

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

METACLUSTER LT, UAB,

Petitioner,

v.

BRIGHT DATA LTD.,

Patent Owner.

Case IPR2022-00687

Patent 11,190,622

PETITIONER'S REPLY

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PETITIONER'S EXHIBIT LIST

Ex. #	Shorthand	Description
1001	'622 Patent	U.S. Patent No. 11,190,622
1002	Olivier	Declaration of Dr. James Olivier
1003	Kocherlakota	U.S. Patent No. 6,785,705 (issued Aug. 31, 2004)
1004	Cohen	U.S. Patent No. 6,389,462 (issued May 14, 2002)
1005	RFC 2616	Internet Engineering Task Force, <i>Hypertext Transfer Protocol – HTTP/1.1</i> , June 1999
1006	RFC 1122	Internet Engineering Task Force, <i>Requirements for Internet Hosts – Communication Layers</i> , October 1989
1007	'622 FH	Prosecution History of U.S. Patent No. 11,190,622
1008	'511 FH	Prosecution History of U.S. Patent No. 10,484,511
1009	'511 Reexam Order	Order Granting Request for Ex Parte Reexamination of U.S. Patent No. 10,484,511 in 90/014,827
1010	Teso CC Order	Claim Construction Opinion and Order, Document 191, <i>Luminati Networks Ltd. v. Teso LT et al.</i> , Case No. 2:19-cv-00395 (E.D. Tex.)
1011	Code200 CC Order	Claim Construction Memorandum Opinion and Order, Document 97, <i>Luminati Networks Ltd. v. Code200 et al.</i> , Case No. 2:19-cv-00396 (E.D. Tex.)
1012	Motion for Hearing	Defendants' Motion for Hearing Regarding O2 Micro Issue, Document 444, <i>Bright Data Ltd. v. Teso LT et al.</i> , Case No. 2:19-cv-00395 (E.D. Tex.)
1013	Supplemental CC Order	Supplemental Claim Construction Order, Document 453, <i>Bright Data Ltd. v. Teso LT et al.</i> , Case No. 2:19-cv-00395 (E.D. Tex.)
1014	Tefincom '511 MSJ	Redacted Defendant's Motion for Partial Summary Judgment of Noninfringement or in the Alternative Invalidity for the '511 Patent, Document 101, <i>Bright Data Ltd. v. Tefincom S.A. d/b/a NordVPN</i> , Case No. 2:19-cv-00414 (E.D. Tex.)
1015	RFC 791	Internet Engineering Task Force, Request for Comments 1122 <i>Internet Protocol</i> , September 1981
1016	RFC 793	Internet Engineering Task Force, Request for Comments 1122 <i>Transmission Control Protocol</i> , September 1981
1017	RFC 1123	Internet Engineering Task Force, Request for Comments 1123 <i>Requirements for Internet Hosts - Application and Support</i> , October 1989

Ex. #	Shorthand	Description
1018	Coley	U.S. Patent 5,826,014 (issued Oct. 20, 1998)
1019	Haverstock	U.S. Patent No. 6,449,640 (issued Sep. 10, 2002)
1020	RFC Index	August 3, 2001 archived Internet Society webpage for RFC Index from Internet Archive (Wayback Machine), available at: http://web.archive.org/web/20010803120225/http://www.rfc-editor.org:80/rfc-index2.html
1021	Williams	Transcript of April 7, 2023 Deposition of Tim A. Williams, Ph.D.

I. INTRODUCTION

Beyond a single argument that the Board considered and rejected in the DI, PO attempts to distinguish the challenged independent claims solely by urging two flawed sets of claim constructions for “client device” and “server.” Each differs from the correct constructions applied in the Petition, adopted by the district court, and adopted by the Board in institution decisions in related trials. First, PO alters the actual role-based constructions by adding an “at a particular point in time,” which PO itself concedes renders the claims nonsensical. Second, PO seeks hardware-based construction that would transform the claims to cover an architecture and steps disclosed nowhere in the patent. Rejecting those improper constructions moots PO’s purported distinctions over the art.

II. LEVEL OF ORDINARY SKILL

Like PO (POR, 2), Petitioner does not believe the slight differences in levels of skill asserted by the parties is relevant in deciding any issue before the Board.

III. CLAIM CONSTRUCTION

A. Petitioner’s Constructions Correctly Reflect the Plain Meaning of “Client Device” and “Second Server” in the Computer Science Context of the Claims

1. PO improperly adds a “point in time” qualifier to Petitioner’s constructions of “client device” and “first server”

The Petition and the district court analysis that the Board has credited and adopted in institution decisions for trials of other family members (IPR2022-00103,

Paper 7 at 18-19) explain that the role-based constructions adopted by both the district court reflect the plain meaning of the terms as described in RFC 2616. Pet., 18-20. Unable to criticize the actual role-based constructions, PO: (1) alters the constructions by adding a “point in time” limitation and then attacks that altered construction, and (2) argues the intrinsic record also supports hardware-based constructions. Both arguments fail.

2. *The role-based constructions do not include a particular “point in time” qualifier*

PO asserts that “purely role-based constructions” “focus only on the role being performed by a network component *at a particular point in time*,” and then proceeds to distinguish Kocherlakota and Cohen on that basis. POR, 1.¹ Neither the Petition’s proposed constructions nor the district court’s constructions—which are one and the same—contain any such qualifier.

The “*at a particular point in time*” is not proper because PO admits that it “contradict[s] the express claim language.” POR, 18. That is, as PO affirmatively explains in detail, this qualifier because it would render the claim language unmeetable and thus nonsensical. This is because, according to PO, “[d]uring the method steps recited in limitations 1c, 1d, 1g, and 1h, the “first server” is operating in the role of a client under the purely role-based constructions.” POR, 18-19.

¹ All emphasis added unless otherwise indicated.

Limitation 1[c] requires *the first server* to “send[], in response to the selecting, the first URL to the first web server using the selected IP address.”

While the POR makes this argument as supporting rejecting of “purely role based constructions,” the correct result is for the Board to reject the “*at a particular point in time*” qualifier and, instead, adopt the actual role-based constructions Petitioner proposed and applied. A construction that “renders [the] claim[s] nonsensical” “cannot be correct.” *Schoenhaus v. Genesco, Inc.*, 440 F.3d 1354, 1357 (Fed. Cir. 2006).

3. RFC 2616 does not support nor require an “at a particular point in time” qualifier

PO does not and cannot dispute that RFC 2616 defines “client” and “server” in functional, not hardware, terms. Yes, PO asserts that RFC 2616’s statement “our use of these terms [server and client] refers only to the role being performed by the program for a particular connection” means “the role-based constructions must be analyzed at a particular point in time for a particular connection.” POR, 29. But RFC 2616 does not define “connection” as a temporal period, let alone mention “a particular point in time.” EX1005, 8/114. Rather, RFC 2616 defines “connection” as “[a] transport layer virtual circuit established between two programs for the purpose of communication.” *Id.*

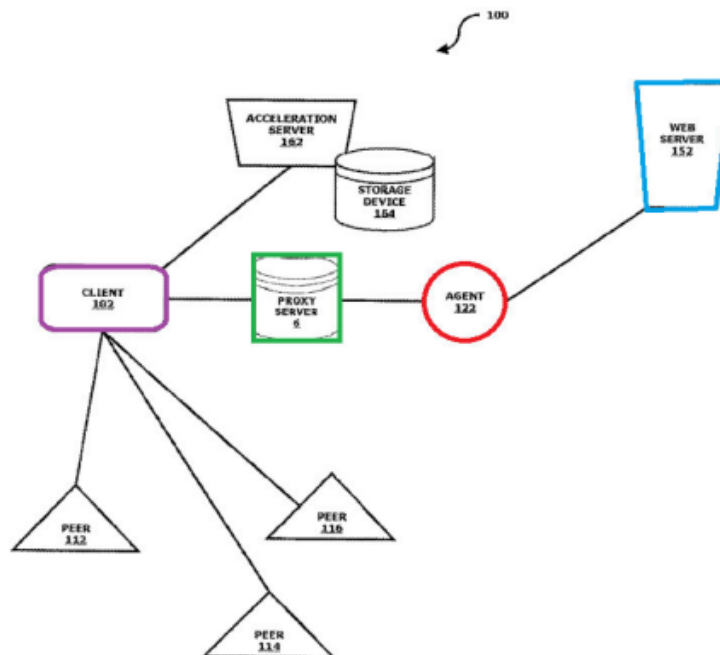
RFC 2616’s definition of “proxy” as “[a]n intermediary program which *acts as both a server and a client* for the purpose of making requests on behalf of other

clients” (EX1005, 9/114) contradicts PO’s premise that client and server roles are mutually exclusive and, thus contradicts myopically focusing on the task actually performed “at a particular point in time.”

B. The Specification Does Not Disclose PO’s Hardware-Based Constructions Nor Distinguish “Client Device” and “Second Server” Based on Hardware

1. The specification does not disclose the claimed methods under PO’s construction

PO urges constructions under which: (1) no actual figures match the claims and (2) even after “modifying” a figure, the purported “first server” in the figure still would not perform the claim steps. PO does not allege that Figure 3 or any other actual figure of the ’622 Patent discloses a “consumer computer” ↔ “not a consumer computer” ↔ “first/second web server” architecture. *See, e.g.,* POR, 7-8. Unable to cite the specification, PO fabricates a figure to illustrate what it attempts to claim:



POR, 7-8 (adding proxy server 6 from prior art FIG. 1 highlighted in green). PO alleges neither that the specification includes such a figure nor that the specification instructs the reader to create this figure. *See id.* Rather, PO asserts, without elaboration, that “[a] POSA would understand that proxy server 6 of Figure 1 ***could be inserted*** between client 102 and agent 122 of Figure 3, as shown below in a modified version of Figure 3” without any citation to the specification, but only to Dr. Williams, who also cites nothing. POR, 7-8; EX2041, ¶60. Having failed to offer any link between the actual specification and its “modified” figure, PO’s requested construction of “first server” as “not a consumer computer” is improper. *See Nellcor Puritan Bennett, Inc. v. Masimo Corp.*, 402 F.3d 1364, 1368 (Fed. Cir. 2005) (“[A] construction that excludes all of the embodiments of an invention is ‘rarely, if ever, correct.’”).

Further, even if PO could justify its fabricated figure, the fabricated figure does not support the claimed ***steps***. Based on the green color coding, and confirmed by Dr. Williams, PO is asserting that proxy server 6 in “modified” Figure 3 (POR, 7-8) corresponds to the “first server” of Challenged Claim 1 (POR, 2-4). EX1021 10:2-19.

Not surprisingly, the specification’s discussion of prior art proxy server 6, does not say a word about performing any “selecting” (steps 1[b], 1[f]) or sending URLs “in response to the selecting” (steps 1[c], 1[g]). EX1001, 2:8-39. The POR

only cites to acceleration server 162, not proxy server 6 as purportedly performing “selecting.” POR, 49 (citing EX1001, 13:25-29). Not only does this disclosure not match “modified” FIG. 3, it differs from the claims in multiple ways. Acceleration server 162 does not select “in response to the receiving of the [first]/[second] URL”—client 200 resolves URLs generated within client 200 into IP addresses and sends IP addresses, not URLs, to acceleration server 162. EX1001, 13:4-15. Further, to the extent identification of potential agents were considered selecting, acceleration server 162 does not send URLs in response to that selecting; it simply sends the list of agents back to client 200, and client 200 sends URLs to agents. *Id.*, 13:19-36. Confronted with the lack of disclosure, Dr. Williams proposed moving functionality from each of (a) acceleration server 162, and (b) client 200 to proxy server 6 to meet the claims. EX1021, 13:1-20:22. Of course, the specification discloses no such thing. Further, Dr. Williams testified that “[t]he division of tasks between these blocks is not constrained by the specification” (*id.*, 17:2-15) such that it is appropriate to move functionality from a “client device” to a “server,” contradicting PO’s thesis that the specification discloses a dichotomy between “client devices” and “servers.”

2. PO’s lexicography argument is incorrect

PO asserts that the district court was incorrect in its analysis rejecting PO’s argument that “client device” should be construed to mean “consumer computer”

based on lexicography. POR, 30-32. But “[t]he standards for finding lexicography and disavowal are exacting.” *Hill-Rom Servs., Inc. v. Stryker Corp.*, 755 F.3d 1367, 1371 (Fed. Cir. 2014). To act as his own lexicographer, the patentee must “clearly set forth a definition of the disputed claim term,” and “‘clearly express an intent’ to redefine the term.” *Thorner v. Sony Computer Ent. Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012).

PO relies upon a single passage *in the background section regarding prior art Figure 2*, which states: “FIG. 2 is a schematic diagram providing an example of a *peer-to-peer file transfer network 50*. *In the network 50*, files are stored on *computers of consumers, referred to herein as client devices 60*.” EX1001, 2:43-46. While less clear from PO’s partial quotation, which notably omits the “60” in “client devices 60” (POR, 31), this passage does not meet the “exacting” standard of demonstrating an “intent” to define “client device.” Rather, the passage refers to specific elements found only in prior art Figure 2: “client devices 60.” EX1001, 2:43-46.

PO analogizes the specification of the ’622 Patent to the specification in *Kyocera*. POR, 31 (citing *Kyocera Senco Indus. Tools, Inc. v. ITC*, 22 F.4th 1369, 1379 (Fed. Cir. 2022)) (stating “[a]cting as their own lexicographers, the patentees defined ‘driven position’ in the specification by stating: This bottom position is also sometimes referred to herein as the ‘driven position.’”) (internal citations omitted).

As explained above, the partial quotation on which PO relies references a prior art figure, *not* the claimed “client device,” making it dissimilar from the specification in *Kyocera*.

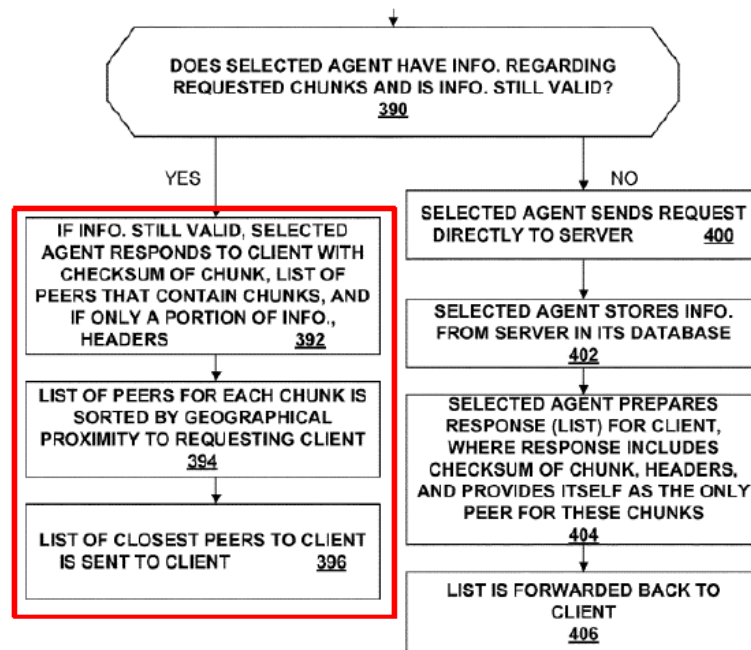
3. *The specification never points to hardware as a required characteristic, point of novelty, or reason for advantage*

Even if it were permissible for PO to rely on its fabricated figure to support its constructions, PO’s “first server” construction still fails because the specification never limits “proxy server 6” to any particular hardware or physical limitation. Instead, the POR relies almost entirely on cited paragraphs of Dr. Williams’s expert declaration, which themselves have little evidentiary support and never cite the ’622 Patent. Namely, the POR repeatedly asserts that “a POSA would understand there are structural differences between proxy servers and proxy client device,” but does so through attorney argument. *See, e.g.*, POR, 23 (citing only EX2041 and not the ’622 Patent); EX2041 (citing nothing).

PO also asserts that “role-based constructions ” are wrong because each of “proxy server 6 of Figure 1 and agent 122 of Figure 3” perform a proxy function and, therefore, absent a hardware-based distinction, “Figure 3 (inventive embodiment) collapses onto Figure 1 (prior art).” POR, 20-21; *see also id.*, 23, 37. PO’s argument incorrectly assumes that the only possible basis for distinguishing Figures 1 and 3 is the structure of proxy server 6 of Figure 1 compared to that of agent 122 of Figure 3. But the specification explains that agent 122 performs many

more functions than just proxying, and these additional functions, not any structure, are what distinguish prior-art Figure 1 from Figure 3.

The Abstract describes the purpose of the purported invention is “releasing congestion from the Web by fetching” web content from “peers” rather than web servers. EX1001, Abstract. The “agent” plays the role of receiving requests and “respond[ing] with a list of peers that have previously seen some or all of the content.” *Id.* As detailed in Figure 10 and the accompanying discussion, agent 122 primarily serves this role of identifying peers and serves as a proxy only when it fails to identify any peers with the requested content:



Id., FIG. 10 (highlighted), 14:42-47.

Second, Dr. Williams argues that Figure 6 and the accompanying discussion demonstrate a distinction between the structures of “servers” and “communication

devices.” In his opinion, “Figure 6 and the associated text disclose communication devices having client, peer, and agent modules, but no server module.” EX2041, ¶130. Again, PO creates this dichotomy only by adding disclosure not found in the specification. The specification does not even mention the term “server module,” let alone distinguish a class of structures known as “communication devices” from a class of structures known as “servers.”

4. *The prosecution histories do not help PO*

Contrary to PO’s suggestion based on examiner statements in the Notices of Allowance therein (*see* POR, 28), this prosecution history does not involve any disclaimer that might help PO. *Salazar v. Proctor & Gamble Co.*, 414 F.3d 1342, 1345 (Fed. Cir. 2005). Likewise, the examiner statements in the other Notices of Allowance (*see* POR, 24-25 (citing ’936 PH), 26 (citing ’374 PH), 27 (citing ’511 PH) do not help PO. *Salazar*, 414 F.3d at 1345.

(a) *Great-Grandparent ’936*

PO contends the ’936 PH provides support for its claim construction positions. *See* POR, 24-25. But the question is whether PO established that it disclaimed scope during the ’936 PH that should carry through to its presently proposed constructions for “client device” or “second server.” *See Elkay Mfg. Co. v. Ebco Mfg. Co.*, 192 F.3d 973, 980 (Fed. Cir. 1999). PO has not.

PO first focuses on the impact of claim amendments and statements it made in its 11/30/2016 response. *See* EX2028, 204-216; POR, 24-25. There, PO distinguished a cache server, which “is clearly a dedicated device and performs a server functionality,” from a “client.” EX2028, 215. But PO has not argued that proxy server 17 of Kocherlakota or proxy redirector 104 of Cohen (mapped to the claimed “first server”) are a cache server, rendering this distinction irrelevant.

PO also argued that the distinguished reference (Garcia) taught away from identifying and using another client device for supporting a content request by a specific client (*id.*, 215; POR, 24). Such “identifying and using” of one client by another client is not recited in Challenged Claim 1, rendering this argument similarly irrelevant. PO contends that the examiner’s concession that Garcia did not teach “a group of clients for data communication between the web server and a requesting client via one or more clients selected from the group; and [] the selected client receiving the content from the web server; and [] the requesting client receiving the content from the selected client” (EX2028, 174) shows that “[t]he examiner recognized a server cannot be equated to a client device regardless of the role being performed at a given moment in time” (POR, 24). But this conclusory attorney argument deserves no weight and is supported only by unexplained expert testimony that parrots it, which also deserves no weight.

PO also argues that its statements in its 4/2/2017 response “clearly distinguished servers from client devices.” POR, 25. But PO’s cited statements were supporting its contention that “Garcia ... is silent, and [e]ffectively teaches away, from using clients as content source for other clients” (EX2028, 163), which is not required by the first client device of Challenged Claim 1 or otherwise consistent with the architecture of the Challenged Claims. PO stated that its claimed clients possessed both “cache-server” and “client” functionality (*id.*, 165-166 (“Using clients over the Internet as both cache-servers AND clients is clearly an unexpected result.”),² 205-214 (using “Internet” in the independent claims)), undermining its position that its ’936 PH statements clearly distinguished servers from client devices.

PO asserts that the examiner’s acknowledgment of the claims “within its environment” as evidence of a unique architecture. POR, 25. The examiner’s statement acknowledges the claimed architecture; it does **not** distinguish servers from client devices.

² This PO statement refers to PO’s then-pending claim language because it uses “Internet,” which is in the claim language, and references an “unexpected result,” which necessarily concerned the claimed invention.

(b) Grandparent '374

PO points to statements made during prosecution to overcome a rejection based on abstract idea. POR, 26 (citing EX2029, 11). Again, PO's assertion of a "specific architecture" does not amount to disclaimer or impact the construction of a server and client device. Similarly, PO made statements to overcome an obviousness rejection *unrelated* to the construction of server and client device. PO's statements distinguished the first and second server (that is a web server) without reference to the construction of server in relation to a client device. EX2029, 14.

(c) Parent '511 Patent

For the reasons discussed above, any reference to the "architecture" or "environment" of the claims does not alter the Court's construction.

C. PO's Assertions That The District Court's Claim Construction Decisions Support Its Positions Misrepresent the Record

As the Petition explains, the district court, across multiple orders, directly addressed the same constructions PO urges here, directly rejected PO's positions, and specifically endorsed and adopted the role-based constructions the Petition applies. Pet., 19-20. Yet, the POR spends nine pages asserting that the district court's *own constructions* "contradict" the district court's various orders. POR, 10-18. Simple logic dictates PO's representations cannot be accurate. As one example, PO argues that the district court's NetNut decision supports its argument that "client device," "communication device," and "consumer computer" are synonymous

because “the Court expressly rejected removing the word ‘communication’ from the Court’s prior construction.” *Id.*, 11-12. But in that proceeding, PO proposed “consumer computer” as its construction, as it does here. EX2023, 10. And in response, the district court stated it had already “rejected a proposal that ‘client device’ refers to a ‘consumer computer,’” and “Plaintiff does not justify revisiting the Court’s rejection of a proposal to construe a ‘client device’ to be a ‘consumer’ device.” *Id.*, 13. PO also cites to a number of *Alice* orders. *Id.*, 14-18. But none of those orders purported to construe any claims terms.

IV. PO FAILS TO DISTINGUISH KOCHERLAKOTA UNDER THE PROPER CONSTRUCTION OF “CLIENT DEVICE” AND “SECOND SERVER”

A. PO’s Arguments Distinguishing Kocherlakota Under “Role-Based” Constructions Fail Because They Rely on an Improper “At That Point In Time” Qualifier

The POR purports to distinguish each of Limitations 1[c], 1[d], 1[h], and 1[g] and Claims 2-13, 16, and 26 from Kocherlakota under “role-based constructions.” POR, 39-42, 49-53. PO repeats a single argument for each limitation of claim 1, arguing that “proxy server 17” cannot correspond to the “first server” because “*at the particular point in time*” that the recited step is performed, “proxy server 17 is operating in the role of a client, not a server.” *Id.*, 40-42. PO makes the same arguments for claims 2-10, stating Petitioner “does not apply the role-based constructions at a *particular point in time*” and “proxy servers 19 and 21 are servers,

not client devices.” *Id.*, 49-52. PO asserts Kocherlocka also fails to disclose claims 11-13, 16, and 26 for the same reasons “discussed above.” *Id.*, 52-53.

As discussed in Section III, this argument is not a criticism of the Petition’s mapping of Kocherlakota, but the only conclusion of applying an incorrect construction that PO concedes can never be met.

B. PO’s Arguments Distinguishing Kocherlakota Based on the Use of an Applet Fail Because the Proxy Server Selects By Executing Logic “In Response” to the URL

PO asserts that Kocherlakota does not disclose “selecting, in response to the receiving of the [first/second] URL” “an IP address from the group” because “proxy server 17 merely applies an applet.” POR, 43-49. PO does not dispute Kocherlakota’s relevant disclosure, only its application to the claim language. And, while PO attempts to minimize the undisputed actions of proxy server 17 as “merely apply[ing] an applet,” PO does not dispute that Kocherlakota discloses proxy server 17 comparing received URLs using matching rules and selecting the IP address of a next proxy based on that logic. Those actions meet the claim language.

First, PO does not dispute that proxy server 17 necessarily stores a group of IP addresses comprising the IP addresses of proxies 19 and 21 in order to perform routing. *Compare* POR, 43-49 *with* Pet., 26-28. Second, PO does not dispute that Kocherlakota discloses proxy server 17 routing received URLs to *either* proxy server 19 (in “pathways” 1 and 2) *or* proxy server 21 (in “pathways 21”). POR, 46-

48. Nor does PO dispute that implementing this routing decision requires choosing the IP address of the identified proxy to perform the routing. *Id.* Third, PO does not dispute that proxy server 17 makes routing decisions *specific to* the contents of the received URL. *Id.* It follows from these undisputed facts that proxy server 17 must make its routing decision *after* receipt of the URL and *based on* the contents of the URL, meaning that routing decision is “in response to” receipt of the URL under any possible construction. *See* Pet., 20-21, 31.

In the face of these undisputed facts, PO argues that proxy server 17 choosing the IP address of the identified proxy is not “selecting” because proxy server 17 makes its routing decisions using pre-defined logic that a user enters via an applet. POR, 42-49. PO argues that “the selection of which features of which proxies are to be used for a particular URL is made before the first/second URL is received by proxy server 17.” *Id.*, 48. This is both factually incorrect and, in any event, fails to distinguish the actual claim language. Factually, Kocherlakota discloses defining in advance via an applet the *criteria* for performing selection. EX1002, ¶105; EX1003, 4:29-31, 5:10-23, FIGs. 6-7. But because those criteria requires as an input a specific URL, proxy server 17 cannot perform the actual analysis until that URL arrives and, therefore, cannot “select” until after the URL arrives.

Addressing the claim language, nothing in the word “selecting” precludes selecting based on predefined logic. Nor does PO propose a construction for

“selecting.” POR, 9 (asserting the phrase “would have its plain and ordinary meaning and does not require a construction”). PO argues that the ’622 Patent preferred embodiment “still requires some intelligent decision-making” for selecting. POR, 49 (citing EX1001, 13:25-29). Even if true, a detail of a preferred embodiment is not a basis to narrow a plain term such as “select.” In any event, the passage PO cites relates to the acceleration server 162—which PO does not to the “first server” and never even receives a URL, only an “IP address.” EX1001, 13:8-29. Nor does this passage describe anything other than executing predefined logic: “finding the communication devices of communication network 100 that are currently online, and whose IP address is numerically close to the IP of the destination Web server.” *Id.*

V. PO FAILS TO DISTINGUISH COHEN UNDER THE PROPER CONSTRUCTION OF “CLIENT DEVICE” AND “SECOND SERVER”

A. PO’s Arguments Distinguishing Cohen Under “Role-Based” Constructions Fail Because They Rely on an Improper “At That Point In Time” Qualifier

The POR purports to distinguish each of Limitations 1[c], 1[d], 1[h], and 1[g] and Claims 2-13 and 26 from Cohen under “role-based constructions.” POR, 53-56, 60-63. PO repeats a single argument for each limitation of claim 1, arguing that “proxy redirector 104” cannot correspond to the “first server” because “*at the particular point in time*” that the recited step is performed, “proxy redirector 104 is operating in the role of a client, not a server.” *Id.* 53-56. PO makes the same

arguments for claims 2-10, stating Petitioner “fails to consider which role is being performed at a *particular point in time*.” *Id.*, 60-62. PO states Cohen also fails to disclose claims 11-13 for “at least the reasons discussed above.” *Id.*, 62.

As discussed in Section III, this argument is not a criticism of the Petition’s mapping of Cohen, but the only conclusion of applying an incorrect construction that PO concedes can never be met.

B. Claim 26: The Same Stored “Group Of IP Addresses” Mapped For Claim 1 Would Also Include The IP Address Of Client 101-2

PO argues that the Petition’s analysis is “inconsistent” because “Petitioner analyzes client 101-2 as the ‘second client device’ rather than one of the proxy caches 110, 115, 117.” POR, 62. Claim 26 introduces the “second client device” for the first time, meaning the Petition did not ever map the “second client device” to any “one of the proxy caches 110, 115, 117.” Thus, there can be no inconsistency. Likewise, the Petition explains why the same stored “group of IP addresses” mapped for Claim 1 would also include the IP address of client 101-2. Pet., 72, 75. Petitioner identifies no flaw in this analysis.

C. Claim 30: PO Fails To Put Forth An Alternative Construction For “Server Operating System”

PO argues that Cohen does not disclose claim 30 because operating on a “Linux machine does not show that proxy redirector 104 uses a server operating

system.” POR, 63. PO fails to offer a construction and provides no reason why the plain-language understanding the Petition applies is wrong. *Id.*

The Petition demonstrates this term is met under its plain meaning because (1) Linux is an operating system, and (2) proxy redirector 104 is operating in the role of a server. Pet., 78-79. Further, to the extent server operating system refers to a class of operating system, PO concedes that “Linux offer[s] various types of operating systems,” including a “server” type that would meet PO’s unstated construction. POR, 63.

D. PO Has Waived Any Argument that Cohen Discloses Not Sending The Received Content Identifier

Claim 1 recites “receiving ... the [first/second] URL” and “sending ... *the* [first/second] URL” and requires that what is received (“the first content identifier” / “the first URL”) then be sent on. In the POPR, PO argued that Cohen does not meet this language because the “claim requires the same content identifier in the selecting step and subsequent sending step.” POPR, 24.

The Board rejected this argument, stating: “we do not discern a difference between the complete URL ... and the absolute URL.” Paper 11, 34. However, the Board “invite[d] the parties to fully address ... whether Cohen’s disclosure of a complete URL that is transformed to an absolute URL is the same URL or a different URL than the complete URL.” *Id.*

In its response, PO declines to do so. PO only includes a footnote in an unrelated section, purportedly referencing Dr. Williams's discussion of Cohen's teachings regarding a complete and absolute URL. POR, 59, n.11. But PO does not allege this footnote *or* any other portion of the POR forms a basis to distinguish an absolute and complete URL. PO thus waives this argument. *In re NuVasive, Inc.*, 842 F.3d 1376, 1380–82 (Fed. Cir. 2016).³

VI. PATENT OWNER'S CHALLENGES TO PETITIONER'S OBVIOUSNESS POSITIONS IN GROUND 3 FAILS

PO argues that “a POSA would not be motivated to arrive at the claimed methods of the '622 Patent based on the teachings of Cohen.” POR, 58. But none

³ To the extent PO may attempt to belatedly respond, nothing in Dr. Williams' explanation of the differences between the two types of URLs distinguishes Cohen from the claims. As an initial matter, Dr. Williams agrees that “the absolute URL includes the complete URL” (EX1021, 31:6-9) and, thus, sending the absolute URL is sending the complete URL and more. This is sufficient to meet the claim. Dr. Williams fails to identify any differences between the URLs that would alter that conclusion. Dr. Williams merely discusses how they are used, criticizing Cohen for not “providing fresh content.” EX2041, ¶¶242-246. This does not address the Board's invitation and rings hollow given the very point of the system the '622 Patent discloses is to use cached, not “fresh,” copies. EX1001, Abstract.

of PO's alleged teaching-away arguments meet the standard necessary to establish teaching away. Further, none of PO's arguments are directed to the modifications of Cohen that Petitioner argued render obvious the *inventions recited* in the claims. Specifically, PO fails to tie any of its teaching-away arguments regarding anonymity and the use of a proxy cache to any of the modifications to Cohen that Petitioner argued a POSITA would have found obvious. *See* POR, 58-60.

The Federal Circuit has consistently held that teaching away requires more than presenting an alternative. *See DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 567 F.3d 1314, 1327 (Fed. Cir. 2009) (“A reference does not teach away, however, if it merely expresses a general preference for an alternative invention but does not ‘criticize, discredit, or otherwise discourage’ investigation into the invention claimed.”) (citing *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004)). In fact, the reference must suggest an inoperative result. *See In re ICON Health & Fitness, Inc.*, 496 F.3d 1374, 1382 (Fed. Cir. 2007) (“[A] reference teaches away from a combination when using it in that combination would produce an inoperative result.”). “[O]bviousness ‘does not require that the motivation be the *best* option, only that it be a *suitable* option from which the prior art did not teach away.’” *Bayer Pharma AG v. Watson Labs., Inc.*, 874 F.3d 1316, 1328 (Fed. Cir. 2017) (quoting *Par Pharm., Inc. v. TWi Pharms., Inc.*, 773 F.3d 1186, 1197-98 (Fed. Cir. 2014)) (emphasis in original).

Similarly, PO's failure to tie its arguments to the modification of Cohen is fatal to PO's position. *See, e.g., In re Urbanski*, 809 F.3d 1237, 1241 (Fed. Cir. 2016) (the factual findings underlying obviousness include "whether the prior art teaches away from the claimed invention") (citation omitted). PO points to no limitation in any Challenged Claim relating to anonymity and the use of a proxy cache (POR, 58-60), which is an independent reason PO's so-called "teaching away" arguments should be rejected. *See Geo M. Martin Co. v. Alliance Mach. Sys. Int'l LLC*, 618 F.3d 1294, 1302-03 (Fed. Cir. 2010) (rejecting nonobviousness arguments concerning unclaimed features).

VII. PO'S SECONDARY CONSIDERATIONS EVIDENCE DOES NOT OVERCOME PETITIONERS' SHOWING OF OBVIOUSNESS

PO's purported evidence of commercial success should be given no weight. PO does not and cannot establish a nexus, and offers no evidence of market share or other context for its purported sales.

First, PO fails to establish a nexus to its purported sales. *Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010) (citing *In re Huang*, 100 F.3d 135, 140 (Fed. Cir. 1996)) ("[T]he patentee must establish a nexus between the evidence of commercial success and the patented invention."). Thus, it was PO's burden to establish a nexus to whatever secondary considerations it sought to rely on. Yet Dr. Williams admits he did **not** apply the District Court's or the Board's constructions in analyzing PO's data center proxy services. EX1021, 25:1-25:9 ("Q. Which

construction or constructions are you applying in rendering that opinion [the Bright Data's data center proxy server practices at least challenged claims?" A. The nonrole-based constructions."]. That alone is fatal to PO's attempt to establish a nexus to "the patented invention."

Moreover, PO's and Dr. Williams' purported mapping of Bright Data's data center services is conclusory and woefully inadequate. The POR cites only Dr. Williams for the proposition that "Bright Data offers a data center proxy service that practices the challenged claims." POR, 64 (citing EX2041, ¶¶265-266). But Dr. Williams does not actually corroborate this assertion, stating only that "I understand that Bright Data offers a data center proxy service," without any explanation of a basis for that understanding. EX2041, ¶265. Dr. Williams also goes on to describe "Bright Data's network diagram," but does not testify that it accurately represents the physical systems actually used to implement the purported data center proxy services. *Id.*, ¶266. Nor does Dr. Williams label the diagram or otherwise corroborate his editorial description of that diagram to the actual diagram itself. *Id.* Dr. Williams next turns to "Bright Data's source code (EX. 2040) for the data center proxy service," but does not testify that or explain how that source code relates to the purported network diagram of EX2045.

Even more confusingly, rather than citing either of the purported network diagram (EX2045) or source code (EX2040), Dr. Williams points only to EX2039

in his mapping to the preamble, without explaining how the words on the webpage of EX2039 relates to or are specifically found in the network diagram or source code. EX2041, ¶267 (pp. 118-121, mapping of Claim 1 preamble). When, in that same chart, Dr. Williams turns to the source code itself for claim elements 1a and 1b, he does so without explaining how that purported source code relates to the network diagram or which particular components actually perform the function. *See, e.g.*, EX2041, ¶267 (pp. 121-125); *see also* POR, 65-67. From there, Dr. Williams fails to cite—much less explain—any particular evidence in his purported mapping of claim elements 1c, 1d, 1e, 1f, or 1h. EX2041, ¶267 (pp. 125-131); POR, 67-69.

PO's attempt to map to claim 1 what Dr. Williams's has apparently been informed are services offered by Bright Data is woefully inadequate and cannot support a nexus. And PO's explanation of the features that purportedly “creates the value of these services” is supported by nothing more than Dr. Williams' unsupported and conclusory characterizations. POR, 74 (citing EX2041, ¶¶268-269). And, because claim 1 is the sole independent claim, PO cannot show a nexus to any of the challenged claims.

PO also touts that it “advertise(s) enterprise-grade scaling.” POR, 75. Yet scaling is not claimed, and PO's evidence lacks the nexus required at least for this reason. *See Nested Bean, Inc. v. Big Beings USA Pty Ltd.*, IPR2020-01234, Paper 34, 42-44 (P.T.A.B. Jan. 24, 2022). Similarly, PO next relies on its “770,000+

Datacenter IPs [presumably IP addresses] in 98 countries,” “99.99% success rate” rating “ as #1,” and revenue. POR, 75. Again, none of these features is claimed, and are connected by only the barest assertion to the purported “first server” as recited in the claimed methods” rather than the claimed method itself. PO also fails to offer any evidence showing specific demand for, or sales of, the purported Bright Data services due to any features of the challenged claims.

Even if credited, PO’s secondary considerations evidence is insufficient to overcome Petitioners’ strong showing. *Agrizap, Inc. v. Woodstream Corp.*, 520 F.3d 1337, 1344 (Fed. Cir. 2008). PO fails to provide any of the context necessary to determine its success in the market. *See In re Applied Materials, Inc.*, 692 F.3d 1289, 1300 (Fed. Cir. 2012) (“[T]he number of units sold without evidence of the market share is only weak evidence of commercial success....”). Neither the POR nor Dr. Williams give any information, much less evidence, about unit sales, revenue, or market share relative to the greater market. As such, PO’s secondary considerations evidence, even if credited, is insufficient to rebut the demonstrated obviousness of the challenged claims.

VIII. CONCLUSION

The Challenged Claims are invalid.

Dated: April 21, 2022

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CERTIFICATE OF WORD COUNT

Pursuant to 37 C.F.R. § 42.24(c)(1), the undersigned certifies that this Paper—exclusive of table of contents, certificate of service, and this certificate of word count—includes 5,541 words.

/Eagle H. Robinson/
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on April 21, 2022, a complete copy of this Petitioner's Reply and EX1021 were served on Patent Owner via email (by consent) to:

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