

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AMAZON.COM, INC., AMAZON WEB SERVICES, INC.,
and AMAZON.COM SERVICES LLC,
Petitioner,

v.

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

IPR2022-01433
Patent 9,762,636 B2

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

AMUNDSON, *Administrative Patent Judge*.

JUDGMENT
Final Written Decision
Determining All Challenged Claims Unpatentable
35 U.S.C. § 318(a)

I. INTRODUCTION

Amazon.com, Inc., Amazon Web Services, Inc., and Amazon.com Services LLC (collectively “Petitioner”) filed a Petition requesting an *inter partes* review of claims 1–12 in U.S. Patent No. 9,762,636 B2 (Exhibit 1001, “the ’636 patent”) under 35 U.S.C. §§ 311–319. Paper 2 (“Pet.”). WAG Acquisition, L.L.C. (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”).

In the Institution Decision, we instituted review based on all challenged claims and all challenges included in the Petition. Paper 7 (“Inst. Dec.”). We have jurisdiction under 35 U.S.C. § 6. We issue this Final Written Decision under 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons explained below, Petitioner has shown by a preponderance of the evidence that claims 1–12 in the ’636 patent are unpatentable. *See* 35 U.S.C. § 316(e) (2018).

II. BACKGROUND

A. Procedural History

After we instituted review, Patent Owner filed a Response (Paper 11, “Resp.”), Petitioner filed a Reply (Paper 15, “Reply”), and Patent Owner filed a Sur-reply (Paper 16, “Sur-reply”). On December 12, 2023, we held an oral hearing, and the record includes the hearing transcript. Paper 25 (“Tr.”).

B. Real Parties in Interest

Petitioner identifies the following real parties in interest:
Amazon.com, Inc., Amazon Web Services, Inc., and Amazon.com Services LLC. Pet. 1. Patent Owner identifies itself as the sole real party in interest. Paper 4, 2. The parties do not raise any issue about real parties in interest.

C. Related Matters

Petitioner and Patent Owner identify the following civil actions where Patent Owner has asserted the '636 patent and related patents against Petitioner and other alleged infringers:

- *WAG Acquisition, L.L.C. v. Amazon.com, Inc. et al.*, No. 6:21-cv-00815 (W.D. Tex. filed Aug. 6, 2021);
- *WAG Acquisition, L.L.C. v. Google LLC et al.*, No. 6:21-cv-00816 (W.D. Tex. filed Aug. 6, 2021); and
- *WAG Acquisition, L.L.C. v. The Walt Disney Company et al.*, No. 2:21-cv-08230 (C.D. Cal. filed Oct. 18, 2021).

Pet. 1–2; Paper 4, 2.

Petitioner and Patent Owner identify the following Board proceedings as related matters involving the '636 patent or a related patent asserted against Petitioner in a civil action:

- *The Walt Disney Company et al. v. WAG Acquisition, L.L.C.*, IPR2022-01227 (U.S. Patent No. 9,762,636 B2);
- *The Walt Disney Company et al. v. WAG Acquisition, L.L.C.*, IPR2022-01228 (U.S. Patent No. 9,742,824 B2);
- *The Walt Disney Company et al. v. WAG Acquisition, L.L.C.*, IPR2022-01346 (U.S. Patent No. 9,729,594 B2);
- *Google LLC v. WAG Acquisition, L.L.C.*, IPR2022-01411 (U.S. Patent No. 9,729,594 B2);
- *Google LLC v. WAG Acquisition, L.L.C.*, IPR2022-01412 (U.S. Patent No. 9,742,824 B2);
- *Google LLC v. WAG Acquisition, L.L.C.*, IPR2022-01413 (U.S. Patent No. 9,762,636 B2);
- *Amazon.com, Inc. et al. v. WAG Acquisition, L.L.C.*, IPR2022-01429 (U.S. Patent No. 9,729,594 B2); and

- *Amazon.com, Inc. et al. v. WAG Acquisition, L.L.C.*, IPR2022-01430 (U.S. Patent No. 9,742,824 B2).

Pet. 5; Paper 4, 4–5; Prelim. Resp. 5.

Additionally, Petitioner and Patent Owner identify numerous civil actions and Office proceedings involving patents related to the '636 patent, e.g., U.S. Patent No. 8,122,141 B2 (Exhibit 1015). Pet. 2–4; Paper 4, 2–8.

D. The '636 Patent (Exhibit 1001)

The '636 patent, titled “Streaming Media Delivery System,” issued on September 12, 2017, from an application filed on October 3, 2016. Ex. 1001, codes (22), (45), (54). The patent identifies that application as the latest in a series of continuation and continuation-in-part applications that started with an application filed on March 28, 2001. *Id.* at 1:6–22, code (63). The patent claims priority to a provisional application filed on September 12, 2000. *Id.* at 1:22–28, code (60). The patent states that the invention relates to “systems and methods for delivering streaming media, such as audio and video, on the Internet.” *Id.* at 1:52–55; *see id.* at code (57).

The '636 patent describes problems with conventional streaming technologies. *See* Ex. 1001, 2:34–3:41. As an example, “users viewing or listening to streaming content over Internet connections often encounter interruptions,” called “dropouts,” due to “unanticipated transmission delays and losses that are inherent in many Internet protocols.” *Id.* at 2:34–40; *see id.* at 5:25–32. Conventional streaming technologies employ “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. But this “process requires the user to wait until

enough of the media file is buffered in memory before listening or viewing can begin,” e.g., to wait “from ten to twenty seconds or more.” *Id.* at 2:45–47, 2:53–54.

As another example, the “audio or video data is delivered from the source at the rate it is to be played out.” Ex. 1001, 2:63–65; *see id.* at 5:60–65, 6:8–12, 8:64–67. Because “transmission of audio/video media data to the user takes place at the rate it is played out, the user’s buffer level can never be increased or replenished while it is playing” if Internet slowdowns or gaps cause the user’s buffer level to decrease from its initial level. *Id.* at 3:5–11; *see id.* at 10:34–35. “In time, extended or repeated occurrences of these gaps empty the user’s buffer.” *Id.* at 3:11–13; *see id.* at 3:34–35. When that occurs, the “audio/video material stops playing, and the buffer must be refilled to” its initial level before playing resumes. *Id.* at 3:13–15; *see id.* at 3:35–40.

The ’636 patent identifies a need for “improved systems and methods for delivering streaming content over the Internet” that:

- (1) “facilitate continuous transmission of streaming content”;
- (2) “respond on demand without objectionable buffering delay”; and
- (3) “perform without disruption or dropouts.”

Ex. 1001, 3:45–50.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.