

U.S. Patent No. 10,257,319  
*Inter Partes* Review  
Petitioners' Reply in Support of Motion for Joinder

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,  
Petitioners,

v.

BRIGHT DATA LTD.,  
Patent Owner.

---

*Inter Partes* Review No. IPR2022-01109  
Patent No. 10,257,319

---

**PETITIONERS' REPLY IN SUPPORT OF MOTION FOR  
JOINDER TO *INTER PARTES* REVIEW IPR2022-00135**

## I. INTRODUCTION

The Board determined in two separate proceedings that petitioners “demonstrated a reasonable likelihood of prevailing” with respect to four different primary references invalidating the ’319 patent claims. *See* “TDC IPR,” IPR2022-00135, Paper 12 (Plamondon); “NetNut IPR,” IPR2021-01492, Paper 11 (Crowds, Border, Morphmix). The Board denied Petitioners’ motion to join the NetNut IPR because (i) Petitioners asserted grounds previously asserted in Petitioners’ prior IPR2020-1266 (“1266 IPR”) and failed to stipulate not to raise these same grounds at trial (IPR2022-00861, Paper 17 at 11-12); (ii) Petitioners previously conducted a jury trial challenging the validity of two of the challenged claims based on Crowds (*id.* at 14-15); (iii) Petitioners sought to also join the present co-pending TDC IPR; and (iv) the PTAB had terminated NetNut from the NetNut IPR (*id.* at 15-16).

None of these facts is present here. First, Petitioners seek to join the TDC IPR based on the Plamondon reference, which was not included in the 1266 IPR. Petitioners had no knowledge of Plamondon prior to TDC filing its IPR. Thus, Petitioners could not have stipulated not to use it at trial, which began before TDC filed its IPR. In any event, Petitioners hereby stipulate not to rely on Plamondon in any future trial concerning the ’319 patent. Second, Petitioners did not rely on the unknown Plamondon reference in the Texas litigation. *See* Ex. 1086, Defendants’ Disclosure Pursuant to 35 U.S.C. § 282 (ECF No. 450) (listing patents and publications relied

on in the Texas litigation for anticipation of the '319 patent or as showing the state of the art). Third, the Board denied Petitioners' motion to join the NetNut IPR—thus, the present petition is Petitioners' first and only opportunity to challenge the validity of the '319 patent in view of Plamondon. Fourth, TDC remains a party to the TDC IPR and Petitioners seek an understudy role.

Bright Data opposes joinder, arguing that Petitioners should have (i) known of Plamondon in 2020; (ii) included Plamondon in the 1266 IPR; and (iii) made the same arguments in the 1266 IPR and jury trial that TDC makes in its IPR. As shown below, Bright Data's arguments are unpersuasive, and the Board should exercise its discretion and grant Petitioners' Motion for Joinder.

## **II. IF JOINDER IS GRANTED, THE PRESENT IPR WOULD BE PETITIONERS' FIRST AND ONLY INSTITUTED IPR CHALLENGE TO THE '319 PATENT**

Patent Owner argues that the present Petition represents a “fifth bite at the invalidity apple” and that the Board should deny joinder because Petitioners should have been aware of Plamondon before TDC filed its IPR. Paper 11 at 1, 8, 11, and 13 (citing *General Plastic*). But if the current IPR is instituted, it will represent Petitioners' **first and only** IPR directed to the '319 patent that will have been instituted.

With respect to *General Plastic*, that decision sought to “take undue inequities and prejudices to Patent Owner into account.” *General Plastic* at 17. The inequities and prejudices considered “undue” involve situations typified by “[m]ultiple,

staggered petitions challenging the same patent and same claims,” in which petitioners could “strategically stage their prior art and arguments in multiple petitions, using our decisions as a roadmap, until a ground is found that results in the grant of review.” *Id.*; see also *Intel Corp. v. VLSI LLC*, IPR2022-00366 at 11 n.8 (“*Intel*”).

Petitioners seek an understudy role in this case—no roadmap exists. See IPR2022-00861, Paper 17 at 13 (no “road mapping” exists in copycat petition). Petitioners did not use a prior decision to craft new arguments. Instead, TDC (a third party) put forth its own arguments. Contrary to Patent Owner’s argument (Paper 11 at 15), the Petition does not introduce any new arguments or evidence. Moreover, Petitioners could not have stipulated not to use Plamondon at trial because Petitioners were not aware of Plamondon, and could not have reasonably learned of its existence until the filing of the TDC IPR, which took place after trial began.

Patent Owner does not argue and provides no evidence that Petitioners had actual knowledge of Plamondon before TDC filed its IPR. See Paper 11 at 9. Instead, Patent Owner argues that Petitioners should have known of Plamondon because it shares a named inventor and assignee with Samuels (*id.* at 8-9), which is one of over 200 prior-art references listed on the face of the ’319 patent. Ex. 1001.

Patent Owner further argues that Petitioners should have known of Plamondon because it shares an assignee, Citrix Systems, with Mithyantha. See Paper 11 at 8-9. Mithyantha, however, is not prior art to the ’319 patent and Petitioners used

Mithyantha as a prior-art reference to a different patent in a different patent family (i.e., US Patent No. 10,469,614). Further, Mithyantha is one of thousands of patents owned by Citrix Systems. Ex. 1087. Patent Owner’s attempt to impute knowledge to Petitioners of thousands of patents, including Plamondon, because they are owned by a common assignee is not supported. *See OpenSky Indus., LLC v. VLSI Tech. LLC*, IPR2021-01064, Paper 17 at 11-12 (Dec. 23, 2021) (declining to impute knowledge to petitioner of prior art used in a prior litigation).<sup>1</sup>

### **III. PETITIONERS’ CLAIM-CONSTRUCTION POSITION HAS ALWAYS BEEN CONSISTENT**

If and when Petitioners become primary petitioners, Petitioners’ claim-construction position will remain consistent with their prior position in prior IPR filings and the Texas litigation. For example, Petitioners have always argued, and the Board has repeatedly agreed, that a device—be it a jondo of Crowds, a proxy server of Border, a node of MorphMix, or an appliance of Plamondon—can act as a “server” or a “client” depending on the role played by the device. *See, e.g., NetNut IPR*, Paper

---

<sup>1</sup> Further, whether Plamondon is more material to the validity of the ’319 patent than, for example, Crowds, Morphmix, or Border, as Patent Owner argues, is irrelevant, and Patent Owner cites no authority to the contrary. Paper 11 at 9. In fact, the Board has instituted multiple IPR proceedings based on all four primary references. *See TDC IPR (Plamondon); NetNut IPR (Crowds, Border, Morphmix)*.

# 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.