

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESO LT, UAB; CODE200, UAB; METACLUSTER LT, UAB;
AND OXYSALES, UAB,
Petitioner,

v.

LUMINATI NETWORKS LTD.,
Patent Owner.

IPR2021-00122
Patent 10,484,511 B2

Before THOMAS L. GIANNETTI, SHEILA F. McSHANE, and
RUSSELL E. CASS, *Administrative Patent Judges*.

McSHANE, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. *Background and Summary*

Teso LT, UAB; Code200, UAB; Metacluster LT, UAB; and Oxysales, UAB (“Teso” or “Petitioner”)¹ filed a Petition requesting *inter partes* review of claims 1–5, 9, 14, 17, 20–22, 25, and 27–30 of U.S. Patent No. 10,484,511 B2 (Ex. 1001, “the ’511 patent”), along with the supporting Declaration of Michael Freedman, Ph.D. Paper 5 (“Pet.”); Ex. 1010. Luminati Networks Ltd. (“Luminati” or “Patent Owner”) filed a Preliminary Response to the Petition, along with the Declaration of V. Thomas Rhyne, Ph.D. Paper 10 (“Prelim. Resp.”); Ex. 2006.

We have authority under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . the information presented in the petition . . . shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

For the reasons that follow, we exercise our discretion under 35 U.S.C. § 314(a) to deny institution of *inter partes* review.

B. *Related Matters*

The parties identify the related litigations, *Luminati Networks Ltd. v. Code200, UAB*, 2:19-cv-00396-JRG (E.D. Tex.) (“the 396 district court case”), *Luminati Networks, Ltd. v. NetNut, Ltd.*, 2:20-cv-00188-JRG (E.D. Tex.), and *Luminati Networks Ltd. v. Tefincom S.A. D/B/A NordVPN*, 2:19-cv-00414-JRG (E.D. Tex.). Pet. 2; Paper 7, 3.

¹ Petitioner additionally identifies coretech lt, UAB as a real party-in-interest. Pet. 1.

The parties note another petition was filed in IPR2020-01266 (now denied) directed to U.S. Patent No. 10,257,319, which claims the benefit of the same provisional application and is a continuation of the same application as the '511 patent. Pet. 1–2; Paper 7, 2. The parties note that another petition was filed in IPR2020-01358 (now denied) that asserted challenges to U.S. Patent No. 10,484,510, which claims the benefit of the same provisional application and is a continuation of the same application as the '511 patent. Pet. 1–2; Paper 7, 3.

C. The '511 Patent

The '511 patent is titled “System Providing Faster and More Efficient Data Communication” and issued on November 19, 2019, from an application filed on February 17, 2019. Ex. 1001, codes (22), (45), (54). The application for the '511 patent is a continuation of several applications, and other related applications include a divisional application and a provisional application. *See id.* at code (60).

The '511 patent is directed to a system and method for increasing network communication speed for users, while lowering network congestion for content owners and internet service providers (ISPs). Ex. 1001, code (57). The system employs network elements including an acceleration server, clients, agents, and peers, where communication requests generated by applications are intercepted by the client on the same machine. *Id.* The IP address of the server in the communication request is transmitted to the acceleration server, which provides a list of agents to use for this IP address. *Id.*

The communication request is sent to the agents. Ex. 1001, code (57). One or more of the agents respond with a list of peers that have previously

seen some or all of the content which is the response to this request (after checking whether this data is still valid). *Id.* The client then downloads the data from these peers in parts and in parallel, thereby speeding up the Web transfer, releasing congestion from the Web by fetching the information from multiple sources, and relieving traffic from Web servers by offloading the data transfers from them to nearby peers. *Id.*

Challenged claim 1 is the only independent claim. Claim 1 of the '511 patent is reproduced below.

1. A method for fetching, by a first client device, a first content identified by a first content identifier and stored in a web server, for use with a first server that stores a group of IP addresses, the method by the first server comprising:

receiving, from the first client device, the first content identifier;

selecting, in response to the receiving of the first content identifier from the first client device, an IP address from the group;

sending, in response to the selecting, the first content identifier to the web server using the selected IP address;

receiving, in response to the sending, the first content from the web server; and

sending the received first content to the first client device,

wherein the first content comprises a web-page, an audio, or a video content, and wherein the first content identifier comprises a Uniform Resource Locator (URL).

Ex. 1001, 19:16–33.

D. Asserted Grounds of Unpatentability

Petitioner challenges the patentability of claims of the '511 patent on the following grounds:

Claim(s) Challenged	35 U.S.C. §	Reference(s)/Basis
1–5, 9, 14, 17, 20–22, 25, 27–30	102(b) ²	Crowds ³
1–5, 9, 14, 17, 20–22, 25, 27–30	103(a)	Crowds, RFC 2616 ⁴
1, 14, 17, 20–22, 25, 27–30	102(b)	Cohen ⁵
1, 14, 17, 20–22, 25, 27–30	103(a)	Cohen, RFC 2616
1, 14, 17, 20–22, 25, 27–30	103(a)	Kocherlakota ⁶ , RFC 2616

Pet. 5.

II. DISCRETIONARY DENIAL UNDER § 314(a)

A. Overview

Patent Owner requests that we exercise our discretion under 35 U.S.C. § 314(a) to deny the Petition under *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential) (“*Fintiv*”). Prelim. Resp. 1–2, 5–15.

² The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. § 103, effective March 16, 2013. Because the '511 patent claims priority to a provisional application that was filed before this date, with Petitioner not contesting that priority, the pre-AIA versions of §§ 102, 103 apply. *See* Ex. 1001, code (60); Pet. 10.

³ Michael K. Reiter, *Crowds: Anonymity for Web Transactions*, ACM Transactions on Information and System Security, Vol. 1, No. 1, November 1998, at 66–92 (Ex. 1012).

⁴ Hypertext Transfer Protocol—HTTP/1.1, Network Working Group, RFC 2616, The Internet Society, 1999 (Ex. 1011).

⁵ U.S. Patent No. 6,389,462 B1, issued May 14, 2002 (Ex. 1014).

⁶ U.S. Patent No. 6,785,705 B1, issued August 31, 2004 (Ex. 1015).

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.