

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

LUMINATI NETWORKS LTD.	§	
	§	
Plaintiff,	§	
v.	§	Case No. 2:19-CV-00395-JRG
TESO LT, UAB; OXYSALES, UAB;	§	
METACLUSTER LT, UAB;	§	
	§	
Defendants.	§	

**LUMINATI'S OPENING CLAIM CONSTRUCTION BRIEF  
(LOCAL PATENT RULE 4-5(a))**

**TABLE OF CONTENTS**

**I. INTRODUCTION..... 1**

**II. FACTUAL AND PROCEDURAL BACKGROUND ..... 1**

**A. The Patents-in-Suit ..... 1**

**B. The Asserted Claims ..... 4**

**III. LEGAL STANDARDS FOR CLAIM CONSTRUCTION ..... 7**

**IV. LEVEL OF ONE OR ORDINARY SKILL IN THE ART ..... 9**

**V. AGREED UPON TERMS FOR CONSTRUCTION..... 9**

**VI. DISPUTED TERMS FOR CLAIM CONSTRUCTION ..... 10**

**A. Client Device (First Family)..... 10**

**B. First Server (First Family) ..... 13**

**C. Second Server (First Family) ..... 13**

**D. Client Device (Second Family)..... 15**

**E. First Server (Second Family) ..... 18**

**VII. THE “INDEFINITENESS” ARGUMENTS MADE BY DEFENDANTS DO NOT REALLY RELATE TO INDEFINITENESS AND ARE NOT CLAIM CONSTRUCTION DISPUTES ..... 19**

**A. Not Indefinite: “The First IP Address” / “The First Client IP Address” ..... 20**

**B. Not Indefinite: “Determining, By The First Client Device, That The Received First Content, Is Valid” / “The Determining Is Based On The Received HTTP Header According To, Or Based On IETF RFC 2616”..... 22**

**C. Not Indefinite: “Periodically Communicating” ..... 23**

**D. Not Indefinite: “In Response To The Receiving Of The First Content Identifier” 24**

**E. The Sending Of The Hypertext Transfer Protocol (HTTP) Request / Receiving And Storing Of The First Content / The Sending Of The Part Of, Or The Whole Of, The Stored First Content..... 25**

**F. The Steps Are Sequentially Executed ..... 27**

**VIII. CONCLUSION ..... 29**

**TABLE OF AUTHORITIES**

**Cases**

*Bancorp Servs. L.L.C. v. Hartford Life Ins. Co.*, 359 F.3d 1367 (Fed. Cir. 2004) ..... 20

*BASF Corp. v. Johnson Matthey Inc.*, 875 F.3d 1360 (Fed. Cir. 2017)..... 23, 24, 27

*Danco, Inc. v. Fluidmaster, Inc.*, No. 5:16-cv-73-JRG-CMC, 2017 U.S. Dist. LEXIS 155936 (E.D. Tex. Sep. 22, 2017)..... 8

*Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342 (Fed. Cir. 2005) ..... 19

*Energizer Holdings v. International Trade Com’n*, 435 F.3d 1366 (Fed. Cir. 2006)..... passim

*Gilead Scis. v. Mylan Inc.*, No. 1:14CV99, 2015 U.S. Dist. LEXIS 44558 (N.D.W. Va. Apr. 6, 2015)..... 20

*Huawei Techs. Co. v. T-Mobile US, Inc.*, No. 2:16-CV-00057-JRG-RSP, 2017 U.S. Dist. LEXIS 96097 (E.D. Tex. June 21, 2017) ..... 8, 13, 14

*Markman v. Westview Instr., Inc.*, 517 U.S. 370 (1996)..... 7

*Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S. Ct. 2120 (2014) ..... passim

*O2 Micro Int’l Ltd. v. Beyond Innovation Tech. Co.*, 521 F.3d 1351 (Fed. Cir. 2008) ..... 7

*On-Line Tech. v. Bodenseewerk Perkin-Elmer GmbH*, 386 F.3d 1133 (Fed. Cir. 2004) ..... 8

*Phillips v. AWH Corp.*, 415 F.3d 1303 (Fed. Cir. 2005) ..... 8

*Poly-America, L.P. v. API Indus., Inc.*, 839 F. 3d 1131 (Fed. Cir. 2016)..... 17

*Rheox, Inc. v. Entact, Inc.*, 276 F.3d 1319 (Fed. Cir. 2002) ..... 17

*SmithKline Beecham Corp. v. Apotex Corp.*, 403 F.3d 1331 (Fed. Cir. 2005)..... 23

*Standard Oil Co. v. Am. Cyanamid Co.*, 774 F.2d 448 (Fed. Cir. 1985)..... 17

*Tate Access Floors, Inc. v. Interface Architectural Res., Inc.* 279 F.3d 1357 (Fed. Cir. 2002) ... 20

*Tech. Licensing Corp. v. Videotek, Inc.*, 545 F.3d 1316 (Fed. Cir. 2008) ..... 19

*Teva Pharmaceuticals USA v. Sandoz, Inc.*, 135 S.Ct. 831 (2015) ..... 7

*Traxxas LP v. Hobby Prods. Int'l*, No. 2:14-CV-945-JRG-RSP, 2015 U.S. Dist. LEXIS 114148  
(E.D. Tex. Aug. 27, 2015)..... 20, 23

*VirnetX, Inc. v. Cisco Sys., Inc.*, 767 F.3d 1308 (Fed Cir. 2014)..... 8

*Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576 (Fed. Cir. 1996)..... 8

***Statutes***

35 U.S.C. § 282..... 19

## **I. INTRODUCTION**

Derry Shribman and Ofer Vilenski, founders of Plaintiff Luminati Networks Ltd. (“Luminati”), invented new methods for fetching content from a target server over the Internet using intermediary third-party client devices, such as an individual’s cell phone, in order to make the request from the third-party instead of the original requestor. These inventions are claimed U.S. Patent Nos. 10,257,319 (the “’319 Patent”, Ex. A), 10,484,510 (the “’510 Patent,” Ex. B) and 10,469,614 (the “’614 Patent,” Ex. C) (collectively the “Patents-in-Suit” or “asserted patents”). Using this novel service permits a user to access content from a server that might otherwise block the request or return a fake response. For example, a retailer can use this service to request pricing data from a competitor by appearing to that competitor as a potential customer.

The parties in this case agree that many of the claim terms should be afforded their plain and ordinary meaning. In some cases, however, additional clarification is important because under the rubric of “plain meaning” Defendants in fact deviate from the plain meaning of the claim terms as used in the patents in light of the clear prosecution history by interpreting “servers” and “client devices” as interchangeable. As used in this patent claims, they are not. Defendants also assert indefiniteness as to a variety of claim terms, but such arguments are baseless as these claims were properly issued by the Patent Office and entitled to the presumption of validity.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

### **A. The Patents-in-Suit**

The Patents-in-Suit are directed to architecture and methods for fetching content over the Internet. The ’319 and ’510 Patents, filed on April 20, 2018 and February 17, 2019 respectively, are in the same family (“First Family”) with a shared specification claiming priority to the same provisional application filed on October 8, 2009. The patents in the First Family are titled: “System

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.