

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FRIENDFINDER NETWORKS INC., STREAMRAY INC., WMM, LLC,
WMM HOLDINGS, LLC, MULTI MEDIA, LLC, AND
DUODECAD IT SERVICES LUXEMBOURG S.À.R.L,
Petitioner,

v.

WAG ACQUISITION, LLC,
Patent Owner.

Case IPR2015-01037
Patent 8,122,141 B2

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

McNAMARA, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

BACKGROUND

Friendfinder Networks Inc., Streamray Inc., WMM, LLC, WMM HOLDINGS, LLC, Multi Media, LLC, and Duodecad IT Services Luxembourg S.À.R.L (collectively, “Petitioner”) filed a petition, Paper 2 (“Pet.”), to institute an *inter partes* review of claims 1–28 (the “challenged claims”) of U.S. Patent No. 8,122,141 (“the ’141 Patent”). 35 U.S.C. § 311. WAG Acquisition, LLC (“Patent Owner”) timely filed a Preliminary Response, Paper 6 (“Prelim. Resp.”) contending that the petition should be denied as to all challenged claims. We have jurisdiction under 37 C.F.R. § 42.4(a) and 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted unless the information presented in the Petition “shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

For the reasons described below, we decline to institute *inter partes* review of all the challenged claims.

REAL PARTIES IN INTEREST

Petitioner identifies the following real parties-in-interest:

FriendFinder Networks Inc., StreamRay Inc., WMM, LLC, WMM Holdings, LLC, Multi Media, LLC, Various, Inc., Interactive Network, Inc., DataTech Global, LLC, DataTech Systems, LLC, 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, and Gattyàn Group S.à r.l. Pet. 2.

PENDING LITIGATION

Petitioner states that WAG Acquisition, LLC has asserted U.S. Patent No. 8,122,141 (“the ’141 Patent”) (the subject of the present Petition), as well as U.S. Patent No. 8,327,011 (“the ’011 Patent”), U.S. Patent No. 8,364,839 (“the ’839 Patent”) and U.S. Patent No. 8,185,611 (“the ’611 Patent”) in the District of New Jersey as follows: *WAG Acquisition, LLC v. Sobonito Investments, Ltd.*, No. 2:14-cv-1661 (D.N.J.) (’141 Patent; ’011 Patent; ’611 Patent; and ’839 Patent); *WAG Acquisition, LLC v. Multi Media, LLC*, No. 2:14-cv-2340 (D.N.J.) (’141 Patent; and ’011 Patent); *WAG Acquisition, LLC v. Data Conversions, Inc.*, No. 2:14-cv-2345 (D.N.J.) (’141 Patent; and ’011 Patent); *WAG Acquisition, LLC v. Flying Crocodile, Inc.*, 2:14-cv-2674 (D.N.J.) (’141 Patent; ’011 Patent; ’611 Patent; and ’839 Patent); *WAG Acquisition, LLC v. Gattayan Group S.à r.l.*, No. 2:14-cv-2832 (D.N.J.) (’141 Patent; ’011 Patent; ’611 Patent; and ’839 Patent); *WAG Acquisition, LLC v. MFCXY, Inc.*, No. 2:14-cv-03196 (D. N.J.) (’141 Patent; ’011 Patent; ’611 Patent; and ’839 Patent); *WAG Acquisition, LLC v. FriendFinder Networks Inc.*, No. 2:14-cv-3456 (D.N.J.) (’141 Patent; ’011 Patent; ’611 Patent; and ’839 Patent); and *WAG Acquisition, LLC v. Vubeology, Inc.*, No. 2:14-cv-4531 (D.N.J.) (’141 Patent; and ’011 Patent).

RELATED PROCEEDINGS

Petitioner notes that it has also petitioned for *inter partes* review of the ’011 Patent (IPR2015-01033), the ’611 Patent (IPR2015-01035) and the ’839 Patent (IPR2015-01036)

THE '121 PATENT (EXHIBIT 1001)

The '121 Patent discloses a system for sending streaming media, such as audio or video files, via the Internet with reduced playback interruptions. Ex. 1001, col. 4, ll. 39–44. Data interruptions can be recovered while the media player continues to play out the audio or video material. *Id.* at col. 4, ll. 48–50. A server connected to the Internet for transmitting time-sequenced data elements. *Id.* at col. 4, ll. 54–58. Associated with the server are a buffer manager and a FIFO buffer that stores at least one of the data elements for transmission. *Id.* at col 4, ll. 56–60. The buffer manager receives the media data, supplies the media data in order to the FIFO buffer, supplies the FIFO buffer with a predetermined number of data elements, and maintains a pointer into the buffer for each user computer indicating the last media data element that has been sent to that user, thus indicating the next element or elements to be sent. *Id.* at col. 4, ll. 61–66. Once the FIFO buffer is full, the oldest data elements in the buffer are deleted as new data elements are received. *Id.* at col. 4, l. 66–col. 5, l. 1. A pre-determined number of data elements are kept in the FIFO buffer. *Id.* at col. 5, ll. 1–4.

At least one user computer is connected to the server via the Internet or other data communications medium. The user computer is associated with media player software incorporating a user buffer that receives and stores a predetermined number of media data elements. *Id.* at col. 8, ll.25–28. The media elements that are received sequentially by the media player, are played out sequentially as audio and/or video, and the media data elements from the buffer as they are played out. *Id.* at col. 8, ll. 28–31. As data is played out, the next sequential data elements are received from the

server in such a fashion as to approximately maintain the predetermined number of data elements in the user's buffer. *Id.* at col. 8, ll. 31–34.

ILLUSTRATIVE CLAIMS

Claim 1 is illustrative:

1. A method for distributing streaming media via a data communications medium such as the Internet to at least one user system of at least one user, the streaming media comprising a plurality of sequential media data elements for a digitally encoded audio or video program, comprising
 - providing a server programmed to receive requests from the user system for media data elements corresponding to specified serial identifiers and to send media data elements to the user system responsive to said requests, at a rate more rapid than the rate at which said streaming media is played back by a user; and
 - providing a machine-readable medium accessible to said user, on which there has been recorded software for implementing a media player for receiving and playing the streaming media on said user system, said software being programmed to cause the media player to maintain a record of the identifier of the last data element that has been received; and to transmit requests to the server to send one or more data elements, specifying the identifiers of the data elements, as said media player requires in order to maintain a sufficient number of media data elements in the media player for uninterrupted playback.

Claim 19 is also illustrative:

19. A non-transitory machine-readable medium on which there has been recorded a computer program for use in operating a computer to prepare streaming media content for transmission by a server wherein said server responds to user requests for media data elements identified by a serial identifier, said program recorded on said non-transitory machine readable medium comprising a routine to store and serially identify sequential data elements comprising said streaming media content, in a format capable of being served to users by said server.

REFERENCES CITED IN PETITION

Reference	Designation	Exhibit
Silvia Hollfelder, Florian Schmidt, Matthias Hemmje, Karl Aberer, Arnd Steinmetz “Transparent Integration of Continuous Media Support into a Multimedia DBMS	Hollfelder	Ex. 1002
Jun Su, “Continuous Media Support for Multimedia Databases	Su	Ex. 1003
Coding Of Moving Pictures And Associated Audio -- For Digital Storage Media At Up To About 1.5 Mbit/S – Part 1	ISO11171-1	Ex. 1004
Information Technology – Coding of Moving Pictures and Associated Audio For Digital Storage Media At Up To About 1.5 Mbit/S – Part 2	ISO11171-2	Ex. 1005
Coding Of Moving Pictures And Associated Audio For Digital Storage Media At Up To About 1.5 Mbit/S – Part 3 Audio Contents	ISO11171-3	Ex. 1006

Reference	Designation	Exhibit
U.S. Patent No. 6,389,473 issued May 14, 2002	Carmel	Ex. 1007
U.S. Patent No. 6,336,143 B1 issued Jan. 1, 2002	Diedrich	Ex. 1012

BASIS OF PETITION

Petitioner asserts the following challenges to patentability (Pet. 3–4):

Claim[s]	Statutory Basis	Ground
1, 2, 5–7, 9–11, 14–16, 18–20, 24, 27, 28	35 U.S.C. § 103(a)	Obvious over Hollfelder in view of Su
3, 4, 12, 13, 22, 23, 25, 26	35 U.S.C. § 103(a)	Hollfelder in view of Su and ISO11172
8, 17, 21	35 U.S.C. § 103(a)	Hollfelder in view of Su and Carmel
19	35 U.S.C. § 102(a)/(e)	Anticipated by Diedrich

CLAIM CONSTRUCTION

For the reasons discussed below, we do not reach Petitioner’s challenges based on Su. We construe only those terms that appear in claim 19. Petitioner does not propose any constructions for the terms in claim 19. Patent Owner proposes the following constructions:

Said server responds to user requests for media data elements

Patent Owner proposes that “user requests for media data elements” means a request to send media data elements and that “said server responds to requests for media data elements identified by a serial identifier” be construed as referring to a response from the requestor. Prelim. Resp. 29 (citing Ex. 1001 col 8, ll. 46–47). Patent Owner’s proposed constructions

are disjointed and do not all concern the specific language of claim 19. We are not persuaded that this term requires any further construction and we accord this term its ordinary meaning in the context of the claim.

A routine to store and serially identify sequential data elements comprising said media content

Patent Owner contends that the claim language would exclude a system that uses only pre-existing identifiers. Prelim. Resp. 30. Patent Owner's construction appears to be mere argument. We are not persuaded that this term requires any further construction and we accord this term its ordinary meaning in the context of the claim.

ANALYSIS OF PETITIONER'S PRIOR ART CHALLENGES
Challenges Based on Su

Petitioner contends that Su discloses a client-pull system that assigns all of the Continuous Object Presentation Units (COPUs) disclosed in Hollfelder indexes numbered from 0 to n-1, where n denotes the total number of COPUs. *Id.* at 17. Petitioner argues that Su's indexes are the functional equivalent of serial numbers and that in the context of an MPEG video presentation, Su discloses that the client sends a request to a server that specifies a frame number. *Id.* at 17–18. Petitioner argues that requests by the client, in view of the combined teaching of Su and Hollfelder's teaching of keeping a record of COPUs (which may be frames in an MPEG system) disclose the limitation of sending or receiving a request "for media data elements corresponding to specified serial identifiers." *Id.*

As an initial matter, Patent Owner contends that Su is not applicable as a prior art reference. We addressed this issue extensively in related IPR2015-01033. There we determined that Petitioner had not carried its

burden of production to establish that Su was accessible to one of ordinary skill exercising reasonable diligence. *Friendfinder v. WAG Acquisiton*, Case IPR2015-01033, slip op. at 6–13 (PTAB Oct. 19, 2015)(Paper 8, Decision Denying Institution) (“Friendfinder I”). The analysis we applied in Friendfinder I concerning the public accessibility of Su also applies in this proceeding. Thus, we decline to institute on Petitioner’s challenges based on Su.

Remaining Challenge To Claim 19

The only remaining challenge is Petitioner’s challenge to claim 19 as anticipated by Diedrich. The text of the Petition, including the claim chart, concerning this challenge appears to be an almost verbatim copy of paragraphs 76 and 77 in the declaration of Nat Polish (Exhibit 1008 “Polish Decl.”). Thus, the Polish Declaration contributes little, if anything, to Petitioner’s arguments. Petitioner argues that Diedrich teaches transmitting data over a wide area network (WAN), such as the Internet to a client computer. Pet. 57. According to Petitioner, Diedrich, discloses the client sending pacing requests, *id.* (citing Ex. 1012 col. 3, ll. 4–13) and that such user requests contain a parameter (or serial identifier) to ensure the next number frame is sent, *id.* (citing Ex. 1012 col. 10, ll. 55–63). Petitioner also argues that Diedrich discloses storing the multimedia data in a fixed buffer and a storage device in terms of frame number (or sequential data elements) in a form for users. *Id.*

Patent Owner argues that, in contrast to user requests for media data elements, Diedrich is directed to a “push” embodiment and discloses adjusting the speed of the sending station’s delivery of media based on “pacing requests” made at negotiated time intervals by the client. Prelim

Resp. 47–48. According to Patent Owner, the subject matter cited by Petitioner concerning user requests addresses the response of the receiving station to a “start multimedia session request” signal sent to the receiving station by the sending station server. *Id.* at 48 (citing Ex. 1012 col. 8, ll. 35–38). Patent Owner notes that the receiving station’s response consists of a set of parameters for the sending station to use in configuring the upcoming session, rather than a request for media data elements. *Id.* at 48.

Patent Owner also contends that Diedrich does not disclose a routine to store and serially identify sequential data elements comprising streaming data content, as claimed. *Id.* According to Patent Owner, this limitation requires that the server serially identify the sequential data elements it stores, but merely referring to serial identifiers already present in the streaming media does not “store and serially identify sequential data elements comprising said streaming media content” as recited in claim 19. *Id.*

Claim 19 recites a computer with stored program instructions to be used in preparing streaming media content for transmission by a server. The program includes a routine to store and serially identify sequential data elements that comprise the streaming media content in a format that can be served to users. Claim 19 also recites that the server responds to user requests for media data elements identified by a serial identifier.

Diedrich discloses that the sending station, e.g., a server, initiates transmission with a start multimedia session request, including a number of parameters, to which a receiving station, e.g., a client, responds by initializing the following parameters utilized by the multimedia communications interface (Ex. 1012, col. 8, ll. 40–46,; col. 10, ll. 39–47): a parameter to indicate the set time interval selected for transmission of

multimedia requests, a parameter to indicate the frame size of the multimedia information, a parameter to indicate availability of current storage, a parameter to indicate the minimum data time remaining in the receiving station, a parameter to indicate the transmission frame, and a parameter to synchronize the interchange of multimedia data (to ensure that the sending station correctly transmits the next proper transmission frame and which may be the last frame number received by the receiving station, permitting the sending station to use the synchronization parameter to compute the availability of current storage at the receiving station). Ex. 1012, col. 8, ll. 36–50; col. 10, ll. 41–63.

As Patent Owner notes, although the parameters include frame numbers, the receiving station is not transmitting requests for particular data elements, but responding to a request to start a multimedia session from the sending station. The parameters the server transmits to the receiving station are not requests for data elements from the receiving station. The parameters identify the information the receiving station has received, the next information in the expected sequence, and the ability of the receiving station to accept additional information. Ex. 1012, col. 10, l. 64–col. 11, l. 6. The receiving station generates and transmits a multimedia session reply that includes a pacing parameter, as well as other parameters pertaining to the transmission of multimedia data. *Id.* at col. 11, ll. 7–18. A fixed multimedia buffer is then created, and the receiving station sends a multimedia pacing request to the sending station. *Id.* at col. 11, ll. 21–35. Although the parameters and pacing requests cited by Petitioner are used for purposes of synchronizing data transfer, we are not persuaded by Petitioner’s argument that Diedrich discloses the claimed feature “wherein said server responds to

user requests for media data elements identified by a serial identifier.” Pet. 58.

We are also not persuaded by Petitioner’s argument that Diedrich discloses the claimed “routine to store and serially identify sequential data elements comprising said streaming media content, in a format capable of being served to users by said server.” The subject matter Petitioner cites at column 4, lines 49–62 of Diedrich describes storing, updating and maintaining files, generally, but does not disclose the claimed routine to store and serially identify sequential data elements. Pet. 59. The subject matter Petitioner cites at columns 8 and 10 of Diedrich concern the receipt of parameters and transmission of pacing requests between the receiving station and the sending station, as discussed above, and also do not demonstrate the claimed routine. Pet. 59–60.

For the reasons discussed above, we are not persuaded that Petitioner has demonstrated a reasonable likelihood it will prevail in its challenge to claim 19 and we decline to institute a trial on Petitioner’s challenge to claim 19 as anticipated by Diedrich.

SUMMARY

We decline to institute an *inter partes* review of claim 1–28 as obvious under 35 U.S.C. § 103(a) because Petitioner has not met its burden of production to establish that Su is applicable prior art.

We are not persuaded that Petitioner has demonstrated a reasonable likelihood that it will prevail in its challenge to claim 19 as anticipated by Diedrich and we decline to institute a trial on this ground.

ORDER

In consideration of the foregoing, we do not institute *inter partes* review of claims 1–28 of the '141 Patent.

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