

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

Case IPR2023-00038

Patent No. 10,257,319

**PATENT OWNER'S OPPOSITION TO
PETITIONERS' MOTION FOR JOINDER**

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United States Patent and Trademark Office
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<u>PATENT OWNER'S LIST OF EXHIBITS</u>	
EX. 2001	Unopposed Motion to Extend Deadline to Answer or Otherwise Respond to Complaint and Set Briefing Schedule on Motion to Dismiss, <i>Bright Data Ltd. v. Teso LT, UAB, et al.</i> , Case No. 2:19-cv-00395, Dkt. 13 (E.D. Tex. Mar. 5, 2020)
EX. 2002	Defendants' Disclosure Pursuant to 35 U.S.C. § 282, <i>Bright Data Ltd. v. Teso LT, UAB, et al.</i> , Case No. 2:19-cv-00395, Dkt. 450 (E.D. Tex. July 16, 2021)
EX. 2003	Motion for Summary Judgment, <i>Bright Data Ltd. v. Teso LT, UAB, et al.</i> , Case No. 2:19-cv-00395, Dkt. 282 (E.D. Tex. Feb. 8, 2021)(redacted version of Dkt. 277)

I. INTRODUCTION

Petitioners in IPR2023-00038 are seeking joinder to IPR2022-00915. Motion, Paper 13. The burden is on Petitioners to justify that joinder should be granted. 37 C.F.R. § 42.20(c). Petitioners have failed to meet their burden, as will be further discussed herein.

Without joinder, the petition is time-barred under 35 U.S.C. § 315(b) because Patent Owner sued Petitioners for infringement of U.S. Patent No. 10,257,319 (the “‘319 Patent”) in December 2019 in Case No. 2:19-cv-00395 (E.D. Tex.)(the “Tex. Litigation”). The Tex. Litigation went to trial in November 2021 where a jury entered a verdict finding the ‘319 Patent was not invalid based on Crowds.¹

Since being sued in December 2019, Petitioners admit they have repeatedly sought to challenge the ‘319 Patent in the USPTO, referencing:

- IPR2020-01266 involving the same Crowds, Border, and Morphmix references;
- Reexamination Control No. 90/014,875 involving the same Crowds, Border, and Morphmix references;

¹ Petitioner-defendants pursued invalidity based on Crowds, Border, and

MorphMix throughout expert discovery, but chose to only present Crowds at trial.

- IPR2022-00861 involving the same Crowds, Border, and Morphmix references;
- IPR2022-01109 involving a different reference, Plamondon; and
- IPR2023-00038 involving the same Crowds, Border, and Morphmix references.

See Motion at 1. Overall, this petition represents the petitioners' *sixth bite* at the invalidity apple as to the '319 Patent. Petitioners have now filed four IPRs, requested 1 reexamination, and conducted 1 jury trial as to the '319 Patent. All but one of those challenges are based on the same Crowds, Border, and MorphMix references.

As discussed below, Patent Owner respectfully requests the Board exercise its discretion and deny joinder of this petition for at least four reasons. First, the petition is time-barred, which favors denial. Second, the petitioners already had their chance to pursue invalidity of the '319 Patent based on the exact same references in the -1266 IPR and the Tex. Litigation. Third, given the unique procedural posture of this petition, granting joinder raises concerns of inefficiency and unfairness. Fourth, the petitioners' actions are not commensurate with an "understudy" role.

II. RESPONSE TO PETITIONERS' STATEMENT OF MATERIAL FACTS ("SMF")

Response to SMF No. 2: This SMF is incomplete regarding executed

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