

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETNUT LTD.,
Petitioner,

v.

BRIGHT DATA LTD.,
Patent Owner.

IPR2021-01492
Patent 10,257,319 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 2, “Pet.”) requesting *inter partes* review of claims 1, 2, 12, 14, 15, 17–19, and 21–29 (the “challenged claims”) of U.S. Patent No. 10,257,319 B2 (Ex. 1001, “the ’319 patent”). Patent Owner, Bright Data Ltd.,¹ filed a Preliminary Response (Paper 9, “Prelim. Resp.”). With authorization from the panel, Petitioner filed a preliminary Reply (Paper 10, “Pet. Prelim. Reply”), and Patent Owner filed a preliminary Sur-reply (Paper 11, “PO Prelim. Sur-reply”).

The Board has authority to determine whether to institute *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 claim. We therefore institute *inter partes* review as to all of the challenged claims of the ’319 patent and all of the asserted grounds of unpatentability in the Petition.

II. BACKGROUND

A. Related Matters

The parties identify several district court proceedings involving the ’319 patent and a related patent, U.S. Patent No. 10,484,510 (“the ’510 patent”), including *Bright Data Ltd. v. NetNut Ltd.*, No. 2:21-cv-225 (E.D.

¹ Bright Data Ltd. was formerly known as Luminati Networks, Ltd. *See* Pet. 1; Prelim. Resp. 11 n.8.

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Tex.) (the “NetNut Litigation”);² and *Luminati Networks Ltd. v. Teso LT, UAB, et al.*, No. 2:19-cv-395 (E.D. Tex.) (the “Teso Litigation”). Pet. 2–3; Paper 4, 1–2.

The parties also identify a number of district court actions involving patents related to the ’319 patent. *See* Pet. 3–4; Paper 4, 2–3.

The ’319 patent was previously before the Board in IPR2020-01266 (institution denied). Pet. 4; Paper 4, 1. The ’510 patent is involved in IPR2021-01493 (pending), and was previously before the Board in IPR2020-01358 (institution denied). Pet. 5; Paper 4, 1. The parties also identify a number of other USPTO proceedings involving patents related to the ’319 patent. *See* Pet. 4–5; Paper 4, 2.

In addition, Patent Owner identifies *ex parte* reexaminations requested for the ’319 and ’510 patents, respectively, Control No. 90/014,875 and Control No. 90/014,876. Paper 6, 1–2; Prelim. Resp. 17.

B. Real Parties-in-Interest

Petitioner identifies NetNut Ltd. as the only real party-in-interest. Pet. 2. Patent Owner identifies Bright Data Ltd. as the only real party-in-interest. Paper 4, 1. At this stage, neither party challenges those identifications.

C. The ’319 Patent (Ex. 1001)

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

² Patent Owner alternatively refers to this case as the “NetNut II Litigation.” *See* Prelim. Resp. 25.

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):

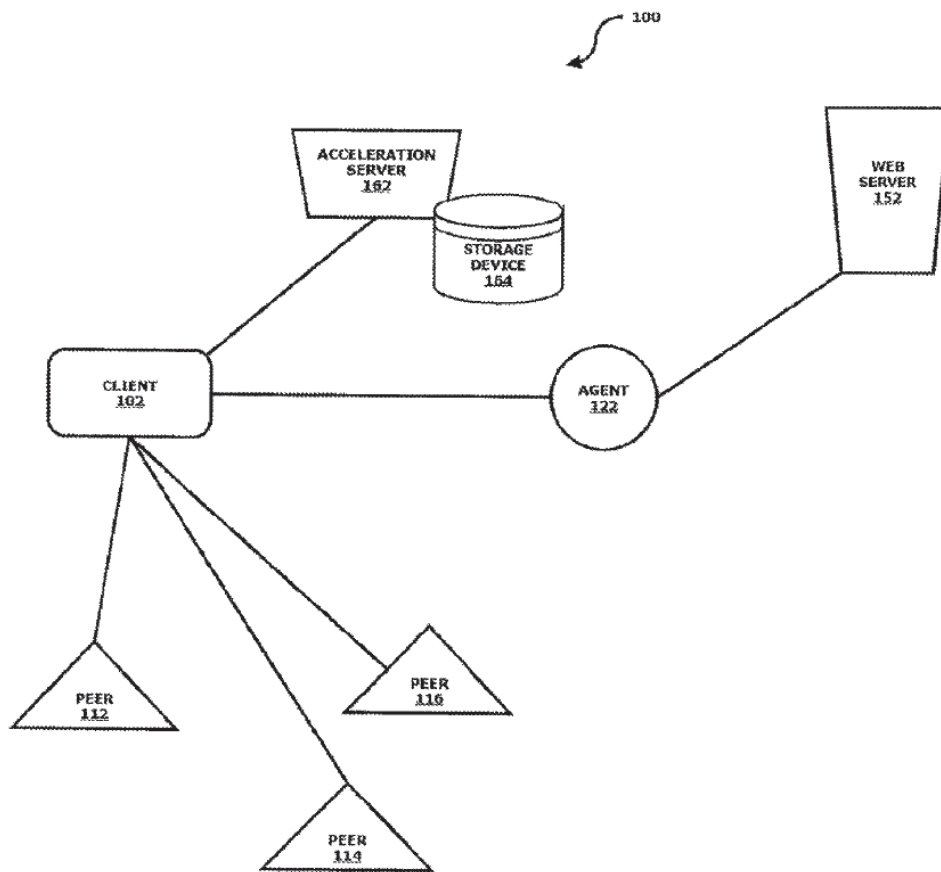


FIG. 3

Figure 3 is a schematic diagram depicting communication network 100 including a number of communication devices. *Id.* at 4:43–45. Due to the functionality provided by software stored within each communication

device, “each device may serve as a client, peer, or agent, depending upon requirements of the network 100.” *Id.* at 4:46–50.

Client 102 is capable of communicating with peers 112, 114, and 116, as well as with one or more agents 122. *Id.* at 4:56–58. Web server 152 may be “a typical HTTP server, such as those being used to deliver content on any of the many such servers on the Internet.” *Id.* at 4:63–67.

Acceleration server 162 includes an acceleration server storage device 164 with an acceleration server database, which “stores Internet Protocol (IP) addresses of communication devices within the communication network 100 having acceleration software stored therein.” *Id.* at 5:8–14.

In operation, a client may request a resource on the network, for example, through the use of an Internet browser. *See id.* at 12:62–13:3. If server 152 is the target of the request, the client sends the IP address of server 152 to acceleration server 162. *Id.* at 13:8–15. Acceleration server 162 then prepares a list of agents that can handle the request, which includes communication devices “that are currently online, and whose IP address is numerically close to the IP of the destination Web server 152.” *Id.* at 13:19–29. The client then sends the original request to the agents in the list to find out which “is best suited to be the one agent that will assist with this request.” *Id.* at 13:31–36.

Each agent responds to the client with information which “can help the client to download the requested information from peers in the network.” *Id.* at 13:53–57. “Specifically, each agent responds with whether the agent has seen a previous request for this resource that has been fulfilled. In such a case, the agent may then provide the client with the list of peers and checksums of the chunks that each of them have.” *Id.* at 13:57–61.

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