

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**

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

TABLE OF CONTENTS

I. INTRODUCTION 1

II. RESPONSE TO PETITIONERS’ STATEMENT OF MATERIAL FACTS (“SMF”) 2

III. ADDITIONAL STATEMENT OF MATERIAL FACTS (“AMF”) 5

IV. LEGAL STANDARD 6

V. THE BOARD SHOULD EXERCISE ITS DISCRETION TO DENY JOINDER 6

 A. WITHOUT JOINDER, THE PETITION IS TIME-BARRED 6

 B. PETITIONERS ATTEMPT TO MINIMIZE THE -1266 IPR 7

 C. PETITIONERS ATTEMPT TO MINIMIZE THE TEX. LITIGATION 7

 D. PETITIONERS SHOULD NOT BE GIVEN UNLIMITED CHANCES TO CHALLENGE THE ‘319 PATENT 9

 1. PETITIONERS ASK THE BOARD TO INSTITUTE TWO IDENTICAL PETITIONS WHICH IS INEFFICIENT AND UNFAIR 10

 2. PETITIONERS FAIL TO PROVIDE A RANKING WHICH IS INEFFICIENT AND UNFAIR 12

 E. PETITIONERS FAIL TO MEET THEIR BURDEN 12

VI. CONCLUSION 13

<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

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.