

IPR2022-01433

Petitioner's Response to Patent Owner's Brief

Filed on behalf of Amazon.com, Inc., Amazon Web Services, Inc.,  
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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,  
Petitioner,

v.

WAG ACQUISITION, LLC,  
Patent Owner.

Case No. IPR2022-01433  
Patent 9,762,636

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**PETITIONER'S RESPONSE TO PATENT OWNER'S  
BRIEF RE RELEVANCE OF DECISION ON APPEAL IN  
*EX PARTE WAG ACQUISITION*, APPEAL 20233-003319**

**EXHIBIT LIST (37 C.F.R. § 42.63(e))**

<b>Exhibit</b>	<b>Description</b>
1001	U.S. Patent No. 9,762,636
1002	Declaration of Kevin Jeffay, Ph.D.
1003	Curriculum vitae of Kevin Jeffay, Ph.D.
1004	File History of U.S. Patent No. 9,762,636 (Abridged)
1005	U.S. Patent No. 6,389,473
1006	Willebeek-LeMair et al. "Bamba—Audio and video streaming over the Internet," published in 1998
1007	Declaration of Rachel Watters re Willebeek
1008	Defendants' Opening Claim Construction Brief (Dkt. 37), No. 6:21-cv-00815-ADA (W.D. Tex.)
1009	Declaration of Dan Schonfeld (Dkt. 37.1), No. 6:21-cv-00815-ADA (W.D. Tex.)
1010	Plaintiff's Responsive Claim Construction Brief (Dkt. 38), No. 6:21-cv-00815-ADA (W.D. Tex.)
1011	Declaration of Keith J. Teruya (Dkt. 38.1), No. 6:21-cv-00815-ADA (W.D. Tex.)
1012	Defendants' Reply Claim Construction Brief (Dkt. 42), No. 6:21-cv-00815-ADA (W.D. Tex.)
1013	Plaintiff's Sur-Reply Claim Construction Brief (Dkt. 47), No. 6:21-cv-00815-ADA (W.D. Tex.)
1014	PCT Publication No. WO 1997/044942
1015	U.S. Patent No. 8,122,141
1016	U.S. Patent No. 6,668,088

Exhibit	Description
1017	U.S. Patent No. 5,533,138
1018	U.S. Patent No. 5,469,212
1019	U.S. Patent No. 6,314,137
1020	U.S. Patent No. 6,848,004
1021	U.S. Patent No. 6,728,763
1022	Scheduling Order (Dkt. 35), No. 6:21-cv-00815-ADA (W.D. Tex.)
1023	Defendants' Motion to Transfer Venue (Dkt. 30), No. 6:21-cv-00815-ADA (W.D. Tex.)
1024	United States District Courts Statistics
1025	Plaintiff's Responsive Claim Construction Brief (Dkt. 39), No. 6:21-cv-00816-ADA (W.D. Tex.)
1026	Declaration of Keith J. Teruya (Dkt. 39.1), No. 6:21-cv-00816-ADA (W.D. Tex.)
1027	Defendants' Reply Claim Construction Brief (Dkt. 43), No. 6:21-cv-00816-ADA (W.D. Tex.)
1028	Plaintiff's Sur-Reply Claim Construction Brief (Dkt. 45), No. 6:21-cv-00816-ADA (W.D. Tex.)
1029	"Transmission Control Protocol," IETF RFC793, published in September 1981
1030	TCP/IP Illustrated, Vol. 1, The Protocols, W. Richard Stevens, published in 1994
1031	U.S. Patent No. 6,175,862
1032	Microsoft Computer Dictionary. Fifth ed. (additional excerpt)
1033	August 3, 2023, Deposition of W. Leo Hoarty

The Board's appeal decision in EX2022, reversing the Examiner's *anticipation* rejection, is irrelevant to the present IPR for several reasons.

First, the rejection in EX2022 concerned the combination of Carmel's FIG. 6B multiple quality level embodiment with FIG. 3C, but the Petition here relies instead on Carmel's single quality level embodiment in FIG. 6A. Reply, 4-8. Thus, the Board's finding that the Examiner failed to provide support connecting Carmel's FIG. 6B embodiment to the symbols illustrated in FIG. 3C (EX2022, 7-8) is irrelevant.

Second, Petitioner's IPR challenge is based on *obviousness* and evidence not considered by the Board in reaching the decision in EX2022. WAG's reexamination argument that Carmel discloses requesting only the first element and "[t]here is no evidence that there are any requests for any element after the first" (EX2022, 9) addressed anticipation and ignores expert testimony in the present IPR. The IPR experts testified that: (a) by 2000 HTTP GET requests were well known and the most common way for a client to request files from a server; (b) Carmel described storing slices as separate files (EX1005, 7:27-28); and (c) clients request individual files with individual requests. Reply, 3-4, 15 (citing testimony of three experts including WAG expert Hoarty (EX1033, ¶¶ 18-19, 26, 41-42, 47-48, 63); Jeffay (EX2010, ¶ 111); and Houh (EX2021, ¶¶ 81-83)). The Board in EX2022 instead based its decision solely on what Carmel expressly teaches and did not have the benefit of the foregoing expert testimony. EX2022, 9.

Third, Petitioner relies on Feig as disclosing well-known details for HTTP GET requests. Reply, 6, 20. The combination of Carmel and Feig was not at issue in EX2022.

Fourth, WAG does not dispute limitation f in this IPR, which most closely corresponds to the limitation at issue in EX2022. *See* Pet., 35-39; Reply, 14-15; EX2022, 4. The Petition explicitly describes how Carmel alone and in combination with Feig discloses this limitation by reference in part to Carmel's FIGS. 6A and 3C and expert testimony. Pet., 35-39. In particular, the Petition explains the correlation between the symbols (J, J+1, J+2...) of FIG. 3C and the user systems' requests (as represented by FIG. 6A) that the Examiner failed to provide in EX2022. *Id.* WAG chose not to address this limitation in its Reply, just as WAG did not dispute a similar limitation found in claim 10 of the '141 patent that was cancelled in IPR2016-01238. *See* IPR2016-01238, Paper 22, 5 (listing claim 10); EX2022 at 2.

The decision in EX2022 is thus irrelevant to the present IPR. It was based on a different invalidity theory, as well as different prior art embodiments, arguments, and evidence. Nor does WAG appear to have disclosed evidence developed during this IPR to the panel in Reexamination 90/014,834 from which EX2022 arose. The record in the present IPR demonstrates that a POSITA would have found the challenged claims obvious based on the presented references.

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