

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CODE200, UAB; TESO LT, UAB; METACLUSTER LT,
UAB; OXYSALES, UAB; AND CORETECH LT, UAB,
Petitioner,

v.

BRIGHT DATA LTD.,
Patent Owner.

IPR2022-00861
Patent 10,257,319 B2

Before THOMAS L. GIANNETTI, SHEILA F. McSHANE, and
RUSSELL E. CASS, *Administrative Patent Judges*

McSHANE, *Administrative Patent Judge*.

DECISION

Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

Denying Motion for Joinder
35 U.S.C. § 315(c); 37 C.F.R. § 42.122

I. INTRODUCTION

Code200, UAB, Teso LT, UAB, Metacluster LT, UAB, Oxysales, UAB, and Coretech LT, UAB (“Petitioner” or “Code200”) filed a Petition for *inter partes* review of claims 1, 2, 12, 14, 15, 17–19, and 21–29 of U.S. Patent No. 10,257,319 B2 (Ex. 1001, “the ’319 patent”). Paper 1 (“Pet.”). Patent Owner filed a Preliminary Response. Paper 15 (“Prelim. Resp.”). With the Petition, Petitioner also filed a Motion for Joinder with *NetNut Ltd. v. Bright Data Ltd.*, IPR2021-01492 (“the 1492 IPR”). Paper 7 (“Mot.”). Bright Data Ltd. (“Patent Owner”) filed an Opposition to the Motion for Joinder. Paper 11 (“Opp.”). Petitioner filed a Reply to Patent Owner’s Opposition. Paper 13 (“Reply”).

We have authority under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” Under 35 U.S.C. § 315(b), “[a]n inter partes review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent.” Section 315(b) further provides that “[t]he time limitation set forth in the preceding sentence shall not apply to a request for joinder under subsection (c).” Additionally, under 35 U.S.C. § 315(c), “the Director, in his or her discretion, may join as a party to that inter partes review any person who properly files a petition under section 311 that the Director . . . determines warrants the institution of an inter partes review under section 314.”

For the reasons described below, we do not institute an *inter partes* review of the challenged claims and we deny Petitioner’s Motion for Joinder.

II. RELATED PROCEEDINGS

The ’319 patent has been the subject of numerous proceedings in district court and the Board. We summarize these proceedings below.

A. *Teso Litigation*

The parties indicate that there are several related district court litigations involving the ’319 patent, including, most particularly, *Bright Data Ltd. v. Teso LT, UAB*, 2:19-cv-00395-JRG (E.D. Tex.) (“the Teso litigation”). Pet. 3; Mot. 2; Paper 16 (Updated Mandatory Notices), 3. In the Teso litigation, Bright Data Ltd., the Patent Owner here, sued defendants, Teso LT, UAB, Metacluster LT, UAB, Oxysales, UAB, and Coretech LT, UAB, some of the petitioner group here, for infringement of the ’319 patent, as well as U.S. Patent Nos. 10,484,510 and 10,469,614. Mot. 2. In the Teso litigation, a jury trial was conducted, and the issue of whether claims 1 and 26 of the ’319 patent were invalid in view of the Crowds reference asserted here (*see infra*) was presented by the defendants. *Id.* The jury found that that the defendants did not prove that these claims were invalid by clear and convincing evidence. *Id.*

B. *1266 IPR*

The parties identify IPR2020-01266 (“the previously-filed 1266 IPR”), filed by Petitioner, which challenged certain claims of the ’319 patent. Mot. 3; Paper 16, 1; Opp. 8. The previously-filed 1266 IPR was denied on discretionary grounds. Mot. 3.

C. '319 Patent Reexamination

The parties also indicate that the '319 patent is the subject of an *ex parte* reexamination, Control No. 90/014,875, which has been stayed. Mot. 5; Paper 16, 2.

D. 1492 IPR

In the 1492 IPR, the case to which Petitioner is seeking joinder, we instituted an *inter partes* review of claims 1, 2, 12, 14, 15, 17–19, and 21–29 of the '319 patent on the following grounds:

Claim(s)	35 U.S.C. §	References/Basis
1, 19, 21–29	102 ¹	Crowds ²
1, 2, 14, 15, 17–19, 21–29	103	Crowds, RFC 2616 ³
1, 12, 14, 21, 22, 24, 25, 27–29	103	Border ⁴
1, 12, 14, 15, 17–19, 21, 22, 24, 25, 27–29	103	Border, RFC 2616
1, 17, 19, 21–29	103	MorphMix ⁵
1, 2, 14, 15, 17–19, 21–29	103	MorphMix, RFC 2616

¹ Because the application from which the '319 patent issued has an earliest effective filing date before March 16, 2013 (Ex. 1001, (60)), citations to 35 U.S.C. §§ 102 and 103 are to the pre-AIA versions. Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29.

² Michael Reiter & Aviel Rubin, *Crowds: Anonymity for Web Transactions*, ACM Transactions on Information and System Security, Vol. 1, No. 1 (Nov. 1998) (Ex. 1006, “Crowds”).

³ Hypertext Transfer Protocol–HTTP/1.1, Network Working Group, RFC 2616, The Internet Society, 1999 (Ex. 1013, “RFC 2616”).

⁴ U.S. Patent No. 6,795,848 B1 (Sep. 21, 2004) (Ex. 1012, “Border”).

⁵ Marc Rennhard, *MorphMix – A Peer-to-Peer-based System for Anonymous Internet Access* (2004) (Ex. 1008, “MorphMix”).

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NetNut Ltd. v. Bright Data Ltd., IPR2021-01492, Paper 12 at 7–8, 39 (PTAB Mar. 21, 2022) (“1492 Decision” or “1492 Dec.”).

Patent Owner settled with NetNut in the 1492 IPR, and NetNut has been terminated as Petitioner in that action. 1492 IPR, Paper 20.

E. 1109 IPR

There is also a newly-filed petition pending in IPR2022-01109, which challenges claims of the ’319 patent based on Plamondon (“the 1109 IPR”), filed by Petitioner. *Code200, UAB v. Bright Data Ltd.*, IPR2022-01109, Paper 1, 9. In the 1109 IPR, Petitioner seeks joinder with previously-instituted case IPR2022-00135 (“the 135 IPR”), which was filed by The Data Company Technologies Inc. *Id.*, Paper 7. The Board has not yet determined whether to grant institution and joinder in the 1109 IPR.

F. 135 IPR

In the 135 IPR, The Data Company Technologies Inc. filed a petition challenging certain claims of the ’319 patent based on Plamondon. As noted, institution was granted in the 135 IPR and Petitioner seeks to join it in the 1109 IPR.

G. Major Data IPR

There is also another pending *inter partes* review challenge to the ’319 patent, filed by Major Data UAB, which also seeks joinder with the 1492 IPR. *Major Data UAB v. Bright Data Ltd.*, IPR2022-00915, Paper 3 (PTAB April 21, 2022) (“the Major Data IPR”). No decision has been rendered on institution or the joinder motion in that case.

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