

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

BRIGHT DATA LTD.

Plaintiff,

v.

TEFINCOM S.A. D/B/A NORDVPN

Defendants.

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Case No. 2:19-CV-00414-JRG

JOINT STATUS REPORT REGARDING MEDIATION

Pursuant to the Court’s March 16, 2022 mediation orders (“Mediation Order”)¹ entered in each of the *Bright Data Ltd. v. Teso LT, UAB et. al.*, Case No. 2:19-CV-00395 (“*Teso* Action”), *Bright Data Ltd. v. Code200, UAB et. al.*, Case No. 2:19-CV-00396 (“*Code200* Action”) and *Bright Data Ltd. v. Tefincom S.A.*, Case No. 2:19-CV-00396 (“*Tefincom* Action”) (collectively, “Related Actions”) and subsequent orders regarding the same, the Parties held an in-person mediation on August 24, 2022 before Judge Folsom regarding the Related Actions. Pursuant to the Court’s Mediation Order in the *Teso* Action, Plaintiff Bright Data Ltd. (“Bright Data”) and Defendants Teso LT, UAB, Metacluster LT, UAB and Oxysales, UAB (collectively, “Defendants”) respectfully file this Joint Status Report. As stated in Judge Folsom’s August 25, 2022 Mediation Report, “The mediation session ended in an impasse. No further follow up is anticipated.” *Teso* Action, Dkt. 586 at 1; *Code200* Action, Dkt. 277 at 1; *Tefincom* Action, Dkt. 214 at 1.

Remaining Disputes in *Tefincom* Action: The Parties have the following remaining disputes and other motions:

¹ A similar Mediation Order was entered in each of the *Teso* Action (Dkt. 580), *Code200* Action (Dkt. 270), and *Tefincom* Action (Dkt. 205).

- Defendants’ response and subsequent briefing to Bright Data’s pending Motion to Exclude Dr. Aviel Rubin (“Motion to Exclude Dr. Aviel Rubin,” November 18, 2021, Dkt. 179);
- The Parties’ Joint Stipulation and Motion for Entry of Order Addressing Claims and Parties to address Tefincom’s post-litigation reorganization (*See e.g.* Dkt. 183);
- Bright Data’s Second Amended Complaint (*See e.g.* Dkt. 183);
- Tefincom’s Answer to Second Amended Complaint (*See e.g.* Dkt. 183);
- The Parties exchange of Updated Exhibit Lists, Witness Lists and Deposition Designations;
- The Filing of the Joint Pretrial Order, Proposed Jury Instructions, and Joint Proposed Verdict Form; and
- Bright Data’s Motions *in Limine* (Dkt. 167)(Briefing is incomplete as Defendant has not filed its response to the motions);
- Defendants’ Motions *in Limine* (Dkt. 166)(Briefing is incomplete as Defendant has not filed its reply in support of the motions);
- Defendant’s motion for Summary Judgment of Noninfringement of the ‘319, ‘510, and ‘614 Patents (Dkt. 93);
- Bright Data’s Motion for Partial Summary Judgment on Certain Invalidity Grounds (Dkt. 92);
- Defendant’s Motion for Partial Summary Judgment of Noninfringement or in the Alternative Invalidity for the ‘511 Patent (Dkt. 91);
- Defendant’s motion to Exclude Opinions and Testimony of Dr. Vernon Thomas Rhyne, III (Dkt. 90);

- Bright Data's Motion to Strike Certain Invalidity Opinions of Dr. Michael J. Freedman (Dkt. 89);
- Defendant's motion to Exclude Opinions and Testimony of Dr. Stephen Becker (Dkt. 88);
- Defendant's Motion for Summary Judgment of Invalidity of the '319, '510, and '511 Patents (Dkt. 87);
- Bright Data's Motion to Strike Certain Non-Infringement Opinions of Dr. Kevin Almeroth (Dkt. 86);
- Bright Data's Daubert Motion to Exclude Expert Testimony of Keith R. Ugone (Dkt. 85);
- Bright Data's Motion for Leave to File Second Amended Infringement Contentions (Dkt. 75); and
- Bright Data requests the production of updated financials from Tefincom and anticipates filing a Motion for Updated Financials to the extent there is any dispute. Bright Data further anticipates updating its damages expert's calculations regarding the same.

Bright Data's Scheduling Proposal and Position in *Tefincom* Action: The Court's November 11, 2021 Order found "that a continuance is appropriate in light of the Jury Verdict in the Teso case and the parties' ongoing mediation efforts." ECF 181 at 1. Bright Data engaged in mediation in good faith, but the mediation concluded without any resolution with the mediator reporting "The mediation session ended in an impasse. No further follow up is anticipated." *Tefincom* Action, Dkt. 214 at 1. Consequently, Bright Data requests that the stay be lifted and the Court grant Bright Data's proposed schedule to proceed with resolution of the above disputes and trial.

Tefincom Action, Dkt. 205. Understanding that both the *Tefincom* and *Code200* Actions are in the pretrial phase, Bright Data proposes that the Court schedule the *Tefincom* trial first, because the *Tefincom* Action involves significantly higher damages and resolution of that case may reduce issues in the *Code200* Action.

Bright Data's Proposed Dates	Event
September 8, 2022	Parties file the Joint Stipulation and Motion for Entry of Order Addressing Claims and Parties; Defendant files its Opposition to Bright Data's <i>Motions in Limine</i> ; and Defendant files its Reply in Support of Defendants' <i>Motions in Limine</i> .
September 15, 2022	Parties Exchange Updated Exhibit Lists, Witness Lists and Deposition Designations; Bright Data files its Reply in Support of its Motion to Exclude Dr. Aviel Rubin; Bright Data files its Reply in Support of Its <i>Motions in Limine</i> ; Bright Data files its Second Amended Complaint; and Defendant produces updated financials.
September 22, 2022	Parties File Joint Pretrial Order, Joint Proposed Jury Instructions, and Joint Proposed Verdict Form; Parties file Surreplies to <i>Motions in Limine</i> ; and Defendant files its Surreply to the Motion to Exclude Dr. Aviel Rubin; Bright Data files its Motion for Updated Financials

September 29, 2022	Tefincom Files Answer to Second Amended Complaint
October 2022	Pretrial Conference
November 2022 – December 2022	Jury Selection and Trial

Having reached an impasse in the mediation, Defendant has no basis to request a continued stay based on a speculative appeal of the *Teso* Action or post-grant proceedings before the PTAB. The November 5, 2021 jury verdict upheld the validity of all asserted claims of the '319, '510, and '614 Patents. Despite the nine month delay since the jury verdict, defendants in the *Teso* Action have filed no motions challenging the jury finding of validity and Tefincom has no basis for asserting that this Court or the Federal Circuit will simplify any issues by overturning the jury verdict. Further, Defendant's requested administrative closure of the matter would clearly prejudice Bright Data as it would stay the case indefinitely. In addition, such an indefinite stay is unwarranted given the late stage of the litigation as both parties were preparing for the November 29, 2021 pretrial conference when the conference and trial were continued to accommodate mediation.

The IPRs and EPRs also do not warrant a stay under the factors described in *NFC Techs. LLC v. HTC Am., Inc.*, Case No. 2:13-cv-1058-WCB, 2015 U.S. Dist. LEXIS 29573, at *5 (E.D. Tex. Mar. 11, 2015) (Bryson, J.): (1) Bright Data will be prejudiced, (2) the litigation is in the advanced pre-trial phase, and (3) a stay will not likely simplify issues for the Court. None of the IPRs against the any Bright Data patents have resulted in a final written decision invalidating any of the patent claims or addressing any of the claim construction issues, and the earliest final written decision would not be expected before May 2023. Furthermore, the reexaminations (EPRs) of the

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