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Paper 11
Entered: March 21, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NETNUT LTD.,
Petitioner,

v.

BRIGHT DATA LTD.,
Patent Owner.

IPR2021-01493
Patent 10,484,510 B2

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

McSHANE, *Administrative Patent Judge.*

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

I. INTRODUCTION

NetNut Ltd. ("Petitioner") filed a Petition (Paper 2, "Pet.") requesting *inter partes* review of claims 1, 2, 6–11, 13, and 15–24 (the "challenged claims") of U.S. Patent No. 10,484,510 B2 (Ex. 1001, "the '510 patent"). Patent Owner, Bright Data Ltd., filed a Preliminary Response (Paper 8, "Prelim. Resp."). With authorization, Petitioner filed a Reply (Paper 9, "Pet. Reply"), and Patent Owner filed a Sur-reply (Paper 10, "PO Sur-reply").

The Board has authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314; 37 C.F.R. § 42.4(a). Under 35 U.S.C. § 314(a), we may not authorize an *inter partes* review unless the information in the petition and the preliminary response "shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

For the reasons stated below, we determine that Petitioner has established a reasonable likelihood that it would prevail with respect to at least one claim. We therefore institute *inter partes* review as to all of the challenged claims of the '510 patent and all of the asserted grounds of unpatentability in the Petition.

II. BACKGROUND

A. Related Matters

The parties identify four district court proceedings involving the '510 patent and a related patent (U.S. Patent No. 10,257,319 ("the '319 patent")):

Bright Data Ltd. v. NetNut Ltd., No. 2:21-cv-225 (E.D. Tex.) (pending);

Luminati Networks Ltd. v. Teso LT, UAB, et al., No. 2:19-cv-395 (E.D. Tex.) (pending);

Luminati Networks Ltd. v. BI Science (2009) Ltd., No. 2:19-cv-397 (E.D. Tex.) (dismissed, but pending Rule 60 motion); and

Luminati Networks Ltd. v. Tefincom S.A., No. 2:19-cv-414 (E.D. Tex.) (pending).

Pet. 2–3; Paper 4, 1–2.

The '510 patent was previously before the Board in IPR2020-01358, where institution was denied. Pet. 4; Paper 4, 1. The related '319 patent is involved in IPR2021-01492, and was previously before the Board in IPR2020-01266, where institution was denied. Pet. 5; Paper 4, 1. Petitioner also identifies a number of other Board proceedings involving patents related to the '510 patent, as well as a number of other district court actions involving patents related to the '510 patent, including an action between Patent Owner (then known as Luminati Networks Ltd.) and Petitioner involving patents other that the '510 patent and '319 patent. *See* Pet. 3–5.

In addition, Patent Owner identifies *ex parte* reexaminations ordered for the '319 and '510 patents, respectively, Control No. 90/014,875 and Control No. 90/014,876. Prelim. Resp. 16.

B. The '510 Patent

The '510 patent is titled "System Providing Faster And More Efficient Data Communication" and issued on November 19, 2019 from an application filed on February 17, 2019. Ex. 1001, codes (22), (45), (54). The patent is subject to a terminal disclaimer. *Id*. at code (*). The application for the '866 patent claims priority to several applications, including U.S. Provisional Application No. 61/249,624, filed October 8, 2009. *Id*. at code (60).

The ’510 patent is directed to addressing the “need for a new method of data transfer that is fast for the consumer, cheap for the content distributor and does not require infrastructure investment for ISPs.” Ex. 1001, 1:57–59. The ‘’510 patent states that other “attempts at making the Internet faster for the consumer and cheaper for the broadcaster,” such as proxy servers and peer-to-peer file sharing, have various shortcomings. *Id.* at 1:61–3:6. The ’510 patent provides a system and method “for faster and more efficient data communication within a communication network,” such as in the network illustrated in Figure 3, reproduced below. *Id.* at 3:16–18, 4:5–7.

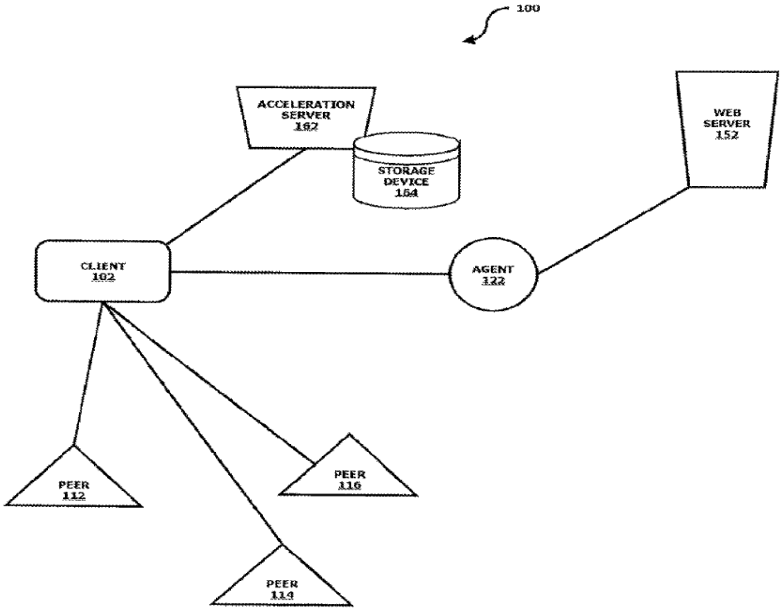

FIG. 3

Figure 3 is a schematic diagram depicting communication network 100 including a number of communication devices. Ex. 1001, 4:56–48. Client 102 is capable of communicating with peers 112, 114, and 116, as well as with one or more agents 122. *Id.* at 4:58–60. Web server 152 may be “a typical HTTP server, such as those being used to deliver content on any of the many such servers on the Internet.” *Id.* at 4:65–5:2. Acceleration server

162 includes an acceleration server storage device 164 with an acceleration server database, which "stores Internet Protocol (IP) addresses of communication devices within the communication network 100 having acceleration software stored therein." *Id.* at 5:14–17.

In operation, a client may request a resource on the network, for example, through the use of an Internet browser. Ex. 1001, 12:62–13:3. If server 152 is the target of the request, the client sends the IP address of server 152 to acceleration server 162. *Id.* at 13:8–15. Acceleration server 162 then prepares a list of agents that can handle the request, which includes communication devices "that are currently online, and whose IP address is numerically close to the IP of the destination Web server 152." *Id.* at 13:19–29. The client then sends the original request to the agents in the list to find out which "is best suited to be the one agent that will assist with this request." *Id.* at 13:31–36. The connection established between the agent and client may be a Transmission Control Protocol [TCP] connection. *Id*. at 17:61–64.

Each agent responds to the client with information as to "whether the agent has seen a previous request for this resource that has been fulfilled," and "which can help the client to download the request information from peers in the network." Ex. 1001, 13:51–57. The client selects an agent based on a number of factors, and the selected agent determines whether data stored in its memory or the memory of the peers "still mirrors the information that would have been received from the server itself for this request." *Id.* at 13:62–14:1, 14:35–38. If the selected agent does not have the necessary information to service a request, it may "load the information

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