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, LLC

Patent Owner

U.S. Pat. No. 9,762,636

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Inter Partes Review Case No. IPR2022-01413

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PATENT OWNER'S SUR-REPLY

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LIST OF PATENT OWNER'S EXHIBITS

Exhibit	Description
2001	*WAG Acquisition, LLC v. WebPower, Inc.*, 781 F. App'x 1007 (Fed. Cir. 2019)
2002	Declaration of W. Leo Hoarty
2003	Declaration of Henry Houh (Ex. 1002 of IPR2022-01228)
2004	May 23, 2023, Deposition of Dr. Kevin Jeffay
2005	IETF RFC 2068
2006	May 25, 2023, Deposition of Dr. Nathaniel Polish
2007	Declaration of Dr. Nathaniel Polish, *Emblaze Ltd. v. Apple Inc.*, case no. 11-CV-01079 (N.D. Ca. Feb. 14, 2014)
2008	*In re Certain Fitness Devices, Streaming Components Thereof, and System Containing Same*, Inv. No. 337-TA-1265, Initial Determination (ITC, Sept. 9, 2022) (CALJ Clark S. Cheney)
2009	*In re Certain Fitness Devices, Streaming Components Thereof, and System Containing Same*, Inv. No. 337-TA-1265, Evidentiary Hearing – Volume III (ITC, March 14, 2022)
2010	Final Written Decision, *WebPower v. WAG Acquisition, LLC*, IPR2016-01238, Paper No. 22 (Dec. 26, 2017)
2011	Final Written Decision on Remand, *WebPower v. WAG Acquisition, LLC*, IPR2016-01238, Paper No. 28 (July 16, 2020)
2012	Microsoft Computer Dictionary, Fifth ed. (excerpts)
2013	Redline comparison of claims of '824 and '636 patents
2014	Claim term concordance table
2015	IETF RFC 1945
2016	October 4, 2023, Deposition of Dr. Nathaniel Polish

INTRODUCTION

Goggle's Reply (as did the Petition) focuses nearly entirely on Carmel. The evidence reflects that Carmel works by a different mechanism than asserted by Google. The facts are inconsistent with Google's theories throughout (including improper new theories as well as the original theories).

Pivoting, Google now seeks to turn Carmel on its head. Google refers several times to language near the end of Carmel referencing upload from source computer 34 to server 36, stating "similar methods are applicable, mutatis mutandis, to the method of downloading the files from server 36 to clients 30, as shown in FIG. 6A." EX1003-13:32-35. Google, at Reply-10-11, relies on its expert, EX2011 ¶¶ 74-78, pointing to source computer 34's control of slices it puts on respective links for upload to server 36 and seeking to project those operations onto the download process. But this clearly cuts *against* Google. In fact, it was *Patent Owner's* argument (POR-56) that server 36, in its transmissions to clients 30, was doing the same thing—what source 34 did via ftp (concededly a push), server 36 did relative to client 30 (*i.e.*, a push).

At Reply 24, however, Google takes this further, with an entirely new theory, which not only projects the source 34-server 36 interaction "mutatis mutandis" onto the server 36-client 30 interaction, but further, based on no written disclosure anywhere, *reverses* the interaction as well, *imagining* it as a client 30-server 36

interaction, with the *client* now in control. But this is *still* not even an attempt to explain how a disclosed *continuous* push transmission of successive elements can be transformed into individually "as required" requests to send identified elements. The Board cannot adopt an interpretation of the prior art based on such inversions and then reinversions of the evidence, which fail to complete the required connections between the elements.

(**Reply-2**) Google's Reply tellingly leads not on the merits but rather by appealing to a prior decision addressing different claim terms. Neither the Petition nor the Reply use the words "collateral estoppel" (and it isn't). The prior decision is also not evidence. The Board must base its decision on the evidence *in this case*.

(**Reply-2, "Client-side control"**) The Petition did not invoke "client-side control" and did not mention the Federal Circuit decision referenced here. Yet Google's mantra throughout its Reply is that "Carmel emphasizes client-control." Carmel does not use the words "client-side control," and what the client does control in Carmel is limited to bulk interactions, such as where streaming begins, the number of links to the server, and compression levels. Google would imply from this that Carmel also discloses individual element requests, but this does not follow. The words "client-side control" are being used by Goole to gloss over lack of actual evidence for individual element requests.

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