

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 IPR2022-00135

Patent No. 10,257,319

PATENT OWNER'S REPLY TO PAPER 27

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Patent Owner respectfully submits this Reply to Petitioner's Partial Opposition (Paper 27) to Patent Owner's Motion to Seal (Paper 26). Petitioner opposes Patent Owner's redactions and designation to EX. 1081, the deposition transcript of Patent Owner's expert, Dr. Williams. *See generally* Paper 27.

As discussed herein, the limited redactions do not diminish the understandability of the public record. The limited redactions balance the strong public policy interest with Patent Owner's interest in protecting its highly sensitive information. Further, the designation is appropriate at least because the petitioner is a market competitor and should not be given access to highly sensitive, technical details about Patent Owner's source code and commercial services.

I. REDACTIONS GENERALLY

Patent Owner made good faith efforts to limit the redactions as much as possible. Paper 26 at 12. The redactions are sufficiently tailored to protect Patent Owner's highly sensitive information, including specific, non-public details regarding Patent Owner's source code and the operation of Patent Owner's commercial services. Paper 26 at 6-8. These specific details comprise competitively valuable information that Patent Owner maintains confidentially and desires to continue to maintain confidentially. Patent Owner would be harmed by disclosing these specific details because that would enable other market competitors to replicate its commercial services, e.g., operation of Bright Data's

SuperProxy. Paper 26 at 9-10; *Unified Patents Inc. v. American Patents LLC*, IPR2019-00482, Paper 132 at 65 (PTAB Aug. 3, 2022)(“*American*”); *Unified Patents, Inc. v. Uniloc 2017 LLC*, IPR2017-02148, Paper 76 at 10 (PTAB Apr. 12, 2019). As discussed in the Motion, the petitioner appears to be developing its own “super proxy”. See Paper 26 at 10. As further discussed below, the redactions are appropriate and necessary.

Petitioner did not rely on the redacted testimony in its Reply. Paper 23. Patent Owner does not intend to rely on the redacted testimony in its forthcoming Sur-Reply. The redactions do not diminish the understandability of the public record. Overall, the public’s interest is outweighed by the prejudicial effect disclosing the redacted testimony would have on Patent Owner.

A. PETITIONERS CITED CASES ARE NOT APPLICABLE

Petitioner cited three cases that are not applicable at least because Patent Owner provided limited redactions with explanations. The thrust of the underlying arguments between the parties are clearly discernable to the public and the redactions do not obscure the gist of the arguments made in the papers.

First, Petitioner cited *Apple v. Corephotonics*, IPR2020-00905, Paper 30 (June 21, 2021). The patent owner moved to seal exhibits **in their entirety** with **no explanation** as to why the information was confidential. *Id.* at 5 and 6. The Board denied the patent owner’s motion to seal **without prejudice** and authorized the

patent owner to file a renewed motion to seal. *Id.* at 2 and 8. The Board explained that redactions should be made “in a manner that allows the thrust of any underlying argument or evidence to be clearly discernible.” *Id.* at 8

Second, Petitioner cited *Netflix v. DivX*, IPR2020-00052, Paper 33 (Apr. 30, 2020). Petitioner specifically cited to the Board’s summary of **Patent Owner’s arguments**, not a statement or analysis by the Board. *Id.* at 7. The dispute between the parties related to identification of a third party as a real party-in-interest. The petitioner sought to seal the exhibits **in their entirety** and provided redactions to its papers. *Id.* at 6 and 10. The Board noted that the third party does not consistently protect this type of information. *Id.* at 7. The Board also noted that the third party issued a press release, making it clear that a relationship between the third party and the petitioner exists. *Id.* at 8. The Board found that the redactions in the papers would “unnecessarily obscure[] the gist of the arguments made in the papers”. *Id.* at 9. The Board ordered the petitioner to file redacted versions of the exhibits and corrected redacted versions of the papers. *Id.* at 12.

Third, Petitioner cited *Western Digital v. Kuster*, IPR2020-01391, Paper 28 (Aug. 19, 2021). The Board found there was no showing that harm would be caused **to the patent owner** because the motion was filed **by the petitioner**, not the patent owner. *Id.* at 3. The Board found that there was no showing that the patent owner sought to protect the information. *Id.* at 4. The Board stated that the

patent owner may seek authorization to file a motion to seal. *Id.* at 4.

II. REDACTIONS SPECIFICALLY

The redactions generally fall into two categories: one relates to the programming language, which Petitioner does not dispute is non-public information, and the second relates to the technical details of Bright Data’s services, which Petitioner alleges are already public.

Regarding EX. 1081 at 46:13-17; the programming language chosen by Patent Owner is a highly sensitive, technical detail of Bright Data’s source code. Paper 26 at 6. Patent Owner has taken steps to maintain the confidentiality of such details and wishes to maintain that confidentiality. Additionally, it is appropriate to redact subsequent testimony from which the specific programming language can be readily ascertained. *American* at 63.

Regarding EX. 1081 at 62:5-63:14; 77:24-78:25; 93:5-95:18; 96:9-97:18; Patent Owner refers to its earlier explanations in the Motion. Paper 26 at 6-8. The public can understand “the thrust” of Patent Owner’s nexus arguments, e.g., EX. 2020 and EX. 2044, such that the public has access to “a materially complete and understandable file history even given the redactions”. *Corning Optical Commn’s LLC v. Dali Wireless, Inc.*, IPR2021-00762, Paper 37 at 3 (PTAB Oct. 11, 2022). The specific details in the redacted testimony are not necessary for a complete understanding of the issues to be resolved in this proceeding. *Eisai Inc. v. Crystal*

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