

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FRIENDFINDER NETWORKS INC., STREAMRAY INC., WMM, LLC,
WMM HOLDINGS, LLC, AND MULTI MEDIA, LLC

Petitioners

v.

WAG ACQUISITION, LLC

Patent Owner

Patent No. 8,122,141

Issue Date: February 21, 2012

Title: STREAMING MEDIA BUFFERING SYSTEM

**MOTION FOR JOINDER TO INSTITUTED *INTER PARTES* REVIEW
(35 U.S.C. § 315(c) AND 37 C.F.R. §§ 42.22 and 42.122(b))**

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I. Statement of Relief Requested

Pursuant to 35 U.S.C. § 315(c) and 37 C.F.R. §§ 42.22 and 42.122(b), petitioners FriendFinder Networks Inc.; Streamray Inc.; WMM, LLC; WMM Holdings, LLC; and Multi Media, LLC (collectively, “Petitioners”) respectfully request joinder with the *Inter Partes* Review of U.S. Patent No. 8,122,141 (the “141 Patent”), *WebPower, Inc. v. WAG Acquisition, LLC*, IPR2016-01238 (“the WebPower IPR”), which was instituted on January 4, 2017. This motion and the accompanying Petition are timely filed within one-month of institution of the WebPower IPR. 37 C.F.R. § 42.122(b).¹

Petitioners respectfully submit that joinder and institution of their concurrently filed Petition for *Inter Partes* Review are appropriate for several reasons.

First, the accompanying Petition is identical to the WebPower IPR petition in all material respects. The only changes are: Mandatory Notices (Section II), Certification of Grounds for Standing (Section III), Section VI, and in matters of

¹ Petitioners plan to request a call with the Board and Patent Owner to discuss in-part either expediting and/or curtailing Patent Owner’s preliminary response given the same prior art and evidence are presented in the concurrently filed Petition as the instituted WebPower IPR.

form. The concurrently filed Petition and the WebPower IPR petition challenge the same claims of the '141 Patent based on the same grounds with the same prior art, evidence, and expert declaration of Nathaniel Polish, Ph.D.²

Second, Petitioners request that the institution of the Petition be limited solely to the grounds instituted in the WebPower IPR. Petitioners agree to proceed solely on the grounds, evidence, and arguments advanced, or that will be advanced, in the WebPower IPR, *i.e.*, no new substantive issues are introduced in the concurrently filed Petition.

Third, if joined, Petitioners will adhere to all applicable deadlines in the WebPower IPR.³ In other words, the WebPower IPR trial schedule will not be disrupted or changed by granting joinder.

Fourth, Petitioners will take an “understudy” role to ensure briefing and discovery is streamlined.⁴ Petitioners agree to coordinate all filings with the

² The declaration has been updated only to reflect retention by Petitioners and is otherwise identical to the declaration of Dr. Polish submitted in the WebPower IPR.

³ The undersigned counsel and law firm have been retained by the Petitioners and the WebPower IPR petitioner.

⁴ Each Petitioner will continue on this basis unless WebPower settles with Patent Owner.

WebPower IPR petitioner and each other. The Petitioners will not submit a separate filing. Additionally, Petitioners will not seek additional discovery including any depositions or deposition time, and will coordinate deposition questioning and hearing presentations with the WebPower IPR petitioner and each other. Given these provisions, briefing and discovery will be simplified.

Fifth, because the Patent Owner has asserted the '141 Patent in district court actions against the Petitioners, joinder will help efficiently resolve the disputes among the parties. In the district court actions, WAG has asserted in total against Petitioners claims 10, 14, 15, 17, 18, 19, 20, 21, and 24 of the '141 Patent, while in WebPower IPR the Board has instituted on claims 10-23 of the '141 Patent. Thus, except for a single claim, joinder could resolve the dispute relating to the '141 Patent between the parties. Joinder thus will promote efficient adjudication across multiple fora.

Finally, joinder also will not prejudice any party. To the contrary, joinder will promote the just, speedy and inexpensive determination of the proceedings. The WebPower IPR petitioner consents to Petitioners' joinder. And, because joinder will not add any new substantive issues, not affect the schedule, not burden deponents, or not increase filings, there will be little-to-no additional costs to Patent Owner. On the other hand, denial of joinder will prejudice Petitioners: their interests may not be adequately protected in the WebPower IPR, particularly if WebPower settles with

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