

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,
Petitioner,

v.

BRIGHT DATA LTD.,
Patent Owner.

IPR2022-01109
Patent 10,257,319 B2

Before THOMAS L. GIANNETTI, SHEILA F. McSHANE, and
RUSSELL E. CASS, *Administrative Patent Judges*

GIANNETTI, *Administrative Patent Judge.*

DECISION

Denying Institution of *Inter Partes* Review
35 U.S.C. § 314

Denying Motion for Joinder
35 U.S.C. § 315(c); 37 C.F.R. § 42.122

I. INTRODUCTION

Code200, UAB; Teso LT, UAB; Metacluster LT; UAB, Oxysales; UAB; and coretech LT, UAB (collectively, “Petitioner” or “Code200”) filed a Petition for *inter partes* review of claims 1–29 of U.S. Patent No. 10,257,319 B2 (Ex. 1001, “the ’319 patent”). Paper 1 (“Pet.”). Bright Data, Ltd. (“Patent Owner”) filed a Preliminary Response (Paper 16, “Prelim. Resp.”), Petitioner filed a Reply to the Preliminary Response (Paper 17), and Patent Owner filed a Sur-reply (Paper 19).

With the Petition, Petitioner filed a Motion for Joinder with *The Data Company. v. Bright Data Ltd.*, IPR2022-00135 (“the 135 IPR”). Paper 7 (“Joinder Mot.”). Patent Owner filed an Opposition to the Joinder Motion (Paper 13, “Joinder Opp.”) and Petitioner filed a Reply to Patent Owner’s Joinder Opposition (Paper 14, “Joinder Reply”).

In addition to opposing joinder, Patent Owner also presents arguments on the merits and for discretionary denial of the Petition under *Fintiv*¹ and *General Plastic*.² See, generally, Prelim. Resp. 5–11 (*General Plastic*), 12–17 (*Fintiv*), and 49–68 (merits).

We have authority under 35 U.S.C. § 314(a), which provides that an *inter partes* review may not be instituted “unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” However, under 35 U.S.C. § 315(b),

¹ *Apple Inc. v. Fintiv Inc.*, IPR2020-00019, Paper 11 (PTAB March 20, 2020) (precedential) (“*Fintiv*”).

² *General Plastic Industrial Co., Ltd. v. Canon Kabushiki Kaisha*, IPR2016-01357, Paper 19 (PTAB Sept. 6, 2017) (precedential as to § II.B.4.i) (“*General Plastic*”).

“[a]n inter partes review may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, real party in interest, or privy of the petitioner is served with a complaint alleging infringement of the patent.” Section 315(b) of 35 U.S.C. further provides that “[t]he time limitation set forth in the preceding sentence shall not apply to a request for joinder under subsection (c).”

We have authority to consider Petitioner’s joinder motion under 35 U.S.C. § 315(c), which provides that “the Director, in his or her discretion, may join as a party to that inter partes review any person who properly files a petition under section 311 that the Director . . . determines warrants the institution of an inter partes review under section 314.”

For the reasons described below, we deny Petitioner’s Motion for Joinder. Furthermore, we deny the Petition as time-barred under 35 U.S.C. § 315(b). We do not reach Patent Owner’s additional contentions including those based on *Fintiv* or *General Plastic*.

II. BACKGROUND

A. Related Matters

The ’319 patent is currently the subject of four proceedings pending before the USPTO and numerous proceedings in district court. We discuss those proceedings in Section III.A, *infra*.

B. Real Parties-in-Interest

Petitioner identifies Code200, UAB; Teso LT, UAB; Metacluster LT; UAB; Oxysales, UAB; and coretech LT, UAB as the real parties-in-interest.
Pet. xiii.

Patent Owner identifies Bright Data Ltd. as the real party-in-interest.
Paper 12, 1.

C. The '319 Patent

The '319 patent is titled “System Providing Faster and More Efficient Data Communication.” Ex. 1001, (54). The '319 patent describes a system and method “for faster and more efficient data communication within a communication network.” *Id.* at 4:41–44; Fig. 3.

D. Prior Art References

Petitioner relies principally on Plamondon³ in all grounds of its challenge. Pet. 3.

III. PETITIONER’S MOTION FOR JOINDER

A. Introduction

The Petition in this proceeding is a “me-too” petition asserting the same grounds of unpatentability as those upon which we instituted review in the 135 IPR filed by The Data Company. Pet. 2. As noted *supra*, Petitioner has moved to join the 135 IPR. Joinder Mot. 1. Petitioner asserts that “[t]he present Petition concerns the same patent and the same claims as the [135 IPR].” *Id.* at 2. Petitioner further argues that “[t]he present Petition and supporting expert declaration are substantively identical to the [135 IPR] petition and expert declaration.” *Id.* Petitioner agrees to take an “understudy” role if joined, thus contending that “[j]oinder will not cause any delay in the resolution of the [135 IPR].” *Id.*

³ U.S. Patent Application Publication US 2008/0228938 A1, published September 18, 2008 (Ex. 1010).

Patent Owner opposes the joinder motion. *See Joinder Opp.* Patent Owner asserts that Petitioner was sued for infringement of the '319 patent in December 2019, and therefore, “[w]ithout joinder, the petition is time-barred under 35 U.S.C. § 315(b).” *Id.* at 1. Patent Owner argues that the Petition is “the [t]hird Code200 IPR Petition challenging the '319 Patent.” *Id.* Patent Owner asserts that “Petitioners have now filed three IPRs, requested 1 reexamination, and conducted 1 jury trial as to the '319 Patent.” *Id.* at 1–2.

Patent Owner contends that Petitioner continues to “harass” Patent Owner by “establishing a pattern of behavior where they are/will be attempting to join any instituted proceeding against any Bright Data patent without regard to justice.” *Id.* at 10–11.

For the reasons that follow, we deny the motion for joinder. We therefore do not reach the other issues raised by Patent Owner as we determine that absent joinder, the Petition is time-barred under 35 U.S.C. § 315(b).

B. Background

As noted *infra*, the '319 patent is currently the subject of several proceedings before the USPTO and in district court. All told, there are currently three IPRs, one *ex parte* reexamination, and one district court proceeding already pending involving challenges to the '319 patent.

Petitioner is involved in the pending district court proceeding and one of the three IPRs. Another of these proceedings is the 135 IPR, which Petitioner seeks to join as a party in the motion that is before us.

We summarize those proceedings in the following sections.

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