UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE PATENT TRIAL AND APPEAL BOARD
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WEBPOWER, INC.,
Petitioner,

v.

WAG ACQUISITION, LLC,
Patent Owner.
_____

Case IPR2016-01238
Patent 8,122,141 B2

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Before TREVOR M. JEFFERSON, BRIAN J. McNAMARA, and
PATRICK M. BOUCHER, *Administrative Patent Judges*.

BOUCHER, *Administrative Patent Judge*.

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

On June 21, 2016, WebPower, Inc. ("Petitioner") filed a Petition
(Paper 1, "Pet.") pursuant to 35 U.S.C. §§ 311–319 to institute an *inter
partes* review of claims 1–28 of U.S. Patent No. 8,122,141 B2 ("the '141

patent"). WAG Acquisition, LLC ("Patent Owner) filed a Preliminary Response (Paper 6, "Prelim. Resp.") on October 7, 2016. Applying the standard set forth in 35 U.S.C. § 314(a), which requires demonstration of a reasonable likelihood that Petitioner would prevail with respect to at least one challenged claim, we institute an *inter partes* review of claims 10–23 of the '141 patent. The Board has not made a final determination on the patentability of any claim.

I. BACKGROUND

A. The '141 Patent

The '141 patent discloses a system for streaming media, such as audio or video, via the Internet with reduced playback interruptions. Ex. 1001, col. 4, ll. 39–44. Data interruptions can be recovered while a media player continues to play the audio or video material. *Id.* at col. 4, ll. 48–50. Figure 1 of the '141 patent is reproduced below.
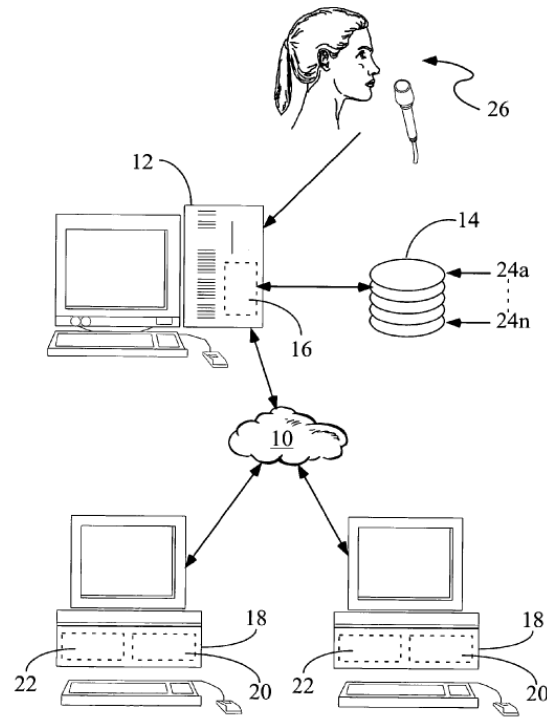
Fig. 1

Figure 1 is a schematic diagram that illustrates elements of a streaming media buffering system. *Id.* at col. 10, ll. 7–9. Server 12 is connected to the Internet for transmitting sequenced streaming-media data elements. *Id.* at col. 10, ll. 22–25. Associated with server 12 are buffer manager 16 and first-in–first-out ("FIFO") buffer 14, which stores at least one of the data elements for transmission. *Id.* at col. 10, ll. 25–27. Buffer manager 16 receives the media data, supplies the media data in order to FIFO buffer 14, and maintains pointers 24a–24n into the buffer for user computers, indicating the last media data element that has been sent to respective users and thus indicating the next element or elements to be sent. *Id.* at col. 10, ll. 30–38. Once FIFO buffer 14 is full, the oldest data elements in the buffer are deleted as new elements are received. *Id.* at col. 10, ll. 38–40. A predetermined number of data elements are kept in FIFO buffer 14. *Id.* at col. 10, ll. 40–41.

At least one user computer 18 is connected to server 12 via the Internet. *Id.* at col. 10, ll. 45–46. User buffer 20 is associated with user computer 18 and stores a predetermined number of the media data elements. *Id.* at col. 10, ll. 47–49. Buffer manager 22, associated with user computer 18, receives and stores a predetermined number of media data elements received by the media player, plays the data out sequentially as audio and/or video, and deletes media data elements from buffer 20 as they are played out to maintain approximately the predetermined number of data elements in the user's buffer. *Id.* at col. 10, ll. 53–59, col. 8, ll. 31–34.

B. Illustrative Claim

Independent claims 1, 10, and 19 are illustrative of the claims at issue:

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.

Ex. 1001, col. 13, ll. 23–44.

> 10.   A server 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, said user system being assumed to have a media player for receiving and playing the streaming media on said user system, which is operable to obtain media data elements from said server by transmitting requests to said server to send one or more specified media data elements, said server comprising
>
>   at least one data storage device, memory for storing machine-readable executable routines and for providing a working memory area for routines executing on the server, a central processing unit for executing the machine-readable executable routines, an operating system, at least one connection to the communications medium, and a communications system providing a set of communications protocols for communicating through said at least one connection;
>
>   a machine-readable, executable routine containing instructions to cause the server to assign serial identifiers to the sequential media data elements comprising the program;
>
>   a machine-readable, executable routine containing instructions to cause the server to receive requests from the user system for one or more media data elements specifying the identifiers of the requested data elements; and
>
>   a machine-readable, executable routine containing instructions to cause the server 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.

Id. at col. 13, l. 63–col. 14, l. 28.

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