Internal distribution code:

(A) [-] Publication in OJ
(B) [-] To Chairmen and Members
(C) [-] To Chairmen
(D) [X] No distribution

Datasheet for the decision
of 9 October 2025

Case Number:	T 0423/23 - 3.5.05
Application Number:	18803304.7
Publication Number:	3472717
IPC:	G06F16/9538, H04L12/46, H04L29/12, H04L29/08
Language of the proceedings:	EN

Title of invention:
Method for improving content fetching by selecting tunnel devices

Patent Proprietor:
BRIGHT DATA LTD.

Opponent:
oxylabs, UAB

Headword:
Content fetching by selecting tunnel devices/BRIGHT DATA

Relevant legal provisions:
EPC Art. 123(2), 123(3)

EPA Form 3030
This datasheet is not part of the Decision
It can be changed at any time and without notice

Keywords:

Added subject-matter - main and auxiliary requests 1 to 3, 5
to 8, 15, 22 and 23 (yes): based on a claim interpretation
giving each claim feature a *technical* meaning
Extension of scope of protection - auxiliary requests 4, 9 to
14 and 16 to 21 (yes)

Case Number: T 0423/23 - 3.5.05

D E C I S I O N
of Technical Board of Appeal 3.5.05
of 9 October 2025

Appellant: (Opponent)	oxylabs, UAB Svitrigailos g. 32 03230 Vilnius (LT)
Representative:	Meissner Bolte Partnerschaft mbB Patentanwälte Rechtsanwälte Postfach 86 06 24 81633 München (DE)
Respondent: (Patent Proprietor)	BRIGHT DATA LTD. 3 Hamahshev St. 42507 Netanya (IL)
Representative:	Becker Kurig & Partner Patentanwälte mbB Bavariastraße 7 80336 München (DE)

Decision under appeal: **Decision of the Opposition Division of the European Patent Office posted on 5 January 2023 rejecting the opposition filed against European patent No. 3472717 pursuant to Article 101(2) EPC.**

Composition of the Board:

Chair	K. Bengi-Akyürek
Members:	P. Tabery
	C. Heath

Summary of Facts and Submissions

I.   The appeal lies from the decision of the opposition
        division to reject the opposition against the present
        European patent.

II.   Oral proceedings before the board were held on
        9 October 2025. The final requests of the parties were
        as follows:

        -   The appellant-opponent ("the opponent") requested
            that the decision under appeal be set aside and the
            patent be revoked.

        -   The respondent-proprietor ("the proprietor")
            requested that the appeal be dismissed (**main
            request**), or, that the patent be maintained in
            amended form on the basis of one of **auxiliary
            requests 1 to 21** filed with the statement of
            grounds of appeal or **auxiliary requests 22 and 23**
            filed with letter dated 7 August 2025.

        At the end of the oral proceedings, the board's
        decision was announced.

III.   Claim 1 as granted (**main request**) reads as follows
        (board's labelling):

        F1   "A method for fetching a content that is
                identified by a content identifier by a
                client device (31a) from a web server (22b)
                using a group of devices (31a-e),
        F1.1   for use with first (71) and second (72)
                servers and the group of devices (31a-e)

F1.1.1   that are each connected to the Internet and
           are each addressable in the Internet using a
           respective Internet Protocol, IP, address,

F1.1.2   wherein the first server (71) stores a
           list (73) of devices by the IP addresses
           associated with the devices in the group,

F1.2   each of the devices in the group of devices
           being a tunnel device,

F1.2.1   a tunnel device being an intermediate node
           for enabling the client device to access
           said content to the web server,
           the method comprising:

F1.3   sending (121a), by the client device to the
           second server (72), a request message that
           comprises the content identifier;

F1.4   receiving (121a, 202), by the second server
           from the client device, the request message;

F1.5   sending (131a, 212), by the second server to
           the first server, a first message in
           response to the received request message;
           and

F1.6   receiving (131a, 224, 202), by the first
           server from the second server, the first
           message;
           the method further comprising:

F1.7   selecting (146), by the first server, a
           device from the list of devices by selecting
           an IP address that is associated with the
           selected device, in response to the received
           first message;

F1.8   sending (131b, 203), by the first server to
           the selected device, a second message using
           the selected IP address of the selected
           device,

F1.8.1   the second message comprising the IP address
           of the second server;

F1.9 receiving (131b), by the selected device from the first server, the second message;

F1.10 sending (131c, 175), by the selected device to the web server, a content request that comprises the content identifier, in response to the received second message;

F1.11 receiving (131d, 176), by the selected device from the web server, the content, in response to the content request;

F1.12 sending (194, 225), by the selected device to the second server, the received content, in response to the receiving of the second message from the first server;

F1.13 receiving (194, 216), by the second server from the selected device, the content;

F1.14 sending (131g, 154), by the second server to the client device, the received content in response to the receiving the content from the selected device; and

F1.15 receiving (131g), by the client device from the second server, the content in response to the request message."

Claim 1 of each of **auxiliary requests 1 to 3 and 5 to 8** is amended vis-à-vis granted claim 1. However, these amendments leave feature F1.12 unmodified.

Claim 1 of **auxiliary requests 4 and 9 to 14** differs from claim 1 as granted, *inter alia*, in that feature F1.12 now reads as follows (amendment as underlined by the proprietor, deletions not shown):

  "sending (194, 225), by the selected device to the second server, the received content, in response to the receiving of the <u>content</u> from the <u>web server</u>".

Claim 1 of **auxiliary request 15** differs from claim 1 as granted, *inter alia*, in that feature F1.12 now reads as follows (amendment as underlined by the proprietor):

"sending (194, 225), by the selected device to the second server over the Internet, the received content, in response to the receiving of the second message from the first server".

Claim 1 of **auxiliary requests 16 to 21** differs from claim 1 as granted, *inter alia*, in that feature F1.12 now reads as follows (amendment as underlined by the proprietor, deletions not shown):

"sending (194, 225), by the selected device to the second server over the Internet, the received content, in response to the receiving of the content from the web server".

Claim 1 of **auxiliary requests 22 and 23** differs from claim 1 as granted, *inter alia*, in that feature F1.12 now reads as follows (amendment as underlined by the proprietor):

"sending (194, 225), by the selected device to the second server, the received content, in response to the receiving of the second message from the first server and to the receiving of the content by the selected device from the web server".

Reasons for the Decision

1.   The opposed patent concerns dynamically assigning a proxy ("tunnel device") for fetching content from a web

server in order to allow for anonymity in the context
of data retrieval.

2.   Main request (patent as granted)

2.1   Added subject-matter (Article 100(c)/123(2) EPC)

2.1.1   The board holds that the technically skilled reader of
        claim 1 would understand features F1.10 and F1.12 such
        that a respective check is performed (by a dedicated
        software and/or hardware) at the "selected device" in
        response to the same event, namely the receipt of the
        "second message" from the "first server". Thus, <u>two</u>
        checks (e.g. one for detecting a "content request" and
        another for detecting the IP address of the "second
        server" to which the requested content is to be sent)
        are supposed to be executed by the "selected device"
        according to that understanding.

2.1.2   With respect to **feature F1.12**, the board concurs with
        the opponent that the basis (i.e. page 169, second
        paragraph to page 171, third paragraph and Fig. 19b of
        the original application) provided by the proprietor do
        not lend itself to directly and unambiguously derive a
        second check whether the "second message" has been
        received from the "first server" beforehand (e.g. for
        deriving said IP address of the "second server"). This
        is however a teaching for which no basis in the
        original application exists.

2.1.3   The board is not convinced by the proprietor's argument
        that the aspect of feature F1.12 in question is indeed
        implied by the flow of messages defined in the
        preceding features (in particular feature F1.9) of
        present claim 1 and the corresponding passages of the
        original description. If this was the case, then the

underlying condition, i.e. "in response to the
receiving of the second message" would be effectively
meaningless as these preceding features already recite
that the "receiving of the second message from the
first server" is to be performed beforehand. However,
the board considers that the skilled reader, when
construing a claim with "a mind willing to understand",
ascribes to each feature a *technical* meaning. In the
present case, the formulation "in response to"
expresses a condition which needs to be observed and
thus requires a step of verification, i.e. a second
check, according to feature F1.12. Since no such step
is originally disclosed, it consequently constitutes
added subject-matter.

2.1.4   The proprietor's alternative argument as to the
        interpretation of claim 1, namely that the second check
        in feature 1.12 is meaningless and therefore
        non-limiting, is thus difficult to sustain. It would
        render the claim open to two interpretations that,
        depending on the respective forum, could be interpreted
        in this or that way at the patentee's convenience. Yet,
        interpreting a feature in a claim as irrelevant and
        therefore non-limiting is possible only where the
        presence of the feature would not alter the technical
        teaching, e.g. because it does not confer any technical
        information. This is however not so in the current
        case.

2.1.5   Moreover, also dependent claim 17 as originally filed
        fails to provide sufficient support for the disputed
        feature F1.12. This is because claim 17 indicates
        merely a step of "initiating a communication" which is
        likewise performed "in response to the receiving of the
        second message". However, this initiated communication
        is not directly and unambiguously disclosed as being

solely used for sending the "received content". Thus, also this argument of the proprietor must fail.

2.1.6   In view of the above, claim 1 indeed contains added subject-matter.

2.2   Consequently, the main request is not allowable under Article 100(c)/123(2) EPC.

3.   Auxiliary requests 1 to 3, 5 to 8 and 15

3.1   Claim 1 of each of **auxiliary requests 1 to 3, 5 to 8 and 15** likewise includes feature F1.12 and thus contains added subject-matter for the same reasons as those for claim 1 as granted.

3.2   Therefore, auxiliary requests 1 to 3, 5 to 8 and 15 are not allowable under Article 123(2) EPC, either.

4.   Auxiliary requests 4, 9 to 14 and 16 to 21

4.1   The board concurs with the opponent that the amendment to feature F1.12 shifts the scope of claim 1 of each of **auxiliary requests 4, 9 to 14 and 16 to 21** vis-à-vis claim 1 as granted, since a previously defined check for a certain condition (i.e. "receiving of the second message") is now modified to check for a different condition (i.e. "receiving of the content from the web server").

4.2   The board is not convinced by the proprietor's argument that there was no shift in scope of protection, since it was already implied by original claim 1 that the "sending" step of feature F1.12 is indeed performed "in response to receiving the content from the web server". Rather, the previously defined express condition which

needs to be observed is now removed by the amendment to feature F1.12 of claim 1. This, however, gives rise to a shift in scope of protection conferred by the patent as granted, contrary to Article 123(3) EPC.

4.3   In consequence, auxiliary requests 4, 9 to 14 and 16 to 21 are not allowable under Article 123(3) EPC.

5.   Auxiliary requests 22 and 23

5.1   The board concurs with the opponent that claim 1 of **auxiliary requests 22 and 23** still requires, in amended feature F1.12, a second check of the second message. Therefore, this amendment fails to overcome the objection raised with respect to feature F1.12 of claim 1 as granted.

5.2   The proprietor argued that the additional condition for "sending the content", i.e. "receiving of the content", embraced the undisclosed condition, i.e. "receiving of the second message". Thus, the added-matter objection raised with respect to granted claim 1 was rendered moot.

        This fails to convince the board for the mere reason that the undisclosed condition is still recited in claim 1 as a limiting feature.

5.3   Thus, irrespective of admittance considerations, **auxiliary requests 22 and 23** are not allowable under Article 123(2) EPC.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chair:

B. Brückner   K. Bengi-Akyürek

Decision electronically authenticated