solutions, Inc.*, IPR201300385, Paper 17 at 3 (July 29, 2013).

## **B. Kaspersky’s Motion for Joinder Is Timely**

Joinder may be requested “no later than one month after the institution date of any *inter partes* review for which joinder is requested.” 37 C.F.R. § 42.122(b). The CrowdStrike IPR was instituted on July 21, 2023. IPR2023-00289, Paper 7 (PTAB July 21, 2023). Kaspersky’s current motion is timely as it is being filed within one month of the institution date.

## **C. The Four Factors Favor Joinder**

Each of the four factors weighs in favor of granting Kaspersky’s Motion for Joinder. Kaspersky’s Petition is substantively identical to the petition in the CrowdStrike IPR; it presents no new grounds of unpatentability. Joinder will have no impact on the pending schedule of the CrowdStrike IPR. Moreover, the briefing and discovery will be simplified by resolving all issues in a single proceeding.

### **1. Joinder of Kaspersky Is Appropriate Because It Will Promote an Efficient Determination of the Validity of the ’250 Patent Without Prejudice to Any Party**

Kaspersky seeks to join the CrowdStrike IPR proceeding in order to ensure that an accused infringer<sup>1</sup> with an active interest in the proceeding remains a party to this Trial if the CrowdStrike Petitioners’ participation is terminated prior to

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<sup>1</sup> Patent Owner has accused Kaspersky of infringing the ’250 patent in *Webroot, Inc. and Open Text, Inc. v. AO Kaspersky Lab* (Case No. 6:22-CV-00243-ADA-DTG), in the Western District of Texas, Waco Division

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