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Paper 22
Entered: December 26, 2017

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

WEBPOWER, INC.,

FRIENDFINDER NETWORKS INC., STREAMRAY INC., WMM, LLC, WWM HOLDINGS, LLC, and MULTIMEDIA, LLC,

DUODECAD IT SERVICES LUXEMBOURG S.À R.L., ACCRETIVE TECHNOLOGY GROUP INC., ICF TECHNOLOGY, INC., RISER APPS LLC, and STREAMME, INC. (f/k/a VUBEOLOGY, INC.),

Petitioner,

v.

WAG ACQUISITION, LLC,
Patent Owner.

Case IPR2016-01238
Patent 8,122,141 B2

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

BOUCHER, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

In response to a Petition (Paper 1, "Pet.") filed by WebPower, Inc., we instituted an *inter partes* review of claims 10–23 of U.S. Patent No. 8,122,141 B2 ("the '141 patent"). Paper 7 ("Dec."), 22–23. We subsequently joined FriendFinder Networks Inc., Steamray Inc., WWM, LLC, WWM Holdings, LLC, Multi Media, LLC, Duodecad IT Services Luxembourg S.à r.l., Accretive Technology Group, Inc., ICF Technology, Inc., Riser Apps LLC, and StreamMe, Inc. (f/k/a Vubeology, Inc.) as parties to the proceeding. Papers 12, 13. We refer collectively to all petitioners herein as "Petitioner."

During the trial, WAG Acquisition, LLC ("Patent Owner") timely filed a Response (Paper 11, "PO Resp."), to which Petitioner timely filed a Reply (Paper 15, "Reply"). An oral hearing was held on September 25, 2017, and a copy of the transcript was entered into the record. Paper 21 ("Tr.").

We have jurisdiction under 35 U.S.C. § 6. This Decision is a Final Written Decision under 35 U.S.C. § 318(a) as to the patentability of the claims on which we instituted trial. Based on the record before us, Petitioner has shown, by a preponderance of the evidence that claims 10–23 are unpatentable.

I. BACKGROUND

A. The '141 Patent

The '141 patent describes a system for streaming media, such as audio or video, via the Internet with reduced playback interruptions. Ex. 1001, col. 4, ll. 39–44. A number of factors can affect the continuity of streaming media, including the quality of a user's connection with the Internet,

variations in Internet traffic that may cause congestion at various points along the route that data flows, and the dropping of data packets by overloaded routers. *Id.* at col. 2, ll. 10–30. The '141 patent describes a buffering system for streaming media that seeks to limit such deficiencies. *Id.* at col. 4, ll. 33–35.

Figure 1 of the '141 patent is reproduced below.

Fig. 1

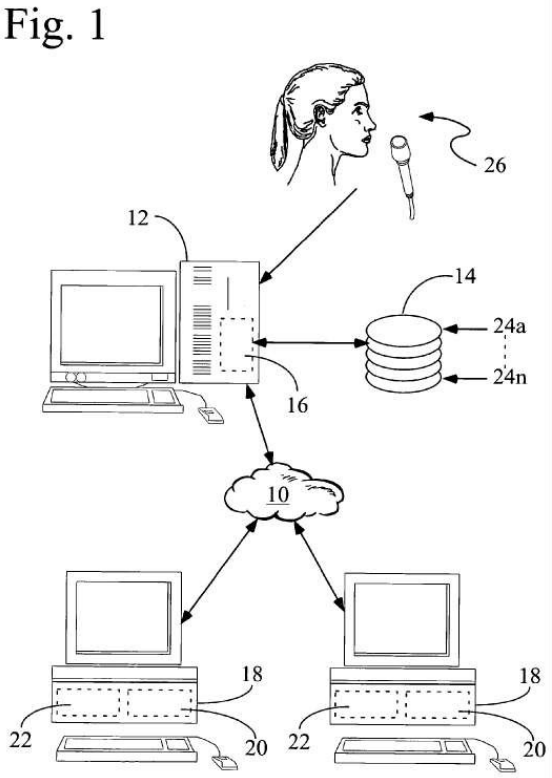

Figure 1 is a schematic diagram that illustrates elements of a streaming media buffering system. *Id.* at col. 10, ll. 7–9. Server 12 is connected to the Internet for transmitting sequenced streaming-media data elements. *Id.* at col. 10, ll. 22–25. Associated with server 12 are buffer manager 16 and first-in–first-out ("FIFO") buffer 14, which stores at least one of the data elements for transmission. *Id.* at col. 10, ll. 25–27. Buffer manager 16 receives the media data, supplies the media data in order to FIFO buffer 14, and maintains pointers 24a–24n into the buffer for user computers,

indicating the last media data element that has been sent to respective users and thus indicating the next element or elements to be sent. *Id.* at col. 10, ll. 30–38. Once FIFO buffer 14 is full, the oldest data elements in the buffer are deleted as new elements are received. *Id.* at col. 10, ll. 38–40. A predetermined number of data elements are kept in FIFO buffer 14. *Id.* at col. 10, ll. 40–41.

At least one user computer 18 is connected to server 12 via the Internet. *Id.* at col. 10, ll. 45–46. User buffer 20 is associated with user computer 18 and stores a predetermined number of the media data elements. *Id.* at col. 10, ll. 47–49. Buffer manager 22, associated with user computer 18, receives and stores a predetermined number of media data elements received by the media player, plays the data out sequentially as audio and/or video, and deletes media data elements from buffer 20 as they are played out to approximately maintain the predetermined number of data elements in the user's buffer. *Id.* at col. 10, ll. 53–59, col. 8, ll. 31–34.

In an alternative embodiment, buffer manager 22 (or the media source) provides for sequentially numbering the media data elements and does not maintain a pointer into buffer 20 for each user. *Id.* at col. 8, ll. 38–40. "Instead, the media player buffer manager in the user computer maintains a record of the serial number of the last data element that has been received." *Id.* at col. 8, ll. 40–42. By using standard data communications protocol techniques, "such as TCP," user computer 18 transmits requests to server 12 for data elements specified by their serial numbers. *Id.* at col. 8, ll. 42–46. Server 12 responds with the requested data elements, depending "upon the reliable transmission protocol" to assure delivery, with user computer 18 then continuing with additional data requests for the duration of

playing the streamed material. *Id.* at col. 8, ll. 46–50. "In this manner, the user computer, not the server, maintains the record of the highest data element number stored in the user computer buffer." *Id.* at col. 8, ll. 50–52.

B. Illustrative Claims

Independent claims 10 and 19 are illustrative of the claims at issue, and are reproduced below.

> 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;
>
> a machine-readable, executable routine containing instructions to cause the server to receive requests from the user system for one or more media data elements specifying the identifiers of the requested data elements; and
>
> a machine-readable, executable routine containing instructions to cause the server to send media data elements to the user system responsive to said requests, at a rate more rapid

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