UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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THE DATA COMPANY TECHNOLOGIES INC,
Petitioner,

v.

BRIGHT DATA LTD.,
Patent Owner.

_____

Case No. IPR2022-00135
Patent No. 10,257,319

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**PETITIONER'S OBJECTIONS TO PATENT OWNER'S
DEMONSTRATIVE EXHIBITS**

Pursuant to the Board's Trial Hearing Order (Paper 42), the parties met and conferred regarding Petitioner's Objections to Patent Owner's Demonstrative Exhibits (Ex. 2054, individual pages identified below as "slides") but were unable to resolve the following objections:

Slide 12

As PO conceded at the February 24, 2023 pre-hearing conference, none of the caselaw on slide 12 was mentioned or argued in the Patent Owner Response ("POR") or the Patent Owner ("PO") Sur-Reply, and the slide provides no citation to either document, while improperly referring to argument in a different proceeding, thus violating the "strict prohibition against the presentation of new evidence or arguments at the hearing" (Paper 42, 4).

- Relevant caselaw involving the interpretation of method claims:

    - *Thales Visionix, Inc. v. United States*, 850 F.3d 1343, 1349 (Fed. Cir. 2017)("[System claim 1 and method claim 22] specify a **particular configuration** of inertial sensors and a particular method of using the raw data from the sensors in order to more accurately calculate the position and orientation of an object on a moving platform. The mathematical equations are a consequence of the arrangement of the sensors and the unconventional choice of reference frame in order to calculate position and orientation. Far from claiming the equations themselves, **the claims seek to protect only the application of physics to the unconventional configuration** of sensors as disclosed.")(emphasis added)

    - *TecSec, Inc. v. Adobe Inc.*, 978 F.3d 1278, 1295 (Fed. Cir. 2020)("[Method claim 1] goes beyond managing access to objects using multiple levels of encryption, as required by "multilevel . . . security." Notably, it expressly requires, as well, accessing an "object-oriented key manager" and specified uses of a "label" as well as encryption for the access management ... **To disregard those express claim elements is to proceed at "a high level of abstraction" that is "untethered from the claim language" and that "overgeneraliz[es] the claim.**")(internal citations omitted)(emphasis added)

    - *Trading Techs. Int'l, Inc. v. CQG, Inc.*, 675 F. App'x 1001, 1004 (Fed. Cir. 2017) ("The [method] claims require a specific, structured graphical user interface paired with a prescribed functionality directly related to the graphical user interface's structure that is addressed to and resolves a specifically identified problem in the prior state of the art.")

    - *Diamond v. Diehr*, 450 U.S. 175, 188, 101 S. Ct. 1048, 1057-58 (1981)("...claims must be considered as a whole. It is inappropriate to dissect the claims into old and new elements and then to ignore the presence of the old elements in the analysis. This is particularly true in a process claim because a new combination of steps in a process may be patentable even though all the constituents of the combination were well known and in common use before the combination was made.")

- Issue raised at oral argument in IPR2022-00138 and not previously disputed by the parties (*see, e.g., In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016)("the Board must base its decision on arguments that were advanced by a party, and to which the opposing party was given a chance to respond"); *see also* EX. 1007

Slide 13

As PO conceded at the February 24, 2023 pre-hearing conference, none of the case law (or the patent challenged in the case) on slide 13 was mentioned or argued in the POR or the PO Sur-Reply, and the slide provides no citation to either document, while improperly referring to argument in a different proceeding, thus violating the "strict prohibition against the presentation of new evidence or arguments at the hearing" (Paper 42, 4).

- A method claim is limited to specific recited structures and connections between those structures for purposes of anticipation, *see, e.g., BlephEx, LLC v. Myco Indus.*, 24 F.4th 1391 (Fed. Cir. 2022):

  – Claim 16 of U.S. Patent No. 10,449,087 recites: "A method of treating an eye for an ocular disorder with a swab operably connected to an electromechanical device, wherein the eye has an eyelid margin and includes a removable debris, the method comprising: effecting movement of the swab relative to the electromechanical device, the swab having at least a portion thereof configured to access a portion of the eyelid margin; and while the swab is being moved by the electromechanical device, contacting a portion of the eyelid margin that includes the removable debris with the swab thereby impacting the debris with the swab to remove debris from the eye." *Id.* at 1395.

  – "It is not enough for anticipation purposes to say that an "applicator/device/wand" may dispense a composition "directly to . . . an eye area tissue, from a dispenser" where the claims require a swab connected to an electromechanical device used to contact the eyelid margin." *Id.* at 1401.

  – "None of the paragraphs identified by Myco on appeal describe a swab that is both operably connected to an electromechanical device and used to contact the eyelid margin, as required by claim 16." *Id.* at 1402.

- Issue raised at oral argument in IPR2022-00138 and not previously disputed by the parties (*see, e.g., In re Magnum Oil Tools Int'l, Ltd.*, 829 F.3d 1364, 1381 (Fed. Cir. 2016)("the Board must base its decision on arguments that were advanced by a party, and to which the opposing party was given a chance to respond"); *see also* EX. 1007

<u>**Slide 17**</u>

PO's (1) characterization of its argument to the district court in a different
proceeding, (2) the argument from the different proceeding (which PO block
quotes and improperly incorporates by reference in a demonstrative), (3) the case
law cited in PO's bullet, and (4) the page (Ex. 1007 at 26) that PO block quotes,
were never mentioned or discussed in the POR or the PO Sur-Reply, including at
pages cited with a "*see also*" as the purported source of this material, thus violating
the "strict prohibition against the presentation of new evidence or arguments at the
hearing" (Paper 42, 4).

- Patent Owner had explained to the Court that the '319 Patent claims operate within a unique distributed architecture with specific components at specific locations relative to each other (EX. 1007 at 26 (citing *Amdocs Isr. Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1303 (Fed. Cir. 2016)):

> *BASCOM,* *Visual Memory,* *Finjan,* *Core Wireless,* and *Amdocs.* Luminati's patents are akin to the analysis in *Amdocs*, which held, "The collection, filtering, aggregating, and completing steps all depend upon the invention's *unique distributed architecture*—the same architecture outlined in our earlier analysis of the '065 patent. An understanding of how this is accomplished is only possible through an examination of the claims in light of the written description." *Amdocs*, at 1303 (emphasis added). *See also DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245 (Fed. Cir. 2014) (use of Internet was not abstract when claim language viewed in light of specification); *Aatrix*, 882 F.3d at 1128 (computer program not abstract as claimed); *Freeny v. Fossil Grp., Inc.*, 2019 U.S. Dist. LEXIS 36688, at *11-13 (E.D. Tex., Feb. 12, 2019) (rejecting Defendants' argument that because the claim only asserted generic or conventional computer components" because "the components are used to perform a specific improvement over the prior art.").
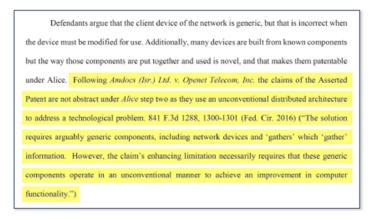
- *See also, e.g.,* POR at 1, 3, 8, 16-17, 23, 27-28, 44-45; Sur-reply at 7-8

<u>**Slide 18**</u>

PO's (1) characterization of its argument to the district court in a different proceeding, (2) the argument from the different proceeding (which PO block quotes and improperly incorporates by reference in a demonstrative), (3) the case law cited in PO's bullet, and (4) the page (Ex. 1007 at 30) that PO block quotes, were never mentioned or discussed in the POR or the PO Sur-Reply, including at pages cited with a "*see also*" as the purported source of this material, thus violating the "strict prohibition against the presentation of new evidence or arguments at the hearing" (Paper 42, 4).

- Patent Owner had explained to the Court that the proxy client devices of the '319 Patent claims operate in an unconventional manner (EX. 1007 at 30 (citing *Amdocs Isr. Ltd. v. Openet Telecom, Inc.*, 841 F.3d 1288, 1300-1301 (Fed. Cir. 2016)):

> Defendants argue that the client device of the network is generic, but that is incorrect when the device must be modified for use. Additionally, many devices are built from known components but the way those components are put together and used is novel, and that makes them patentable under Alice. Following *Amdocs (Isr.) Ltd. v. Openet Telecom, Inc.* the claims of the Asserted Patent are not abstract under *Alice* step two as they use an unconventional distributed architecture to address a technological problem. 841 F.3d 1288, 1300-1301 (Fed. Cir. 2016) ("The solution requires arguably generic components, including network devices and 'gathers' which 'gather' information. However, the claim's enhancing limitation necessarily requires that these generic components operate in an unconventional manner to achieve an improvement in computer functionality.")

- *See also, e.g.*, POR at 1, 3, 8, 16-17, 23, 27-28, 44-45; Sur-reply at 7-8

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