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.

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Case IPR2016-01238
Patent 8,122,141 B2

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Record of Oral Hearing
Held: September 25, 2017

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

Case IPR2016-01238
Patent 8,122,141 B2

APPEARANCES:

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The above-entitled matter came on for hearing on Monday, September 25, 2017, commencing at the U.S. Patent and Trademark Office, 600 Dulany Street, Alexandria, Virginia.

	P R O C E E D I N G S
1	
2	JUDGE JEFFERSON: Good afternoon. We're here for WebPower
3	and other Petitioners v. WAG Acquisitions, for Case Nos. IPR2016-01238
4	and IPR2016-01239.
5	We maintain, as the Order said, separate transcripts for these cases, so
6	we'll have to take a brief intermission at the end of the first one, and I'll ask
7	the counsel to make appearances in both. So we'll start now with
8	appearances for Petitioner.
9	MR. GASPARO: Good afternoon, Your Honor. Frank Gasparo with
10	Venable, counsel for Petitioner WebPower, Inc. and also various joint
11	parties.
12	JUDGE JEFFERSON: And for Patent Owner?
13	MR. ABRAMSON: Yes. Ronald Abramson from the firm of Lewis,
14	Baach, Kaufmann, Middlemiss, PLLC, for the Patent Owner, WAG
15	Acquisition, Inc. And with me is Ari Jaffess from my firm.
16	JUDGE JEFFERSON: Thank you. With the first case, which is
17	IPR2016-01238, each party will have 40 minutes to make and present its
18	argument. Petitioner may reserve rebuttal time for its case and let me know
19	at the outset. We'll do our best to keep time up here. Make sure that Judge
20	Boucher can hear us remotely. Can --
21	JUDGE BOUCHER: Yes, I can hear you fine.
22	JUDGE JEFFERSON: Very good. And obviously with the remote
23	Judge, any demonstratives you use or any documents you refer to, you
24	should refer to by exhibit number or page number, as appropriate.
25	Counsel for Petitioner can begin when ready for Case 01238.

1   MR. GASPARO: Thank you, Your Honor. And I should also

2 mention I'm joined by my colleague, John Falkler, who may or may not say

3 something on behalf of Petitioner.

4   JUDGE JEFFERSON: Understood. Would you like to reserve any

5 rebuttal time?

6   MR. GASPARO: I would. I would, Your Honor.

7   JUDGE JEFFERSON: Okay. How much?

8   MR. GASPARO: It could be as much as 20 minutes, but at least 10

9 minutes.

10   JUDGE JEFFERSON: Okay. I'll set a warning for you at 20.

11   MR. GASPARO: Great. Thank you.

12   JUDGE JEFFERSON: You may begin when ready.

13   OPENING ARGUMENT

14   BY MR. GASPARO: So, Your Honors, we're here today on --

15 regarding Claims 10 to 23 of what I'll refer to as the 141 Patent. Those are

16 the claims that the proceeding was instituted on. We thought it would be

17 helpful to sort of summarize what we believe to be uncontested as well as

18 contested.

19   First, what we believe to be uncontested is the invalidity of Claims 19

20 to 23, as well as the teachings of Carmel, with the exception of two claim

21 elements. We believe those claims and the claim elements of the other

22 claims are -- those arguments were waived. They were not addressed by the

23 Patent Owner in its response.

24   So the two claim limitations that we will be talking about today are

25 found in Claim 10 and Claim 15. Specifically, the limitation in Claim 10 is

26 whether Carmel teaches "send media data elements to the user system

1   responsive to said requests at a rate more rapid than the rate at which said

2   streaming media is played back by a user."

3   And then in Claim 15, whether Carmel teaches the limitation "said

4   server does not maintain a pointer into a buffer established within said server

5   for each said user."

6   On Slide No. 3 we have reproduced Claim 10. As can be seen, it's a

7   server claim, and the limitation that we will be talking about today is found

8   at the end of the claim, and we emphasize the language that I recently just

9   read into the record.

10   The next slide, Slide No. 4, we set forth two figures from Carmel.

11   The one on the left-hand side is the client server architecture of Carmel, and

12   the illustration on the right is what's referred to as the structure of a data

13   stream. And as can be seen, it's broken into slices, and each slice has a time

14   interval associated with it.

15   So on Slide No. 5, just to jump into things, we set forth one instance

16   where Carmel teaches the limitation "send media data elements to the user

17   system responsive to said request at a rate more rapid than the rate at which

18   said streaming media is played back by a user."

19   And you'll see there, there is a -- that is some text from Carmel, and

20   we've emphasized what we believe to be some important language, and I'd

21   like to read that text.

22   "In some preferred embodiments of the invention -- of the present

23   invention," I'm sorry, "the transmitting computer and the clients monitor the

24   uploading and downloading of data to and from the server, respectfully, in

25   order to determine the amount of time required to convey each slice and to

26   verify that the slices are conveyed at a sufficient rate. When the data stream

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