

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FRIENDFINDER NETWORKS INC., STREAMRAY INC., WMM, LLC,
WMM HOLDINGS, LLC, MULTI MEDIA, LLC, AND
DUODECAD IT SERVICES LUXEMBOURG S.À.R.L.,
Petitioners

v.

WAG ACQUISITION, LLC,
Patent Owner.

Case IPR2015-01033;
Patent 8,327,011 B2
Case IPR2015-01037;
Patent 8,122,141 B2¹

Before GLENN J. PERRY, TREVOR M. JEFFERSON, and
BRIAN J. McNAMARA, *Administrative Patent Judges*.

McNAMARA, *Administrative Patent Judge*.

DENIAL OF AUTHORIZATION FOR PETITIONER REPLY BRIEF
Conduct of the Proceeding
37C.F.R. § 42.5

¹ This Order addresses issues that are identical in related cases. Therefore, we exercise our discretion to issue one order to be filed in each case. The parties, however, are not authorized to use this style heading in any subsequent papers.

On July 31, 2015, counsel for Friendfinder Networks Inc., Streamray Inc., WMM, LLC, WMM HOLDINGS, LLC, Multi Media, LLC, and Duodecad IT Services Luxembourg S.À.R.L (collectively, “Petitioner”) by e-mail requested a teleconference to seek authorization to file a Reply to the Preliminary Response filed by WAG Acquisition (“Patent Owner”) in IPR2015-01033 and IPR-01037 (“Subject Proceedings”). Petitioner’s request stated that Petitioner sought to respond to Patent Owner's arguments regarding the proper legal standard for determining whether certain documents constitute a “printed publication.” Petitioner also stated that it wished to respond to Patent Owner’s characterization of keywords that would be used by a diligent searcher in view of the content of the patent specifications.

In a teleconference on August 4, 2015, Petitioner was represented by Matthew Dushek and Patent Owner was represented by Ronald Abramson. During the conference, Petitioner argued that the legal standard for a printed publication is a threshold issue and that the Board has permitted petitioners to reply to patent owner preliminary responses that concern threshold issues. Patent Owner responded that the issue of whether an asserted reference is a printed publication goes to the merits and could have been addressed in the Petition. Patent Owner also argued that allowing Petitioner to respond to its Patent Owner Preliminary Response effectively would provide Petitioner with more than the allotted number of pages for a petition.

Noting that it does not seek to introduce new evidence or rebut facts put forth in the Patent Owner Preliminary Response, Petitioner agreed that the question before us is a legal one. Our procedures, which we construe to secure the just, speedy, and inexpensive resolution of each proceeding, 37 C.F.R. § 42.1(b), do not, in the ordinary course, provide for a petitioner to reply to a patent owner

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preliminary response. 37 C.F.R. §§ 42.101–107. In this case, where the issue is a legal one and Petitioner does not seek to introduce evidence disputing facts asserted in the Patent Owner Preliminary Response concerning the indexing and cataloging of the relevant publications, we are not persuaded that a reply to the Patent Owner Preliminary Response is warranted.

In view of the circumstances, Petitioner’s request for authorization to file a reply is DENIED.

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