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571-272-7822

Paper 8
Date Entered: October 19, 2015

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,
Petitioner,

v.

WAG ACQUISITION, LLC,
Patent Owner.

Case IPR2015-01037
Patent 8,122,141 B2

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

McNAMARA, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

BACKGROUND

Friendfinder Networks Inc., Streamray Inc., WMM, LLC,WMM HOLDINGS, LLC, Multi Media, LLC, and Duodecad IT Services Luxembourg S.À.R.L (collectively, "Petitioner") filed a petition, Paper 2 ("Pet."), to institute an *inter partes* review of claims 1–28 (the "challenged claims") of U.S. Patent No. 8,122,141 ("the '141 Patent"). 35 U.S.C. § 311. WAG Acquisition, LLC ("Patent Owner") timely filed a Preliminary Response, Paper 6 ("Prelim. Resp.") contending that the petition should be denied as to all challenged claims. We have jurisdiction under 37 C.F.R. § 42.4(a) and 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted unless the information presented in the Petition "shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition."

For the reasons described below, we decline to institute *inter partes* review of all the challenged claims.

REAL PARTIES IN INTEREST

Petitioner identifies the following real parties-in-interest: FriendFinder Networks Inc., StreamRay Inc., WMM, LLC, WMM Holdings, LLC, Multi Media, LLC, Various, Inc., Interactive Network, Inc., DataTech Global, LLC, DataTech Systems, LLC, Docler USA, LLC, Duodecad IT Services Luxembourg S.à r.l., Docler Holding S.à r.l., Gattyàn Family Irrevocable Trust (including Mr. György Gattyàn in his capacity as Grantor and Investment Advisor), Duodecad IT Services Hungary KFT, and Gattyàn Group S.à r.l. Pet. 2.

PENDING LITIGATION

Petitioner states that WAG Acquisition, LLC has asserted U.S. Patent No. 8,122,141 ("the '141 Patent") (the subject of the present Petition), as well as U.S. Patent No. 8,327,011 ("the '011 Patent"), U.S. Patent No. 8,364,839 ("the '839 Patent") and U.S. Patent No. 8,185,611 ("the '611 Patent") in the District of New Jersey as follows: *WAG Acquisition, LLC v. Sobonito Investments, Ltd*., No. 2:14-cv-1661 (D.N.J.) ('141 Patent; '011 Patent; '611 Patent; and '839 Patent); *WAG Acquisition, LLC v. Multi Media, LLC*, No. 2:14-cv-2340 (D.N.J.) ('141 Patent; and '011 Patent); *WAG Acquisition, LLC v. Data Conversions, Inc.*, No. 2:14-cv-2345 (D.N.J.) ('141 Patent; and '011 Patent); *WAG Acquisition, LLC v. Flying Crocodile*, Inc., 2:14-cv-2674 (D.N.J.) ('141 Patent; '011 Patent; '611Patent; and '839 Patent); *WAG Acquisition, LLC v. Gattyàn Group S.à r.l*, No. 2:14-cv-2832 (D.N.J.) ('141 Patent; '011 Patent; '611 Patent; and '839 Patent); *WAG Acquisition, LLC v. MFCXY, Inc.*, No. 2:14-cv-03196 (D. N.J.) ('141 Patent; '011 Patent; '611 Patent; and '839 Patent); *WAG Acquisition, LLC v. FriendFinder Networks Inc.*, No. 2:14-cv-3456 (D.N.J.) ('141 Patent; '011 Patent; '611 Patent; and '839 Patent); and *WAG Acquisition, LLC v. Vubeology, Inc.*, No. 2:14-cv-4531 (D.N.J.) ('141 Patent; and '011 Patent).

RELATED PROCEEDINGS

Petitioner notes that it has also petitioned for *inter partes* review of the '011 Patent (IPR2015-01033), the '611 Patent (IPR2015-01035) and the '839 Patent (IPR2015-01036)

THE ’121 PATENT (EXHIBIT 1001)

The ’121 Patent discloses a system for sending streaming media, such as audio or video files, via the Internet with reduced playback interruptions. Ex. 1001, col. 4, ll. 39–44. Data interruptions can be recovered while the media player continues to play out the audio or video material. *Id.* at col. 4, ll. 48–50. A server connected to the Internet for transmitting time-sequenced data elements. *Id.* at col. 4, ll. 54–58. Associated with the server are a buffer manager and a FIFO buffer that stores at least one of the data elements for transmission. *Id.* at col 4, ll. 56–60. The buffer manager receives the media data, supplies the media data in order to the FIFO buffer, supplies the FIFO buffer with a predetermined number of data elements, and maintains a pointer into the buffer for each user computer indicating the last media data element that has been sent to that user, thus indicating the next element or elements to be sent. *Id.* at col. 4, ll. 61–66. Once the FIFO buffer is full, the oldest data elements in the buffer are deleted as new data elements are received. *Id*. at col. 4, l. 66–col. 5, l. 1. A pre-determined number of data elements are kept in the FIFO buffer. *Id*. at col. 5, ll. 1–4.

At least one user computer is connected to the server via the Internet or other data communications medium. The user computer is associated with media player software incorporating a user buffer that receives and stores a predetermined number of media data elements. *Id.* at col. 8, ll.25–28. The media elements that are received sequentially by the media player, are played out sequentially as audio and/or video, and the media data elements from the buffer as they are played out. *Id.* at col. 8, ll. 28–31. As data is played out, the next sequential data elements are received from the

server in such a fashion as to approximately maintain the predetermined number of data elements in the user's buffer. *Id.* at col. 8, ll. 31–34.

ILLUSTRATIVE CLAIMS

Claim 1 is illustrative:

> 1. A method for distributing streaming media via a data communications medium such as the Internet to at least one user system of at least one user, the streaming media comprising a plurality of sequential media data elements for a digitally encoded audio or video program, comprising
>
> providing a server programmed to receive requests from the user system for media data elements corresponding to specified serial identifiers and to send media data elements to the user system responsive to said requests, at a rate more rapid than the rate at which said streaming media is played back by a user; and
>
> providing a machine-readable medium accessible to said user, on which there has been recorded software for implementing a media player for receiving and playing the streaming media on said user system, said software being programmed to cause the media player to maintain a record of the identifier of the last data element that has been received; and to transmit requests to the server to send one or more data elements, specifying the identifiers of the data elements, as said media player requires in order to maintain a sufficient number of media data elements in the media player for uninterrupted playback.

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