

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

OXYLABS LT, UAB,

Petitioner

v.

BRIGHT DATA LTD.,

Patent Owner

Case IPR2024-00126

Patent No. 11,616,826

**PATENT OWNER'S MOTION TO SEAL AND
TO ENTER THE JOINT PROTECTIVE ORDER**

Mail Stop PATENT BOARD
Patent Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1450
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<u>PATENT OWNER'S EXHIBIT LIST</u>	
EX. 2001	Preliminary Amendment, dated March 12, 2024 in Reissue Application No. 18/603,037
EX. 2002	Office Action, dated 6/21/2022 in Reexamination Control No. 90/014,827
EX. 2003	Remarks, dated Aug. 6, 2019 in Application No. 16/278,105 which issued as U.S. Patent No. 10,469,628
EX. 2004	Remarks dated Aug. 23, 2018 in Application No. 15/957,950 which issued as U.S. Patent No. 10,225,374
EX. 2005	U.S. Pub. No. 2006/0212584 (“Yu”)
EX. 2006	Deposition Transcript of Dr. James Olivier, dated December 29, 2022 in IPR2022-00687
EX. 2007	U.S. Patent No. 6,434,618 (“Cohen II”)
EX. 2008	U.S. Patent No. 11,044,341 (“the ‘341 Patent”)
EX. 2009	U.S. Patent No. 10,469,628 (“the ‘628 Patent”)
EX. 2010	U.S. Patent No. 10,225,374 (“the ‘374 Patent”)
EX. 2011	Definition of “Operating System”, Merriam-Webster Dictionary, accessed at https://www.merriam-webster.com/dictionary/operating%20system on March 13, 2024
EX. 2012	Definition of “Operating System”, Cambridge English Dictionary, accessed at https://dictionary.cambridge.org/us/dictionary/english/operating-system on March 13, 2024
EX. 2013	Deposition Transcript of Dr. James Olivier, dated August 12, 2024 in IPR2024-00126

EX. 2014	Errata Sheet of Dr. James Olivier, dated August 27, 2024 in IPR2024-00126
EX. 2015	U.S. Patent No. 10,484,511 (“the ‘511 Patent”)
EX. 2016	Definition of “select”, Dictionary.com, accessed at https://www.dictionary.com/browse/select on September 3, 2024
EX. 2017	Definition of “selecting”, Merriam-Webster Dictionary, accessed at https://web.archive.org/web/20090422141612/https://www.merriam-webster.com/dictionary/selecting on September 3, 2024
EX. 2018	Definition of “select”, Cambridge English Dictionary, accessed at https://dictionary.cambridge.org/us/dictionary/english/select?q=selecting on September 3, 2024
EX. 2019	U.S. Patent No. 10,257,319 (“the ‘319 Patent”)
EX. 2020	U.S. Patent No. 10,484,510 (“the ‘510 Patent”)
EX. 2021	U.S. Patent No. 10,491,713 (“the ‘713 Patent”)
EX. 2022	U.S. Patent No. 11,050,852 (“the ‘852 Patent”)
EX. 2023	Claim Construction Order, <i>Bright Data Ltd. v. NetNut Ltd.</i> , Case No. 2:21-cv-00225, Dkt. 146 (E.D. Tex. May 10, 2022)
EX. 2024	Order, <i>Bright Data Ltd. f/k/a Luminati Networks Ltd. v. Teso LT, UAB a/k/a UAB Teso LT, et al.</i> , Case No. 2:19-cv-395-JRG, Dkt. 303 (E.D. Tex. Feb. 12, 2021)
EX. 2025	Order, <i>Bright Data Ltd. f/k/a Luminati Networks Ltd. v. Code200, UAB, et al.</i> , Case No. 2:19-cv-396-JRG, Dkt. 98 (E.D. Tex. Feb. 9, 2021)
EX. 2026	U.S. Patent No. 10,637,968 (“the ‘968 Patent”)
EX. 2027	U.S. Patent No. 10,069,936 (“the ‘936 Patent”)

EX. 2028	Prosecution History of U.S. Patent No. 10,069,936
EX. 2029	Select portions of the prosecution history of U.S. Patent No. 10,225,374
EX. 2030	Definition “Consumer”, Cambridge English Dictionary; accessed at https://dictionary.cambridge.org/us/dictionary/english/consumer on June 10, 2022
EX. 2031	Definition “Consumer”, Cambridge Advanced Learner’s Dictionary, copyright 2008, ISBN 978-0-521-71266-8
EX. 2032	Definition “Consumer”, Cambridge Academic Content Dictionary, copyright 2009, ISBN 978-0-521-69196-3
EX. 2033	Definition “Consumer”, Collins English Dictionary; accessed at https://www.collinsdictionary.com/us/dictionary/english/consumer on June 10, 2022
EX. 2034	Definition “Consumer”, Collins COBUILD Advanced Dictionary of American English, copyright 2007, ISBN 978-1-4240-0363-1
EX. 2035	Network Fundamentals Study Guide, published February 17, 2015; accessed at https://www.webopedia.com/reference/network-fundamentals-studyguide/#topologies on June 14, 2022
EX. 2036	Excerpts from Tanenbaum, A., et al., “Computer Networks – Fifth Edition”, copyright 2011, ISBN 0-13-212695-8
EX. 2037	Excerpts from Tanenbaum, A., “Computer Networks – Fourth Edition”, copyright 2003, ISBN 0-13-066102-3
EX. 2038	RESERVED
EX. 2039	Bright Data, “Buy Datacenter Proxies”, accessed at https://brightdata.com/proxy-types/datacenter-proxies on December 12, 2022

EX. 2040	Source Code File - HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY – SOURCE CODE
EX. 2041	Declaration of Dr. Tim A. Williams – HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY
EX. 2042	Bright Data, “What is Proxy Manager?”, accessed at https://help.brightdata.com/hc/en-us/articles/4413135708561 on January 19, 2023
EX. 2043	Bright Data, “Is communication between relays encrypted?”, accessed at https://help.brightdata.com/hc/en-us/articles/4413418365713-Is-communication-between-relays-encrypted- on January 19, 2023
EX. 2044	Bright Data, “Which ports and protocols are supported by Bright Data?”, accessed at https://help.brightdata.com/hc/en-us/articles/4413222000017-Which-ports-and-protocols-are-supported-by-Bright-Data- on January 19, 2023
EX. 2045	Bright Data, Network Diagram – HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY
EX. 2046	Select portions of the prosecution history of U.S. Patent No. 10,469,628
EX. 2047	Select portions of the prosecution history of U.S. Patent No. 11,044,341
EX. 2048	Preliminary Amendment dated November 29, 2023, Reissue Application No. 18/523,800
EX. 2049	Prosecution History of U.S. Patent No. 10,257,319
EX. 2050	Corrected Patent Owner Preliminary Response, IPR2020-01266, Paper 16 (PTAB Dec. 9, 2020)
EX. 2051	Patent Owner Preliminary Response, IPR2020-01358, Paper 9 (PTAB Nov. 20, 2020)

EX. 2052	Joint Protective Order
EX. 2053	Redlined version of the Joint Protective Order (compared to Default Protective Order)
EX. 2054	Executed Acknowledgements from Dr. Tim A. Williams and counsel for Patent Owner

I. RELIEF REQUESTED

Pursuant to 37 C.F.R. § 42.54, Patent Owner respectfully requests the following:

First, Patent Owner respectfully requests that the Board grant this Motion to Seal Exhibits 2040, 2045, and 2041, which contain highly confidential material.

Second, Patent Owner respectfully requests that the Board grant this Motion to Seal the Patent Owner Response, which contains highly confidential material.

Third, Patent Owner respectfully requests that the Board enter the Joint Protective Order (EX. 2052).

Petitioner does not oppose this Motion.

II. LEGAL STANDARD

The Board may, for good cause, issue an order to protect a party or person from disclosing confidential information, including, but not limited to, “[r]equiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way.” 37 C.F.R. § 42.54(a)(7).

A party may file a motion to seal where the motion to seal contains a proposed protective order and a certification that the moving party has in good faith conferred or attempted to confer with other affected parties. 37 C.F.R. § 42.54(a). Generally, “a movant to seal must demonstrate adequately that (1) the

information sought to be sealed is truly confidential, (2) a concrete harm would result upon public disclosure, (3) there exists a genuine need to rely in the trial on the specific information sought to be sealed, and (4), on balance, an interest in maintaining confidentiality outweighs the strong public interest in having an open record.” *Corning Optical Commc’ns RF, LLC v. PPC Broadband, Inc.*, Case IPR2014-00736, Paper 38, at 2-3 (PTAB Apr. 14, 2015).

III. SEALING OF EXHIBITS 2040, 2045, AND 2041

A. EXHIBIT 2040 (SOURCE CODE FILE)

Confidentiality: Exhibit 2040 contains highly sensitive source code, which has not been publicly disclosed and Patent Owner has taken steps to guard against its disclosure in, for example, pending district court litigation. *E.g.*, *Bright Data Ltd. v. Code200, UAB, et al.*, No. 2:19-cv-396 (E.D. Tex.) (“the Code200 Litigation”). Exhibit 2040 consists entirely of material designated as “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” such that redaction would not be practical. Exhibit 2040 is additionally designated as “SOURCE CODE” subject to the restrictions on printing, transport, and transmission in the Joint Protective Order (EX. 2052) discussed below. Exhibit 2040 requires filing entirely under seal and accordingly, no public versions of this exhibit has been filed.

Consequences of disclosure: Patent Owner would be significantly harmed by disclosure of Exhibit 2040 insofar as its competitors would be able to access sensitive technical details regarding Patent Owner's source code.

Importance: Exhibit 2040 is referenced in the expert declaration (EX. 2041) and the Patent Owner Response ("POR"). Patent Owner, and its expert, rely on Exhibit 2040 to show the operation of Patent Owner's commercial services and to establish nexus as it relates, in particular, to secondary considerations of non-obviousness. Exhibit 2040 provide the best evidence of the technical details of Patent Owner's commercial services and there are no public versions of the source code.

Balance of interests: Patent Owner's interest in protecting this highly sensitive information outweighs the Public's interest in a complete file history. To serve the Public's interest, public versions of the expert declaration and the POR are submitted concurrently. The harm to Patent Owner, if Exhibit 2040 were disclosed, and Patent Owner's need to rely on Exhibit 2040, favor sealing Exhibit 2040.

Accordingly, good cause exists to seal Exhibit 2040.

B. EXHIBIT 2045 (NETWORK DIAGRAM)

Confidentiality: Exhibit 2045 is a highly sensitive, technical, network diagram of Patent Owner's commercial services, which has not been publicly

disclosed and Patent Owner has taken steps to guard against its disclosure in, for example, pending district court litigations. *E.g.*, the Code200 Litigation, *Bright Data Ltd. v. Teso LT, UAB, et al.*, No. 2:19-cv-395 (E.D. Tex.)(“the Teso Litigation”), *Bright Data Ltd. v. Code200, UAB, et al.*, No. 2:19-cv-396 (E.D. Tex.)(“Code200 Litigation”), *Bright Data Ltd. v. Tefincom SA*, No. 2:19-cv-414 (E.D. Tex.)(“the Tefincom Litigation”). Exhibit 2045 consists entirely of material designated as “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” such that redaction would not be practical. Exhibit 2045 requires filing entirely under seal and accordingly, no public version of Exhibit 2045 has been filed.

Consequences of disclosure: Patent Owner would be significantly harmed by disclosure of Exhibit 2045 insofar as its competitors would be able to access sensitive technical details regarding Patent Owner’s commercial services.

Importance: Exhibit 2045 is referenced in the expert declaration (EX. 2041) and the POR. Patent Owner, and its expert, rely on Exhibit 2045 to provide context to Patent Owner’s source code (see discussion of Exhibit 2040 above) and to establish nexus as it relates, in particular, to secondary considerations of non-obviousness. Exhibit 2045 provides the best evidence of the technical details of Patent Owner’s commercial services and there are no public versions of the network diagram.

Balance of interests: Patent Owner's interest in protecting this highly sensitive information outweighs the Public's interest in a complete file history. To serve the Public's interest, public versions of the expert declaration and the POR are submitted concurrently. The harm to Patent Owner, if Exhibit 2045 were disclosed, and Patent Owner's need to rely on Exhibit 2045, favor sealing Exhibit 2045.

Accordingly, good cause exists to seal Exhibit 2045.

C. EXHIBIT 2041 (EXPERT DECLARATION)

Exhibit 2041 is the expert declaration, which references highly sensitive material in Exhibits 2040 and 2045, discussed above. Patent Owner has taken steps to guard against the disclosure of this highly sensitive material in, for example, pending district court litigation. *E.g.*, the Code200 Litigation. Exhibit 2041 is designated as "HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS' EYES ONLY".

To serve the Public's interest, a public version of the expert declaration is submitted concurrently. The public version redacts information that refers to or incorporates highly sensitive material. For the same reasons as discussed above, the harm to Patent Owner, if Exhibit 2041 were disclosed in its entirety, and Patent Owner's need to rely on Exhibit 2041, favor sealing Exhibit 2041.

IV. SEALING OF THE PATENT OWNER RESPONSE

The POR references highly sensitive material in Exhibits 2040, 2045, and 2041, discussed above. The POR is designated as “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY”. To serve the Public’s interest, a public version of the POR is submitted concurrently. The public version redacts information that refers to or incorporates highly sensitive material from Exhibits 2040, 2045, and 2041. For the same reasons as discussed above, the harm to Patent Owner, if the POR were disclosed in its entirety, and Patent Owner’s need to submit the POR to defend the validity of the challenged patent, favor sealing the POR.

V. ENTRY OF THE JOINT PROTECTIVE ORDER

With this Motion to Seal, Patent Owner respectfully requests that the Board enter the Joint Protective Order (EX. 2052). Patent Owner respectfully submits that the Joint Protective Order (EX. 2052) is consistent with the integrity and efficient administration of the proceeding. *See Consolidated Trial Practice Guide* (November 2019)(“TPG”) at 115. The parties have agreed to the terms of the Joint Protective Order and Petitioner does not oppose this Motion.

The Joint Protective Order is based on the Board’s default protective order, with modifications as shown in the Redlined Version of the Joint Protective Order (EX. 2053). The Joint Protective Order deviates from the Board’s default

protective order primarily by defining two levels of confidentiality:

“CONFIDENTIAL” and “HIGHLY CONFIDENTIAL – OUTSIDE

ATTORNEYS’ EYES ONLY”. The Joint Protective Order includes a second tier

for “highly confidential” material that is for “outside attorneys’ eyes only” and not to be shared with the petitioner or its in-house counsel. *See* EX. 2052, paragraph 5.

As outlined in paragraph 4 of the Joint Protective Order, “highly confidential”

material may include unpublished technical information, trade secret information, financial information, or computer source code. These modifications are directed

to preserving the highly confidential nature of Bright Data’s source code and

network diagram, which require a higher level of protection than what is offered in the default protective order.

Due to the highly confidential nature of computer source code, the producing party is to clearly mark computer source code as “SOURCE CODE” subject to the additional provisions for “source code material” and “source code documents” outlined in paragraph 6 of the Joint Protective Order. The provisions in paragraph 6 of the Joint Protective Order relate to printing, transport, and transmission of “source code material” and “source code documents” that include excerpts of source code material.

Patent Owner certifies that it has in good faith conferred with Petitioner and the parties have no disputes regarding the Joint Protective Order.

Patent Owner respectfully submits that the proposed modifications are appropriate for at least four reasons:

First, the parties agree to the proposed modifications, which are consistent with the integrity and efficient administration of the proceeding. “The Board will consider changes agreed to by the parties, and generally will accept such proposed changes if they are consistent with the integrity and efficient administration of the proceedings.” TPG at 115.

Second, this highly sensitive information has been previously produced in pending district court litigation, *e.g.*, the Code200 Litigation, and was previously marked with confidentiality designations based on the District Court Protective Order. Those protections should be maintained in this proceeding.

Third, Patent Owner would be significantly harmed if this highly sensitive material were disclosed to the petitioner or in-house counsel to the petitioner, given the business nature of the confidential information. Petitioner and Patent Owner are competitors in the same market and are involved in pending district court litigations. *E.g.*, the Code200 and Teso Litigations.

Fourth, the Board has previously granted modified protective orders with a “HIGHLY CONFIDENTIAL – OUTSIDE ATTORNEYS’ EYES ONLY” tier. *See, e.g., Varian Medical Systems, Inc., et al. v. Best Medical International, Inc.*, IPR2020-00071, Paper 43 at 4-5 (PTAB Oct. 23, 2020)(granting proposed

modifications in Paper 32); *see also, e.g., Echelon Fitness Multimedia, LLC v. Peloton Interactive, Inc.*, IPR2020-01541, Paper 56 at 87-88 (PTAB March 2, 2022)(public version of Paper 54; granting proposed modifications in Paper 31).

Thus, Patent Owner respectfully requests that the Board enter the Joint Protective Order (EX. 2052) in this proceeding. Furthermore, Patent Owner understands that the terms of a protective order take effect upon the filing of a Motion to Seal by a party, and remain in place until lifted or modified by the Board. *See* TPG at 107.

Respectfully submitted,

Date: September 6, 2024

By: /s/ Thomas M. Dunham
Thomas M. Dunham
Reg. No. 39,965

Cherian LLP
1901 L Street NW, Suite 700
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(202) 838-1567

ATTORNEY FOR PATENT OWNER,
BRIGHT DATA LTD.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITS

This Motion is within the 15 page-limit, in compliance with 37 C.F.R. § 42.24(a)(1)(v).

Respectfully submitted,

Date: September 6, 2024

By: /s/ Thomas M. Dunham

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ATTORNEY FOR PATENT OWNER,
BRIGHT DATA LTD.

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned hereby certifies that
PATENT OWNER'S MOTION TO SEAL AND TO ENTER THE JOINT
PROTECTIVE ORDER and all exhibits thereto were served on the undersigned
date via email, as authorized by Petitioner, at the following email addresses:

eagle.robinson@nortonrosefulbright.com

daniel.leventhal@nortonrosefulbright.com

chad.wallis@nortonrosefulbright.com

Respectfully submitted,

Date: September 6, 2024

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