

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

BRIGHT DATA LTD.,	§	
	§	
Plaintiff,	§	
	§	Civil Action No.
v.	§	2:21-cv-00225-JRG-RSP
	§	
NETNUT LTD.,	§	
	§	
Defendant.	§	
	§	

**DEFENDANT’S INVALIDITY CONTENTIONS
AND ACCOMPANYING DOCUMENT PRODUCTION**

In accordance with Local Patent Rules (“P.R.”) 3-3 and 3-4, and the Amended Court’s Docket Control Order (ECF No. 56), Defendant NetNut Ltd. (“NetNut”) provides the following invalidity contentions and accompanying document production addressing the claims asserted by Plaintiff Bright Data Ltd. (“Bright Data”) in its P.R. 3-1 infringement contentions.

I. INTRODUCTION

In this action Bright Data asserts the following claims of the following patents (together, the “Asserted Claims” of the “Asserted Patents”):

Asserted Patents	Asserted Claims
10,484,510 (“the ’510 patent)	1, 2, 8-11, 13, 15, 16, 18-20, 22, and 23
10,257,319 (“the ’319 patent)	1, 2, 14, 15, 17, 18, and 21-27
10,491,713 (“the ’713 patent)	1, 11, 24, and 27
11,050,852 (“the ’852 patent)	1, 14, 25, and 28
11,044,346 (“the ’346 patent)	1, 15, 17, 20, and 22-26

Based on NetNut's investigation to date, NetNut hereby: (a) identifies each item of prior art that allegedly anticipates each Asserted Claim or renders it obvious; (b) specifies whether each such item of prior art (or a combination thereof) anticipates or renders obvious one or more of the Asserted Claims; (c) provides a chart identifying where specifically in each item of prior art each element of each asserted claim is found (*see* Appendices A-1 through A-5 and A-7 ('510 patent); B-1 through B-5 and B-7 ('319 patent); C-1 through C-6 and C-8 through C-10 ('713 patent); D-1 through D6 and D-8 through D-10 ('852 patent); E-1 through E4, E-6, E-8 and E-9 ('346 patent)); and (d) identifies additional grounds of invalidity of the Asserted Claims under 35 U.S.C. § 112. P.R. 3-3(a)-(d).

Concurrent with these invalidity contentions, NetNut also provides documentation sufficient to show the operation of the Accused Instrumentalities identified by Bright Data in its infringement contentions. P.R. 3-4(a); *see* NETNUT2-00011551–13554. NetNut has previously made its source code for the Accused Instrumentalities available for inspection by Bright Data on December 14, 2021. Additionally, NetNut produces herewith a copy of each item of prior art identified in these invalidity contentions which does not appear in the file history of the Asserted Patents. *See* NETNUT2-00000001–11550 (with NETNUT2-00000001–5388 being prior art Squid documents and NETNUT2-00005389-11550 being other prior art identified herein).

II. RESERVATIONS

NetNut reserves the right to amend these invalidity contentions in accordance with the Court's Patent Rules and as the Court may otherwise provide. NetNut makes these invalidity contentions based upon its current knowledge, understanding, and belief as to the facts and information available as of the date of these invalidity contentions. To the extent that NetNut obtains additional information and prior art, including but not limited to prior art systems, sales, public uses, and publications, NetNut reserves the right to amend, supplement, or modify these

invalidity contentions. Further, if Bright Data provides additional detail to NetNut relating to alleged infringement beyond the information in Bright Data's infringement contentions served September 15, 2021 and supplemental infringement contentions served October 22, 2021, NetNut reserves the right to modify these invalidity contentions accordingly.

Discovery in this action and NetNut's investigation into the facts relating to this action are ongoing. NetNut reserves the right to amend, supplement, or modify the disclosures made herein as new, additional, or different information is discovered through fact, expert, and/or third-party discovery, after the Court has construed the Asserted Claims, and/or if Bright Data alters its invalidity contentions. NetNut is currently unaware of the extent, if any, to which Bright Data will contend that limitations of the Asserted Claims are not disclosed by the prior art identified by NetNut. To the extent such an issue arises, NetNut reserves the right to identify other references that disclose the allegedly missing limitation(s) of the Asserted Claim(s).

These invalidity contentions are not, and should not be understood as, admissions as to, or the adoption of, any particular claim scope or construction. To the extent possible, NetNut has attempted to consider Bright Data's assertions regarding Bright Data's apparent construction of the Asserted Claims. Nonetheless, NetNut provides these invalidity contentions prior to any claim construction ruling by the Court. Any invalidity analysis depends upon claim construction, which is a question of law reserved for the Court. The parties have not yet engaged in briefing on claim construction. NetNut reserves the right to amend, supplement, or modify these invalidity contentions based on any claim construction positions that Bright Data may take in this case. NetNut further reserves the right to amend, supplement, or modify these invalidity contentions after the Asserted Claims have been construed by the Court.

The citations to the prior art provided in these invalidity contentions are intended to be illustrative, but not exhaustive. Where NetNut cites a particular drawing, figure, or table, the citation encompasses the description of the drawing, figure, or table, as well as any text associated with the drawing, figure, or table, in the relevant prior art reference. Similarly, where NetNut cites particular text concerning a table or figure in a prior art reference, the citation encompasses that table or figure as well. Also, where NetNut cites any portion of a prior art reference as disclosing a particular limitation, that citation applies with equal weight to all similar or identical instances of the limitation in each of the Asserted Claims of the Asserted Patents.

NetNut has endeavored to cite relevant portions of the identified prior art references, but each item of identified prior art is relied upon for all that it teaches or suggests. Uncited portions and embodiments of the identified prior art may additionally disclose, either expressly or inherently, and/or render obvious one or more elements or limitations of the Asserted Claims. NetNut reserves the right to rely upon additional uncited portions of the identified prior art to establish the invalidity of any asserted claim. Moreover, NetNut reserves the right to rely on uncited portions of the identified prior art, other art, or expert testimony to provide context for, or aid in understanding of, the cited portions of the identified prior art. NetNut also reserves the right to rely upon the knowledge of persons of ordinary skill in the relevant art as demonstrated by the Asserted Patents, testimony, treatises, published industry standards, and/or similar documents.

The obviousness combinations of references provided below under 35 U.S.C. § 103 are also intended to be illustrative, but not exhaustive. The identified prior art describes subject matter in the same art and addresses similar or related problems. The prior art references provide

solutions to those problems, which may be similar to other disclosed problems. There was ample reason to combine those references. Exemplary rationales for combining the references include, but are not limited to, teachings, suggestions and motivations in the prior art, common sense of a person of ordinary skill in the art (“POSITA” or “POSA”), the combination of prior art elements according to known methods to yield predictable results, the simple substitution of one known element for another to obtain predictable results, routine experimentation, and known work in the art that prompted predictable variations of it based on design incentives or other market forces. A skilled artisan would have had a reasonable expectation of success in reaching the alleged inventions of the Asserted Patents based on the prior art.

There are many combinations of the identified references and/or knowledge of persons skilled in the art that render the Asserted Claims obvious. NetNut reserves the right to use any such combinations in this action. Further, to the extent that Bright Data asserts that a limitation is not disclosed in a prior art reference, NetNut reserves the right to contend that the limitation is obvious based on the prior art reference and/or identify other references that may render the allegedly missing limitation obvious.

NetNut is unaware of any objective indicia that could support an assertion of non-obviousness of the Asserted Claims. NetNut reserves the right to respond to any evidence or argument from Bright Data regarding any alleged objective indicia of non-obviousness.

These invalidity contentions are based upon the alleged priority date of October 8, 2009, for the ’319, ’510, ’713, ’852, and ’346 patents, as alleged by Bright Data under its P.R. 3-1(e) disclosure. However, NetNut does not admit or concede that any of the Asserted Claims are entitled to that alleged priority date. Indeed, as discussed below in connection with certain prior art and other invalidity grounds, the Asserted Claims of the ’319, ’510, ’713, ’852, and ’346

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