

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TESO LT, UAB; CODE200, UAB; METACLUSTER LT, UAB; AND
OXYSALES, UAB, Petitioners,

v.

LUMINATI NETWORKS LTD.,
Patent Owner.

Case IPR2021-00249
Patent No. 10,637,968

**NOTICE OF ISSUANCE OF ORDER RELEVANT
TO PARALLEL DISTRICT COURT LITIGATION**

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Patent Board:

Petitioner’s Position: In Paper 13 of *Inter Partes* Review Case No. IPR2020-01266, the Board instructed the parties to “advise the Board by email of any changes to the schedule in the district court action that might affect the trial date of that action within 24 hours of entry of the changes by the district court.” Although no similar Order has been entered in this case, the immediate case involves the same parties and a patent asserted in one of the two patent infringement actions referenced below. Accordingly, Petitioners provide the following Notice of Issuance of Order Relevant to Parallel District Court Litigation.

Patent Owner has filed two patent infringement actions against Petitioners in the United States District for the Eastern District of Texas. The first action, Case No. 2:19-cv-00395-JRG (“395 Case”), involves three patents, U.S. Pat. 10,257,319, U.S. Pat. 10,484,510, and U.S. Pat. 10,469,614, which are asserted against Petitioners Teso LT, UAB, Metacluster LT, UAB, and Oxysales, UAB. Those patents were the subject of, respectively, *Inter Partes* Review Case Nos. IPR2020-01266, IPR2020-01358, and IPR2020-01506. The Board issued discretionary denials of the three Petitions under 35 U.S.C. § 314(a), in part due to the 395 Case being set for jury selection on May 10, 2021, before a final determination would issue in any of the *Inter Partes* Review Cases. After the discretionary denials, the parties filed a Joint Motion to Reschedule Pretrial Conference and Conditionally Continue Trial Setting

in the 395 Case to conditionally continue the trial. The Court granted the motion “as modified,” and set the trial to July 12, 2021. 395 Case, ECF No. 372. A copy of the Order is attached hereto as Exhibit 1037.

The second action, Case No. 2:19-cv-00396-JRG (“396 Case”), involves two patents—U.S. Pat. 10,637,968 (the patent-at-issue in the immediate petition) and U.S. Pat. 10,484,511 (the subject of *Inter Partes* Review Case No. IPR2021-00122),¹ asserted against Petitioners Code200, UAB, Metacluster LT, UAB, and Oxysales, UAB. Importantly, the 396 Case is also set for jury selection on July 12, 2021. Petitioners and Patent Owner acknowledge that trial in both cases cannot commence simultaneously, and have discussed the scheduling conflict. Patent Owner has informed Petitioners that it contends the 395 Case trial should commence first because it was filed first. Accordingly, Patent Owner’s position is effectively that the trial in the 396 Case—which involves a patent that is the subject of a still pending *Inter Partes* Review Case—should not commence on July 12, 2021. Therefore, Petitioners respectfully submit that, given the current state of affairs, it is not clear when the 396 Case will reach trial. Petitioners disagree with Patent Owner’s characterization of the “practice of the Court.” Patent Owner’s suggestion that the

¹ The Board issued a discretionary denial in *Inter Partes* Review Case No. IPR2021-00122 under 35 U.S.C. § 314(a) on April 20, 2021, in part due to the 396 Case being set for trial on July 12, 2021, before a final determination would issue in that *Inter Partes* Review Case.

396 Case will be tried in July, effectively immediately after the 395 case, is mere speculation.

Patent Owner Position: As stated by the United States District for the Eastern District of Texas (“Court”), “[t]he dates of pretrial conference and jury selection are among those which the Court does not change without a showing of good cause.” Exhibit 1037 at 2. The Court set the jury selection date for the 396 Case for July 12, 2021 under the current Docket Control Order (ECF 48), which has not changed. Exhibit 2001 at 1. Neither party has suggested there is good cause to move the jury selection date and Patent Owner is aware of no motion, joint or otherwise, seeking to move the jury selection date. Per the practice of the Court, multiple cases often share the same jury selection date with the trials to follow. Consistent with that practice, Bright Data has no reason to believe that both trials will not occur in July.

Dated: April 29, 2021

Respectfully submitted,

CHARHON CALLAHAN ROBSON &
GARZA, PLLC

/Craig Tolliver/

Craig Tolliver (Reg. No. 45,975)
George "Jorde" Scott (Reg. No. 62,859)
3333 Lee Parkway, Suite 460
Dallas, TX 75219
(214) 521-6400

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