1. My name is ~~Henry Houh~~Kevin Jeffay, and I have been ~~retained~~asked by ~~counsel for The~~the parties

~~Walt Disney Company, Disney Streaming~~requesting this review, Amazon.com, Inc., Amazon Web Services, Inc., and

Amazon.com Services LLC~~, Hulu LLC, and Netflix Inc.~~ (collectively "Petitioner") to analyze U.S. Patent No.

9,742,824 (the '"824 patent") (EXl00l) and to provide my opinions regarding the

patentability of claims 1-12 of the '824 patent.

2. I am being compensated ~~at my normal consulting rate of $650 per hour~~ for my time. ~~My~~This compensation is not

contingent ~~on the~~ upon my performance, the conclusions I reach in my analysis, the

outcome of this
~~proceeding~~ matter, or ~~of~~ any ~~proceedings relating~~issues involved in or related to ~~the '824 patent~~this matter.

II. BACKGROUND AND QUALIFICATIONS

* * * * *

III. MATERIALS CONSIDERED

~~22~~19. In preparing this declaration, I reviewed the '824 patent, including the

claims of the patent in view of the specification, and I have reviewed the prosecution

~~prosecution~~ history of the '824 patent and numerous prior art and technical references from and

before the time of the alleged invention. ~~Of the materials cited as an~~These references are discussed below.

~~exhibit to the '824 patent IPR petition, I reviewed the following:~~
~~Exhibit~~
~~1001~~
~~1003~~
~~1004~~
~~1005~~
~~1006~~
~~1007~~
~~1008~~
~~1015~~
~~1016~~
~~1017~~
~~Description~~
~~U.S. Patent No. 9,742,824~~
~~File History of~~20~~ U.S. Patent No. 9,742,824~~
~~U.S. Patent 6,389,473 to Carmel et al.U.S. Patent No. 8,122,141 to Price~~
~~Final Written Decision, Web Power v. WAG Acquisition, LLC,~~

~~IPR2016-01238, Paper No. 22 (Dec. 26, 2017)~~
~~WAG~~
~~Acquisition, LLC, IPR2016-01238, Paper No. 28 (July 16, 2020)~~
~~U.S. Patent No. 7,529,806 to Shteyn~~
~~Plaintiffs Responsive Claim Construction Brief, No. 6-21-cv-~~
~~00815, Dkt. No. 38 (WDTX)~~
~~Declaration of Keith J. Teruya, No. 6-21-cv-00815, Dkt. No.~~
~~38-1 (WDTX)~~
~~U.S. Patent No. 6,728,763 to Chen~~
~~1018~~
~~1019~~
~~1020~~
~~1021~~
~~1022~~
~~1023~~
~~1024~~
~~1025~~
~~IETF RFC793 published in September 1981.~~
~~TCP/IP Illustrated, Volume 1 by W. Richard Stevens published~~
~~in 1994.~~
~~U.S. Patent No. 6,848,004 to Chang~~
~~WO1997044942 to Kliger~~
~~U.S. Patent No. 6,668,088 to Werner et al.~~
~~U.S. Patent No. 5,533,138 to Kim et al.~~
~~U.S. Patent No. 5,469,212 to Lee~~
~~U.S. Patent No. 6,314,137 to Ono et al.~~

~~23~~. Petitioner's counsel has asked me to consider whether certain references disclose or suggest, alone or in combination, the features recited in certain ~~certain~~ claims of the '824 patent. I have also been asked to consider the state of the art and the prior art available before the time of the alleged invention of the '824 patent. My opinions are provided in this declaration.

~~24~~21. My opinions in this declaration are based on my review of the documents above, my understanding as an expert in the relevant field, and my education, training, research, knowledge, and personal and professional experience. ~~experience.~~

~~25~~22. To my knowledge, I have no financial interest in Petitioner. Counsel for Petitioner has informed me that WAG Acquisition, LLC purports to own the '824 ~~'824~~ patent. To the best of my knowledge, I have no financial interest in WAG Acquisition, LLC and, to my recollection, have had no contact with WAG Acquisition, LLC or the named inventor of the '824 patent, Harold Edward Price. To the best of my knowledge, I do not have any financial interest in the '824 patent.

~~patent.~~

~~26~~23. To the extent any mutual funds or other investments that I own have a financial interest in the Petitioner, the Patent Owner, or the '824 patent, I am not aware of, and do not control, any financial interest that would affect or bias my judgment.

IV. LEGALSTANDARDS

~~27~~24. Petitioner's counsel has informed me that, in an inter partes review proceeding, a patent claim may be deemed unpatentable if it is shown by a preponderance of the evidence that the claim was either anticipated by a prior art patent or publication or rendered obvious by one or more prior art patents or publications.

~~28~~25. Petitioner's counsel has informed me that a claim is unpatentable if the differences between the subject matter of the patent and the prior art are such that the subject matter as a whole would have been obvious to a person of ordinary skill in the art~~, or a "POSIT A",~~ at the time of the invention~~.~~, a "POSIT A."

~~29~~26. Petitioner's counsel has informed me that a determination of whether a claim would have been obvious should be based upon several factors, including the following:

• The level of ordinary skill in the art at the time the application was filed;

• The scope and content of the prior art; and

• What differences, if any, existed between the claimed invention and the prior art.

~~30~~27. Petitioner's counsel has informed me that a single reference can render a patent claim obvious if any differences between that reference and the claims would have been obvious to a person of ordinary skill in the art. Alternatively, the teachings of two or more references may be combined in the same way as disclosed in the claims, if such a combination would have been obvious to one having ordinary skill in the art. In determining whether a combination based on either a single reference or multiple references would have been obvious, I understand from

Petitioner's counsel that it is appropriate to consider the following factors:

• Whether the teachings of the prior art references disclose known concepts combined in familiar ways, and when combined, would yield predictable results;

• Whether a POSIT A could implement a predictable variation~~,~~ and would see the benefit of doing so;

• Whether the claimed elements represent one of a limited number of known design choices~~,~~ and would have a reasonable expectation of success by those skilled in the art;

• Whether a person of ordinary skill would have recognized a reason to combine known elements in the manner described in the claim;

• Whether there is some teaching or suggestion in the prior art to make the modification or combination of elements claimed in the patent; and

• Whether the innovation applies a known technique that had been used to ~~to~~ improve a similar device or method in a similar way.

~~31~~28. Petitioner's counsel has informed me that a POSITA has ordinary creativity and is not an automaton.

~~32~~29. Petitioner's counsel has informed me that all prior art references are to be looked at from the viewpoint of a POSIT A.

~~33~~30. Petitioner's counsel has informed me that, in considering obviousness, it is important not to determine obviousness using the benefit of hindsight derived from the patent being considered, and that obviousness is analyzed from the perspective of a POSIT A at the time of the invention.

V. OVERVIEW OF THE '824 PATENT

~~34~~31. The '824 patent, titled "Streaming media delivery system~~"~~," was filed on October 3, 2016, and issued on August 22, 2017.

~~35~~32. The '824 patent issued from U.S. Patent Application No. 15/283,578 ('"578 application"), filed on October 3, 2016. The '578 application is a continuation of Application No. 13/815,040, filed on Jan 25, 2013, which is a continuation of

Application No. 13/385,375, filed on February 16, 2012, which is a continuation of Application No. 12/800,177, filed on May 10, 2010, which is a continuation of Application No. 10/893,814, filed on July 19, 2004, which is a continuation-in-part of Application No. 09/819,337, filed on March 28, 2001 , which claims priority to Application No. 60/231 ,997 ("'997 application"), filed on September 12, 2000 ("(the "Critical Date").

A. Summary of the Alleged Invention

3633. The '824 patent provides in the "Field of Invention" section of the specification that it relates generally to "multimedia computer communication systems" and more specifically describes "systems and methods for delivering streaming media, such as audio and video, on the Internet." EXl00l , 1:52-55.

3 734. According to the '824 patent, systems purportedly use 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. The user would "start[] the audio or video stream, typically by clicking on a 'start' button, and wait[] ten to twenty seconds or so before the material starts playing." Id., at 2:58-62. During that time, audio or video data would be delivered to the user's computer and fill the media player's buffer. Id., at 2:62-63.

3 835. The '824 patent states that in such systems "audio or video data is delivered from the source at the rate it is to be played out." Id., at 2:63-3: 1 ("[i]f, for example, the user is listening to an audio stream encoded to be played-out at 24,000 bits per second, the source sends the audio data at the rate of 24,000 bits per second.")."). After ten seconds of waiting, assuming the Internet connection has not been interrupted, "there [was] enough media data stored in the buffer to play for ten seconds." Id., at 3:1-4.

3936. The '824 patent purportedly describes a streaming media system in which, in addition to a conventional buffer at the user computer, the server uses a first in, first out ("FIFO") server buffer to store streaming media data, and media data is sent from the server buffer to the user computer at a rate faster than the

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