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Paper 11
Date Entered: February 27, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

I.M.L. SLU,
Petitioner,

v.

WAG ACQUISITION, LLC,
Patent Owner.

Case IPR2016-01656
Patent 8,122,141 B2

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

McNAMARA, *Administrative Patent Judge*.

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

BACKGROUND

I.M.L. SLU ("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 B2 ("the '841 patent"). 35 U.S.C. § 311. WAG Acquisition, LLC ("Patent Owner") timely filed a Preliminary Response, Paper 8 ("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." Having considered the arguments and the associated evidence presented in the Petition and the Preliminary Response, for the reasons described below, we institute *inter partes* review of claims 19–23.

REAL PARTIES IN INTEREST

The Petition identifies I.M.U. SLU as the sole real party-in-interest. Pet. 1.

PENDING LITIGATION

The Petition states that the '141 Patent is asserted in the following litigation: (1) *WAG Acquisition, LLC v. Sobonito Investments, Ltd. et al.*, Case No. 2:14-cv-1661-ES-JAD (D.N.J.); (2) *WAG Acquisition, LLC v. Multi Media, LLC et al.*, Case No. 2:14-cv-2340-ES-JAD (D.N.J.); (3) *WAG Acquisition, LLC v. Data Conversions, Inc. et al.*, Case No. 2:14-cv-2345-ES-JAD (D.N.J.); (4) *WAG Acquisition, LLC v. Flying Crocodile, Inc. et al.*,

Case No. 2:14-cv-2674-ES-MAH (D.N.J.); (5) *WAG Acquisition, LLC v. Gattyàn Group S.à r.l. et al.*, Case No. 2:14- cv- 2832-ES-JAD (D.N.J.); (6) *WAG Acquisition, LLC v. FriendFinder Networks Inc. et al*., Case No. 2:14-cv-3456-ES-JAD (D.N.J.); (7) *WAG Acquisition, LLC v. Vubeology, Inc. et al.*, Case No. 2:14-cv-4531-ES-JAD (D.N.J.); (8) *WAG Acquisition, LLC v. Gamelink International Limited et al.* Case No. 2:15-cv-3416 (D.N.J.); and (9) *WAG Acquisition LLC v. WebPower, Inc. et al.*, Case No. 2:15- cv-03581 (D.N.J). Petitioner also states that one other related litigation, *WAG Acquisition, LLC v. MFCXY, Inc. et al.*, Case No. 2:14-cv-3196-ES-MAH (D.N.J.), has been dismissed

THE ’141 PATENT (EXHIBIT 1001)

The ’141 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 is 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 are deleted 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 drawn to a method 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.

Claim 10, drawn to a server for distributing media via a data communication medium, is also illustrative:

> 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;

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