

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETNUT LTD.,
Petitioner,

v.

BRIGHT DATA LTD,
(f/k/a LUMINATI NETWORKS, LTD.),
Patent Owner.

IPR2021-00458
Patent 9,241,044 B2

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

GIANNETTI, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

NetNut Ltd. (“Petitioner”) filed a Petition (Paper 1, “Pet.”) requesting an *inter partes* review of claims 81, 82, 87–100, and 108 (the “challenged claims”) of U.S. Patent No. 9,241,044 B2 (Ex. 1001, “the ’044 patent”). Patent Owner, Bright Data, Inc. (formerly known as Luminati Networks Ltd.),¹ filed a Preliminary Response (Paper 8, “Prelim. Resp.”). With authorization of the panel, Petitioner filed a Reply (Paper 9, “Pet. Supp. Reply”) and Patent Owner a Sur-reply (Paper 10, “PO Supp. Sur-Reply”), addressing a specific argument raised by Patent Owner in the Preliminary Response. *See* Section III, *infra*.

The Board has authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314; 37 C.F.R. § 42.4(a). Under 35 U.S.C. § 314(a), we may not authorize an *inter partes* review unless the information in the petition and the preliminary response “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 stated below, we determine that Petitioner has established a reasonable likelihood that it would prevail with respect to at least one challenged claim. We therefore institute *inter partes* review as to all of the challenged claims of the ’044 patent and all of the asserted grounds of unpatentability in the Petition.

¹ Patent Owner advised the Board of the name change in an Updated Mandatory Notice. Paper 7. The Board considers this as a request to reform the caption, and accordingly grants the request. Going forward, the caption and further filings in this matter will reflect the name change.

II. BACKGROUND

A. Related Matters

The parties identify no pending district court proceedings involving the '044 patent. Pet. 1–3, Paper 4, 2. Patent Owner identifies three district court cases involving the '044 patent and a related patent (U.S. Patent No. 9,742,866 (“the '866 patent”): *Luminati Networks Ltd. v. UAB Tesonet*, No. 2:18-cv-299 (E.D. Texas) (closed); *Luminati Networks Ltd. v. BI Science Inc.*, No. 2:18-cv-483 (E.D. Texas) (final judgment recently entered, entering appeal stage)²; and *Luminati Networks Ltd. v. IP Ninja Ltd.*, No. 2:19-cv-196 (E.D. Texas) (closed). Paper 4, 2. Patent Owner identifies several additional cases (now dismissed) involving the '044 patent. Prelim. Resp. 2. The parties also identify numerous district court actions involving patents related to the '044 patent, including an action between Patent Owner and Petitioner involving patents other than the '044 patent and '866 patent. Pet. 2–4, Paper 4, 3.

The '044 patent was previously before the Board in IPR2020-00166 (terminated). Pet. 3; Prelim. Resp. 5. In addition, Patent Owner identifies other PTO proceedings involving patents related to the '044 patent, including IPR2021-00465, involving the '866 patent, in which, as here, the petitioner is NetNut Ltd. Paper 4, 2.

²² Patent Owner advises us that the appeal in this case has been suspended pending resolution by the district court of a dispute over the settlement agreement. Prelim. Resp. 2, 9–10.

B. Real Parties-in-Interest

Petitioner identifies NetNut Ltd. as the real party-in-interest. Pet. 1. Patent Owner identifies Bright Data Ltd. as the real party-in-interest. Paper 7, 1. At this stage, neither party challenges those identifications.

C. The '044 Patent (Ex. 1001)

The '044 patent is titled “System and Method for Improving Internet Communication by Using Intermediate Nodes.” Ex. 1001, (54). According to the Abstract, “[a]method for fetching a content from a web server to a client device is disclosed, using tunnel devices serving as intermediate devices.” *Id.* at (57). This is illustrated in Figure 5, following:

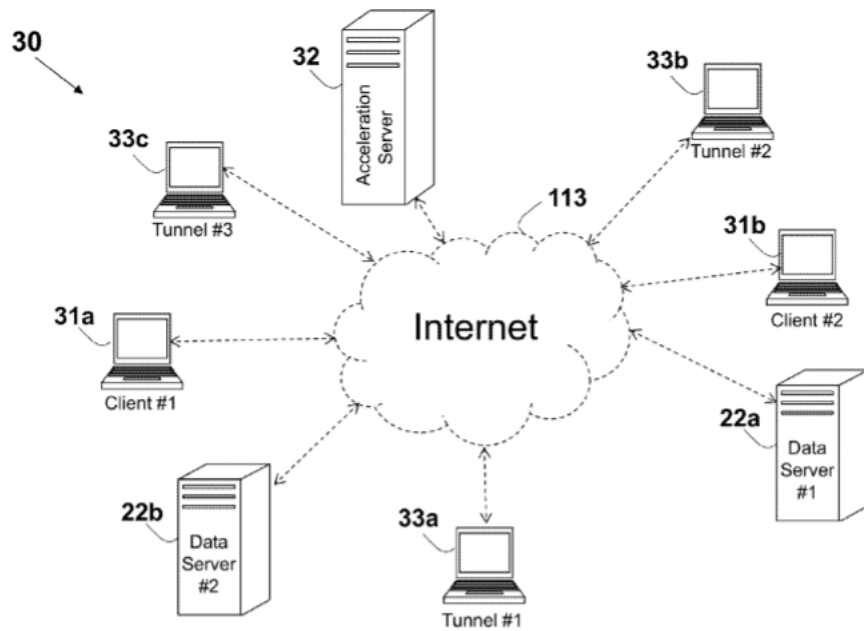


FIG. 5

Figure 5 depicts, schematically, client devices, tunnel devices, and servers connected to the Internet. Ex. 1001, 76:32–33. Figure 5 shows system 30 including client devices #1 and #2 (31a and 31b, respectively), that may access data servers 22a and 22b using one or more tunnel devices 33a, 33b,

33c, under the management and control of acceleration server 32. *Id.* at 81:32–41.

The client devices access the acceleration server to receive a list of available tunnel devices. *Id.* at (57). The requested content is partitioned into slices, and the client devices send a request for the slices to the available tunnel devices. *Id.* The tunnel devices in turn fetch the slices from the data server and send the slices to the client devices, where the content is reconstructed from the received slices. *Id.*

The patent further discloses that the functionality of any device described in the patent may be implemented using multiple physical devices. Ex. 1001, 93:50–51. One example is shown in Figure 13, following:

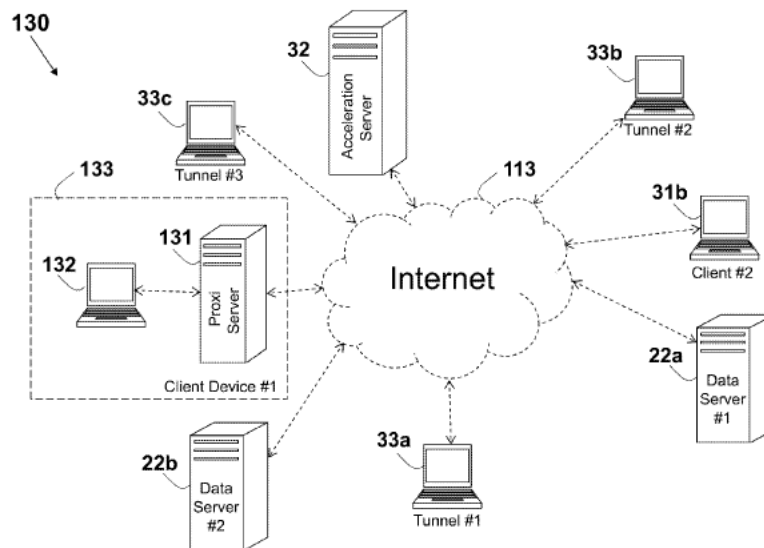


FIG. 13

Figure 13 depicts schematically client devices, tunnel devices, and servers connected to the Internet, where the client device is implemented using a proxy server. Ex. 1001, 77:4–6. As shown in Figure 13, the functionality of

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