UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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WEBPOWER, INC.,

FRIENDFINDER NETWORKS INC., STREAMRAY INC., WMM, LLC,
WMM HOLDINGS, LLC, and MULTI MEDIA, LLC,

DUODECAD IT SERVICES LUXEMBOURG S.A.R.L., ACCRETIVE
TECHNOLOGY GROUP, INC., ICF TECHNOLOGY, INC., and
RISER APPS LLC,
Petitioner,

v.

WAG ACQUISITION, LLC,
Patent Owner.

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Case IPR2016-01239
Patent 8,364,839 B2

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Before TREVOR M. JEFFERSON, BRIAN J. McNAMARA, and
PATRICK M. BOUCHER, *Administrative Patent Judges*.

JEFFERSON, *Administrative Patent Judge*.

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

I. INTRODUCTION

On December 27, 2016, we instituted *inter partes* review based upon the ground asserted in the Petition (Paper 2, "Pet.") by Webpower, Inc., challenging claims 5, 12, and 19 of U.S. Patent No. 8,364,839 B2 (Ex. 1001, "the '839 patent") and a Preliminary Response to the Petition (Paper 6, "Prelim. Resp.") filed by WAG Acquisition, LLC ("WAG" or "Patent Owner"). Paper 7 ("Dec.") 35–36. We subsequently joined Friendfinder Networks Inc., Streamray Inc., WMM, LLC, WMM Holdings, LLC, and Multi Media, LLC in IPR2017-00784; and Duodecad IT Services Luxembourg S.A.R.L., Accretive Technology Group, Inc., ICF Technology, Inc., and Riser Apps LLC in IPR2017-00785 as parties to the present proceeding. Papers 11, 12. We refer collectively to all petitioners herein as "Petitioner."

In our Decision, we instituted *inter partes* review on the ground that claims 5, 12, and 19 of the '839 patent are unpatentable under 35 U.S.C. § 103(a) over (1) Chen,[1] Willebeek,[2] and Chen FH;[3] and (2) Chen, Cannon,[4] and Chen FH. Dec. 36; *see* Pet. 5 (setting forth grounds).

Following institution, Patent Owner filed a Patent Owner's Response (Paper 10, "PO Resp.") and Petitioner filed a Consolidated Reply to Patent Owner's Response (Paper 14, "Reply"). We held a hearing on September

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[1] U.S. Patent 5,822,524, issued October 13, 1998 (Ex. 1004, "Chen").

[2] M. H. Willebeek-LeMair, et al., *Bamba-Audio and Video Streaming Over the Internet*, IBM J. RES. DEVELOP., Vol. 42, No. 2 (1998) (Ex. 1008, "Willebeek").

[3] File History of U.S. Application 505,488 (Ex. 1010, "Chen FH").

[4] U.S. Patent 6,014,706, issued Jan. 11, 2000 (Ex. 1009, "Cannon").

25, 2017, and a transcript of the hearing is included in the record. Paper 20 ("Tr.").

We have jurisdiction under 35 U.S.C. § 6. This Final Written Decision is entered pursuant to 35 U.S.C. § 318(a) and 37 C.F.R. § 42.73. For the reasons discussed below, Petitioner has shown by a preponderance of the evidence that the challenged claims are unpatentable.

A. Related Proceedings

The '839 patent is the same patent that was the subject of *inter partes* review in IPR2015-01036 ("the '1036 IPR"), where our Final Written Decision determined that claims 1, 4, 6, 8, 11, 13, 15, 18, and 20 are unpatentable under 35 U.S.C. § 103(a) as obvious over Chen and Chen FH; and that claims 3, 10, and 17 are unpatentable under 35 U.S.C. § 103(a) as obvious over Chen, Chen FH, and ISO-11172.[5] *Duodecad IT Services Luxembourg S.a.r.l. v. WAG Acquisition*, *LLC*, IPR2015-01036 (PTAB Oct. 20, 2016) (Paper 17) ("*Duodecad-01036*"). We also note that the '839 patent is at issue in *I.M.L. SLU et al v. WAG Acquisition*, LLC, IPR2016-01658.

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[5] International Standard ISO/IEC 11172-1, "Information Technology – Coding of moving pictures and associated audio for digital storage media at up to about 1,5 Mbit/s – Part 1: Systems," August 1993; International Standard ISO/IEC 11172-1, "Information Technology – Coding of moving pictures and associated audio for digital storage media at up to about 1,5 Mbit/s – Part 2: Video," August 1993; and International Standard ISO/IEC 11172-1, "Information Technology – Coding of moving pictures and associated audio for digital storage media at up to about 1,5 Mbit/s – Part 3: Audio," August 1993 (collectively "ISO-11172").

The parties state that the '839 patent is asserted in nine pending litigations: *WAG Acquisition, LLC v. Sobonito Investments, Ltd. et al.*, Case No. 2:14-cv-1661-ES-MAH (D.N.J.); *WAG Acquisition, LLC v. Multi Media, LLC et al.*, Case No. 2:14-cv-2340-ES-JAD (D.N.J.); *WAG Acquisition, LLC v. Data Conversions, Inc. et al.*, Case No. 2:14-cv-2345-ES-MAH (D.N.J.); *WAG Acquisition, LLC v. Flying Crocodile, Inc. et al.*, Case No. 2:14-cv-2674-ES-MAH (D.N.J.); *WAG Acquisition, LLC v. Gattyàn Group S.à r.l. et al.*, Case No. 2:14-cv-2832-ES-MAH (D.N.J.); *WAG Acquisition, LLC v. FriendFinder Networks Inc. et al.*, Case No. 2:14-cv-3456-ES-MAH (D.N.J.); *WAG Acquisition, LLC v. Vubeology, Inc. et al.*, Case No. 2:14-cv-4531-ES-MAH (D.N.J.); *WAG Acquisition, LLC v. Gamelink Int'l Ltd. et al.*, Case No. 2:15-cv-3416-ES-MAH (D.N.J.); *WAG Acquisition LLC v. WebPower, Inc. et al.*, Case No. 2:15-cv-03581-ES-MAH (D.N.J). Pet. 1–2; Paper 4. One related litigation, *WAG Acquisition, LLC v. MFCXY, Inc. et al.*, Case No. 2:14-cv-3196-ES-MAH (D.N.J.), has been dismissed. Pet. 1–2; Paper 4.

B. The '839 Patent (Ex. 1001)

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 who 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

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without objectionable buffering delay, and perform without disruption or dropouts." *Id.* at 3:24–29.

The '839 patent states 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 number of 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.

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