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[Your Name]

[Your Title]

[Your Company]

[Street Address, City, State ZIP]

May 14, 2026

[Opposing Counsel Name]

[Firm Name]

[Address]

Re: U.S. Patent No. 8438120 — Response to Assertion of Infringement

Dear Counsel,

We acknowledge receipt of your correspondence asserting infringement of U.S. Patent No. 8438120 (the "8438120 Patent"). After preliminary review, we have substantial concerns about the validity, enforceability, and scope of the asserted claims, summarized below. We reserve all rights and defenses.

1. Subject Patent — Summary

Analysis of U.S. Patent 8,438,120

Date of Analysis: 2026-04-30

Patent Summary

- Title: Machine learning hyperparameter estimation
- Assignee: The current assignee of record is K Mizra LLC. The original assignee was Nederlandse Organisatie voor Toegepast Natuurwetenschappelijk Onderzoek TNO. Ownership was transferred to DATASERVE TECHNOLOGIES LLC in March 2020, and subsequently to K.MIZRA LLC in August 2020.
- Inventor: Stephan Alexander Raaijmakers
- Filing Date: April 25, 2008
- Issue Date: May 7, 2013
- Abstract: A method of determining hyperparameters (HP) of a classifier (1) in a machine learning system (10) iteratively produces an estimate of a target hyperparameter vector. The...

2. Validity Concerns under 35 U.S.C. § 102 — Prior Art

We have identified prior-art references that, in our preliminary view, anticipate one or more asserted claims of the 8438120 Patent:

Prior Art Analysis for U.S. Patent 8,438,120

The following analysis details the most relevant prior art cited against U.S. Patent 8,438,120. The evaluation focuses on non-patent literature cited on the face of the patent, assessing its potential to anticipate the claims under 35 U.S.C. § 102. Anticipation requires a single prior art reference to disclose every element of a claimed invention.

The core invention of patent '120 is an iterative method for determining machine learning hyperparameters. Its key feature, as described in independent claim 1, is the process of "selecting, from the random sample of hyperparameter vectors, a hyperparameter vector producing a best result in the present and any previous iterations," and using this "best-so-far" vector to update the estimate for the next iteration. This introduction of "elitism" or "memory" into a cross-entropy-like method for hyperparameter tuning is the central inventive concept.

1. Mannor et al., "The cross entropy method for classification"

• Full Citation: Mannor, S., Peleg, D., & Rubinstein, R. (2005). The cross...

3. Obviousness under 35 U.S.C. § 103

Independent of § 102, we believe the asserted claims are obvious in view of combinations of prior art that a person having ordinary skill in the art would have been motivated to combine:

Obviousness Analysis (35 U.S.C. § 103)

Under 35 U.S.C. § 103, an invention is unpatentable if the differences between the claimed invention and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art (PHOSITA). The analysis considers the scope and content of the prior art, the differences between the prior art and the claims at issue, and the level of ordinary skill in the pertinent art.

Definition of a Person Having Ordinary Skill in the Art (PHOSITA)

At the time of the invention (priority date April 25, 2007), a PHOSITA in the field of machine learning and computational optimization would have a Master's degree or equivalent experience in computer science, electrical engineering, or a related field. This individual would be familiar with fundamental machine learning concepts (e.g., classifiers, hyperparameters, training/testing) and various optimization techniques, including statistical methods and evolutionary algorithms like genetic algorithms. They would have practical...

4. Litigation History of the Patent

Public records reflect that the 8438120 Patent has been the subject of the following litigation, which informs our view of the asserted claims and your client's enforcement posture:

- K. Mizra LLC v. CrowdStrike, Inc. — 1:26-cv-00754 · U.S. District Court for the Western District of Texas · pending
- K. Mizra LLC v. Rapid7, Inc. — 1:26-cv-00316 · U.S. District Court for the Western District of Texas · pending
- Google LLC v. K. Mizra LLC — 3:25-cv-08107 · U.S. District Court for the Northern District of California · filed 2025-12-05 · pending
- K. Mizra LLC v. Fortinet, Inc. — 2:21-cv-00249 · U.S. District Court for the Eastern District of Texas · filed 2021-07-08 · terminated

5. Request

In light of the foregoing, we request that your client (i) provide a detailed claim chart identifying each accused product or service and mapping every limitation of each asserted claim, (ii) identify any prior art known to your client, including any references cited during prosecution or reexamination, and (iii) substantiate the basis for any damages or licensing demand. We are prepared to discuss the matter further once we have received and reviewed the foregoing.

Sincerely,

[Your Name]

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