

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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WEBPOWER, INC.,

FRIENDFINDER NETWORKS INC., STEAMRAY INC., WMM, LLC,  
WMM HOLDINGS, LLC, and MULTI MEDIA, LLC,

DUODECAD IT SERVICES LUXEMBOURG S.À R.L.,  
ACCRETIVE TECHNOLOGY GROUP, INC., ICF TECHNOLOGY, INC.,  
RISER APPS LLC, and STREAMME, INC. (f/k/a VUBEOLOGY, INC.),

Petitioner,

v.

WAG ACQUISITION, LLC,  
Patent Owner.

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Case IPR2016-01238 (Patent 8,122,141 B2)  
Case IPR2016-01239 (Patent 8,364,839 B2)<sup>1</sup>

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

BOUCHER, *Administrative Patent Judge*.

ORDER  
*Requests for Oral Argument*  
37 C.F.R. § 42.70

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<sup>1</sup> The parties are not authorized to use this style of caption.

IPR2016-01238 (Patent 8,122,141 B2)  
IPR2016-01239 (Patent 8,364,839 B2)

The date set for oral hearing in each of these proceedings is September 25, 2017, if hearing is requested by either party and granted by the Board. Paper 9 (IPR2016-01238); Paper 10 (IPR2016-01239). Both parties request oral hearing. Papers 16, 17 (IPR2016-01238); Papers 15, 16 (IPR2016-01239). The requests are *granted*.

There will be back-to-back hearings for these *inter partes* reviews, separated by a short break. The first hearing will be for IPR2016-01238 and will commence at 1:00 PM Eastern Time, on September 25, 2017. After briefly recessing once arguments in IPR2016-01238 have concluded, the second hearing, for IPR2016-01239, will commence. For each proceeding, each side will have 40 minutes to present its argument. Petitioner bears the ultimate burden of proof that Patent Owner's claims at issue in these reviews are unpatentable. Accordingly, for each hearing, Petitioner will open by presenting its case regarding the challenged claims for which the Board instituted trial; Patent Owner will respond to Petitioner's argument; and Petitioner may rebut if it has time remaining. For each hearing, Petitioner may reserve time to respond to Patent Owner's argument; Patent Owner may not reserve time.

The hearings will be open to the public for in-person attendance, on the ninth floor of Madison Building East, 600 Dulany Street, Alexandria, Virginia. The Board will provide a court reporter for the hearing and the reporter's transcript will constitute the official record of the hearing. At least one member of the panel may be attending the oral argument remotely by use of two-way audio-visual communication equipment. If the parties

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have any concern about disclosing confidential information, they are requested to contact the Board at least 10 days in advance of the hearing to discuss the matter.

The parties are reminded that, under 37 C.F.R. § 42.53(f)(7), a proponent of deposition testimony must file such testimony as an exhibit. The Board will not consider any deposition testimony that has not been so filed. Furthermore, under 37 C.F.R. § 42.70(b), demonstrative exhibits must be served at least seven business days before the hearing date. The parties shall meet and confer to discuss and resolve any objections to demonstrative exhibits.

Any party with unresolved objections must file a list of those objections with the Board at least two business days before the hearing. For each objection, the list must identify with particularity which portions of the demonstrative exhibits are subject to the objection and may include a short, one-sentence statement explaining the objection. No argument or further explanation is permitted. The Board will consider any objections and schedule a conference call if deemed necessary. Otherwise, the Board will reserve ruling on the objections. Any objection to demonstrative exhibits not timely presented will be considered waived.

Notwithstanding 37 C.F.R. § 42.70(b), each party also shall file its demonstrative exhibits with the Board as a separate paper at least two business days prior to the hearing. A hard copy of the demonstratives should be provided to the court reporter at the hearing, but hard copies of the demonstratives are not needed for the judges.

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The parties are directed to *St. Jude Medical, Cardiology Division, Inc. v. The Board of Regents of the University of Michigan*, IPR2013-00041 (PTAB January 27, 2015) (Paper 65), for guidance regarding the appropriate content of demonstrative exhibits. Demonstrative exhibits are not evidence and may not introduce new evidence or arguments. Instead, demonstrative exhibits should cite to evidence in the record. The parties are reminded that the presenter must identify clearly and specifically each demonstrative exhibit (e.g., by slide or screen number) referenced during the hearing to ensure the clarity and accuracy of the reporter's transcript.

Generally, the Board expects lead counsel for each party to be present in person at the oral hearing. Patent Owner states in its Requests that it anticipates that its lead counsel will not be present at oral hearing in these cases, and that backup counsel will present argument. Given that Patent Owner's backup counsel is a registered practitioner and has signed Patent Owner's merits briefing, attendance by lead counsel at the oral hearing is excused. If Petitioner expects that its lead counsel will not be attending the oral hearing, the parties should request a joint telephone conference with the Board no later than 10 days prior to the oral hearing to discuss the matter.

Any special requests for audio-visual equipment should be directed to [Trials@uspto.gov](mailto:Trials@uspto.gov). Requests for special equipment will not be honored unless presented in a separate communication not less than five days before the hearing directed to the above email address.

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