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

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|---|---|---|
| BRIGHT DATA LTD. | § | |
| *Plaintiff*, | § | |
| v. | § | Case No. 2:21-CV-225-JRG-RSP |
| NETNUT LTD. | § | |
| *Defendant*. | § | |

**CLAIM CONSTRUCTION ORDER**

On April 21, 2022, the Court held a hearing to determine the proper construction of disputed terms in United States Patents No. 10,257,319, 10,484,510, 10,491,713, 11,050,852, and 11,044,346. Before the Court is the Opening Claim Construction Brief (Dkt. No. 106) filed by Plaintiff Bright Data Ltd. Also before the Court is the Responsive Claim Construction Brief (Dkt. No. 115) filed by Defendant NetNut Ltd. as well as Plaintiff's reply (Dkt. No. 118). Further before the Court are the parties' Patent Rule 4-3 Joint Claim Construction Statement (Dkt. No. 93) and the parties' Patent Rule 4-5(d) Joint Claim Construction Chart (Dkt. No. 123, Ex. A). Having reviewed the arguments made by the parties at the hearing and in their claim construction briefing, having considered the intrinsic evidence, and having made subsidiary factual findings about the extrinsic evidence, the Court hereby issues this Claim Construction Order. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (en banc); *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 135 S. Ct. 831, 841 (2015).



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## I. BACKGROUND

Plaintiff alleges infringement of United States Patent Nos. 10,257,319 ("the '319 Patent") 10,484,510 ("the '510 Patent"), 10,491,713 ("the '713 Patent"), 11,050,852 ("the '852 Patent") and 11,044,346 ("the '346 Patent") (collectively, the "patents-in-suit") (Dkt. No. 106, Exs. A–E).

Plaintiff submits that the patents-in-suit relate to "new methods for fetching content from a target server over the Internet using intermediary proxies including third-party client devices, such as an individual's cell phone, in order to make the request from the intermediary proxy instead of the original requestor." Dkt. No. 106 at 1.



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Defendant submits that "[t]he patents are generally directed to speeding up Hypertext Transfer Protocol ('HTTP') requests by requesting the content directly from a peer who already has the content in its cache, rather than accessing it from a web server." Dkt. No. 115 at 1.

The '319 Patent, titled "System Providing Faster and More Efficient Data Communication," issued on April 9, 2019, and bears an earliest priority date of October 8, 2009. The Abstract of the '319 Patent states:

> A system designed for increasing network communication speed for users, while lowering network congestion for content owners and ISPs. The system employs network elements including an acceleration server, clients, agents, and peers, where communication requests generated by applications are intercepted by the client on the same machine. The IP address of the server in the communication request is transmitted to the acceleration server, which provides a list of agents to use for this IP address. The communication request is sent to the agents. One or more of the agents respond with a list of peers that have previously seen some or all of the content which is the response to this request (after checking whether this data is still valid). The client then downloads the data from these peers in parts and in parallel, thereby speeding up the Web transfer, releasing congestion from the Web by fetching the information from multiple sources, and relieving traffic from Web servers by offloading the data transfers from them to nearby peers.

The parties submit that all five of the patents-in-suit are related and share the same specification. *See* Dkt. No. 106 at 2 n.1; *see also* Dkt. No. 115 at 2.

"Bright Data asserts infringement of independent claim 1 and dependent claims 2, 14, 15, 17, 18, 21, 22, 23, 24, 25, 26, and 27 of the '319 Patent, independent claim 1 and dependent claims 2, 8, 9, 10, 11, 15, 16, 18, 19, 20, 22, and 23 of the '510 Patent, independent claim 1 and dependent claims 11, 24, and 27 of the '713 Patent, independent claim 1 and dependent claims 14, 25, and 28 of the '852 Patent, and independent claim 1 and dependent claims 15, 17, 20, 22, 23, 24, 25, and 26 of the '346 Patent." *Id.* at 6.

The Court previously construed disputed terms in the '319 Patent and the '510 Patent in *Luminati Networks, Ltd. v. Teso LT, UAB, et al.*, No. 2:19-CV-395, Dkt. No. 191 (E.D. Tex.



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Dec. 7, 2020) ("*Teso CC Order*"), and *Bright Data Ltd. v. Teso LT, UAB, et al.*, No. 2:19-CV-395, Dkt. No. 453 (E.D. Tex. Aug. 6, 2021) ("*Teso Supplemental CC Order*" or "*Teso Suppl. CC Order*").

Shortly before the start of the April 21, 2022 hearing, the Court provided the parties with preliminary constructions with the aim of focusing the parties' arguments and facilitating discussion. Those preliminary constructions are noted below within the discussion for each term.

## II. LEGAL PRINCIPLES

"It is a 'bedrock principle' of patent law that 'the claims of a patent define the invention to which the patentee is entitled the right to exclude.'" *Phillips*, 415 F.3d at 1312 (quoting *Innova/Pure Water Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1115 (Fed. Cir. 2004)). Claim construction is clearly an issue of law for the court to decide. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 970–71 (Fed. Cir. 1995) (en banc), *aff'd*, 517 U.S. 370 (1996). "In some cases, however, the district court will need to look beyond the patent's intrinsic evidence and to consult extrinsic evidence in order to understand, for example, the background science or the meaning of a term in the relevant art during the relevant time period." *Teva*, 135 S. Ct. at 841 (citation omitted). "In cases where those subsidiary facts are in dispute, courts will need to make subsidiary factual findings about that extrinsic evidence. These are the 'evidentiary underpinnings' of claim construction that we discussed in *Markman*, and this subsidiary factfinding must be reviewed for clear error on appeal." *Id.* (citing 517 U.S. 370).

To determine the meaning of the claims, courts start by considering the intrinsic evidence. *See Phillips*, 415 F.3d at 1313; *see also C.R. Bard, Inc. v. U.S. Surgical Corp.*, 388 F.3d 858, 861 (Fed. Cir. 2004); *Bell Atl. Network Servs., Inc. v. Covad Commc'ns Group, Inc.*,



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262 F.3d 1258, 1267 (Fed. Cir. 2001). The intrinsic evidence includes the claims themselves, the specification, and the prosecution history. *See Phillips*, 415 F.3d at 1314; *C.R. Bard*, 388 F.3d at 861. Courts give claim terms their ordinary and accustomed meaning as understood by one of ordinary skill in the art at the time of the invention in the context of the entire patent. *Phillips*, 415 F.3d at 1312–13; *accord Alloc, Inc. v. Int'l Trade Comm'n*, 342 F.3d 1361, 1368 (Fed. Cir. 2003).

The claims themselves provide substantial guidance in determining the meaning of particular claim terms. *Phillips*, 415 F.3d at 1314. First, a term's context in the asserted claim can be very instructive. *Id.* Other asserted or unasserted claims can aid in determining the claim's meaning because claim terms are typically used consistently throughout the patent. *Id.* Differences among the claim terms can also assist in understanding a term's meaning. *Id.* For example, when a dependent claim adds a limitation to an independent claim, it is presumed that the independent claim does not include the limitation. *Id.* at 1314–15.

"[C]laims 'must be read in view of the specification, of which they are a part.'" *Id.* at 1315 (quoting *Markman*, 52 F.3d at 979). "[T]he specification 'is always highly relevant to the claim construction analysis. Usually, it is dispositive; it is the single best guide to the meaning of a disputed term.'" *Phillips*, 415 F.3d at 1315 (quoting *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996)); *accord Teleflex, Inc. v. Ficosa N. Am. Corp.*, 299 F.3d 1313, 1325 (Fed. Cir. 2002). This is true because a patentee may define his own terms, give a claim term a different meaning than the term would otherwise possess, or disclaim or disavow the claim scope. *Phillips*, 415 F.3d at 1316. In these situations, the inventor's lexicography governs. *Id.* The specification may also resolve the meaning of ambiguous claim terms "where the ordinary and accustomed meaning of the words used in the claims lack



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