

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

BRIGHT DATA LTD.,  
Patent Owner.

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Case IPR 2021-01492  
Patent 10,257,319

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**PETITIONERS' MOTION TO EXCLUDE NEW EVIDENCE  
IN PATENT OWNER'S SUR-REPLY**

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

Petitioners move to exclude purported new evidence included in Patent Owner's Sur-Reply (Paper 41) filed on May 1, 2023.

**I. Compliance With Trial Practice Guide**

Petitioners comply with requirements (a)-(d) found in the Board's Trial Practice Guide (p.79):

- (a) Petitioners objected to the new evidence in PO's Sur-Reply in Petitioners' objections filed May 8 (Paper 44), within five business days of service of PO's Sur-Reply.
- (b) PO relies on the evidence on page 29 of its Sur-Reply, in the chart reproduced below in Section II.
- (c)-(d) Petitioners argue below in Section II that the evidence should be excluded because it is new evidence.

**II. PO's New Evidence in its Sur-Reply Should be Excluded**

Patent Owner included the following table in its Sur-Reply:

<b>Residential Proxy Service</b>	<b>Data Center Proxy Service</b>
72 million+ residential IP addresses	1.6 million datacenter IP addresses
Approx. \$53.7 million revenue in 2021	Approx. \$22.1 million revenue in 2021 <sup>13</sup>

Sur-Reply at 29. As shown above, Patent Owner’s purported support for “Approx. \$22.1 million revenue in 2021” is its footnote 13. Footnote 13 cites to a document from another proceeding: “IPR2022-00687, Paper 18 at 75 (PTAB Jan. 20, 2023).” Sur-Reply at 29 n.13.

Petitioners move to exclude the alleged new evidence cited in footnote 13 from a different proceeding (IPR2022-00687) and the evidentiary sentence (“Approx. \$22.1 million revenue in 2021”) that is based on the new evidence.

The basis for Petitioners’ motion is simple: Patent Owner cannot include new evidence in its Sur-Reply. 37 CFR § 42.23(b) (“A sur-reply may only respond to arguments raised in the corresponding reply and may not be accompanied by new evidence other than deposition transcripts of the cross-examination of any reply witness.”); Patent Trial and Appeal Board Consolidated Trial Practice Guide (November 2019) at 73 (same). Not only has PO included new evidence in its Sur-Reply, but the cited evidence is not even from this proceeding.

For the foregoing reasons, Petitioners request that the Board exclude the new evidence noted above.

Respectfully submitted,

CHARHON CALLAHAN ROBSON  
& GARZA, PLLC

Dated: May 25, 2023

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## CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that the above Petitioners' Motion to Exclude New Evidence Included in Patent Owner's Sur-Reply was served on counsel for Patent Owner via e-mail, as authorized by Patent Owner, at the following e-mail addresses:

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Dated: May 25, 2023