

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

Bright Data Ltd.,

Plaintiff,

v.

**Teso LT, UAB, Oxysales, UAB and
Metacluster LT, UAB,**

Defendants.

**Civil Action No.
2:19-cv-00395-JRG**

REVISED JOINT PRETRIAL ORDER

Plaintiff Bright Data Networks Ltd. (“Bright Data”), and Defendants Teso LT, UAB (“Teso”), Oxysales, UAB (“Oxysales”) and Metacluster LT, UAB (“Metacluster”) (Defendants collectively, “Oxylabs” or “Defendants”) (Bright Data and Defendants, collectively, the “Parties”) hereby submit this Amended Joint Pretrial Order pursuant to the Court’s First Amended Docket Control Order (ECF No. 379) and the Court’s Order on Pretrial Motions (ECF No. 476).

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B. STATEMENT OF JURISDICTION

This Court has subject matter jurisdiction over the action brought by Bright Data pursuant to 28 U.S.C. §§ 1331 and 1338(a), because this action arises under the patent laws of the United States, including 35 U.S.C. § 1 *et seq.* The parties do not dispute that, with respect to Bright Data’s claims, the Court has personal jurisdiction over Bright Data, Teso, Oxysales, and Metacluster and that venue is proper in this judicial district.

Oxylabs further asserts that, with respect to Oxylabs’ counterclaims, personal jurisdiction exists over Bright Data, the Court has subject-matter jurisdiction, and venue is proper.

C. NATURE OF ACTION

1. Bright Data’s Statement:

This is a patent infringement case related to Internet Protocol (“IP”) proxy technology, and specifically residential proxy services (“Residential Proxy Services”) that use client devices as proxies in Internet communication. Plaintiff Bright Data alleges that Defendants’ Residential Proxy and Real-Time Crawler services (“Accused Instrumentalities”) infringe claims 1 and 26 of U.S. Patent No. 10,257,319 (the “319 Patent”), claims 1 and 22 of U.S. Patent No. 10,484,510 (the “510 Patent”) and 1, 6, 11, 16, 20 and 26 of U.S. Patent No. 10,469,614 (the “614 Patent”), collectively “Asserted Patents” and “Asserted Patent Claims” respectively). Bright Data asserts that Defendants directly or indirectly infringe the Asserted Patent Claims under 25 U.S.C. § 271(a) and/or (b) as Defendants have and continue to use, provide, sell, and offer to sell the Accused

Instrumentalities using residential proxies (client device) located in the United States, induce their customers to infringe the same Asserted Patent Claims through the use of the Accused Instrumentalities, induce their partners and residential proxy suppliers to infringe the Asserted Patent Claims through their support of the Accused Instrumentalities, and import into the United States software development kits (“SDKs”) used to cause client devices in the United States to serve as residential proxies in support of the Accused Instrumentalities.

Defendants assert counterclaims of invalidity and non-infringement regarding the Asserted patent Claims, as well as a counterclaim of unenforceability of the ’614 Patent based on Defendants’ allegations of inequitable conduct. Bright Data denies these counterclaims and Defendants defenses.

2. Defendants’ Statement:

Bright Data accuses Oxylabs of infringing Claims 1, 6, 11, 16, 20 and 26 of the ’614 Patent; Claims 1 and 26 of the ’319 Patent; and Claims 1 and 22 of the ’510 Patent (collectively, the “Asserted Claims” and the ’614 Patent, the ’319 Patent, and the ’510 Patent, collectively, the “Patents-in-Suit”).

The accused products are Teso’s residential proxy service and Metacluster’s real-time crawler service when operated over Teso’s residential proxy service (collectively, the “Accused Products”). Oxylabs denies that it infringes (whether directly or indirectly, willfully or otherwise) the Patents-in-Suit and further contends that Patents-in-Suit are invalid and not patent eligible under 35 U.S.C. § 101. Oxylabs further asserts that the ’614 Patent is unenforceable due to inequitable conduct. Oxylabs further asserts that Bright Data’s claims for relief are limited by 35 U.S.C. §§ 286-287 and/or 28 U.S.C. § 1498, prosecution-history estoppel, extraterritoriality principles, and/or the disclosure-dedication doctrine.

Oxylabs asserts declaratory judgment claims against Bright Data under the Declaratory Judgment Act, 28 U.S.C. §§ 2201(a) and 2202. Oxylabs seeks a declaratory judgment that the Patents-in-Suit are not infringed and invalid, and that the '614 Patent is unenforceable due to inequitable conduct.

D. CONTENTIONS OF THE PARTIES

1. Plaintiff Bright Data's contentions

Infringement claims and damages:

1. Bright Data contends that Defendants directly infringe the Asserted Patent Claims, literally and/or under the doctrine of equivalents, in violation of 35 U.S.C. § 271 including at least § 271(a) because Defendants have used, uses, offered for sale, offers for sale, imported, imports, sells and/or has sold the Accused Instrumentalities in the United States; and § 271(b) because Defendants have and continues to actively induced their customers and residential proxy suppliers to infringe the Asserted Patent Claims.
2. Bright Data contends that it has been damaged by the offers for sale and sales of the Accused Instrumentalities and is entitled to past damages equal to at least its lost profits and not less than a reasonable royalty under 35 U.S.C. § 284 for the time beginning on April 9, 2019 when Defendants first infringed the '319 Patent, beginning on November 5, 2019 when Defendants first infringed the '614 Patent, and beginning November 19, 2019 when Defendants first infringed the '510 Patent.
3. Bright Data further contends that it is and has been being irreparably harmed by the offers for sale and sales of the Accused Instrumentalities and that no remedy at law would suffice to compensate Bright Data for the ongoing harm to its business.

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