

1 **LISTON ABRAMSON LLP**
RONALD ABRAMSON (*Pro Hac Vice*)
2 ron.abramson@listonabramson.com
DAVID G. LISTON (*Pro Hac Vice*)
3 david.liston@listonabramson.com
ARI J. JAFFESS (*Pro Hac Vice*)
4 ari.jaffess@listonabramson.com
ALEX G. PATCHEN (*Pro Hac Vice*)
5 alex.patchen@listonabramson.com
405 Lexington Avenue, 46th Floor
6 New York, New York 10174
Telephone: (212) 357-1630
7 Facsimile: (917) 999-9999

8 **HILL, FARRER & BURRILL LLP**
WILLIAM A. WHITE (State Bar No. 121681)
9 wwhite@hillfarrer.com
One California Plaza
10 300 South Grand Avenue, 37th Floor
Los Angeles, California 90071
11 Telephone: (213) 620-0460
12 Facsimile: (213) 624-4840

Attorneys for Plaintiff
13 WAG ACQUISITION, L.L.C.

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA

16 WAG ACQUISITION, L.L.C., A New
Jersey Limited Liability Company,
17
18 Plaintiff,

19 v.

20 DISNEY STREAMING SERVICES
LLC, a Delaware limited liability
company, DISNEY STREAMING
21 TECHNOLOGY LLC, a Delaware
limited liability company, DISNEY
22 PLATFORM DISTRIBUTION, INC., a
Delaware corporation, BAMTECH,
23 LLC, a Delaware limited liability
company, ESPN, INC., a Delaware
24 corporation, and HULU LLC, a
Delaware limited liability company,
25
26 Defendant.

Case No. 2:21-cv-08230-JAK (Ex)
[Consolidated with USDC Case No.
2:21-cv-08242-JAK (Ex)]

**FIRST AMENDED COMPLAINT
FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY
TRIAL**

HILL, FARRER & BURRILL LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
ONE CALIFORNIA PLAZA
300 S. GRAND AVENUE, 37TH FLOOR
LOS ANGELES, CALIFORNIA 90071-3147

1 Plaintiff WAG Acquisition, L.L.C. (“WAG” or “Plaintiff”) alleges as follows,
2 for its first amended complaint against Defendants:

3 **JURISDICTION AND VENUE**

4 1. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331
5 and 1338(a), in that this action arises under the patent laws of the United States, 35
6 U.S.C. §§ 1 et seq. This Court has general as well as specific personal jurisdiction
7 over Defendants because they reside in this District and have engaged in systematic
8 and continuous business activities in this District, including acts of patent
9 infringement within this District giving rise to the claims asserted herein.

10 2. Defendants have established minimum contacts with this forum such
11 that the exercise of jurisdiction over Defendants would not offend traditional notions
12 of fair play and substantial justice. Defendants offer products and services in this
13 District and are part of a business enterprise headquartered in this District. On
14 information, a substantial number of Defendants’ employees in this District are
15 engineers who work on streaming media development and related technology. On
16 information and belief, these technical employees within this District have committed
17 acts of infringement on behalf of Defendants in this District by conduct including
18 configuring and managing Defendants’ servers and software for media player
19 devices, and testing and/or using media player devices, to infringe the patents-in-suit
20 as hereinafter alleged. On information and belief, Defendants distribute streaming
21 media over a content distribution network (CDN) that utilizes servers in this District,
22 over which Defendants exercise control, through operation and configuration, in a
23 manner that causes the servers so controlled by Defendants to infringe.

24 3. Venue is proper in this District pursuant to 28 U.S.C. § 1400(b) because
25 Defendants have regular and established places of business in this District and have
26 committed acts of infringement in this District by reason, inter alia, of having acted
27 in this District to configure and manage Defendants’ servers for distributing
28

1 streaming video, and software for media player devices, and to test and/or use media
2 player devices, in a manner that infringes the patents-in-suit as hereinafter alleged.

3
4 **INTRODUCTION**

5 4. Plaintiff’s predecessor, known as Surfer NETWORK, developed
6 technology to improve the process of delivering streaming media over the Internet,
7 reflected in a family of United States patents including without limitation U.S. Patent
8 Nos. 9,742,824, 9,729,594, and 9,762,636 (the “patents-in-suit”).

9 5. Defendants have used the technology taught and claimed in the patents-
10 in-suit to their substantial financial benefit, to achieve responsive and stable delivery
11 of its media, including without limitation video-on-demand (“VOD”) and live
12 programming, which Defendants provide via the Internet in the United States and
13 worldwide, for pre-recorded and live programming, delivered to desktop, tablet,
14 smartphone, smart TV, streaming stick, and other streaming device and media player
15 platforms, by way of their streaming video services, Disney+, MLB.TV, ESPN+, and
16 Hulu streaming video services (together referred to herein as “Video Services”).

17 6. Plaintiff alleges that Defendants’ Internet delivery of streaming video
18 via Defendants’ Video Services has infringed the patents-in-suit, as more particularly
19 specified herein.

20 **THE PARTIES**

21 7. WAG Acquisition, L.L.C. is a New Jersey limited liability company
22 with its principal place of business at 275 Route 10 East, Suite 220-313, Succasunna,
23 New Jersey 07876.

24 8. Defendant Disney Streaming Services LLC (“DSS”) is a Delaware
25 limited liability company with a place of business at 500 South Buena Vista Street,
26 Burbank, California, 91521.

1 U.S. Patent No. 9,762,636 (the “’636 patent”), Issue Date: September 12, 2017,
2 Title: Streaming Media Delivery System. A copy of the ’636 patent is attached hereto
3 as Exhibit C and incorporated herein by reference.

4 16. The patents-in-suit were developed in the course of SurferNETWORK’s
5 business and were assigned by Harold Price (the inventor) to SurferNETWORK.
6 Plaintiff now owns all rights to the patents-in-suit, including without limitation all
7 rights to recover for infringement of the patents-in-suit.

8 17. Plaintiff has complied with the marking provisions of 35 U.S.C. §
9 287(a), and also required those persons authorized to operate for or under Plaintiff to
10 comply therewith.

11 18. The patents-in-suit concern technological solutions to two problems that
12 SurferNETWORK perceived in the early streaming media implementations that
13 characterized the prior art. First, the beginning of playback, when a user clicked on a
14 program, would entail a significant period of “buffering,” during which the user
15 would typically only see an hourglass. During this period, the user would have to
16 wait until the player accumulated sufficient content over its Internet connection for
17 the program to start. Second, even after the program started, if the program stream
18 became interrupted, a repeat of the long and frustrating “buffering”/hourglass
19 sequence would be necessary, and this uneven stuttering behavior could occur
20 repeatedly. These problems resulted in a poor user experience and greatly
21 disadvantaged Internet streaming media as compared competitively against other
22 forms of audio and/or video media, such as radio and TV.

23 19. SurferNETWORK sought a solution that would jump-start Internet
24 media playback to achieve the perception of “Instant On,” so as to provide a user
25 experience akin to what ordinarily happened when turning on a transistor radio. The
26 patents-in-suit address the identified shortcomings in the prior art by changing the
27 manner of use of computer facilities and the sequence of operations by which
28 streaming media is delivered over an Internet connection, to provide an Internet

1 streaming user experience that would then be comparable to the immediacy and
2 continuity that the user enjoyed with ordinary radio and television.

3 20. The advances that the patents-in-suit assert improve over the prior art
4 include achieving the twin and simultaneous objects of (1) fast streaming startup after
5 a user requests a stream, and (2) avoiding interruptions once the streaming starts, for
6 the duration of the streamed program. The claims of the patents-in-suit spell out not
7 only these functional twin objectives, but also recite how to implement a process that
8 achieves both objectives—i.e., making the data constituting the program stream
9 available as discrete chunks identified by serial ID, responding to client requests
10 made for the chunks by their serial IDs, and sending each requested chunk comprising
11 the entire stream at a higher-than-playback transmission rate. By doing these things,
12 the patented mechanism ensures that each chunk can be transferred to the client
13 before it is needed for playback, so the streaming client will have the latitude it needs
14 to control the timing of its chunk requests so as to maintain its input buffer at a desired
15 level for the entire transmission of the stream, thereby achieving the desired advance
16 over the prior art. The claims are thus directed at specific technological measures that
17 improve the speed and reliability of how the client and server computers
18 communicate. Those measures utilize the computer components in each such
19 computer to function in a different way than those components were used in prior
20 approaches, thereby improving how computers communicate.

21 21. Inventive concepts in the patents-in-suit lie in the ability to satisfy the
22 requirements for fast streaming startup and uninterrupted delivery by switching to a
23 “pull” model, where the flow is regulated by the pace of client requests, rather than
24 trying to have the server pace its own delivery, and in making the pull mechanism
25 workable, by (i) pre-collecting quantities of the program in time-sequenced chunks,
26 (ii) using serial identifiers to ensure proper ordering of the chunks (even if some
27 chunks are sent more quickly than others), (iii) making the server responsive to
28

1 requests for chunks by their serial identifiers, and (iv) ensuring that the server will
2 send each chunk faster than the playback rate.

3 22. With regard to the claims concerning receiving streams (as in the '594
4 patent), further inventive concepts lie in the client's ability to monitor the state of its
5 buffer and rate of consumption of media to determine when to request chunks, and
6 how many to request. The claims at issue make clear that not only the startup but the
7 entire duration of the program is streamed in this manner, and using this combination
8 of steps for sustained media streaming was not conventional at the time of the
9 invention.

10 23. Defendants' accused systems avoid the delays and stuttering that
11 characterized the prior art by using the technology claimed in Plaintiff's patents.

12 **COUNT I: INFRINGEMENT OF THE '824 PATENT**

13 24. Plaintiff repeats and realleges the averments of paragraphs 1-23 above
14 as if fully set forth at length herein.

15 25. Defendants have each infringed the '824 patent under 35 U.S.C. §
16 271(a) by making and using server systems in accordance with one or more claims
17 thereof, without authorization and in the United States, by conduct as hereinafter
18 more particularly alleged.

19 26. In particular, Defendants' Video Services have taken advantage of
20 Plaintiff's improved technology as claimed in the '824 patent, throughout the term
21 of the '824 patent.

22 27. Defendants, through their Video Services, distribute (and during the
23 entire term of the '824 patent, have distributed), pre-recorded ("video on demand"
24 (VOD)) video programs that are digitally stored in and read from their server systems,
25 located in, or controlled from, the United States.

26 28. With regard to claim 1, on information and belief, Defendants originate
27 VOD streams for distribution through a content delivery networks, and configure,
28 manage and/or control the corresponding streaming servers and services.

HILL, FARRER & BURRILL LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
ONE CALIFORNIA PLAZA
300 S. GRAND AVENUE, 37TH FLOOR
LOS ANGELES, CALIFORNIA 90071-3147

1 29. The VOD streams for each of Defendants’ Video Services result from
2 recorded programs stored under the control of Defendants’ servers, in data structures
3 under the control of the server system. The programs are read from the storage when
4 views thereof are requested by Defendants’ customers.

5 30. The media data elements representing a program distributed through
6 Defendants’ Video Services each comprise a digitally encoded portion of the
7 program, for example, in video/mp4 encoding at a playback rate corresponding to the
8 encoding. This is shown, with respect to the Disney+, MLB.TV, ESPN+, and Hulu
9 streaming video services, in Exhibits D1-D4, respectively, attached hereto, which
10 show requests and responses captured in mid-stream during users’ reception of
11 Defendants’ video programming.

12 31. As shown in Exhibits D1-D4, the media data elements are serially
13 identified by numeric identifiers, which indicate a time sequence of the media data
14 elements.

15 32. For example, Exhibit D-1 (from the Disney+ service) shows requests for
16 media data elements having identifiers specified in the client request, e.g., 48_048.
17 The next following video request/response is similar, except that the identifier is
18 56_056, where the first two digits increment by 8 or a multiple of 8 with each
19 successive request, beginning over at 60, and the last three digits also increment by
20 8, returning to 136 after reaching 808. The foregoing constitutes a repetitive pattern
21 of incrementing/recycling identifiers that continues until the end of the program.
22 Corresponding patterns are shown in Exhibits D2-D4.

23 33. Exhibit E-1 is another view of requests to and responses from
24 Defendants’ Disney+ servers during a streaming session. Exhibit E-1 shows that the
25 server system receives “GET” requests (as shown in the top portion of the figure)
26 from user systems via data connections over the Internet, for media data elements
27 identified by numeric identifiers. Responsive to those requests, the server system
28 sends to the requesting user system the media data elements having the serial

1 identifier corresponding to the request (as shown in the bottom portion of the figure).
2 Corresponding request/response patterns for Defendants' other Video Services are
3 shown in Exhibits E2-E4.

4 34. In observed streaming sessions, the data connection of the server to the
5 user system, used for so responding, has consistently had a data rate more rapid than
6 the playback rate of the media data elements that are being sent via that connection,
7 and each sending is at a transmission rate as fast as that data connection will allow.
8 The media data elements being sent are selected as requested, and thus without
9 depending on the server system maintaining a record of the last media data element
10 that had been sent to the requesting user system. Likewise, such observations also
11 reflect that all of the media data elements that are so sent by the server system to the
12 one or more user systems (i.e., from the beginning to the end of the viewing session)
13 are sent solely in response to the user system requests, and all of the media data
14 elements that are sent by the server system to the requesting user systems are sent
15 from the data structure under the control of the server system as the media data
16 elements were first stored therein.

17 35. Furthermore, with regard to the dependent claims, as reflected in the
18 above example, the aforementioned identifiers, in addition to being serial, may also
19 be sequential, and the sending is via a reliable transmission protocol, which may be
20 TCP.

21 36. Defendants also make and use systems that incorporate and execute
22 instructions that carry out the foregoing streaming media distribution, as well as
23 computer-readable media (computer program products) that incorporate such
24 instructions.

25 37. Defendants, by performing the above-described processes, and making
26 and using the above-described systems and computer program products, have thereby
27 infringed one or more claims of the '824 patent during its term, in the United States.
28

1 38. The foregoing allegations encompass all servers used for distributing
2 Disney+, MLB.TV, ESPN+, and Hulu Video Services in, or controlled from, the
3 United States (regardless of where the users were located).

4 39. Defendant Disney Platform Distribution is responsible for the foregoing
5 infringement of the '824 patent by the Disney+ Video Service at least because Disney
6 Platform Distribution owns and controls the Disney+ website and service, owns and
7 provides via rental servers for that service, operates the streaming systems for
8 Disney+ in a manner that infringes as aforesaid, and receives revenue therefrom, and,
9 with Defendant DSS contracts for infringing performance of services for the Disney+
10 Video Service by third-party Content Distribution Networks ("CDNs"). Disney
11 Platform Distribution is responsible for the foregoing infringement of the '824 patent
12 by the ESPN+ Video Service at least because it owns and provides via rental servers
13 for the ESPN+ Video Service and, with DSS, contracts for infringing performance of
14 services for the ESPN+ Video Service by third-party CDNs. By said conduct with
15 respect to said Video Services, including without limitation retaining DSS and said
16 CDNs as agents that commit acts of infringement on its behalf, Disney Platform
17 Distribution is responsible for at least making and using infringing servers and
18 performing methods constituting infringement.

19 40. Defendants DSS and DST are each responsible for the foregoing
20 infringement of the '824 patent by the Disney+ Video Service at least because DSS
21 and DST maintain and develop the Disney+ Video Service, and, with Disney
22 Platform Distribution, DSS contracts for infringing performance of services for the
23 Disney+ Video Service by third-party CDNs. Defendant DSS is responsible for the
24 foregoing infringement of the '824 patent by the ESPN+ Video Service at least
25 because DSS, with Disney Platform Distribution, contracts for infringing
26 performance of services for the ESPN+ Video Service by third-party CDNs. By said
27 conduct with respect to the Disney+ and ESPN+ Video Services, DSS and DST are
28

1 each responsible for at least making and using infringing servers and performing
2 methods constituting infringement.

3 41. Defendant BAMTech is responsible for the foregoing infringement of
4 the '824 patent by the MLB.TV Video Service at least because BAMTech owns and
5 controls the domain bamtech.com and receives revenue for operating the MLB.TV
6 Video Service in a manner that infringes as aforesaid. Defendant BAMTech is
7 responsible for the foregoing infringement of the '824 patent by the ESPN+ Video
8 Service at least because BAMTech owns, develops, and maintains the ESPN+ Video
9 Service in a manner that infringes as aforesaid. By said conduct with respect to the
10 MLB.TV and ESPN+ Video Services, BAMTech is responsible for at least making
11 and using infringing servers and performing methods constituting infringement.

12 42. Defendant ESPN is responsible for the foregoing infringement of the
13 '824 patent by the ESPN+ Video Service at least because ESPN owns and controls
14 the domain for the ESPN+ Video Service. By said conduct with respect to the ESPN+
15 Video Service, ESPN is responsible for at least making and using infringing servers
16 and performing methods constituting infringement.

17 43. Defendant Hulu is responsible for the foregoing infringement of the
18 '824 patent at least because Hulu owns and controls the related domains and
19 develops, owns and maintains apps for using the Hulu Video Service, operates the
20 Hulu Video Service in a manner that infringes as aforesaid, owns the servers that
21 operate that service, and receives revenue therefrom. By said conduct with respect to
22 the Hulu Video Service, Hulu is responsible for at least making and using infringing
23 servers and performing methods constituting infringement.

24 44. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to not less than a
25 reasonable royalty for the use made by Defendants under the '824 patent, in an
26 amount subject to proof at trial, together with interest and costs as fixed by the Court.
27
28

COUNT II: INFRINGEMENT OF THE '594 PATENT

1
2 45. Plaintiff repeats and realleges the averments of paragraphs 1-44 above
3 as if fully set forth at length herein.

4 46. Defendants have each infringed the '594 patent under 35 U.S.C. §
5 271(a) by making and using computer recorded media for a streaming media player
6 in accordance with one or more claims thereof, without authorization and in the
7 United States, by conduct as hereinafter more particularly alleged.

8 47. In particular, Defendants' Video Services have taken advantage of
9 Plaintiff's improved technology as claimed in the '594 patent, throughout the term
10 of the '594 patent.

11 48. With regard to claim 1, each of Defendants' Video Services identified
12 herein utilizes software provided by Defendants and put into the hands of the user,
13 which executes on the user's media consuming device (e.g., computer, smartphone,
14 tablet, smart TV, streaming stick, or other streaming devices, referred to as the
15 "media player"), and causes that device to make requests for streaming media data
16 elements that are handled by Disney+ servers as described above in connection with
17 the '824 patent.

18 49. In the case of the Disney+ Video Service, the software described in the
19 foregoing paragraph is embodied in JavaScript files (e.g., files named "bam-hls.js"
20 (in whole or in part) and like names), which Defendants create and maintain as
21 electronic copies on computer-readable media on their server systems, thereby
22 making articles within the scope of the claims of the '594 patent. During the term of
23 the '594 patent, Defendants have used their copies of such software, under the control
24 of Defendants' servers, to read from such copies the contents of the JavaScript
25 software, to enable Defendants' servers to transmit the JavaScript files to users, so
26 that said software may then be operated on the user's media player device to make
27 the above-described requests to the servers deployed by Defendants' Video Services,
28 and work correctly with those servers.

1 50. The JavaScript software instructions are executable to cause the user’s
2 media player (via its processor) to send requests (HTTP GET requests as addressed
3 above with respect to the ’824 patent) via an Internet connection for a media data
4 element that is part of a desired audio/video stream, identified by a serial identifier.
5 The requested media data elements have a playback rate.

6 51. Plaintiff states, on the same basis as it did with respect to the
7 corresponding allegations concerning the ’824 patent, i.e., based on direct
8 observation, that the JavaScript instructions also cause the media player to receive
9 the requested media data elements over a data connection having a data rate more
10 rapid than the playback rate, receiving the requested media data elements as fast as
11 the data connection allows.

12 52. Monitoring playback further shows that the instructions further cause
13 the media player to store the received media data elements in its memory, and play
14 the received media data elements back in series from the memory. Observing the
15 captures over time also reflects that the instructions are further executable to cause
16 the media player, as the received media data elements are played, to automatically
17 send additional requests for subsequent media data elements for storage in the
18 memory of the media player, as required to maintain about a predetermined number
19 of media data elements in the memory of the media player during playing.

20 53. Furthermore, with regard to the dependent claims, the instructions cause
21 the media player to maintain in its memory a record identifying the last media data
22 element received and stored by the media player. As reflected in the above example,
23 shown in paragraph 35, the serial identifiers, in addition to being serial, may also be
24 sequential. The media data elements are received via a reliable transmission protocol,
25 which may be TCP. In addition, as noted above, the JavaScript software is provided
26 as a software application for the media player.

27 54. The MLB.TV, ESPN+, and Hulu Video Services likewise each provide
28 client-side software that operates in the same manner relative to the claims of the

1 '594 patent as described above with respect to the Disney+ Video Service, and each
2 infringes.

3 55. Defendants, by making and using the systems and computer program
4 products described above, have each thereby infringed one or more claims of the '594
5 patent, during its term, in the United States.

6 56. Each of Defendants Disney Platform Distribution, DSS, DST,
7 BAMTech, ESPN, and Hulu are responsible for said infringement at least by reason
8 of their involvement in operating the Defendants' Video Services as alleged above
9 with respect to the '824 patent.

10 57. The foregoing allegations encompass all servers used for distributing
11 Disney+ Video Services in, or controlled from, the United States (regardless of where
12 the users were located).

13 58. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to not less than a
14 reasonable royalty for the use made by Defendants under the '594 patent, in an
15 amount subject to proof at trial, together with interest and costs as fixed by the Court.

16 **COUNT III: INFRINGEMENT OF THE '636 PATENT**

17 59. Plaintiff repeats and realleges the averments of paragraphs 1-58 above
18 as if fully set forth at length herein.

19 60. Defendants ESPN, BAMTech, DSS, and Disney Platform Distribution
20 have each infringed the '636 patent under 35 U.S.C. § 271(a) by making and using
21 server systems in accordance with one or more claims thereof, without authorization
22 and in the United States, by conduct as hereinafter more particularly alleged.

23 61. In particular, Defendants' ESPN+ and MLB.TV Streaming Services
24 have taken advantage of Plaintiff's improved technology as claimed in the '636
25 patent, throughout the term of the '636 patent.

26 62. With regard to claim 1, Defendants, through the Defendants' ESPN+
27 and MLB.TV Streaming Services distribute (and throughout the term of the '636
28

HILL, FARRER & BURRILL LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
ONE CALIFORNIA PLAZA
300 S. GRAND AVENUE, 37TH FLOOR
LOS ANGELES, CALIFORNIA 90071-3147

1 patent have distributed) live video programs over the Internet, where each live
2 program is transmitted to a plurality of user systems.

3 63. Defendants' live streaming has included without limitation the
4 widespread streaming of sports events, and well as providing streaming services for
5 others that supported and distributed live streams. All of these activities are part of
6 the infringing conduct hereinafter alleged.

7 64. To do the foregoing, Defendants receive at their server systems a
8 continuous digitally encoded stream for the program, via a data connection from a
9 live source, in real time. Upon receipt of the stream, Defendants' servers supplied
10 media data elements representing the program, in which each element comprises a
11 digitally encoded portion of the program, for example, in transport stream (.ts) media
12 segments, in a plurality of encodings, such as video/MP2T, each at a playback rate
13 corresponding to the encoding. This is reflected in Exhibits F-1 (MLB.TV) and F-2
14 (ESPN+), attached hereto, which is representative of requests and responses captured
15 in mid-stream during a user's reception of Defendants' video programming.

16 65. As shown for example in the left-hand panel of Exhibit F-1, the media
17 data elements for a live transmission are serially identified by numeric identifiers,
18 which indicate a time sequence of the media data elements. As further reflected in
19 that panel, the media data elements are stored in a data structure under the control of
20 the server system.

21 66. Exhibit F-1 reflects requests being made to Defendants' servers by a
22 user system, for media data elements having identifiers specified in the client request,
23 e.g., 09_137. The next following video request/response is similar, except that the
24 identifier is 14_142, where the first two and last three sets of digits increment by 5
25 and recycle after reaching a maximum value, similar to the pattern shown above with
26 respect to pre-recorded media and the '824 patent. As in the case of the pre-recorded
27 video, the foregoing constitutes a repetitive pattern of incrementing/recycling
28 identifiers that continues until the end of the program.

1 67. Exhibit F-1 also shows that the server system receives “GET” requests
2 (as shown in the top right portion of the figure) from user systems via data
3 connections over the Internet, for media data elements identified by numeric
4 identifiers (the identifier is cut off in the printout of the GET request, but it can be
5 seen on the left panel that the request is to GET element 04_193.ts). Responsive to
6 those requests, the server system sends to the requesting user system the media data
7 elements having the serial identifier corresponding to the request (i.e., 04_193).

8 68. In observed streaming sessions of Defendants’ live programming, the
9 data connection of the server to the user system, used for so responding, has
10 consistently had a data rate more rapid than the playback rate of the media data
11 elements that are being sent via that connection, and each sending is at a transmission
12 rate as fast as that data connection will allow. As each element sent is responsive to
13 a prior request to the server, for by that element, by its identifier, it appears that the
14 media data elements being sent are selected without depending on the server system
15 maintaining a record of the last media data element that had been sent to the
16 requesting user system. It is further observed that, in such transmissions, all of the
17 media data elements that are so sent by the server system to the one or more user
18 systems are sent in response to the user system requests, and all of the media data
19 elements that are sent by the server system to the requesting user systems are sent
20 from the data structure under the control of the server system as the media data
21 elements were first stored therein.

22 69. Furthermore, with regard to the dependent claims, as reflected in the
23 above example, the aforementioned identifiers, in addition to being serial, may also
24 be sequential, and the sending is via a reliable transmission protocol, which may be
25 TCP.

26 70. Defendants also make and use systems that incorporate and execute
27 instructions that carry out the foregoing streaming media distribution, as well as
28

1 computer-readable media (computer program products) that incorporate such
2 instructions.

3 71. Defendants, by performing the above-described processes, and making
4 and using the above-described systems and computer program products, have each
5 thereby infringed one or more claims of the '636 patent during its term, in the United
6 States.

7 72. The foregoing allegations encompass all servers used for distributing
8 live video in, or controlled from, the United States for the MLB.TV, and ESPN+
9 (regardless of where the users were located).

10 73. Each of Defendants Disney Platform Distribution, DSS, BAMTech, and
11 ESPN are responsible for said infringement at least by reason of their involvement in
12 operating the Defendants' Video Services as alleged above with respect to the '824
13 patent.

14 74. Pursuant to 35 U.S.C. § 284, Plaintiff is entitled to not less than a
15 reasonable royalty for the use made by the Defendants under the '636 patent, in an
16 amount subject to proof at trial, together with interest and costs as fixed by the Court.

HILL, FARRER & BURRILL LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
ONE CALIFORNIA PLAZA
300 S. GRAND AVENUE, 37TH FLOOR
LOS ANGELES, CALIFORNIA 90071-3147

17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury on all issues.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff WAG ACQUISITION, L.L.C. requests an entry of judgment in its favor and against Defendants as follows:

- i. Declaring that Defendants have infringed one of more claims of United States Patent Nos. 9,742,824, 9,729,594, and 9,762,636;
- ii. Awarding to Plaintiff the damages arising out of said infringement of United States Patent Nos. 9,742,824, 9,729,594, and 9,762,636;
- iii. Awarding attorneys’ fees, costs, or other damages pursuant to 35 U.S.C. §§ 284 or 285 or as otherwise permitted by law, against Defendants;
- iv. Awarding costs in this action to Plaintiff; and
- v. For such other and further relief as the Court may deem just and proper.

DATED: August 11, 2022

Respectfully submitted,
LISTON ABRAMSON LLP

By: /s/ Alex G. Patchen
Ronald Abramson (*Pro Hac Vice*)
David G. Liston (*Pro Hac Vice*)
Ari J. Jaffess (*Pro Hac Vice*)
Alex G. Patchen (*Pro Hac Vice*)
LISTON ABRAMSON LLP
405 Lexington Avenue, 46th Floor
New York, New York 10174
Telephone: (212) 257-1630
Facsimile: (917) 633-5568

William A. White
HILL, FARRER & BURRILL LLP
One California Plaza
300 South Grand Avenue, 37th Floor

HILL, FARRER & BURRILL LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
ONE CALIFORNIA PLAZA
300 S. GRAND AVENUE, 37TH FLOOR
LOS ANGELES, CALIFORNIA 90071-3147

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Los Angeles, California 90071
Telephone: (213) 620-0460
Facsimile: (213) 624-4840

Attorneys for Plaintiff
WAG ACQUISITION, L.L.C.

HILL, FARRER & BURRILL LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
ONE CALIFORNIA PLAZA
300 S. GRAND AVENUE, 37TH FLOOR
LOS ANGELES, CALIFORNIA 90071-3147

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on August 11, 2022, I electronically filed the documents listed below with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list. I hereby certify that there are no non-CM/ECF participants indicated on the Manual Notice list.

**FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT
AND DEMAND FOR JURY TRIAL**

Executed on August 11, 2022, at Los Angeles, California.

Dated: August 11, 2022

By: /s/ *Sonia Padilla*
Sonia Padilla

HILL, FARRER & BURRILL LLP
A LIMITED LIABILITY PARTNERSHIP
ATTORNEYS AT LAW
ONE CALIFORNIA PLAZA
300 S. GRAND AVENUE, 37TH FLOOR
LOS ANGELES, CALIFORNIA 90071-3147