

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 IPR2021-01492

Patent No. 10,257,319

**PATENT OWNER'S OPPOSITION
TO PETITIONERS' MOTION TO EXCLUDE**

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

Based on Petitioners' Motion to Exclude, it is unclear whether Petitioners seek to exclude Patent Owner's recitation of the data center proxy service having "Approx. \$22.1 million revenue in 2021" and/or Patent Owner's citation in footnote 13 to "IPR2022-00687, Paper 18 at 75 (PTAB Jan. 20, 2023)". *See generally* Paper 46.

Regardless, Petitioners' Motion to Exclude should be denied for at least 4 reasons.

First, Petitioners' Motion to Exclude is effectively an unauthorized motion to strike and should be denied on that basis alone. *See* Patent Trial and Appeal Board Consolidated Trial Practice Guide (November 2019) ("TPG") at 79 (explaining that a motion to exclude should not address evidence that a party believes exceeds the proper scope of a sur-reply); *see also* TPG at 80-81 (discussing a motion to strike which requires prior authorization). The Board has "repeatedly stated" that filing a motion to exclude evidence as failing to comply with 37 C.F.R. § 42.23 is improper. *Palo Alto Networks, Inc. v. Finjan Inc.*, IPR2015-01979, Paper 62 at 66 (PTAB Mar. 15, 2017)(citing collection of cases).

Second, Petitioners' Motion to Exclude does not argue that Patent Owner violated any of the Federal Rules of Evidence (*e.g.*, inadmissible due to relevance or hearsay). *See* TPG at 79; *see also* TPG at 8 ("Admissibility of evidence is

generally governed by the Federal Rules of Evidence). Petitioners thus fail to meet their burden.

Third, Patent Owner has continuously argued the value of its residential proxy service and, in the Sur-reply, directly responded to Petitioners' arguments in the Reply (*see* pages 24-26) regarding use of a residential IP address versus a commercial IP address. \$53.7 million in annual revenue of the residential proxy service (which uses residential IP addresses) is significant in and of itself. Patent Owner additionally recited the approximate annual revenue of the data center proxy service (which uses commercial IP addresses) for comparison.

Fourth, Petitioners (now collectively known as Oxylabs, UAB) are the same petitioners in IPR2022-00687. *See* Paper 39 at 1; IPR2022-00687, Paper 24 at 1.¹ Petitioners have been aware of IPR2022-00687 since that petition was filed on March 14, 2022. Petitioners have been aware of the annual revenue of Patent Owner's data center proxy service since at least January 20, 2023 when the Patent Owner Response was filed in IPR2022-00687. Moreover, Petitioners have been aware of the annual revenue of Patent Owner's services through the various district

¹ The original named petitioner in IPR2022-00687 was Metacluster LT, UAB and Code200, UAB; Teso LT, UAB; Oxysales, UAB; and coretech lt, UAB were listed as real parties-in-interest. IPR2022-00687, Paper 1 at 2.

court litigations (e.g., *Bright Data Ltd. v. Teso LT, UAB, et al.*, Case No. 2:19-cv-395 (E.D. Tex.) and *Bright Data Ltd. v. Code200, UAB et al.*, Case No. 2:19-cv-396 (E.D. Tex.) and also, given that the annual revenue is public information disclosed in Reexam Control Nos. 90/014,624; 90/014,827; 90/014,652; and 90/014,816; each of which Petitioners have been aware of since at least March 20, 2023. Paper 39 at 2. Most notably, Petitioners have been aware that the annual revenue of Patent Owner's services is inconsistent with their argument that the use of residential IP addresses has no value compared to the use of commercial IP addresses.

For at least the foregoing reasons, Petitioners' Motion should be denied. Additionally, Patent Owner notes that the Board need not decide Petitioners' Motion at this time given that consideration of the objected-to evidence may ultimately be unnecessary to resolve the patentability of the challenged claims, rendering the Motion moot. *See* TPG at 79-80.

Respectfully submitted,

Date: June 1, 2023

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