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Table with 5 columns: APPLICATION NO., FILING DATE, FIRST NAMED INVENTOR, ATTORNEY DOCKET NO., CONFIRMATION NO.
90/014,834 08/25/2021 8122141 125737.538655 8070

7590 11/17/2023
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EXAMINER

FERRIS III, FRED O

ART UNIT PAPER NUMBER

3992

MAIL DATE DELIVERY MODE

11/17/2023

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* WAG ACQUISITION, LLC  
Patent Owner and Appellant

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Appeal 2023-003319  
Reexamination Control 90/014,834  
Patent 8,122,141 B2  
Technology Center 3900

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Before JOHN A. JEFFERY, ERIC B. CHEN, and BRIAN J. McNAMARA,  
*Administrative Patent Judges.*

CHEN, *Administrative Patent Judge.*

DECISION ON APPEAL

Pursuant to 35 U.S.C. §§ 134(b) and 306, Patent Owner<sup>1</sup> appeals from the final rejection of claims 1, 5, 8, 24, and 28. Claims 2–4, 6, 7, 9, and 25–27 were not subject to reexamination. Claims 10–23 were cancelled in a previous *inter partes* review proceeding.

A video oral hearing was held on September 18, 2023. The record includes a written transcript of the oral hearing. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

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<sup>1</sup> Patent Owner identifies the real party in interest as WAG Acquisition, LLC. (Appeal Br. 2.)

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## STATEMENT OF THE CASE

### *Reexamination Proceedings*

A request for *ex parte* reexamination of U.S. Patent No. 8,122,141 B2 (“the ’141 patent”) was filed on August 25, 2021 and assigned Control No. 90/014,834. The ’141 patent, entitled “Streaming Media Buffering System” issued February 21, 2012 to Harold Edward Price, based on Application No. 12/800,152, filed May 10, 2010. The ’141 patent is part of a series of multiple continuing applications, with the first application filed on March 28, 2001, which claims priority to provisional Application No. 60/231,997, filed on September 12, 2000.

### *Claimed Subject Matter*

The claims are directed to streaming media, sent via the Internet, such that the media in the user buffer accumulates and is immediately played on a user’s computer. Media data is transmitted from the server more rapidly than it is played out by the user’s computer. (Abstract.)

### *Related Litigation*

The ’141 patent has been asserted in the following litigation: (i) *WAG Acquisition, LLC v. Sobonito Investments, Ltd. et al.*, No. 2:14-cv-1661 (D.N.J.) (dismissed); (ii) *WAG Acquisition, LLC v. Multi Media, LLC et al.*, No. 2:14-cv-2340 (D.N.J.) (dismissed); (iii) *WAG Acquisition, LLC v. Data Conversions, Inc. et al.*, No. 2:14-cv-2345 (D.N.J.) (dismissed); (iv) *WAG Acquisition, LLC v. Flying Crocodile, Inc. et al.*, No. 2:14-cv-2674 (D.N.J.); (v) *WAG Acquisition, LLC v. Gattyán Group S.á.r.l. et al.*, No. 2:14-cv-

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2832 (D.N.J.) (dismissed); (vi) *WAG Acquisition, LLC v. MFCXY, Inc. et al.*, Case No. 2-14-cv-3196 (D.N.J.) (dismissed); (vii) *WAG Acquisition, LLC v. FriendFinder Networks Inc. et al.*, No. 2:14-cv-3456 (D.N.J.); (viii) *WAG Acquisition, LLC v. Vubeology, Inc. et al.*, No. 2:14-cv-4531 (D.N.J.) (dismissed); (ix) *WAG Acquisition, LLC v. GameLink Int'l Ltd. et al.*, No. 2:15-cv-3416 (D.N.J.) (dismissed); and (x) *WAG Acquisition LLC v. WebPower, Inc. et al.*, No. 2:15-cv-3581 (D.N.J.) (dismissed).

The '141 patent was subject to the following petitions for *inter partes* review: (i) *FriendFinder Networks Inc. et al. v. WAG Acquisition L.L.C.*, IPR2015-01037 (PTAB Oct. 19, 2015) (institution denied); (ii) *WebPower v. WAG Acquisition L.L.C.*, IPR2016-01238 (final written decision cancelling claims 10–23), *remanded WAG Acquisition, LLC v. WebPower, Inc.*, 781 F. App'x 1007 (Fed. Cir. 2019).

### *The Claims*

Claim 1 is illustrative of the claimed subject matter, and reproduced below with disputed limitations in italics:

1. A method 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, comprising  
*providing a server programmed to receive requests from the user system for media data elements corresponding to specified serial identifiers and to send media data elements to the user system responsive to said requests, at a rate more rapid than the rate at which said streaming media is played back by a user; and*

providing a machine-readable medium accessible to said user, on which there

has been recorded software for implementing a media player for receiving and playing the streaming media on said user system, said software being programmed

to cause the media player to maintain a record of the identifier of the last data element that has been received; and

to transmit requests to the server to send one or more data elements, specifying the identifiers of the data elements, as said media player requires in order to maintain a sufficient number of media data elements in the media player for uninterrupted playback.

#### REFERENCES

Name	Reference	Date
Carmel et al.	US 6,389,473 B1	May 14, 2002
Shteyn	US 7,529,806 B1	May 5, 2009

#### REJECTIONS

Claims 1, 5, 8, 24, and 28 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Carmel.

Claims 1, 5, 8, 24, and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Carmel and Shteyn.

#### OPINION

##### *§ 102 Rejection*

We are persuaded by Patent Owner's arguments (Appeal Br. 13) that Carmel does not describe the limitation "providing a server programmed to receive requests from the user system for media data elements corresponding to specified serial identifiers," as recited in independent claim 1.

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