

UNITED STATES PATENT AND TRADEMARK OFFICE

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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AMAZON.COM, INC., AMAZON WEB SERVICES, INC.,  
AND AMAZON.COM SERVICES LLC.,

Petitioners

v.

WAG ACQUISITION, LLC

Patent Owner

U.S. Pat. No. 9,762,636

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*Inter Partes* Review Case No. IPR2022-01433

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**PATENT OWNER'S BRIEF IN SUPPORT OF RELEVANCE OF DECISION  
ON APPEAL IN *EX PARTE* WAG ACQUISITION, APPEAL 2023-003319**

**LIST OF PATENT OWNER'S EXHIBITS**

<b>Exhibit</b>	<b>Description</b>
2001	<i>WAG Acquisition, LLC v. WebPower, Inc.</i> , 781 F. App'x 1007 (Fed. Cir. 2019)
2002	IETF RFC 1945
2003	CV of Kevin Jeffay, Ph.D.
2004	<i>Longhorn HD LLC v. Netscout Systems, Inc.</i> , Case No. 2:20-CV-00349, Memorandum Opinion (E.D. Tex., March 31, 2022)
2005	<i>3G Licensing, S.A. v. HTC Corp.</i> , Case No. 17-83, Memorandum Order (D. Del. March 30, 2022)
2006	<i>SEVEN Networks, LLC v. Google LLC</i> , Case No. 2:17-cv-442, Pretrial Conference (E.D. Tex., Dec. 12, 2018)
2007	Declaration of W. Leo Hoarty
2008	Declaration of Henry Houh (Ex. 1002 of IPR2022-01228)
2009	Redline comparing declaration of Kevin Jeffay (Ex. 2824) with Declaration of Henry Houh (Ex. 2008)
2010	May 23, 2023, Deposition of Dr. Kevin Jeffay
2011	May 25, 2023, Deposition of Dr. Nathaniel Polish
2012	<i>In re Certain Fitness Devices, Streaming Components Thereof, and System Containing Same</i> , Inv. No. 337-TA-1265, Initial Determination (ITC, Sept. 9, 2022) (CALJ Clark S. Cheney)
2013	<i>In re Certain Fitness Devices, Streaming Components Thereof, and System Containing Same</i> , Inv. No. 337-TA-1265, Evidentiary Hearing – Volume III (ITC, March 14, 2022)
2014	<i>In re Certain Fitness Devices, Streaming Components Thereof, and System Containing Same</i> , Inv. No. 337-TA-1265, Document Filing Report

2015	Redline comparison of claims of '824 and '636 patents
2016	Final Written Decision, <i>WebPower v. WAG Acquisition, LLC</i> , IPR2016-01238, Paper No. 22 (Dec. 26, 2017)
2017	Final Written Decision on Remand, <i>WebPower v. WAG Acquisition, LLC</i> , IPR2016-01238, Paper No. 28 (July 16, 2020)
2018	IETF RFC 2068
2019	Microsoft Computer Dictionary, Fifth ed. (excerpts)
2020	<i>Avi Networks, Inc. v. Citrix Systems, Inc.</i> , IPR2019-00845, Ex. 1007
2021	April 10, 2023 Deposition of Dr. Henry Houh
2022*	<i>Ex parte WAG Acquisition, LLC</i> , Appeal 2023-003319, Reexam 90/014,834, Decision on Appeal (PTAB November 17, 2023) (U.S. Patent No. 8,122,141)
2636	Declaration of Kevin Jeffay (Ex. 1002 of IPR2022-01433)
2824	Declaration of Kevin Jeffay (Ex. 1002 of IPR2022-01430)

\* Addressed herein.

EX2022 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 (EX1005), with respect to the feature of repeated streaming element requests, which the Petition argues corresponds to the claims herein and is taught by Carmel. The appeals panel read Carmel *not* to disclose that feature, which reading totally aligns with Patent Owner's arguments herein, and is inconsistent with Petitioner's.

The Petition (Paper 2) relies on Carmel (EX1005) as alleged evidence for limitations requiring 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 18-55. 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).

EX2022 at 9.

EX2022 confirms Patent Owner's expert, Mr. Hoarty, that Carmel does not teach repeated client requests for successive individually identified elements. *See* EX2007 ¶¶ 50-52, 55, 58-65. Mr. Hoarty's testimony as to Carmel's failure to disclose the claimed individual request mechanism was already supported by the disclosures of Carmel itself and by Dr. Jeffay's prior ITC testimony (EX2013) and corresponding ITC decision (EX2014), which Mr. Hoarty cited, that came to the same conclusion. EX2022 reflects a further example of an independent review coming to the same conclusion as Mr. Hoarty.

Dated: December 1, 2023

Respectfully submitted,

*/Ronald Abramson/*

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