UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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DUODECAD IT SERVICES LUXEMBOURG S.À.R.L.,
FRIENDFINDER NETWORKS INC., AND
STREAMRAY INC.,
Petitioner,

v.

WAG ACQUISITION, LLC,
Patent Owner.

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Case IPR2015-01036
Patent 8,364,839 B2

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Before GLENN J. PERRY, TREVOR M. JEFFERSON, and
BRIAN J. McNAMARA, *Administrative Patent Judges*.

PERRY, *Administrative Patent Judge*.

FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73

I. INTRODUCTION

This is a Final Written Decision entered in an *inter partes* review instituted pursuant to 35 U.S.C. § 314. For reasons discussed below, we determine that Petitioner has shown by a preponderance of the evidence that claims 1, 3, 4, 6, 8, 10, 11, 13, 15, 17, 18, and 20 of U.S. Patent No. 8,364,839 B2 (Ex. 1001, "the '839 patent") are unpatentable. However, Petitioner has not established by a preponderance of evidence that claims 7, 14, and 21 are unpatentable.

A. *Procedural History*

Duodecad IT Services Luxembourg S.à r.l., Friendfinder Networks Inc., and Streamray Inc., (collectively, "Duodecad" or "Petitioner") filed a Petition (Paper 2, "Pet."), to institute an *inter partes* review of claims 1–21 (the "challenged claims") of U.S. Patent No. 8,364,839 ("the '839 patent"). 35 U.S.C. § 311. WAG Acquisition, LLC ("WAG" or "Patent Owner") timely filed a Preliminary Response (Paper 6, "Prelim. Resp.") contending that the petition should be denied as to all challenged claims. We instituted an *inter partes* review of claims 1, 3, 4, 6–8, 10, 11, 13–15, 17, 18, 20 and 21 of the '839 patent.

After institution of trial, Patent Owner timely filed a Patent Owner Response (Paper 11, "Resp.") and Petitioner filed a Reply (Paper 13, "Reply"). We heard oral argument on July 18, 2016. A transcript of the argument was entered into the record. Paper 16 ("Tr.").

B. Real Parties in Interest

Petitioner identifies the following real parties-in-interest: Docler USA, LLC, Duodecad IT Services Luxembourg S.à r.l., Docler Holding S.à r.l., Gattyàn Family Irrevocable Trust (including Mr. György Gattyàn in his capacity as Grantor and Investment Advisor), Duodecad IT Services Hungary KFT, Gattyàn Group S.à r.l., FriendFinder Networks Inc., StreamRay Inc., WMM, LLC, WMM Holdings, LLC, Multi Media LLC, Various, Inc., Interactive Network, Inc., Data Tech Global, LLC, and DataTech Systems, LLC. Pet. 2. Patent Owner does not challenge Petitioner's statement of real parties in interest.

C. Related Matters

Petitioner states that Patent Owner asserted the '839 patent in eight pending litigations: *WAG Acquisition, LLC v. Sobonito Investments, Ltd.*, Case No. 2:14-cv-1661-ES-JAD (D.N.J.); *WAG Acquisition, LLC v. Multi Media, LLC*, Case No. 2:14-cv-2340-ES-JAD (D.N.J.); *WAG Acquisition, LLC v. Data Conversions, Inc.*, Case No. 2:14-cv-2345-ES-JAD (D.N.J.); *WAG Acquisition, LLC v. Flying Crocodile, Inc.*, Case No. 2:14-cv-2674-ES-MAH (D.N.J.); *WAG Acquisition, LLC v. Gattyàn Group S.à r.l.*, Case No. 2:14-cv-2832-ES-JAD (D.N.J.); *WAG Acquisition, LLC v. MFCXY, Inc.*, Case No. 2:14-cv-3196-ES-MAH (D.N.J.); *WAG Acquisition, LLC v. FriendFinder Networks Inc.*, Case No. 2:14-cv-3456-ES-JAD (D.N.J.); and *WAG Acquisition, LLC v. Vubeology, Inc.*, Case No. 2:14-cv-04531-ES-JAD (D.N.J.). Pet. 2.

In addition to this *inter partes* review, Petitioner filed petitions for *inter partes* reviews of U.S. Patent No. 8,185,611 ("the '611 patent"), U.S.

Patent No. 8,122,141 and U.S. Patent No. 8,327,011. The '839 patent states on its face that it is a continuation of the '611 patent, involved in IPR2015-01035. Prelim. Resp. 13, Ex. 1001. Petitions in related *inter partes* reviews IPR2015-01033 (U.S. Patent No. 8,327,011), IPR2015-01035 (U.S. Patent No. 8,185,611), and IPR2015-01037 (U.S. Patent No. 8,122,141) were denied.

D. The '839 Patent

1. Described Invention

The '839 patent, titled "Streaming Media Delivery System," issued on January 29, 2013. It describes users viewing or listening to streaming content over Internet connections encounter interruptions ("drops outs") due to transmission delays and losses. Ex. 1001, 2:16–23. The '839 patent addresses a "need for improved systems and methods for delivering streaming content over the Internet or other communications medium, which facilitate continuous transmission of streaming content, respond on demand without objectionable buffering delay, and perform without disruption or dropouts." *Id.* at 3:24–29.

The '839 patent tells us that Internet streaming, as practiced in the prior art, relied on a server transmitting streaming media continuously at the playback rate of the media, where the playback rate corresponds to the frames-per-second at which the media was encoded for playback at normal speed. *Id.* at 1:30–2:15. Data in each frame can be encoded using Constant Bit Rate (CBR) or Variable Bit Rate (VBR) encoding. *Id.*

A client device for receiving and playing a streamed transmission (e.g., a computer running media player software) typically used a playback

buffer (user buffer) for collecting frames of data being streamed. The client
would not begin playback until the user buffer was filled to a specified level.
The user buffer thus provided a reservoir of data available in the event of
packet loss or delay, corresponding to the playback time of the amount of
media initially buffered. If losses or delays occurred during transmission,
the content of the user buffer (reservoir of data) would shrink as playback
continued during the period of such losses or delays. See, e.g. Ex. 1001,
2:16−38. Because playback continued at the playback rate, the buffer did
not refill after depletion, other than by suspending playback and waiting for
it to refill. Startup of playback always had to wait for the user buffer
initially to accumulate data to a specified level, which required a noticeable
startup delay.

The '839 patent approach uses the server's built-in transport
mechanism, e.g., the server's TCP stack, as a control mechanism. *Id.* at 8:9–
13. The server buffer sends data, via the transport mechanism, to the user
buffer. At any time, the connection between the server and user buffers, as
moderated by the server's transport mechanism, sends as much data as the
transport mechanism will accept, and sends the data as fast as the connection
will allow. *Id.* at 10:24–33.

The server buffer is pre-filled before a user joins the stream and
transmission starts. *Id.* at 8:31–44. Pre-filling of the server buffer can be
rapid if the data comes from disk storage. If joining a live (real time)
transmission in progress, the server buffer is already filled at the time the
user joins the stream. Once the server buffer is sufficiently full, the server
buffer sends its contents, as fast as the connection will support, to the user

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