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

| | | |
|---|---|---|
| BRIGHT DATA LTD., | § | |
| | § | |
| *Plaintiff*, | § | |
| | § | |
| v. | § | |
| | § | Case No. 2:19-cv-00396-JRG |
| TESO LT, UAB, OXYSALES, UAB, and | § | |
| METACLUSTER LT, UAB | § | Case No. 2:19-cv-00395-JRG |
| | § | |
| | § | |
| CODE200, UAB ET AL., | § | |
| | § | |
| *Defendants*. | § | |

**SUPPLEMENTAL CLAIM CONSTRUCTION ORDER**

Before the Court are three motions regarding claim construction issues. The first motion is the Request for Clarification / Objections to Magistrate Judge Payne's Claim Construction Order ("Clarification Request") filed by Plaintiff Bright Data Ltd., formerly Luminati Networks Ltd. ("Plaintiff") in Case No. 2:19-cv-00396-JRG ("*Code200* Action"). **Dkt. No. 102**. Plaintiff's Clarification Request seeks clarification and revision of the Claim Construction Order (*Code200* Action, Dkt. No. 97) as to two construed terms: (1) U.S. Patent No. 10,484,511 (the "'511 Patent") claim 1 regarding "sending . . . the first content identifier to the web server using the selected IP address"; and (2) '511 Patent claim 25 regarding "source address." *Id.* at 4–8.

The second motion is the Motion for Hearing Regarding *O2 Micro* Issue ("Motion for Hearing") filed by Defendants Code200, UAB, Oxysales, UAB, and Metacluster LT, UAB (collectively, "Code200 Defendants") in the *Code200* Action and by Defendants Teso LT, UAB, Oxysales, UAB, and Metacluster LT, UAB (collectively, "Teso Defendants") (collectively, "Defendants") in Case No. 2:19-cv-00395-JRG ("*Teso* Action"). ***Code200* Action, Dkt. No. 234**; ***Teso* Action, Dkt. No. 444**. Defendants' Motion for Hearing asserts that Plaintiff's rebuttal

validity expert report takes a position as to the claim scope of "server" that requires the Court's intervention and requests four alleged clarifications that revise the Court's existing claim constructions for the terms "first server" and "second server" in certain patents. *Id.* at 1–2.

On April 20, 2021, the Court granted an unopposed motion for leave to supplement briefing on Plaintiff's Clarification Request. *Code200* Action, Dkt. No. 143. Accordingly, Plaintiff's Clarification Request briefing includes Code200 Defendants' Response (*Code200* Action, Dkt. No. 110), Plaintiff's Reply (*Code200* Action, Dkt. No. 163), and Defendants' Sur-Reply (*Code200* Action, Dkt. No. 179).

## I.       "Source Address"

During claim construction, Plaintiff proposed the term "source address" be construed to have its plain and ordinary meaning while Code200 Defendants sought a finding of indefiniteness. *Code200* Action, Dkt. No. 97 at 23. The Court construed "source address" to mean "address of the web server." *Id.* at 27. Plaintiff seeks to "clarify" that "source address" refers to "the IP address of the sender of a communication" and "not the IP address of the web server." *Code200* Action, Dkt. No. 102 at 6.

Plaintiff argues, as it asserts it did at oral argument, that the plain meaning of "source address" to a POSA is the sender's IP address. *Id.* at 4. Plaintiff notes that the specification never uses "source address" to refer to content and that "[r]ather, the two uses of 'source' cited in the Order ('source program' and 'sources' of content) are not used in the context of addresses." *Id.* at 4–5. Plaintiff then discusses the HTTP protocol and TCP/IP protocol, arguing that the "source address" is the address of the sender as opposed to the "destination address," which Plaintiff asserts is the address of the web server. *Id.* at 5. Plaintiff continues, "[w]hile a web server sometimes is the source of a communication, it is never the source of the claimed step of 'sending [a content

request] to the web server' because in that situation the web server is the destination, not the source." *Id.* at 6.

Code200 Defendants respond that this is not a clarification request, but rather a request that the Court change the construction to the opposite of what it found so that "source" refers to the IP address of the "sender" of a communication rather than the IP address of the source of the content, i.e., the web server. *Code200* Action, Dkt. No. 110 at 1. Code200 Defendants are correct.

Code200 Defendants argue that Plaintiff asserts that it argued to the Court that "source address" must be "the sender's IP address," but that the Court's Claim Construction Order demonstrated that Plaintiff argued at claim construction that "source address" has a "plain and ordinary meaning" and that "source address" refers to an "IP address associated with a source." *Id.* at 2 (citing Dkt. No. 97 at 23). The Claim Construction Order identified Plaintiff's proposed construction of "source address" as "plain and ordinary meaning," and stated, "Plaintiff submits: The 'source address' refers to an 'IP address associated with a source.'" *Code200* Action, Dkt. No. 97 at 23 (citing *Code200* Action, Dkt. No. 86 at 26–27 ("In Dr. Rhyne's opinion: '[A] POSA would understand the source address as referring to an IP address associated with a source . . .'") (quoting *Code200* Action, Dkt. No. 86-3)).

With respect to Plaintiff's note that the specification never uses "source address" to refer to content, Code200 Defendants respond that the phrase "source address" is never used in the patent written description. *See Code200* Action, Dkt. No. 110 at 2. Code200 Defendants continue, arguing that Plaintiff's argument regarding HTTP and TCP/IP misses that the specification does not ever point to HTTP or TCP/IP for a definition of "source address." *Id.* Code200 Defendants argue that Plaintiff has no basis to contest the Court's explanation as to why "source address" is limited to the address of the source of content. *Code200* Action, Dkt. No. 110 at 3.

As Code200 Defendants pointed out, Plaintiff's argument that the specification never uses "source address" to refer to content falls flat because the specification never uses the term "source address" at all. *See Code200* Action, Dkt. No. 110 (citing *Code200* Action, Dkt. No. 88 at 17 (citing *Code200* Action, Dkt. No. 88-1 at ¶¶ 78–84)); *see also Code200* Action, Dkt. No. 86-1 at 1–29. Accordingly, what must be understood is what a "source" is.

The Court's Claim Construction Order previously explained that the '511 Patent's specification "suggests that 'source' is used to refer to a *content* source rather than a *communication* source." *Code200* Action, Dkt. No. 97 at 25 (emphasis added). As the Court previously stated, "ultimately, when read in the context of the entire specification, including the complete claim set and the description of the invention, the scope of 'source address' is reasonably limited to *the address of the source of content, which in Claim 1 is the web server.*" *Id.* at 26 (citing *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316 (Fed. Cir. 2005); *Trs. of Columbia Univ. v. Symantec Corp.*, 811 F.3d 1359, 1363 (Fed. Cir. 2016)) (emphasis added).

Plaintiff requested additional briefing on their Clarification Request.  That briefing pointed to Dr. Freedman's December 31, 2020[1] declaration in which Dr. Freeman opined that a POSA would not understand what "source address" means in the context of claim 25 of the '511 Patent but then testified in his March 22, 2021 deposition that "source address" is a term of art that refers to the "sender address" rather than a "destination address." *Code200* Action, Dkt. No. 163 at 2–4. Plaintiff argues "[t]he above conflicting testimony is material to the Court's Claim Construction Order as the Court cited Code200 Defendants' argument that the 'source address' could refer to the 'source of content' . . . ." *Id.* at 4 (citing *Code200* Action, Dkt. No. 97 at 24–27).

---

[1] Plaintiffs state that "[h]ere, Dr. Freedman provided a December 31, 2021 declaration . . . ." Dkt. No. 163 at 2. The Court interprets this as a typographic error for December 31, 2020.

Code200 Defendants respond that while Plaintiff quotes Dr. Freedman's opinion in paragraphs 80-81 that "source address" could refer to the source of content, Plaintiff omits paragraph 82, where "Dr. Freedman opined that 'source address' could alternatively refer to the source of the request (i.e., sender) rather than the source of content." *Code200* Action, Dkt. No. 179 at 3 (citations omitted). Paragraph 82 of Dr. Freedman's declaration indeed provides, "[a]lternatively, the patentees could be using 'source' to refer to the source of the content request that is sent to the web server . . . ." *Code200* Action, Dkt. No. 163-2 at ¶ 82.

This is additional evidence that "source address" may be used in the art to denote a sending address. However, that the source address may be a sending address was never in dispute, and the new evidence does not restrict "source address" to sending address in the art such that it could mean only sending address in the patent. Ultimately, Plaintiff provides no new information and merely rehashes arguments already resolved and explained by the Claim Construction Order. Accordingly, the Court denies Plaintiff's request to revise the construction of "source address."

As the Court previously found, "ultimately, when read in the context of the entire specification, including the complete claim set and the description of the invention, the scope of 'source address' is reasonably limited to the address of the source of content, which in Claim 1 is the web server." *Id.* at 26 (internal citations omitted). The Court retains its previous construction that "source address" means "address of the web server." *See Code200* Action, Dkt. No. 97 at 27.

## II.     "Sending . . ."

Plaintiff seeks clarification and revision of the construction of the '511 Patent claim 1 term "sending . . . the first content identifier to the web server using the selected IP address." *Code200* Action, Dkt. No. 102 at 6. The Court construed this term to mean "sending . . . the first content

# DOCKET ALARM

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

### LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

### FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

### E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

fastcase®
Smarter legal research.