

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WEBPOWER, INC.
Petitioner

v.

WAG ACQUISITION, LLC
Patent Owner

U.S. Patent No. 8,122,141

Inter Partes Review Case No. 2016-01238

PATENT OWNER PRELIMINARY RESPONSE

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A. (Claims 1 and 24, and dependent Claims 2, 4-7, 9 and 26-28) The media player requests are made “as said media player requires in order to maintain a sufficient number of media data elements in the media player for uninterrupted playback.” [limitations 1g, 24f]5

B. (Claims 1 and 10, and dependent Claims 2, 4-7, 9, 11, 13-16, 18, and 28) Sending the responsive media data elements to the user system at a rate more rapid than the playback rate [limitations 1d and 10h].....6

C. (Claims 1, 10, and 24, and dependent Claims 2, 4-7, 9, 11, 13-16, 18, and 26-28) Preamble [limitations 1a-b, 10a-b, 24a]9

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A. (Claim 1, and dependent Claims 2, 4-9, and 28) server “programmed to receive requests from the user system for media data elements corresponding to specified serial identifiers” and “send[ing] media data elements to the user system responsive to said requests.” [limitations 1c-1d].....18

B. (Claims 1 and 24, and dependent Claims 2, 4-9 and 26-28) The media player requests are made “as said media player requires in order to maintain a sufficient number of media data elements in the media player for uninterrupted playback.” [limitations 1g, 24f] ..21

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A. (Claim 10, and dependent Claims 11 and 13-18) The proposed combination does not disclose or suggest “receiv[ing] requests from the user system for one or more media data elements specifying the identifiers of the requested data elements” and “send[ing] media data elements to the user system responsive to said requests.” [limitations 10g-10h]23

B. (Claim 19, and dependent Claims 20-21 and 23) “to prepare streaming media content for transmission by a server wherein said server responds to user requests for media data elements identified by a serial identifier” [limitations 19a-b].....23

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Patent Owner WAG Acquisition, L.L.C. (“Patent Owner” or “WAG”)

respectfully submits this Preliminary Response in accordance with 35 U.S.C. § 313 and 37 C.F.R. § 42.107, responding to the Petition for *inter partes* review (the “Petition”) filed by Webpower, Inc. (“Petitioner”) regarding the claims of U.S. Patent No. 8,122,141 (the “’141 Patent”). While the patent owner is not required to file a Preliminary Response, WAG takes this limited opportunity to point out the shortcomings of the Petition and the reasons why the Board should not institute trial.

I. Introduction and Summary of Argument

By statute, the Board must decide whether to institute a trial based on “the information presented in the petition.” 35 U.S.C. § 314(a). Petitioner bears the burden of demonstrating a reasonable likelihood that it would prevail in showing unpatentability on the grounds asserted in the Petition. 37 C.F.R. § 42.108(c). Petitioner’s burden includes, *inter alia*, explaining in the Petition how each challenged claim is construed and how the prior art teaches that claim. *See* 37 CFR § 42.104(b)(3)-(4); *World Bottling Cap, LLC v. Crown Packaging Tech., Inc.*, Case IPR2015-00296, slip op. at 5 (PTAB May 27, 2015) (Paper 8).

The claims of the ’141 Patent are directed in various respects to methods, systems and their components, in which one or more media player clients receive and play streaming media over an Internet Protocol network from a server via a

“pull” mechanism – where transmission of data elements within the stream is requested by the client. Streaming media transmission occurs in response to repeated requests by the client for serially identified media data elements comprising the program stream. The media data elements are served in response to those client requests, the result of which is that transmission is not metered by the server.

The Petition’s references, including primary references Chen and Carmel, do not use repeated client requests for media data elements in order to transmit a multimedia program. As discussed below, Chen’s main transmission mechanism uses a server “push,” and specific requests are used only to fill-in missing packets. In Carmel, the client uses an index to identify a starting point in the stream, and the Carmel server operates to transmit the stream from that point forward. The secondary references used by the Petition do nothing to cure these fundamental deficiencies. There are additional problems with the Petition discussed in the arguments made below.

The following discussion does not make each and every available argument. The fact that Patent Owner has not addressed particular claim elements should not be taken as a concession that they are disclosed in or made obvious by the applied art. All such additional arguments are reserved for Patent Owner’s Response (if necessary).

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