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

BRIGHT DATA LTD.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. 2:19-CV-00395-JRG
	§	
TESO LT, UAB, METACLUSTER LT, UAB, OXYSALES, UAB,	§	
	§	
Defendants.	§	

ORDER

Before the Court is Plaintiff Bright Data Ltd.'s ("Bright Data") Motion for a Preliminary and Permanent Injunction Against Infringement (the "Motion") (Dkt. No. 529). Having considered the Motion, the related briefing, and the applicable law, the Court is of the opinion that the Motion should be **DENIED**.

I. BACKGROUND

On December 6, 2019, Bright Data filed its complaint against Defendants Teso LT, UAB, Metacluster LT, UAB, and Oxysales, UAB (collectively, "Oxylabs") asserting infringement of U.S. Patent Nos. 10,257,319 (the "'319 Patent"), 10,484,510 (the "'510 Patent"), and 10,469,614 (the "'614 Patent") (collectively, the "Asserted Patents") in addition to other causes of action. (Dkt. No. 1). After discovery and subsequent case narrowing, the parties filed *Daubert* and dispositive motions for consideration at the pre-trial conference. (*See generally* Dkt. No. 469).

As a part of the pre-trial conference, Bright Data asserted two damages models regarding the cost of Oxylabs's alleged infringement. (*Id.* at 136:11–20). First, Bright Data asserted that it was entitled to recover lost profits from Oxylabs. (*Id.*). Alternatively, Bright Data asserted that it was entitled to recover a reasonable royalty for Oxylabs's infringement. (*Id.*). In support of such damages, it was noted that Bright Data's expert, Dr. Stephen Becker, opined that "a reasonable royalty for [Oxylabs's] use of the [Asserted Patents] is a per-unit running royalty of $2.46 per GB of traffic" on Oxylabs's accused services. (Dkt. No. 236-1 at ¶ 186). However, after hearing argument on Oxylabs's Motion to Strike Expert Opinions of Stephen L. Becker, Ph.D. (Dkt. No. 236) (the "Motion to Strike"), the Court found that certain portions of the reasonable royalty analysis were not sufficiently tied to the statutory mandate of 35 U.S.C. § 284 because Dr. Becker failed to apportion the value added by the Asserted Patents to Oxylabs's accused services. (Dkt. No. 469 at 145:22–149:22, 157:4–164:5, 166:9–167:9). As a result, the Court granted-in-part Oxylabs's Motion to Strike and struck paragraphs 161, 162, and 184 as well as exhibits SLB-4A and SLB-4B from Dr. Becker's report. (Dkt. No. 476 at 6). At no time during the initial pre-trial conference held on August 31, 2021 or the final pre-trial conference held on October 29, 2021 did Bright Data ask for (or even raise the possibility of) injunctive relief. (*See generally* Dkt. Nos. 469, 505).

The case proceeded to trial before a jury beginning on November 1, 2021. As a consequence of the Court's ruling on Oxylabs's Motion to Strike, Bright Data elected to proceed at trial only on its lost profits theory asserting that it was entitled to $9,343,595.00 in lost profits. (Dkt. No. 529-11 at 4). At the conclusion of the trial, the jury returned a verdict finding that Oxylabs infringed at least one claim of the Asserted Patents, that none of the Asserted Patents were invalid, and that Oxylabs's infringement was willful. (Dkt. No. 516). The jury also awarded Bright Data $7,474,876.00 in lost profits as compensation for such infringement. (*Id.*).

After trial and the return of the verdict, Bright Data then filed the instant Motion requesting: (1) that the Court enter a preliminary injunction enjoining Oxylabs from offering its accused services until the Court entered its Final Judgement, and (2) that the Court enter a permanent injunction enjoining Oxylabs from "offering in the United States the Residential Proxies, Residential 'exit nodes,' or Residential 'Minions' adjudged to have infringed the Asserted Patents" in this case. (Dkt. No. 529-19 at 1). Following the trial, the Court ordered Bright Data and Oxylabs—as well as other defendants in co-pending suits brought by Bright Data—to mediate their disputes. (Dkt. No. 528). On December 12, 2021, the Court stayed all deadlines in the case—including briefing on the instant Motion—to allow the parties to focus their efforts on the mediation scheduled for January 6, 2022. (Dkt. No. 543).

The parties were unable to resolve their disputes at the January 6th mediation, and the Court lifted the stay as to the instant Motion for injunctive relief. (Dkt. No. 567 at 2). Briefing on the Motion was complete on January 14, 2022, and the Court scheduled a hearing regarding the same for February 4, 2022. (*Id.*). At the hearing, the Court heard oral argument from both Bright Data and Oxylabs addressing the Motion. (*See generally* Dkt. No. 574).

II. LEGAL STANDARD

The Patent Act provides that in cases of patent infringement a Court "may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable." 35 U.S.C. § 283. To obtain injunctive relief, the patentee must show: "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). The patentee must prove that it meets all four equitable factors, and it must do so on the merits of its particular case. *Nichia Corp. v. Everlight Americas, Inc.*, 855 F.3d 1328, 1340 (Fed. Cir. 2017).

III. DISCUSSION

"[T]he issues of irreparable harm and adequacy of remedies at law are inextricably intertwined" and, as such, are often discussed together.[1] *ActiveVideo Networks, Inc. v. Verizon Comms. Inc.*, 694 F.3d 1312, 1337 (Fed. Cir. 2012). Here, the briefing and the arguments at the hearing before the Court often addressed these factors in unison. (*See* Dkt. No. 569 at 4 n.4; *see also* Dkt. No. 574 at 26:3–13, 30:14–24). Accordingly, the Court discusses these two factors together.

1. Irreparable Injury and Inadequacy of Remedies at Law

The parties do not dispute that they compete in the same Internet Protocol proxy network (IPPN) marketplace. (Dkt. No. 529-8 at 4; Dkt. No. 529-9 at 41:6–12; *compare* Dkt. No. 529 at 5, *with* Dkt. No. 569 at 12). Bright Data argues that its injuries are irreparable because any loss of market share, brand recognition, and goodwill are too difficult to calculate given Oxylabs's status as a competitor. (Dkt. No. 529 at 4, 6–7) (citing *Presidio Components, Inc. v. Am. Tech. Ceramics Corp.*, 702 F.3d 1351, 13 (Fed. Cir. 2012); *TEK Glob., S.R.L. v. Sealant Sys. Int'l*, 920 F.3d 777, 793 (Fed. Cir. 2019) (noting that "head-to-head competition and lost market share tend to evidence irreparable harm")). Further, Bright Data asserts that the competition between the parties also indicates that monetary damages are inadequate. (*Id.* at 11) (citing *Retractable Techs. Inc. v. Occupational & Med. Innovations, LTD*, 2010 U.S. Dist. Lexis 82069, at *13 (E.D. Tex. Aug. 11, 2010)). In light of Oxylabs's statements that it continues offering its accused services, Bright Data

[1] Such entwinement is intuitive—the ability to adequately measure a certain injury in terms of monetary damages undermines a conclusion that such harm is irreparable. *See also Johnson & Johnson Vision Care, Inc. v. CIBA Vision Corp.*, 712 F. Supp. 2d 1285, 1287 (M. D. Fla. 2010) ("In many cases, and in this one, the issues of irreparable injury and the adequacy of monetary damages necessarily overlap.") (citation omitted).

asserts than an injunction is the only adequate remedy to address its harm and that enforcing a monetary judgment against a foreign Lithuanian defendant would be "difficult, if not impossible." (*Id.* at 1, 5–6, 12; Dkt. No. 529-4).

Oxylabs responds that Bright Data's overly simple rationale would open the door to a permanent injunction in every case involving competitors and return the Court to the "general rule that courts [should] issue permanent injunctions against patent infringement absent exceptional circumstances" previously rejected by the Supreme Court in *eBay*. (Dkt. No. 569 at 1). Oxylabs argues that Bright Data has not met its burden to show irreparable injury or inadequacy of monetary relief because Bright Data only points to harms that are commonly quantified in terms of monetary damages—such as loss of market share, loss of sales, and lost profits. (*Id.* at 11–12) (citing *Novartis Pharms. Corp. v. Teva Pharms. USA, Inc.*, 2007 WL 2669338, at *14 (D.N.J. Sept. 6, 2007) ("Both loss of market share and price erosion are economic harms that are compensable by money damages."), *aff'd*, 280 Fed. App'x 996 (Fed. Cir. 2008) (per curiam)). Next, Oxylabs argues that Bright Data's own conduct—such as its purported willingness to license the Asserted Patents across the industry[2]—establishes that licensing fees and other forms of monetary relief are adequate compensation for any infringement of the Asserted Patents. (*Id.* at 9–10) (citing *Nichia Corp.*, 855 F.3d at 1343; *Johnson & Johnson*, 712 F. Supp. at 1289–90). Finally, Oxylabs argues that Bright Data has not proven any inability to successfully pursue and enforce a monetary judgment against it in Lithuania—other than its unsupported assertion that because Oxylabs is based in Lithuania monetary damages are difficult or impossible to collect. (*Id.* at 10–11).

[2] *See, e,g,*, Dkt. No. 569-4 at 2 ("[Bright Data] is willing to discuss licensing of the above patents on reasonable terms."), 3–4 ("The [previous] letter informed you of some of [Bright Data's] patents and offered a license on reasonable terms. . . . "[Bright Data] is willing to discuss licensing of the above patents (regarding past and future products) on reasonable terms.").

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