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

LUMINATI NETWORKS LTD. Plaintiff, v. TESO LT, UAB; OXYSALES, UAB; METACLUSTER LT, UAB; Defendants.	Case No. 2:19-cv-395-JRG LEAD CASE

LUMINATI'S SURREPLY IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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I. INTRODUCTION

Rather than address the patent claims as written, Defendants continue to misread and misrepresent them to create straw man claims that Defendants then argue are abstract. But Defendants are not permitted to rewrite the claims to invalidate them. The Patent Office, with a substantial body of *Alice*-related law to draw on, reviewed the actual claims of each patent and found them valid. The clear claim language discloses methods of steps performed by a client device in a new, novel **server–client device–web server** architecture that Defendants ignore, instead improperly oversimplifying and rewriting the claims as disclosing only an abstract **computer-computer-computer** architecture, which is clearly incorrect in light of the claim language itself and the specifications.[1] Defendants' approach also defies the clear Section 101 analysis under *Alice* recognizing "[a]t some level, all inventions embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas." *Alice Corp. Pty. Ltd. v. CLS Bank Int'l*, 134 S. Ct. 2347 (2014). Having ignored the language of the claims themselves, Defendants also further attempt to limit the claims to specific figures while ignoring other figures from the specification as well as Luminati's citations to the specification in its Opposition. Defendants other arguments are similarly unavailing. Defendants do not have evidence in the record to support an unpatentability finding and the motion should be dismissed. However, even if not dismissed, Defendants could not support such a motion without a favorable claim construction order and additional evidence.

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[1] Defendants also argue that the claims themselves do not include a "new network." That is incorrect -- the claims set forth the components of the new network and how they relate to each other in a way that establishes such a network, which is a disclosure of the new network. Moreover, to the extent that enabling a new network is an advantage of the claims, there is no requirement that the claims expressly state their own advantages. *Uniloc USA, Inc. v. LG Elecs. USA, Inc.*, No. 2019-1835, 2020 U.S. App. LEXIS 13876, at *13 (Fed. Cir. Apr. 30, 2020) ("Claims need not articulate the advantages of the claimed combinations to be eligible.")

II. ARGUMENT

A. Defendants' Reply Fails to Address Nonpatent Claims

Defendants' reply only addresses its motion on patent claims and fails to answer Luminati's opposition (and thus waives) its motion regarding nonpatent claims.

B. Defendants Err by Ignoring the Actual Language of the Claims

Section 101 analysis focuses on the claimed invention, but Defendants err by ignoring the actual language of the claims. Reply at 2. Defendants rely upon *Ericsson* for the unremarkable assertion that under the facts of that case and the particular patent at issue there, the "three layered architecture" did not provide "the necessary inventive concept" when the alleged "'architecture' was 'wholly missing' from the claims." *Id.* As the Federal Circuit found in *Ericsson* regarding the claims at issue, "[n]either claim recites any particular architecture at all—much less the specific three layered architecture advocated by Ericsson. Nor does either claim recite software stacks or units—vertical, horizontal, or otherwise." *Ericsson Inc. v. TCL Commun. Tech. Holdings Ltd.*, No. 2018.2003, 2020 U.S. App. LEXIS 11702, at *21-22 (Fed. Cir. Apr. 14, 2020) (emphasis added). [2] However, Ericsson is inapposite to this case.

Defendants wrongly argue that "Luminati never shows where, **in the claims**, the new architecture is allegedly found." Reply at 2 (emphasis in original). This is false. As shown in the

[2] "According to Ericsson, claims 1 and 5 "recite three specific layers of software," in which the bottom "services layer" is "further arranged into vertical functional software stacks." Appellees' Br. 36 (internal quotations omitted). Ericsson contends that the novelty of the claims is, in part, the "arrangement of horizontally partitioned functional software units" which "differs from the standard model, which uses vertical layers only." *Id.* But this allegedly novel aspect of the invention is wholly missing from claims 1 and 5. Neither claim recites any particular architecture at all—much less the specific three layered architecture advocated by Ericsson. Nor does either claim recite software stacks or units—vertical, horizontal, or otherwise." *Ericsson Inc. v. TCL Commun. Tech. Holdings Ltd.*, No. 2018-2003, 2020 U.S. App. LEXIS 11702, at *21-22 (Fed. Cir. Apr. 14, 2020).

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