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 BRIEF IN SUPPORT OF RELEVANCE OF DECISION ON APPEAL IN *EX PARTE WAG ACQUISITION*, APPEAL 2023-003319 (WAG '141 Patent)

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
2017*	*Ex parte WAG Acquisition, LLC*, Appeal 2023-003319, Reexam 90/014,834, Decision on Appeal (PTAB November 17, 2023) (U.S. Patent No. 8,122,141)

* Addressed herein.

EX2017 is a PTAB appeals decision in a related case, the outcome of which,

though it concerned different claim language, turned on the panel's reading of the

same prior art, Carmel (EX1003), with respect to the feature of repeated streaming

element requests, which the Petition asserts corresponds to the claims herein and is

taught by Carmel. The appeals panel read Carmel *not* to disclose that feature,

which reading aligns with Patent Owner's arguments herein, and is inconsistent

with Petitioner's.

The Petition relies on Carmel relative to limitations that require repeated

requests made by the client and received by the server, for successive individually

identified data elements comprising the desired media stream. *See generally*

Petition at 25-43. The appeals panel rejected the assertion that Carmel disclosed

such repeated client requests by serial ID. This Panel should take the other panel's

analysis into account:

> [W]e are persuaded by Patent Owner's arguments as follows:
>
>> Carmel actually discloses one circumstance-and one
>> circumstance only-in which its player makes a request to its
>> server to send an element, specifying to the server the serial
>> ID of that element, and that is with regard to the first element
>> of a requested stream. There is no evidence that there are any
>> requests for any element after the first, separately or
>> otherwise, let alone by serial ID. The only scenario disclosed
>> in Carmel that would even concern an element requested by
>> serial ID is the first element in a requested stream. (Appeal Br.
>> 13.)

Thus, we do not sustain the rejection of independent claim 1 under 35U.S.C. § 102(e).

EX2017 at 9.

EX2017 confirms Patent Owner's expert, Mr. Hoarty, that Carmel (EX1003) does not teach repeated client requests for successive individually identified elements. *See* EX2002 ¶¶ 53-69, 71-75, 84-94. Mr. Hoarty, referencing analysis by others, as well as himself, came to the same conclusion. As there is no disclosure anywhere in Carmel that supports a contrary interpretation, the record is exceedingly strong that Carmel does not disclose streaming via successive elements requests and is instead tailored throughout to a client-server system that will perform continuous push streaming from the server.

Dated: December 14, 2023

Respectfully submitted,

/*Ronald Abramson*/

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