

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*.

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

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.”).

Under 37 C.F.R. § 42.4(a), we have authority to determine whether to institute an *inter partes* review. We may institute an *inter partes* review only if “the information presented in the petition filed under section 311 and any response filed under section 313 shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.” 35 U.S.C. § 314(a) (2018). The “reasonable likelihood” standard is “a higher standard than mere notice pleading” but “lower than the ‘preponderance’ standard to prevail in a final written decision.” *Hulu, LLC v. Sound View Innovations, LLC*, IPR2018-01039, Paper 29 at 13 (PTAB Dec. 20, 2019) (precedential).

Based on the current record and for the reasons explained below, Petitioner has shown that there is a reasonable likelihood that it would prevail with respect to at least one of the challenged claims. Thus, we institute an *inter partes* review of claims 1–12 in the ’636 patent on all challenges included in the Petition.

II. BACKGROUND

A. Real Parties in Interest

Petitioner identifies the following real parties in interest:

Amazon.com, Inc., Amazon Web Services, Inc., and Amazon.com Services

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LLC. Pet. 1. Patent Owner identifies itself as the real party in interest.

Paper 4, 2. The parties do not raise any issue about real parties in interest.

B. 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);

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- *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. Pet. 2–4; Paper 4, 2–8.

C. 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.

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