UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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GOOGLE LLC,
Petitioner,

v.

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

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IPR2022-01413
Patent 9,762,636 B2

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

LORIN, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. Background

Google LLC ("Petitioner") filed a Petition (Paper 1, "Pet.") requesting *inter partes* review of claims 1–12 of U.S. Patent No. 9,762,636 B2 (Ex. 1001, "the '636 patent"). WAG Acquisition, L.L.C. ("Patent Owner") filed a Preliminary Response. Paper 6 ("Prelim. Resp.").

We have jurisdiction under 35 U.S.C. § 6.

Upon consideration of the arguments and evidence presented by Petitioner, we are persuaded that Petitioner has demonstrated, under 35 U.S.C. § 314(a), a reasonable likelihood that it would prevail in showing the unpatentability of at least one challenged claim.

For the reasons stated below, we institute *inter partes* review as to challenged claims 1–12 of the '636 patent.

B. Related Proceedings

Petitioner indicates that the '636 patent is asserted in pending district court litigation styled *WAG Acquisition, L.L.C. v. Google LLC*, No. 6:21-cv-00816-ADA (W.D. Tex.). Pet. 1; *see also* Paper 3 (Patent Owner's Mandatory Notices), 2.

Petitioner indicates that the '636 patent is also the subject to the following other pending district court litigations:

- *WAG Acquisition, LLC v. The Walt Disney Company*, No. 2:21-cv-08230 (C.D. Cal., filed Oct. 18, 2021); and,

- *WAG Acquisition, LLC v. Amazon.com, Inc.*, No. 6:21-cv-00815 (W.D. Tex., filed Aug. 6, 2021).

Pet. 1; Paper 3, 2.

Petitioner also makes us aware that the '636 patent is the subject of pending Office proceeding IPR2022-01227 (P.T.A.B.) (filed July 13, 2022). Pet. 1–2. Patent Owner makes us aware that the '636 patent is also subject to the pending Office proceeding IPR2022-01433 (P.T.A.B.) (filed Aug. 23, 2022). Paper 3, 4–5.

Patent Owner makes us aware of other district court litigations involving U.S. Patent Nos. 6,766,376, 8,122,141, 8,327,011, 8,185,611, 8,364,839, 9,742,824, and 9,729,594 related to the '636 patent. Paper 3, 2–4. Patent Owner makes us aware of other Office proceedings involving U.S. Patent Nos. 8,122,141, 8,327,011, 8,185,611, 8,364,839, 9,729,594, and 9,742,824, related to the '636 patent. *Id.* at 4–8.

C. Real Party in Interest

Petitioner identifies Google LLC and YouTube LLC as real parties in interest. Pet. 1. According to Patent Owner, "WAG ACQUISITION, L.L.C. is the real party in interest." Paper 3, 2.

D. The '636 Patent (Ex. 1001)

1. Disclosure

The '636 patent, titled "Streaming Media Delivery System," relates "to systems and methods for delivering streaming media, such as audio and video, on the Internet." Ex. 1001, code (54), 1:52–55.

The '636 patent describes problems with prior-art streaming technologies, where "users viewing or listening to streaming content over Internet connections often encounter interruptions, due to the frequency of unanticipated transmission delays and losses that are inherent in many Internet protocols." *Id.* at 2:34–38. The patent describes prior-art methods

of addressing this, involving 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. After several seconds waiting for playback to begin, the "audio or video data is delivered from the source at the rate it is to be played out." *Id.* at 2:63–65. Playback would continue, but could still be interrupted by network interruptions. *Id.* at 3:5–41.

The '636 patent addresses this by, for example, "sending initial streaming media elements to the user system at a sending rate more rapid than the playback rate, to fill the user buffer," and then continuing sending media elements "at about the playback rate." *Id.* at 3:60–64. Figure 1, reproduced below, shows a block diagram of the elements of the streaming media buffering system of the '636 patent. *Id.* at 4:23–25.
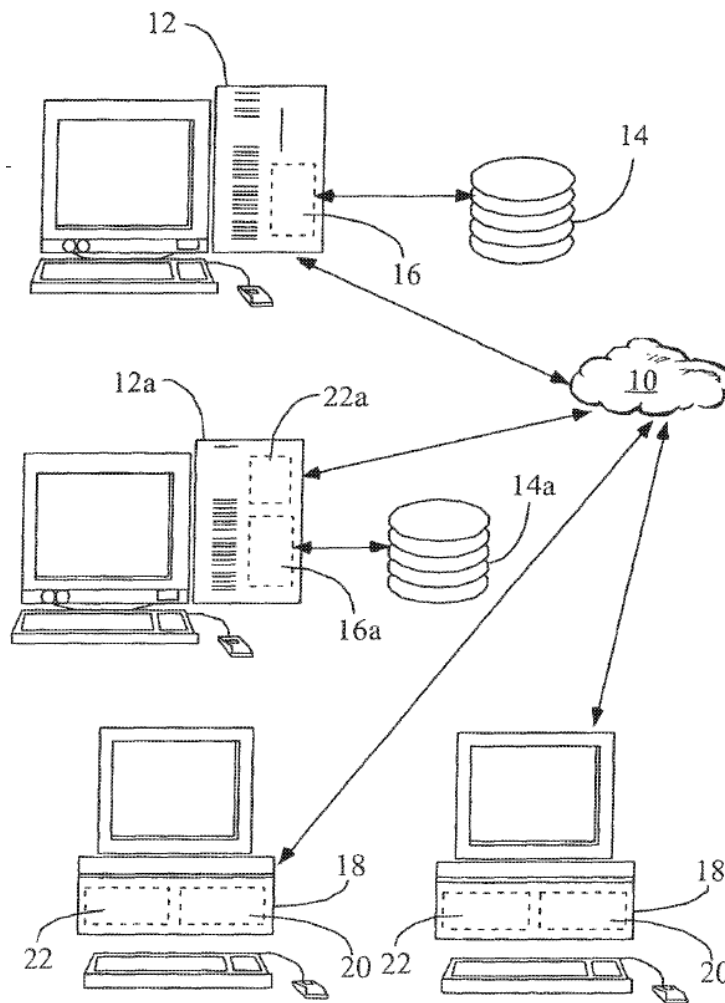
Figure 1 shows streaming server 12, Internet 10, server buffer 14, buffer manager 16, and user computer 18, with buffer 20. *Id.* at 6:30-52.

When a user connects to the server 12, the server transmits audio/video data, as sequential data elements, from the server's buffer 14 to the user buffer 20, at a higher-than-playback rate. *Id.* at 9:36–39. The "media begins to play on the user computer 18 as soon as the user connection is made to the audio server 12 and a minimal amount of data elements have been received and stored in the user's buffer 20." *Id.* at 9:40–45.

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