

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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WEBPOWER, INC.,

FRIENDFINDER NETWORKS INC., STREAMRAY INC., WMM, LLC,  
WMM 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.

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Case IPR2016-01238  
Patent 8,122,141 B2

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

BOUCHER, *Administrative Patent Judge*.

JUDGMENT  
Final Written Decision on Remand  
Determining All Challenged Claims Unpatentable  
*35 U.S.C. §§ 144, 318(a) and 37 C.F.R. § 42.73*

I. INTRODUCTION

We address this case on remand after a decision by the U.S. Court of Appeals for the Federal Circuit in *WAG Acquisition, LLC v. Webpower, Inc.*, 781 F. App'x 1007 (Fed. Cir. 2019).

*A. Background*

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, 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, “POResp.”), 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.”).

Following consideration of the fully developed record, we issued a Final Written Decision in which we concluded that Petitioner had shown, by a preponderance of the evidence, that claims 10–23 of the ’141 patent are

unpatentable. Paper 22 (“Dec.”). Patent Owner appealed our Decision to the Federal Circuit “as to claims 10–18.” *WAG Acquisition*, 781 F. App’x at 1008. The Federal Circuit vacated our Decision “as to the appealed claims” and remanded for further consideration whether claims 10–18 are unpatentable in light of the Court’s construction of a disputed limitation recited in independent claim 10. *Id.* Because Patent Owner did not appeal the Board’s prior conclusion that claims 19–23 are unpatentable, those claims and related issues are not before the Board on remand. *See id.* at 1009 n.2.

On remand, the parties jointly proposed submission of simultaneous briefs addressing the patentability of claims 10–18 in light of the Federal Circuit’s decision, and we adopted this procedure. Paper 25. Accordingly, Petitioner filed a Petitioner’s Brief on Remand (Paper 26, “Pet. Remand Br.”) and Patent Owner filed a Patent Owner’s Supplemental Brief After Remand (Paper 27, “PO Remand Br.”).

For the reasons discussed below, we conclude, in view of the Federal Circuit’s claim construction, and a full record that includes the parties’ remand briefs, that Petitioner shows, by a preponderance of the evidence, that claims 10–18 are unpatentable.

### *B. 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, 4:39–44. 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 2:10–30. The '141 patent describes a buffering system for streaming media that seeks to limit such deficiencies. *Id.* at 4:33–35.

Figure 1 of the '141 patent is reproduced below.

Fig. 1

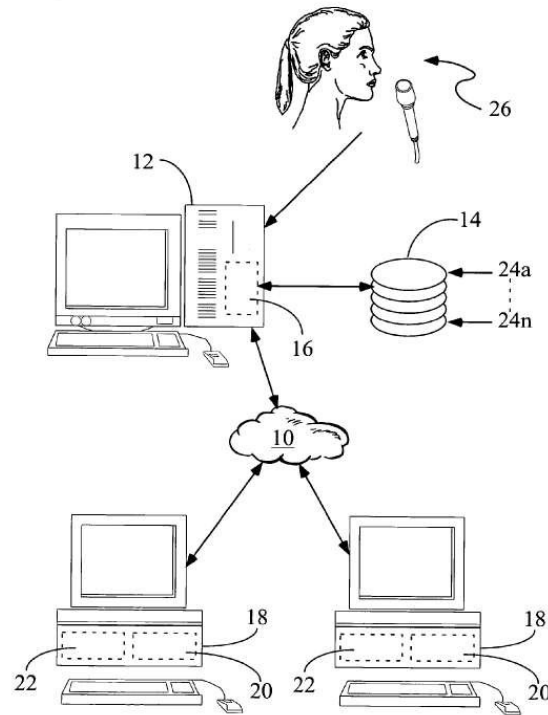


Figure 1 is a schematic diagram that illustrates elements of a streaming media buffering system. *Id.* at 10:7–9. Server 12 is connected to the Internet for transmitting sequenced streaming-media data elements. *Id.* at 10:22–25. Associated with server 12 are buffer manager 16 and first-in–first-out (“FIFO”) buffer 14, which stores at least one of the data elements for transmission. *Id.* at 10:25–27. 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 10:30–38. Once FIFO buffer

14 is full, the oldest data elements in the buffer are deleted as new elements are received. *Id.* at 10:38–40. A predetermined number of data elements are kept in FIFO buffer 14. *Id.* at 10:40–41.

At least one user computer 18 is connected to server 12 via the Internet. *Id.* at 10:45–46. User buffer 20 is associated with user computer 18 and stores a predetermined number of the media data elements. *Id.* at 10:47–49. 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 10:53–59, 8:31–34.

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 8:38–40. “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 8:40–42. 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 8:42–46. 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 8:46–50. “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 8:50–52.

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