

Filed on behalf of Petitioner by:

Paper No. ____

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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.

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

**PETITIONER'S OBJECTIONS TO EVIDENCE
SERVED WITH PATENT OWNER'S RESPONSE**

Pursuant to 37 C.F.R. § 42.64(b)(1), Petitioner objects to evidence served in connection with the Patent Owner's Response on August 24, 2022. These objections have been timely filed and served within five business days of service of the evidence to which the objections are directed.

I. Exhibits 2044 and 2020

Petitioner objects to Exhibit 2044, the Declaration of Dr. Tim A. Williams. Petitioner also objects to Exhibit 2020, which purports to be an appendix to Exhibit 2044.

Petitioner objects to ¶¶ 77, 82, 119, 121-126, 128-129, 229-235 and Exhibit 2020 under Fed. R. Evid. 702 and 703 as unhelpful, not based on sufficient facts or data, and not the product of reliable principles and methods, to the extent this testimony relies on documents that have not been established as authentic under Fed. R. Evid. 901(a), that are not relevant to an issue in this proceeding under Fed. R. Evid. 401, or that lack foundation.

Petitioner further objects to ¶¶ 121, 123-126, 128-129, 229-230, 234-235, and Exhibit 2020 under Fed. R. Evid. 702 to the extent that Dr. Williams bases this testimony on reliance on the work of others, including Mr. Matt McKune or source code reviewers, whose competence and expertise has not been established.

Petitioner objects to ¶¶ 122-123, 126, 128-129, 229-234, and Exhibit 2020 as reciting out of court statements from others, or the content of documents, for the

truth of the matter asserted, making the testimony hearsay under Fed. R. Evid. 801, and inadmissible Fed. R. Evid. 802.

Petitioner objects to ¶¶ 77, 82, 119, 121-126, 128-129, 229-235 and Exhibit 2020 as lacking foundation.

II. Exhibits 2014-2025 and 2029-2043

Petitioner objects to each of Exhibits 2014-2025 and 2029-2043 as lacking foundation.

III. Exhibits 2014, 2018-2019, 2025, and 2028-2043

Petitioner objects to each of Exhibits 2014, 2018-2019, 2025, and 2028-2043 for these reasons:

- Each of these exhibits is inadmissible because Patent Owner has failed to authenticate any of these exhibits in accordance with Fed. R. Evid. 901(a). Patent Owner has not produced evidence sufficient to support a finding that each Exhibit is what Patent Owner claims it is; has not explained what each document is; has not provided evidence regarding the origin or preservation each document; has not established that each is a true and accurate copy; and has not otherwise authenticated each document.
- To the extent Patent Owner attempts during this proceeding to rely on any statement within these exhibits as evidence to prove the truth of

the matter asserted, such statement is hearsay under Fed. R. Evid. 801 and is inadmissible under Fed. R. Evid. 802.

- Due to at least these deficiencies, Patent Owner has failed to establish that these exhibits are relevant under Fed. R. Evid. 401, and therefore the exhibits are inadmissible under Fed. R. Evid. 402.

IV. Exhibits 2015-2017 and 2045

Petitioner objects to each of Exhibits 2015-2017 and 2045 under Fed. R. Evid. 401 and 402 because Patent Owner has not established that these exhibits are relevant to any issue in this proceeding. Specifically, the Patent Owner relies on these exhibits as evidence of the knowledge of a person having ordinary skill in the art (POSA). Because Patent Owner takes the position that the date of invention for each challenged claim is October 8, 2009, Patent Owner has failed to demonstrate that Exhibit 2015 (dated 2022), Exhibit 2016 (dated 2022), Exhibit 2017 (dated 2015), or Exhibit 2045 (dated 2011) have any relevance to the knowledge of a POSA in 2009.

V. Exhibits 2021-2024

Petitioner objects to each of Exhibits 2021-2024 for these reasons:

- Each of these exhibits is inadmissible because Patent Owner has failed to authenticate any of these exhibits in accordance with Fed. R. Evid. 901(a). Patent Owner has not produced evidence sufficient to support

a finding that each Exhibit is what Patent Owner claims it is; has not explained what each document is; has not provided evidence regarding the origin or preservation each document; has not established that each is a true and accurate copy; and has not otherwise authenticated each document.

- For at least these reasons, Patent Owner has failed to establish that these exhibits are relevant under Fed. R. Evid. 401, and therefore the exhibits are inadmissible under Fed. R. Evid. 402.
- Petitioner further objects to these exhibits because they are misleading and incomplete under Fed. R. Evid. 106 and therefore, even if they were admissible under Fed. R. Evid. 401, would be inadmissible under Fed. R. Evid. 403.

VI. Exhibits 2026-2027

Petitioner objects to Exhibits 2026-2027 because they are misleading and incomplete under Fed. R. Evid. 106 and therefore, even if they were admissible under Fed. R. Evid. 401, would be inadmissible under Fed. R. Evid. 403. It is improper for Patent Owner to attempt to rely on partial trial transcripts without providing Petitioner access to the full, unredacted transcripts of the trial.

Petitioner further objects to Exhibits 2026-2027 as violating 37 C.F.R. § 42.53. Rule 42.53(a) states that uncompelled direct testimony “must be submitted

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