

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE DATA COMPANY TECHNOLOGIES INC.,
Petitioner,

v.

BRIGHT DATA LTD.,
Patent Owner.

IPR2022-00135
Patent 10,257,319 B2

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

CASS, *Administrative Patent Judge*.

JUDGMENT

Final Written Decision
Determining All Challenged Claims Unpatentable
Granting Motions to Seal
Granting Motion to Exclude
35 U.S.C. § 318(a); 37 C.F.R. § 42.14; 37 C.F.R. § 42.64

I. INTRODUCTION

A. Background

In this *inter partes* review, The Data Company Technologies Inc. (“Petitioner”) challenges the patentability of claims 1–29 (the “challenged claims”) of U.S. Patent No. 10,257,319 B2 (Ex. 1001, “the ’319 patent”), which is assigned to Bright Data Ltd. (“Patent Owner”).

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision, issued pursuant to 35 U.S.C. § 318(a), addresses issues and arguments raised during the trial in this *inter partes* review. For the reasons discussed below, Petitioner has proven by a preponderance of the evidence that claims 1–29 are unpatentable.

B. Procedural History

In this proceeding, Petitioner relies upon the following references:

1. Plamondon, U.S. Patent Application Publication US 2008/0228938 A1, published September 18, 2008 (Ex. 1010).
2. RFC 2616, *Hypertext Transfer Protocol—HTTP/1.1*, Network Working Group, The Internet Society, 1999 (Ex. 1018).
3. RFC 1122, *Requirements for Internet Hosts—Communication Layers*, Network Working Group, Internet Engineering Task Force, 1989 (Ex. 1014).
4. IEEE 802.11-2007, *IEEE Standard for Information Technology—Telecommunications and Information Exchange Between Systems - Local and Metropolitan Area Networks—Specific Requirements—Part 11: Wireless LAN Medium Access Control (MAC) and Physical Layer (PHY) Specifications*, IEEE Standards, June 12, 2007 (Ex. 1022).
5. Price, U. S. Patent Application Publication US 2006/0026304 A1, published February 2, 2006 (Ex. 1023).
6. Kozat, U. S. Patent Application Publication US 2009/0055471 A1, published February 26, 2009 (Ex. 1024).

Petition (“Pet.”) viii, 2.

Petitioner submitted a declaration from Prof. David Levin (Ex. 1003, “Levin Decl.”). Patent Owner submitted a Declaration of Dr. V. Thomas Rhyne with the Preliminary Response (Ex. 2001, “Rhyne Decl.”), and submitted a declaration from Dr. Tim A. Williams with the Patent Owner Response (Ex. 2044, “Williams Decl.”).

Petitioner challenges the Patentability of claims 1–29 on the following grounds:

Claim(s) Challenged	35 U.S.C. §¹	Reference(s)/Basis
1, 12–14, 21–27	102(b)	Plamondon
28, 29	103(a)	Plamondon
15–17	103(a)	Plamondon, RFC 2616
17, 18	103(a)	Plamondon, RFC 1122
2	103(a)	Plamondon, IEEE 802.11-2007
2–5, 19, 20	103(a)	Plamondon, Price
6–11	103(a)	Plamondon, Kozat

Pet. 2. Patent Owner filed a Preliminary Response. Paper 7 (“Prelim. Resp.”). With our permission, Petitioner filed a Reply to the Preliminary

¹ The Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 287–88 (2011), amended 35 U.S.C. §§ 102 and 103, effective March 16, 2013. Because the ’319 patent claims priority to a provisional application that was filed before this date, we apply the pre-AIA versions of §§ 102 and 103. *See* Ex. 1001, code (60).

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Response (Paper 8), and Patent Owner filed a Sur-reply to Petitioner's Reply (Paper 9).

During the trial, Patent Owner filed a Response (Paper 16, "PO Resp."), Petitioner filed a Reply (Paper 23, "Pet. Reply"), and Patent Owner filed a Sur-reply (Paper 29, "PO Sur-reply").

An oral hearing was held on March 1, 2023, a transcript of which appears in the record. Paper 48 ("Tr.").

C. Real Parties-in-Interest

Petitioner identifies itself as the only real party-in-interest. Pet. xiv. Without conceding that they are real parties in interest, Petitioner also identifies Avantis Team Technologies Ltd. and Cytronix Ltd. *Id.*

Patent Owner identifies Bright Data Ltd. as the only real party-in-interest. Paper 4, 1.

D. Related Matters

The parties identify several district court proceedings involving the '319 patent and its child, U.S. Patent No. 10,484,510 ("the '510 patent"),² including *Bright Data Ltd. v. NetNut Ltd.*, No. 2:21-cv-225 (E.D. Tex.) (the "NetNut Litigation"); and *Luminati Networks Ltd. v. Teso LT, UAB, et al.*, No. 2:19-cv-395 (E.D. Tex.) (the "Teso Litigation"). Pet. xv; Paper 4, 1–2.

The '319 patent is or was previously before the Board in IPR2020-01266 (institution denied), IPR2021-01492 (pending), IPR2022-00861 (joined with IPR2021-01492), IPR2022-00915 (pending), IPR2022-01109 (terminated) and IPR2023-00038 (terminated). Pet. xiv–xv; Paper 5, 1;

² The '510 patent is based on a continuation of the application for the '319 patent. Ex. 1025, code (60).

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Paper 39, 3. The '510 patent is or was involved in IPR2020-01358 (institution denied), IPR2021-01493 (pending), IPR2021-00862 (joined with IPR2021-01493), IPR2022-00916 (pending), IPR2022-01110 (terminated), and IPR2023-00039 (terminated). Paper 5, 1–2; Paper 39, 3–4.

In addition, Patent Owner identifies two *ex parte* reexaminations, Control Nos. 90/014,875 and 90/014,876, that have been ordered for the '319 and '510 patents, respectively. Paper 5, 2. Those reexaminations have since been stayed by the Board. *See* IPR2021-01492, Paper 14 (Apr. 7, 2022); IPR2021-01493, Paper 13 (Apr. 7, 2022).

E. The '319 Patent

The '319 patent is titled “System Providing Faster and More Efficient Data Communication.” Ex. 1001, (54). According to the '319 patent, there is a “need for a new method of data transfer that is fast for the consumer, cheap for the content distributor and does not require infrastructure investment for ISPs.” *Id.* at 1:54–56. The patent states that other “attempts at making the Internet faster for the consumer and cheaper for the broadcaster,” such as proxy servers and peer-to-peer file sharing, have various shortcomings. *Id.* at 1:58–59; 2:24–2:32; 2:59–3:3.

The '319 patent describes a system and method “for faster and more efficient data communication within a communication network,” such as in the network illustrated in Figure 3, reproduced below (*id.* at 4:41–44):

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