

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

BRIGHT DATA LTD.

Plaintiff,

v.

TEFINCOM S.A. D/B/A NORDVPN

Defendant.

Case No. 2:19-cv-00414-JRG



**PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT ON CERTAIN
INVALIDITY GROUNDS**

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Pursuant to Rule 56, Plaintiff respectfully moves for partial summary judgment of no invalidity of U.S. Patent Nos. 10,257,319 (the “’319 Patent”), 10,484,510 (the “’510 Patent”), 10,484,511 (the “’511 Patent”), 10,469,614 (the “’614 Patent”), and 10,637,968 (the “’968 Patent”) (collectively, the “Patents-in-Suit”) with regard to the following grounds:

- a) lack of patent eligibility under 35 U.S.C. § 101.
- b) anticipation/obviousness of the ’319 Patent based on *Crowds*;
- c) anticipation/obviousness of the ’510 Patent based on *Crowds*;
- d) anticipation/obviousness of the ’511 Patent based on *Crowds*;
- e) anticipation/obviousness of the ’319 Patent based on *MorphMix*;
- f) anticipation/obviousness of the ’510 Patent based on *MorphMix*;
- g) anticipation/obviousness of the ’614 Patent based on *MorphMix*; and
- h) anticipation/obviousness of the ’968 Patent based on *MorphMix*

As addressed separately in Plaintiff’s Motion to Strike Certain Invalidity Opinions of Expert Dr. Michael J. Freedman (“Motion to Strike”), Defendant has not provided an expert opinion sufficient to support the above grounds for invalidity. To the extent that the Motion to Strike is granted, there is no genuine dispute of material fact as to invalidity on the above grounds and Bright Data respectfully requests that summary judgment of no invalidity be granted.

I. STATEMENT OF ISSUES TO BE DECIDED BY THE COURT

1. Whether the Court should grant summary judgment as to lack of patent eligibility under 35 U.S.C. § 101 of the asserted claims of the ’319, ’510, ’511, ’614 and ’968 Patents.
2. Whether the Court should grant summary judgment as to anticipation/obviousness of the asserted claims of the ’319, ’510, and/or ’511 Patents based on *Crowds: Anonymity for Web Transactions* (“*Crowds*”) if the Court grants Plaintiff’s concurrently filed Motion to Strike.
3. Whether the Court should grant summary judgment as to anticipation/obviousness

of the asserted claims of the '319, '510,'614, and/or '968 Patents based on *MorphMix – A Peer-to-Peer-based System for Anonymous Internet Access* (“*MorphMix*”) if the Court grants Plaintiff’s concurrently filed Motion to Strike.

II. STATEMENT OF UNDISPUTED FACTS (“SUF”)

SUF 1: Defendant relies upon the opinions of Dr. Freedman for its invalidity and obviousness claims against the Patents-in-Suit and Defendant has not served an invalidity report from any other expert.

SUF 2: Dr. Freedman provided an opinion that the asserted claims of the '511 and '968 Patents are invalid as unpatentable under 35 U.S.C. § 101. Ex. A, Freedman Report, ¶¶ 484-496.

SUF 3: Dr. Freedman provided an opinion that all dependent claims of the '510 and '614 Patents are invalid as unpatentable under 35 U.S.C. § 101, but did not provide an opinion that the independent claims of the '510 and '614 Patents are invalid under 35 U.S.C. § 101. *Id.* Dr. Freedman did not provide an opinion that any of the '319 Patent claims are invalid under 35 U.S.C. § 101. *Id.*

SUF 4: The Court issued an order denying Defendant’s Rule 12(b)(6) Motion to Dismiss Amended Complaint (“Motion to Dismiss”), which asserted invalidity of the Patents-in-Suit under 35 U.S.C. § 101. Ex. B, Dkt. No. 84. In its order, the Court incorporated the reasoning from its orders denying 101 invalidity for the same patents in the cases of *Bright Data Ltd. v. Teso et al.*, No. 2:19-cv-395, Dkt. No. 303 (E.D. Tex. Dec. 30, 2020) (*Teso* Action Order, Ex. C) and *Bright Data Ltd. v. Code200, UAB et al.*, No. 2:19-cv-396, Dkt. No. 98 (E.D. Tex. Dec. 30, 2020) (*Code200* Action Order, Ex. D) explaining:

[T]he method claims of the '319, '510, and '614 Patents, “while including generic computers and common Internet communication protocols, recite a broader network that is itself the claimed improvement. Rather than a mere categorization

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