

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

THE WALT DISNEY COMPANY, DISNEY
STREAMING SERVICES LLC, and HULU LLC,
Petitioner,

v.

WAG ACQUISITION, L.L.C.,
Patent Owner.

IPR2022-01227
Patent 9,762,636 B2

Before HUBERT C. LORIN, JOHN A. HUDALLA, and
STEVEN M. AMUNDSON, *Administrative Patent Judges*.

AMUNDSON, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

The Walt Disney Company, Disney Streaming Services LLC, and Hulu LLC (collectively “Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–12 in U.S. Patent No. 9,762,636 B2 (Exhibit 1001, “the ’636 patent”) under 35 U.S.C. §§ 311–319. Paper 1 (“Pet.”). WAG Acquisition, L.L.C. (“Patent Owner”) filed a Preliminary Response. Paper 10 (“Prelim. Resp.”).

In the Institution Decision, we instituted review based on all challenged claims and all challenges included in the Petition. Paper 11 (“Inst. Dec.”). We have jurisdiction under 35 U.S.C. § 6. We issue this Final Written Decision under 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons explained below, Petitioner has shown by a preponderance of the evidence that claims 1–12 in the ’636 patent are unpatentable. *See* 35 U.S.C. § 316(e) (2018).

II. BACKGROUND

A. Procedural History

After we instituted review, Patent Owner filed a Response (Paper 15, “Resp.”), Petitioner filed a Reply (Paper 17, “Reply”), and Patent Owner filed a Sur-reply (Paper 19, “Sur-reply”). On November 13, 2023, we held an oral hearing, and the record includes the hearing transcript. Paper 26 (“Tr.”).

B. Real Parties in Interest

Petitioner identifies the following real parties in interest: The Walt Disney Company, Disney Streaming Services LLC, Disney Streaming Technology LLC, Disney Platform Distribution, Inc., BAMTECH, LLC, ESPN, Inc., and Hulu LLC. Pet. 1; Paper 8, 1; Paper 9, 1. Patent Owner

identifies itself as the sole real party in interest. Paper 5, 2. The parties do not raise any issue about real parties in interest.

C. Related Matters

Petitioner and Patent Owner identify the following civil actions where Patent Owner has asserted the '636 patent and related patents against Petitioner and other alleged infringers:

- *WAG Acquisition, L.L.C. v. Amazon.com, Inc. et al.*, No. 6:21-cv-00815 (W.D. Tex. filed Aug. 6, 2021);
- *WAG Acquisition, L.L.C. v. Google LLC et al.*, No. 6:21-cv-00816 (W.D. Tex. filed Aug. 6, 2021); and
- *WAG Acquisition, L.L.C. v. The Walt Disney Company et al.*, No. 2:21-cv-08230 (C.D. Cal. filed Oct. 18, 2021).

Pet. 2; Paper 5, 2; Paper 8, 1–2; Paper 9, 1.

Petitioner and Patent Owner identify the following Board proceedings as related matters involving the '636 patent or a related patent asserted against Petitioner in a civil action:

- *The Walt Disney Company et al. v. WAG Acquisition, L.L.C.*, IPR2022-01228 (U.S. Patent No. 9,742,824 B2);
- *The Walt Disney Company et al. v. WAG Acquisition, L.L.C.*, IPR2022-01346 (U.S. Patent No. 9,729,594 B2);
- *Google LLC v. WAG Acquisition, L.L.C.*, IPR2022-01411 (U.S. Patent No. 9,729,594 B2);
- *Google LLC v. WAG Acquisition, L.L.C.*, IPR2022-01412 (U.S. Patent No. 9,742,824 B2);
- *Google LLC v. WAG Acquisition, L.L.C.*, IPR2022-01413 (U.S. Patent No. 9,762,636 B2);
- *Amazon.com, Inc. et al. v. WAG Acquisition, L.L.C.*, IPR2022-01429 (U.S. Patent No. 9,729,594 B2);

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- *Amazon.com, Inc. et al. v. WAG Acquisition, L.L.C.*, IPR2022-01430 (U.S. Patent No. 9,742,824 B2); and
- *Amazon.com, Inc. et al. v. WAG Acquisition, L.L.C.*, IPR2022-01433 (U.S. Patent No. 9,762,636 B2).

Paper 8, 4; Paper 9, 3–4; Prelim. Resp. 3.

Additionally, Petitioner and Patent Owner identify numerous civil actions and Office proceedings involving patents related to the '636 patent, e.g., U.S. Patent No. 8,122,141 B2 (Exhibit 1005). Pet. 1–4; Paper 5, 2–7; Paper 8, 1–4; Paper 9, 1–3.

D. The '636 Patent (Exhibit 1001)

The '636 patent, titled “Streaming Media Delivery System,” issued on September 12, 2017, from an application filed on October 3, 2016. Ex. 1001, codes (22), (45), (54). The patent identifies that application as the latest in a series of continuation and continuation-in-part applications that started with an application filed on March 28, 2001. *Id.* at 1:6–22, code (63). The patent claims priority to a provisional application filed on September 12, 2000. *Id.* at 1:22–28, code (60). The patent states that the invention relates to “systems and methods for delivering streaming media, such as audio and video, on the Internet.” *Id.* at 1:52–55; *see id.* at code (57).

The '636 patent describes problems with conventional streaming technologies. *See* Ex. 1001, 2:34–3:41. As an example, “users viewing or listening to streaming content over Internet connections often encounter interruptions,” called “dropouts,” due to “unanticipated transmission delays and losses that are inherent in many Internet protocols.” *Id.* at 2:34–40; *see id.* at 5:25–32. Conventional streaming technologies employ “a pre-buffering technique to store up enough audio or video data in the user’s

computer so that it can play the audio or video with a minimum of dropouts.” *Id.* at 2:42–45. But this “process requires the user to wait until enough of the media file is buffered in memory before listening or viewing can begin,” e.g., to wait “from ten to twenty seconds or more.” *Id.* at 2:45–47, 2:53–54.

As another example, the “audio or video data is delivered from the source at the rate it is to be played out.” Ex. 1001, 2:63–65; *see id.* at 5:60–65, 6:8–12, 8:64–67. Because “transmission of audio/video media data to the user takes place at the rate it is played out, the user’s buffer level can never be increased or replenished while it is playing” if Internet slowdowns or gaps cause the user’s buffer level to decrease from its initial level. *Id.* at 3:5–11; *see id.* at 10:34–35. “In time, extended or repeated occurrences of these gaps empty the user’s buffer.” *Id.* at 3:11–13; *see id.* at 3:34–35. When that occurs, the “audio/video material stops playing, and the buffer must be refilled to” its initial level before playing resumes. *Id.* at 3:13–15; *see id.* at 3:35–40.

The ’636 patent identifies a need for “improved systems and methods for delivering streaming content over the Internet” that:

- (1) “facilitate continuous transmission of streaming content”;
- (2) “respond on demand without objectionable buffering delay”; and
- (3) “perform without disruption or dropouts.”

Ex. 1001, 3:45–50.

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